#### **OKANOGAN COUNTY**

#### **ORDINANCE 2018 - 3**

An Ordinance repealing portions of Okanogan County Code Title 20 Development Permit Procedures and Administration as it relates to the administration and review of permit exempt wells.

WHEREAS: The Washington State Legislature adopted Revised Code of Washington (RCW) 36.70B in 1995, which is often cited as regulatory reform, in response to the adoption of the Growth Management Act and the growing complexity of land use regulation and permit review, and

WHEREAS: The Washington State Legislature, in adopting RCW 36.70B found:

(1) As the number of environmental laws and development regulations has increased for land uses and development, so has the number of required local land use permits, each with its own separate approval process.

(2) The increasing number of local and state land use permits and separate environmental review processes required by agencies has generated continuing potential for conflict, overlap, and duplication between the various permit and review processes.

(3) This regulatory burden has significantly added to the cost and time needed to obtain local and state land use permits and has made it difficult for the public to know how and when to provide timely comments on land use proposals that require multiple permits and have separate environmental review processes, and

**WHEREAS:** RCW 36.70B.060 required counties: Not later than March 31, 1996, each local government planning under RCW <u>36.70A.040</u> shall establish by ordinance or resolution an integrated and consolidated project permit process that may be included in its development regulations, and

**WHEREAS:** RCW 36.70B.150 allows: A local government not planning under RCW  $\underline{36.70A.040}$  may incorporate some or all of the provisions of RCW  $\underline{36.70B.060}$  through \*  $\underline{36.70B.090}$  and  $\underline{36.70B.110}$  through  $\underline{36.70B.130}$  into its procedures for review of project permits or other project actions, and

WHEREAS: A draft Okanogan County Code title 20 Development Permit Procedures and Administration was submitted to the Okanogan Board of County Commissioners(BOCC) by members of an advisory committee formed for purposes of working on the revised zone code for their consideration, and

WHEREAS: The BOCC determined the proposed draft OCC Title 20 should be published for public review, and

WHEREAS: The SEPA Responsible Official has determined this proposal is exempt from the review requirements of RCW 43.21C and OCC 14.04 in accordance with Washington Administrative Code 197-11-800 (19), and

WHEREAS: A public hearing was conducted on September 26, 2016, and

WHEREAS: Following publication of the draft ordinance the Washington State Supreme Court has handed down the Whatcom-Hirst decision which increased the responsibility of the Counties to determine that adequate provisions for potable water have been made regarding land use applications reviewed in accordance with RCW 58.17.110 and RCW 19.27.097, and

WHEREAS: In response to the Whatcom-Hirst decision the Okanogan Board of County Commissioners adopted interim ordinance 2016-5 on November 8, 2016 which created a process for review of land use applications that proposed a new use of permit exempt wells as defined in RCW 90.44.050 as the source of potable water, and

WHEREAS: A public hearing was conducted on December 19 and 28, 2016 following which the BOCC approved Ordinance 2016-8 which adopted OCC title 20, and

WHEREAS: In the 2017 session the Washington State legislature considered several bills characterized as "fixes" for the Whatcom-Hirst decision with no bill subsequently adopted, and

WHEREAS: Okanogan County has reviewed applications proposing to use permit exempt wells applying the requirements of WAC 173-548, WAC 173-549,OCC Title 20 and other applicable statutes for the year following adoption of OCC 20, and

WHEREAS: In the 2018 session the Washington State Legislature reviewed and subsequently adopted ESSB 6091 which provides direction and new requirements for the processing of applications for building permits and land divisions that propose to use permit exempt wells as defined in RCW 90.44.050 as the source for potable water, and

WHEREAS: The BOCC conducted a public hearing on February 26, 2018 to consider whether OCC 20 should be repealed as a result of the adoption of ESSB 6091, and

WHEREAS: After considering testimony and written comments the BOCC finds the requirements for processing applications using permit exempt wells found in OCC 20.10.050 are not consistent with the direction and requirements found in ESSB 6091, and

WHEREAS: The inconsistency between OCC 20.10.050 and ESSB 6091 will lead to confusion in the processing of permits and approvals required by RCW 58.17.110 and RCW 19.27.097, and

**WHEREAS:** The Okanogan Board of County Commissioners finds it will benefit the public to repeal OCC 20.10.050 dealing with the review of permit exempt well applications, and

WHEREAS: Further review of the remainder of OCC 20 will take place as time and resources allows,

BE IT THEREFORE ORDAINED: Okanogan County Code 20.10.050 is hereby repealed.

DATED at Okanogan, Washington this 27 day of February -2017. 2018

BOARD OF COUNTY COMMISSIONERS OKANOGAN, WASHINGTON

Jim DeTro, Chairman

Chris Branch, Member

Andy Hover, Member

Laleña Johns, Clerk of the Board

# Chapter 20.10 APPLICATION REVIEW

#### Sections:

20.10.005	Application review criteria.
20.10.010	Application review classification.
20.10.020	Administrative review of applications.
20.10.030	Nonadministrative review of applications.
20.10.040	Legislative review of applications.
20.10.050	Repealed
20.10.060	Notice of final decision.

20.10.005 Application review criteria. Review of an application and proposed development shall be governed by and be consistent with the fundamental land use planning policies and choices which have been made in adopted comprehensive plans and development regulations. The review process shall consider the type of land use permitted at the proposed site, the density and intensity of the proposed development, the infrastructure available and needed to serve the development, the character of the development and its consistency with development regulations. (Ord. 2016-8 Att. A, 2016).

#### 20.10.010 Application review classification. SHARE

A. Following the issuance of a determination of completeness and a notice of application, an application shall be reviewed at one of three levels, as determined by the director: administrative review, nonadministrative review, and legislative review.

B. If this title or the Okanogan County Code provides that a proposed development is subject to a specific type of review, or a different review procedure is required by law, the application for such development shall be processed and reviewed accordingly. If this title does not provide for a specific type of review or if a different review procedure is not required by law, then the director shall determine the type of review to be used for the type and intensity of the proposed development. In instances where more than one type of review applies to a project, the process shall follow the review procedure for the highest-level decision.

C. Any public meeting or required open record hearing may be combined by the department with any public meeting or open record hearing that may be held on the proposed development by another local, state, federal or other agency. Hearings shall be combined if requested by the applicant. However, joint hearings must be held within Okanogan County and within the time limits of this title and Chapter 36.70B RCW.

D. No more than one open record public hearing and one closed record appeal shall be held on an application. (Ord. 2016-8 Att. A, 2016).

## 20.10.020 Administrative review of applications. SHARE

A. Administrative review shall be used when the proposed development is subject to objective and subjective standards that require the exercise of limited discretion about nontechnical issues and about which there may be limited public interest. The proposed development may or may not be subject to SEPA review. Included within this type of review are interpretation of codes and ordinances, boundary line adjustments, certificates of exemption, short subdivisions, binding site plans and other permits that are categorically exempt from SEPA.

- B. This review procedure under administrative review shall be as follows:
- 1. If the proposed development is subject to the State Environmental Policy Act (SEPA), the final determination shall be made after the closing of the public comment period required in the notice of application.
- 2. Upon the completion of the public comment period and the comment period required by SEPA, if applicable, the department may approve, approve with conditions, or deny the application. The department shall mail the notice of decision to the applicant and all parties of record. The decision shall include:
- a. A statement of the applicable criteria and standards in the development codes and other applicable law;
- b. A statement of the findings of the review authority, stating the application's compliance or noncompliance with each applicable criterion, and assurance of compliance with applicable standards;
- c. The decision to approve or deny the application;
- d. A statement that the decision is final unless appealed as provided in the respective governing regulation. (Ord. 2016-8 Att. A, 2016).

# 20.10.030 Nonadministrative review of applications. SHARE

A. Nonadministrative review shall be used when the development or use proposed under the application requires a public hearing before a hearing body. This type of review shall be used for appeals of administrative decisions, major subdivisions, conditional use permits, planned developments, variances, rezones that are not of general applicability (site-specific) and other similar applications.

- B. The review procedure under nonadministrative review shall be as follows:
- 1. A nonadministrative review process requires an open record public hearing before the appropriate hearing body.
- 2. The public hearing shall be held after the completion of the public comment period and the comment period required by SEPA, if applicable, except as otherwise authorized in Chapter 197-11 WAC.
- 3. The notice of public hearing shall be given as identified in OCC 20.08.060.
- 4. At least seven working days prior to the date of the public hearing, the department will issue a written staff report, integrating the SEPA review and threshold determination and shall make available to the public a copy of the staff report for review and inspection, and shall mail and e-mail, if address is provided, a copy of the staff report and recommendation to the applicant or the applicant's designated representative. The department shall make available a copy of the staff report, subject to payment of a reasonable charge, to other parties who request it.
- 5. Public hearings shall be conducted in accordance with the rules of procedure adopted by the hearing body. A public hearing shall be recorded. If for any reason the hearing cannot be completed on the date set in the public notice, it may be continued during the public hearing to a specified date, time and location, without further public notice required.
- 6. Within 10 working days after the date the public record closes, the hearing body shall issue a written decision regarding the application(s).
- 7. The hearing body may approve, approve with conditions or deny the application and shall mail and e-mail, if address is provided, the notice of its decision to the department, applicant, the applicant's designated representative, the property owner(s), and any other parties of record. The decision shall include:
- a. A statement of the applicable criteria, standards and law; and
- b. A statement of the findings of fact and conclusions of the hearing body showing the proposal does or does not comply with each applicable approval criterion and assurance of compliance with applicable standards; and
- c. A statement that the decision is final unless appealed. The appeal closing date shall be listed; and

d. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for inspection during the open office hours at Okanogan County department of planning and development. The notice shall list the place and telephone number of the department. (Ord. 2016-8 Att. A, 2016).

## 20.10.040 Legislative review of applications. SHARE

A. Legislative review shall be used when the proposal involves the creation, implementation or amendment of county policy. In contrast to the other procedure types, legislative review usually applies to a relatively large geographic area containing several property owners. This type of review shall be used for comprehensive plan, subarea plan, zoning and/or development code amendments and generalized zoning district map reclassifications.

- B. Legislative review shall be conducted as follows:
- 1. Legislative review requires at least one open record public hearing before the Okanogan County planning commission and one public meeting before the Okanogan County board of commissioners.
- 2. Notice of a public meeting or hearing shall be given as follows:
- a. Publication in the official county newspaper at least 10 calendar days before the date of a public meeting, hearing or pending action.
- b. The public notice shall include the SEPA threshold determination, a general description of the proposed project, action to be taken, a nonlegal description of the property or a vicinity map or sketch, the time, date and place of the public hearing and the place where further information may be obtained.
- c. If, for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date, time and place certain and no further notice under this section is required.
- 3. At least five working days prior to the hearing, the department shall issue a written staff report integrating the SEPA review and threshold determination, and shall make available to the public a copy of the staff report for review and inspection, and shall mail and e-mail, if address is provided, a copy of the staff report and recommendation to the applicant or the applicant's designated representative and planning commission members. The department shall make available a copy of the staff report, subject to a reasonable charge, to other persons who request it.
- 4. Following the public hearing and in accordance with RCW <u>36.70.630</u>, the recommendation of the planning commission shall be forwarded to the board of county commissioners. Upon receiving the

recommendation from the planning commission, the board of county commissioners shall set a public meeting to consider the proposal, at which the board may either accept or reject the recommendation, or remand the application back to the planning commission for reopening of the open record hearing to consider specific issues identified by the county commission.

- 5. The board of county commissioners must hold a public hearing to consider any changes to the recommendation of the planning commission. The board of county commissioners may approve, approve with conditions, deny or remand the proposal back to the planning commission for further review after such public hearing. The final decision of the board of county commissioners shall be adopted by resolution or as otherwise provided for by law.
- 6. The final decision of the board of county commissioners shall be in writing and include:
- a. A statement of the applicable criteria and law;
- b. A statement of the findings indicating the application's compliance or noncompliance with each applicable approval criterion;
- c. The decision to approve, condition or reject the planning commission recommendation or remand for further review;
- d. A statement that the decision is final unless appealed to superior court within 21 days of the issuance of the decision, as determined pursuant to Chapter <u>36.70C</u> RCW, as applicable. The appeal closing date shall be listed;
- e. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for inspection during the open office hours at Okanogan County department of community development. The notice shall list the place and telephone number of the department. (Ord. 2016-8 Att. A, 2016).

#### Repealed

## 20.10.060 Notice of final decision. SHARE

A. The county shall issue a written notice of final decision on an application reviewed pursuant to either an administrative or nonadministrative review process within 120 calendar days after the date of the determination of completeness, unless timelines are specified otherwise in the respective title. In determining the number of days that have elapsed, the following periods shall be excluded:

- 1. Any period during which the applicant has been requested by the department to correct plans, perform required studies, or provide additional information or materials. The period shall be calculated from the date the department issues the request to the applicant to the earlier of the date the department determines whether the additional information satisfies its request or 14 days after the date the information has been received by the department.
- 2. If the county determines the information submitted by the applicant under subsection (A)(1) of this section is insufficient, it shall again notify the applicant of deficiencies and the procedures under subsection (A)(1) of this section shall apply to the request for information.
- 3. Any period during which an environmental impact statement (EIS) is being prepared following a determination of significance pursuant to Chapter <u>43.21C</u> RCW.
- 4. Any period for administrative appeals.
- 5. Any extension of time mutually agreed upon in writing by the applicant and the department.
- B. The time limit by which the county will issue a notice of final decision does not apply if an application:
- 1. Requires an amendment to the comprehensive plan or a development regulation.
- 2. Is substantially revised by the applicant after a determination of completeness has been issued, in which case the time period shall start from the date on which the revised project application is determined to be complete.
- C. If the county is unable to issue its final decision within the time limits provided for in this section, it shall provide written notice of this fact to the applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.
- D. The review authority shall provide the notice of decision or copy of findings of fact and conclusions of law and decision to the applicant, agent (if applicable), surveyor (if applicable), commenting agencies of jurisdiction, and any parties of record (any person who prior to the rendering of the decision requested notice of decision, submitted written comments on the application, or testified at the public hearing). (Ord. 2016-8 Att. A, 2016).