

ORDINANCE NO. 17-21

AN ORDINANCE of the City of Richland amending Chapter 23.70 of the Richland Municipal Code related to administration, enforcement and amendment.

WHEREAS, the City has need, from time to time, to update the Richland Municipal Code (RMC) to eliminate ambiguities; and

WHEREAS, RMC 23.70.080 allowed for administrative approval of minor variances by the City's administrative official; and

WHEREAS, RMC 23.70.080 is difficult to administer because it does not currently contain any criteria by which the City's administrative official can make a sound decision; and

WHEREAS, adding objective criteria to RMC 23.70.080 to aid in its application will ensure that arbitrary and capricious land use decisions are not made.

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

Section 1. Chapter 23.70 of the Richland Municipal Code, entitled Administration, Enforcement, Amendment, as first enacted by Ordinance No. 28-05, and last amended by Ordinance No. 51-19, is hereby amended as follows:

**Chapter 23.70
ADMINISTRATION, ENFORCEMENT, AMENDMENT**

Sections:

- 23.70.010 Administration.
- 23.70.020 Duties of administrative official.
- 23.70.030 Building permits – Required.
- 23.70.040 Board of adjustment created – Membership.
- 23.70.050 Board of adjustment – Rules of procedure.
- 23.70.060 Board of adjustment – Powers and duties.
- 23.70.070 ~~Administrative review~~ Appeals to Hearing Examiner – Procedures.
- 23.70.080 ~~Administrative~~ Minor variances – Administrative review.
- 23.70.110 Variances – Applications.
- 23.70.120 Variances – Application – Plans.
- 23.70.130 Variances – Notices – Hearings.
- 23.70.140 Variances – Findings.
- 23.70.150 Variances – Limitations – Conditions.
- 23.70.160 Decisions of the board of adjustment.
- 23.70.170 Appeal from board of adjustment.
- 23.70.180 Amendment.
- 23.70.190 Initiation of proceedings.

- 23.70.200 Notice of hearing.**
- 23.70.210 Public hearing and recommendation to council.**
- 23.70.230 Consideration and action by council.**
- 23.70.240 Appeals.**
- 23.70.250 Resubmission of petition.**
- 23.70.270 Violations – Penalties.**
- 23.70.280 Severability.**

23.70.010 Administration.

The administrative official shall administer and be responsible for the enforcement of this title.

23.70.020 Duties of administrative official.

If the administrative official shall find that any of the provisions of this title are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this title to ensure compliance with or to prevent violation of its provisions.

23.70.030 Building permits – Required.

No building or other structure shall be erected, moved, added to, or structurally altered without a building permit issued in accordance with the building code of the city of Richland. No building permit shall be issued except in conformity with the provisions of this title.

23.70.040 Board of adjustment created – Membership.

There is created a board of adjustment consisting of five members appointed by the city council. Members shall serve staggered terms of five years and until their successors are appointed and confirmed.

23.70.050 Board of adjustment – Rules of procedure.

Not less than one regular meeting shall be held in each month of each year; provided, that if no issues over which the board has jurisdiction are pending, a meeting may be cancelled.

23.70.060 Board of adjustment – Powers and duties.

The board of adjustment shall have the following powers and duties:

A. To hear and decide requests for reduction in the number of parking spaces required when parking is jointly shared between two or more uses;

B. To hear and decide applications for special use permits for special uses as specifically authorized under RMC 23.46.025(B) and to grant such permits when it finds that the requirements of this code specifically pertaining to such special uses are fully met. The

board, in granting special use permits, may impose such additional conditions and restrictions as are necessary to make the proposed use compatible with the other uses permitted in the particular use district or in a neighboring district;

C. To hear, decide and grant or deny variances to the regulations or restrictions contained in this title when such variances are in harmony with the general purposes and intent of this title and are in accordance with general or specific rules contained in this title.

23.70.070 ~~Administrative review~~ Appeals to Hearing Examiner – Procedures.

Appeal to the hearing examiner concerning interpretation or administration of this title may be taken by any person aggrieved. Such appeals shall be taken within 10 days from the date of the order, requirement, decision or determination, by filing with the administrative official and with the city clerk a notice of appeal specifying the grounds thereof, together with such fees as set forth in RMC 19.80.020. The administrative official shall transmit to the hearing examiner all papers constituting the record upon which the action appealed from was taken.

The hearing examiner shall fix a time for the hearing of the appeal, which time shall be within 45 days after the filing of the notice of appeal, and shall give 10 days' posted public notice thereof as well as notice in writing to be mailed at least 10 days before said time to the parties in interest. At the hearing, any party may appear in person or by agent or attorney.

23.70.080 ~~Administrative~~ Minor variances – Administrative review.

A. The administrative official may approve without notice a reduction in setback, lot width and/or depth and an increase in lot coverage and building height, none of which exceeds ten (10) percent of the standards of the zone in which the use is located. Minor ~~variances~~ variations shall not allow an increase in the number of dwelling units on a parcel, nor permit a reduction in lot area of any lot.

B. The minor variance may not be used to violate or invalidate any other portions of the municipal code or easements.

C. No minor variance shall be issued when there is an existing violation of this title.

D. Application. An application for a minor variance must be made in writing to the administrative official with the specific degree of variance requested and be accompanied with necessary materials for review as determined by the administrator, including but not limited to a plot plan of the property showing location and dimensions of existing and proposed improvements. The applicant must demonstrate how the proposal meets the criteria in RMC 23.70.110. The application shall be accompanied by such fees as required by RMC 19.80.010.

E. Review. The burden of proof is on the applicant. The application must be supported by clear and convincing evidence that the minor variance conforms to the applicable elements of the City's development regulations and the comprehensive plan. A minor

variance shall be denied unless the applicant demonstrates with clear and convincing evidence that the requested minor variance meets the criteria in RMC 23.70.110.

F. Decision. To grant or deny a minor variance, the administrative official shall issue a written decision stating the precise zoning requirements for which a minor variance is sought and the degree of variance, along with specific written findings showing compliance with this section and addressing the criteria in RMC 23.70.110. If granted, the administrative official's written decision shall also include a finding that the reasons set forth in the application justify granting the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, structure, or buildings. The administrative official shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this title, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

G. Denial. If the administrative official denies a minor variance variation request, an applicant may request approval of the variance request from the board of adjustment through the filing of a variance application in accordance with RMC 23.70.110.

23.70.110 Variances – Applications.

A variance from the terms of this title shall not be granted by the board of adjustment unless and until a written application for variance is submitted demonstrating:

- A. That special conditions and circumstances exist which are peculiar to the land, structures, or building involved and which are not applicable to other lands, structures, or buildings in the same district.
- B. That literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this title.
- C. That the special conditions and circumstances do not result from the actions of the applicant.
- D. That granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same district.

23.70.120 Variances – Application – Plans.

The application shall be accompanied by a report from a title insurance company showing ownership of record of the property involved, an accurate legal description of the property involved, and a list of the names and addresses of all owners of record of property within 100 feet of the proposed variance, and such fees as are required by this title. In addition, the report shall include an accurate key map showing the property involved and delineating the property within 100 feet of the proposed variance. Each parcel falling wholly or partly within the 100-foot distance shall be numbered to correspond with the ownership report.

The application shall also be accompanied by a plot plan of the property showing location and dimensions of existing and proposed improvements and proposed location of accessory facilities such as automobile parking areas. If new building construction is involved, tentative plans and sketches shall also be submitted. Where use of existing buildings is involved, a floor plan showing existing conditions and proposed changes shall be submitted.

23.70.130 Variances – Notices – Hearings.

Written notice of public hearing shall be addressed through the United States mail to the property owner requesting the variance and to the owners of record of all property within 100 feet of the exterior boundaries of subject property pursuant to the title insurance company report required by RMC 23.70.120. Notice of the time and place of the hearing shall also be published at least once in the official newspaper of the city. Both published and mailed notices shall be given at least 10 days in advance of the public hearing.

23.70.140 Variances – Findings.

The board of adjustment shall make findings that the requirements of RMC 23.70.110 have been met by the applicant for the variance. The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, structure, or buildings. The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this title, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

23.70.150 Variances – Limitations – Conditions.

No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

The board of adjustment shall not grant a variance under any circumstances to allow a use not permissible under the terms of this title in the district involved, or any use expressly or by implication prohibited by the terms of this title in said district. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this title.

The board of adjustment may prescribe a time limit within which the action for which the variance is granted shall be begun or completed, or both. Failure to begin or complete, or both, such action within the time limit set shall void the variance. In the event that no specific time limit to begin or complete an action for which the variance is granted is identified, the action shall be completed within two years from the date the variance was granted. Said time limits may be extended by the board of adjustment for good cause shown.

23.70.160 Decisions of the board of adjustment.

The concurring vote of a majority of the members of the board of adjustment shall be necessary to decide in favor of the applicant on any matter upon which it is required to pass under this title, or to effect any variation in the application of this title.

The board shall render a decision on all applications at a public meeting no later than 30 days after hearing of an application. The applicant shall be notified of the decision in writing.

23.70.170 Appeal from board of adjustment.

A. Appeals from variance decisions shall be made in accordance with RMC 19.70.060 (Judicial appeals).

B. Appeals from decisions on special use permits or on decisions regarding parking reduction for jointly shared parking facilities shall be made in accordance with Chapter 19.70 RMC (Closed Record Decisions and Appeals).

23.70.180 Amendment.

The regulations, restrictions and boundaries set forth in this title may from time to time be amended, supplemented, changed or repealed; provided, however, that no such action shall be taken until after a public hearing at which parties in interest and citizens shall have an opportunity to be heard.

23.70.190 Initiation of proceedings.

Proceedings for a reclassification or an amendment to this title may be initiated by either of the following two means:

A. The verified petition of one or more persons or corporations requesting the amendment or owning property which is proposed to be reclassified shall be filed with the secretary of the planning commission. A petition for reclassification shall also be accompanied by a report from a title insurance company showing ownership of the property involved and a list of the names and addresses of all owners of property within 300 feet of boundaries of the property involved. In addition, the report shall include an accurate key map showing the property involved and delineating the property within 300 feet of the property involved. Each parcel falling wholly or partly within the 300-foot distance shall be numbered to correspond with the ownership report. The petition shall also be accompanied by such fees as are required by RMC 19.80.020;

B. On the request of the city council or by the planning commission, on its own initiative.

23.70.200 Notice of hearing.

Notice of public hearing consistent with the requirements of Chapter 19.40 RMC shall be published at least once in the official newspaper of the city. In addition, written notice shall be mailed to the owner or owners of the property involved, and to all property owners of record within a radius of 300 feet of the exterior areas of subject property pursuant to the title insurance company report required by RMC 23.70.190. Both published and mailed notices shall be given at least 10 days in advance of the public hearing.

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.

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 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.

23.70.240 Appeals.

Appeals from city council decisions on requests for reclassification or amendment shall be made in accordance with RMC 19.70.060 (Judicial appeals).

23.70.250 Resubmission of petition.

A petition for reclassification or amendment which has been disapproved by the council cannot be resubmitted to the city within six months of the date of disapproval, without a waiver of the council.

23.70.270 Violations – Penalties.

Any person who has violated any provision of this title shall have committed a civil infraction subject to a civil penalty as set forth in RMC 10.02.050(E).

Provided, if the same violator has been found to have committed an infraction violation

for the same or similar conduct two separate times, with the violations occurring at the same location and involving the same or similar sections of the Richland Municipal Code or other similar codes, the third or subsequent violation shall constitute a misdemeanor, punishable as provided in RMC 1.30.010 for criminal offenses.

For any violation of a continuing nature, each day's violation shall be considered a separate offense and shall subject the offender to the above penalties for each offense.

In addition to the enforcement provisions of this section, any violation of any of the provisions of RMC 23.42.030 is declared to be a public nuisance, per se, which shall be abated by the city attorney by way of civil abatement procedures.

23.70.280 Severability.


If any section, subsection, sentence, clause, phrase of any portion of this title is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this title. The city council of the city of Richland hereby declares that it would have adopted this title and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 2. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 3. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 4. 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 6th day of July, 2021.



Ryan Lukson, Mayor

Attest:



Jennifer Rogers, City Clerk

Approved as to form:



Heather Kintzley, City Attorney

Date Published: July 11, 2021