

CITY OF FIFE, WASHINGTON

ORDINANCE NO. 1866

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, AMENDING THE FIFE MUNICIPAL CODE REGARDING QUASI-JUDICIAL PROCEEDINGS

WHEREAS, RCW 35A.63.110 and .170 authorize a city's legislative body to use a hearing examiner system for quasi-judicial land use applications; and

WHEREAS, the City Council adopted a hearing examiner system in 2006 by Ordinance No. 1593; and

WHEREAS, although Ordinance No. 1593 transferred may quasi-judicial matters to the hearing examiner, the City Council retain quasi-judicial authority over preliminary plats, site specific rezones, and shoreline permits; and

WHEREAS, the City Council finds that the use of a hearing examiner system for preliminary plats, site specific rezones, and shoreline permit will provide improved compliance with legal requirements, including due process, appearance of fairness, and record preparation; and

WHEREAS, the City's insurer supports the use of a hearing examiner system for preliminary plats, site specific rezones, and shoreline permits because it is believed to reduce land use liability exposure; now therefore

THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Section 2.92.120 of the Fife Municipal Code is hereby amended to read as follows:

2.92.120 Duties.

A. The following applications and appeals shall be within the jurisdiction of the examiner under the terms and procedures of this chapter:

1. Variances from the zoning code;
2. Conditional use permits;
3. Preliminary plats;
4. Site-specific rezone applications;
5. Shoreline permits;
6. Short plat appeals;

7. State Environmental Protection Act (SEPA) appeals;
8. Critical areas reasonable use exceptions, variances or appeals of any order or decision by the director regarding the critical areas ordinance;
9. Appeals of issuance, denials, revocations or suspensions of business or other city-issued licenses;
10. Appeals of decisions or requests for variances in the administration or enforcement of the water, sewer, road, flood damage prevention, surface water drainage or stormwater facility design and construction standards;
11. Appeals of administrative decisions;
12. Appeals of building or other construction-related permits, including street use;
13. Appeals of lot line adjustments;
14. Appeals of special event permits;
15. Appeals of sign permits and requests for variances from the sign code;
16. Appeals of special use permits;
17. Appeals of revocation of permits; and
18. All other appeals, hearings and interpretations where the examiner retains authority pursuant to other ordinances and provisions of the Fife Municipal Code.

Section 2. A new section 2.92.145 is hereby added to the Fife Municipal Code to read as follows:

2.92.145 Hearing examiner's recommendation.

A. For actions requiring the hearing examiner's recommendation as provided by ordinance, the examiner's recommendation shall be forwarded to the city council. The city council upon its review of the record may:

1. Affirm the recommendation;
2. Remand the recommendation to the hearing examiner;
3. Schedule a closed record public hearing before the city council.

B. Any aggrieved person may request the city council to conduct its own closed record hearing. Upon its own closed record hearing the city council may affirm, reject, or modify the hearing examiner's recommendation or take whatever action it deems appropriate pursuant to law.

Section 3. Section 14.02.030 of the Fife Municipal Code is hereby amended as set forth in Exhibit A attached hereto.

Section 4. Section 16.11.030 of the Fife Municipal code is hereby amended to read as follows:

16.11.030 Allowable actions.

The community development director shall review submittals for comprehensive sign design plans. The community development director can allow one or more of the following actions under a comprehensive sign design plan:

- A. Allow one wall sign to be up to 20 percent larger than allowed under the sign code;
- B. Allow one freestanding sign to be up to 10 percent larger than allowed under the sign code;
- C. Allow freestanding signs to be up to 10 percent closer together than allowed under the sign code;
- D. Allow one additional freestanding sign on a parcel; and
- E. Allow directional signs to be larger than permitted when necessary for view purposes.

The community development director can require that the applicant provide additional landscaping as a condition of allowing a comprehensive sign design plan. The community development director can also require that the applicant return to the planning commission for review of any changes to the signs issued under the comprehensive sign design plan. Other conditions can be required by the planning commission as necessary to preserve the purpose and intent of the sign code and the zone code.

Section 5. Section 16.11.050 of the Fife Municipal code is hereby amended to read as follows:

16.11.050 Application process.

The applicant shall submit the following to the community development department:

- A. Comprehensive sign design plan application;
- B. Application fee;
- C. Written description of proposal including the criteria the application falls under and justification of the criteria applied to the site or building;
- D. Full size site plan showing buildings on the site, existing signs, and proposed signs;
- E. Reduced size site plan;
- F. Landscape plan, if appropriate; and
- G. Other information as required by the community development department.

The community development director can approve, deny, or conditionally approve any comprehensive sign design plan. A sign permit must be obtained from the community development department after approval of a comprehensive sign design plan

Section 6. Section 18.05.070 of the Fife Municipal code is hereby amended to read as follows:

18.05.070 Administrative review.

The director shall solicit the comments of the public works director, city engineer, parks director, building official, any other appropriate city department, local utility provider, local school district, and any other appropriate public or private entity concerning the proposed subdivision. Comments received in a timely manner, as well as any written comments received in response to a notice of public hearing, shall either be transmitted to the hearing examiner or incorporated into a report prepared by the director and submitted to the hearing examiner, prior to the scheduled public hearing.

Section 7. Section 18.05.080 of the Fife Municipal code is hereby amended to read as follows:

18.05.080 Public hearing – Hearing Examiner action.

A. After having received the proposed subdivision plat and after completion of any required environmental review, the community development director or designee shall set a date for an open record public hearing before the hearing examiner

B. Every hearing held for the purposes of this chapter shall be open to the public, and a record of the hearing shall be kept and made available for public inspection. A public hearing held under this chapter shall not be continued beyond the originally scheduled date of public hearing unless the applicant consents, in writing, to an extension of the time period allowed for a decision under FMC 18.05.050(C).

C. Any notice of public hearing required by this section shall include the hour and location of the hearing and a description of the property to be subdivided. The description may be in the form of either a vicinity location sketch or a written description other than a legal description.

D. Except as provided in RCW 36.70B.110, at a minimum the director shall cause notice of the hearing to be given in the following manner:

1. Notice shall be published not less than 10 days prior to the hearing in a newspaper of general circulation within the county and The News Tribune newspaper;

2. Notice shall be mailed to all property owners within 300 feet of the subject property. If the applicant owns property abutting the project site, all property owners within 300 feet of the abutting property shall also be notified;

3. Where any boundary of the proposed subdivision lies adjacent to or within one mile of the municipal boundaries of any city or town other than the city of Fife, notice shall be mailed to the appropriate city or town authorities;

4. Where the proposed subdivision adjoins the municipal boundaries of the city of Fife, notice shall be mailed to the appropriate county officials;

5. Where the proposed subdivision is located adjacent to the right-of-way of a state highway, notice shall be mailed to the Washington State Department of Transportation;

6. Where the proposed subdivision is located within two miles of a publicly owned airport, notice shall be mailed to the Washington State Secretary of Transportation.

E. If, after considering the matter at a public hearing, the hearing examiner shall review and either approve, approve with conditions, or deny subdivision. The hearing examiners decision shall include findings and conclusions to support the decision.

Section 8. Section 18.05.100 of the Fife Municipal code is hereby amended to read as follows:

18.05.100 Approval or disapproval of subdivision – Factors to be considered.

A. The hearing examiner shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. A proposed subdivision and dedication shall not be approved unless the hearing examiner makes written findings that: (1) the proposed subdivision is in conformity with all applicable zoning and other land use regulations; (2) 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; and (3) the public use and interest will be served by the platting of such subdivision and dedication.

B. If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city council shall adopt the designated name.

C. The hearing examiner shall consider the physical characteristics of a proposed subdivision site and may disapprove a proposed plat because of flood, inundation, or swamp conditions. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final plat. No plat shall be approved by the city covering any land situated in a flood control zone as provided in Chapter 86.16 RCW without the prior written approval of the Department of Ecology of the State of Washington.

Section 9. Section 18.05.140 of the Fife Municipal code is hereby amended to read as follows:

18.05.140 Modification or revocation of preliminary plat.

The hearing examiner may modify a preliminary plat or revoke approval of a preliminary plat if, after notice and a public hearing, the hearing examiner finds:

A. That a change in conditions creates a serious threat to the public health or safety;

B. Preliminary plat approval was made under a mistake of material fact and in violation of law; or

C. The conditions of preliminary plat approval are impossible to satisfy because of a knowing and deliberate violation of a condition of approval.

Section 10. Section 18.05.150 of the Fife Municipal code is hereby amended to read as follows:

18.05.150 Time limitations.

Through December 31, 2014, a preliminary plat shall be valid for a seven-year period following council approval of the preliminary plat. Starting January 1, 2015, a preliminary plat shall be valid for a five-year period following hearing examiner approval for the preliminary plat. An applicant who files a written request with the hearing examiner at least 30 days before the expiration of the stated period shall be granted a one-year extension upon showing that a good faith effort has been attempted in applying for a final plat. A good faith effort is defined to be at minimum the submittal of a complete engineering construction drawing(s) to the city. Additional extensions of one year may be similarly requested by the applicant and granted by the hearing examiner, subject to a finding of good faith effort. A plat granted preliminary approval but not filed for final plat approval within the applicable time period or extended time period shall be null and void.

Section 11. A new section 19.06.747 is hereby added to the Fife Municipal Code to read as follows:

19.06.747 Site-specific rezone

“Site-specific rezone” means a proposed change or revision to the official city zoning map affecting a limited number of acres and must be composed of a single parcel or contiguous parcels that are under one or a limited number of ownerships and are requested to allow a specific project not allowed under the current zoning designation.

Section 12. Subsection 19.52.070(H) of the Fife Municipal code is hereby amended to read as follows:

H. Approval Authority. The director is hereby authorized to review and approve all planned developments that are not subject to subdivision review and approval under FMC Chapter 18.5. Planned developments that are subject to the subdivision review and approval under FMC Chapter 18.05 shall be reviewed and approved in accordance with the preliminary and final plat process.

Section 13. Subsection 19.52.010(B) of the Fife Municipal code is hereby amended to read as follows:

B. Revisions to an Approved Planned Development. Any proposed revisions which cannot be classified as a minor revision shall be submitted to the hearing examiner if the planned development was approved by the hearing examiner and to the director if the planned development was approved by the director. The director shall decide the necessary application materials required for proper review of a proposed revision.

Section 14. Section 19.92.030 of the Fife Municipal code is hereby amended to read as follows:

19.92.030 Initiation of amendments.

Amendments of this title and the official zoning map may be initiated by:

A. Text Amendments. In order to initiate a text amendment, the owner of land within the city shall submit a notarized application for such an amendment. The application shall be on forms supplied by the director. The application shall identify each chapter, section, paragraph, sentence and word subject to the amendment request and include the exact text changes which are being proposed. The director may request additional information necessary to process the application. Applications for initiation of amendments shall be in accordance with FMC Title 14.

B. Map Amendments. In order to initiate a map amendment, the owner of land within the city shall submit a notarized application for such an amendment. The application shall be on forms supplied by the director. The application shall include an accurate map and legal description of the property subject to the map amendment. The director may request additional information necessary to process the application. Applications for initiation of amendments shall be in accordance with FMC Title 14.

C. Initiation by City Council. By the adoption of a motion by the city council requesting the planning commission to set a matter for meeting and recommendation.

D. Initiation by Planning Commission. By adoption of a motion by the planning commission.

E. Map or Text Amendments Requiring Comprehensive Plan Amendments. If a map or text amendment, other than a site-specific rezone, requires a comprehensive plan amendment, then such amendments shall be processed concurrently. This combined process will occur in accordance with the comprehensive plan amendment process.

Section 15. A new section 19.92.035 is hereby added to the Fife Municipal Code to read as follows:

19.92.035 Amendment procedure—Site specific rezones.

All applications for site-specific zoning map amendments shall be reviewed by the community development director prior to the scheduling of a public hearing. After review of the application, the director shall determine which of the following two processes should occur to properly hear the rezone:

1. If the rezone is consistent with the comprehensive plan, then the hearing examiner shall conduct a public hearing on the rezone and make a recommendation to the city council pursuant to FMC 2.92.145.
2. If the rezone is in conflict with the comprehensive plan, or there are no policies that relate to the rezone, or the policies are not complete, then a comprehensive plan amendment must be approved and adopted by the city council prior to the rezone being scheduled for a public hearing in front of the hearing examiner.

Section 16. Section 19.92.040 of the Fife Municipal Code is hereby amended read as follows:

19.92.040 Amendment procedure—text amendments and area wide rezones.

A. Planning Commission Recommendation. Upon initiation of a text amendment or area wide rezone request in conformance with FMC 19.92.030, the planning commission shall, at a public meeting, review and consider the proposed amendment. The planning commission shall recommend either approval or denial of the proposed amendment request to the city council.

B. City Council Action. Within 30 days of receiving a recommendation on an amendment request from the planning commission, the city council shall hold a public hearing to consider the request. At a public hearing and supported by written findings, the city council shall either remand, grant, grant with modifications or deny the amendment request. Prior to granting an amendment, the city council must conclude that the request is consistent with FMC 19.92.045. Amendments shall be official upon adoption of an ordinance granting the request.

Section 17. A new section 19.92.045 is hereby added to the Fife Municipal Code to read as follows:

FMC 19.92.045 Criteria.

In order for a zoning map or text amendment to be approved the following criteria must be met:

1. The proposed amendment is consistent with the goals and policies of the comprehensive plan; and
2. For map amendments, the proposed zoning is consistent and compatible with the uses and zoning of surrounding property; and
3. For map amendments, the property is suited for the uses allowed in the proposed zoning classification; and
4. For amendments requiring comprehensive plan amendments, that there are changed conditions since the previous zoning, title adoption or title amendment to warrant the proposed amendment; and
5. The proposed amendment will promote, rather than detract, from the public health, safety morals and general welfare.

Section 18. Repealer. Section 18.05.060 and Subsection 19.52.030(F) of the Fife Municipal Code are hereby repealed.

Section 19. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 20. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced the 13th day of May, 2014.

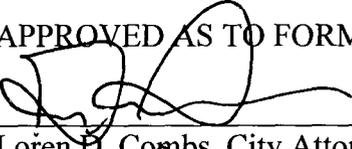
Passed by the City Council on the 27th day of May 2014.


David K. Labell, City Manager

ATTEST:



Carol Etgen, City Clerk

APPROVED AS TO FORM:


Loren B. Combs, City Attorney
amstel city atty

Published: May 29, 2014
Effective Date: June 3, 2014

EXHIBIT A

14.02.030 Project permit application framework

Planning Permit Processing

Permit Description	Project Permit Types	DRC Meeting	Preapplication Meeting	Notification Distance Mailing List	Notice Newspaper	Notice Post Site	Comment Period	Recommendation Required	Open Record Public Hearing	Final Decision Approval/Denial	Judicial Appeal
Lot Line Adjustments	Type I	Optional	Optional	No	No	No	No	Admin. Approval	No	CD Director	HE PC Superior Court
Binding Site Plan	Type I	Optional	Optional/may be required	No	Yes if SEPA required	Yes if SEPA required	Yes if SEPA required	No	No	CD Director	HE PC Superior Court
SEPA-DNS/MDNS	Type II	Optional	Optional	No	Yes	Yes	30 days	Res. Official	No	Responsible Official	HE PC Superior Court
Variance	Type III	Optional	Required	300 feet	Yes	Yes	30 days	N/A	Yes	Hearing Examiner	PC Superior Court
Short Subdivision 1 --	Type I	Optional	Optional	No	No	No	No	Admin. Approval	No	CD Director	HE PC Superior

4 Lots												Court
Subdivision 5+ Lots (Prelim. Plat)	Type IV	Optional	Required	300 feet	Yes if SEPA required	Yes if SEPA required	30 days	NO		Yes	Hearing Examiner	PC Superior Court
Large Lot Division	Type I	Optional	Optional	No	No	No	No	Admin. Approval	No		CD Director	HE PC Superior Court
Final Plat	Type V	Optional	Required	300 feet	Yes	Yes	No	No	No	No	City Council	PC Superior Court
Site-Specific Rezones	Type IV	Optional	Required	300 feet	Yes with SEPA	Yes with SEPA	30 days	No		Yes Hearing Examiner	City Council	PC Superior Court
Shoreline Mgt. Permit	Type IV	Optional	Required	300 feet	Yes	Yes	30 days	No		Yes	Hearing Examiner	PC Superior Court
Conditional Use Permit	Type III	Optional	Required	300 feet	Yes	Yes	30 days	No		Yes	Hearing Examiner	PC Superior Court
Developer Agreement	Type IV	Optional	Required	No	No	No	No	PC		Yes	City Council	PC Superior Court
Building and Other Construction Permits (SEPA Not Required)	Type I	Optional	No	No	No	No	No	No		No	Admin. Approval	HE PC Superior Court
Special Event Permits	Type I	Optional	No	No	No	No	No	No		No	Admin. Approval	HE PC Superior

combined with preliminary plat approval. Final approval combined with final plat approval											
Area-Wide Rezones	Type V	No	No	300 feet	Yes with SEPA	Yes with SEPA	30 Days	PC		Yes	City Council PC Superior Court