

ORDINANCE NO. 51-19

AN ORDINANCE of the City of Richland amending Titles 19, 23 and 24 of the Richland Municipal Code to send certain land use development permitting decisions to the City of Richland Hearing Examiner with the right of appeal to Benton County Superior Court.

WHEREAS, the City of Richland has need, from time to time, to amend the Richland Municipal Code (RMC) to bring local ordinances into alignment with developed practices, to eliminate conflicts and ambiguities, and to comply with state and/or federal law; and

WHEREAS, in October 2018, Richland City Council directed staff to pursue updating the City's land use development permitting process to send certain actions to the City's Hearing Examiner for final decision with an appeal opportunity into Benton County Superior Court; and

WHEREAS, the proposed changes in the hearing body for certain types of development applications will benefit the citizens of Richland by streamlining the approval process; and

WHEREAS, entrusting the final decision on land use development permitting to a qualified and experienced Hearing Examiner promotes consistency in result and reduces liability for the City.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Richland Municipal Code Section 19.20.010, entitled Procedures for processing development permits, as first enacted by Ordinance No. 12-96, and last amended by Ordinance No. 02-18A, is hereby amended to read as follows:

19.20.010 Procedures for processing development permits.

For the purpose of project permit processing, all development permit applications shall be classified as one of the following: Type I, Type II, ~~or~~ Type III, or Type IIIA. Legislative decisions are Type IV actions, and are addressed in RMC 19.20.050. Exclusions from the requirements of project permit application processing are contained in RMC 19.20.070.

A. Type I permits include the following types of permit applications:

1. Minor revisions to planned unit developments;
2. Final approvals of planned unit developments;
3. Short plats;
4. Small binding site plans;

5. Minor revisions to preliminary plats;
6. Minor revisions to site plans;
7. Minor revisions to special use permits;
8. Minor revisions to shoreline substantial development permits;
9. Minor new substantial development permits that meet any of the following criteria:
 - a. Single-family residences not constructed by an owner, lessee, or contract purchaser for their own use;
 - b. Single-family nonexempt docks; and
 - c. New developments on a site of one acre or less and with a cost of less than \$500,000;
10. Accessory dwelling units;
11. Extension of preliminary plat approvals.

B. Type II permits include the following types of permit applications:

1. Shoreline substantial development permits not classified as Type I permits or major revisions thereof;
2. Large binding site plans;
3. Site plan approvals or major revisions thereof;
4. Building height exceptions;
5. Design review – acceptance of alternative design standards;
6. Schools on small sites;
7. Joint use parking reductions;
8. Special sign permits;
9. Special use permits or major revisions thereof.

C. Type III permits include the following types of permit applications:

1. Preliminary plats or major revisions thereof;
- ~~2. Site-specific rezones;~~
32. Planned unit developments – preliminary approvals;
- ~~4. Development agreements;~~

53. Plat alterations or vacations.

D. Type IIIA permits include site-specific rezones.

DE. Type IV permits include the following types of permit applications:

1. Zoning code text and zoning district amendments;
2. Adoption of development regulations and amendments;
3. Area-wide rezones to implement new city policies;
4. Adoption of the comprehensive plan and any plan amendments; and
5. Annexations.

Section 2. Richland Municipal Code Section 19.20.030, entitled Project permit application framework, as first enacted by Ordinance No. 12-96, and last amended by Ordinance No. 19-14, is hereby amended to read as follows:

19.20.030 Project permit application framework.

	PROJECT PERMIT APPLICATION TYPE AND PROCEDURE				
	Type I	Type II	Type III	<u>Type IIIA</u>	Type IV
Recommendation Made By:	N/A	N/A	Hearing Examiner N/A	<u>Hearing Examiner</u>	Planning Commission
Permit Decision Made By:	Director	Board of Adjustment or Planning Commission or Hearing Examiner	City Council <u>Hearing Examiner</u>	<u>City Council</u>	City Council
Notice of Application:	No	Yes	Yes	<u>Yes</u>	No
Notice of Decision:	Yes	Yes	Yes	<u>Yes</u>	No
Notice of Hearing:	No	Yes	Yes	<u>Yes</u>	Yes

	PROJECT PERMIT APPLICATION TYPE AND PROCEDURE				
	Type I	Type II	Type III	<u>Type IIIA</u>	Type IV
Open Record Public Hearing:	No	Yes, before Board of Adjustment or Planning Commission or Hearing Examiner ¹	Yes, before Hearing Examiner	<u>The Hearing Examiner will conduct an open record pre-decision public hearing</u>	Yes, before both Planning Commission and City Council
Open Record Appeal Hearing:	Yes, before Hearing Examiner	No	No	<u>No</u>	N/A
Closed Record Appeal Hearing:	No	<u>No</u> Yes, before City Council	<u>No</u> Yes, before City Council	<u>City Council will conduct a closed record decision hearing</u>	N/A
Judicial Appeal:	Yes	Yes	Yes	<u>Yes</u>	Yes

¹ RMC 23.46.025 defines the specific special use permit applications for which the hearing examiner or board of adjustment is designated as the hearing body.

Section 3. Richland Municipal Code Section 19.70.040, entitled Closed record decisions and appeals – Type II project permit decisions, as first enacted by Ordinance No. 12-96, and last amended by Ordinance No. 19-14, is hereby amended to read as follows:

19.70.040 Closed record decisions and appeals – Type II project permit decisions. Appeals of the ~~hearing body's~~ director's decision on a Type II project permit application shall be governed by the following:

A. Time to File. An appeal of the Type I ~~or Type II~~ permit decision must be filed within ten (10) business days following issuance of the written decision. Appeals may be delivered to the development services division by mail, personal delivery, or e-mail ~~or by fax~~ before 5:00 p.m. on the last business day of the appeal period.

B. Computation of Time. For the purposes of computing the time for filing an appeal, the day the notice of decision is mailed shall not be included. The last day of the appeal period shall be included unless it is a Saturday, Sunday, or a day designated by RCW 1.16.050 or by the city's ordinances as a legal holiday; then it also is excluded and the filing must be completed on the next business day.

C. Content of Appeal. Appeals shall be in writing, be accompanied by an appeal fee, and contain the following information:

1. Appellant's name, address and phone number;
2. Appellant's statement describing his or her standing to appeal;
3. Identification of the application which is the subject of the appeal;
4. Appellant's statement of grounds for appeal and the facts upon which the appeal is based;
5. The relief sought, including the specific nature and extent;
6. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

D. Effect. ~~The timely filing of an appeal shall stay the effective date of the hearing body's decision until such time as the appeal is adjudicated by the council or withdrawn. In the case of an appeal of a Type I permit decision, t~~The timely filing of an appeal shall stay the effective date of the administrative decision until such time as the appeal is adjudicated by the hearing examiner or withdrawn.

E. Notice of Appeal. The director shall provide public notice of the appeal to any party required to receive notice of hearing on the underlying permit as set forth elsewhere in the city's adopted development regulations and to those persons entitled to notice of decision as set forth in RMC 19.60.080(D).

Section 4. Richland Municipal Code Section 19.70.050, entitled Procedures for closed record decisions, as first enacted by Ordinance No. 12-96, and last amended by Ordinance No. 19-14, is hereby amended to read as follows:

19.70.050 Procedure for closed record decisions ~~and appeals.~~

A. The following sections of this title shall apply to a closed record ~~meeting~~ proceeding: ~~decisions and appeals~~ proceeding. RMC 19.60.030; 19.60.040; 19.60.050; 19.60.060; 19.60.070(A), (B), (C), (D), and (F) and 19.60.080.

B. The closed record ~~decisions and appeals meeting~~ proceeding shall be on the record before the hearing body. No new evidence shall be presented before the city council in a closed record ~~appeal~~ proceeding. Only those persons who participated in the open record hearing before the hearing examiner, planning commission or board of adjustment may address the council in a closed record ~~appeal meeting~~ proceeding. Comments made at a closed record ~~appeal meeting~~ proceeding must be in the nature of summary argument only, based on and limited to facts in the written and oral record developed during the open record hearing. If any speaker at a closed record ~~appeal meeting~~ proceeding presents comments that are not based on facts in the record, anyone present ~~at the~~

meeting may make an objection. If an objection is made, the speaker will stop until the issue of the objection is resolved.

Section 5. Richland Municipal Code Section 19.70.060, entitled Judicial appeals, as first enacted by Ordinance No. 12-96, and last amended by Ordinance No. 29-12, is hereby amended to read as follows:

19.70.060 Judicial appeals.

Except in the event of legal authority providing for a different appeal process, ~~¶~~the city's final decision on an application may be appealed by a party of record with standing to file a land use petition in Benton County superior court. Such petition must be filed within 21 days of issuance of the decision, as provided in Chapter 36.70C RCW.

Section 6. Richland Municipal Code Section 23.70.210, entitled Public hearing and recommendation to council, as first enacted by Ordinance No. 28-05, and last amended by Ordinance No. 24-14, is hereby amended to read as follows:

23.70.210 Public hearing and recommendation to council.

A. Reclassification. The hearing examiner shall conduct an open record public hearing as required by RMC Title 19 for a Type IIIA permit application. The recommendation shall include written findings of fact and the reasons for the hearing examiner's action; and shall refer expressly to the maps, description and other matters intended by the hearing examiner to constitute the reclassification.

B. Amendment. The planning commission shall conduct an open record public hearing as required by RMC Title 19 for a Type IV permit application. The recommendation to the city council of any amendment hereto by the planning commission shall be by the affirmative vote of not less than a majority of the total members of the commission. The recommendation shall be by a recorded motion, which shall include written findings of fact of the commission and the reasons for its action; and the motion shall refer expressly to the specific language of the proposed amendment and any other graphics or materials intended by the commission to constitute the amendment. The secretary of the planning commission shall prepare and sign an action summary of the commission's recommendation, which shall be forwarded to the city clerk for scheduling for city council consideration.

Section 7. Richland Municipal Code Section 23.70.230, entitled Consideration and action by council, as first enacted by Ordinance No. 28-05, is hereby amended to read as follows:

23.70.230 Consideration and action by council.

The planning commission's or hearing examiner's recommendation on any reclassification or amendment, together with other reports, maps, documentation and recommendations, shall be considered by the city council in accordance with the provisions and requirements of RMC Title 19 (Development Regulation and Administration).

The council may, by ordinance, adopt or adopt with modification, any reclassification or amendment which the planning commission or hearing examiner has made a recommendation on; or by motion reject the reclassification or amendment.

The council may refer any request for reclassification or amendment back to the planning commission or hearing examiner for further review and recommendation. ~~In such case, no further public hearing before the planning commission shall be required.~~

Section 8. Richland Municipal Code Section 24.12.050, entitled Preliminary plat – Public hearing, hearing examiner consideration and recommendation to city council, as first enacted by Ordinance No. 73, and last amended by Ordinance No. 01-18, is hereby amended to read as follows:

24.12.050 Preliminary plat – Public hearing, hearing examiner decision, ~~consideration and recommendation to city council.~~

A. The hearing examiner shall consider any preliminary plat application and shall conduct an open record public hearing in accordance with Chapter 19.60 RMC. After public hearing and review the hearing examiner shall decide ~~determine~~ whether the preliminary plat is in accordance with the comprehensive plan and other applicable code requirements ~~and shall either make a recommendation for approval or disapproval to the city council.~~

~~Recommendation for~~ A decision of approval of the preliminary plat shall not be given by the hearing examiner without the prior review and approval of the city manager or ~~his~~ designee with respect to the engineering elements of said plat, including the following:

1. Adequacy of proposed street, alley, right-of-way, easement, lighting, fire protection, drainage, and utility provisions;
2. Adequacy and accuracy of land survey data;
3. The submittal by the applicant of a plan for the construction of a system of street lights within the area proposed for platting, including a timetable for installation; provided, that in no event shall such a plan be approved that provides for the dedication of such a system of lighting to the city later than the occupancy of any of the dwellings within the subdivision.

B. The hearing examiner ~~recommendation~~ decision shall be final, subject to judicial appeal as provided for in RMC 19.70.060. ~~forwarded to the city clerk for scheduling for city council consideration.~~

Section 9. Richland Municipal Code Section 24.12.053, entitled Preliminary plat – Required findings, as first enacted by Ordinance No. 03-00, and last amended by Ordinance No. 01-18, is hereby amended to read as follows:

24.12.053 Preliminary plat – Required findings.

The hearing examiner shall not ~~approve~~ ~~recommend~~ ~~approval of~~ any preliminary plat application, unless the approval is accompanied by written findings that:

- A. The preliminary plat conforms to the requirements of this title;
- B. Appropriate provisions are made for the public health, safety and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school;
- C. The public use and interest will be served by the platting of such subdivision and dedication; and
- D. The application is consistent with the requirements of RMC 19.60.095.

Section 10. Richland Municipal Code Section 24.12.055, entitled Preliminary plat – City council consideration and action, as first enacted by Ordinance No. 13-96, and last amended by Ordinance No. 01-18, is hereby amended to read as follows:

24.12.055 Preliminary plat – ~~City council~~ Hearing examiner consideration and action.

~~A. The city council shall consider the recommendation of the hearing examiner together with other recommendations, maps and documents and matters of record and render a decision on the preliminary plat consistent with the requirements of RMC Title 19 for Type III permit application.~~

BA. The application for preliminary plat approval shall be approved, disapproved or returned to the applicant for modification or correction within 90 days of the date of acceptance.

CB. ~~City council~~ Hearing examiner approval of a preliminary plat shall not guarantee final approval of the plat or subdivision and shall not constitute an acceptance of the subdivision, but shall authorize the subdivider to proceed with the preparation of the final plat along the lines indicated in the preliminary plat.

DC. Approval of the preliminary plat shall be operative for five (5) years from the date of approval by the hearing examiner ~~city council~~ during which time a final plat or plats may be submitted.

ED. The subdivision administrator may extend the approval period or may require that the preliminary plat must be resubmitted after the expiration of the approval period.

Section 11. This ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 12. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance, including but not limited to the correction of scrivener's errors/clerical errors, section numbering, references, or similar mistakes of form.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 5th day of November, 2019.


ROBERT J. THOMPSON
Mayor

ATTEST:


TONI FULTON, Acting Deputy City Clerk

APPROVED AS TO FORM:


HEATHER KINTZLEY, City Attorney

Date Published: November 10, 2019