



**Agenda**  
Planning Commission Workshop  
Wednesday, June 10, 2026  
Richland City Hall - Council Chambers  
625 Swift Boulevard

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## **Regular Workshop - 6:00 p.m.**

### **Call to Order/Attendance**

### **Agenda Items**

1. Overview of City Development Codes and Code Adoption Process
  - Nicole Stickney  
AHBL
  
2. Upcoming Community Outreach & Public Meetings
  - Nicole Stickney  
AHBL

### **Adjournment**

Richland City Hall is ADA accessible. Any individual who has difficulty attending the meeting in-person may request to provide comments remotely. (RCW Ch. 42.30) Requests for sign interpreters, audio equipment, and/or other special services must be received 48 hours prior to the meeting by calling the City Clerk's Office at 509-942-7389.



## PLANNING COMMISSION WORKSHOP AGENDA ITEM STAFF REPORT

Meeting Date: 6/10/2026

Agenda Category: Agenda Items

Prepared By: Nicole Stickney, AHBL

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### Subject

Overview of City Development Codes and Code Adoption Process

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### Department/Office

### Document Type

Development Services

Planning Commission Item

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### Summary

Nicole Stickney, Principal with AHBL, Inc, will provide an overview of the City's development codes, including key concepts such as setbacks, permitted uses, and related regulatory standards, as well as an overview of the code adoption process, including how public comments are collected and considered. The purpose of this presentation is to build foundational knowledge and enhance the Planning Commission's ability to effectively review proposed municipal code amendments, understand their implications for permitting, and evaluate how such changes may influence future community growth and development.

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### Attachments

1. Power Point Presentation
2. Short Course on Planning Excerpt from Chapter 5, Zoning



# Planning Commission Workshop

June 10, 2026, 6PM

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AHBL
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## Adjournment



# **Richland Comprehensive Plan Update**

PLANNING COMMISSION WORKSHOP  
June 10, 2026



**LET'S TALK ABOUT "CODING"  
(WE DON'T MEAN: COMPUTER CODING!)**

## CONTEXT AND THE PLANNING COMMISSION'S ROLE

- The Planning Commission reviews proposed changes and updates to development regulations to align with community goals and comprehensive plans
- When considering development code changes think about how adjustments will guide **permitting** and **planning decisions** for community growth
- Planning Commission members come with varied experience levels, ensuring informed and consistent participation in reviews
- Thoughtful code review promotes transparency, predictable development, and long-term community health and vitality



# WHAT ARE DEVELOPMENT CODES?



Development codes regulate land use and building standards to enforce local policies and promote orderly growth



Codes cover land use, building placement, design, infrastructure, and environmental considerations in development



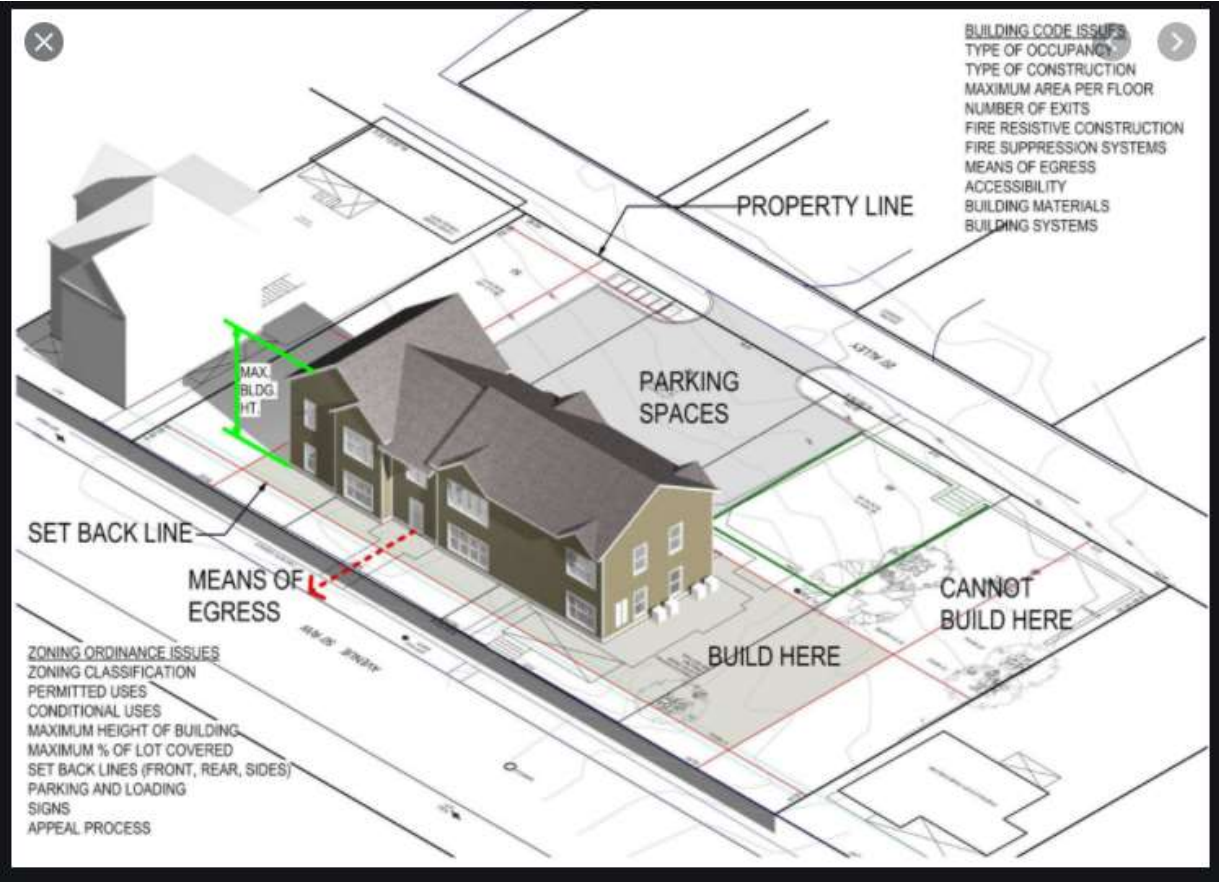
They have legal force requiring compliance from property owners, developers, and local government



Codes serve are used to evaluate project consistency with policies



# BUILDING CODES VS ZONING



## WHAT DO SUCCESSFUL DEVELOPMENT CODES DO?



### Implement Long-Term Community Vision

- Regulations help implement plans and policies to reflect long-term community goals in daily decisions

### Balance Property Rights and Public Interest

- Development regulations balance private property rights with community health, safety, and welfare goals

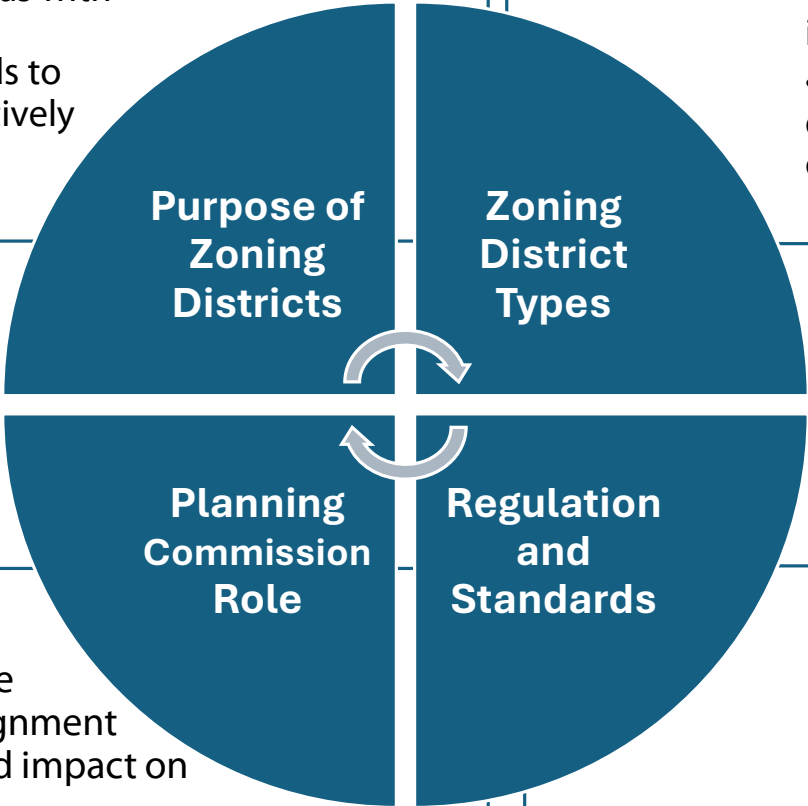
### Ensure Predictability and Investment

- Be clear
- Provide predictability, supporting investments but also consider where flexibility can be incorporated
- Reducing permitting uncertainties

# WHAT ARE ZONING DISTRICTS AND WHY DO WE HAVE THEM?

- Divide the city into areas with specific land uses and development standards to organize growth effectively

- Generally: residential, commercial, industrial, and mixed-use districts
- Each support unique development patterns and compatible land uses

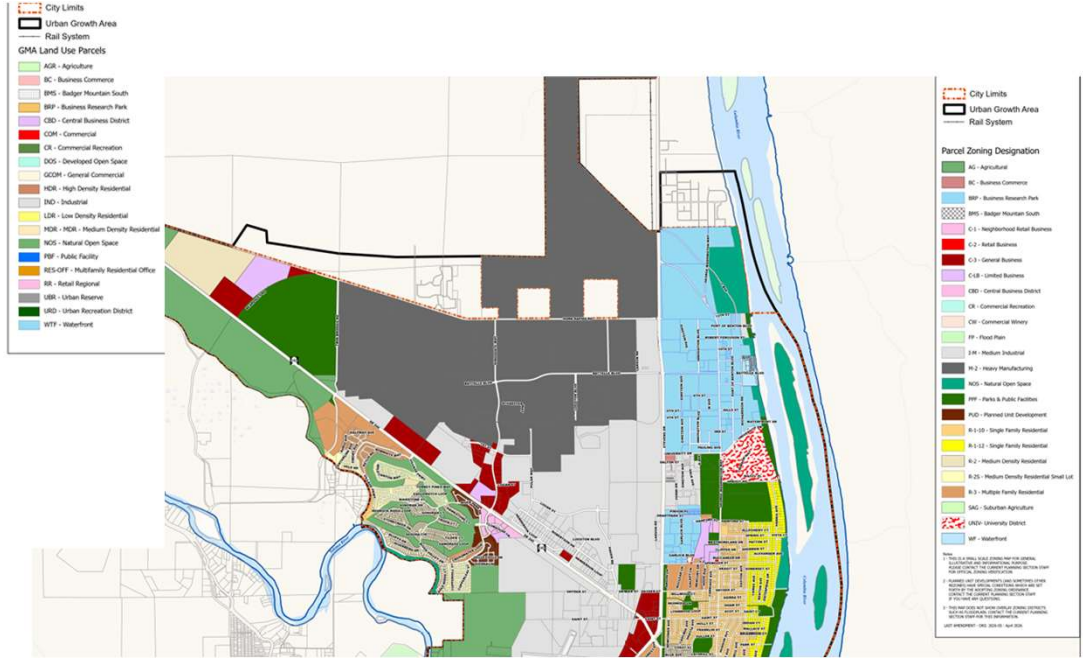
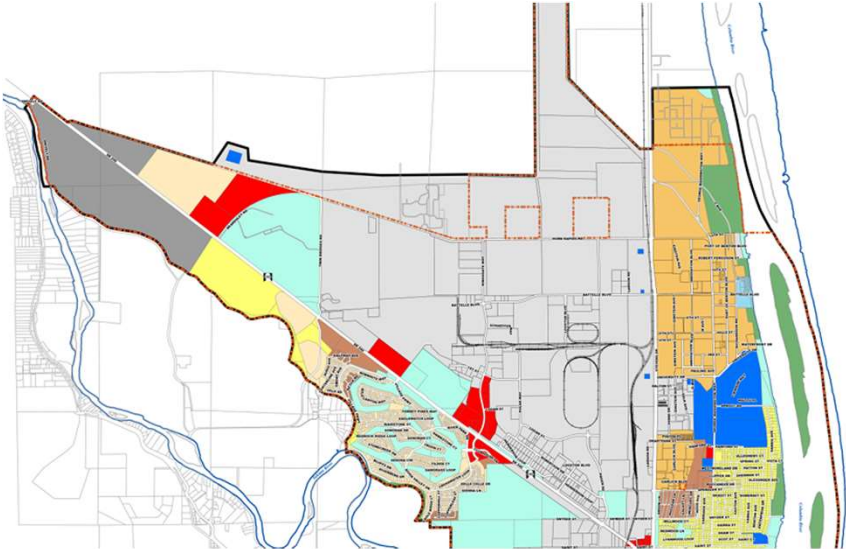


- Review proposed code changes to ensure alignment with district intent and impact on the community

- Zoning sets building size, height, density, and setback standards



# LAND USE MAP VS ZONING MAP



## HOW DO DEVELOPMENT CODES SHAPE COMMUNITY FORM?

### IMPACT OF ZONES

- Zoning controls land uses, dictating if neighborhoods develop as residential, commercial, or mixed-use areas and how intense (dense) the development may be

### ROLE OF SETBACKS AND HEIGHT STANDARDS

- Setbacks and building heights affect street character, light access, and the relationship between buildings and public spaces (like a neighborhood street)

### LONG-TERM COMMUNITY GROWTH

- Development codes influence growth patterns, needs for transportation facilities, and infrastructure demands over time

# KEY CONSIDERATIONS AND QUESTIONS TO ASK

What is the purpose of the proposed amendment?

What problem can this solve?

Is there alignment with the City's Comprehensive Plan?

What are the potential impacts?

Effects on development patterns

Housing availability and neighborhood character

Is the change narrowly tailored? Does it have broader consequences?



# OTHER BIG – PICTURE CONSIDERATIONS



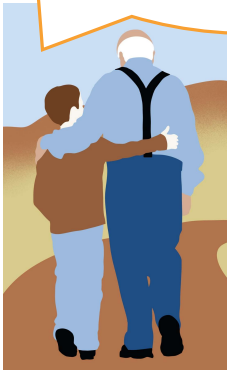
New Technologies  
& Ways We Live

Development  
Agreements &  
Private Covenants  
Have a Role

HOW HAVE  
COMMUNITY  
NEEDS  
SHIFTED?



Project Timing  
&  
“VESTING”



LEGALLY NON  
CONFORMING  
USES & ITEMS  
("GRAND-  
FATHERED")



NEW GMA  
REQUIREMENTS

What could be built today, per the current Richland Municipal Code?

Zone	Middle Housing Type								
	Duplex	Triplex	Fourplex	Fiveplex	Sixplex	Townhome	Stacked Flat	Cottage Housing	Courtyard Apartment
SAG	X	X	X	X	X	X	X	X	X
R-1-12	X	X	X	X	X	X	X	X	X
R-1-10	X	X	X	X	X	X	X	X	X
R-2	Permitted	X	X	X	X	Permitted – A	X	X	X
R-2S	Permitted	X	X	X	X	Permitted	X	X	X
R-3	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted	Permitted – B	Permitted – C	Permitted – D

**EXAMPLE**

- A. Though not currently defined in the code, “Townhouses: would be classified as a similar use to One-family attached dwellings (RMC 23.06.305).
- B. “Stacked flats” are not defined in RMC. However, based on definition of Stacked Flats in RCW 36.70A.030, it appears they would be classified as having a similar use to that of a triplex (RCW 36.70A.030) or multiple family dwelling in the Richland Code (RMC 23.06.315) and therefore could be permitted in R-3.
- C. If cottage housing units are sold as 3 or more condominiums, they would be permitted in the R-3 District under current RMC codes.
- D. Although the term “Courtyard Apartment” is not used, in RMC 23.18.030 – Residential Use Table lists “Apartments with 3 or more units” as permitted in R-3.

DEFINITIONS

DEFINE A TYPE OF  
USE OR TERM USED  
IN THE CODE

RMC CH. 23.06

- ✓ Clarity and Precision Counts
- ✓ Plain, Unambiguous language
- ✓ Strive for Consistency
- ✓ Align with Regulatory Intent

DEFINITIONS

ALLOWED  
USES

ZONES DETERMINE  
WHAT USES ARE  
ALLOWED IN THE  
CITY

Typical Structure:

- ✓ Permitted or "Allowed"
- ✓ Accessory *(to Permitted Use)*
- ⚠ Special Use
- ✗ Not Allowed

*\*Use-Specific Standards or  
Performance Standards may  
also apply*

**RMC CH. 23.08 & CH. 23.12 – 23.30**

DEFINITIONS

ALLOWED  
USES

YARD /  
AREA REGS

SUPPLEMENTARY  
STANDARDS MAY  
APPLY TO MANY  
DISTRICTS

RMC CH. 23.38

- ✓ Architectural features
- ✓ Carports
- ✓ Patios and Porches
- ✓ Fences
- ✓ Landscaping Maintenance

DEFINITIONS

ALLOWED  
USES

YARD/  
AREA REGS

GENERAL  
PROVISIONS

# GENERAL PROVISIONS AND SPECIAL CONDITIONS

RMC CH. 23.42

- Specific regulations providing for the location of certain special and accessory uses throughout the use districts of the city and providing supplementary controls for the protection of the essential uses of the districts.
- Examples: Operating standards for various businesses, Rules for Swimming Pools, Outdoor Storage Limitations

DEFINITIONS

ALLOWED  
USES

YARD/  
AREA REGS

GENERAL  
PROVISIONS

DIMENSIONAL  
STANDARDS

## BULK AND DIMENSIONAL STANDARDS

**RMC: ACCORDING  
TO DISTRICT**

- Minimum Yard Requirements (Overall size, minimum lot width, lot depth, street frontage requirement)
- Percent of Lot Coverage / Impervious Surface Coverage
- Building Heights
- Minimum Setbacks
- Requirements for Screening

DEFINITIONS

ALLOWED  
USES

YARD/  
AREA REGS

GENERAL  
PROVISIONS

DIMENSIONAL  
STANDARDS

PARKING  
LIGHTING

**RMC CH. 23.54** OFF-STREET PARKING & LANDSCAPING

**RMC CH. 23.58** OUTDOOR LIGHTING STANDARDS



**Thank you!**



# Upcoming Community Outreach & Public Meetings:

- **June 23<sup>rd</sup>: 4-6 pm: Transportation Systems Plan Open House**
  - Tentative Date & Time
  - Badger Mountain South Fire Station, 4307 Trowbridge Blvd
- **June 24<sup>th</sup>: Planning Commission Meeting**
  - Potential Topic: Land Use Element
- **July 8<sup>th</sup>: Planning Commission Workshop**

# A. Community Development Regulations and Official Controls

## 1. Introduction

**Two categories of development regulations and official controls are commonly found in communities:**

- Zoning - texts and maps that define permitted uses of property and the bulk, density coverage, and setback limitations for any property.
- Development and subdivision - regulations dealing with the development and division of land. These include plats, short plats, binding site plans, and building, grading and utility permits. All deal with physical development of the ground, or the division of land for sale or lease.

Zoning controls are placed throughout the community. They apply whether or not a property owner seeks to use or modify the land in a particular fashion. Development and subdivision regulations come into play when a property is proposed for change or “development.”

## 2. Zoning

Zoning is defined as “...the legislative division of a community into areas in which are permitted only certain designated uses of land or structures.”<sup>1</sup>

**Courts have elaborated on the concept as follows:**

**...a part of and an end result or product of effective municipal “planning,” for it is through the medium of enacted and enforceable zoning regulations that the aims and objectives of the land-use-classification facet of over-all municipal “planning” may be carried to fruition.<sup>2</sup>**

A zoning ordinance is one of many “official controls” a community can adopt to carry out the objectives of its comprehensive plan. Like the comprehensive plan, zoning ordinances are adopted by elected public officials after a recommendation by the planning commission. The planning staff again plays a central role in developing models and alternatives, and in providing the technical frame of reference for making informed decisions.

### a. The Objectives of Zoning

The general objectives of zoning, as identified in the enabling statutes, are to regulate and restrict land use:

**In such measure as is deemed reasonably necessary or requisite in the interest of health, safety, morals and the general welfare.<sup>3</sup>**

<sup>1</sup> McQuillin, Municipal Corporation, §25.07, 21 (3d ed. 1983).

<sup>2</sup> Shelton, *supr*, at 35.

<sup>3</sup> RCW 35.63.080.

All regulations shall be worked out as parts of a comprehensive plan which each commission shall prepare for the physically and other generally advantageous development of the municipality and shall be designed, among other things, to encourage the most appropriate use of land throughout the municipality<sup>4</sup>

**The Washington Supreme Court has had numerous opportunities to comment on the proper objectives of zoning:**

[The general purpose of zoning is to stabilize the use, conserve the value of the property, and to preserve the character of neighborhoods; but we insist that the emphasis be placed on the words “general purpose.”<sup>5</sup>

**More recently, a court upheld the prohibition of mobile homes in a traditional residential single-family zone, noting:**

...that the purpose of zoning is not to increase or decrease the value of any particular lot or tract. Rather it is to benefit the community generally by the intelligent planning of land uses without unreasonable discrimination.<sup>6</sup>

**The courts also have reflected that preserving the community’s civic and social values is a proper objective of zoning:**

Zoning stabilizes the uses of land and furnishes a protection to residential neighborhoods which will cause them to maintain themselves in a decent and sanitary way and protects the civic and social values of the American home.<sup>7</sup>

**Finally, the courts have touched on aesthetics as a valid zoning objective:**

Aesthetic considerations alone may not support invocation of the police powers, ... [T]he fact that aesthetics play a part in adoption of zoning ordinances does not affect its validity if the regulation finds reasonable justification in...police power.<sup>8</sup>

**Nevertheless, on the value of aesthetics to the planning process, a Washington court quoted Justice Douglas:**

The concept of the public welfare is broad and inclusive. ...The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.<sup>9</sup>

**The opinion of Justice Douglas was not lost on the Washington court, which said:**

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<sup>4</sup> RCW 35.63.090.

<sup>5</sup> McNaughton v. Boeing, 68 Wn.2d 659, 661, 414 P.2d 778 (1966).

<sup>6</sup> n-c kh B w o r t V. Bonney Lake, 91W n. 2d 19 , 2728 - , S 86 P2d 860 . ( 197

<sup>7</sup> Duckworth, supra (quoting Rhyne, Municipal Law, 943 (1957)).

<sup>8</sup> Duckworth, supr, at 30.8) (emphasis in original).

<sup>9</sup> Berman v. Parker, 348 U.S. 26, 99 L. Ed.3d. 27, 75 S. Ct. 98 (1954). Duckworth, 91 Wn.2d at 31.

**If zoning regulations stabilize the value of property, promote the permanency of home surroundings, and add to the happiness and comfort of the citizens, they most certainly promote the general welfare.<sup>10</sup>**

Washington courts have specifically recognized that preserving traditional residential neighborhoods from commercial expansion,<sup>11</sup> or creating commercial centers to meet the demand of growing neighborhoods are valid zoning objectives.<sup>12</sup> Courts have recognized as proper such varied issues as historic preservation,<sup>13</sup> protecting the quality of the environment,<sup>14</sup> and providing adequate housing to meet regional needs.<sup>15</sup>

In addition, the courts have upheld ordinances which look to the quality of buildings constructed, rather than to the use or number of buildings.

**In this regard, it is generally recognized that the exterior architectural appeal and functional plan of a structure should not be so at variance with either the exterior architectural appeal or functional plan of the structures already constructed or in the course of construction, in the immediate neighborhood, as to cause substantial depreciation of the property value of the neighborhood.... (Citations omitted.) The difference in appearance and [a] recognized potential effect upon an existing neighborhood of conventional homes is a legitimate and significant factor to consider in enacting zoning laws.<sup>16</sup>**

Strict regulations of signs or advertising material have likewise been upheld under limited circumstances.<sup>17</sup>

The basic purpose of zoning enactments is to promote the general development of the community and to put into practice the goals and policies of a community's comprehensive plan. The courts have recognized that a community does not require specific enabling legislation to adopt regulations that meet community needs.<sup>18</sup> **The principal test is whether the action bears "a substantial relation to the public health, safety, morals or general welfare,"**<sup>19</sup> a traditional police power formulation.

As broad as zoning authority has become, the courts continue to remind us that planning may certainly affect the use of property. Such regulations will be strictly scrutinized to assure a balance between public health, safety, and private interests. The Supreme Court has stated,

**The basic rule in land use law is still that, absent more, an individual should be able to utilize his own land as he sees fit...Although zoning is, in general, a proper exercise of**

<sup>10</sup> Duckworth, *supr*, at 31.

<sup>11</sup> *Carlson v. Bellevue*, 73 Wn.2d 41, 435 P.2d 957 (1968).

<sup>12</sup> *McNaughton v. Boeing*, 68 Wn.2d 659, 414 P.2d 778 (1966).

<sup>13</sup> *State v. Seattle*, 94 Wn.2d 162, 615 P.2d 461 (1980).

<sup>14</sup> *SAVE*, *supra*.

<sup>15</sup> *Southern Burlington County NAACP v. Mt. Laurel*, 67 N.J. 151, 336 A.2d 713, cert. denied, 423 U.S. 808 (1975), cited with approval in *SAVE*, *supr*, at 871.

<sup>16</sup> Duckworth, *supr*, at 29 (citing *American Law of Zoning* §1401, at 548).

<sup>17</sup> *Ackerley Communications v. City of Seattle*, 92 Wn.2d 905, 602 P.2d 1177 (1979), cert. denied, 449 U.S. 804 (1980).

<sup>18</sup> *Lutz v. Longview*, 83 Wn.2d 566, 520 P.2d 1374 (1974).

<sup>19</sup> *Lutz*, *su r*, at 574.

**police power which can permissibly limit an individual's property rights, it goes without saying that the use of police power cannot be unreasonable... While local governments exist to provide necessary public services to those living within their borders and to avoid harms in their protection of the public's health, safety, and general welfare, exercise of this authority must be reasonable, and rationally related to a legitimate purpose of government such as avoiding harm or protecting health, safety and general, not local or parochially conceived, welfare.<sup>20</sup>**

A community's zoning powers also will be limited by the statutory mandate that communities must use inclusionary techniques to accommodate group homes and other facilities in the community, as required by state law.<sup>21</sup>

## **b. Traditional Zoning Tools**

The adoption of zoning in a community typically involves two activities: 1) adopting a text, and 2) adopting the zoning map. The text defines the categories, uses, and standards of development to be permitted within a particular land use designation. The zoning map applies the adopted land use designations to the community. Zoning controls frequently involve more than designating land uses on maps.

**In addition to basic use districts and maps, the more significant zoning tools are:**

### **i. Conditional Uses**

Many uses are appropriate for a particular use district, but require special consideration to integrate them into the neighborhood. Conditional uses are permitted only where certain conditions exist. Historically, schools, churches, utilities and similar uses have been allowed as conditional uses.<sup>22</sup> More recently, many communities have tried to integrate small commercial, multi-family, and single-family uses by applying conditional uses and performance standards. The legal presumption is that conditional uses are appropriate in the specified district. Site specific limitations may offset or minimize the traffic, noise, or other special characteristics of the conditional use.

**The significance of a conditional use is that objection to it must be based on some particular feature of a project unique to the site, not inherent in the use** (such as traffic on Sundays at church). The community has already determined that the inherent characteristics are to be permitted. It will tolerate them, with some additional protection, by establishing the conditional use approval.

### **ii.) Limited Uses**

Some uses are difficult to site<sup>23</sup> almost anywhere in a community, but must be provided to serve its needs. Gravel pits, rock quarries, and sanitary landfills, for example, are site dependent uses which

<sup>20</sup> Norco Construction v. King County, 97 Wn.2d 680, 684, amend. V, XIV), emphasis added.

<sup>21</sup> RCW 36.70A.200. 649 P.2d 103 (1982) (citing U.S. Const.

<sup>22</sup> See, e.g., Pierce v. Northeast Lake Washington Sewer & Water District, 123 Wn.2d 550, 870 P.2d 305 (1994).

<sup>23</sup> Norco Construction v. King County, 97 Wn.2d 680, 684, 649 P.2d 103 (1982) (citing U.S. Const. amend. V, XIV).

may have a large impact on surrounding communities.<sup>24</sup> **Unlike conditional uses, which are presumed to be appropriate, no such presumption exists with limited uses.** A limited use may have to demonstrate community need before a permit is granted.

### i) Special Uses

Some communities have abandoned the conditional use/limited use dichotomy, designating all uses requiring special review as “special uses.”<sup>25</sup> **In this case, the limited use/conditional use presumptions do not apply.** Similarly, an applicant would only have to prove “community need” if this was determined to be an important factor; and if the issue were included specifically in criteria for the approval process.

### ii) Variances

A variance is nothing more than a waiver of one or more specific physical (rather than use) standards, such as bulk, yard, or site coverage contained in an ordinance.<sup>26</sup> The variance is used to waive a condition that creates a particular hardship. **Variances are to be narrowly construed and used only in extreme circumstances** since, by nature, they are at odds with the fundamental doctrine that entitles all persons to equal protection and enforcement of the laws.

**The Planning Enabling Act details several prerequisites which must be met before a variance can be granted:**

- Due to special circumstances of the subject property (including its size, shape, or surroundings), strict application of the zoning ordinance would deprive it of rights and privileges enjoyed by other properties in the vicinity and under identical zone classifications.
- 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 the subject property is located.
- The situation does not arise from actions of the applicant or the predecessor in interest after the zoning ordinance was adopted.<sup>27</sup>

In addition, some variance requests require the review and approval of another agency or governmental body before the variance can be granted<sup>28</sup>

A “use” variance permits a use that is otherwise prohibited in the neighborhood. **A use variance does not meet traditional variance tests, and is not considered lawful.** It is the de facto equivalent of a spot zone, without the formality of trying to amend the ordinance to justify the public interest. If a certain situation produces frequent variance requests, a community should amend its codes to accommodate it.

<sup>24</sup> See, e.g., *Organization to Preserve Agricultural Lands v. Adams County*, 128 Wn.2d 869, 913 P.2d 793 (1996), *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 801 P.2d 985 (1990).

<sup>25</sup> See, e.g., *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 903 P.2d 986 (1995), *State ex rel. Standard Mining & Dev. Corp. v. City of Auburn*, 82 Wn.2d 321, 510 P.2d 647 (1973).

<sup>26</sup> See, e.g., *Orion Corp. v. State*, 103 Wn.2d 441, 693 P.2d 1369 (1985).

<sup>27</sup> RCW 36.70.810(2).

<sup>28</sup> *Buechel v. DOE*, 125 Wn.2d 196, 884 P.2d 910 (1994) (shoreline variance requires DOE’s approval in addition to the City’s).

**PRACTICE TIP: All too often, variances are approved because a board believes certain zoning requirements may be unfair or unreasonable. While fairness and reasonableness may be grounds for amending a statute, they cannot be substituted for the required findings if an ordinance is to have any integrity or validity.<sup>29</sup> If a common occurrence leads to multiple variance requests, the community’s ordinance and its comprehensive plan, if inconsistent, should be amended to address the situation.**

### iii) Planned Unit Developments/Planned Residential Development

One of the tools appearing frequently in zoning ordinances is enabling legislation for planned unit developments (PUDs). **A PUD is an authorized “floating zone,”** which may or may not be specifically located when the zoning text and map are adopted.<sup>30</sup> The zone may then be adapted to any qualifying parcel under the PUD ordinance.

The PUD may eliminate (or reduce) many of the bulk or density requirements of the underlying zoning district. Through a mix of residential and/or commercial types of development, it can create an entirely unique district.

#### **PUDs should be authorized in three ways:**

- 1) Through broad policy goals in the comprehensive plan;
- 2) Through enabling language in the zoning ordinance (often with suitable areas designated on maps); and
- 3) Through a site plan review and binding site plan for the overall development.

PUDs also need mechanisms to assure continuity and the ability to meet community changes over time. Planned unit developments have been approved by the courts even though no state-authorizing legislation exists.<sup>31</sup>

**A planned residential development (PRD)** mirrors the PUD, but is more strongly oriented to a project’s residential nature. The PRD is more flexible than traditional subdivision, platting, and site plan approaches.

The GMA also specifically authorizes new, fully-contained communities outside urban growth

<sup>29</sup> In *Sherwood v. Grant County*, 40 Wn. App. 496, 699 P.2d 243 (1985), a divided court of appeals recently discussed the criteria to be used to evaluate a variance. In *Sherwood*, the majority upheld a variance to permit a mobile home in a traditional single family neighborhood. Under the ordinance in effect, mobile homes were not permitted in traditional single family neighborhoods. The Sherwoods owned a mobile home and requested a variance to permit them to keep the unit. The testimony was overwhelming in favor of keeping the unit and that the unit did not depreciate the neighborhood. Nevertheless, the site could easily have been used for a traditional single family home. The court approved the variance to avoid the hardship to removing the home. While the analysis is legally questionable since the site did have permissible alternatives, the case is evidence of the lengths even courts may go to avoid altering the status quo. Nevertheless, the case must be read for the analysis and not the result. The opposite result would be equally, if not more easily defensible.

<sup>30</sup> See *Lutz v. Longview*, 83 Wn.2d 566, 520 P.2d 1374 (1974) for general discussion of planned unit developments.

<sup>31</sup> *Lutz, su r*; see also *Barrie v. Kitsap County*, 84 Wn.2d 579, 585, 527 P.2d 1377 (1974).

areas.<sup>32</sup> A PUD form of zoning will likely be required to allow the design and location of such communities with suitable standards and controls.

#### iv) Contract Rezones

Unlike development approvals, rezones involve amending an ordinance. When a legislative body wants to approve a rezone but impose conditions to mitigate impacts of the change, it may do so. However, this requires a two-step determination: (1) Is the rezone in the public interest (that is, consistent with the comprehensive plan)? (2) Are the conditions imposed attributable to new use categories approved for the property? If these two tests are met, the courts will uphold a contract rezone.<sup>33</sup> A community should make specific factual findings on both issues as part of the contract rezone approval process.

The rezone process is limited by the requirement that all changes requiring an amendment to the comprehensive plan, be made only once a year so cumulative impacts will be considered.<sup>34</sup> Although the development regulations can be amended at any time, they must be consistent with the comprehensive plan. If the rezone is inconsistent with the comprehensive plan, the rezone must await an amendment to the plan during the annual amendment process.

#### v) Spot Zoning

**Spot zoning is an action,**

**by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan. Spot zoning is a zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole.**<sup>35</sup>

**Spot zoning is prohibited** because it denies equal protection and enforcement of the laws to the benefit of a small group or individual. When a zoning change is inconsistent with the comprehensive plan, the change is presumed to be a “spot zone.”<sup>36</sup> Conversely, when a change in zoning is consistent with the comprehensive plan, the plan - not the spot zone - will be presumed in the public interest. This is true even if the rezone affects just one parcel.

**PRACTICE TIP: All conditions of the contract should be met before final action is taken to create an amended zone. In addition, completion of these required conditions should be tied to utility hookup, certificates of occupancy, or other steps in construction development.**

**PRACTICE TIP: The key question in any nonconforming use case involves enlargement**

<sup>32</sup> RCW 36.70A.350.

<sup>33</sup> State ex. rel. Myhre v. Spokane, 70 Wn.2d 207,422 P.2d 790 (1967).

<sup>34</sup> RCW 36.70A. 130.

<sup>35</sup> Smith v. Skagit County, 75 Wn.2d 715, 743, 453 P.2d 832 (1969), overruled on other grounds, Harrisv. Hornbaker, 98 Wn.2d 650, 658 P.2d 1219 (1983). See also Chrobuck v. Snohomish County, 78 Wn.2d 858,872, 480 P.2d 489 (1971).

<sup>36</sup> See Smith, supra; Chrobuck, sup

**vs. intensification. Enlargement expands the area in which a nonconforming use takes place, while intensification expands the activity within an existing area. Enlargement is prohibited without specific legislative authorization, but intensification within an existing structure is allowed.<sup>37</sup>**

#### vi) Nonconforming Uses

Nonconforming uses lawfully exist at the time a zoning ordinance is adopted, but become inconsistent when there is a rezone.<sup>38</sup> The presumption is that the community eventually wants to eliminate the nonconforming use, but allows it to continue to avoid extreme hardship.<sup>39</sup> Communities may continue, intensify, and modify nonconforming uses through appropriate provisions in the ordinance.

**Unless authorized by statute, nonconforming uses traditionally cannot be expanded or enlarged;**<sup>40</sup> once abandoned, they may not be reinstated. Abandonment, however, is an intentional act. The courts have refused to accept statutory limitations (e.g., six months), as any more than presumptions of intentional abandonment.<sup>41</sup> This is particularly true of intermittent uses, such as gravel pits.

#### vii) Rezones/Down Zones

The term “rezone” is undefined in Washington law. Using the “I know it when I see it” approach, the Supreme Court has taken the following position: **A rezone authorizes uses on property that differ substantially from terms of the prior zoning designation.** Thus, a city may not use a PUD to approve multi-family housing in a single-family zone without amending the zoning map through a formal rezone<sup>42</sup>

The Court of Appeals has reaffirmed that consideration of a PUD is the equivalent of a rezone,<sup>43</sup> meaning that an applicant has no vested rights to have a PUD approved. Since most communities have zoning in effect, requests for land use changes will involve a rezone request to the city.

#### Rezones differ from zoning actions in several respects:

- Parcel-specific rezones do not enjoy the presumptions of validity legislative activities have (as in area-wide rezones); the property owner/applicant must prove that a parcel-specific rezone is valid<sup>44</sup>
- Rezones must be based on a change of circumstances or community needs, or implement the

<sup>37</sup> Keller v. Bellingham, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979).

<sup>38</sup> Summit-Waller Ass’n v. Pierce County, 77 Wn. App. 384, 895 P.2d 405, rev. denied, 127 Wn.2d 1018(1995).

<sup>39</sup> Andrew v. King County, 21 Wn. App. 566, 586 P.2d 509 (1978).

<sup>40</sup> Anderson v. Island County, 81 Wn.2d 312, 324, 501 P.2d 594 (1972), rev. denied, 91 Wn.2d 1023(1979).

<sup>41</sup> Andrew, supra. See also State ex rel. Lige & Wm. B. Dickson Co. v. Pierce County, 65 Wn. App. 614, 829 P.2d 217, rev. denied, 120 Wn.3d 1008 (1992).

<sup>42</sup> Lutz, supra.

<sup>43</sup> Johnson v. City of Mt. Vernon, 37 Wn. App. 214, 679 P.2d 405 (1984).

<sup>44</sup> Hayden v. Port Townsend, 93 Wn.2d 870, 613 P.2d 1164 (1980), overruled on other grounds, SANE v. Seattle, 101 Wn.2d 288, 676 P.2d 1006 (1984).

policies of an adopted comprehensive plan.<sup>45</sup> They cannot be based exclusively on the desires of public interest groups.<sup>46</sup>

- The burden of proof required to downzone a property against the wishes of an owner is higher than the burden on an owner who seeks a zoning change.<sup>47</sup>
- Rezones contrary to the comprehensive plan are generally considered to be spot zones. These are unlawful because they benefit private interests rather than the public.<sup>48</sup>
- Downzones are subject to the same consideration as upzones. A downzone must be consistent with the comprehensive plan, and not merely the desires of a neighborhood. The primary limitation on downzones is that the community action must meet a public objective. It must also permit reasonable use of the property after the downzone.<sup>49</sup>

**PRACTICE TIP: Rezones and down zones are more difficult to obtain as a result of the GMA. Zoning ordinances must be consistent with the comprehensive plan, and the plan can only be amended once a year.**

## X) Vested Rights

The Washington Supreme Court has acknowledged that development rights are a “valuable right in property.”<sup>50</sup> The vested rights doctrine in Washington was adopted to protect development rights. Under this doctrine, developers who file a timely and complete permit application obtain a vested right to have their application processed according to the zoning and building ordinances in effect at the time of the application.

**At what point does a person have a right to retain a use or structure authorized by a zoning code, after that code is changed?** Nonconforming use is one attribute of the vested rights doctrine. The use or structure is “grandfathered,” or vested, because it is already present. But what about cases in which an applicant has applied for a use at the same time local ordinances are changing? Washington has a straightforward test for vesting:

- Building permits are vested as of the date a complete application is filed.<sup>51</sup>
- Plats (formal plats and short plats) are vested when a fully completed application is filed.<sup>52</sup>

<sup>45</sup> Parkridge v. Seattle, 89 Wn.2d 454, 573 P.2d 359 (1978) (when a rezone implements policies of an adopted comprehensive plan, changed circumstances are not necessary to justify a rezone). See also Bjarnson v. Kitsap County, 78 Wn. App. 840, 844-46, 899 P.2d 1290 (1995); Save Our Rural Environment v. Snohomish County, 99 Wn.2d 363, 370-71, 662 P.2d 816 (1983).

<sup>46</sup> Parkridge v. Seattle, 89 Wn.2d 454, 573 P.2d 359 (1978). For example, a neighborhood’s desire is not sufficient per se to warrant a downzone. This is the flip side of the old spot zoning problem.

<sup>47</sup> Hayden, supra.

<sup>48</sup> Smith, supra; Chrobuck, supra.

<sup>49</sup> Parkridge, supra; Carlson, supra.

<sup>50</sup> West Main Assoc. v. Bellevue, 106 Wn.2d 47, 720 P.2d 782 (1986).

<sup>51</sup> RCW 19.27.095(1).

- Communities shall define the requirements of a fully completed application by local ordinance.<sup>53</sup>
- Communities may not artificially delay the vesting time to permit changes.<sup>54</sup>

Washington courts have applied the vested rights doctrine to other types of development permits, such as conditional use permits,<sup>55</sup> shoreline permits,<sup>56</sup> grading permits,<sup>57</sup> septic tank permits,<sup>58</sup> and phased development under a binding site plan.<sup>59</sup>

A vested project means that the project is measured against the rules in place at the time of vesting - even if those rules have changed by the time construction starts.

#### xi) “Innovative Techniques”

The Growth Management Act specifically identifies **density bonuses, design guidelines, conservation easements, cluster housing, planned unit developments, and transfer of development rights** as “innovative techniques” to accomplish growth management goals.<sup>60</sup>

“Innovative techniques” can be used to balance competing needs in a community. A regulation may try, for example, to protect a critical area by prohibiting its use for development, requiring certain buffers, or excluding it from density calculations. This scenario leaves little incentive to identify critical areas or nurture marginal critical lands. The result, particularly in urban areas, could limit land available for infill, affordable housing, or other competing needs.

**Innovative techniques can offer incentives and help create or protect critical areas and buffers.** If wetland and buffer areas are set aside for open space, a landowner might receive density bonuses in return. Owners can then build at higher densities or use smaller lots, allowing cities to meet densification and urbanization objectives while retaining and protecting critical areas.

### 3. Moratoriums and Interim Controls

Moratoriums and interim zoning controls are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development.<sup>61</sup> Notice and public hearing is not necessary prior to enactment of a moratorium or emergency zoning measure, but a public hearing must be held within 60 days of its adoption. If such requirements were applied to interim zoning decisions, developers could frustrate effective long-term planning by

<sup>52</sup> RCW 58.17.033(1). See also *Noble Manor v. Pierce County*, 81 Wn. App. 141, 913 P.2d 417, *aff'd*, Wn.2d 269 (1997) (under RCW 58.17.033, the submission of a completed short plat application vests the right to develop, not merely divide the land under the regulations in effect at the time of the submission).

<sup>53</sup> RCW 58.17.033(2) & .140.

<sup>54</sup> *Norco*, *supr.*

<sup>55</sup> *Beach v. Board of Adjustment*, 73 Wn.2d 343, 438 P.2d 617 (1968).

<sup>56</sup> *Talbot v. Gray*, 11 Wn. App. 807, 525 P. 2d 801 (1974), *rev. denied*, 85 Wn.2d 1001 (1975).

<sup>57</sup> *Juanita Bay Vly. Comm'ty Ass'n v. Kirkland*, 9 Wn. App. 59, 510 P.2d 1140, *review denied*, 83 Wn.2d 1002 (1973).

<sup>58</sup> *Juanita Bay Vly. Comm'ty Ass'n v. Kirkland*, 9 Wn. App. 59, 510 P.2d 1140, *review denied*, 83 Wn.2d 1002 (1973).

<sup>59</sup> *Mercer Enterprises v. Bremerton*, 93 Wn.2d 624, 611 P.2d 1237 (1980), *Valley View Industrial Park v. Redmond*, 107 Wn.2d 621, 733 P.2d 182 (1987).

<sup>60</sup> RCW 36.70A.090; 070(5)(b).

<sup>61</sup> RCW 36.70A.390, 35.63.200.



## PLANNING COMMISSION WORKSHOP AGENDA ITEM STAFF REPORT

Meeting Date: 6/10/2026

Agenda Category: Agenda Items

Prepared By: Nicole Stickney, AHBL

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### Subject

Upcoming Community Outreach & Public Meetings

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### Department/Office

### Document Type

Development Services

Planning Commission Item

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### Summary

1. June 23rd, 4-6 PM: Transportation Systems Plan Open House
  - Tentative Date & Time
  - Badger Mountain South Fire Station, 4307 Trowbridge Blvd
2. June 24th, 6 PM: Planning Commission Regular Meeting
  - Potential Topic: Land Use Element
3. July 8th, 6 PM: Planning Commission Regular Workshop

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### Attachments