

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING VARIOUS SECTIONS AND SUBSECTIONS OF TITLE 18, UNIFIED DEVELOPMENT CODE, OF THE OLYMPIA MUNICIPAL CODE RELATED TO REASONABLE USE EXCEPTIONS AND VARIANCES

WHEREAS, Title 18 of the Olympia Municipal Code (OMC) contains provisions allowing, in certain circumstances, for reasonable use exceptions to development and building limitations in critical areas, and provisions allowing, in certain circumstances, variances to certain zoning limitations; and

WHEREAS, staff have identified a need to update and modernize these reasonable use exception and variance provisions to provide clarity to staff and to the public; and

WHEREAS, on November 7, 2022, staff from the City of Olympia Community Planning and Development Department provided a briefing to the Olympia Planning Commission regarding reasonable use exceptions and variances; and

WHEREAS, on December 16, 2022, the City of Olympia Community Planning and Development Department proposed amendments to various chapters in Title 18, Unified Development Code, of the OMC (the Proposed Amendments); and

WHEREAS, on December 16, 2022, the City of Olympia issued a Determination of Non-Significance pursuant to the State Environmental Policy Act (SEPA) on the Proposed Amendments, which was routed to all Recognized Neighborhood Associations with the City of Olympia; and

WHEREAS, on December 20, 2022, the Proposed Amendments were sent to the Washington State Department of Commerce Growth Management Services with the Notice of Intent to Adopt Development Regulation amendments as required by RCW 36.70A.106, and comments received from state agencies during the 60-day comment period were considered; and

WHEREAS, on December 21, 2022, notice of the public hearing on the Proposed Amendments was provided to all Parties of Record pursuant to Chapter 18.78 OMC, Public Notification; and

WHEREAS, on December 29, 2022, a legal notice was published in *The Olympian* newspaper regarding the date of the Olympia Planning Commission's public hearing on the Proposed Amendments; and

WHEREAS, on January 9, 2023, the Olympia Planning Commission held a public hearing on the Proposed Amendments and began its deliberations; and

WHEREAS, following the public hearing and deliberations, on February 6, 2023, the Planning Commission provided to the City Council its recommendation to amend multiple sections of Title 18 OMC, Unified Development Code, as proposed; and

WHEREAS, the Proposed Amendments are consistent with the Olympia Comprehensive Plan and other chapters of Title 18 OMC; and

WHEREAS, the Proposed Amendments have been reviewed pursuant to the Rezones and Text Amendments process outlined in Chapter 18.58 OMC; and

WHEREAS, the Proposed Amendments have been reviewed for conformance with the State of

Washington Attorney General's Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property; and

WHEREAS, Chapters 35A.63 and 36.70A RCW and Article 11, Section 11 of the Washington State Constitution authorize and permit the City to adopt this Ordinance;

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

Section 1. Amendment of OMC 18.66.010. Olympia Municipal Code Section 18.66.010 is hereby amended to read as follows:

18.66.010

The Director and Hearing Examiner shall have the authority to may grant a variance and/or a reasonable use exceptions as set forth in this Chapter following the noticing requirements of ~~from the requirements of Chapter 18.32, after considering the matter at a public hearing duly called and giving notice to adjoining property owners as provided in Chapter 18.78, Public Notification.~~ The Director may grant minor variances; a "minor variance" is (1) a variance to setback requirements that would alleviate the need for a Reasonable Use Exception (as provided for elsewhere in this Chapter), or (2) a variance that accompanies an administratively granted Reasonable Use Exception. All other variances may be granted by the Hearing Examiner.

Section 2. Amendment of OMC 18.66.020. Olympia Municipal Code Section 18.66.020 is hereby amended to read as follows:

18.66.020

A. A variance is a mechanism that allows the provisions of OMC Title 18 to be varied on a case-by-case basis. The Director or Hearing Examiner may approve a variance only when it is for relief from a dimensional standard when the application of such standard would result in an unusual or unreasonable hardship. Before any variance is granted, the Director (for minor variances) or the Hearing Examiner (for all other variance requests) shall must find that the following circumstances exist:

1. That the proposed variance will not amount to a rezone or constitute a change in the district boundaries shown on the Official Zoning Map;
2. That because of special conditions and circumstances relating to the size, shape, topography, location, or surroundings of the subject property, the variance is necessary to provide ~~it~~ the applicant with use rights and privileges permitted ~~to~~ for other properties in the vicinity and in the zone in which the subject property is located;
3. That the special conditions and circumstances do not result from the actions of the applicant;
4. That granting of the variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property is located;
5. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated; and
6. That the variance is the minimum variance necessary to provide the rights and privileges described above.

Section 3. Amendment of OMC 18.66.040. Olympia Municipal Code Section 18.66.040 is hereby amended to read as follows:

18.66.040

Applicability and Intent. A reasonable use exception is a unique type of variance that pertains to the regulations within the Critical Area Ordinance (OMC 18.32); a reasonable use exception is available when compliance with critical area regulations would result in depriving the property owner of even minimal economic use to which a property owner is entitled under applicable state and federal constitutional provisions. A reasonable use exception is intended as a last resort, when all municipal code provisions are exhausted. Before any reasonable use exception may be granted, the Director (for development proposals with buffer reductions of less than 75%) and/or the Hearing Examiner (for all other applications) shall must find that the application meets all of the following criteria: circumstances exist:

~~A. The property has been in a single ownership (i.e., not held in conjunction with any adjacent lot, tract or parcel) since January 10, 1985 or, if the property was held in conjunction with any other adjacent lot, tract or parcel since January 10, 1985, the then applicable provisions of this Chapter denied all reasonable economic use of the properties as combined;~~

~~BA. The application of this Chapter OMC 18.32, the Critical Area Ordinance would deny all reasonable economic use of the property;~~

~~CB. No other reasonable economic use of the property would have less impact on any critical area;~~

~~DC. The use proposed is the minimum necessary to allow for reasonable economic use of the property. Project plans must demonstrate:~~

~~1. Other development alternatives do not result in less impact to the critical area. An alternatives analysis must address: a change in use, reduction in project size, and variances for setback and other development standards; and,~~

~~2. Impervious surface coverage should be the minimum necessary and should not exceed 2,500 square feet;~~

~~ED. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant or the applicant's predecessor(s), after the effective date of this Chapter the Critical Area Ordinance (June 5, 2005);~~

~~FE. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;~~

~~GF. The design maximizes protection and mitigates impacts to any critical area functions and values consistent with the best available science, and must be supported by critical area reports demonstrating compliance to OMC 18.32, including mitigation sequencing; and~~

~~HG. The proposal is consistent with other applicable regulations and standards.~~

~~H. In addition to meeting the conditions in A) through G); above, an applicant who requests a 75% or greater reduction in critical area buffers or requests to develop within a critical area itself, or requests both, must meet the conditions in 2) or 3) below, and such request must be approved by the Hearing Examiner.~~

~~1. Definitions: (for purposes of this subsection H):~~

~~a. "Single ownership" means not owned (or previously owned) by a person or entity who concurrently owns (or owned) one or more adjacent lots, tracts, or parcels.~~

- b. “Common ownership” means owned (or previously owned) by a person or entity who concurrently owns (or owned) one or more adjacent lots, tract, or parcels.
 - c. “Undevelopable” means all reasonable economic use of the property is denied by applicable City regulations.
 - d. “Adjacent” means two or more parcels sharing a common boundary of at least one point. Parcels across unopen (unimproved) or vacated (by statue or otherwise) Rights of Way are adjacent.
2. The property is or has been in single ownership (i.e., not owned by a person or entity who concurrently owns or owned one or more adjacent lots, tracts, or parcels) continuously since the adoption of the Critical Area Regulations; or
3. The property:
- a. Is or was at any time since adoption of the Critical Area Ordinance (June 5, 2005) in common ownership (i.e., the property is or was owned by a person or entity who concurrently owns or owned one or more adjacent lots, tracts, or parcels at some time since June 5, 2005); and
 - b. Did not become undevelopable solely by reason of passing out of common ownership and into single ownership, by sale or other transfer.
4. Should the Reasonable Use Exception be granted, the adjacent lots, parcels, tracts determined to be held in common ownership must be legally consolidated into a single parcel prior to building permit issuance.

Section 4. Amendment of OMC 18.66.050. Olympia Municipal Code Section 1866.050 is hereby amended to read as follows:

18.66.050

Before granting a variance or reasonable use exception, the Hearing Examiner, or Director as appropriate, may prescribe appropriate conditions and safeguards that will ensure that the purpose and intent of this Title ~~shall~~ are not be violated. Violation of such conditions and safeguards when made part of the terms under which the variance or reasonable use exception is granted, ~~shall be deemed is~~ is a violation of this Title and punishable under Chapter 18.73, Civil and Criminal Penalty.

Section 5. Amendment of OMC 18.66.060. Olympia Municipal Code Section 18.66.060 is hereby amended to read as follows:

18.66.060

With respect to uses of land, buildings, and other structures, this Title is declared to be a definition of the public interest by the City Council, and the spirit of this Title will not be observed by any variance which permits a use not generally or by conditional use, permitted in the district involved, or any use expressly or by implication prohibited, by the terms of this Title in the district. Therefore, under no circumstances ~~shall~~ may the Hearing Examiner or Director, grant a variance to permit a use not generally or by conditional use permitted in the district involved, or any use expressly or by implication prohibited, by the terms of this Title in the district.

Section 6. Amendment of OMC 18.72.100. Olympia Municipal Code Section 18.72.100 is hereby amended to read as follows:

18.72.100

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

KEY:

- Director = Community Planning and Development Director or designee
- SPRC = Site Plan Review Committee
- 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
ZONING							
Conditional Use Permit	D	R				D	
Interpretations	D					O	
Land Use Review	D ¹	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
Zoning Variance	R					D	
<u>Administrative Zoning Variance</u>	<u>D</u>	<u>R</u>				<u>O</u>	
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 <u>Modification Variance</u>	D	R				O	
Accessory Dwelling Unit	D					O	
Short-Term Rental – Vacation Rental	D					O	

	Director	SPRC	DRB	PC	HC	HE	Council
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	
COMPREHENSIVE PLAN							
Amendments (map, text)	R			R			D
DESIGN REVIEW							
Detailed Review	D		R				
major			O				
Concept Review	D	R	R			O	
Signs (general)	D					O	
Scenic Vistas	D	R	R			O	
ENVIRONMENTAL							
Threshold Determination	D					O	
Impact Statement Adequacy	D					O	
Reasonable Use Exception	R					D	
<u>Administrative Reasonable Use Exception</u>	<u>D</u>	<u>R</u>				<u>O</u>	
SEPA Mitigating Conditions	D					O	
Shoreline Substantial Development Permit	D	R				<u>O</u>	
Shoreline Conditional Use Permit		R				D	
Shoreline Variance		R				D	
Shoreline Permit Revision or Exemption	D					O	
SUBDIVISION							
Boundary Line Adjustment (including lot consolidation)	D					O	
Preliminary Plat, Long	R					D	
Preliminary Short, (2-9 lots)	D ¹					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	

¹ 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 7. Amendment of OMC 18.72.120. Olympia Municipal Code Section 18.72.120 is hereby amended to read as follows:

18.72.120

- A. Notice of Completeness. The Department shall provide a written notice within ~~twenty-eight (28)~~ days of the date of receipt of any application stating whether the application is complete, and identifying any other governmental agencies known to have jurisdiction over the proposal; or if not complete setting forth any deficiency of the application, and specifying a date upon which the application will be null and void if any deficiencies have not been corrected. Upon receipt of any required additional information, the Department shall notify the applicant within ~~fourteen (14)~~ days whether the application is now complete or what additional information is necessary.
- B. Weekends and Holidays. Regardless of whether any period is a minimum or maximum, when any permit review, notice, or decision time limit of this Title terminates upon a weekend or City holiday, such time limit ~~shall~~ is automatically be extended to the first following non-holiday weekday.
- C. Review Period. The review and processing of project permit applications ~~shall~~ results in a decision being rendered within time limits set forth below.
- D. Notice of Delayed Decision. If the City is unable to issue its final decision within the time limits listed below, the City ~~will~~ shall provide written notice of this fact to the applicant. The notice ~~shall~~ must include a statement of reasons why the time limits have not been met and an estimated date for issuance of a final decision.
- E. Request for Timeline. Where no time limit is specified, upon written request the City ~~will~~ shall provide an estimated time of review. (Also see Council Resolution regarding exceptions.)
- F. Application Time Limits.

PLANNING APPLICATION TYPE	TIME LIMIT
Site-Specific Rezones (also see OMC <u>18.58.040</u>)	180-days
Environmental Review (SEPA Checklist and Assessment)	90-days
Environmental Impact Statement (draft)	365-days
Short Plats	90-days
Land Use Approval	120-days
Preliminary Plat (10 or more lots)	90-days
Preliminary Planned Residential Development	90-days
Final Planned Residential Development	30-days
Final Plat	30-days
Conditional Use Permit	120-days
Conditional Use Permit – Residential	120-days
<u>Variance / Reasonable Use Exception</u>	90-days
Shoreline Substantial Development Permit	120-days
Shoreline Exemption	90-days
Time Extension or Modification	90-days
Boundary Line Adjustment	90-days

Appeal to Hearing Examiner	90-days
ENGINEERING PERMIT APPLICATION TYPE	TIME LIMIT
Short Plat	120 days
Long Plat	120 days
Utility Extension (in-city)	120 days
Commercial	120 days
Multifamily	120 days
BUILDING PERMIT APPLICATION TYPE	TIME LIMIT
New Single-family Residential	30-days
Residential Addition/Remodel	30-days
New Multifamily	120-days
New Commercial	120-days
Commercial Addition/Remodel	120-days

G. Time Limit Exceptions. The time limits set forth above do not include:

1. Up to the first ~~twenty-eight (28)~~ days after receipt of an application during which the City determines whether the application is complete.
2. Any period during which the applicant has been requested by the City to correct plans, perform studies, or provide additional information requested by the City.
3. If the City determines that the additional information submitted to the City by the applicant under Subsection (2) above is insufficient, the City shall notify the applicant of the deficiencies and the procedures of Subsection (2) shall apply as if a new request for information has been made.
4. Any appeal period. The Hearing Examiner shall issue Decisions a decision regarding an appeals shall be issued by the Examiner within 90 days of receipt of an appeal.
5. Any extension of time mutually agreed upon by the applicant and the City.
6. The time required to prepare and issue a final EIS in accordance with the State Environmental Policy Act.

Section 8. Amendment of OMC 18.72.140. Olympia Municipal Code Section 18.72.140 is hereby amended to read as follows:

18.72.140

An applicant is responsible for knowing~~knowledge of~~ the expiration date of any approval ~~is the responsibility of the applicant.~~ The City ~~shall is not be held accountable~~ responsible for notification-notifying an applicant of expirations.

- A. Variance/Reasonable Use Exception. Unless exercised, a variance or reasonable use exception shall expires one year from the date a final decision is issued. If timely exercised, a variance or reasonable use exception shall be valid indefinitely.
- B. Conditional Use Permit. Unless exercised or otherwise specified, a conditional use permit ~~shall be~~ void one ~~(1)~~ year from the date a notice of final decision was issued. If exercised, a conditional use permit ~~shall be~~ valid for the amount of time specified by the approval authority. If the use allowed by the permit is

inactive, discontinued, or abandoned for ~~twelve (12)~~ consecutive months, the permit is void and the applicant must obtain a new permit ~~shall be obtained~~ in accordance with the provisions of this ~~title-Title~~ prior to resuming operations.

- C. Home Occupation Permit. A home occupation permit ~~shall be~~ valid indefinitely unless a time limitation is specified by staff or the Hearing Examiner or it is revoked for lack of compliance to conditions. A home occupation permit ~~shall be~~ void unless exercised within one ~~(1)~~-year from the date such permit was issued. If the use allowed by the permit is inactive, discontinued, or abandoned for ~~twelve (12)~~ consecutive months, the permit is void and ~~a the applicant shall apply for and obtain a new permit shall be applied for and obtained~~ in accordance with the provisions of this ~~title-Title~~ prior to resuming operations. A Home Occupation permit ~~shall is not be~~ transferable to a new site or entity.
- D. Land Use Approval. Unless exercised by complete application for necessary construction permits, any land use approval ~~shall expires~~ and ~~be is~~ null and void two years from the date the final approval was issued. Land use approval ~~shall may~~ be extended two additional years if a complete building or other construction permit application for the project is submitted prior to expiration of the land use approval. Even absent such application, upon finding that there has been no substantial change in relevant circumstances and standards, land use approval may be extended up to two ~~(2)~~ additional years by the Director pursuant to a written request submitted prior to expiration of land use approval. Upon receiving such request, the City shall provide notice shall be provided pursuant to the comparable notice of application procedures of Table 78-1. Following a comment period of at least 14 days, the Director may grant, limit, or deny the extension and may impose such conditions of extension to ensure compliance with any subsequently revised standards. If such written request for extension is not received by the Department prior to expiration, the Director shall deny such extension shall be denied.
- E. Detailed Design Review approval ~~shall expires~~ simultaneously with expiration of any associated building or other construction permit.

Section 9. Amendment of OMC 18.78.020. Olympia Municipal Code Section 18.78.020 is hereby amended to read as follows:

18.78.020

To inform the public of proposed project actions, the Department and applicants shall provide notice as identified in Table 78-1. A vicinity map and basic site plan ~~shall must~~ be included with any mailed notices. If a project is SEPA-exempt and no public hearing is required, notice of application as required by RCW 36.70B.110(5) ~~will be is~~ limited to the type of notice described below.

**TABLE 78-1
CITY OF OLYMPIA - PUBLIC NOTIFICATION**

PROCESS	APPLICATION TYPE	NOTICE TYPES	WHEN	WHO
CONCEPTUAL DESIGN REVIEW	Multifamily/Commercial in DR districts/Master Planned Development	Mail	Public Meeting 10 Days	PO RNA PR
SEPA	Environmental Checklist	Mail	Notice of Application	PO RNA PR Agencies
		Post site Mail Notify Paper	SEPA Threshold Determination	PO RNA PR Agencies
SEPA, when using the Optional DNS Process	Environmental Checklist	Mail Post Site	Notice of Application/ notice of anticipated	PO RNA PR

**TABLE 78-1
CITY OF OLYMPIA - PUBLIC NOTIFICATION**

PROCESS	APPLICATION TYPE	NOTICE TYPES	WHEN	WHO
		Notify Paper	SEPA Threshold Determination	Agencies
		Mail	Final Threshold Determination	PR Agencies
SUBDIVISIONS	Short Plats	Post Site	Application	
HEARING EXAMINER	Subdivision Variance / <u>RUE</u> Rezone Conditional Use Master Planned Development	Post Site Mail Publish in Paper	Public Hearing - 10 days	PO RNA PR
	Conditional Use - Wireless Communications Facility	Post Site Mail Publish in Paper	Public Hearing - 30 days	PO RNA PR
		Mail	Decision	RNA PR
SHORE LANDS	Substantial Development Permit	Post Site Mail	Public Hearing - 15 days	PO RNA PR
		Publish in Paper Mail	Decision	RNA PR
LAND USE REVIEW	Multifamily Commercial Industrial Master Planned Development, <u>Administrative Variance / RUE</u>	Mail	Meeting - 5 days	RNA PR
			Decision	RNA PR
DETAILED DESIGN REVIEW	Multifamily/Commercial Master Planned Development	Mail	Public Meeting 10 days	RNA PR
		Mail	Decision	RNA PR
APPEALS	Administrative to Hearing Examiner	Post Site Mail	Open Hearing - 10 Days	RNA PR
	Hearing Examiner to City Council OCC	Mail	Closed Hearing 10 Days	PR RNA
ANNEXATION	10 Percent Notice of Intent	Mail	Public Meeting 10 days	PO RNA PR
	50/60 Percent Petition	Mail Post Publish in Paper	Public Hearing - 10 days	PO RNA PR
COMPREHENSIVE PLAN AMENDMENT/ZONING MAP AMENDMENT	Proposal	Mail Publish in Paper	Proposal Availability	RNA
	Application	Mail Publish in Paper	Public Hearing - 10 days	PO RNA PR

LEGEND

PO = Property Owner within 300 feet of site

RNA = Recognized Neighborhood Associations

LEGEND

PR = Parties of Records on File with the Case

Section 10. 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 11. 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 remain unaffected.

Section 12. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 13. Effective Date. This Ordinance takes effect 5 days after passage and publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: