

**CLARK COUNTY
STAFF REPORT**

DEPARTMENT: Community Development

DATE: October 14, 2019

REQUESTED ACTION:

Approve two Title 40 code amendments as proposed in the attached ordinance to remove an existing “court order” exemption to platting. The two sections of code that are proposed to be amended are Section 40.520.010.E (legal lot determination) and Section 40.540.020.B (exemptions to platting).

Consent Hearing County Manager

BACKGROUND

The proposed changes were considered by the County Council on January 22, 2019 as part of the fall biannual code amendments, but were not adopted.

To summarize the need to amend the court order provisions, CCC Sections 40.520.010.E.1.b(5) and 40.540.020.B.4.h recognize parcels created through a court order as a legal means to create a lot of record without going through a platting process. State law no longer recognizes court orders as an exemption to platting, thus these two sections of County code are inconsistent with state law. The proposed clarifications will eliminate the “court order” language in favor of the exemptions that are recognized by RCW 58.17.

For questions on this item, contact Jan Bazala at #4499 or Taylor Hallvik at #5866.

COUNCIL POLICY IMPLICATIONS

None expected.

ADMINISTRATIVE POLICY IMPLICATIONS

None expected.

COMMUNITY OUTREACH

The required sixty day notification of intent to adopt the fall biannual code amendments was received by the State Department of Commerce on November 7, 2018. This item was resubmitted to the department for expedited review, and an acknowledgement letter was received on October 14, 2019.

A SEPA determination of non-significance for the fall biannual code amendments was published in the “Columbian” newspaper on October 29, 2018. No SEPA comments were received on this, or any of the other items.

The text of the proposed changes was presented to, and reviewed by the Development and Engineering Advisory Board (DEAB) as part of the fall 2018 biannual code amendments. The DEAB supported the amendments.

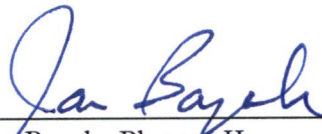
Legal notice of the Council hearing was published on October 28, 2019.

BUDGET IMPLICATIONS

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

DISTRIBUTION:

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>


Jan Bazala, Planner II


Mitch Nickolds, Community Development Director

Primary Staff Contact: Taylor Hallvik, #5866

APPROVED: _____
CLARK COUNTY, WASHINGTON
BOARD OF COUNTY COUNCILORS

DATE: NOV. 12, 2019

SR# —

ORDINANCE NO. 2019 -11 -15

1
2
3 WHEREAS, the Clark County Code contains provisions that recognize parcels of land
4 created by court order as legal lots of record and that such parcels are exempt from
5 platting requirements; and
6

7 WHEREAS, such parcels created by court orders are inconsistent with state laws
8 regarding platting requirements; and
9

10 WHEREAS, the County proposed a code change to eliminate two sections of Title 40
11 which recognize such court orders as part of the fall biannual code amendments but the
12 proposed change to the court order provisions was not adopted at that time; and
13

14 WHEREAS, additional parcels have been created by court order since the fall of 2019
15 that the County has had to acknowledge, and the County Council is aware of the need
16 to reconsider eliminating the court order provisions; and
17

18 WHEREAS, the County requested a two week expedited review period by the State
19 Department of Commerce to review the proposed code changes, and received
20 acknowledgment from the state on October 14, 2019 that the requirement had meet
21 met; and
22

23 WHEREAS, a SEPA determination of non-significance was published on this item as a
24 part of the County's Fall 2019 biannual code amendments on October 29, 2018, and
25

26 WHEREAS, the Planning Commission held a duly noticed public hearing on November
27 15, 2018, at which it considered and deliberated on the staff proposals for these and
28 other code amendments, and adopted a recommendation of approval to the Board of
29 County Councilors regarding the proposed court order amendments; and
30

31 WHEREAS, the County Councilors took public testimony on this item as part of the
32 biannual code amendment process on January 22, 2019 and separately on November
33 12, 2019; and
34

35 WHEREAS, a legal notice of the Board of County Councilors' November 12 public
36 hearing was published on October 28, 2019; and
37

38 WHEREAS, the Board of County Councilors took public testimony at its public hearing
39 on November 12, 2019 regarding this item; and
40

41 WHEREAS, the Board of County Councilors voted to approve the code amendments as
42 proposed in Sections 1 and 2; and
43

44 WHEREAS, the Board of County Councilors finds that adoption of these amendments
45 furthers the public interest; and now, therefore
46

1 BE IT HEREBY ORDERED, RESOLVED AND DECREED BY THE BOARD OF
2 COUNTY COUNCILORS, CLARK COUNTY, STATE OF WASHINGTON AS
3 FOLLOWS:

4
5 **Section 1. Amendatory.** Sec. 1 (Exh. A) of Ord. 2003-11-01 as most recently
6 amended by Sec. 1 (Att. A) of Ord. 2007-06-05 and codified as CCC 40.520.010 are
7 each hereby amended as follows:
8

9 **40.520.010 Legal Lot Determination**

10 A. Purpose and Summary.

- 11 1. The purpose of this section is to provide a process and criteria for determining
12 whether parcels are lots of record consistent with applicable state and local
13 law, and to include a listing of potential remedial measures available to owners
14 of property which do not meet the criteria.
- 15 2. In summary, parcels are lots of record if they were in compliance with applicable
16 laws regarding zoning and platting at the time of their creation. Zoning laws
17 pertain primarily to the minimum lot size and dimensions of the property.
18 Platting laws pertain primarily to the review process used in the creation of the
19 lots. Specific provisions are listed herein.

20 B. Applicability.

21 The standards of this section apply to all requests for lot determinations, or for
22 building permit, placement permit, site plan review, short plat, subdivision, conditional
23 use permit, rezone, or comprehensive plan change application.

24 C. Determination Process.

25 Lot of record status may be formally determined through the following ways:

- 26 1. Lot Determinations as Part of a Building Permit or Other Development Request.
27 Building or other development applications for new principal structures on
28 parcels which are not part of a platted land division shall be reviewed by the
29 county for compliance with the criteria standards of this section, according to
30 the timelines and procedures of the building permit or other applicable review
31 involved. Lot determination fees pursuant to Title 6 shall be assessed, unless
32 the parcel was recognized through a previous lot determination or other review
33 in which such recognition was made. Lot determination fees will be assessed
34 for placement or replacement of primary structures. A separate written
35 approval will not be issued unless requested by the applicant. Request for
36 determinations based on the innocent purchaser or public interest exception
37 criteria of this chapter shall require separate submittal under Section
38 40.520.010(C)(2).

- 1 2. Lot Determinations Requests Submitted Without Other Development Review.
2 Requests for determinations of lot of record status not involving any other
3 county development reviews, or any requests for innocent purchaser or
4 mandatory public interest exceptions shall submit an application for lot
5 determination, with fees assessed pursuant to Title 6 of this code. A Type I
6 process per Section 40.510.010 shall be used, unless the request is based on
7 the public interest exception discretionary criteria of Section 40.520.010(F)(3),
8 in which case Type II reviews as per Section 40.510.020 will be used. The
9 county will issue a letter of determination in response to all such requests.

10 *(Amended: Ord. 2008-06-02)*

11 D. Application and Submittal Requirements.

- 12 1. The following shall be submitted with all applications for lot determination, or
13 applications for other development review in which a lot determination is
14 involved. Applicants are encouraged to submit material as necessary to
15 demonstrate compliance with this section.
- 16 a. Prior county short plat, subdivision, lot determination or other written
17 approvals, if any, in which the parcel was formally created or determined to
18 be a lot of record;
 - 19 b. Sales or transfer deed history dating back to 1969;
 - 20 c. Prior segregation request, if any;
 - 21 d. Prior recorded survey, if any;
 - 22 e. At the discretion of the applicant, any other information demonstrating
23 compliance with criteria of this section.
- 24 2. Requests for the innocent purchaser exception shall also include a written
25 explanation of the circumstances surrounding the purchase of the property
26 which demonstrates compliance with innocent purchaser criteria of Section
27 40.520.010(F)(1). Additional documentation such as earnest money
28 agreements, written affidavits, previous tax statements or property
29 advertisements may be included at the discretion of the applicant.
- 30 3. Requests for the public interest exception shall also include a written
31 explanation which demonstrates compliance with applicable public interest
32 exception criteria of this chapter.

33 E. Approval Criteria.

- 34 1. Basic Criteria. Parcels which meet both of the following basic criteria are lots of
35 record:

- 1 a. Zoning. The parcel meets minimum zoning requirements, including lot size,
2 dimensions and frontage width, in effect currently or at the time the parcel
3 was created; and
- 4 b. Platting.
- 5 (1) The parcel was created through a subdivision or short plat recorded
6 with Clark County; or
- 7 (2) The parcel is five (5) acres or more in size and was created through
8 any of the following:
- 9 (a) An exempt division which occurred prior to April 19, 1993,
10 (b) A tax segregation requested prior to April 19, 1993,
11 (c) A survey completed as to boundaries prior to April 19, 1993, and
12 recorded prior to July 19, 1993; or
- 13 (3) The parcel was created through a division or segregation of four (4)
14 or fewer lots requested prior to July 1, 1976; or
- 15 (4) The parcel was created through division or segregation and was in
16 existence prior to August 21, 1969; or
- 17 (5) The parcel was created through ~~court order, will and testament, or~~
18 ~~other~~ by a process listed as exempt from platting requirements by RCW
19 58.17.035, 58.17.040, or Section 40.540.010(A), or through an
20 exemption from platting regulations provided by law at the time of
21 creation of the parcel; or
- 22 (6) The parcel was segregated at any time and is twenty (20) acres or
23 more in size.
- 24 2. Prior Determination. Parcels which have been recognized through a previous lot
25 determination review, or other county planning approval in which lot
26 recognition is made, are lots of record. Such parcels shall remain lots of record
27 until changed by action of the owner.
- 28 3. Dormant territorial plats lots created through land divisions which were recorded
29 prior to 1937, and not subsequently developed or improved shall not be
30 considered legal lots of record under the basic criteria of Section
31 40.520.010(E)(1)(b), although they may be recognized if they meet other
32 approval criteria of this chapter.
- 33 4. Parcels created as a result of government condemnation for road construction
34 under Section 40.540.020(B)(4)(c) do not qualify as legal lots in the Columbia

1 River Gorge National Scenic Area District, as specified under the definition of
2 "parcel" in Section 40.240.040.

3 *(Amended: Ord. 2004-06-11; Ord. 2005-04-12; Ord. 2007-06-05)*
4

5 **Section 2. Amendatory.** Sec. 1 (Exh. A) of Ord. 2003-11-01 as most recently
6 amended by Sec. 21 of Ord. 2016-09-04 and codified as CCC 40.540.020 are each
7 hereby amended as follows:
8

9 **40.540.020 Land Division – Introduction**

10 A. Purpose. In addition to those purposes set forth in RCW 58.17.010, the following
11 purposes are also essential to the regulation of the subdivision of land within the
12 unincorporated areas of the county:

- 13 1. To promote the effective utilization of land;
- 14 2. To make adequate provision for the housing, commercial, and industrial needs
15 of the county;
- 16 3. To prescribe procedures for the subdivision of land in accordance with officially
17 adopted plans, policies, and standards, including the provisions of any adopted
18 zoning ordinance; and
- 19 4. To provide for the efficient processing of subdivision applications without undue
20 delay.

21 B. Applicability.

- 22 1. Plat, Short Plat or Other Review Required. All divisions of land, except those
23 specifically listed in Section 40.540.020(B)(4), shall be subject to the provisions
24 of the applicable portions of Chapter 58.17 RCW and this chapter.
- 25 2. Agreement to Transfer Land After Preliminary Plat Approval. Agreements to
26 transfer land prior to final plat or short plat is authorized; provided, that the
27 performance of an offer or agreement to sell, lease or otherwise transfer a lot,
28 tract or parcel of land following preliminary plat or short plat approval is
29 expressly conditioned on the recording of the final plat or short plat containing
30 the lot, tract or parcel.
- 31 3. Redivisions. Any division of land occurring after June 20, 1989, which is exempt
32 from review under RCW 58.17.040(2) and Section 40.540.020(B)(4)(b) shall
33 not be further divided using the short plat process for a period of five (5) years
34 following the date of such exempt division.
- 35 4. Exemptions. The provisions of this chapter shall not apply to the following:

- 1 a. Cemeteries and burial plots while used for that purpose.
- 2 b. Divisions of land into lots or tracts, each of which is one thirty-second (1/32) of
3 a section of land or larger, or twenty (20) acres or larger, if the land is not
4 capable of description as a fraction of a section of land. For purposes of
5 computing the size of any lot under this item which borders on a street or
6 road, excluding limited-access streets or roads, the lot size shall be
7 expanded to include that area which would be bounded by the centerline of
8 the road or street, and the side lot lines of the lot running perpendicular to
9 such centerline.
- 10 c. Divisions of land which are the result of the actions of governmental agencies,
11 such as condemnation for road construction purposes.
- 12 d. Divisions of land made by testamentary provisions, or the laws of descent.
- 13 e. Divisions of land into lots or tracts classified for industrial or commercial use,
14 when the responsible official has approved a "binding site plan" for use of
15 the land in accordance with Section 40.520.040(C).
- 16 f. Divisions of land made for the purpose of lease when no residential structure
17 other than mobile homes or travel trailers are permitted to be placed upon
18 the land, when the responsible official has approved a "binding site plan" for
19 the use of land in accordance with Section 40.520.040.
- 20 g. Divisions of land made by subjecting a portion of a parcel or tract of land to
21 Chapter 64.32 RCW.
- 22 h. Divisions of land made by court order through a process listed as exempt
23 from platting requirements by RCW 58.17.035, 58.17.040, or Section
24 40.540.010(A); provided that the parcel meets all other provisions of the
25 UDC, including, but not limited to, applicable zoning and dimensional
26 requirements. ~~provided, the divisions shall comply with all other provisions of~~
27 ~~the UDC.~~
- 28 i. A boundary line adjustment pursuant to Section 40.540.010.
- 29 j. A division for the purpose of leasing land for facilities providing personal
30 wireless services while used for that purpose. "Personal wireless services"
31 means any federally licensed personal wireless service. "Facilities" means
32 unstaffed facilities that are used for the transmission or reception, or both, of
33 wireless communication services including, but not necessarily limited to,
34 antenna arrays, transmission cables, equipment shelters, and support
35 structures.

36 *(Amended: Ord. 2016-09-04)*

37

1 **Section 3. Effective Date.**

2 This ordinance shall go into effect ten (10) days after adoption as provided by law.

3
4 **Section 4. Instructions to Clerk.**

5 The Clerk of the board shall:


- 6 1) Transmit a copy of this ordinance to the Washington State Department of
- 7 Commerce within ten (10) days of its adoption, pursuant to RCW
- 8 36.70A.106;
- 9 2) Record a copy of this Ordinance with the Clark County Auditor;
- 10 3) Cause notice of adoption of this ordinance to be published forthwith,
- 11 pursuant to RCW 36.70A.290; and
- 12 4) Transmit a copy of the adopted ordinance to Code Publishing, Inc. forthwith
- 13 to update the electronic version of the Clark County Code.

14
15 **Section 5. Roll Call Vote.** The following persons voted in favor of the above
16 ordinance [amendments]:

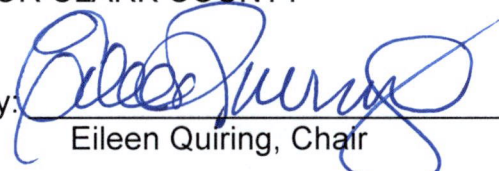
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18 Temple Lentz, Julie Olson, John Blom,
19 Gary Medvicky, Eileen Quiring.
20
21

22
23 ADOPTED this 12th day of November, 2019.

24
25
26
27
28
29 Attest:

30 
31
32 _____
33 Clerk to the Board

34
35 BOARD OF COUNCILORS
36 FOR CLARK COUNTY

37 By: 
38 _____
39 Eileen Quiring, Chair

40 Approved as to form only:
41 ANTHONY F. GOLIK,
42 Prosecuting Attorney

43 By: _____
44 Temple Lentz, Councilor

45 
46 _____
47 Taylor Hallvik,
48 Deputy Prosecuting Attorney

49 By: _____
50 John Blom, Councilor

51 By: _____
52 Julie Olsen, Councilor

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By: _____
Gary Medvigy, Councilor

