

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussion of Ordinance No. 857 Adopting Permanent Plat Alteration Regulations		
DEPARTMENT:	City Attorney's Office		
PRESENTED BY:	Margaret King, City Attorney Julie Ainsworth Taylor, Assistant City Attorney		
ACTION:	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Motion
	<input checked="" type="checkbox"/> Discussion	<input type="checkbox"/> Public Hearing	

PROBLEM/ISSUE STATEMENT:

On December 10, 2018, the City Council adopted Ordinance No. 849 establishing "interim" regulations for the alteration of plats (subdivision) as authorized by state law (RCW 35A.63.220 and RCW 36.70A.390.) The regulations are effective for six (6) months.

Subsequently, staff commenced the process to adopt permanent regulations for the alteration of plats. Tonight, the City Council will be presented with these regulations as recommended by the Planning Commission for discussion. Proposed Ordinance No. 857 provides for these permanent regulations. This Ordinance is currently scheduled for adoption on the April 1, 2019.

RESOURCE/FINANCIAL IMPACT:

There is no financial impact at this time for the City except that permit fees will be delineated for the process of plat alterations. Regulations for plat alterations may increase the development timeline for some projects but may also expedite the timeline as it will provide staff a process to follow.

RECOMMENDATION

This is a discussion item only. No action is required of the City Council. If City Council has no concerns regarding proposed Ordinance No.857 and the permanent regulations set forth in Attachment A, then staff requests proposed Ordinance No. 857 be placed on the April 1, 2019 Consent Calendar for final adoption.

Approved By: City Manager **DT**

City Attorney **JA-T**

BACKGROUND

On December 10, 2018, the City Council adopted Ordinance No. 849, declaring an emergency and establishing interim regulations for Plat Alterations consistent with RCW 58.17.215, as permitted under RCW 36.70A.390 and RCW 35A.63.220. A copy of the staff report for this December 10, 2018 action can be found at the following link: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2018/staffreport121018-7d.pdf>.

In establishing these interim regulations, the regulations bypassed the standard process for the adoption of development regulations as set forth in SMC 20.30.070. In Section 4 of Ordinance No. 849, the City Council directed staff to refer the Ordinance to the Planning Commission for its review and recommendation of permanent regulations to replace the interim regulations. The Planning Commission held a study session on these regulations at its January 3, 2019 regular meeting. The staff report for that meeting can be found at the following link: <http://www.shorelinewa.gov/home/showdocument?id=41619>.

As required by RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing on the “interim” regulations at its February 4, 2019 regular meeting. The staff report for that meeting can be found at the following link: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2019/staffreport020419-8a.pdf>.

At this meeting, the City Council requested the City Attorney’s office to provide a one-page explanation on the difference between plat notes and private covenants when the regulations were returned to the City Council. This document is set forth in Attachment B to this staff report.

On March 7, 2019, in compliance with SMC 20.30.070, the Planning Commission held a public hearing for the purpose of accepting public testimony on the permanent regulations and to formulate its recommendation for submittal to the City Council for final adoption. The staff report for that meeting can be found at the following link: <http://www.shorelinewa.gov/home/showdocument?id=42696>.

DISCUSSION

The process for administering plat alterations, including the modification or removal of Plat Notes, is currently set out in RCW 58.17.215 to 58.17.218. The statute sets forth specific requirements for a plat alteration. A summary of the requirements are:

- Application for plat alteration must include the signatures of a majority of property owners in the plat;
- If the plat is subject to restrictive covenants that were filed at the time of original plat approval and the alteration would violate the covenants, all property owners need to agree to alteration;
- All owners in the plat need to receive notice of the plat alteration;

- A public hearing is not required but an owner may request a hearing; the hearing may be held by a hearing examiner;
- The legislative body determines the public use and interest in the alteration and may deny or approve the application; and
- If approved, the applicant prepares a revised plat for signature of the legislative authority and files with the county.

As stated above, the proposed regulations are consistent with RCW 58.17.215. However, the statute states that the legislative body (the City Council) is to make the final approval/denial decision. The City Council has the ability to delegate this authority. Thus, the regulations are written so that the Director of Planning & Community Development has approval authority for plat alterations unless a public hearing has been requested, and then the City Hearing Examiner would issue a final decision. The regulations provide both City staff and applicants with a process for such alterations and applicable fees.

These regulations are not utilized from amending private covenants that exist on property; the City has not authority over such amendments. The ability to amend covenants is left to property owners and is controlled by the governing documents that established the covenants.

There was no public comment at the March 7, 2019 Planning Commission public hearing. After closing the public hearing, the Planning Commission recommended the City Council adopt the regulations as set forth in Attachment A, Exhibit A.

Also, included in Attachment A – Exhibit B to this staff report is a fee table. Planning and Community Development staff has given consideration to the work involved in a plat alteration and has set what it believes to be a reasonable fee. The Planning Commission has no authority over fees so there is no recommendation in regard to the fees.

RESOURCE/FINANCIAL IMPACT

There is no financial impact at this time for the City except that permit fees will be collected for the process of plat alterations. Regulations for plat alterations may increase the development timeline for some projects but may also expedite the timeline as it will provide staff a process to follow.

RECOMMENDATION

This is a discussion item only. No action is required of the City Council. If City Council has no concerns regarding proposed Ordinance No.857 and the permanent regulations set forth in Attachment A, then staff requests proposed Ordinance No. 857 be placed on the April 1, 2019 Consent Calendar for final adoption.

ATTACHMENTS

Attachment A – Proposed Ordinance No. 857

Exhibit A - Plat Alteration Regulations

Exhibit B – Fee Table

Attachment B – Explanation Handout

ORDINANCE NO. 857

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON
REPEALING INTERIM REGULATIONS FOR PLAT ALTERATIONS
ADOPTED BY ORDINANCE NO. 849 AND ADOPTING PERMANENT
REGULATIONS FOR PLAT ALTERATIONS IN CHAPTER 20.30 AND
CHAPTER 3.01 OF THE SHORELINE MUNICIPAL CODE.**

WHEREAS, the City of Shoreline is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the state of Washington, and planning pursuant to the Growth Management Act, Title 36.70A RCW; and

WHEREAS, on December 10, 2018, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council adopted Ordinance No. 849, declaring an emergency and establishing interim regulations for the processing of plat alterations within Chapter 20.30 of the Shoreline Municipal Code (SMC) and fees for the processing of applications in Chapter 3.01 SMC; and

WHEREAS, these interim regulations are valid for six (6) months from the date of adoption, expiring on June 8, 2019; and

WHEREAS, on January 3, 2019, the City of Shoreline Planning Commission reviewed proposed permanent regulations; and

WHEREAS, on February 4, 2019, as required by RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing on the interim regulations so as to receive public testimony; and

WHEREAS, on March 7, 2019, the Planning Commission held a public hearing on the permanent regulations so as to receive public testimony; and

WHEREAS, at the conclusion of the March 7 public hearing, the Planning Commission voted to recommend the permanent regulations, as presented by staff, to the City Council for approval; and

WHEREAS, on March 18, 2019, the City Council held a study session on the proposed permanent regulations for plat alterations as recommended by the Planning Commission; and

WHEREAS, the City Council has considered the entire public record, public comments, written and oral, and the Planning Commission's recommendation; and

WHEREAS, the City provided public notice of the amendments and the public hearing as provided in SMC 20.30.070; and

WHEREAS, pursuant to RCW 36.70A.370, the City has utilized the process established by the Washington State Attorney General so as to assure the protection of private property rights; and

WHEREAS, pursuant to RCW 36.70A.106, on December 13, 2018, the City has provided the Washington State Department of Commerce with a 60-day notice of its intent to adopt the amendment(s) to its Unified Development Code; and

WHEREAS, pursuant to WAC 197-11-800(19)(a), these procedural regulations are exempt from review under the State Environmental Policy Act, chapter 43.21C RCW (SEPA); and

WHEREAS, the City Council has determined that the amendments are consistent with and implement the Shoreline Comprehensive Plan and serves the purpose of the Unified Development Code as set forth in SMC 20.10.020; and

WHEREAS, the City Council concurs in the Shoreline Planning Commission's recommendation;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Repeal of Interim Regulations. The interim regulations and fees for plat alterations adopted by Ordinance No. 849 as set forth in SMC Table 20.30.050(7), 20.30.420(B), 20.30.425, and SMC 3.01.010(M)(8) are repealed in their entirety, effective on the effective date of this Ordinance No. 857.

Section 2. Adoption of Permanent Regulations.

- A. Shoreline Municipal Code, Title 20, Sections 20.30.050, Table 20.30.060 and 20.30.420 are amended as set forth in Exhibit A to this Ordinance.
- B. A new section, Section 20.30.425, Alteration of Recorded Plats is added to Title 20 of the Shoreline Municipal Code as set forth in Exhibit A to this Ordinance.
- C. Shoreline Municipal Code, Chapter 3.01 Fee Schedules, Section 3.01.010(M) shall be amended as set forth in Exhibit B to this Ordinance.

Section 3. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 4. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any person or situation.

Section 5. Publication and Effective Date. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON APRIL 1, 2019.

Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik-Smith
City Clerk

Margaret King
City Attorney

Date of Publication: , 2019
Effective Date: , 2019

Attachment A, Exhibit A

Exhibit A – PLAT ALTERATION REGULATIONS
Ordinance No. 857

SMC 20.30.050 Administrative decisions – Type B, amended as follows:

Table 20.30.050 – Summary of Type B Actions, Notice Requirements, Target Time Limits for Decision, and Appeal Authority

Action	Notice Requirements: Application and Decision ^{(1), (2), (3)}	Target Time Limits for Decision	Appeal Authority	Section
Type B:				
1. Binding Site Plan ⁽⁴⁾	Mail	90 days	HE	20.30.480
2. Conditional Use Permit (CUP)	Mail, Post Site, Newspaper	90 days	HE	20.30.300
3. Preliminary Short Subdivision ⁽⁴⁾	Mail, Post Site, Newspaper	90 days	HE	20.30.410
4. SEPA Threshold Determination	Mail, Post Site, Newspaper	60 days	HE	20.30.490 – 20.30.710
5. Shoreline Substantial Development Permit, Shoreline Variance and Shoreline CUP	Mail, Post Site, Newspaper	120 days	State Shorelines Hearings Board	Shoreline Master Program
6. Zoning Variances	Mail, Post Site, Newspaper	90 days	HE	20.30.310
7. Plat Alteration ^{(5) (6)}	<u>Mail</u>	<u>90 days</u>	<u>HE</u>	<u>20.30.425</u>

Key: HE = Hearing Examiner

(1) Public hearing notification requirements are specified in SMC 20.30.120.

(2) Notice of application requirements are specified in SMC 20.30.120.

(3) Notice of decision requirements are specified in SMC 20.30.150.

(4) These Type B actions do not require a neighborhood meeting. A notice of development will be sent to adjacent properties.

(5) A Plat Alteration does not require a neighborhood meeting.

(6) If a public hearing is requested, the Plat Alteration will be processed as a Type C Action per SMC Table 20.30.060.

SMC 20.30.060 Quasi-judicial decisions – Type C

Table 20.30.060 – Summary of Type C Actions, Notice Requirements, Target Time Limits for Decision, and Appeal Authority

Action	Notice Requires for Application and Decision (3), (4)	Review Authority, Open Record Public Hearing	Decision Making Authority (Public Meeting)	Target Time Limits for Decision	Section
Type C					

...				
<u>9. Plat Alteration with Public Hearing (5)</u>	<u>Mail</u>	<u>Hearing Examiner (1), (2)</u>	<u>120 days</u>	<u>20.30.425</u>

(1) Including consolidated SEPA threshold determination appeal

...

(5) A Plat Alteration does not require a neighborhood meeting.

SMC 20.30.420 Changes to approved subdivision, subsection (B) amended as follows:

A.

B. Recorded Final Plats. An application to ~~change/alter~~ a final plat that has been filed for record shall be processed as provided for in SMC 20.30.425, in the same manner as a new application. ~~This section does not apply to affidavits of correction of lot line adjustments.~~

SMC 20.30.425 Alteration of Recorded Plats, is adopted as follows:

- A. Applicability** A plat alteration provides a process to alter or modify a previously recorded plat, short plat, binding site plan, or any portion thereof. The plat alteration results in changes to conditions of approval, restrictions, or dedications that are shown on the recorded plat.
1. Any person seeking to alter a recorded final plat or any portion thereof shall comply with the requirements set forth in chapter 58.17 RCW and the regulations in effect at the time the application is submitted to the City.
 2. This section shall not apply to the:
 - a. Alteration or replatting of any plat of state-granted tide or shore lands as provided in RCW 58.17.215.
 - b. Adjustment of boundary lines as provided in RCW 58.17.040(6).
 - c. Any change to a recorded final plat where an additional lot(s) is proposed shall not be considered an alteration and shall be processed as a new formal subdivision or short subdivision depending on the number of lots being created. EXCEPT, if a condition or restriction on the original plat would prohibit such a change, then the plat alteration process must first be completed before a new subdivision may be sought.
- B. Application** A request to alter a recorded plat shall be submitted on official forms prescribed and provided by the Department along with the applicable fees.
1. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered.
 2. If the subdivision is subject to restrictive covenants which were recorded at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.
 3. If the application seeks to extinguish or alter an easement established by a dedication, the application must contain an agreement for the release or alteration of the easement by all of the owners or the easement.

C. Notice

1. Complete Application. After the City has determined the application is complete, the City shall issue a notice of the complete application. This notice shall:

1. Be provided by regular U.S. mail to all owners of property within the subdivision as provided in RCW 58.17.080 and 58.17.090; and
2. Establish a date for a public hearing or provide that a hearing may be requested by a person receiving notice within 14 calendar days of receipt of the notice. The cost of the public hearing shall be the responsibility of the applicant for the plat alteration.

2. Public Hearing. If a public hearing is timely requested, notice of the public hearing shall be provided as set for in SMC 20.30.180.

D. Review Criteria

1. Decision-making authority.

- a. Director. Applications for a plat alteration are a Type B action and shall be administratively reviewed by the Director unless a public hearing has been timely requested as provided in SMC 20.50.425(C)(2) or the City determines that a public hearing is in the public interest, in which case it is a Type C action.
- b. Hearing Examiner. Applications for a plat alteration for which a public hearing has been requested are a Type C action. An open record public hearing before the hearing examiner shall be held and the hearing examiner shall issue a decision.

2. The decision-making authority shall review the submittal materials and may approve or deny after a written determination is made whether the public use and interest will be served by the alteration and whether the alteration satisfies the review criteria set forth in SMC 20.30.410(B).

3. In any written determination approving an alteration:

- a. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration.
- b. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

4. The Director's decision is final unless appealed to the hearing examiner as provided in Section F below. The hearing examiner's decision on a plat alteration for which a public hearing was requested is final and may be appealed to superior court pursuant to chapter 36.70C RCW Land Use Petition Act.

E. Recording of Alteration No later than thirty (30) calendar days after approval of the alteration, the applicant shall produce a revised drawing or text of the approved alteration to the plat, conforming to the recording requirements of Chapter 58.17 RCW and processed for signature in the same manner as set forth for final plats in this chapter. The applicant shall file, at their sole cost and expense, the revision approved by the alteration to the plat with the King County Recorder to become the lawful plat of the property.

F. Appeal

1. The Director's decision on a plat alteration where no public hearing was held may be appealed to the hearing examiner as provided in SMC 20.30 Subchapter 4 General Provisions for Land Use Hearings and Appeals.
2. The Hearing Examiner's decision shall be final on an appeal of the Director's decision on a plat alteration.
3. The final decision of the Hearing Examiner may be appealed to superior court pursuant to chapter 36.70C RCW Land Use Petition Act.

EXHIBIT B – Fees
Ordinance No. 857

SMC 3.01.010 Planning and Development Fees, is amended as follows:

M. SUBDIVISIONS	
1. Binding site plan	\$6,063.00
2. Preliminary short subdivision	\$6,914.00 for 2-lot short subdivision, plus (\$532.00) for each additional lot
3. Final short subdivision	\$2,021.00
4. Preliminary subdivision	\$15,956.00 for 10-lot subdivision, plus (\$745.00) for each additional lot, and public hearing (\$3,723.00)
5. Final subdivision	\$7,765.00
6. Changes to preliminary short or formal subdivision	\$3,936.00
7. Multiple buildings	Hourly rate, 10-hour minimum \$1,990
8. <u>Plat alteration</u>	<u>Hourly rate, 2-hour minimum \$398</u>
9. <u>Plat alteration with public hearing</u>	<u>Hourly rate, 2-hour minimum \$398 and public hearing (\$3,723)</u>

Plat Alteration Procedures:

When a subdivision is determined to be final, the applicant files a “Plat” – a map visually depicting the subdivision – with the King County Recorder. This Plat becomes part of the land records for King County. Once recorded, the only way to change the recorded document is via the Plat Alteration process established in SMC 20.30.425 unless new lots are being created, boundary lines are being adjusted, or tide or shorelands are involved.

Plats have conditions, notes, easements, and dedications shown on the “Face of the Plat” that were conditions of approval imposed when the land was being subdivided. For some Plats recorded prior to the City of Shoreline’s incorporation, these conditions of approval may have referenced zoning-related information such as building setbacks, density limits, or other land use restrictions. Because a subdivision is to be regulated by the conditions of its approval, the City of Shoreline has an obligation to enforce these conditions of approval when development is sought, or the property is further divided.

The Plat Alteration Procedures contained in SMC 20.30.425 are the method by which these conditions of approval can be removed or revised. The webpage for more information on this process can be found on the City’s Permit Checklist & Application Packets webpage at: <http://www.shorelinewa.gov/government/departments/planning-community-development/forms-application-checklists-application-handouts/permit-checklists-application-packets>

Restrictive Covenants:

Restrictive covenants create limitations on the use of land such as the type of activities that can occur, architectural features, and community aesthetics. These limitations can be found not on the face of the Plat but in separately recorded documents using such titles as “Covenants, Conditions, and Restrictions (CC&Rs), “Declaration of Covenants,” or “Deed Restrictions.” These types of limitations on the use of land create a contractual relationship between the property owners within a subdivision. The City has no authority to enforce, remove, or revise these covenants. The enforcement, removal, or revision of the covenants is the responsibility of the property owners and the procedures for doing this are contained within the document that created the covenants or a property owner may utilize a court proceeding.

Discriminatory Plat Notes or Restrictive Covenants:

For some Plats recorded prior to the 1960s, there may be language on the face of the plat or in a separately recorded covenant that prevents sale, transfer, or rental of the property based on national origin or race. These discriminatory restrictions are not enforceable under the law today, but some property owners may still like them removed. The King County Recorder’s Office has established a Restrictive Covenant Modification webpage to assist property owners in this regard. Recording of document is not required to protect property rights (as the discrimination is unenforceable) and recording does not delete the historic record. The King County Recorder’s webpage is found at the link below. <https://kingcounty.gov/depts/records-licensing/records-office/restrictive-covenant-modification.aspx>