

Ordinance No. 7342

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING OLYMPIA MUNICIPAL CODE CHAPTER 18.53 AND SECTIONS 18.72.100, 18.82.120, 18.82.240, AND 18.86.100, RELATING TO DEVELOPMENT AGREEMENTS**

**WHEREAS**, RCW 36.70B.170 authorizes the City of Olympia to enter into a written development agreement with a person having ownership or control of real property within its jurisdiction or as part of an annexation or service agreement; and

**WHEREAS**, the execution of a development agreement is a proper exercise of City police power and contract authority; and

**WHEREAS**, RCW 36.70B.200 requires that a public hearing be held on a development agreement prior to its approval, and that public hearing may be conducted by a planning commission, hearing examiner or other body designated by the Olympia City Council; and

**WHEREAS**, RCW 36.70B.060 requires that cities and counties provide for a consolidated development project review process that includes no more than one open record public hearing and one closed record appeal; and

**WHEREAS**, for development project applications that require review by the Olympia Hearing Examiner the single public hearing is conducted by the Hearing Examiner, in which case a public hearing on a development agreement should be combined with the hearing on the development project application; and

**WHEREAS**, the Olympia City Council desires to have information available regarding a development permit application when it is considering a proposed development agreement for the same property;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. Amendment of OMC 18.53.** Olympia Municipal Code Chapter 18.53 is hereby amended to read as follows:

Chapter 18.53  
DEVELOPMENT AGREEMENTS

18.53.000 Chapter Contents

Sections:

- 18.53.010 Authority.
- 18.53.020 Content of Development Agreement.
- 18.53.030 Applications.
- 18.53.040 Timing of Public Hearings.
- 18.53.050 Notice.
- 18.53.060 ~~Staff Report Reserved~~
- 18.53.070 ~~Public Hearing and~~ City Council Action.
- 18.53.080 Term of Agreement.

**18.53.010 Authority**

Pursuant to RCW 36.70B.170, the City may enter into a written development agreement with a person having ownership or control of real property within its jurisdiction. The execution of a development agreement is a proper exercise of City police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement ~~shall~~must be consistent with applicable development regulations. A development agreement ~~shall~~must reserve authority to impose new or different regulations to the extent required by serious threat to public health and safety.

### **18.53.020 Content of Development Agreement**

A development agreement ~~shall~~must set forth the duration of the agreement, the development standards and other provisions that apply to and govern and vest the development, the land use or development description, and any mitigation of the development of the real property. Any person intending to propose a development agreement shall first meet with the Director of Community Planning and Development, or the Director's designee, for purposes of understanding the parameters of the proposal and applicable procedures.

### **18.53.030 Applications**

Consideration of a development agreement may be initiated by City Council or ~~council~~Council committee or requested by ~~the planning commission~~, City Staff, or the applicant. Any person may personally, or through an agent, propose a development agreement regarding property the person owns. The applicant shall file a complete development agreement application on forms provided by the Department. At minimum, such application ~~shall~~must include a copy of the proposed agreement, applicable fee, names and address of all current owners of ~~the subject~~real property, and all real property within 300 feet of each boundary of the subject property as shown in the records of the county assessor, and a vicinity map showing the subject property with enough information to locate the property within the larger area. In addition, the Director may require the applicant ~~may be required to~~ submit any additional information or material that the Director determines is reasonably necessary for a decision on the matter.

### **18.53.040 Timing of Public Hearings**

Any development agreement associated with a specific project or development plan application that has been received by the City and that requires Hearing Examiner approval shall must be heard by the City Council at a public hearing conducted by the Hearing Examiner prior to consideration of any related project application. The Hearing Examiner shall consider the proposed development agreement at the public hearing and make a recommendation to the City Council on whether the proposed development agreement should be approved, rejected, or approved with modifications. Any development agreement for a property for which a development permit application has not been received by the City, or for which a development permit application has been received that does not require Hearing Examiner approval, must be heard at a public hearing conducted by the City Council. A final decision on any related project application may not be issued prior to the City Council's decision on a development agreement with which it is associated.

### **18.53.050 Notice**

Prior to the public hearing ~~held by the City Council~~, the Director shall issue a public hearing notice as outlined in OMC 18.78 Public Notice Requirements. ~~describing the purpose of hearing, the date, time, and place of the public hearing, the name of the applicant and the project name (if applicable), a description of the proposed agreement, and the street address of the subject property or other description of its location, a statement of the availability of the record, a statement of the right of any person to submit written comments to the Council and to appear at the public hearing to give comments.~~ The Director shall distribute this notice and require at

least one public notification sign in accordance with OMC 18.78.040. At least seven calendar days before the hearing, the Director shall distribute the staff report to the applicant and each person who has specifically requested it.

#### **18.53.060 ~~Staff Report~~Reserved**

~~The Director shall prepare a staff report for the public hearing by the City Council containing all pertinent application materials, all comments regarding the matter received by the Department prior to distribution of the staff report, an analysis of the application under the relevant provisions of this chapter and state law, and a recommendation on the matter. At least seven calendar days before the hearing, the Director shall distribute the staff report to the applicant and each person who has specifically requested it.~~

#### **18.53.070 ~~Public Hearing and City Council Action~~**

~~The City Council shall consider the proposed development agreement at and following the public hearing. The decision of City Council on a development agreement is the final decision of the City. The Director shall distribute Notice notice of the final decision by the City Council ~~shall be~~ according to OMC 18.78. ~~mailed to the applicant, to any person who submitted comments to the City Council, and to any other person who has specifically requested it. The applicant shall record~~ A the approved development agreement ~~shall be recorded with the Thurston County Records Department.~~~~

#### **18.53.080 Term of Agreement**

During the term of the development agreement, the agreement is binding on the parties and their successors. Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or part of build-out period specified in the agreement, and ~~may is not be~~ subject to an amendment to a zoning ordinance, development standard, or regulation adopted after the effective date of the agreement. A permit or approval issued by the City after the execution of the development agreement ~~shall must~~ be consistent with the development agreement. Amendments to the terms of the development agreement ~~shall may~~ be done only by a written instrument executed by all parties pursuant to the procedures of this ~~article~~ chapter, or as may be amended. The City ~~will~~ shall process and decide upon an application for an amendment upon payment of applicable fees, as if it were an application for a new development agreement.

**Section 2. Amendment of OMC 18.72.100.** Olympia Municipal Code Section 18.72.100 is hereby amended to read as follows:

#### **18.72.100 Review and appeal authority**

The following table describes development permits and the final decision and appeal authorities. When separate applications are consolidated at the applicant's request, the final decision ~~shall must~~ be rendered by the highest authority designated for any part of the consolidated application.

#### **KEY:**

Director = Community Planning and Development Director or designee

SPRC = Site Plan Review Committee

**KEY:**

DRB	=	Design Review Board
PC	=	Planning Commission
HC	=	Heritage Commission
HE	=	Hearing Examiner
Council	=	City Council
R	=	Recommendation to Higher Review Authority
D	=	Decision
O	=	Open Record Appeal Hearing
C	=	Closed Record Appeal Hearing

[NOTE: City Council decisions may be appealed to Superior Court, except comprehensive plan decisions, which may be appealed to the State Growth Management Hearings Board.]

	Director	SPRC	DRB	PC	HC	HE	Council
<b>ZONING</b>							
Conditional Use Permit	D	R				D	
<u>Development Agreement, associated with a development permit application requiring Hearing Examiner review</u>						<u>R</u>	<u>D</u>
<u>Development Agreement, not associated with a development permit application requiring Hearing Examiner review</u>							<u>D</u>
Interpretations	D					O	
Land Use Review	D <sup>1</sup>	R				O	
Small Lot Review	D					O	
Townhouse (2 – 4 Units)	D					O	
Townhouse (10 or more units)		R	R			D	
Townhouse Final (2-9)	D					O	
Townhouse Final (10 or more)		R					D

	Director	SPRC	DRB	PC	HC	HE	Council
Zoning Variance	R					D	
Zone Map Change, without Plan Amendment	R					R	D
Zone Change, with Plan Amendment or Ordinance Text Amendment	R			R			D
Home Occupation	D					O	
Temporary Use Permit	D					O	
SEPA exempt Building Permit	D					O	
Parking or Fence Variance	D	R				O	
Accessory Dwelling Unit	D					O	
Short-Term Rental – Vacation Rental	D					O	
Accessory Building	D					O	
Occupancy Permit	D					O	
Sign Permit	D					O	
Landscape Plan	D					O	
Tree Plan	D					O	
Historic Properties	D	R			R	O	
<b>COMPREHENSIVE PLAN</b>							
Amendments (map, text)	R			R			D
<b>DESIGN REVIEW</b>							
Detailed Review	D		R				
major			O				
Concept Review	D	R	R			O	
Signs (general)	D					O	

	Director	SPRC	DRB	PC	HC	HE	Council
Scenic Vistas	D	R	R			O	
<b>ENVIRONMENTAL</b>							
Threshold Determination	D					O	
Impact Statement Adequacy	D					O	
Reasonable Use Exception	R					D	
SEPA Mitigating Conditions	D					O	
Shoreline Substantial Development Permit	D	R					
Shoreline Conditional Use Permit		R				D	
Shoreline Variance		R				D	
Shoreline Permit Revision or Exemption	D					O	
<b>SUBDIVISION</b>							
Boundary Line Adjustment (including lot consolidation)	D					O	
Preliminary Plat, Long	R					D	
Preliminary Short, (2-9 lots)	D <sup>1</sup>					O	
Final Short Plat	D					O	
Final Long Plat	D					O	
Master Plan Approval	R		R			R	D
MPD Project Approval		R	R			D	
Preliminary PRD		R				R	D
Final PRD		R					D
Time Extensions	D					O	

<sup>1</sup> Except when the Director refers the project for a public hearing before the Hearing Examiner pursuant to OMC 18.60.080 or 17.32.130(A)(4).

**Section 3. Amendment of OMC 18.82.120.** Olympia Municipal Code Section 18.82.120 is hereby amended to read as follows:

**18.82.120 Authority**

The following cases ~~shall be~~ within the jurisdiction of the Hearing Examiner under the terms and procedures of this Chapter.

- A. Short plat modification, variance requests or appeals.
- B. Shoreline development permits and permit rescissions.
- C. Shoreline development variances.
- D. Preliminary plat applications.
- E. Preliminary plat approval extension requests.
- F. Rezone and Master Planned Development applications.
- G. Preliminary plat modification requests.
- H. Planned residential developments.
- I. Conditional use permits.
- J. Zoning variances.
- K. Appeals of zoning interpretations.
- L. Administrative appeals.
- M. Appeals of the requirements of the Engineering Design and Development Standards, including deviation request decisions made under Chapter 1 of such Standards
- N. Applications for density bonuses.
- O. Removal of density bonus conditions.
- P. Critical area reasonable use exception.
- Q. Site plan and home occupation application referred by staff.
- R. Preliminary short plat or binding site plan applications referred by staff.
- S. Concept design review.

- T. Detailed design review.
- U. Building and grading permits.
- V. Engineering and other construction permits.
- W. Permits and other matters associated with and consolidated with applications for the above project approvals.
- X. Appeals of Community Planning and Development Director's denial or cancellation of a multi-family housing final certificate of tax exemption.
- Y. Subdivision improvement deferral agreement.
- Z. County homeless encampments.
- AA. Appeals of Drainage Manual Administrator decisions.
- BB. Development Agreements associated with a pending development permit application requiring Hearing Examiner review.

**Section 4. Amendment of OMC 18.82.240.** Olympia Municipal Code Section 18.82.240 is hereby amended to read as follows:

**18.82.240 Rezones –Recommendations**

The Hearing Examiner shall make Any any decision of the Hearing Examiner regarding a rezone, or a Master Plan Development, or a development agreement associated with a pending development permit application requiring Hearing Examiner review, with or without conditions, shall be in the form of a recommendation to the City Council. The City Council shall consider Said such recommendation shall be considered by the Council at a regular public meeting. In the alternative, the Council may consider the recommendation at a public hearing with notice given as provided by this Chapter. In either case, the scope of Council review shall be as provided in Sections 18.75.080 and 18.75.100 of this Chapter. The evidence, record, and arguments before the Council shall be limited solely to those brought before the Hearing Examiner. A copy of documents will be provided to the Council by paper or on the internet electronically. A copy of arguments will be presented to the Council or provided on the internet electronically. No new evidence, record or arguments of any type is allowed before Council. The staff report, recordings if any, and attachments, including those on the internet, to Council will solely provide the evidence, record, and argument that was presented to the City Hearing Examiner on the proposed rezone that does not require a Comprehensive Plan amendment.

**Section 5. Amendment of OMC 18.86.100.** Olympia Municipal Code Section 18.86.100 is hereby amended to read as follows:

**18.86.100 Responsibilities of the City**

- A. The City shall provide a list of recognized neighborhood associations and their contacts to the proponents of a project at each pre-submission conference. The City ~~will~~ shall encourage the project proponents of development to discuss their project with the recognized neighborhood associations.
- B. The City shall mail notice to recognized neighborhood associations within ~~fourteen~~ (14) days of determination that the following applications, proposals, or determinations are complete:



Administrative Time Extensions for Plats Formal Site Plan Review

Annexations

Comprehensive Plan Amendments

Conditional Uses

Development Agreements

Environmental Determinations

Environmental Impact Statements

Family Child Care Home

Land Clearing Permit Applications

Land Use Approval

Landmark Tree Nominations

Major Design Review

Master Planned Developments

Mobile Home Parks

Permit Amendments by Hearing Examiner

Planned Residential Developments (Preliminary and Final)

Rezoning

Shoreline Conditional Uses

Shoreline Substantial Developments

Shoreline Variances by Hearing Examiner

Short Plats (5 to 9 lots)

Site Plan Review

Street or Alley Vacations

Subdivisions (Preliminary Plat) (10 or more lots)

Time Extension of any discretionary action

Tree Removal Applications

Townhouses including 5 units or more

Variances

Zoning Ordinance Text Amendments

1. This notice ~~will~~ must be given when such applications, projects, or determinations are enclosed by or within ~~one thousand (1,000)~~ feet of the recognized neighborhood association's boundaries. If no recognized neighborhood association is within ~~one thousand (1,000)~~ feet of the area of an application,

project or determination, then the recognized neighborhood association closest to the application, project or determination ~~will~~must be notified.

2. The City shall mail such neighborhood associations notice concerning all subsequent public hearings concerning such applications, projects, or determinations, except hearings which have been continued to a specific time announced at the prior hearing.

C. In addition to any notice of application, such notice shall include the following information:

1. The nature of the project or proposal and its location.
2. The process to be followed, with expected time line, if known.
3. Name and address of the applicant and of the agent/contact person.
4. Name and phone number of the city staff contact person.
5. Any other government agencies known to have decision-making authority in the application/action.
6. Any government programs providing funds for the project.

D. Upon request the City shall provide information regarding the above actions at no charge to the two (2) registered neighborhood association contacts. Requests for additional copies or duplicates of information already received may be charged at cost. Extraordinary requests which require substantial staff time, production cost and mailing fees will be charged to the neighborhood association when permitted by law. Payment is due upon receipt of materials.

E. The City shall give directly affected recognized neighborhood associations notice by mail of pending major development and redevelopment projects by the City which will have a direct, significant impact on that neighborhood; such as street construction and major repair, total closing of streets, changes in size or type in City parks, or building of new City facilities. The City shall provide notice by mail or e-mail of any home occupation business licenses issued within the boundaries of a neighborhood association.

F. For the purpose of A, B, C, D and E of this section, first class letters mailed to two (2) contact addresses submitted by a neighborhood association shall constitute notification. Alternatively, if an e-mail contact address is provided, notice may be provided by electronic mail.

G. The City shall:

1. Inform all known neighborhood associations and inquiring parties of the requirements for recognition, and advise such groups on how to meet the requirements.
2. Review its files on neighborhood associations to verify if each association has met the requirements for recognition with current information.
3. At least annually notify each known neighborhood association of its current recognition status.

4. Work with recognized neighborhood associations to develop an understanding of the processes for neighborhood review and comment on applications and actions pursuant to this Chapter.
5. Supply annually to all recognized neighborhood associations a current list of all City government agencies, their department heads, and corresponding phone numbers.
6. Make available to the public the names and addresses of the two (2) designated recipients of notices as most recently specified by each recognized neighborhood association.
7. Review this chapter two (2) years after adoption to determine if modifications are needed to meet the purpose of the chapter.

H. The City Manager shall develop a program to support the establishment of neighborhood associations and their active participation in City decision processes. The details of this program shall be subject to available resources, and may include:

1. Through its publications and in response to inquiries, encourage individuals to participate with their existing neighborhood association.
2. Encourage the development of neighborhood associations where they do not exist.
3. Provide an opportunity, under City editorial control, to increase communications between neighborhood associations and the general public by publishing neighborhood related articles in the City's quarterly newsletter.
4. Provide an annual neighborhood association workshop on appropriate topics concerning City procedures and actions as well as the effective operation of neighborhood associations. A neighborhood handbook with information on the program and City resources will be made available.
5. Advise recognized neighborhood associations of self-help projects which could enhance the quality of life within their neighborhoods. For example, the City may pass along information from organizations such as Neighborhoods USA. It will continue to work cooperatively with neighborhoods on spring clean-up drives, recycling programs, and other appropriate ventures.
6. The City and neighborhood associations shall hold alternating quarterly forums to discuss items of interest. The City is responsible for hosting two (2) meetings a year and shall develop agenda topics. The neighborhood associations are responsible for hosting the remaining two (2) meetings and shall develop agenda topics. These forums shall be coordinated through the City Manager's Office.


I. With the advice and consent of the Council, the City may establish practices, rules and guidelines necessary to implement this Chapter.

**Section 6. Corrections.** The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.


**Section 7. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 8. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 9. Effective Date.** This Ordinance shall take effect thirty (30) days after passage and publication, as provided by law.

  
\_\_\_\_\_  
MAYOR

**ATTEST:**

  
\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
DEPUTY CITY ATTORNEY

**PASSED:** November 1, 2022

**APPROVED:** November 1, 2022

**PUBLISHED:** November 4, 2022