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**SUBSTITUTE HOUSE BILL 2344**

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**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** House Committee on House Government Reform & Land Use (originally sponsored by Representatives Reams, Dyer and Sullivan)

Read first time 01/22/98. Referred to Committee on .

1 AN ACT Relating to local government land use permitting; and  
2 amending RCW 35A.63.110, 36.70.810, 36.70.830, 36.70.860, 36.70.880,  
3 36.70.890, 58.17.020, 58.17.060, 58.17.090, 58.17.095, and 58.17.100.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 35A.63.110 and 1979 ex.s. c 18 s 34 are each amended  
6 to read as follows:

7 A code city which pursuant to this chapter creates a planning  
8 agency and which has twenty-five hundred or more inhabitants, by  
9 ordinance, shall create a board of adjustment and provide for its  
10 membership, terms of office, organization, and jurisdiction. A code  
11 city which pursuant to this chapter creates a planning agency and which  
12 has a population of less than twenty-five hundred may, by ordinance,  
13 similarly create a board of adjustment. In the event a code city with  
14 a population of less than twenty-five hundred creates a planning  
15 agency, but does not create a board of adjustment, the code city shall  
16 provide that the city legislative authority shall itself hear and  
17 decide the items listed in (~~subdivisions~~) subsections (1), (2), and  
18 (3) of this section. The action of the board of adjustment shall be  
19 final and conclusive, unless(~~, within ten days from the date of the~~

1 ~~action, the original applicant or an adverse party makes application to~~  
2 ~~the superior court for the county in which that city is located for a~~  
3 ~~writ of certiorari, a writ of prohibition, or a writ of mandamus)) a~~  
4 land use petition is filed with a superior court as provided in chapter  
5 36.70C RCW. No member of the board of adjustment shall be a member of  
6 the planning agency or the legislative body. Subject to conditions,  
7 safeguards, and procedures provided by ordinance, the board of  
8 adjustment may be empowered to hear and decide:

9 (1) Appeals from orders, recommendations, permits, decisions, or  
10 determinations made by a code city official in the administration or  
11 enforcement of the provisions of this chapter or any ordinances adopted  
12 pursuant to it.

13 (2) Applications for variances from the terms of the zoning  
14 ordinance, the official map ordinance or other land-use regulatory  
15 ordinances under procedures and conditions prescribed by city  
16 ordinance, which among other things shall provide that no application  
17 for a variance shall be granted unless the board of adjustment finds:

18 (a) The variance shall not constitute a grant of special privilege  
19 inconsistent with the limitation upon uses of other properties in the  
20 vicinity and zone in which the property on behalf of which the  
21 application was filed is located; ((and))

22 (b) That such variance is necessary, because of special  
23 circumstances relating to the size, shape, topography, location, or  
24 surroundings of the subject property, to provide it with use rights and  
25 privileges permitted to other properties in the vicinity and in the  
26 zone in which the subject property is located; and

27 (c) That the granting of such variance will not be materially  
28 detrimental to the public welfare or injurious to the property or  
29 improvements in the vicinity and zone in which the subject property is  
30 situated.

31 (3) Applications for conditional-use permits, unless such  
32 applications are to be heard and decided by the planning agency. A  
33 conditional use means a use listed among those classified in any given  
34 zone but permitted to locate only after review as herein provided in  
35 accordance with standards and criteria set forth in the zoning  
36 ordinance.

37 (4) Such other quasi judicial and administrative determinations as  
38 may be delegated by ordinance.

1 In deciding any of the matters referred to in subsections (1), (2),  
2 (3), and (4) of this section, the board of adjustment shall issue a  
3 written report giving the reasons for its decision. If a code city  
4 provides for a hearing examiner and vests in him or her the authority  
5 to hear and decide the items listed in (~~subdivisions~~) subsections  
6 (1), (2), and (3) of this section pursuant to RCW 35A.63.170, then the  
7 provisions of this section shall not apply to such a city.

8 **Sec. 2.** RCW 36.70.810 and 1963 c 4 s 36.70.810 are each amended to  
9 read as follows:

10 The board of adjustment, subject to chapter 36.70B RCW and to  
11 appropriate conditions and safeguards as provided by the zoning  
12 ordinance or the ordinance establishing the board of adjustment, if  
13 there be such, (~~shall~~) may hear and decide:

14 (1) Applications for conditional uses or other permits when the  
15 zoning ordinance sets forth the specific uses to be made subject to  
16 conditional use permits and establishes criteria for determining the  
17 conditions to be imposed;

18 (2) Application for variances from the terms of the zoning  
19 ordinance: PROVIDED, That any variance granted shall be subject to  
20 such conditions as will assure that the adjustment thereby authorized  
21 shall not constitute a grant of special privilege inconsistent with the  
22 limitations upon other properties in the vicinity and zone in which  
23 subject property is situated, and that the following circumstances are  
24 found to apply(~~is~~):

25 (a) Because of special circumstances applicable to subject  
26 property, including size, shape, topography, location, or surroundings,  
27 the strict application of the zoning ordinance is found to deprive  
28 subject property of rights and privileges enjoyed by other properties  
29 in the vicinity and under identical zone classification;

30 (b) That the granting of the variance will not be materially  
31 detrimental to the public welfare or injurious to the property or  
32 improvements in the vicinity and zone in which subject property is  
33 situated(~~is~~);

34 (3) Appeals, where it is alleged by the applicant that there is  
35 error in any order, requirement, permit, decision, or determination  
36 made by an administrative official in the administration or enforcement  
37 of this chapter or any ordinance adopted pursuant to it.

1       **Sec. 3.** RCW 36.70.830 and 1963 c 4 s 36.70.830 are each amended to  
2 read as follows:

3       Except as otherwise provided in chapter 36.70B RCW, appeals may be  
4 taken to the board of adjustment by any person aggrieved, or by any  
5 officer, department, board, or bureau of the county affected by any  
6 decision of an administrative official. Such appeals shall be filed in  
7 writing in duplicate with the board of adjustment within ~~((twenty))~~  
8 fourteen days of the date of the action being appealed.

9       **Sec. 4.** RCW 36.70.860 and 1963 c 4 s 36.70.860 are each amended to  
10 read as follows:

11       In exercising the powers granted by RCW 36.70.810 and 36.70.820,  
12 the board of adjustment may, in conformity with this chapter and  
13 chapter 36.70B RCW, reverse or affirm, wholly or in part, or may modify  
14 the order, requirement, decision, or determination appealed from, and  
15 may make such order, requirement, decision, or determination as should  
16 be made and, to that end, shall have all the powers of the officer from  
17 whom the appeal is taken, insofar as the decision on the particular  
18 issue is concerned.

19       **Sec. 5.** RCW 36.70.880 and 1963 c 4 s 36.70.880 are each amended to  
20 read as follows:

21       Except as otherwise provided in chapter 36.70B RCW, the action by  
22 the zoning adjustor on all matters coming before him or her shall be  
23 final and conclusive unless within ~~((ten))~~ fourteen days after the  
24 zoning adjustor has made his or her order, requirement, decision, or  
25 determination, an appeal in writing is filed with the board of  
26 adjustment. Such an appeal may be taken by the original applicant, or  
27 by opponents of record in the case.

28       **Sec. 6.** RCW 36.70.890 and 1963 c 4 s 36.70.890 are each amended to  
29 read as follows:

30       The action by the board of adjustment on an application for a  
31 conditional use permit or a variance, or on an appeal from the decision  
32 of the zoning adjustor or an administrative officer shall be final and  
33 conclusive unless ~~((within ten days from the date of said action the~~  
34 ~~original applicant or an adverse party makes application to a court of~~  
35 ~~competent jurisdiction for a writ of certiorari, a writ of prohibition~~

1 ~~or a writ of mandamus))~~ a land use petition is filed with superior  
2 court as provided in chapter 36.70C RCW.

3 **Sec. 7.** RCW 58.17.020 and 1995 c 32 s 2 are each amended to read  
4 as follows:

5 As used in this chapter, unless the context or subject matter  
6 clearly requires otherwise, the words or phrases defined in this  
7 section shall have the indicated meanings.

8 (1) "Subdivision" is the division or redivision of land into five  
9 or more lots, tracts, parcels, sites, or divisions for the purpose of  
10 sale, lease, or transfer of ownership, except as provided in subsection  
11 (6) of this section.

12 (2) "Plat" is a map or representation of a subdivision, showing  
13 thereon the division of a tract or parcel of land into lots, blocks,  
14 streets and alleys, or other divisions and dedications.

15 (3) "Dedication" is the deliberate appropriation of land by an  
16 owner for any general and public uses, reserving to himself or herself  
17 no other rights than such as are compatible with the full exercise and  
18 enjoyment of the public uses to which the property has been devoted.  
19 The intention to dedicate shall be evidenced by the owner by the  
20 presentment for filing of a final plat or short plat showing the  
21 dedication thereon; and, the acceptance by the public shall be  
22 evidenced by the approval of such plat for filing by the appropriate  
23 governmental unit.

24 A dedication of an area of less than two acres for use as a public  
25 park may include a designation of a name for the park, in honor of a  
26 deceased individual of good character.

27 (4) "Preliminary plat" is a neat and approximate drawing of a  
28 proposed subdivision showing the general layout of streets and alleys,  
29 lots, blocks, and other elements of a subdivision consistent with the  
30 requirements of this chapter. The preliminary plat shall be the basis  
31 for the approval or disapproval of the general layout of a subdivision.

32 (5) "Final plat" is the final drawing of the subdivision and  
33 dedication prepared for filing for record with the county auditor and  
34 containing all elements and requirements set forth in this chapter and  
35 in local regulations adopted under this chapter.

36 (6) "Short subdivision" is the division or redivision of land into  
37 four or fewer lots, tracts, parcels, sites, or divisions for the  
38 purpose of sale, lease, or transfer of ownership(~~(:—PROVIDED, That)~~).

1 However, the legislative authority of any city or town may by local  
2 ordinance increase the number of lots, tracts, or parcels to be  
3 regulated as short subdivisions to a maximum of nine. The legislative  
4 authority of any county planning under RCW 36.70A.040 that has adopted  
5 a comprehensive plan and development regulations in compliance with  
6 chapter 36.70A RCW may by ordinance increase the number of lots,  
7 tracts, or parcels to be regulated as short subdivisions to a maximum  
8 of nine in any urban growth area.

9 (7) "Binding site plan" means a drawing to a scale specified by  
10 local ordinance which: (a) Identifies and shows the areas and  
11 locations of all streets, roads, improvements, utilities, open spaces,  
12 and any other matters specified by local regulations; (b) contains  
13 inscriptions or attachments setting forth such appropriate limitations  
14 and conditions for the use of the land as are established by the local  
15 government body having authority to approve the site plan; and (c)  
16 contains provisions making any development be in conformity with the  
17 site plan.

18 (8) "Short plat" is the map or representation of a short  
19 subdivision.

20 (9) "Lot" is a fractional part of divided lands having fixed  
21 boundaries, being of sufficient area and dimension to meet minimum  
22 zoning requirements for width and area. The term shall include tracts  
23 or parcels.

24 (10) "Block" is a group of lots, tracts, or parcels within well  
25 defined and fixed boundaries.

26 (11) "County treasurer" shall be as defined in chapter 36.29 RCW or  
27 the office or person assigned such duties under a county charter.

28 (12) "County auditor" shall be as defined in chapter 36.22 RCW or  
29 the office or person assigned such duties under a county charter.

30 (13) "County road engineer" shall be as defined in chapter 36.40  
31 RCW or the office or person assigned such duties under a county  
32 charter.

33 (14) "Planning commission" means that body as defined in  
34 chapter((s)) 36.70, 35.63, or 35A.63 RCW as designated by the  
35 legislative body to perform a planning function or that body assigned  
36 such duties and responsibilities under a city or county charter.

37 (15) "County commissioner" shall be as defined in chapter 36.32 RCW  
38 or the body assigned such duties under a county charter.

1       **Sec. 8.** RCW 58.17.060 and 1990 1st ex.s. c 17 s 51 are each  
2 amended to read as follows:

3       (1) The legislative body of a city, town, or county shall adopt  
4 regulations and procedures, and appoint administrative personnel for  
5 the summary approval of short plats and short subdivisions or  
6 alteration or vacation thereof. When an alteration or vacation  
7 involves a public dedication, the alteration or vacation shall be  
8 processed as provided in RCW 58.17.212 or 58.17.215. Such regulations  
9 shall be adopted by ordinance and shall provide that a short plat and  
10 short subdivision may be approved only if written findings that are  
11 appropriate, as provided in RCW 58.17.110, are made by the  
12 administrative personnel, and may contain wholly different requirements  
13 than those governing the approval of preliminary and final plats of  
14 subdivisions and may require surveys and monumentations and shall  
15 require filing of a short plat, or alteration or vacation thereof, for  
16 record in the office of the county auditor: PROVIDED, That such  
17 regulations must contain a requirement that land in short subdivisions  
18 may not be further divided in any manner within a period of five years  
19 without the filing of a final plat, except that when the short plat  
20 contains fewer than (~~four parcels~~) the maximum number of lots,  
21 tracts, or parcels permitted by local ordinance under RCW 58.17.020(6),  
22 nothing in this section shall prevent the owner who filed the short  
23 plat from filing an alteration within the five-year period to create up  
24 to a total of (~~four lots~~) the maximum number of lots, tracts, or  
25 parcels permitted by local ordinance under RCW 58.17.020(6) within the  
26 original short plat boundaries: PROVIDED FURTHER, That such  
27 regulations are not required to contain a penalty clause as provided in  
28 RCW 36.32.120 and may provide for wholly injunctive relief.

29       An ordinance requiring a survey shall require that the survey be  
30 completed and filed with the application for approval of the short  
31 subdivision.

32       (2) Cities, towns, and counties shall include in their short plat  
33 regulations and procedures pursuant to subsection (1) of this section  
34 provisions for considering sidewalks and other planning features that  
35 assure safe walking conditions for students who walk to and from  
36 school.

37       **Sec. 9.** RCW 58.17.090 and 1995 c 347 s 426 are each amended to  
38 read as follows:

1 (1) (~~Open~~) Following receipt of an application for preliminary  
2 plat approval the administrative officer charged by ordinance with  
3 responsibility for administration of regulations pertaining to platting  
4 and subdivisions shall provide public notice and set a date for ((a  
5 public)) an open record hearing. Except as provided in RCW 36.70B.110,  
6 at a minimum, notice of the open record hearing shall be given in the  
7 following manner:

8 (a) Notice shall be published not less than ten days prior to the  
9 open record hearing in a newspaper of general circulation within the  
10 county and a newspaper of general circulation in the area where the  
11 real property which is proposed to be subdivided is located; and

12 (b) Special notice of the open record hearing shall be given to  
13 adjacent landowners by any other reasonable method local authorities  
14 deem necessary. Adjacent landowners are the owners of real property,  
15 as shown by the records of the county assessor, located within three  
16 hundred feet of any portion of the boundary of the proposed  
17 subdivision. If the owner of the real property which is proposed to be  
18 subdivided owns another parcel or parcels of real property which lie  
19 adjacent to the real property proposed to be subdivided, notice under  
20 this subsection (1)(b) shall be given to owners of real property  
21 located within three hundred feet of any portion of the boundaries of  
22 such adjacently located parcels of real property owned by the owner of  
23 the real property proposed to be subdivided.

24 (2) All open record hearings shall be public. All open record  
25 hearing notices shall include a description of the location of the  
26 proposed subdivision. The description may be in the form of either a  
27 vicinity location sketch or a written description other than a legal  
28 description.

29 **Sec. 10.** RCW 58.17.095 and 1986 c 233 s 1 are each amended to read  
30 as follows:

31 (1) A county, city, or town may adopt an ordinance providing for  
32 the administrative review of a preliminary plat without ((a public)) an  
33 open record hearing by adopting an ordinance providing for such  
34 administrative review. The ordinance may specify a threshold number of  
35 lots in a subdivision above which ((a public)) an open record hearing  
36 must be held, and may specify other factors which necessitate the  
37 holding of ((a public)) an open record hearing.



1       (2) The administrative review process shall include the following  
2 minimum conditions:

3       (~~(1)~~) (a) Except as otherwise provided in this subsection, The  
4 notice requirements of RCW 36.70B.110 and 58.17.090 shall be  
5 followed(~~(, except that the)~~).

6       (b) In a county, city, or town not planning under RCW 36.70A.040:

7       (i) Publication shall be made within ten days of the filing of the  
8 application(~~(. Additionally,)~~); and

9       (ii) At least ten days after the filing of the application notice  
10 both shall be:

11       (~~(a)~~) (A) Posted on or around the land proposed to be subdivided  
12 in at least five conspicuous places designed to attract public  
13 awareness of the proposal; and

14       (~~(b)~~) (B) Mailed to the owner of each lot or parcel of property  
15 located within at least three hundred feet of the site. The applicant  
16 shall provide the county, city, or town with a list of such property  
17 owners and their addresses.

18       (c) The notice shall include notification that no (~~public~~) open  
19 record hearing will be held on the application, except as provided by  
20 this section. The notice shall set out the procedures and time  
21 limitations for persons to require (~~a public~~) an open record hearing  
22 and make comments.

23       (~~(2)~~) (3) Any person shall have a period of twenty days from the  
24 date of the notice to comment upon the proposed preliminary plat or a  
25 period of not less than fourteen nor more than thirty days for a city,  
26 county, or town planning under RCW 36.70A.040. All comments received  
27 shall be provided to the applicant. The applicant has seven days from  
28 receipt of the comments to respond thereto.

29       (~~(3) A public~~) (4) An open record hearing on the proposed  
30 subdivision shall be held if any person files a request for a hearing  
31 with the county, city, or town within twenty-one days of the publishing  
32 of such notice. If (~~such a~~) an open record hearing is requested,  
33 notice requirements for the (~~public~~) hearing shall be in conformance  
34 with RCW 58.17.090, and the (~~ninety-day~~) period for approval or  
35 disapproval of the proposed subdivision provided for in RCW 58.17.140  
36 shall commence with the date of the filing of the request for (~~a~~  
37 ~~public~~) an open record hearing. Any hearing ordered under this  
38 subsection shall be conducted by the planning commission or hearings  
39 officer as required by county or city ordinance.

1       (~~(4)~~) (5) On its own initiative within twenty-one days of the  
2 filing of the request for approval of the subdivision, the governing  
3 body, or a designated employee or official, of the county, city, or  
4 town, shall be authorized to cause (~~a public~~) an open record hearing  
5 to be held on the proposed subdivision within ninety days of the filing  
6 of the request for the subdivision.

7       (~~(5)~~) (6) If the (~~public~~) open record hearing is waived as  
8 provided in this section, the planning commission or planning agency  
9 shall complete the review of the proposed preliminary plat and transmit  
10 its recommendation to the legislative body as provided in RCW  
11 58.17.100.

12       **Sec. 11.** RCW 58.17.100 and 1995 c 347 s 428 are each amended to  
13 read as follows:

14       (1)(a) If a city, town, or county has established a planning  
15 commission or planning agency in accordance with state law or local  
16 charter, such commission or agency shall review all preliminary plats  
17 and make recommendations thereon to the city, town, or county  
18 legislative body to assure conformance of the proposed subdivision to  
19 the general purposes of the comprehensive plan and to planning  
20 standards and specifications as adopted by the city, town, or county.  
21 Except as provided in (b) of this subsection, reports of the planning  
22 commission or agency shall be advisory only(~~(:—PROVIDED, That)~~).

23       (b) The legislative body of the city, town, or county may, by  
24 ordinance, assign to such commission or agency, or any department  
25 official or group of officials, such administrative functions, powers,  
26 and duties as may be appropriate, including the holding of open record  
27 hearings, and recommendations for approval or disapproval of  
28 preliminary plats of proposed subdivisions.

29       (~~Such~~) (2) A recommendation made pursuant to subsection (1) of  
30 this section shall be submitted to the legislative body not later than  
31 fourteen days following action by the hearing body. Upon receipt of  
32 the recommendation on any preliminary plat the legislative body shall  
33 at its next public meeting set the date for the (~~public meeting~~)  
34 closed record appeal where it shall consider the recommendations of the  
35 hearing body and may adopt or reject the recommendations of (~~such~~)  
36 the hearing body based on the record established at the (~~public~~) open  
37 record hearing. If, after considering the matter (~~at a public~~  
38 meeting) in a closed record appeal, the legislative body deems a

1 change in the planning commission's or planning agency's recommendation  
2 approving or disapproving any preliminary plat is necessary, the  
3 legislative body shall adopt its own recommendations and approve or  
4 disapprove the preliminary plat.

5 (3) Every decision or recommendation made under this section shall  
6 be in writing and shall include findings of fact and conclusions to  
7 support the decision or recommendation.

8 (4) A record of all (~~public meetings and public hearings~~) open  
9 record hearings and closed record appeals shall be kept by the  
10 appropriate city, town, or county authority and shall be open to public  
11 inspection.

12 (5) Sole authority (~~to approve final plats, and~~) to adopt or  
13 amend platting ordinances shall reside in the legislative bodies.

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