

**ORDINANCE NO. O2024-005**

**AN ORDINANCE** of the City Council of the City of Tumwater, Washington, amending Chapter 2.58 *Hearing Examiner*, Chapter 3.30 *Multifamily Housing Tax Exemptions*, Title 11 *Telecommunications and Telecommunications Facilities*, Title 13 *Public Services*, Title 14 *Development Code Administration*, Title 15 *Buildings and Construction*, Title 16 *Environment*, Title 17 *Land Division*, and Title 18 *Zoning* of the Tumwater Municipal Code to address revisions needed to bring the regulations into compliance with Second Substitute Senate Bill 5290 related to local project review (Chapter 338, Laws of 2023) and update approvals processes as more particularly described herein.

**WHEREAS**, in May 2023 the Governor of Washington signed into law Second Substitute Senate Bill 5290 (Chapter 338, Laws of 2023) which modified requirements for local land use permit review; and

**WHEREAS**, it was determined that Chapter 2.58 *Hearing Examiner*, Chapter 3.30 *Multifamily Housing Tax Exemptions*, Title 11 *Telecommunications and Telecommunications Facilities*, Title 13 *Public Services*, Title 14 *Development Code Administration*, Title 15 *Buildings and Construction*, Title 16 *Environment*, Title 17 *Land Division*, of the Tumwater Municipal Code should be updated to reflect current state standards; and

**WHEREAS**, this Ordinance meets the goals and requirements of the Growth Management Act; and

**WHEREAS**, the proposed amendments are consistent with the City's Comprehensive Plan; and

**WHEREAS**, the Attorney General *Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property* (September 2018) was reviewed and utilized by the City in objectively evaluating the proposed amendments; and

**WHEREAS**, this Ordinance was sent to the Washington State Department of Commerce on September 30, 2024, at least sixty days before the proposed code amendments were adopted, in accordance with RCW 36.70A.106; and

**WHEREAS**, on September 30, 2024, the Washington State Department of Commerce notified the City of Tumwater that the requirements for State Agency

notification for the proposed amendments had been met, as required by RCW 36.70A.106; and

**WHEREAS**, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act (Chapter 43.21C RCW), pursuant to Chapter 197-11 WAC on October 4, 2024, and a Determination of Non-Significance (DNS) was issued on October 18, 2024; and

**WHEREAS**, the Planning Commission had a briefing on the code amendments on September 24, 2024, and work sessions on the code amendments on October 8, 2024, and October 22, 2024; and

**WHEREAS**, the Planning Commission held a public hearing on the code amendments on November 12, 2024; and

**WHEREAS**, following the public hearing and deliberations, the Planning Commission recommended approval of the code amendments by the City Council; and

**WHEREAS**, the General Government Committee discussed the Planning Commission's recommendation on the code amendments on November 13, 2024; and

**WHEREAS**, the City Council considered the proposed code amendments on December 3, 2024; and

**WHEREAS**, the City Council finds that the provisions of this Ordinance are in the best interest of and protect the health, safety, and welfare of the residents of the City.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1.** TMC 2.58.090 of the Tumwater Municipal Code is hereby amended to read as follows:

**2.58.090 Powers of the examiner.**

The hearing examiner shall have the following duties with respect to applications of matters submitted before ~~him or her~~them:

A. The examiner shall receive and examine all available information, conduct public hearings, and prepare a record thereof and enter findings of fact and conclusions based upon these facts, which conclusions shall represent the final

action on the application, unless appealed as provided for herein, for the following matters:

1. Variances;
2. Conditional use permits;
3. Preliminary plats, replats, and plat alterations when a hearing is requested pursuant to RCW 58.17.215;
4. Administrative land use appeals;
5. Shoreline permits;
6. State Environmental Policy Act/SEPA appeals;
7. Site-specific rezones not requiring a comprehensive plan amendment;
8. Planned unit developments;
9. Impact fee determinations;
10. Concurrency determinations;
11. Reasonable use exceptions;
12. Such additional matters as are described in TMC 14.08.030 Title 14 Development Code Administration, TMC Title 15 Buildings and Construction, TMC Title 16 Environment, TMC Title 17 Environment, and TMC Title 18 Zoning;
13. Administrative orders and civil penalties issued for violations of TMC Chapters 12.32, 13.12, 16.20 and 16.32;
14. Business license denials or revocations;
15. Code violations pursuant to TMC Chapter 1.10; and
16. Land use code interpretations.

B. The examiner shall have any duties and related authority prescribed to the hearing examiner by this code or other city ordinance.

C. The examiner is authorized to act in lieu of the building board of appeals. Wherever existing ordinances, codes, or policies authorize or direct the building board of appeals to undertake certain activities, such ordinances, codes, or policies shall be construed to refer to the hearing examiner.

D. The decision of the hearing examiner shall be final unless such decision is appealed to Thurston County superior court pursuant to TMC 2.58.180.

(Ord. O2013-018, Amended, 09/17/2013; Ord. O2012-009, Amended, 08/06/2012; Ord. O2010-014, Amended, 06/15/2010; Ord. O2009-018, Amended, 01/19/2010; Ord.

O2005-021, Amended, 09/06/2005; Ord. O96-024, Amended, 09/17/1996; Ord. O96-004, Amended, 04/16/1996; Ord. O95-022, Amended, 11/07/1995; Ord. 1333, Amended, 10/20/1992; Ord. 1278, Amended, 08/20/1991; Ord. 1259, Added, 11/06/1990)

**Section 2.** TMC 2.58.120 of the Tumwater Municipal Code is hereby amended to read as follows:

**2.58.120 Notices and hearings – Appeal rights.**

In the furtherance of the responsibilities of the hearing examiner, the city shall comply with the notice and hearing requirements set forth in TMC [Title 14 Development Code Administration Chapter 14.06](#) or such other code related or statutory notice and hearing requirements as are applicable to the proceeding. At the commencement of the hearing, the examiner shall give oral notice regarding the register provided for in TMC 2.58.140. At the conclusion of the hearing, those present shall be advised of appeal rights and the hearing examiner shall specifically advise that the scope of appeal shall be strictly limited to the specific assignment of error alleged by any appealing party.

(Ord. O2010-014, Amended, 06/15/2010; Ord. O96-039, Amended, 11/05/1996; Ord. O96-004, Amended, 04/16/1996; Ord. 1259, Added, 11/06/1990)

**Section 3.** TMC 3.30.050 of the Tumwater Municipal Code is hereby amended to read as follows:

**3.30.050 Project eligibility.**

A proposed project must meet the following requirements for consideration for a property tax exemption:

- A. Location. The project must be located within a residential target area as designated in TMC 3.30.030.
- B. Tenant Displacement Prohibited. The project must not displace existing residential tenants of structures that are proposed for redevelopment. Existing dwelling units proposed for rehabilitation must have been unoccupied for a minimum of twelve months prior to submission of an application and must have one or more violations of the International Property Maintenance Code of the city of Tumwater. Applications for new construction cannot be submitted for vacant property upon which an occupied residential rental structure previously stood, unless a minimum of twelve months has elapsed from the time of most recent occupancy.
- C. Size. The project must include at least four units of multifamily housing within a residential structure or as part of an urban development. A minimum of four new units must be constructed or at least four additional multifamily units must be

added to existing occupied multifamily housing. Existing multifamily housing that has been vacant for twelve months or more does not have to provide additional units so long as the project provides at least four units of new, converted, or rehabilitated multifamily housing.

D. Proposed Completion Date. New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application.

E. Compliance with Guidelines and Standards. The project must be designed to comply with the city's comprehensive plan, building, housing, and zoning codes, and any other applicable regulations in effect at the time the application is approved. The project must also comply with any other standards and guidelines adopted by the city council for the residential target area in which the project will be developed.

F. At least fifty percent of the space in a new, converted, or rehabilitated multiple unit must be for permanent residential housing. In the case of existing occupied multifamily development, the multifamily housing must also provide for a minimum of four additional multifamily units. Existing multifamily vacant housing that has been vacant for twelve months or more does not have to provide additional units.

G. The applicant must enter into a contract with city approved by ~~city council~~the director under which the applicant agrees to the implementation of the development on terms and conditions satisfactory to the city ~~council~~.

(Ord. O2017-004, Added, 04/18/2017)

**Section 4.** TMC 3.30.070 of the Tumwater Municipal Code is hereby amended to read as follows:

**3.30.070 Application review and issuance of conditional certificate.**

A decision to approve or deny an application shall be made within ninety calendar days of receipt of a complete application.

A. Approval. The director may approve the application if ~~he/she finds~~they find that:

1. A minimum of four new units are being constructed or in the case of occupied rehabilitation or conversion a minimum of four additional multifamily units are being developed;
2. If applicable, the proposed multi-unit housing project meets the affordable housing requirements as described in RCW 84.14.020;

**Commented [BM1]:** RCW 84.14.030(6) states:

The applicant must enter into a contract with the city or county approved by the governing authority, or an administrative official or commission authorized by the governing authority, under which the applicant has agreed to the implementation of the development on terms and conditions satisfactory to the governing authority.

3. The proposed project is or will be, at the time of completion, in conformance with all local plans and regulations that apply at the time the application is approved;
4. The owner has complied with all standards and guidelines adopted by the city under this chapter; and
5. The site is located in a residential targeted area of an urban center that has been designated by the city council in accordance with procedures and guidelines of this chapter.

B. Before application approval the applicant shall enter into a contract with the city, approved by the city council director, regarding the terms and conditions of the project. After city council director approval of the contract, and director approval of the application, the director shall issue a conditional certificate of acceptance of tax exemption. The conditional certificate expires three years from the date of approval unless an extension is granted as provided in this chapter.

C. Denial. The director shall state in writing the reasons for denial and shall send notice to the applicant at the applicant's last known address within ten calendar days of the denial. An applicant may appeal a denial to the city council within thirty days after receipt of the denial. The appeal before the governing authority must be based upon the record made before the administrative official with the burden of proof on the applicant to show that there was no substantial evidence to support the administrative official's decision. The decision of the governing body in denying or approving the application is final.

**Section 5.** TMC 11.20.040 of the Tumwater Municipal Code is hereby amended to read as follows:

**11.20.040 Processing procedures – Issuing authority and appeals.**

A. Fully complete applications for WCF permits shall be processed in accordance with the project-land use permit processing requirements of TMC Title 14 Development Code Administration ~~Chapter 14.02~~. Final decisions and appeal authorities for such permits are as described in TMC Table 14.04.020(A) ~~14.08.030~~.

B. Type of Review for Eligible Facilities Request Permit Application. Upon receipt of an application for an eligible facilities request pursuant to this chapter, the director shall review such application to determine whether the application so qualifies.

1. Time Frame for Review. Subject to the tolling provisions of subsection (B)(2) of this section, within sixty days of the date on which an applicant submits an application seeking approval under this chapter, the city shall act on the application unless it determines that the application is not covered by this subsection.

**Commented [BM2]:** RCW 84.14.030(6) states:

The applicant must enter into a contract with the city or county approved by the governing authority, or an administrative official or commission authorized by the governing authority, under which the applicant has agreed to the implementation of the development on terms and conditions satisfactory to the governing authority.

**Commented [BM3]:** Question for Karen: Does the change in the project permit review time in SB 5290 require a change in the 120-day review times in Title 11? TMC 11.06 Telecommunications Master Permit, which is not referenced in the current version of Title 14 or TMC 11.08.030?

2. Tolling of the Time Frame for Review. The sixty-day review period begins to run when the application is filed, and may be tolled only by mutual agreement of the city and the applicant, or in cases where the director determines the application is incomplete:

- a. To toll the time frame for incompleteness, the city must provide written notice to the applicant within thirty days of receipt of the application, specifically delineating all missing documents or information required in the application;
- b. The time frame for review begins running again when the applicant makes a supplemental written submission in response to the city's notice of incompleteness; and
- c. Following a supplemental submission, the city will notify the applicant within ten days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in subsection (B)(2)(a) of this section. In the case of a second or subsequent notice of incompleteness, the city may not specify missing information or documents that were not delineated in the original notice of incompleteness if no new information submitted by the applicant alters a previously reviewed aspect of the application.

C. Failure to Act. In the event the city fails to act on a request seeking approval for an eligible facilities request under this section within the time frame for review, accounting for any tolling, the request shall be deemed granted. The deemed grant becomes effective when the applicant notifies the city in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

D. Interaction with Telecommunications Act Section 332(c)(7). If the city determines that the applicant's request is not an eligible facilities request as delineated in this title, the presumptively reasonable time frame under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the city's decision that the application is not a covered request. To the extent such information is necessary, the city may request additional information from the applicant to evaluate the application under Section 332(c)(7) reviews.

(Ord. O2018-025, Amended, 12/18/2018; Ord. O97-018, Added, 06/17/1997)

**Section 6.** TMC 13.12.020 of the Tumwater Municipal Code is hereby amended to read as follows:

**13.12.020 Stormwater management.**

A. Illicit Discharges. It is unlawful for any person to throw, drain or otherwise discharge, cause or permit others under its control to throw, drain or otherwise discharge into the city's stormwater system and/or surface and ground waters any pollutant or material other than stormwater.

B. Conditional Discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter if they meet the stated conditions, unless the city determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and in volumes and velocities controlled to prevent resuspension of sediments in the stormwater system;
2. Dechlorinated swimming pool and spa discharges. These discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and in volumes and velocities controlled to prevent resuspension of sediments in the stormwater system;
3. Runoff from lawn/landscape watering is permitted if the amount of runoff is reduced to the maximum extent practical;
4. Street and sidewalk wash water, water used to control dust, and routine external building washdown that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street;
5. Dye testing is allowable but requires verbal notification to the city's public works department at least one working day prior to the date of the test. The Tumwater public works department is exempt from this notice requirement;
6. Nonstormwater discharges covered by another NPDES permit; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system;
7. Irrigation water from agricultural sources that is commingled with urban stormwater, provided the city has received written notification and the irrigation water does not increase the pollutant load of the receiving urban stormwater; and
8. Other nonstormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP)

reviewed and approved by the director, which addresses control of such discharges by applying AKART to prevent pollutants from entering surface or ground water.

C. Allowable Discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter unless the city determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Diverted stream flows;
2. Rising ground waters;
3. Uncontaminated ground water infiltration – as defined in 40 C.F.R. C.F.R.(20);
4. Uncontaminated pumped ground water;
5. Foundation drains;
6. Air conditioning condensation;
7. Springs;
8. Water from crawl space pumps;
9. Footing drains;
10. Flows from riparian habitats and wetlands; and
11. Discharge from emergency fire-fighting activities.

D. Storm Drainage System – Inspections and Maintenance.

1. Maintenance of Stormwater Drainage System by Owners.
  - a. Any person(s) holding title to a premises for which a stormwater drainage system and BMPs have been required shall be responsible for the continual operation, maintenance and repair of said stormwater facilities and BMPs in accordance with the provisions of this chapter.
  - b. For privately maintained stormwater facilities, the maintenance requirements specified in this chapter, including the manual, shall be enforced against the owner(s) of the property served by the stormwater facility.
2. Maintenance Agreement Required for Privately Maintained Stormwater Facilities.
  - a. When applicable, prior to the issuance of a certificate of occupancy, the person(s) holding title to a premises for which a stormwater system has been required shall record a maintenance agreement which guarantees the city

that the stormwater facilities shall be properly operated, maintained and inspected. Restrictions set forth in such agreement shall be included in any instrument of conveyance of the premises and shall be recorded with the Thurston County auditor.

b. The director may require the person(s) responsible for existing stormwater facilities, for which the city has not previously received a maintenance agreement, to record a maintenance agreement for the premises.

c. Maintenance agreements shall remain in force for the life of the development, or until the responsibility for the operation and maintenance of the subject stormwater facilities is accepted by the city.

3. City Acceptance of Existing Stormwater Facilities.

a. The city is responsible for the maintenance, including performance and operation, of stormwater facilities which have formally been accepted for maintenance by the director.

b. The city may assume maintenance of privately maintained stormwater facilities only if the following conditions have been met:

i. All necessary easements or dedications entitling the city to properly maintain the stormwater facility have been conveyed to the city;

ii. The director has determined that the stormwater facility is in the dedicated public road right-of-way or that maintenance of the facility will contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:

(A) Flooding,

(B) Downstream erosion,

(C) Property damage due to improper function of the facility,

(D) Safety hazard associated with the facility,

(E) Degradation of water quality or in-stream resources, or

(F) Degradation to the general welfare of the community; and

iii. The director has declared in writing acceptance of maintenance responsibility by the city. Copies of this document will be kept on file in the public works department.

c. The director may terminate the city's assumption of maintenance responsibilities in writing after determining that continued maintenance will not significantly contribute to protecting or improving the health, safety and

welfare of the community based upon review of the existence of or potential for:

- i. Flooding;
  - ii. Downstream erosion;
  - iii. Property damage due to improper function of the facility;
  - iv. Safety hazard associated with the facility;
  - v. Degradation of water quality or in-stream resources; or
  - vi. Degradation to the general welfare of the community.
- d. A stormwater facility which does not meet the criteria of this section shall be the responsibility of the person(s) holding title to the premises for which the facility was required.
- e. Director may recover costs for maintenance activities incurred by the city from the person(s) holding title to the premises served by the stormwater facility.
4. City Inspections of Privately Maintained Stormwater Facilities.
- a. The director is authorized to develop and implement an inspection program for privately owned and maintained stormwater facilities in the city. The purpose of this inspection program shall be to determine if said stormwater facilities, conveyance structures and water quality facilities are in good working order and are properly maintained, and to ensure that stormwater quality BMPs are in place and that nonpoint source pollution control is being implemented.
  - b. As part of the inspection program, or whenever there is cause to believe that a violation of this chapter has been or is being committed, the city is authorized to inspect during regular working hours, or at other reasonable times, any and all stormwater drainage facilities within the city to determine compliance with the provisions of this chapter.
  - c. When making any inspections, the director or designee shall follow the procedures delineated in subsection (D)(5) of this section.
5. Inspection Procedures.
- a. Prior to making any inspections, the city shall present identification, state the reason for the inspection and request entry.
  - b. If the premises is unoccupied, the city shall make a reasonable effort to locate the person(s) having charge or control of the property or portions of the property and request entry.

c. If, after reasonable effort, the city is unable to locate the person(s) having charge or control of the property, and has reason to believe the condition of the site or of the stormwater drainage system creates an imminent hazard to persons or property, the city may enter.

d. If entry is not consented to by the owner or person(s) in control of the property or portion of the property, and no conditions are reasonably believed to exist which create a risk of imminent hazard, the inspector shall obtain a search warrant prior to entry. To the extent authorized by the laws of the state of Washington, the Tumwater municipal court is hereby authorized to issue a warrant permitting the inspection of privately owned stormwater facilities, upon a showing of probable cause to believe that a provision of this title has been or is being violated.

e. The inspector may also inspect the stormwater drainage system without obtaining a search warrant provided for in subsection (D)(5)(d) of this section, provided the inspection can be conducted while remaining on public property or other property on which permission to enter is obtained.

E. Illicit Connections – Inspection and Removal.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited.
2. This prohibition expressly includes, without limitation, connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is in violation of this chapter if the person connects a line conveying sanitary sewage to the MS4, or allows such a connection to continue.
4. Any connection identified by the director that could convey anything not composed entirely of surface and stormwater directly into the city's storm drainage system is considered an illicit connection and is prohibited.
5. When the director has reason to believe that an illicit connection is resulting in an illicit discharge, the director may sample and analyze the discharge and recover the costs from the person(s) responsible for the connection or premises.

F. Administration.

1. General. The director is authorized to implement and enforce the provisions of this chapter. The director will coordinate the implementation and enforcement of this chapter with other city departments.
2. Treatment BMPs. In the event that a person discharges stormwater into a municipal separate storm sewer system (MS4) that is not of a quality that complies with city, county, state, and/or federal requirements, or where

determined necessary, water quality-based requirements, the person shall provide necessary source control/stormwater treatment BMPs as required to comply with these requirements.

- a. The manual shall be used to select acceptable technologies.
- b. Any facility required to treat stormwater to an acceptable level shall be properly operated and maintained at the owner's expense. Detailed engineering plans and specifications showing the treatment facilities shall be submitted to the city for review, and must be acceptable to the city before construction of the facility. The person responsible for the premises shall obtain all necessary construction/operating permits from the city. Depending upon size and complexity of the treatment facility, the city may find it necessary to require that the facility be run by a qualified operator. Necessary qualifications shall be determined by the city in each individual case. The review of such plans shall in no way relieve the person from the responsibility of modifying its facility as necessary to produce a stormwater effluent acceptable to the city under the provisions of this chapter.
- c. Upon completion of the treatment facility, the person responsible for the premises shall furnish its operations and maintenance procedures to the city for review and approval. Any subsequent changes in the treatment facilities or operation and maintenance procedures shall be reported to and be accepted by the city prior to initiation of the changes.

3. Inspection and Sampling. The city may inspect all facilities of any person to determine compliance with the requirements of these regulations. The city shall be allowed to enter upon the premises at all reasonable hours for the purposes of inspection, sampling, or records examination. The city shall have the right to inspect and copy any of the person's records that are required by, or that relate to, compliance with the terms and conditions of these regulations. The city shall have the right to set up on the person's property such devices as are necessary to conduct sampling, inspection, compliance monitoring, and/or metering operations.

G. Enforcement.

1. Authorization. The director is authorized to enforce this chapter and any permit, order or approval issued pursuant to this chapter, against any violation or threatened violation thereof. Violations of this chapter shall constitute a public nuisance. The director is authorized to take enforcement action for violations of this chapter including but not limited to illicit discharges and connections, as well as dumping as described in this chapter.
2. Compliance. The director shall attain compliance with this chapter by requiring the implementation and maintenance of BMPs. The director may

initially rely on education and informational assistance to gain compliance with this chapter. However, if the director determines a violation poses a hazard to public health, safety, or welfare or endangers any property, the director may demand immediate cessation of unlawful discharges and/or connections and assess penalties for violations. Said penalties shall escalate as necessary to achieve compliance with this chapter.

3. Penalties. The city is authorized to issue violation notices and orders, levy fines, recover costs, issue notices of civil infraction, and/or institute both civil and criminal actions in court. Recourse to any single remedy shall not preclude recourse to any other remedies available to the city.

a. Orders. The city may serve an order of violation of this chapter. The order shall include the following:

i. Owner Information. Name and address of the property owner and/or other person(s) to whom the notice and order is directed.

ii. Description of Violation. The specific nature, extent, and time of violation.

iii. Code Reference. Reference to the provision of code which has been violated.

iv. Corrective Measures. The order may include specific corrective measures to be taken to correct the violation and a date or time by which correction is to be completed.

v. Correction Required. The order shall include a statement that the person(s) to whom the notice is directed must:

(A) Complete correction by the date stated in the notice;

(B) Appeal the notice and order to the hearing examiner within fourteen days as provided in TMC ~~1.10.070~~~~14.08.030~~; or

(C) Enter into and comply with a voluntary correction agreement with the city.

vi. Nonaction. The order shall include a statement that if the violation is not corrected, the notice and order not appealed, a voluntary correction agreement not entered or complied with, or hearing examiner order not complied with, a penalty as specified in this chapter shall accrue, and that the violation may be abated by the city and costs assessed against the person(s) as authorized by this chapter.

vii. Service. The notice and order shall be served by personal delivery or mailing a copy by registered or certified mail and/or by posting a copy

conspicuously on the affected property, etc. The order issued under this section shall become effective immediately upon personal delivery or posting, or, in the case of mailing, three days after deposited in the U.S. mail.

viii. Civil Penalty. Any person(s) who unlawfully discharges and/or connects into a municipal storm drainage system may be assessed a civil penalty as follows:

(A) The director may assess the owner a civil penalty not to exceed \$5,000 for each violation. Each violation or each day or portion of a day of continued unlawful activity shall constitute a separate violation. For a first violation, the civil penalty shall not exceed \$1,000; \$2,500 for a second violation; and \$5,000 for a third and continual violation of this chapter.

(B) Any person(s) who, through an act of commission or omission, aids in a violation shall be considered to have committed the violation for purposes of the civil penalty.

(C) Within fourteen days of receiving the notice of violation, the person may appeal the penalty or action to the hearing examiner as provided in TMC ~~1.10.070-14.08.030~~.

b. Recovery of Costs Incurred by the City. In addition to any penalty, any person(s) violating any of the provisions of this chapter, who discharges or causes a discharge which violates the city's NPDES permit and/or produces a deposit or obstruction or causes damage to or impairs the city's stormwater system or causes damage to physical, chemical, or biological systems of waters of the state or waters of the United States, shall be liable to the city for any expense, loss, or damage caused by such violation or discharge, including the costs for bringing the city back into compliance with its NPDES permit associated with the violation of these regulations, and any fines levied for violations of the city's NPDES permit.

c. Abatement by City. The city may perform the abatement required upon noncompliance with the terms of an unappealed notice and order, a voluntary correction agreement, or a final order of the hearing examiner. The city may utilize city employees or a private contractor under city direction to accomplish the abatement. The city, its employees and agents using lawful means are expressly authorized to enter upon the property of the violator for such purposes.

i. Recovery of Abatement Costs. The city shall bill its costs, including incidental expenses, of abating the violation to the person obligated to perform the work under the notice and order, voluntary correction

agreement or the hearing examiner's decision, which costs shall become due and payable thirty days after the date of the bill. The term "incidental expenses" shall include, but not be limited to, personnel costs, both direct and indirect, including attorney's fees incurred by the city; costs incurred in documenting the violation; the actual costs and expenses in the preparation of notices, specifications and contracts, and in inspecting the work; and the cost of any required printing and mailing. The director, or the hearing examiner, may in ~~his or her~~their discretion waive in whole or part the assessment of any costs of abatement upon a showing that abatement has occurred or is no longer necessary, or that the costs would cause a significant financial hardship for the person(s) responsible for the violation. The city may authorize the use of collection agencies to recover costs. The city attorney is authorized to collect the costs by use of appropriate legal remedies.

ii. Obstruction with Work Prohibited. No person shall obstruct, impede or interfere with the city, its employees or agents, or any person who owns or holds any interest or estate in any property in the performance of any necessary act, preliminary or incidental to carrying out the requirements of a notice and order to correct, voluntary correction agreement, or order of the hearing examiner issued pursuant to this chapter. A violation of this provision shall constitute a misdemeanor.

iii. Report to the City Council on Cost of Abatement. Where costs are assessed under this section and the person(s) responsible fails to pay within the thirty-day period, the director shall prepare a written itemized report to the city council showing the cost of abatement, including rehabilitation, demolition, restoration or repair, including such salvage relating thereto plus the amount of any outstanding penalties.

(A) A copy of the report and a notice of the time and date when the report shall be heard by the city council shall be served on the person(s) responsible for payment at least five days prior to the hearing before the city council.

(B) The city council shall review the report and such other information on the matter as it receives and deems relevant to the hearing. The city council shall confirm or revise the amounts in the report, authorize collection of that amount or, in the case of a debt owed by a property owner, authorize placement of an assessment lien on the property as provided herein.

iv. Assessment Lien. Following the hearing and authorization by the city council, the city clerk shall certify to the county treasurer the confirmed

amount. The county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates as provided in RCW 84.56.020, as now or hereafter amended, for delinquent taxes, and when collected to be deposited to the credit of the stormwater utility of the city. The lien shall be of equal rank with the state, county, and municipal taxes. The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within fifteen calendar days after the assessment is placed upon the assessment roll.

d. **Violators Punishable by Fine and Imprisonment.** Any person who without authorization discharges pollutants into a municipal stormwater system, uses an unapproved connection to discharge into a municipal stormwater system, submits false information in permitting and reporting requirements, violates the terms and conditions of a permit, violates an order issued by the director or designee, fails to pay a civil penalty or cost recovery assessment, or obstructs or damages a municipal storm drainage system shall be deemed guilty of a misdemeanor. Each person found guilty of a violation shall be deemed guilty of a separate offense for every day during any portion of which the violation is committed, continued, or permitted by such person and shall be punishable as provided for in this chapter. Any person who, through an act of commission or omission, procures, aids, or abets in a violation shall be considered to have committed a violation for the purpose of this section.

e. **Injunction and Other Civil Remedies.** In addition to any other penalty or method of enforcement, the city attorney may bring civil actions and suits for damages, injunctive relief and/or for other civil remedies as necessary. Any violation of this chapter shall constitute a public nuisance, and may be enjoined as provided by the statutes of the state of Washington.

4. **Records Retention.** All persons subject to these regulations shall retain and preserve for no less than three years any records, books, documents, memoranda, reports, correspondence, and any and all summaries thereof, relating to operation, maintenance, monitoring, sampling, and chemical analysis made by or on behalf of a person in connection with its discharge. All records which pertain to matters which are the subject of enforcement or litigation activities brought by the director pursuant to this chapter shall be retained and preserved by the person until all enforcement activities have concluded.

(Ord. O2011-007, Amended, 07/19/2011; Ord. O2009-018, Amended, 01/19/2010; Ord. 1099, Added, 04/07/1987)

**Section 7.** TMC Title 14 of the Tumwater Municipal Code is hereby amended to read as follows:

**Title 14**

**Development Code Administration**

**Chapters:**

**14.02 GENERAL PROVISIONS**

**14.04 LAND USE PERMITS**

**14.06 PREAPPLICATION PROCESS**

**14.08 LAND USE PERMIT APPLICATION SUBMITTAL**

**14.10 LAND USE PERMIT APPLICATION REVIEW**

**14.12 LAND USE PERMIT APPLICATION DECISIONS AND APPEALS**

**Chapter 14.02**

**GENERAL PROVISIONS**

**Sections:**

**14.02.010 Intent.**

**14.02.020 Definitions.**

**14.02.030 Applicability.**

**14.02.040 Time limits.**

**14.02.050 General notice requirements.**

**14.02.060 Determination of a substantially different proposal.**

**14.02.070 Expiration of approvals.**

**14.02.080 Other provisions.**

**14.02.010 Intent.**

**A. The purpose of this title is to combine and consolidate the application, review, and approval processes for land uses in the city of Tumwater in a manner that is clear, concise, and understandable. It is further intended to comply with state guidelines for expediting development review and integrating environmental review and land use regulations.**

**B. Fundamental land use planning choices made in the city's comprehensive plan and development regulations shall serve as the foundation for land use permit review. The review of a proposed project's consistency with applicable development regulations, or, in the absence of applicable regulations, the city's adopted comprehensive plan, shall be incorporated into the determinations made in this title.**

**C. These procedures provide for an effective processing and review of land use permit applications consistent with Chapter 36.70B RCW.**

**Commented [BM4]:** Based on RCW 36.70B.030(1)

**Commented [BM5]:** In SB 5290 the definition of "project permit" was amended in RCW 36.70B.020(4) to remove building permits. From reading the new RCW definition, we don't think construction permits such as "fill and grade" permits that are covered by Title 15 fall under Title 14.

*(4) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action, including but not limited to subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones which do not require a comprehensive plan amendment, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.*

D. This title is applied in conjunction with TMC 2.58 Hearing Examiner; TMC Title 15 Buildings and Construction; TMC Title 16 Environment; TMC Title 17 Land Division; TMC Title 18 Zoning; the city's shoreline master program; and other applicable codes and standards.

**Commented [BM6]:** Replaced by new TMC Table 14.04.030

E. Unless another department or agency is the primary agency in a permit process, the community development department shall administer the provisions hereof and may adopt such rules as will assist in administering these provisions.

F. Notwithstanding the city's authority to issue land use approvals within the period established by this title, staff should strive to process land use permits in a timely manner. Provided, however, permit processing should not be conducted so as to adversely affect the public's right to provide appropriate input to the process and exercise appeal rights.

#### **14.02.020 Definitions.**

A. "City" means the city of Tumwater, Washington.

B. "Closed record appeal" means an administrative appeal on the record to a city body or officer, or another agency if they have approval authority, following an open record hearing on a land use permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

C. "Days" means calendar days, including weekends and holidays.

**Commented [BM7]:** Based on RCW 36.70B.070(e)

D. "Department" means the community development department.

E. "Determination of completeness" means a written determination by the director that a land use permit application is procedurally complete, and all required elements of an application have been received by the city. This determination initiates the statutory review period for the application, if any, and subject to certain exceptions, entitles the applicant to have the application considered and reviewed pursuant to the laws, regulations, and standards in effect on the date the application was complete.

F. "Development guide" means the Tumwater development guide pursuant to TMC 15.020.010 or as subsequently amended.

G. "Development review committee" means a group of development review staff from city departments assigned by the director to conduct preapplication conferences and review and/or approve land use permit applications.

H. "Director" means the director of the community development department of the city, or their designee, unless another department or agency is in charge of the proposed land use action in which case it refers to the chief administrative officer of

that department or agency. The director, or their designee, shall serve as the city's designated permit coordinator.

**Commented [BM8]:** Identifies the "designated permit coordinator per RCW 36.70B.120(1)

I. "Feasibility review" means an optional preapplication conference between a prospective applicant or development proponent and the development review committee to provide limited information on applicable development and site requirements as a precursor to a preapplication conference.

J. "Formal review" means the second and final stage of preapplication conference to provide feedback and additional guidance to applicants on how effectively they have incorporated information received during the preliminary review into their development proposal. The formal review is an evaluation of a development proposal to determine suitability for submittal of the land use permit application.

K. "Land use permit" means any land use or environmental permit or license required from the city for a land use action, including but not limited to subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones which do not require a comprehensive plan amendment, but excluding the adoption or amendment of the comprehensive plan, a subarea plan, or development regulations except as otherwise specifically included in this title. A land use action also includes any proposal for development of any new commercial, industrial, institutional, or multifamily (five units or more) structure or addition or modification to a commercial, industrial, institutional, or multifamily structure or change in occupancy of such an existing structure that changes utility requirements, parking requirements or necessitates additional site improvements.

**Commented [BM9]:** Not part of RCW 36.70B.020(4), but part of the current TMC 14.02.020(O) land use permit definition.

**Commented [BM10]:** Based on RCW 36.70B.020(4)

L. "Open record hearing" means a hearing, conducted by the city hearing examiner, or another body identified in TMC Table 14.04.020(A), that creates the record through testimony and submission of evidence and information. An open record hearing may be held prior to a decision on a land use permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing was held on the land use permit.

**Commented [BM11]:** Based on RCW 36.70B.020(3)

M. "Planned action" means one or more types of land use actions that are designated planned actions by city ordinance or resolution as more particularly outlined in TMC 14.10.030(B).

N. "Preapplication conference" means one or more of the two stages of meetings between an applicant and the development review committee usually held after a "feasibility review," but prior to submission of a land use permit application. The two stages, "preliminary review" and "formal review," are progressions toward development of the land use permit application designated to evaluate developing

application submittal documents, to answer questions and provide procedural information to prospective applicants, and to guide applicants with preparation of a permit application submittal.

O. “Preliminary review” means the first stage of a preapplication conference to analyze an applicant’s initial development proposal, usually based on information received from a feasibility review. The preliminary review is the initial review of development proposal documents to identify potential problems and develop the preliminary proposal toward submittal of the land use permit application.

**14.02.030 Applicability.**

A. By the adoption of this title, the city has consolidated land use permit application and review procedures in order to integrate land use permit and environmental review processes to avoid duplication.

B. Approval of a land use permit application must be completed, and all appeal periods terminated prior to application for a building or any other construction permit.

1. The applicant shall construct and develop projects that have been reviewed as land use permit applications in compliance with the approved site plan and conditions attached thereto.

2. In limited circumstances, the director may allow by a written decision for building and other construction permits to be submitted for review prior to the completion of all land use permit application approvals and appeals. Such a decision shall be subject to the applicant assuming responsibility if changes to the building or construction permit application are required to meet the subsequent land use permit application approval or appeal resolution.

C. A land use permit approval under this title is required for the following actions:

1. A change of use of land, variance, planned unit development, site plan review, citywide design guidelines, or other land use approvals in TMC Title 18 Zoning, aside from those approvals excluded in TMC 14.02.030(D), including:

- a. Any addition that results in a substantial revision to the approved site plan or land use permit application as defined in TMC 14.02.060;
- b. Any new nonresidential use of land; and
- c. The location or construction of any nonresidential building or any project which contains five or more dwelling units;

2. Environmental permit approvals subject to TMC Title 16 Environment;

3. Land division approvals subject to TMC Title 17 Land Division;

4. Shoreline approvals subject to the city’s shoreline master program; and

**Commented [BM12]:** Moved to new TMC 14.04.020(E)(2)

**Commented [BM13]:** Former TMC 14.02.040

**Commented [BM14]:** RCW 19.27.095 Building permit application.

(1) A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

**Commented [BM15]:** See TMC 14.02.080.

5. Site-specific rezones that do not require a comprehensive plan amendment, text amendments to the municipal code, general area rezones, and comprehensive plan text or map amendments subject to TMC 18.60 Text Amendments and Rezones.

D. The following approvals are not subject to the approval procedures in this title:

1. Building and construction approvals subject to TMC Title 15 Buildings and Construction; and
2. Floodplain development permits subject to TMC 18.38.
3. Any other approvals not listed in TMC 14.02.030(C).

#### 14.02.040 Time limits.

A. Except as otherwise provided in this title, the director shall issue a notice of final decision or approve a land use permit application within the number of days established by TMC Table 14.04.030 after notifying the applicant that the application is complete, as provided in TMC 14.08.020.

B. In determining the number of days that have elapsed after the director has established that the application is complete, the following periods shall be excluded:

1. Any period after an applicant informs the city in writing that they would like to temporarily suspend review of the land use permit application until the time that the applicant notifies the city in writing that they would like to resume the review of the application.
  - a. The city may set a time limit and conditions for the temporary suspension of a permit application.
  - b. If an applicant informs the city in writing that the applicant would like to temporarily suspend the review of the land use action for more than sixty days, an additional thirty days shall be added to the time periods for the city to take action to issue a final decision for each type of land use permit subject to this title:
2. Any period during which the applicant has been requested by the city to correct plans, perform required studies, or provide additional required information.
  - a. This period shall be calculated from the date the director notifies the applicant of the need for additional information until the earlier of the date the director determines whether the additional information satisfies the request for information or fourteen days after the date the information has been provided.

**Commented [BM16]:** New section.

Under RCW 36.70B.080, we can exclude certain permit types, so based on the definition in RCW 36.70B.020(4) we are proposing to explicitly exclude permits addressed in Title 15 from the processes in Title 14 but include those in Titles 16, 17, and 18.

*(c) A jurisdiction may exclude certain permit types and timelines for processing project permit applications as provided for in RCW 36.70B.140.*

**Commented [BM17]:** Moved to new TMC 14.02.030

b. If the director determines that the information submitted by the applicant is insufficient under TMC 14.08.020(A)(2), the director shall notify the applicant of the deficiencies and the procedures under TMC 14.08.020(F) shall apply as if a new request for studies had been made.

c. If an applicant is not responsive for more than sixty consecutive days after the city has notified the applicant in writing that additional information is required to further process the application, an additional thirty days shall be added to the time periods for the city to take action to issue a final decision for each type of land use permit subject to this chapter.

d. A land use permit application shall expire if an applicant does not respond in writing to a request for additional information within ninety days.

e. Any written notice from the city to the applicant that additional information is required to further process the application must include a notice that nonresponsiveness for sixty consecutive days may result in thirty days being added to the time for review and that the application will expire according to TMC 14.02.040(A)(2)(d).

f. For the purposes of this subsection, not being responsive means that an applicant is not making demonstrable progress on providing additional requested information to the city, or that there is no ongoing written communication from the applicant to the city on the applicant's ability or willingness to provide the additional information.

3. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 43.21C RCW;

4. Any period after an administrative appeal is filed until the administrative appeal is resolved and any additional time period provided by the administrative appeal has expired; and

5. Any extension of time mutually agreed upon in writing by the applicant and the director.

C. The time limits established by TMC Table 14.04.030 do not apply if a land use permit application:

1. Is a text amendment to the municipal code, a general area rezone, or a comprehensive plan text or map amendment subject to TMC 18.60 Text Amendments and Rezones;

2. Requires approval of the siting of an essential public facility as provided in RCW 36.70A.200; or

**Commented [BM18]:** Old code TMC 14.04.040(A)(1) is 180 days

3. Is substantially revised by the applicant as determined by the process in TMC 14.02.060, in which case the time period shall start from the date at which the revised application is determined to be complete under TMC 14.08.020.

**D. If Review Time Limits are not Met.**

1. If the director is unable to issue their final decision within the time limits provided for in TMC Table 14.04.030, as extended as allowed by TMC 14.02.040(A), the director shall refund a portion of the land use permit application fee to the applicant.

2. The portion of the fee refunded for the city missing time periods shall be:

a. Ten percent if the final decision of the land use permit application was made after the applicable time limit in TMC Table 14.04.030 but the period from the end of the time limit to the time of issuance of the final decision does not exceed twenty percent of the original time limit; or

b. Twenty percent if the end of the applicable time limit in TMC Table 14.04.030 to the time of the issuance of the final decision exceeded twenty percent of the original time period.

**E. Regardless of whether any period is a minimum or maximum, when any land use permit review, notice, or decision time limit of this title terminates on a weekend or city holiday, such time limit automatically extends to the first following non-holiday weekday.**

**14.02.050 General notice requirements.**

**A. Notices that are required by this title should be distributed as follows:**

1. Publication in the official newspaper if one has been designated or a newspaper of general circulation in the city;

2. Mailing to all owners of property as listed on the records of the Thurston County assessor within three hundred feet of the boundaries of property which is the subject of the meeting, hearing, or pending land use action. The director may extend notification beyond three hundred feet in cases where the area notified does not provide adequate notice to neighbors affected by the pending action. Addressed, prestamped envelopes shall be provided by the applicant;

3. Posting at least one notice on the subject property by the applicant in accordance with specifications provided by the department; and

4. Whenever practical, the director may utilize additional forms of notice.

**B. Content of Notice. The public notice shall include:**

1. The address, location, and a vicinity map or sketch of the property which is the subject of the land use permit application;

**Commented [BM19]:** New section reflecting new time limits in RCW 36.70B.080.

The 120-day requirement established by RCW 36.70B.080 has been replaced by the new requirements in SB 5290.

**Commented [BM20]:** Former TMC 14.02.050 replaced by TMC 14.04.010 and TMC 14.04.020.

2. The date, time, location, and purpose of the meeting or hearing;

3. A general description of the proposed project or land use action to be taken; and

4. A place where further information about the meeting or hearing may be obtained.

C. Public notices shall be written in a form and use words easily understood by the public. Any technical terms or complex legal phrases should either be avoided or restated in commonly understood language.

D. All notices are deemed to have been provided or received on the date the notice is deposited in the mail, sent electronically, or personally delivered, whichever occurs first.

E. Optional Public Notice.

1. In addition to required public notice, the city may provide notice to other individuals or organizations interested in or possibly affected by the proposal.

F. Failure to provide public notice as described in this title is not grounds for invalidation of a decision on a land use permit.

**14.02.060 Determination of a substantially different proposal.**

A. If the director determines that the content of a land use permit application has been so substantially revised by an applicant, either voluntarily or to conform with applicable standards and requirements, that such revised proposal constitutes a substantially different proposal than that originally submitted, the director shall determine that the revised proposal is new application.

B. In reaching a determination whether a revision is so substantial as to constitute a new land use permit application, the director shall consider:

1. The relative and absolute magnitude of the revision;

2. The environmental sensitivity of the site; and

3. Any changes in location of significant elements of the proposed project and their relation to public facilities, surrounding lands and land uses, and the stage of review of the proposal.

C. Lesser revisions that would not constitute substantial revisions during preliminary stages of review may be substantial during later stages due to the reduced time and opportunity remaining for interested parties to review and comment upon such changes.

D. The director shall provide written notice of the determination that the revision is so substantial as to constitute a new application to the applicant and all parties of record.

**Commented [BM21]:** From TMC 14.06.060.

**Commented [BM22]:** Moved to new TMC 14.06.010.

**Commented [BM23]:** Expansion of former TMC 14.04.040(B)(3)

E. The director's determination that a revision is so substantial as to constitute a new land use permit application shall result in the time periods set forth in TMC Table 14.04.030 to restart from the date when the revised application is determined to be complete.

F. The revised land use permit application is subject to all laws, regulations, and standards in effect on the date of receipt of such revised application.

**14.02.070 Expiration of approvals.**

A. An applicant is responsible for knowing the expiration date of any land use permit approval as the city is not responsible for notifying an applicant of expirations.

**B. Land Use Permit Approval.**

1. Except as noted elsewhere in this section, land use permit approvals are valid for a period of eighteen months.

a. Unless exercised by the complete application for necessary building and construction permits, a land use permit approval expires and is null and void eighteen months from the date the final approval was issued unless a different time limitation is established by this section.

b. A specific land use permit approval time period, as deemed necessary by the nature of the proposed project or the other permits required by the proposed project, may be imposed by the director as a condition of the initial land use permit approval.

c. A land use permit approval may be extended an additional six months if complete building and construction permit applications for the proposed project are submitted prior to expiration of the land use permit approval.

d. Even absent such applications, upon finding that there has been no substantial change in relevant circumstances and standards, land use permit approval may be extended up to one additional year by the director pursuant to a written request submitted prior to expiration of land use permit approval.

i. The director may grant, limit, or deny the extension and may impose such conditions of extension to ensure compliance with any subsequently revised standards.

ii. If such written request for extension is not received by the department prior to expiration, the director shall deny such extension.

**C. Land Divisions.**

1. Preliminary Plats.

**Commented [BM24]:** RCW 36.70B.110(h):

*(h) The time periods for a local government to process a permit shall start over if an applicant proposes a change in use that adds or removes commercial or residential elements from the original application that would make the application fail to meet the determination of procedural completeness for the new use, as required by the local government under RCW 36.70B.070.*

**Commented [BM25]:** Moved to new TMC 14.06.020

**Commented [BM26]:** From TMC 18.56.070 CUP Time Limitations

a. The duration of preliminary plat approvals is found in TMC 17.14.080.

2. Final Plats.

a. The time limit for filing an approved final land division is found in TMC 17.24.100.

D. Conditional Use Permits.

1. Time limitations for conditional use permit approvals are found in TMC 18.56.070.

E. Planned Unit Developments.

1. Time limitations for planned unit development approvals are found in TMC 18.36.170.

F. Site Plan Reviews.

1. Time limitations for site review approvals are found in TMC 18.55.070.

G. Design review approvals expire simultaneously with expiration of any associated land use, building, or other construction permit or approval.

H. Variances and Reasonable Use Exceptions.

1. Unless exercised, a variance or reasonable use exception expires eighteen months from the date a final decision is issued. If timely exercised, a variance or reasonable use exception is valid indefinitely.

I. United States Fish and Wildlife Service Incidental Take Permits.

1. For land use permit approvals issued by the city which are affected by the United States Fish and Wildlife Service's requirement for an incidental take permit, the director may issue time extensions in one year increments until an areawide or individual habitat conservation plan is approved by the U.S. Fish and Wildlife Service.

2. In no case shall time extensions for incidental take permits exceed three years.

3. During such extensions granted pursuant to this subsection, approvals shall continue to be subject to the conditions of approval and vested rights that applied to the approval prior to the extension, except for storm drainage standards, design guidelines, and building and fire codes, unless it would significantly alter the approval.

**14.02.080 Other provisions.**

A. Land Use Code Interpretations.

1. Purpose and applicability.

**Commented [BM27]:** From TMC 17.14.080(C) Plat Duration of approval.

**Commented [BM28]:** Moved and expanded in new TMC 14.08.010

**Commented [BM29]:** New section

- a. The purpose of this section is to establish the procedure for interpreting provisions of city land use codes to clarify conflicting or ambiguous wording.
  - b. The director is authorized to make written interpretations of the provisions of the following titles of the TMC:
    - i. TMC Title 14 Development Code Administration;
    - ii. TMC Title 16 Environment;
    - iii. TMC Title 17 Land Division;
    - iv. TMC Title 18 Zoning; and
    - v. Shoreline Management Program.
  - c. Issuance of an interpretation of the provisions of the codes cited in TMC 14.02.080(A)(1)(b) shall not amend the code.
2. Interpretation requests.
- a. Requests may be made by staff or an applicant prior to submission of a land use permit application.
    - i. A written request on a form provided by the department shall be submitted that specifies each provision of the codes in TMC 14.02.080(A)(1)(b) for which an interpretation is requested.
    - ii. The written request shall specify why an interpretation of each provision is necessary and any reasons or material in support of a proposed interpretation.
  - b. Code interpretations after a land use permit application has been submitted shall be made as part of the applicable land use permitting process pursuant to TMC Title 14 Development Code Administration.
4. Procedure.
- a. The director shall determine how to process the interpretation request.
  - b. The request shall be:
    - i. Processed as a Type I land permit application type decision; or
    - ii. Consolidated with the process associated with a preliminary or formal preapplication conference.
  - c. The director shall consult with the Department of Ecology regarding any interpretation of the shoreline management program.
5. Factors for consideration.

a. In making an interpretation of the provisions of the land use code, the director shall consider the following criteria:

- i. The applicable provisions of the land use code including their purpose and context;
- ii. The impact of the interpretation on other provisions of the code;
- iii. The implications of the interpretation for development within the city as a whole; and
- iv. The applicable provisions of the comprehensive plan and other relevant codes and policies.

6. Issuance of interpretation.

- a. The director shall issue a written interpretation within thirty days of the department's receipt of the interpretation request.
- b. Issuance of the interpretation shall include notification of the person making the request and publication of the interpretation on the city's website.
- c. Issued interpretations are not project approvals.

7. Appeals.

- a. Any person with standing may file an appeal of an issued interpretation.
- b. The appeal shall follow all rules and procedures for appeals of Type I land use permit applications to the hearing examiner as set forth in TMC Title 14 Development Code Administration.

B. Dedication, Improvements, and Performance Bonds.

- 1. As a condition of land use permit approval, the city may require an applicant to dedicate property, construct public improvements, or furnish performance bonds to the city to secure an obligation to complete the provisions and conditions of the land use permit as approved.

C. Building and Construction Permits.

- 1. The city shall not issue any building permit for the construction, alteration, or relocation of any building, structure, or part thereof or construction permit for the construction of any site improvements unless the plans, specifications, and intended use of such building or structure and site conforms in all respects to the final land use permit approval(s) required by this title.

D. Fees.

**Commented [BM30]:** See TMC 14.02.030.

**Commented [BM31]:** Question for Karen:

Can we not allow building or construction permit submittals until land use permit approvals are complete?

The issue for building permits have shorter permit review timeframes and we have ongoing issues with building permit applications submitted, put on hold until land use permit approval is complete, but extended multiple times.

Other permits have a variety of review timelines that do not sync well with land use permit review timeframes.

1. Land use permit application fees are updated annually by the city council resolution.

E. Vesting.

1. Land use permit approvals vest according to TMC 15.44 and other applicable state and federal laws.

F. Conflicts.

1. In the event of conflicts between the procedural requirements of this title and other development regulations of the city, the provisions of this title shall control.

Commented [BM32]: Old TMC 14.08.040.

**Chapter 14.04**

**LAND USE PERMITS**

Sections:

14.04.010 Land use permit application procedures and types.

14.04.020 Decision and appeal authorities.

14.04.030 Land use permit application review periods.

**14.04.010 Land use permit application procedures and types.**

Commented [BM33]: New section.

A. An applicant seeking land use permit approval shall apply on forms provided by the city and provide all the items noted on land use permit application checklists, unless waived in writing by the director.

B. Application fees as established by the city are due at the time of submittal of a land use permit application.

C. Applicable procedures for the review and decision on land use permit applications are pursuant to the provisions of this title.

D. Land Use Permit Application Types.

1. The director shall determine the proper land use permit application type for the processing of each application pursuant to the provisions of this title.

2. Land use permit applications are categorized as Type I, Type II, Type III, or Type IV.

a. Type I. Administrative decisions by the director who may approve, conditionally approve, or deny the application.

b. Type II. Administrative decisions by the director with specified public notice. The director may approve, conditionally approve, or deny the application.

c. Type III. Hearing examiner decisions following a public hearing. The hearing examiner may approve, conditionally approve, or deny the

application. The director shall provide the city's recommendation to the hearing examiner for consideration.

d. Type IV. Legislative decisions by the city council after a public hearing. The city council may approve, conditionally approve, modify and approve, or deny the application. Type IV applications are not subject to review timeline limitations of this title.

3. TMC Table 14.04.010 identifies examples of the types of land use permit applications included in each application type.

4. Decision and appeal authorities for each land use permit application type is identified in TMC Table 14.04.020(A).

5. Permit notice requirements for each land use permit application type is identified in TMC Table 14.04.020(B).

6. Review times for each land use permit application type is identified in TMC Table 14.04.030.

**Table 14.04.010**

**Land Use Permit Application Types<sup>1</sup>**

<b><u>Land Use Permit Application Type</u></b>	<b><u>Examples</u></b>
<b><u>Type I</u></b>	<b><u>Boundary line adjustments, critical area requests for determination of applicability, final plats, home occupation permits, land clearing permits, land use code interpretations, lot consolidations, plat time extensions, preliminary short plats, preliminary SEPA threshold determinations (if EIS is required), reasonable use exemptions, shoreline exemptions, site plan review, sign permits, temporary use permits, and tree permits</u></b>
<b><u>Type II</u></b>	<b><u>Any Type 1 permits that are not SEPA exempt</u></b>
<b><u>Type III</u></b>	<b><u>Binding site plans (phased), conditional use permits, planned unit developments, plat alternations with hearing, plat vacations, preliminary plats, replats, shoreline conditional use permits, shoreline substantial development permits, shoreline variances, site-specific rezones not requiring a comprehensive plan amendment, and zoning variances</u></b>

**Commented [BM34]:** Excludes building permits and other related Title 15 building approvals, including concurrency applications which TMC 15.48.040 considers part of the building permit application.

<u>Land Use Permit Application Type</u>	<u>Examples</u>
Type IV	<u>Development code amendments, comprehensive plan map and text amendments, development agreements, rezones requiring comprehensive plan amendments, and shoreline master program amendments</u>

TMC Table 14.04.010 Explanatory Notes:

<sup>1</sup> The table is not an exhaustive list of all land use permit application types. For any land use permit application not listed in the table, the director will determine the application type.

**14.04.020 Decision and appeal authorities.**

A. TMC Table 14.04.020(A) describes the final decision and appeal authorities for each land use permit application type.

1. When separate land use permit applications are consolidated under TMC 14.10.040(B) the final decision and appeal shall be rendered by the highest authority designated for any part of the consolidated application in TMC Table 14.04.020(A).
2. Hearing examiner decisions may be appealed to superior court, except final shoreline permit actions which may be appealed to the shoreline hearings board.

B. TMC Table 14.04.020(B) provides public notice requirements for each land use permit application type.

1. When separate land use permit applications are consolidated under TMC 14.10.040(B) the public notice requirements in TMC Table 14.04.020(B) shall be based on the highest land use permit application type in the consolidated application.

C. A land use permit approval may be amended at the applicant's request by the same procedures provided under this title for original application approval and are subject to TMC 14.02.060.

D. The review process for a land use permit application may include review and approval by the following entities:

1. Department Staff.
  - a. Individual staff, as assigned by the director, shall have the authority to:
    - i. Review and approve, deny, modify, or conditionally approve Type I land use permit applications, and

**Commented [BM35]:** Moved to new TMC 14.10.010

**Commented [BM36]:** New section replaces TMC 14.08.030

ii. Provide recommendations to the director regarding land use code interpretations.

2. Development Review Committee.

a. The development review committee shall have authority to:

i. Conduct feasibility review;

ii. Conduct preapplication conferences;

iii. Make such decisions as are delegated to it by the director;

iv. Grant, conditionally grant, deny, or modify Type II land use permit applications;

v. Provide recommendations to the director regarding land use code interpretations;

vi. Make post application determinations in conjunction with the issuance of land use permits; and

vii. Make recommendations where the hearing examiner is charged with approval authority.

b. The committee shall advise the director, who is responsible for all land use related decisions.

c. The committee shall adopt rules of procedure for the purpose of ensuring fair, lawful, and timely recommendations.

d. The committee shall meet weekly.

e. The committee agenda shall be prepared and posted by the department pursuant to the notification standards found in TMC 14.02.050.

3. Hearing Examiner.

a. The hearing examiner shall have the authority vested pursuant to TMC 2.58.090, including approval authority for Type III land use permit applications and appeal of all staff decisions on Type I and II land use permit applications including SEPA determinations.

E. Referral to Hearing Examiner.

1. If in the director's opinion a land use permit application is extraordinarily complex or presents significant environmental, design, or compatibility issues, the director may refer the land use permit application for a public hearing before the hearing examiner.

2. The director may decide at any time to refer a land use permit application to the examiner.

**Table 14.04.020(A)**  
**Decision and Appeal Authority**

<u>Land Use Permit Application Type</u>	<u>Recommendation</u>	<u>Hearing Body</u>	<u>Decision Authority</u>	<u>Appeal To (Open or Closed Record Appeal)</u>
<u>Type I</u>	<u>DRC</u>	<u>N/A</u>	<u>DIR</u>	<u>HEX</u>
<u>Type II</u>	<u>DRC</u>	<u>N/A</u>	<u>DIR</u>	<u>HEX</u>
<u>Type III</u>	<u>DIR - site-specific rezones not requiring a comprehensive plan amendment. DRC – All others.<sup>1</sup></u>	<u>HEX</u>	<u>HEX</u>	<u>Superior Court or WA State ELUHO for shoreline permits (closed record)</u>
<u>Type IV</u>	<u>PC</u>	<u>PC</u>	<u>CC</u>	<u>Superior Court or WA State ELUHO</u>

TMC Table 14.04.020(A) Legend:

CC – City Council

DIR – Director of the Community Development Department

DRC – Development Review Committee

ELUHO – State Environmental and Land Use Hearings Office

HEX – Hearing Examiner

N/A – Not Applicable

PC – Planning Commission

TMC Table 14.04.020(A) Explanatory Notes:

<sup>1</sup> Decisions on shoreline conditional use permits are issued by the city and the city’s decision can be appealed. The city’s decision is sent to the State Department of Ecology for further review and approval or disapproval. After the city appeal process and Ecology’s review processes are complete, appeals may be made to the ELUHO within twenty-one days of the “date of filing” as defined in RCW 90.58.140(6).

**Table 14.04.020(B)**

**Public Notice Requirements**

<u>Land Use Permit Application Type</u>	<u>Determination of Completeness</u>	<u>Notice of Application</u>	<u>Notice of Hearing</u>	<u>Notice of Decision</u>
Type I	No	No	N/A <sup>1</sup>	No
Type II	Yes	Yes	N/A <sup>1</sup>	Yes
Type III	Yes	Yes	Yes	Yes
Type IV	No	No	Yes	Adoption of Ordinance

TMC Table 14.04.020(B) Explanatory Notes:

<sup>1</sup> If Type I or Type II land use permit application types are appealed, then public notice of hearing requirements would apply.

**14.04.030 Land use permit application review periods.**

**A. Review Period.**

1. The decision authority established in TMC Table 14.04.020(A) shall make a final decision on a land use permit application within time limits set forth in TMC Table 14.04.030.

a. When separate land use permit applications are consolidated under TMC 14.10.040(B) the time limits for review in TMC Table 14.04.030 shall be based on the highest land use permit application type in the consolidated application.

b. The city shall review and process a land use permit application to allow for a final decision by the decision authority established in TMC Table 14.04.020(A) within these time limits.

**Table 14.04.030**

**Land Use Permit Application Review Times**

<u>Land Use Permit Application Type</u>	<u>Time in Review</u>
Type I	65 days • Final Plat: 30 days (TMC 17.24.050)
Type II	100 days
Type III	170 days • Preliminary Plat: 90 days (RCW 58.17.140)

**Commented [BM37]:** Days noted are from RCW 36.70B.080.

Staff discussion is needed is needed to confirm final review times.

**Commented [BM38]:** RCW 58.17.140 Time limitation for approval or disapproval of plats—Extensions. (1) Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): PROVIDED, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency. (2) Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period.

<u>Land Use Permit Application Type</u>	<u>Time in Review</u>
<u>Type IV</u>	<u>Not subject to review timeline limitations of this title.</u>

B. Time Limit Exceptions. The time limits set forth above do not include:

1. Up to the first 28 days after receipt of a land use permit application, during which the city determines whether the application is complete under TMC 14.08.020.
2. Any period during which the applicant has been requested by the city to correct plans, perform studies, or provide additional information under TMC 14.08.020(D).
3. Any appeal period. See TMC Chapter 14.12 for appeal procedures.
4. Any extension of time mutually agreed upon by the applicant and the city under TMC 14.02.040.
5. The time required to prepare and issue an environmental impact statement in accordance with SEPA.

**Chapter 14.06**

**PREAPPLICATION PROCESS**

Sections:

14.06.010 Feasibility review.

14.06.020 Preapplication conferences.

**14.06.010 Feasibility review.**

A. At the option of the applicant, the development review committee will provide limited information through a feasibility review as a precursor to a formal preapplication conference as described in TMC 14.06.020.

B. For a feasibility review, the applicant need not have available all the information required on the feasibility review application.

C. The information provided by the development review committee will be verbal only and limited by the detail of the information provided by the applicant.

D. Applications for feasibility review shall be scheduled for specific time periods on the agenda prepared for development review committee meetings each week.

E. Feasibility reviews shall be public meetings, unless requested otherwise in writing by the development proponent with submittal of the feasibility review application.

**14.06.020 Preapplication conferences.**

**Commented [BM39]:** Former old TMC 14.02.060

**Commented [BM40]:** Confirm with Karen if these do not need to be open meetings.

**Commented [BM41R40]:** If formally a part of Title 14 can feasibility meetings be closed to the public?

**Commented [BM42]:** Former old TMC 14.02.070

A. Applications for all land use permits except for minor development proposals such as fences, small detached buildings, and individual single-family residences, duplexes, triplexes, and quadplexes, shall not be accepted for processing until the applicant has scheduled and attended preapplication conferences.

B. The purpose of preapplication conferences is to enable the applicant to present the project proposal to the development review committee to understand to the intent, standards and provisions of the applicable development regulations that will be required in land use permit applications. The intent is to eliminate as many potential problems as possible in order for land use permit applications to be processed without delay or undue expense.

C. At the preapplication conferences, the development review committee shall make available all pertinent information related to the project area. The preapplication conferences should take place prior to detailed work by the applicant's engineer or surveyor. Discussion topics at conferences would include such things as:

1. The comprehensive plan and subarea plans;
2. The shoreline master program;
3. The regulatory requirements of the following titles:
  - a. TMC Title 15 Buildings and Construction;
  - b. TMC Title 16 Environment;
  - c. TMC Title 17 Land Division, if applicable; and
  - d. TMC Title 18 Zoning;
4. Transportation requirements:
  - a. The transportation plan and transportation concurrency;
  - b. Sidewalk requirements;
  - c. Bike paths; and
  - d. Bus stops;
5. Utilities:
  - a. Availability of sewer and water; and
  - b. Need for utility extension or oversizing;
6. Phasing of off-site requirements such as sidewalks, streetlights, traffic signals, utilities, or improvement of adjacent streets;
7. Latecomer charges;

8. Storm drainage and erosion control;

9. Citywide design guidelines;

10. Other city requirements and permits;

11. Features of the development, and the rationale behind them;

12. If the applicant owns adjacent land, the possibilities of future development shall be discussed; and

13. Application review process and timelines.

D. The development review committee will provide the applicant with written comments on how the proposed project conforms to city policies and regulations, which will include a list of all the materials needed to make land use permit applications procedurally complete and the requirements for development approval.

E. Preapplication conferences shall consist of two stages:

1. Preliminary Review.

a. At preliminary review, the applicant shall present to the development review committee preliminary studies or conceptual sketches which contain in a rough and approximate manner based on the information required in the preliminary review preapplication conference application.

b. The preliminary review of development proposal documents is intended to analyze and identify potential issues and develop the preliminary proposal toward submittal of land use permit applications.

2. Formal Review.

a. Formal review is the final preapplication evaluation of a development proposal based on information requested by the city from the applicant to determine suitability for submittal of land use permit applications based on the information required in the formal review preapplication conference application.

b. Prior to formal review, the department shall evaluate whether a proposed project has potential to significantly affect the character or environment of an area; and in such cases, will encourage the development proponent to participate in additional notification efforts including, but not limited to, a public information meeting with members of the public potentially affected by the proposal.

F. Applications for preliminary and formal reviews shall be scheduled for specific time periods on the development review committee agenda each week and shall be public meetings.

G. The director may waive the requirement for either or both stages of preapplication conference in individual cases if the department and the applicant agree a proposal is ready for land use permit application submittal.

**Commented [BM43]:** Moved to new TMC 14.10.040

## **Chapter 14.08**

### **LAND USE PERMIT APPLICATION SUBMITTALS**

#### Sections:

14.08.010 Land use permit applications.

14.08.020 Determination of completeness.

#### **14.08.010 Land use permit applications.**

**Commented [BM44]:** Expansion of old TMC 14.02.080

A. Applications for land use permits shall be submitted using the forms provided by the department.

**Commented [BM45]:** Replaced by TMC 14.04.020

B. A land use permit application that is procedurally complete shall consist of all materials required by the city's development guide and other applicable development regulations listed in the land use permit application checklist, which are prepared pursuant to TMC 14.08.010(C), as supplemented in writing by the development review committee pursuant to the preapplication conference process in TMC 14.06.020.

C. The director shall approve the content of the land use permit application checklists and may waive in writing submittal items required by TMC 18.08.010(D) depending on the land use permit application type.

D. Each land use permit application at a minimum shall include the following information:

1. A complete application form containing:

a. The title and location of the proposed project;

b. The names, addresses, telephone numbers, and email addresses of the record owner or owners of the land and of the applicant, and, if applicable, the names, addresses, telephone numbers, and email addresses of any architect, planner, designer, engineer, or other consultants responsible for the preparation of the application, and of any authorized representative of the applicant; and

c. The designation of a single person or entity by the applicant to receive application determinations and notices required by this title;

**Commented [BM46]:** Derived from RCW 36.70B.100

2. A verified statement by the applicant that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all the owners of the affected property;

3. A legal description of the site;
4. A title report or plat certificate issued by a title company which shows property ownership, and any easements or other encumbrances shall be submitted with the application package. Such title report or plat certificate shall be dated no more than thirty days prior to submittal;
5. The applicable land use permit application fee;
6. Evidence of adequate water supply as required by RCW 19.27.097;
7. Evidence of sewer availability, or approval and authorization to construct a community or individual sewer or septic system;
8. Complete plans, studies, and/or reports identified in the land use permit application checklist and the preapplication conferences;
9. A complete description of the each proposed use of the land and buildings, including the size of each use, and if a residential use, the number, size, and number of bedrooms of each dwelling unit;
10. The written recommendations of the health department, the building division, transportation & engineering department, water resources & sustainability department, parks and recreation department, and fire department as to any portion of the land use permit application covering areas within their respective jurisdictions;
11. All materials required by TMC Title 16 Environment shall be included in the land use permit application, including a SEPA environmental checklist if required; and
12. For land use actions proposing land division pursuant to TMC Title 17 Land Division, all materials required by that title shall be included in the land use permit application.
13. A site plan drawing or drawings at a scale of not less than one inch for each twenty feet which shall show:
  - a. General Information.
    - i. Project name;
    - ii. Street address of property;
    - iii. Title block containing the drawing title, scale, revision number, if applicable, north arrow, and date;
    - iv. Vicinity map including streets and surrounding landmarks within 500 feet of the property or enough information to easily locate the site on a large city map;

- v. Legal description of the property as provided by the Thurston County assessor's office;
- vi. Parcel numbers as provided by the Thurston County assessor's office;
- vii. Parcel map as provided by the Thurston County assessor's office showing all adjacent parcels;
- viii. Existing zoning;
- ix. Lot size;
- x. Square footage of floor area in each structure;
- xi. Parking spaces and parking lot dimensions;
- xii. Type of construction proposed;
- xiii. The proposed number of square feet in paved or covered surfaces, whether covered by buildings, driveways, parking lots, or any other structure covering land; and the total amount of square feet in the entire proposed project site;
- xiv. The proposed number of dwelling units and project density, including the number of dwelling units for each existing or proposed structure on the site and number of units per gross acre, if applicable;
- xv. The proposed number of square feet in gross floor area for each commercial, industrial, and institutional use, if applicable; and
- xvi. If project will be developed in phases, the number of phases, the size of each phase, and the number of units or buildings for each phase;
- b. Site Information.
  - i. Location of property lines, indicating exterior lines with bold solid lines and interior lines with long dashed lines;
  - ii. If the property is to be divided pursuant to TMC Title 17 Land Division, the boundaries of each proposed lot and tract within the property;
  - iii. Survey maps which delineate topographic contour lines showing both existing and proposed elevations, at two foot intervals, extending a minimum of 10 feet beyond the property line. The interval should be such that the existing and proposed slopes of the property can be determined on the drawing. Proposed contours shall show ties to existing contours and show spot elevations as needed;
  - iv. All existing and proposed public and private easements;

- v. The number and size of all phases in the proposed project, if applicable;
  - vi. Proposed building(s), including dimensions;
  - vii. Front, rear, and side building setbacks with clear dimensions;
  - viii. Distance to adjacent structures on site, if applicable;
  - ix. Locations and dimensions of off-street and on-street parking, including accessible parking, parking designated per unit if applicable, lot striping, wheel stops and curbing, including turning radii in the circulation pattern;
  - x. Locations and dimensions of existing and proposed driveways, traffic flow, emergency vehicle access, and parking lot circulation and maneuvering areas;
  - xi. Locations and dimensions of existing and proposed rights-of-way, streets, curbs, gutters, and street centerlines, including pavement edges;
  - xii. Dimensions and locations of walkways, trails, sidewalks, and curb cuts;
  - xiii. Sizes and locations of solid waste containers showing details of any site screening fences or structures and screening of dumpsters;
  - xiv. Location of existing and proposed signs including elevation, size, material, color, design, and method of illumination;
  - xv. Dimensions, types, and locations of fencing;
  - xvi. Locations, dimensions, and types of critical areas and buffers pursuant to TMC Title 16 Environment;
  - xvii. Information required by TMC 16.08.050 addressing trees and vegetation;
  - xviii. Locations, dimensions, and types of open space;
  - xix. Information required by the shoreline master program, if the property the project is located on is within shoreline jurisdiction;
  - xx. The existing zone district of the proposed project site and any other zone district within three hundred feet of the site; and
  - xxi. All special districts, including, but not limited to school or water districts, in which the proposed project shall be located and all such districts within three hundred feet of the proposed project;
- c. Building Information.

i. Architectural elevations of existing and proposed buildings, including height and number of stories, along with any mechanical roof-mounted equipment; and

ii. Generalized floor plans, planned uses for each area of building (including occupancy type, if known), finished floor elevations, and exiting and accessibility accommodations;

d. Infrastructure Improvements.

i. Location of existing and proposed storm sewers, catch basins, utility holes, parking lot storm drains, detention structures, etc.;

ii. Locations and dimensions of stormwater treatment, flow control, and low impact development facilities;

iii. Location and size of existing and proposed water mains, valves, service lines, size of water meters, sprinkler systems, fire hydrants, and backflow devices;

iv. Location and size of existing and proposed sanitary sewer collectors, utility holes, pumping stations, force main and side services, including cleanouts; and

v. Location of other existing and proposed utilities, including, but not limited to, gas, power, telephone, streetlights.

e. Landscaping.

i. The applicant shall submit a stamped landscape plan pursuant to TMC 18.47 Landscaping that is consistent with the proposed site plan.

**14.08.020 Determination of completeness.**

A. Within twenty-eight days after receiving a land use permit application or sooner, if completed, the department shall provide a written determination to the applicant which states either:

1. That the application is complete and that the procedural submission requirements of this title have been met; or

2. That the application is incomplete and that the procedural submission requirements of this title have not been met. The determination shall outline what is necessary to make the application procedurally complete.

B. To the extent known, the department shall identify other local, state, or federal agencies that may have jurisdiction over some aspect of the land use permit application in the determination of completeness.

C. Definition of a Complete Application.

**Commented [BM47]:** Replaces old TMC 14.02.090

**Commented [BM48]:** RCW 36.70B.070(1)(a)(ii)

**Commented [BM49]:** Derived from RCW 36.70B.070(1)(d)

1. A land use permit application is complete for purposes of TMC 14.08.020 when it meets the procedural submission requirements of TMC 14.08.010, as well as the submission requirements contained in all other applicable development regulations of the city.

**Commented [BM50]:** How do we determine what these are and if they meet the procedural review requirements?

D. Requesting Additional Information.

1. Additional information or studies may be required, or modifications to the project may be undertaken after the procedural review of the land use permit application by the city.

2. The city's determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the determination of completeness or later if additional information is required or where there are substantial changes in the proposed land use action as defined in TMC 14.02.060.

E. The determination of completeness may include or be combined with the following actions:

1. A preliminary determination of those development regulations that will be used for mitigation of the proposed project;

2. A preliminary determination of consistency according to TMC 14.10.010;

3. Other information the city chooses to include; or

4. The notice of application pursuant to the requirements in TMC 14.10.050.

**Commented [BM51]:** RCW 36.70B.070(3)

F. Incomplete Land Use Permit Application Procedure.

1. If the applicant receives a determination from the city that a land use permit application is not complete, the applicant shall be subject to the time period requirements specified in TMC 14.02.040(B)(2) to submit the necessary information to the city.

2. Within fourteen days after an applicant has submitted to the city the requested additional information, the city shall make a written determination to the applicant as described in TMC 14.08.020(A).

3. If the applicant either refuses in writing or fails to submit the required information or additional information within the ninety-day period, the land use permit application shall expire as specified in TMC 14.02.040(B)(2).

4. Upon failure to cure any deficiency the department shall refund fifty percent of the filing or application fees submitted with the incomplete application.

G. City's Failure to Provide Determination of Completeness.

1. A land use permit application shall be deemed procedurally complete under TMC 14.08.020 if the city does not provide a written determination to the applicant that the application is incomplete as provided in TMC 14.08.020(A)(2).

H. When the city determines that the application is complete, the City shall note the date of the determination and the official review period to render a decision, as identified in TMC Table 14.04.030, begins.

### **Chapter 14.10**

### **LAND USE PERMIT APPLICATION REVIEW**

#### Sections:

14.10.010 Land use action review and determination of consistency.

14.10.020 Initial SEPA analysis.

14.10.030 Categorically exempt and planned actions.

14.10.040 Referral and review of land use permit applications.

14.10.050 Notice of application.

#### **14.10.010 Land use action review and determination of consistency.**

A. Purpose. When the city receives a land use permit application, consistency between the proposed project and the applicable regulations and comprehensive plan should be determined through the process in this chapter and the city's environmental regulations.

#### B. Consistency.

1. During the land use permit application review, the city shall determine whether the items listed in TMC 14.10.010(B)(3) are defined in the development regulations applicable to the proposed project.

2. In the absence of applicable development regulations, the city shall determine whether the items listed in TMC 14.10.010(B)(3) are defined in the city's comprehensive plan.

3. At a minimum, a determination of consistency shall include the following information:

a. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;

b. The level of development, such as units per acre, density of residential development, or other measures of development intensity;

c. Availability and adequacy of infrastructure and public facilities identified in the comprehensive plan if the plan or development regulations provide for funding of these facilities as required by Chapter 36.70A RCW; and

Commented [BM52]: Replaced old TMC 14.04.010

d. Characteristics of the development, such as development standards and guidelines.

C. Nothing in TMC 14.10.010 requires documentation from the city, dictates the city's procedures for considering consistency, or limits the city from asking more specific or related questions with respect to any of the four main categories listed in TMC 14.10.010(B)(3) as part of land use application review.

D. During land use application review, the city shall not reexamine alternatives to or hear appeals on the items identified in TMC 14.10.010(B)(3), except for issues of land use code interpretation pursuant to TMC 14.02.080(A).

E. Nothing in TMC 14.10.010 limits the authority of the city to approve, condition, or deny a land use permit as provided in its development regulations adopted under Chapter 36.70A RCW and in its policies adopted under RCW 43.21C.060.

F. Land use application review shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts, if applicable.

#### 14.10.020 Initial SEPA analysis.

A. The city shall also review land use permit applications under the requirements of SEPA, Chapter 43.21C RCW, the SEPA Rules, Chapter 197-11 WAC, and the city's environmental policy ordinance, TMC 16.04, and shall:

1. Determine whether the applicable regulations require studies that adequately analyze all the land use permit application's specific probable adverse environmental impacts;
2. Determine if the applicable regulations require measures that adequately address such environmental impacts;
3. Determine whether additional studies are required and/or whether the land use permit application should be considered with additional mitigation measures;
4. Provide prompt and coordinated review by agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific impacts of a proposed project that have not been considered and addressed at the plan or development regulation level.

B. In its review of a land use permit application, the city shall determine if the requirements for environmental analysis, protection and mitigation measures in the applicable development regulations, comprehensive plan and/or in other applicable local, state, or federal laws provide adequate analysis of and mitigation for the specific adverse environmental impacts of the application.

**Commented [BM53]:** Derived from RCW 36.70B.030(5) and moved from TMC 14.04.040.

**Commented [BM54]:** Replaces old TMC 14.04.020

**Commented [BM55]:** How does the timing of this analysis work with the completeness review in TMC 14.02.090(A)? Do we want to make sure that the Pre-Application review process identifies the specific materials that are needed for a complete application?

**Commented [BM56R55]:** Tami - This is reflected in the complete application, required studies, etc? The completed checklist and any required studies (gopher, tree, traffic) if not exempt, must be present to issue complete application.

C. If the city bases or conditions its approval of the land use permit application on compliance with the requirements or mitigation measures described in TMC 14.10.020(A), the city shall not impose additional mitigation under SEPA during land use application review.

D. The comprehensive plan, development regulations, or other applicable local, state, or federal law provides adequate analysis of and mitigation for the specific adverse environmental impacts of a land use permit application when:

1. The impacts have been avoided or otherwise mitigated; and
2. The city has designated as acceptable certain levels of service, land use designations, development standards or other land use planning required or allowed by Chapter 36.70A RCW.

E. In its decision whether a specific adverse environmental impact has been addressed by an existing rule or law of another agency with jurisdiction with environmental expertise with regard to a specific environmental impact, the city shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the city shall base or condition its land use approval on compliance with these other existing rules or laws.

F. Nothing in TMC 14.10.020 limits the authority of the city in its review or mitigation of a proposed project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by Chapter 43.21C RCW.

G. The time limits applicable to SEPA review are found in TMC 16.04.040, TMC 16.04.070, TMC 16.04.090, and TMC 16.04.160.

#### **14.10.030 Categorically exempt and planned actions.**

##### **A. Categorically Exempt.**

1. Actions categorically exempt under RCW 43.21C.110(1)(a) do not require environmental review or the preparation of an environmental impact statement. An action that is categorically exempt under the rules adopted by the State Department of Ecology (Chapter 197-11 WAC) may not be conditioned or denied under SEPA (RCW 43.21C.031).

##### **B. Planned Actions.**

1. A planned action does not require a threshold determination or the preparation of an environmental impact statement under SEPA but is subject to environmental review and mitigation under SEPA.
2. A “planned action” means one or more types of project action that:
  - a. Are designated planned actions by an ordinance or resolution adopted by the city;

**Commented [BM57]:** Replaces old TMC 14.04.030

- b. Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with:
  - i. The comprehensive plan or a subarea plan adopted under Chapter 36.70A RCW; or
  - ii. A master planned development or a phased project;
- c. Are subsequent or implementing projects for the proposals listed in TMC 14.10.030(B)(2)(b);
- d. Are located within an urban growth area, as defined in RCW 36.70A.030;
- e. Are not essential public facilities, as defined in RCW 36.70A.200; and
- f. Are consistent with the city's comprehensive plan adopted under Chapter 36.70A RCW.

3. Limitation on Planned Actions.

- a. The city shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the city; and
- b. The city may limit a planned action to a time period identified in the environmental impact statement or in the ordinance or resolution designating the planned action under RCW 36.70A.040.

C. Limitations on SEPA Review.

- 1. During land use application review, the city shall not reexamine alternatives to or hear appeals on the items identified in TMC 14.10.010(B)(3), except for land use code interpretations pursuant to TMC 14.02.080.
- 2. Land use application review shall be used to identify specific project design and conditions relating to the character of development or other measures to mitigate a proposal's probable adverse environmental impacts.

**14.10.040 Referral and review of land use permit applications.**

A. Within fourteen days of accepting a complete land use permit application, the director shall take the following actions:

- 1. Transmit a copy of the land use permit application, or appropriate parts of the application, to each affected agency and city department for review and comment, including those responsible for determining compliance with state and federal requirements.
  - a. The affected agencies and city departments shall have fourteen days to comment.

**Commented [BM58]:** Replaces old TMC 14.06.020

- b. The referral agencies or city departments are presumed to have no comments if comments are not received within the specified time period.
- c. The director shall grant an extension of time for comment, only if the land use permit application involves unusual circumstances.
- d. Any extension shall only be for a maximum of one week.

**B. Consolidated Review and Decision.**

- 1. The city's land use permit review process shall integrate and consolidate the review and decision on two or more land use permits relating to a proposed project in a single application review and approval process covering all land use permits for a proposed project.
- 2. Land use permits in the consolidated review and decision process shall be:
  - a. Reviewed and approved by the decision and appeal authority specified in TMC 14.04.020(A)(1);
  - b. Follow the public notice requirements specified in TMC 14.04.020(B)(1);
  - c. Follow the permit review timelines specified in TMC 14.04.030(A)(1)(a); and
  - d. Follow the processes specified in TMC Chapter 14.10 and TMC Chapter 14.12.
- 3. The determination of completeness, notice of application, and notice of final decision must include all land use permits being reviewed through the consolidated land use permit review process.

**C. Hearing Examiner Approval.**

- 1. If hearing examiner approval is required, notice and hearing shall be provided as set forth in TMC 2.58.
- 2. Except for the appeal of a determination of significance as provided in RCW 43.21C.075, there shall be no more than one open record hearing and one appeal for land use permits.
- 3. When a public hearing is required in conjunction with a land use permit, the recommending authority shall issue its recommendation in sufficient time for the hearing examiner to issue a notice of final decision within the number of days established by TMC Table 14.04.030 from the date of the complete land use permit application.

**14.10.050 Notice of application.**

**A. Generally.**

**Commented [BM59]:** Derived from RCW 36.70B.050(2)

**Commented [BM60]:** Address multiple project permits for one project.

**Commented [BM61R60]:** Need to address RCW 36.70B.120

(1) Each local government planning under RCW 36.70A.040 shall establish a permit review process that provides for the integrated and consolidated review and decision on two or more project permits relating to a proposed project action, including a single application review and approval process covering all project permits requested by an applicant for all or part of a project action and a designated permit coordinator. If an applicant elects the consolidated permit review process, the determination of completeness, notice of application, and notice of final decision must include all project permits being reviewed through the consolidated permit review process.

(2) Consolidated permit review may provide different procedures for different categories of project permits, but if a project action requires project permits from more than one category, the local government shall provide for consolidated permit review with a single open record hearing and no more than one closed record appeal as provided in RCW 36.70B.060. Each local government shall determine which project permits are subject to an open record hearing and a closed record appeal. Examples of categories of project permits include but are not limited to:

- (a) Proposals that are categorically exempt from chapter 43.21C RCW, such as construction permits, that do not require environmental review or public notice;
- (b) Permits that require environmental review, but no open record predecision hearing; and
- (c) Permits that require a threshold determination and an open record predecision hearing and may provide for a closed record appeal to a hearing body or officer or to the local government legislative body.

(3) A local government may provide by ordinance or resolution for the same or a different decision maker or hearing body or officer for different categories of project permits. In the case of consolidated project permit review, the local government shall specify which decision makers shall make the decision or recommendation, conduct the hearing, or decide the appeal to ensure that consolidated permit review occurs as provided in this section. The consolidated permit review may combine an open record predecision hearing on one or more permits with an open record appeal hearing on other permits. In such cases, the local government by ordinance or resolution shall specify which project permits, if any, shall be subject to a closed record appeal.

**Commented [BM62]:** What is typically "Sufficient time"

**Commented [BM63]:** Replaces old TMC 14.06.010

1. A notice of application shall be issued on all Type II and Type III land use permit applications for which the hearing examiner has decision making authority, or SEPA review is required as required by TMC Table 14.04.020(B).
2. The notice of application shall be issued pursuant to the general notice requirements of TMC 14.02.050.
3. The notice of application shall be issued prior to and is not a substitute for any other required notice of a public hearing.

**B. SEPA Exempt Projects.**

1. A notice of application shall not be required for Type I land use permit applications that are categorically exempt under SEPA and fall below the thresholds established in WAC 197-11-800(1)(b)(i) through (v), unless a public comment period or an open record predecision hearing is required or an open record appeal hearing is allowed on the land use permit decision.

**C. Contents. The notice of application shall include:**

1. The date of the land use permit application, the date of the notice of completion for the application, and the date of the notice of application;
2. A description of the proposed project action and a list of all land use permit applications and, if applicable, a list of any studies requested under TMC 14.08.010 or other permits;
3. The identification of other permits not included in the land use permit application, to the extent known by the city;
4. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated in the document providing notice of application, the location where the land use permit application and any studies can be reviewed;
5. A statement of the limits of the public comment period, which shall not be less than fourteen nor more than thirty days following the date of notice of application, and a statement of the right of any person to comment on the land use permit application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;
6. The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of application;
7. A statement of the preliminary determination of consistency, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation and of consistency as provided in TMC 14.10.010; and

**Commented [BM64]:** How should we address RCW 36.70B.110(1)

Nothing in this section or this chapter prevents a lead agency, when it is a project proponent or is funding a project, from conducting its review under chapter 43.21C RCW or from allowing appeals of procedural determinations prior to submitting a project permit.

**Commented [BM65]:** Not sure if this is applicable.

**Commented [BM66]:** RCW 36.70B.110(5)

**Commented [BM67]:** How are the number of days (14 to 30) determined?

**Commented [BM68]:** RCW 36.70B.110(2)(e)

A local government may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit

8. Any other information determined appropriate by the department, such as the city's threshold determination, if complete at the time of issuance of the notice of application.

**Commented [BM69]:** Derived from RCW 36.70B.110

D. Time Frame for Issuance of Notice of Application.

1. Within fourteen days after the city has issued a determination of completeness of a land use permit application according to TMC 14.08.020, the city shall issue a notice of application.

**Commented [BM70]:** RCW 36.70B.070(4)(c) and RCW 36.70B.110(2)

2. If an open record predecision hearing is required for the requested land use permit(s), the notice of application shall be provided at least fifteen days prior to the open record hearing.

**Commented [BM71]:** From RCW 36.70B.110(3)

**Commented [BM72R71]:** What is the timing before an open record hearing?

E. Public Comment on the Notice of Application.

1. All public comments received on the notice of application must be received by the department by 5:00 p.m. on the last day of the comment period.

2. Comments may be mailed, personally delivered, or sent via email. Comments should be as specific as possible.

F. Except for a determination of significance, the city may not issue its threshold determination or issue a decision or recommendation on a land use permit until the expiration of the public comment period on the notice of application.

**Chapter 14.12**

**LAND USE PERMIT APPLICATION DECISIONS AND APPEALS**

**Commented [BM73]:** Replaces old TMC 14.06.090

Sections:

14.12.010 Notice of decision.

14.12.020 Appeals of administrative approvals.

14.12.030 Appeal of SEPA related matters.

14.12.040 Notice of open record hearing.

14.12.050 Combined public hearings allowed.

14.12.060 Notice of appeal hearings.

**14.12.010 Notice of decision.**

A. The notice of decision shall be issued pursuant to the general notice requirements of TMC 14.02.050.

B. Final hearing examiner decisions.

**Commented [BM74]:** Based on TMC 18.58.050 Variance notice of decision.

1. Not later than five working days following the decision of the hearing examiner granting or denying a land use permit application or an appeal, the applicant and parties of record shall be notified of the decision in writing.

2. Such written notification shall include the findings of fact for denial or approval, whichever is applicable.

B. Written notice for all final decisions shall be sent to the applicant and all parties of record.

C. The notice shall include:

1. A statement of any threshold determination made under Chapter 43.21C RCW;

2. Procedures for administrative or judicial appeal, if any; and

3. A statement that affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. The city shall provide the notice of decision to the county assessor's office.

D. Notice of decision shall be sent to the applicant pursuant to TMC 17.14.070.

#### 14.12.020 Appeals of administrative approvals.

A. Type I and Type II land use permit applications may be appealed to the hearing examiner within fourteen days of the final staff decision pursuant to TMC Table 14.04.020(B) using procedures outlined in TMC 14.10.040(C) and in TMC 2.58 Hearing Examiner.

#### 14.12.030 Appeal of SEPA related matters.

A. The city establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:

1. Any agency or person may file an appeal concerning the city's conditioning, lack of conditioning or denial of an action pursuant to Chapter 197-11 WAC. All such appeals shall be made to the hearing examiner and must be filed within six days after the comment period for the threshold decision has expired. This appeal and any other appeal of a land use action shall be considered together.

2. The following threshold decisions or actions are subject to timely appeal:

a. Determination of Significance. Appeal of a determination of significance or a claim of error for failure to issue a determination of significance may only be appealed to the hearing examiner within that fourteen-day period immediately following issuance of such initial determination.

b. Determination of Nonsignificance or Mitigated Determination of Nonsignificance. Conditions of approval and the lack of specific conditions may be appealed to the hearing examiner within six calendar days after the SEPA comment period expires.

c. Environmental Impact Statement. A challenge to a determination of adequacy of a final EIS may be heard by the hearing examiner in conjunction with any appeal or hearing regarding the associated land use permit. Where no hearing is associated with the proposed action, an appeal of the

**Commented [BM75]:** Do we need to establish how one becomes a party of record?

**Commented [BM76]:** Last half of RCW 36.70B.130

A local government planning under RCW 36.70A.040 shall provide a notice of decision that also includes a statement of any threshold determination made under chapter 43.21C RCW and the procedures for administrative appeal, if any. The notice of decision may be a copy of the report or decision on the project permit application. The notice shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application. The local government shall provide for notice of its decision as provided in RCW 36.70B.110(4), which shall also state that affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. The local government shall provide notice of decision to the county assessor's office of the county or counties in which the property is situated.

**Commented [BM77]:** Where do we address the requirement of RCW 36.70B.060(5) for a "single report"?

In addition to the elements required by RCW 36.70B.050, the process shall include the following elements:

[...]

(5) A single report stating all the decisions made as of the date of the report on all project permits included in the consolidated permit process that do not require an open record predecision hearing and any recommendations on project permits that do not require an open record predecision hearing. The report shall state any mitigation required or proposed under the development regulations or the agency's authority under RCW 43.21C.060. The report may be the local permit. If a threshold determination other than a determination of significance has not been issued previously by the local government, the report shall include or append this determination;

**Commented [BM78]:** New section

**Commented [BM79]:** Replaces old TMC 14.06.050

**Commented [BM80]:** 15-Days is based on TMC 16.04.090 Mitigated DNS requirements. However WAC 197-11-340(2) is 14-Days.

Update TMC 16.04.090.

**Commented [BM81]:** How do we address the requirements of RCW 36.70B.060(6):

In addition to the elements required by RCW 36.70B.050, the process shall include the following elements:

[...]

(6) Except for the appeal of a determination of significance as provided in RCW 43.21C.075, if a local government elects to provide an appeal of its threshold determination...

determination of adequacy must be filed within fourteen days after the thirty-day comment period has expired.

d. Denial of a Proposal. Any denial of a project or nonproject action using SEPA policies and rules may be appealed to the hearing examiner within six days following the final administrative decision.

3. For any appeal under TMC 14.12.030(A) the city shall keep a record of the appeal proceedings, which shall consist of the following information:

- a. Findings and conclusions;
- b. Testimony under oath; and
- c. A taped or written transcript.

4. Any procedural determination by the city's responsible official shall carry substantial weight in any appeal proceeding.

B. The city shall give official notice under WAC 197-11-680(5) whenever it issues a land use permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.

#### 14.12.040 Notice of open record hearing.

A. Notice of a public hearing for all land use permit applications and all open record appeals shall be given as follows:

1. Time, Form, and Content of Notices.

a. Except as otherwise required, public notification of meetings, hearings, and pending actions under TMC Title 14 Development Code Administration, TMC Title 16 Environment, TMC Title 17 Land Division, and TMC Title 18 Zoning shall be made at least ten days before the date of the public meeting, hearing, or pending action pursuant to the general notice procedures in TMC 14.02.050.

2. Continuations.

a. 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 certain and no further notice under TMC 14.12.040 is required.

#### 14.12.050 Combined public hearings.

A. At the request of the applicant, the city may combine any hearing on a land use permit with any hearing that may be held by another local, state, regional, federal, or other agency, if:

- 1. The hearing is held within the city; and

**Commented [BM82]:** Replace this section with judicial only appeals of SEPA actions. See RCW 43.21C.075.

**Commented [BM83R82]:** RCW 43.21C.075(6)(c)

Judicial review under this chapter shall without exception be of the governmental action together with its accompanying environmental determinations.

**Commented [BM84]:** Replaces old TMC 14.06.070

**Commented [BM85]:** New section

2. The applicant agrees to the schedule if additional time is needed to combine the hearings.

B. The city is authorized to issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, and take such other actions as may be necessary to hold joint hearings consistent with its respective statutory obligations.

**14.12.060 Notice of appeal hearings.**

In addition to the general notice requirements of TMC 14.12.040(A), notice of appeal hearings for administrative approvals shall be mailed to adjacent property owners.

Commented [BM86]: Replaces old TMC 14.06.080

**Title 14**

**DEVELOPMENT CODE ADMINISTRATION**

**Chapters:**

~~14.02 PROJECT PERMIT PROCESSING/APPLICATIONS~~

~~14.04 PROJECT CONSISTENCY/TIME LIMITS~~

~~14.06 PUBLIC NOTICE REQUIREMENTS~~

~~14.08 APPROVAL, REVIEW AND APPEAL AUTHORITY~~

**Chapter 14.02**

**PROJECT PERMIT PROCESSING/APPLICATIONS**

**Sections:**

~~14.02.010 Intent/applicability.~~

~~14.02.020 Definitions.~~

~~14.02.030 Development review committee established.~~

~~14.02.040 Application.~~

~~14.02.050 Exempt actions.~~

~~14.02.060 Feasibility review.~~

~~14.02.070 Preapplication conferences —When required.~~

~~14.02.080 Project permit application.~~

~~14.02.090 Submission and acceptance of application.~~

~~14.02.100 Optional consolidated permit processing.~~

**~~14.02.010 Intent/applicability.~~**

~~The purpose of this title is to combine and consolidate the application, review, and approval processes for land development in the city of Tumwater in a manner that is clear, concise, and understandable. It is further intended to comply with state guidelines for combining and expediting development review and integrating environmental review and land use development plans. Final decision on development proposals shall be made within one hundred twenty days of the date of the determination of completeness except as provided in TMC 14.02.050. The provisions apply to all land use permits under TMC Titles 15, 16, 17 and 18, and to~~

~~the related regulation implementing these provisions or any other ordinance or law. Unless another department is the primary agency in a permit process, the department of community development shall administer the provisions hereof and may adopt such rules as will assist in administering these provisions.~~

~~Notwithstanding the city's authority to issue development permits within a one-hundred twenty day period, staff should strive to process such permits as soon as possible. Provided, however, permit processing should not be conducted so as to adversely affect the public's right to provide appropriate input to the process and exercise appeal rights.~~

~~(Ord. O2011-002, Amended, 03/01/2011; Ord. O96-004, Added, 04/16/1996)~~

#### ~~14.02.020 Definitions.~~

~~A. "City" means the city of Tumwater, Washington.~~

~~B. "Closed record appeal" means an administrative appeal on the record following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.~~

~~C. "Days" means calendar days, including weekends and holidays.~~

~~D. "Department" means the department of community development.~~

~~E. "Determination of completeness" means a written determination by the director or his/her designee that all required elements of an application have been received by the city. This determination initiates the statutory review period for the application, if any, and subject to certain exceptions, entitles the applicant to have the application considered and reviewed pursuant to the laws, regulations and standards in effect on the date the application was complete.~~

~~F. "Development guide" means the Tumwater community development guide or Tumwater development guide as adopted by Ordinance No. O95-023 or as subsequently amended.~~

~~G. "Development review committee (DRC)" means a group of staff members of the community development department (usually three) assigned by the director to conduct preapplication conferences and review and/or approve development permit applications.~~

~~H. "Director" means the director of the department of community development of the city of Tumwater unless another department or agency is in charge of the project in which case it refers to the chief administrative officer of that department or agency.~~

~~I. "Feasibility review" means an optional preapplication meeting between a prospective applicant or development proponent and the DRC to provide limited~~

information on applicable development and site requirements as a precursor to a “preapplication conference.”

J. —“Formal review” means the second and final stage of preapplication conference to provide feedback and additional guidance to applicants on how effectively they have incorporated information received during the preliminary review into their development proposal. The formal review is an evaluation of a development proposal to determine suitability for submittal of the project permit application.

K. —“Open record hearing” means a hearing, conducted by a single hearing body or officer, that creates the record through testimony and submission of evidence and information. An open record hearing may be held prior to a decision on a project permit to be known as an “open record predecision hearing.” An open record hearing may be held on an appeal, to be known as an “open record appeal hearing,” if no open record predecision hearing was held on the project permit.

L. —“Planned action” means one or more types of project actions that are designated planned actions by city ordinance or resolution as more particularly outlined in TMC 14.04.030(B)(2).

M. —“Preapplication conference” means one or more of the two stages of meetings between an applicant and DRC usually held after a “feasibility review,” but prior to submission of a project permit application. The two stages, “preliminary review” and “formal review,” are progressions toward development of the project permit application designated to evaluate developing application submittal documents, to answer questions and provide procedural information to prospective applicants, and to guide applicants with preparation of a permit application submittal.

N. —“Preliminary review” means the first stage of a preapplication conference to analyze an applicant’s initial development proposal, usually based on information received from a feasibility review. The preliminary review is the initial review of development proposal documents to identify potential problems and develop the preliminary proposal toward submittal of the project permit application.

O. —“Project permit” means any land use or environmental permit or license required from the city for a project action, including but not limited to subdivisions, planned unit developments, conditional uses, shoreline substantial development permits, permits or approvals required by critical area ordinances, site specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection. Project action also includes any proposal for development of any new commercial/industrial or multifamily (three units or more) structure or addition or modification to a commercial/industrial or multifamily structure or change in occupancy of such an

existing structure that changes utility requirements, parking requirements or necessitates additional site improvements.

(Ord. O2011-002, Amended, 03/01/2011; Ord. O96-004, Added, 04/16/1996)

**14.02.030 — Development review committee established.**

There is hereby established within the department of community development a development review committee composed of appropriate staff representatives of the department as designated by the director. The primary purpose of said committee is to make such decisions as are delegated to it by ordinance and administrative directive, conduct preapplication conferences and make post application determinations in conjunction with the issuance of project permits as well as staff recommendations where the hearing examiner is charged with approval authority.

(Ord. O2011-002, Amended, 03/01/2011; Ord. O96-004, Amended, 04/16/1996)

**14.02.040 — Application.**

By the adoption of this title, the city has consolidated development application and review procedures in order to integrate the development permit and environmental review process, while avoiding duplication of the review processes.

(Ord. O96-004, Added, 04/16/1996)

**14.02.050 — Exempt actions.**

A. The following actions are exempt from the project permit application process:

1. Zoning code text amendments;
2. Adoption of development regulations and amendments;
3. Area wide rezones to implement new city policies;
4. Adoption of the comprehensive plan and any plan amendments;
5. Annexations;
6. Certificates of appropriateness;
7. Landmark designations;
8. Street vacations;
9. Street use permits.

B. Pursuant to RCW 36.70B.140(2), building permits, boundary line adjustments, and other construction permits, or similar administrative approvals which are categorically exempt from environmental review under SEPA (Chapter 43.21C RCW), or permits/approvals for which environmental review has been completed in connection with other project permits are exempt from the following procedures:

1. Determination of completeness;

- ~~2.— Notice of application, except as provided in TMC 14.06.010(B);~~
- ~~3.— Except as provided in RCW 36.70B.140, optional consolidated project permit review processing;~~
- ~~4.— Joint public hearings;~~
- ~~5.— Single report stating all the decisions and recommendations made as of the date of the report that do not require an open record hearing;~~
- ~~6.— Notice of decision;~~
- ~~7.— Completion of project review within any applicable time periods (including the one hundred twenty day permit processing time).~~

~~(Ord. O2018-007, Amended, 10/16/2018; Ord. O96-004, Added, 04/16/1996)~~

~~**14.02.060— Feasibility review.**~~

~~At the option of the development proponent, the department will provide limited information through a feasibility review as a precursor to a formal preapplication conference. For such review, the development proponent need not have available all the information required on the DRC application. It should be recognized that the information supplied will be verbal only and limited by the detail of the information provided by the development proponent. Applications for feasibility review shall be scheduled for specific time periods on the agenda prepared for DRC meetings each week. Feasibility reviews shall be open meetings, unless requested otherwise in writing by the development proponent with submittal of the feasibility review application.~~

~~(Ord. O96-004, Added, 04/16/1996)~~

~~**14.02.070— Preapplication conferences—When required.**~~

~~A.— Application for all project permits with the exception of minor development proposals such as fences, small detached buildings, individual single family residences and duplexes shall not be accepted for processing until the applicant has scheduled and attended a preapplication conference, as follows:~~

- ~~1.— Preapplication conferences shall consist of two stages: (a) preliminary review, and (b) formal review. Preliminary review is an analysis of an initial development proposal by an applicant based on information received from a feasibility review. The preliminary review is the initial review of development proposal documents to identify potential problems and develop the preliminary proposal toward submittal of the project permit application. Formal review is the final preapplication evaluation of a development proposal to determine suitability for submittal of the project permit application.~~

~~2.— Applications for preliminary and formal reviews shall be scheduled for specific time periods on the DRC agenda each week. Preliminary and formal reviews shall be scheduled open meetings.~~

~~3.— A DRC agenda shall be prepared and posted by the department on public bulletin boards at Tumwater City Hall, Tumwater Timberland Library, and in any additional public location the director may deem appropriate.~~

~~4.— The director may waive the requirement for either or both stages of preapplication conference in individual cases where the department and the development proponent agree a proposal is ready for application submittal.~~

~~B.— At such meeting, the development proponents or their representative shall present to the DRC preliminary studies or conceptual sketches which contain in a rough and approximate manner all of the information required on the DRC application. The purpose of the preapplication review is to enable the developer presenting the plan to obtain the advice of the DRC as to the intent, standards and provisions of the applicable development regulations.~~

~~C.— The DRC shall make available all pertinent information as may be on file relating to the general area. It is the purpose of this conference to eliminate as many potential problems as possible in order for the preliminary development plan to be processed without delay or undue expense. The conference should take place prior to detailed work by an engineer or surveyor. Discussion topics at this time would include such things as:~~

- ~~1.— The comprehensive plan;~~
- ~~2.— The transportation plan and transportation concurrency;~~
- ~~3.— The shoreline master plan;~~
- ~~4.— Zoning ordinance;~~
- ~~5.— Availability of sewer and water, or need for utility oversizing;~~
- ~~6.— Storm drainage and erosion control;~~
- ~~7.— Latecomer charges;~~
- ~~8.— Features of the development, and the rationale behind them;~~
- ~~9.— Sidewalk requirements;~~
- ~~10.— Bike paths;~~
- ~~11.— Bus stops;~~
- ~~12.— Phasing of off site requirements such as sidewalks, street lights, traffic signals, utilities or improvement of adjacent streets;~~

- ~~13. The regulatory requirements of TMC Title 16, Environment;~~
- ~~14. Design concepts (architectural goals and themes);~~
- ~~15. Other city requirements and permits;~~
- ~~16. If the applicant owns adjacent land, the possibilities of future development shall be discussed;~~
- ~~17. Process and timelines.~~

~~D. The DRC will also furnish to the developer comments on how the proposed development conforms to city policies and regulations, and the committee's requirements for development approval.~~

~~E. Prior to formal review, the department shall evaluate whether a project has potential to significantly affect the character or environment of an area; and in such cases, will encourage the development proponent to participate in additional notification efforts including, but not limited to, a public information meeting with members of the public potentially affected by the proposal.~~

~~(Ord. 096-004, Added, 04/16/1996)~~

~~**14.02.080 — Project permit application.**~~

~~Applications for project permits shall be submitted upon forms provided by the department. An application shall consist of all materials required by the city's development guide and other applicable development regulations, and shall include the following general information:~~

- ~~A. A completed project permit application form and site plan checklist;~~
- ~~B. A verified statement by the applicant that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all the owners of the affected property;~~
- ~~C. A property and/or legal description of the site for all applications, as required by the applicable development regulations;~~
- ~~D. The applicable fee;~~
- ~~E. Evidence of adequate water supply as required by RCW 19.27.097;~~
- ~~F. Evidence of sewer availability, or approval and authorization to construct a community or individual sewer or septic system.~~

~~(Ord. 096-004, Added, 04/16/1996)~~

~~**14.02.090 — Submission and acceptance of application.**~~

~~A. Determination of Completeness. Within twenty-eight days after receiving a project permit application or sooner, if completed, the department shall mail or~~

personally provide a written determination to the applicant which states either: (1) that the application is complete; or (2) that the application is incomplete and what is necessary to make the application complete. (RCW 36.70B.070.)

~~B.—Identification of Other Agencies with Jurisdiction. To the extent known by the city, other agencies with jurisdiction over the project permit application shall be identified in the city's determination required by subsection A of this section. (RCW 36.70B.070.)~~

~~C.—“Complete” Application/Additional Information. A project permit application is complete for purposes of this section when it meets the requirements of TMC 14.02.080, as well as the submission requirements contained in all other applicable development regulations of the city. This determination of completeness shall be made when the application is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The city's determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the notice of completeness or at some later time, if new information is required or where there are substantial changes in the proposed action. (RCW 36.70B.090(1).)~~

~~D.—Incomplete Application Procedure.~~

~~1.—If the applicant receives a determination from the city that an application is not complete, the applicant shall have ninety days to submit the necessary information to the city. Within fourteen days after an applicant has submitted the requested additional information or sooner if completed, the city shall make the determination as described in subsection A of this section, and notify the applicant in the same manner.~~

~~2.—If the applicant either refuses or fails to submit the required information or additional information or does not submit such information within the ninety-day period, the application shall lapse. Upon failure to cure any deficiency the department shall refund fifty percent of the filing or application fees submitted with the incomplete application.~~

~~E.—City's Failure to Provide Determination of Completeness. A project permit application shall be deemed complete under this section if the city does not provide a written determination to the applicant that the application is incomplete as provided in subsection A of this section. (RCW 36.70B.070(4)(a).)~~

~~F.—Date of Acceptance of Application. When the project permit application is complete, the director shall accept it, and note the date of acceptance.~~

~~(Ord. 096-004, Added, 04/16/1996)~~

~~**14.02.100—Optional consolidated permit processing.**~~

~~An applicant may submit complete construction permit applications (building and/or engineering) simultaneously with or during the period of review of a required land use approval application. When an applicant elects to submit a land use approval application together with construction applications, such applications shall be reviewed and processed as one application and subject to all notices, review and appeals as if one consolidated and integrated application. (RCW 36.70B.060(3), 36.70B.120.)~~

~~(Ord. 096-004, Added, 04/16/1996)~~

#### **Chapter 14.04**

### **PROJECT CONSISTENCY/TIME LIMITS**

#### **Sections:**

~~14.04.010—Determination of consistency.~~

~~14.04.020—Initial SEPA analysis.~~

~~14.04.030—Categorically exempt and planned actions.~~

~~14.04.040—Determining time limits.~~

#### **14.04.010—Determination of consistency.**

~~A.—Purpose. When the city receives a project permit application, consistency between the proposed project and the applicable regulations and comprehensive plan should be determined through the process in this chapter and the city's environmental policy ordinance.~~

~~B.—Consistency. During project permit application review, the city shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project. In the absence of applicable development regulations, the city shall determine whether the items listed in this subsection are defined in the city's adopted comprehensive plan. This determination of consistency shall include the following:~~

- ~~1.—The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied; and~~
- ~~2.—The level of development, such as units per acre, density of residential development in urban growth areas, or other measures of density; and~~
- ~~3.—Availability and adequacy of infrastructure and public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by Chapter 36.70A RCW; and~~
- ~~4.—Character of the development, such as development standards. (RCW 36.70B.030, 36.70B.040.)~~

~~(Ord. 096-004, Added, 04/16/1996)~~

**14.04.020—Initial SEPA analysis.**

~~A.—The city shall also review the project permit application under the requirements of the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, the SEPA Rules, Chapter 197-11 WAC, and the city's environmental policy ordinance, TMC Chapter 16.04, and shall:~~

- ~~1.—Determine whether the applicable regulations require studies that adequately analyze all of the project permit application's specific probable adverse environmental impacts;~~
- ~~2.—Determine if the applicable regulations require measures that adequately address such environmental impacts;~~
- ~~3.—Determine whether additional studies are required and/or whether the project permit application should be considered with additional mitigation measures;~~
- ~~4.—Provide prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level.~~

~~B.—In its review of a project permit application, the city may determine that the requirements for environmental analysis, protection and mitigation measures in the applicable development regulations, comprehensive plan and/or in other applicable local, state or federal laws provide adequate analysis of and mitigation for the specific adverse environmental impacts of the application.~~

~~C.—If the city bases or conditions its approval of the project permit application on compliance with the requirements or mitigation measures described in subsection A of this section, the city shall not impose additional mitigation under SEPA during project review.~~

~~D.—A comprehensive plan, development regulation or other applicable local, state or federal law provides adequate analysis of and mitigation for the specific adverse environmental impacts of an application when:~~

- ~~1.—The impacts have been avoided or otherwise mitigated; and~~
- ~~2.—The city has designated as acceptable certain levels of service, land use designations, development standards or other land use planning required or allowed by Chapter 36.70A RCW.~~

~~E.—In its decision whether a specific adverse environmental impact has been addressed by an existing rule or law of another agency with jurisdiction with environmental expertise with regard to a specific environmental impact, the city shall consult orally or in writing with that agency and may expressly defer to that~~

agency. In making this deferral, the city shall base or condition its project approval on compliance with these other existing rules or laws.

F. ~~Nothing in this section limits the authority of the city in its review or mitigation of a project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by Chapter 43.21C RCW.~~

~~(Ord. 096-004, Added, 04/16/1996)~~

**~~14.04.030—Categorically exempt and planned actions.~~**

A. ~~Categorically Exempt. Actions categorically exempt under RCW 43.21C.110(1)(a) do not require environmental review or the preparation of an environmental impact statement. An action that is categorically exempt under the rules adopted by the Department of Ecology (Chapter 197-11 WAC) may not be conditioned or denied under SEPA. (RCW 43.21C.031.)~~

B. ~~Planned Actions:~~

~~1.— A planned action does not require a threshold determination or the preparation of an environmental impact statement under SEPA, but is subject to environmental review and mitigation under SEPA.~~

~~2.— A “planned action” means one or more types of project action that:~~

~~a.— Are designated planned actions by an ordinance or resolution adopted by the city;~~

~~b.— Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with:~~

~~i.— A comprehensive plan or subarea plan adopted under Chapter 36.70A RCW; or~~

~~ii.— A fully contained community, a master planned resort, a master planned development or a phased project;~~

~~c.— Are subsequent or implementing projects for the proposals listed in subsection (B)(2)(b) of this section;~~

~~d.— Are located within an urban growth area, as defined in RCW 36.70A.030;~~

~~e.— Are not essential public facilities, as defined in RCW 36.70A.200; and~~

~~f.— Are consistent with the city’s comprehensive plan adopted under Chapter 36.70A RCW. (RCW 43.21C.031.)~~

C. ~~Limitation on Planned Actions. The city shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the city, and may limit a planned action to a time period identified in the environmental impact statement or in the ordinance or~~

resolution designating the planned action under RCW 36.70A.040. (RCW 43.21C.031.)

D.— ~~Limitations on SEPA Review.~~ During project review, the city shall not reexamine alternatives to or hear appeals on the items identified in TMC 14.04.010(B), except for issues of code interpretation. Project review shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts. (RCW 36.70B.030(3).)

(Ord. 096-004, Added, 04/16/1996)

**14.04.040 — Determining time limits.**

A.— ~~Except as otherwise provided in subsection B of this section and TMC 14.02.050, the director shall issue his/her notice of final decision on a project permit application within one hundred twenty days, or sooner if possible, after notifying the applicant that the application is complete, as provided in TMC 14.02.090(A). In determining the number of days that have elapsed after the director has established that the application is complete, the following periods shall be excluded:~~

- ~~1.— Any period during which the applicant has been requested to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the director notifies the applicant of the need for additional information until the earlier of the date the director determines whether the additional information satisfies the request for information or fourteen days after the date the information has been provided. A project permit application shall expire if an applicant does not respond to a request for additional information within 180 calendar days;~~
- ~~2.— If the director determines that the information submitted by the applicant under subsection (A)(1) of this section is insufficient, he/she shall notify the applicant of the deficiencies and the procedures under subsection (A)(1) of this section shall apply as if a new request for studies had been made;~~
- ~~3.— Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 43.21C RCW;~~
- ~~4.— Any period for administrative appeals of project permits, if an open record appeal hearing or a closed record appeal, or both, are allowed. The time period for considering and deciding shall not exceed: (a) ninety days for an open record appeal hearing; and (b) sixty days for a closed record appeal. The parties to an appeal may agree to extend these time periods; and~~

~~5.— Any extension of time mutually agreed upon by the applicant and the director.~~

~~B.— The time limits established by subsection A of this section do not apply if a project permit application:~~

- ~~1.— Requires an amendment to the comprehensive plan or a development regulation;~~
- ~~2.— Requires approval of a new fully contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.70A.200; or~~
- ~~3.— Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete. An application is substantially revised if proposed changes would have affected decisions in the approval process.~~

~~C.— If the director is unable to issue its final decision within the time limits provided for in this section, he/she shall provide written notice of this fact to the project 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.~~

~~(Ord. O2017-022, Amended, 12/05/2017; Ord. O96-004, Added, 04/16/1996)~~

#### **Chapter 14.06**

#### **PUBLIC NOTICE REQUIREMENTS**

~~Sections:~~

- ~~14.06.010— Notice of application.~~
- ~~14.06.020— Referral and review of project permit application.~~
- ~~14.06.030— Notice of application/distribution.~~
- ~~14.06.040— Administrative approvals.~~
- ~~14.06.050— Appeal of SEPA related issues/administrative matters.~~
- ~~14.06.060— Reconsideration in response to SEPA comments.~~
- ~~14.06.070— Notice of open record hearing.~~
- ~~14.06.080— Notice of appeal hearings.~~
- ~~14.06.090— Notice of decision.~~

#### **14.06.010— Notice of application.**

~~A.— Generally. A notice of application shall be issued on all project permit applications for which the hearing examiner has decision making authority, or SEPA is required.~~

~~B.— SEPA Exempt Projects. A notice of application shall not be required for project permits that are categorically exempt under SEPA and fall below the thresholds~~

established in WAC 197-11-800(1)(b)(i) through (v), unless a public comment period or an open record predecision hearing is required.

~~C.— Contents. The notice of application shall include:~~

- ~~1.— The date of application, the date of the notice of completion for the application and the date of the notice of application;~~
- ~~2.— A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070;~~
- ~~3.— The identification of other permits not included in the application, to the extent known by the city;~~
- ~~4.— The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;~~
- ~~5.— A statement of the limits of the public comment period, which shall not be less than fourteen nor more than thirty days following the date of notice of application, and a statement of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;~~
- ~~6.— The date, time, place and type of hearing, if applicable and scheduled at the date of notice of the application;~~
- ~~7.— A statement of the preliminary determination of consistency, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation and of consistency as provided in TMC 14.04.010.~~
- ~~8.— Any other information determined appropriate by the department, such as the city's threshold determination, if complete at the time of issuance of the notice of application. (RCW 36.70B.110.)~~

~~D.— Time Frame for Issuance of Notice of Application.~~

- ~~1.— Within fourteen days after the city has made a determination of completeness of a project permit application, the city shall issue a notice of application.~~
- ~~2.— If any open record predecision hearing is required for the requested project permit(s), the notice of application shall be provided at least fifteen days prior to the open record hearing. (RCW 36.70B.110.)~~

~~E.— Public Comment on the Notice of Application. All public comments received on the notice of application must be received by the department of community development by 5:00 p.m. on the last day of the comment period. Comments may be~~

mailed, personally delivered or sent by facsimile. Comments should be as specific as possible.

~~F.—Except for a determination of significance, the city may not issue its threshold determination or issue a decision or recommendation on a project permit until the expiration of the public comment period on the notice of application. (RCW 36.70B.110.)~~

~~(Ord. O2017-008, Amended, 09/05/2017; Ord. O2011-002, Amended, 03/01/2011; Ord. O96-004, Added, 04/16/1996)~~

~~**14.06.020—Referral and review of project permit application.**~~

~~As soon as possible, but in any event within ten days of accepting a complete application, the director shall do the following:~~

~~A.—Transmit a copy of the application, or appropriate parts of the application, to each affected agency and city department for review and comment, including those responsible for determining compliance with state and federal requirements. The affected agencies and city departments shall have fifteen days to comment. The referral agencies or city departments are presumed to have no comments if comments are not received within the specified time period. The director shall grant an extension of time for comment only if the application involves unusual circumstances. Any extension shall only be for a maximum of three additional days. (RCW 36.70B.070.)~~

~~B.—If hearing examiner approval is required, notice and hearing shall be provided as set forth in TMC Chapter 2.58.~~

~~(Ord. O96-004, Added, 04/16/1996)~~

~~**14.06.030—Notice of application/distribution.**~~

~~A.—The notice of application shall be posted on the subject property by the applicant in accordance with specifications provided by the community development department, published once in a newspaper of general circulation in the city, and mailed to all record owners of property within three hundred feet of the boundaries of the subject property. The director may extend notice beyond three hundred feet in cases where the area notified does not provide adequate notice to neighbors affected by the proposed project action.~~

~~B.—The notice of application shall be issued prior to and is not a substitute for any other required notice of a public hearing.~~

~~C.—A notice of application is not required for the following actions, except as provided in TMC 14.06.010(B), when they are categorically exempt from SEPA or environmental review has been completed:~~

- ~~1.—Application for building permits.~~

~~2.—Application for boundary line adjustments.~~

~~3.—Application for administrative approvals.~~

~~(Ord. O2018-007, Amended, 10/16/2018; Ord. O96-004, Added, 04/16/1996)~~

~~**14.06.040—Administrative approvals.**~~

~~Administrative decisions regarding the approval or denial of the following applications or determinations/interpretations may be appealed to the hearing examiner within fourteen days of the final staff decision using procedures outlined below and in TMC Chapter 2.58, Hearing Examiner (refer to TMC 14.08.030 for other appeal authorities):~~

~~A.—All administrative interpretations/determinations.~~

~~B.—Boundary line adjustments.~~

~~C.—Building permits.~~

~~D.—Home occupation permits.~~

~~E.—Preliminary short plats.~~

~~F.—Preliminary SEPA threshold determination (EIS required).~~

~~G.—Shoreline exemptions and staff level substantial development permits.~~

~~H.—Sign permits.~~

~~I.—Final plats.~~

~~J.—Variances, administrative.~~

~~(Ord. O2018-007, Amended, 10/16/2018; Ord. O96-004, Added, 04/16/1996)~~

~~**14.06.050—Appeal of SEPA related issues/administrative matters.**~~

~~A.—The city establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:~~

~~1.—Any agency or person may appeal the city's conditioning, lack of conditioning or denial of an action pursuant to Chapter 197-11 WAC. All such appeals shall be made to the hearing examiner and must be filed within six days after the comment period for the threshold decision has expired. This appeal and any other appeal of a land use action shall be considered together.~~

~~2.—The following threshold decisions or actions are subject to timely appeal:~~

~~a.—Determination of Significance. Appeal of a determination of significance (DS) or a claim of error for failure to issue a DS may only be appealed to the hearing examiner within that fourteen-day period immediately following issuance of such initial determination.~~

~~b.— Determination of Nonsignificance or Mitigated Determination of Nonsignificance. Conditions of approval and the lack of specific conditions may be appealed to the hearing examiner within six calendar days after the SEPA comment period expires.~~

~~e.— Environmental Impact Statement. A challenge to a determination of adequacy of a final EIS may be heard by the hearing examiner in conjunction with any appeal or hearing regarding the associated project permit. Where no hearing is associated with the proposed action, an appeal of the determination of adequacy must be filed within fourteen days after the thirty-day comment period has expired.~~

~~d.— Denial of a Proposal. Any denial of a project or nonproject action using SEPA policies and rules may be appealed to the hearing examiner within six days following the final administrative decision.~~

~~3.— For any appeal under this subsection the city shall keep a record of the appeal proceedings, which shall consist of the following:~~

~~a.— Findings and conclusions; and~~

~~b.— Testimony under oath; and~~

~~e.— A taped or written transcript.~~

~~4.— Any procedural determination by the city's responsible official shall carry substantial weight in any appeal proceeding.~~

~~B.— The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.~~

~~(Ord. 096-004, Added, 04/16/1996)~~

~~**14.06.060— Reconsideration in response to SEPA comments.**~~

~~Any interested person may submit written comments and request reconsideration by the development review committee within fifteen days of the date any final recommendation or decision attached to a SEPA threshold determination is issued. Unless further action is taken by the development review committee in response to such comments, the period in which to file an appeal shall terminate twenty-one days after the date such final recommendation or decision is issued. SEPA exempt actions of the committee shall not be subject to reconsideration and shall be subject to only a fourteen-day appeal period.~~

~~(Ord. 096-004, Added, 04/16/1996)~~

~~**14.06.070— Notice of open record hearing.**~~

~~Notice of a public hearing for all development applications and all open record appeals shall be given as follows:~~

~~A. — Time and Form of Notices. Except as otherwise required, public notification of meetings, hearings, and pending actions under TMC Titles 14 through 18 shall be made at least ten days before the date of the public meeting, hearing, or pending action by:~~

- ~~1. — Publication in the official newspaper if one has been designated or a newspaper of general circulation in the city;~~
- ~~2. — Mailing to all owners of property as listed on the records of the Thurston County assessor within three hundred feet of the boundaries of property which is the subject of the meeting, hearing, or pending action. The director may extend notification beyond three hundred feet in cases where the area notified does not provide adequate notice to neighbors affected by the pending action. Addressed, prestamped envelopes shall be provided by the applicant;~~
- ~~3. — Posting on the city's website;~~
- ~~4. — Posting at least one notice on the subject property by the applicant in accordance with specifications provided by the community development department; and~~
- ~~5. — Whenever practical, the director may utilize additional forms of notice including, but not limited to, presentation on one or more radio or television bulletin boards or similar media commonly used for public notices or announcements.~~

~~B. — Content of Notice. The public notice shall include:~~

- ~~1. — The address and location, and/or a vicinity map or sketch of the property which is the subject of the public hearing; and~~
- ~~2. — The date, time, location, and purpose of the public hearing; and~~
- ~~3. — A general description of the proposed project or action to be taken; and~~
- ~~4. — A place where further information about the hearing may be obtained.~~

~~Furthermore, the public notice shall be written in a form and use words easily understood by the general public. Any technical terms or complex legal phrases should either be avoided or restated in commonly understood language.~~

~~C. — Continuations. 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 certain and no further notice under this section is required.~~

(Ord. O2018-007, Amended, 10/16/2018; Ord. O2017-022, Amended, 12/05/2017; Ord. O2015-010, Amended, 10/20/2015; Ord. O96-004, Added, 04/16/1996)

**14.06.080—Notice of appeal hearings.**

In addition to the posting and publication requirements of TMC 14.06.070(A), notice of appeal hearings shall be as follows:

A.—For administrative approvals, notice shall be mailed to adjacent property owners.

B.—For planning commission recommendations, mailing to parties of record from the commission hearing.

(Ord. O96-004, Added, 04/16/1996)

**14.06.090—Notice of decision.**

A written notice for all final decisions shall be sent to the applicant and all parties of record.

(Ord. O96-004, Added, 04/16/1996)

**Chapter 14.08**

**APPROVAL, REVIEW AND APPEAL AUTHORITY**

Sections:

~~14.08.010—Approval and appeal authorities.~~

~~14.08.020—Consolidation of appeals—Completion of process.~~

~~14.08.030—Review and appeal authority.~~

~~14.08.040—Conflicts.~~

**14.08.010—Approval and appeal authorities.**

The project review process for an application or a permit may include review and approval by one or more of the following processes:

A.—Department Staff. Individual staff as assigned by the director shall have the authority to review and approve, deny, modify, or conditionally approve, among others, accessory buildings, accessory dwelling units, boundary line adjustments, building permits and other construction permits exempt from the State Environmental Policy Act, environmental determinations, home occupation permits, design review (including reviews of undersized lots of record), short plats, sign permits, certificates of occupancy, temporary use permits, time extensions, tree plans, and shoreline exemptions, and to provide interpretations of codes and regulations applicable to such projects.

B.—Development Review Committee (DRC). Pursuant to TMC Chapter 14.02, the development review committee shall have authority to conduct feasibility review and hold preapplication conferences and to grant, conditionally grant, deny, or

~~modify, land use approvals regarding projects for which an open record predetermination hearing is not required.~~

~~C. — Hearing Examiner. The Tumwater hearing examiner shall have the authority vested pursuant to TMC 2.58.090, including approval authority for site specific rezones, plats, variances, conditional use permits and appeal of all staff decisions including SEPA and permits issued under the shoreline master program.~~

~~(Ord. 096-004, Added, 04/16/1996)~~

~~**14.08.020 — Consolidation of appeals — Completion of process.**~~

~~A. — Any development which includes a request for one or more variances shall be considered by the hearing examiner concurrently with the plat or plan to which it applies.~~

~~B. — When a public hearing is required in conjunction with a project permit, the recommending authority shall issue its recommendation in sufficient time for the hearing examiner to issue a notice of final decision within one hundred twenty days of the date of the complete application.~~

~~(Ord. 096-004, Added, 04/16/1996)~~

~~**14.08.030 — Review and appeal authority.**~~

~~Table 14.08.030 describes development permits and the final decision and appeal authorities. When separate applications are consolidated at the applicant's request, the final decision shall be rendered by the highest authority designated for any part of the consolidated application. Hearing examiner decisions may be appealed to superior court except comprehensive plan decisions which may be appealed to the State Growth Management Hearings Board and final shoreline permit actions which may be appealed to the shoreline hearings board.~~

~~(Ord. O2022-004, Amended, 06/07/2022; Ord. O2018-007, Amended, 10/16/2018; Ord. O2014-018, Amended, 12/16/2014; Ord. O2012-009, Amended, 08/06/2012; Ord. O2010-017, Amended, 12/21/2010; Ord. O2005-024, Amended, 09/06/2005; Ord. O96-024, Amended, 09/17/1996; Ord. O96-004, Added, 04/16/1999)~~

~~**14.08.040 — Conflicts.**~~

~~In the event of conflicts between the procedural requirements of this title and other development regulations of the city, the provisions of this title shall control.~~

~~(Ord. O2020-004, Amended, 09/15/2020; Ord. O96-004, Added, 04/16/1996)~~

**Table 14.08.030**

**Key: R**

**= Recommendation to Higher Review Authority; D = Decision;**

**A**

**- Appeal Decision; C = Closed Record Appeal Hearing;**

**OP**

**- Open Record Predetermination Hearing**

	HISTORIC COMMISSION	COMMUNITY DEVELOPMENT DEPARTMENT STAFF	DEVELOPMENT REVIEW COMMITTEE	HEARING EXAMINER	PLANNING COMMISSION	CITY COUNCIL
<b>ZONING</b>						
CONDITIONAL USE PERMITS			R	D(OP)		
VARIANCE			R	D(OP)		
SITE SPECIFIC REZONES REQUIRED AS A RESULT OF A COMPREHENSIVE PLAN CHANGE					R(OP)	D(OP)
SITE SPECIFIC REZONES NOT REQUIRING A COMPREHENSIVE PLAN AMENDMENT		R		D(OP)		
ZONING TEXT AMENDMENT (DEV. REG. CHANGES)					R(OP)	D(OP)
AREA WIDE MAP AMENDMENT					R(OP)	D(OP)
HOME OCCUPATION		D		A(OP)		
CERTIFICATE OF APPROPRIATENESS	D	R		A(C)		
<b>COMPREHENSIVE PLAN</b>						
COMPREHENSIVE PLAN TEXT AMENDMENT					R(OP)	D(OP)
COMPREHENSIVE PLAN MAP AMENDMENT					R(OP)	D(OP)
<b>LAND DIVISION</b>						
REPLAT			R	D(OP)		
PLAT VACATION			R	D(OP)		
BLA		D		A(OP)		
LOT CONSOLIDATION		D		A(OP)		

	HISTORIC COMMISSION	COMMUNITY DEVELOPMENT DEPARTMENT STAFF	DEVELOPMENT REVIEW COMMITTEE	HEARING EXAMINER	PLANNING COMMISSION	CITY COUNCIL
PRELIMINARY PLAT			R	D(OP)		
SHORT PLAT		D		A(OP)		
FINAL PLAT		D		A(OP)		
PUD			R	D(OP)		
BINDING SITE PLAN			D	A(OP)		
BINDING SITE PLAN—PHASED			R	D(OP)		
PLAT TIME EXTENSION		D		A(OP)		
PLAT ALTERATION W/ HEARING		R		D(OP)		
PLAT ALTERATION W/O HEARING		D		A(OP)		
<b>ENVIRONMENTAL</b>						
WETLAND PERMIT		D		A(OP)		
TREE PLANS		D		A(OP)		
SEPA DET.		D		A(OP)		
<b>SHORELINES</b>						
SUB. DEV. PERMIT			R	D(OP)		
CONDITIONAL USE PERMIT			R	D(OP) (1)		
VARIANCE			R	D(OP) (1)		
EXEMPT		D		A(OP)		
<b>OTHER</b>						
DEV. CODE INTERPRETATIONS		D		A(OP)		
BUILDING PERMIT PER IBC		D		A(OP)		
ADMINISTRATIVE ORDERS		D		A(OP)		
CIVIL PENALTIES		D		A(OP)		
REASONABLE USE EXCEPTIONS		R		D(OP)		
BUILDING MOVING PERMIT		D		A(OP)		

	HISTORIC COMMISSION	COMMUNITY DEVELOPMENT DEPARTMENT STAFF	DEVELOPMENT REVIEW COMMITTEE	HEARING EXAMINER	PLANNING COMMISSION	CITY COUNCIL
GRADING PERMIT PER IBC		D		A(OP)		
IMPACT FEE DETERMINATIONS		D		A(OP)		
CONCURRENCY DETERMINATIONS		D		A(OP)		

Table 14.08.030 Explanatory Notes:

~~1. Decisions on shoreline conditional use permits are issued by the city and the local decision can be appealed. The city's decision is sent to the Washington State Department of Ecology for further review and approval or disapproval. After the city appeal process and Ecology's review processes are complete, appeals may be made to the Shorelines Hearings Board within twenty-one days of the "date of filing" as defined in RCW 90.58.140(G).~~

**Section 8.** A new TMC 15.01.055 is hereby added to the Tumwater Municipal Code to read as follows:

**Commented [BM87]:** Based on IRC Section R110 Certificate of Occupancy.

**15.01.055 Certificate of occupancy.**

- A. A building or structure shall not be used or occupied in whole or in part, and a change of occupancy of a building or structure or portion thereof shall not be made, until the building official has issued a certificate of occupancy that reflects the conclusion of the work allowed by the permit.
- B. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the city. Certificates presumed to give authority to violate or cancel the provisions of this code or other ordinances of the city shall not be valid.
- C. The city shall not issue business and occupational licenses unless the applicant has a valid certificate of occupancy.

**Section 9.** TMC 15.44.030 of the Tumwater Municipal Code is hereby amended to read as follows:

**15.44.030 Definition.**

- A. For the purpose of this code, a "valid and fully complete building permit application" means the following information has been provided for any construction project:

1. The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor.
2. The property owner's name, address and phone number.
3. The prime contractor's business name, address, phone number, and current state contractor registration number.
4. Either:
  - a. The name, address and phone number of the office of the lender administering the interim construction financing, if any; or
  - b. The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the bond is for an amount not less than fifty percent of the total amount of the construction project.
5. If any of the information required by subsection (A)(4) of this section is not available at the time the application is submitted, the applicant shall so state, and the application shall be processed forthwith and the permit issued as if the information had been supplied. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.
6. Plans, specifications and reports, as required by this title.

7. A completed ~~environmental checklist~~ **SEPA determination and land use permit approvals** for applicable projects.

~~8. Accompanying the building permit application, a completed application and all information required to be filed for:~~

- ~~a. Preliminary site plan review application;~~
- ~~b. Zoning conditional use permit;~~
- ~~c. Zoning variance;~~
- ~~d. Zoning planned unit development;~~
- ~~e. Zoning certificate of appropriateness;~~
- ~~f. Shoreline permit, conditional use permit or variance;~~
- ~~g. Site development/grading permit;~~
- ~~h. Land clearing permit;~~
- ~~i. Wetland permit;~~
- ~~j. Wireless communications facility permit;~~

**Commented [BM88]: Question for Karen:**

Can we not allow building or construction permit submittals until land use permit approvals are complete?

The issue for building permits have shorter permit review timeframes and we have ongoing issues with building permit applications submitted, put on hold until land use permit approval is complete, but extended multiple times.

Other permits have a variety of review timelines that do not sync well with land use permit review timeframes.

~~k. Wetland or fish and wildlife habitat protection reasonable use exception;~~  
~~l. Any other land use or environmental permit in effect on the date of application.~~

~~89.~~ Payment of all fees, including but not limited to ~~items listed in subsections (A)(7) and (8) of this section,~~ plan check fees required under the provisions of the Tumwater Municipal Code, and resolutions setting forth fees.

B. For the purpose of this code, a valid and fully complete binding site plan, preliminary plat, or preliminary short plat application requires at a minimum that the following information has been provided:

1. Submittal of all plans, reports and other materials required by the city's development guide, TMC Title 17, Land Division, and other applicable development regulations, and shall include the following general information:
  - a. A completed binding site plan, preliminary plat, or preliminary short plat application form and intake checklist;
  - b. A verified statement by the applicant that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all the owners of the affected property;
  - c. A property and/or legal description of the site for all applications, as required by the applicable development regulations;
  - d. The application fee;
  - e. Evidence of adequate water supply as required by RCW 19.27.097;
  - f. Evidence of sewer availability, or approval and authorization to construct a community or individual sewer or septic system.

(Ord. O2022-004, Amended, 06/07/2022; Ord. O2010-017, Amended, 12/21/2010; Ord. 1332, Added, 07/07/1992)

**Section 10.** TMC 15.48.020 of the Tumwater Municipal Code is hereby amended to read as follows:

**15.48.020 Definitions.**

The words and terms used in this chapter shall have the meanings set forth below:

- A. "Adequate transportation facilities" means transportation facilities that meet or exceed the adopted standard of service set forth in the city's comprehensive plan.
- B. "Transportation facility capacity" means the maximum number of vehicles that can be accommodated during a specified travel period at a specified level of service. Capacity will be calculated according to the methodology used in the most current

highway capacity manual. An alternative methodology may be used only if it is preapproved by the director of ~~public works transportation and engineering~~ or ~~his/her/their~~ designee.

C. “Completion of development” means:

1. The certificate of occupancy, or other approval, has been issued by the city authorizing occupancy and the use of a development.
2. Final plat approval in the case of residential plats ~~involving single family, townhouse or duplex development.~~

D. “Concurrent with development” means the improvements or transportation strategies are in place at the time of building permit issuance or residential ~~preliminary-final~~ plat approval, or the financial commitment is in place to complete the improvements or strategies within six years.

E. “Concurrency test” means the comparison of the traffic generated by a proposed development with the unused or uncommitted capacity of existing and planned transportation facilities, in order to assess the impact of the proposed development on the transportation level of service.

F. “Financial commitment” means revenue sources forecast to be available and designated for transportation facilities or strategies in the comprehensive plan or in the transportation element of the comprehensive plan, other unanticipated revenue from federal or state grants, or other sources for which the city has received a notice of commitment, and/or revenue that is assured by an applicant in a form approved by the city.

G. “Finding of concurrency” means the finding that is a part of the ~~land use permit or, if a land use permit is not required, a building permit or residential preliminary plat approval~~ issued by the city indicating that the transportation system has adequate unused or uncommitted capacity, or will have adequate capacity, to accommodate traffic generated by the proposed development, without causing the level of service standards to decline below the adopted standards, at the time of development.

H. “Level of service standard” means a measurement of the quality of service provided by a facility, including traffic conditions along a given roadway or at a particular intersection, and of transit service. Roadway and intersection level of service standards are commonly denoted by a letter ranking from “A,” the highest level of service, to “F,” the lowest level of service.

I. “Transportation strategies” means transportation demand management plans, schemes, techniques, programs, and methodologies for minimizing transportation facility demand, such as improved transit service, off-peak travel, and ride-sharing programs.

J. “Transportation facilities” means arterials and transit routes owned, operated, or administered by the state of Washington and its political subdivisions, such as the city of Tumwater.

1. “Existing transportation facilities” means those transportation facilities in place at the time a concurrency test is applied; and
2. “Planned transportation facilities” means those transportation facilities scheduled to be completed no later than the sixth year of the capital facilities plan and/or transportation element in effect at the time the city approves the development.

K. “Traffic study” means a specialized study of the impacts that a certain type and size of development in a specific location will have on the surrounding transportation system. The scope of work for the study will be determined by the city.

(Ord. O2010-017, Amended, 12/21/2010; Ord. O95-022, Added, 11/07/1995)

**Section 11.** TMC 15.48.040 of the Tumwater Municipal Code is hereby amended to read as follows:

**15.48.040 Concurrency test – Finding of concurrency.**

A. Except for the exemptions provided for in TMC 15.48.050, the test for concurrency will be conducted as a part of the land use permit application or, if a land use permit application is not required, the building permit application.

B. The city may conduct an alternative concurrency test for the applications identified in TMC 15.48.060 using the process set forth in subsection F of this section.

C. The test for concurrency will be conducted in the order in which the completed land use permit application or, if a land use permit application is not required, building permit application is received.

D. The concurrency test will be performed only for the specific property uses, residential densities and intensities of the uses described on the land use permit application or, if a land use permit application is not required, a building permit application. The applicant shall describe the proposed development in a manner adequate for the city to determine the peak-hour traffic which is likely to be generated by the proposed development. The applicant shall also provide to the city a legal description of the property. Revisions to the proposed development that may create additional impacts on transportation facilities will be required to undergo an additional concurrency test.

E. In conducting the concurrency test, the city will use the trip generation rates set forth in the latest edition of the Institute of Transportation Engineers,

Information Report – Trip Generation. The presumption is that the rates used by the city are accurate unless proven otherwise.

F. If the applicant pays the fees identified in TMC 15.48.080, the applicant may submit a calculation of alternative trip generation rates for the proposed development. The city shall review the alternate calculations and indicate in writing whether such calculations are acceptable in lieu of the standard trip generation rates.

G. The city may adjust the trip generation forecast of the proposed development in order to account for any transportation strategies proposed by the applicant that are acceptable to the city.

H. The city shall not make a finding of concurrency as a part of the issuance of a land use permit or, if a land use permit is not required, a building permit if the proposed development will result in the transportation facilities declining below the adopted level of service standards. If the level of service of the transportation facilities meets or exceeds the adopted level of service standards, the concurrency test is passed and the city shall make a finding of concurrency.

(Ord. O2010-017, Amended, 12/21/2010; Ord. O95-022, Added, 11/07/1995)

**Section 12.** TMC 15.48.050 of the Tumwater Municipal Code is hereby amended to read as follows:

**15.48.050 Exemptions from the concurrency test.**

The following applications for a land use permit or, if a land use permit is not required, a building permit shall be exempt from the concurrency test; provided, that this exemption from the concurrency test is not an exemption from TMC Chapter 3.50.

- A. Any proposed development that creates no additional impacts on any transportation facility;
- B. Any project that is a component of another proposed development and that was included in a prior application for a finding of concurrency;
- C. Any application for a residential building permit if the dwelling unit is a part of a subdivision or short plat that submitted an application and that has undergone a concurrency test and received concurrency approval as part of plat approval; and
- D. Any application that is exempt from TMC Title 16 Environment.

(Ord. O2010-017, Amended, 12/21/2010; Ord. O95-022, Added, 11/07/1995)

**Section 13.** TMC 15.48.060 of the Tumwater Municipal Code is hereby amended to read as follows:

**Commented [TM89]:** This includes SEPA exemptions...

- A. up to nine single-family dwelling units;
- B. up to sixty multifamily dwelling units;
- C. Ag buildings
- D. office, school, commercial, recreational, service or storage building with ten thousand square feet of gross floor area or less;
- E. Parking lots for thirty or fewer automobiles not associated with a structure;
- F. Any fill or excavation of two hundred fifty cubic yards or less throughout the total lifetime of the fill or excavation and any excavation, fill or grading necessary for an exempt project in subsections A, B, C, D, and E of this section shall be exempt.

**Commented [BM90R89]:** Do we amend our threshold exemptions?

**15.48.060 Traffic study.**

Nonexempt land use permit applications or, if a land use permit application is not required, building permit applications for the following types of developments must be accompanied by a traffic impact analysis study prepared by an engineer registered in the state of Washington with special training and experience in traffic engineering and who is a member of the Institute of Transportation Engineers and submitted by the applicant:

- A. Development that generates fifty or more vehicle trips in the peak hour on the adjacent streets and intersections; or
- B. Development that generates twenty-five percent or more of peak-hour traffic through a signalized intersection or the critical movement at an unsignalized intersection.

All developments that are estimated to generate ten or more vehicle trips, five or more truck trips, or one or more trips to any Interstate 5 interchange must provide trip distribution diagrams prepared by a qualified transportation professional even if a full traffic impact analysis is not required.

(Ord. O2022-015, Amended, 10/04/2022; Ord. O2010-017, Amended, 12/21/2010; Ord. O95-022, Added, 11/07/1995)

**Section 14.** TMC 15.48.070 of the Tumwater Municipal Code is hereby amended to read as follows:

**15.48.070 Finding of concurrency.**

- A. The city shall make a finding of concurrency for each land use permit application or, if a land use permit application is not required, building permit application that passes the concurrency test.
- B. The finding of concurrency shall be valid for the same time period as the underlying building permit, including any extensions thereof.
- C. A finding of concurrency shall expire if the underlying land use permit or, if a land use permit is not required, building permit expires or is revoked by the city.
- D. A finding of concurrency accompanying a land use permit or, if a land use permit is not required, a building permit for a particular parcel of property shall be valid for the period of validity of the permit, even if the ownership of the property changes.
- E. All land use permits or, if a land use permit is not required, building permits that require one or more transportation facilities to be provided by the applicant shall be and are hereby conditioned upon an appropriate financial commitment by the applicant which is binding upon subsequent owners, heirs, executors, successors or assigns, and upon the completion of such transportation facilities in a timely

manner, prior to the issuance of the certificate of occupancy or prior to occupancy, unless stated otherwise in writing by the city. Such financial commitment shall be subject to the approval of the city attorney, including performance bond, escrowed funds, or other similar instrument.

(Ord. O2010-017, Amended, 12/21/2010; Ord. O95-022, Added, 11/07/1995)

**Section 15.** TMC 15.48.090 of the Tumwater Municipal Code is hereby amended to read as follows:

**15.48.090 Concurrency system.**

A. The city will provide, or arrange for others to provide, adequate transportation facilities by constructing needed transportation facilities and implementing transportation strategies within the six-year horizon that:

1. Eliminate the level of service deficiencies for existing uses;
2. Achieve the level of service standards for anticipated future development and redevelopment resulting from previously issued land use permits or, if a land use permit is not required, building permits; and
3. Maintain existing facilities and repair or replace obsolete or worn out facilities.

The improvements to transportation facilities will be consistent with the Tumwater comprehensive plan.

B. To the extent possible, the city will make every effort to allocate sufficient funds during the appropriate fiscal year to meet the financial commitment for all the transportation facilities required to meet the level of service standards, except that the city may omit from its budget any capital improvements for which a binding agreement has been executed with another party.

(Ord. O2010-017, Amended, 12/21/2010; Ord. O95-022, Added, 11/07/1995)

**Section 16.** TMC 16.04.090 of the Tumwater Municipal Code is hereby amended to read as follows:

**16.04.090 Mitigated DNS.**

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a determination of nonsignificance (DNS) based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

**Commented [TM91]:** Does this mean that any improvements that are required for concurrency (not standard frontage)

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency;
  2. Precede the city's actual threshold determination for the proposal.
- C. The responsible official should respond to the request for early notice within fifteen working days. The response shall:
1. Be written;
  2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that are leading the city to consider a DS;
  3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.
- D. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- E. When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the city shall base its threshold determination on the changed or clarified proposal:
1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a determination of nonsignificance under WAC 197-11-340(2).
  2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate.
  3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct two-hundred-square-foot stormwater retention pond at Y location" are adequate provided sufficient preliminary design data has been included to indicate the proposed mitigation will mitigate the environmental impacts.
  4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.
- F. A mitigated DNS is issued under WAC 197-11-340(2), requiring a ~~fifteen~~fourteen-day comment period and public notice.

**Commented [BM92]:** WAC 197-11-340(2) requires a 14-day comment period.

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city.

H. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

I. The city's written response under subsection B of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination.

(Ord. O96-004, Amended, 04/16/1996; Ord. 1007, Added, 09/18/1984)

**Section 17.** TMC 16.08.050 of the Tumwater Municipal Code is hereby amended to read as follows:

**16.08.050 Permit required – Applications – Requirements – Processing – Conditions of issuance.**

A. No person, corporation, or other legal entity not exempt under TMC 16.08.080 shall engage in land clearing or tree removal in the city without having received a land clearing permit.

B. Requirement Established. The application for land clearing permit shall be submitted with any ~~project-land use~~ permit as defined in TMC 14.02.020(~~OK~~), including single-family and duplex structures unless a land clearing permit was previously reviewed as part of prior ~~project-land use or building~~ permit. A tree protection plan is required to obtain a land clearing permit and is also required for any land development not exempt under TMC 16.08.080. The tree protection plan shall be developed by a qualified professional forester and be submitted in conjunction with other environmental submittals and site plan development permits. For single-family homes on lots created prior to November 1994, the applicant has the option of using the city tree protection professional to prepare the permit application. This service will be provided at the same hourly rates charged to the city under its contractual arrangement with the tree protection professional.

**Commented [BM93]:** Review whether this should be included or not further.

C. An application for a land clearing permit shall be submitted on a form provided by the city. Accompanying such form shall be a report which includes the following information:

1. General vicinity map;

2. Date, north arrow and scale;
3. Property boundaries, the extent and location of proposed clearing and major physical features of the property (streams, ravines, etc.);
4. Tree Inventory. Drawn to scale on the preliminary or conceptual site plan: a map delineating vegetation types. Each type should include the following information:
  - a. Average trees and basal area per acre, by species and six-inch diameter class. For nonforested areas, a general description of the vegetation present.
  - b. Narrative description of the potential for tree preservation for each vegetation type. This should include soils, wind throw potential, insect and disease problems, and approximate distance to existing and proposed targets.
  - c. Description of any off-site tree or trees, which could be adversely affected by the proposed activity;
5. Tree Protection Plan. Drawn to scale on the site plan, grading and erosion control and landscape plans. It should include the following information:
  - a. Surveyed locations of perimeters of groves of trees and individual trees to be preserved, adjacent to the proposed limits of the construction. General locations of trees proposed for removal. The critical root zones of trees to be preserved shall be shown on the plans.
  - b. Limits of construction and existing and proposed grade changes on site.
  - c. Narrative description, buildable area of the site, and graphic detail of tree protection, and tree maintenance measures required for the preservation of existing trees identified to be preserved.
  - d. Timeline for clearing, grading and installation of tree protection measures.
  - e. Final tree protection plan will be drawn to scale on the above described plans and submitted with the final application packet;
6. Tree Replacement Plan. Drawn to scale on the site and landscape plans. The tree replacement plan shall be developed by a licensed Washington landscape architect, Washington certified nursery professional, ISA certified arborist, board certified horticulturist, qualified professional forester or Washington certified landscaper. It should include the following information:
  - a. Location, size, species, and numbers of trees to be planted.
  - b. Narrative description and detail showing any site preparation, installation, and maintenance measure necessary for the long-term survival and health of the trees.

c. Narrative description and detail showing proposed locations of required tree planting, site preparation, installation, and maintenance within critical root zones of preserved groups or individual trees.

d. Cost estimate for the purchase, installation, and three years' maintenance of trees;

7. A timeline for implementation and monitoring of the tree protection, and/or replacement plan;

8. A plan indicating how the site will be revegetated and landscaped;

9. A proposed time schedule for land clearing, land restoration, revegetation, landscaping, implementation of erosion controls, and any construction of improvements;

10. Information indicating the method to be followed in erosion control and restoration of land during and immediately following land clearing;

11. A note indicating that the city will have the right of entry upon the subject property for the purpose of performing inspections consistent with the provisions of this chapter;

12. The approved tree protection plan map will be included in contractor's packet of approved plans used for construction on the project; and

13. Other information as deemed appropriate to this chapter and necessary by the code administrator or city tree protection professional.

D. In addition to the requirements noted in subsection C of this section, on timbered property greater in size than one acre or commercial property with more than fifteen trees, or other sites the city deems necessary because of special circumstances or complexity, the code administrator may require review of the site and proposed plan and submittal of a report by the city's tree protection professional for compliance with the requirements of this chapter.

Further provided, that the code administrator may modify the submittal requirements of subsections C and D of this section, on individual applications where the information is not needed or is unavailable.

E. Each application shall be submitted with a fee established by resolution of the city council, to help defray the cost of handling the application, no part of which fee is refundable.

F. The code administrator shall notify the applicant whether the application is complete ~~within twenty-eight calendar days of receipt of the application pursuant to the determination of completeness process in TMC 14.08.020.~~ If incomplete, the

code administrator shall ~~indicate in the notice the information required to make the application complete.~~ follow the process in TMC 14.08.020.

~~G. The code administrator shall approve, approve with conditions or deny the permit within thirty calendar days of receipt of the complete application, or within thirty calendar days of completion of any environmental review, whichever is later. For applications such as site development proposals where there is more than a land clearing permit pending, the code administrator shall, whenever feasible, coordinate reviews, notices and hearings, and act upon the land clearing permit concurrently with other pending permits.~~ review and approval process for land clearing permits shall follow the land use permit application review process in TMC Title 14.

~~G.H. The expiration and extension of land clearing permits shall follow the requirements of TMC 14.02.070. Any permit granted under this chapter shall expire eighteen months from the date of issuance, unless said permit is associated with another development permit. If it is associated with another development permit, the restrictions and deadlines of that approval will apply. Upon a written request, a permit not associated with another development permit may be extended by the code administrator for one six-month period.~~

I. Approved plans shall not be amended without being resubmitted to the city. Minor changes consistent with the original permit intent will not require a new permit fee or full application standards to be followed.

J. The permit may be suspended or revoked by the city because of incorrect information supplied or any violation of the provisions of this chapter.

~~H.K.~~ Once issued, the permit shall be posted by the applicant on the site, in a manner so that the permit is visible to the general public.

(Ord. O2017-022, Amended, 12/05/2017; Ord. O2006-014, Amended, 04/17/2007; Ord. O2002-012, Amended, 07/16/2002; Ord. O97-029, Amended, 03/17/1998; Ord. O94-029, Amended, 09/20/1994; Ord. 1190, Added, 05/16/1989)

**Section 18.** TMC 16.08.100 of the Tumwater Municipal Code is hereby amended to read as follows:

**16.08.100 Appeal procedure.**

The appeal procedure for land clearing permit is found in TMC Title 14.

~~Any person aggrieved by a decision or an action of the code administrator in the enforcement or implementation of this chapter may, within fourteen calendar days of such decision or action, file a written appeal to the hearing examiner. Any decision of the hearing examiner may be appealed to the Thurston County superior court in accordance with the provisions of TMC Chapter 2.58.~~

(Ord. O2017-022, Amended, 12/05/2017; Ord. O2006-014, Amended, 04/17/2007; Ord. O2002-012, Amended, 07/16/2002; Ord. O94-029, Amended, 09/20/1994; Ord. 1259, Amended, 11/06/1990; Ord. 1190, Added, 05/16/1989)

**Section 19.** TMC 16.28.150 of the Tumwater Municipal Code is hereby amended to read as follows:

**16.28.150 Permit processing.**

A. Consolidation. The city shall, to the extent practicable and feasible, consolidate the processing of wetlands related aspects of other city of Tumwater regulatory programs which affect activities in wetlands, such as subdividing, clearing and grading, floodplain, and environmentally sensitive chapter, etc., with the wetland permit process established herein so as to provide a timely and coordinated permit process.

B. Completeness of Application. After receipt of the permit application, the city shall notify the applicant as to the completeness of the application in accordance with the procedures outlined in TMC ~~Chapter 14.02~~14.08.020. An application shall not be deemed complete until and unless all information necessary to evaluate the proposed activity, its impacts, and its compliance with the provisions of the chapter have been provided to the satisfaction of the city. Such determination of completeness shall not be construed as approval or denial of the permit application. (Ord. O96-008, Amended, 11/05/1996; Ord. 1278, Added, 08/20/1991)

**Section 20.** TMC 17.04.170 of the Tumwater Municipal Code is hereby amended to read as follows:

**17.04.170 Development review committee.**

The composition of the DRC is as provided in TMC 14.02.020(FG).

(Ord. O96-004, Amended, 04/16/1996; Ord. 1308, Added, 10/15/1991)

**Section 21.** TMC 17.14.010 of the Tumwater Municipal Code is hereby amended to read as follows:

**17.14.010 Preliminary subdivisions, short subdivisions, binding site plans, and large lot subdivisions.**

Preliminary land divisions shall be reviewed as described below:

A. Administrative Review. Short plats, binding site plans and large lot subdivisions shall be reviewed by the development review committee, the composition of said committee is defined in TMC 14.02.020(G). See also TMC ~~14.08.030~~14.020(A) regarding jurisdictional authority.

B. Hearing Examiner Review. Preliminary plats shall be reviewed by the development review committee which shall forward their recommendation to the hearing examiner for ~~his/her~~their decision.

(Ord. 096-004, Amended, 04/16/1996; Ord. 1308, Added, 10/15/1991)

**Section 22.** TMC 17.14.020 of the Tumwater Municipal Code is hereby amended to read as follows:

**17.14.020 Preapplication/application procedures.**

The land divider shall comply with procedures set forth in TMC ~~14.02.060 through 14.02.090~~Title 14 Development Code Administration in processing ~~project~~land use permit applications.

(Ord. 096-004, Amended, 04/16/1996; Ord. 1308, Added, 10/15/1991)

**Section 23.** TMC 17.14.030 of the Tumwater Municipal Code is hereby amended to read as follows:

**17.14.030 Submission.**

A. Application. Each land division submitted to the city shall be accompanied by a completed application form and application materials as provided in TMC Chapter ~~14.02.08.010~~. Such blank form shall be provided by the community development department. The information requested on such form shall be revised and updated from time to time by the community development department.

B. Environmental Checklist. With the exception of short plats not located on or adjacent to a water body or other environmentally sensitive areas such as wetlands, all other applications for divisions of land shall be accompanied by a completed environmental checklist. Such environmental checklist form shall be provided by the community development department.

C. Title Report. A title report or plat certificate issued by a title company which shows property ownership and any easements or other encumbrances shall be submitted with the application package. Such title report or plat certificate shall be dated no more than thirty days prior to submittal.

D. Format of Plan. All drawings of preliminary land divisions shall be prepared on sheet(s) not exceeding twenty-four by thirty-six inches.

A scale of fifty feet to the inch is preferred, although other engineering scales may be used at the discretion of the designer. Architectural scales shall not be used.

E. Number of Copies. The number of copies of a proposed preliminary division of land required for submittal shall be set by the community development department in direct response to the needs of the review authorities. The number of copies shall

be clearly indicated on the application form and may vary depending on the type of land division proposed.

F. Content of Plan. Generally, the information required to be submitted with or on a proposed preliminary division of land plan shall be specified on the application form as provided by the community development department. The type and amount of information required may be changed from time to time by the department to respond to the needs of the reviewing authorities. Generally, such information shall be the minimum required to properly review the proposed division of land and determine its potential environmental impacts. While it is the intent of the city to standardize as much as possible the submittal requirements, it may be necessary from time to time for the staff or other reviewing authorities to request additional information from the applicant beyond that specified on the application forms, in order to adequately review plans for sites with unique characteristics or unique development plans.

G. Adjacent Property Owners. Included with the application packet for any proposed preliminary division of land must be a list of properties located within three hundred feet of the subject property, its registered owner(s) and their mailing addresses as listed in the office of the county assessor. This list must be submitted on the form provided by the community development department for that purpose in order to facilitate the mailing of notices to the property owners. The director may extend the area of the required list beyond three hundred feet in cases where three hundred feet does not adequately identify neighbors affected by the pending action.

If the list is not prepared at the assessor's office, or at an office having direct computer access to the assessor's ownership records, the date of receipt of the master list from which the information was taken shall be indicated on the form when submitted to the city. In no case shall the information be based on a master list more than three months old at the time of filing the application.

H. Public Notification. In the case of preliminary land divisions going before the hearing examiner, notification of the required public hearing shall be as provided by this code. Notification of administrative consideration of preliminary land divisions shall be by posting of the site in three conspicuous places.

I. Time Limit for Action. As provided in TMC ~~14.02.080 and 14.02.090~~ Title 14 Development Code Administration, when the community development department has received a complete application, it shall be approved or disapproved ~~within one hundred twenty days according to the review times established by TMC Table 14.04.030~~ or as soon as reasonably practicable; provided, that if an expanded environmental checklist, environmental assessment or environmental impact statement is required as provided in Chapter 43.21C RCW, the ~~one hundred-~~

~~twenty-day period required review time~~ shall not include the time spent preparing and circulating the environmental documents.

J. Specific Requirements.

1. Phasing. If phasing of the land division is anticipated, such phasing must be indicated on the plan. When projects are phased, care must be taken to ensure that each phase or combination of phases can meet all applicable requirements on their own. Examples would include utility systems, emergency vehicle access, and adequate turnaround areas. When an applicant owns adjacent land, the phasing plan shall include preliminary draft layouts of the master plan for the total property. Special attention shall be given to the compatibility of layouts and the provision of transportation and pedestrian linkages.

2. Distribution of Information. The staff of the department shall distribute copies of the preliminary land division plan and pertinent information to the members of the development review committee and other agencies and utilities as appropriate. A copy of the proposed land division shall also be sent to the State Department of Transportation and the Port of Olympia.

(Ord. O2011-002, Amended, 03/01/2011; Ord. O96-004, Amended, 04/16/1996; Ord. 1308, Added, 10/15/1991)

**Section 24.** TMC 17.14.090 of the Tumwater Municipal Code is hereby amended to read as follows:

**17.14.090 Phased development.**

A. Residential preliminary plats containing more than one hundred dwelling units and commercial or industrial preliminary plats covering more than twenty acres are eligible to attain final plat approval in phases. Residential binding site plans containing ten or more dwelling units and commercial or industrial binding site plans covering more than twenty acres are eligible to attain approval in phases. Phased approval of final plats and binding site plans is limited to developments with at least two but not more than four phases.

Upon receipt of the recommendation from the development review committee, the hearing examiner shall hold a public hearing and shall review the phased land division in accordance with this title, the recommendations of the development review committee, reports of other agencies and officials, if any, and the hearing testimony. At the hearing, the hearing examiner shall consider and may alter any part of the proposed phased development. The hearing examiner may approve, approve with conditions, or disapprove the phasing plan. The phasing of binding site plans shall follow the procedures for binding site plan-phasing approval in ~~Table 14.08.030~~[TMC Title 14 Development Code Administration](#).

The preliminary plat or binding site plan for a phased development shall show the number of phases, the area each phase encompasses, and the sequence for submission for recording of the various phases. A submittal for a phased development shall demonstrate how transportation, access, traffic, stormwater, parks and open space, critical areas, and utilities will be addressed for all phases of the development.

The period of time between the date of the preliminary approval of the phased land division by the hearing examiner and the date of filing for final plat approval for the first phase shall be consistent with TMC 17.14.080. The period of time between the date of preliminary approval of the phased land division by the hearing examiner and the completion of the first phase of a phased binding site plan, and the recording of such document(s) shall be consistent with TMC 17.14.080.

Construction plans for each phase of a phased development shall include stormwater management facilities that comply with all state and local requirements in effect at the beginning of the time period allotted for that phase.

Applications for final plat or binding site plan approval for each successive phase must be submitted within three years of the submittal for final plat or binding site plan approval on the previous phase, except as provided below.

B. For phased preliminary plats approved prior to January 1, 2008, which are affected by the United States Fish and Wildlife Service's requirement for a habitat conservation plan protecting federally listed habitat and/or species, the community development director or his/her designee may issue time extensions in one-year increments until a citywide or individual habitat conservation plan is completed, but in no case shall time extensions exceed three years. During such extensions granted pursuant to this subsection, the plat shall continue to be subject to the conditions of approval and vested rights that applied to the approved phased preliminary plat prior to the extension, with the exception of storm drainage standards, design guidelines and building and fire codes, unless it would significantly alter the plat as approved by the hearing examiner.

C. Time extensions that are granted pursuant to these regulations shall continue to be subject to the conditions of approval and vested rights that applied to the approved phased preliminary plat or binding site plan prior to the extension, with the exception of stormwater management regulations and building and fire codes, except as provided under subsection B of this section. If time extensions are granted pursuant to these regulations, subsequent phases shall meet current stormwater management regulations and building and fire codes. The director's decision shall be a final decision of the city of Tumwater and not subject to administrative appeal.

(Ord. O2022-004, Amended, 06/07/2022; Ord. O2016-022, Amended, 01/03/2017; Ord. O2016-010, Amended, 08/02/2016; Ord. O2011-015, Amended, 12/20/2011; Ord. O2010-004, Amended, 05/04/2010; Ord. O2000-004, Added, 07/18/2000)

**Section 25.** TMC 17.24.010 of the Tumwater Municipal Code is hereby amended to read as follows:

**17.24.010 Final plats, short plats, binding site plans, and large lot subdivisions.**

Recommendations, decision-making authority, and appeal authority shall be as provided in TMC ~~14.08.030~~ Table 14.04.020(A).

(Ord. O96-004, Amended, 04/16/1996; Ord. 1308, Added, 10/15/1991)

**Section 26.** TMC 17.24.050 of the Tumwater Municipal Code is hereby amended to read as follows:

**17.24.050 Time to act.**

After the city certifies in writing that the applicant has completed all required improvements and the applicant has submitted all the required elements of final land division application, final land divisions shall be approved, disapproved or returned to the applicant within thirty days from the date of filing unless the applicant consents to an extension of such time period.

(Ord. 1308, Added, 10/15/1991)

**Section 27.** TMC 17.28.040 of the Tumwater Municipal Code is hereby amended to read as follows:

**17.28.040 Procedure for approval.**

The hearing examiner shall consider a variance request concurrently with the land division or plan to which it applies in accordance with the provisions of TMC Title 14 Development Code Administration. The hearing examiner shall act on all requested modifications prior to acting upon the plat or short plat to which they apply. The hearing examiner shall detail ~~his/her~~ their findings with respect to requested variances. At no time shall the hearing examiner's action on a variance be finalized unless accompanied by the hearing examiner's action on the land division or plan, or short plat, or vice versa.

(Ord. O96-004, Amended, 04/16/1996; Ord. 1308, Amended, 10/15/1991; Ord. 1063, Amended, 03/18/1986; Ord. 1016, Added, 10/02/1984)

**Section 28.** TMC 18.07.010 of the Tumwater Municipal Code is hereby amended to read as follows:

**18.07.010 Residential zone districts permitted and conditional uses.**

If there are any inconsistencies between Table 18.07.010 and the specific requirements in the underlying zoning district, the requirements in the underlying zoning district shall be followed.

**TABLE 18.07.010**

**RESIDENTIAL ZONE DISTRICTS PERMITTED AND CONDITIONAL USES**

<b>RESIDENTIAL DISTRICTS</b> <b>Note: See Figure 18.23.020</b> <b>for residential uses allowed</b> <b>in the TC town center zone</b> <b>district; and Table 18.27.040</b> <b>for residential uses allowed</b> <b>in the BD brewery district</b> <b>zone</b>	<b>RSR</b>	<b>SFL</b>	<b>SFM</b>	<b>MFM</b>	<b>MFH</b>	<b>MHP</b>	<b>Applicable Regulations</b>
Adult family homes, residential care facilities	P	P	P	P	P	P	18.53
Agriculture up to 30 acres in size	P	P	P	P			18.42.070
Animals (the housing, care and keeping of)	P	P	P	P			6.08
Attached wireless communication facilities	P	P	P	P	P		11.20
Bed and breakfasts	C <sup>1</sup>	C <sup>1</sup>	C <sup>1</sup>	P		C <sup>1</sup>	18.56
Cemeteries	C	C	C	C	C	C	18.56
Child day care center	C	C	C	C	C	C	18.56
Churches	C	C	C	C	C	C	18.56
Community garden	P	P	P	P	P		
Cottage housing	P	P	P	P			18.51
Designated manufactured home parks				P			18.48; 18.49
Designated manufactured homes	P	P	P	P		P	18.48
Duplexes	P <sup>2</sup>	P <sup>2</sup>	P <sup>3</sup>	P			
Emergency communication towers or antennas	C	C	C	C	C	C	18.56; 11.20

<b>RESIDENTIAL DISTRICTS</b> <b>Note: See Figure 18.23.020</b> <b>for residential uses allowed</b> <b>in the TC town center zone</b> <b>district; and Table 18.27.040</b> <b>for residential uses allowed</b> <b>in the BD brewery district</b> <b>zone</b>	<b>RSR</b>	<b>SFL</b>	<b>SFM</b>	<b>MFM</b>	<b>MFH</b>	<b>MHP</b>	<b>Applicable Regulations</b>
Family child care home, child mini-day care center	P	P	P	P	P	P	18.52
Fourplexes				P	P		
Group foster homes	C	C	C	C	C	C	18.56
Inpatient facilities				C	C		18.56
Medical clinics or hospitals				C	C		18.56
Mental health facilities				C	C		18.56
Multifamily dwellings				P	P		
Manufactured home parks in accordance with the provisions of TMC Chapter 18.48						P	18.48
Mobile home parks which were legally established prior to July 1, 2008						P	18.48
Neighborhood community center	C	C	C	C	C	C	18.56
Neighborhood-oriented commercial center		C	C	C	C	C	18.56
Parks, trails, open space areas and recreational facilities	P	P	P	P	P	P	
Permanent supportive housing	P	P	P	P	P	P	18.42.150
Planned unit developments		P	P	P	P	P	18.36
Private clubs and lodges			C	C	C		18.56
Recreational vehicle parks				C			18.56
Schools	C	C	C	C	C	C	18.56

<b>RESIDENTIAL DISTRICTS</b> <b>Note: See Figure 18.23.020</b> <b>for residential uses allowed</b> <b>in the TC town center zone</b> <b>district; and Table 18.27.040</b> <b>for residential uses allowed</b> <b>in the BD brewery district</b> <b>zone</b>	<b>RSR</b>	<b>SFL</b>	<b>SFM</b>	<b>MFM</b>	<b>MFH</b>	<b>MHP</b>	<b>Applicable</b> <b>Regulations</b>
Senior housing facilities, assisted				C	C		18.56
Senior housing facilities, independent				P	P		
Single-family detached dwellings	P	P	P			P	
Single-family detached dwellings existing prior to April 15, 2021				P <sup>4</sup>			
Support facilities	P	P	P	P	P	P	
Temporary expansions of schools, such as portable classrooms	C	C	C	C	C	C	18.56
Townhouses and rowhouses			P <sup>5</sup>	P	P		18.16.050 (F)(1)(a)
Transitional housing	P	P	P	P	P	P	18.42.150
Triplexes				P	P		
Wildlife refuges and forest preserves	P	P	P	P	P		
Wireless communication towers	C	C	C	C	C	C	11.20; 18.56

**LEGEND**

P = Permitted Use

C = Conditional Use

RSR = Residential/Sensitive Resource

SFL = Single-Family Low Density Residential

SFM = Single-Family Medium Density Residential

MFM = Multifamily Medium Density Residential

MFH = Multifamily High Density Residential

MHP = Manufactured Home Park

Table 18.07.010 Footnotes:

(1) “Bed and breakfasts” with only one guest room are a permitted use, but are subject to the notice of application requirements in TMC ~~Chapter 14.06~~ 14.10.050 to allow for public notice for neighbors and an appeal of the administrative decision to the hearing examiner.

**Commented [BM94]:** Is this allowable under state law if SEPA exempt?

(2) “Duplexes” are allowed in the residential/sensitive resource (RSR) and single-family low density residential (SFL) zone districts on individual lots legally established before or on April 15, 2021. Duplexes shall not occupy more than twenty percent of the total lots in a new short plat or subdivision, which was legally established after April 15, 2021. In such cases, the community development director shall have the discretion to alter the percentage in order to allow the new short plat or subdivision to meet minimum required densities due to topography or other special conditions related to the site, such as critical areas.

(3) “Duplexes” are allowed in the single-family medium density residential (SFM) zone district on individual lots legally established before or on April 15, 2021. Duplexes shall not occupy more than thirty percent of the total lots in a new short plat or subdivision, which was legally established after April 15, 2021. In such cases, the community development director shall have the discretion to alter the percentage in order to allow the new short plat or subdivision to meet minimum required densities due to topography or other special conditions related to the site, such as critical areas.

(4) Single-family detached dwellings constructed after April 15, 2021, are not allowed in the multifamily medium density residential (MFM) zone district.

(5) “Townhouses and rowhouses” are allowed within a residential planned unit development in the single family medium density residential (SFM) zone district.

Table 18.07.010 Explanatory Notes:

1. If the box is shaded, the use is not allowed in that zone district.
2. Accessory uses are listed in each zoned district chapter.

(Ord. O2022-013, Amended, 10/04/2022; Ord. O2022-006, Amended, 08/01/2022; Ord. O2021-019, Amended, 01/18/2022; Ord. O2020-005, Amended, 03/16/2021; Ord. O2020-003, Amended, 09/15/2020; Ord. O2019-007, Amended, 09/03/2019; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-006, Added, 07/18/2017)

**Section 29.** TMC 18.08.040 of the Tumwater Municipal Code is hereby amended to read as follows:

**18.08.040 Conditional uses.**

Conditional uses in the RSR zone district are as follows:

- A. Churches;
- B. Wireless communication towers;\*
- C. Cemeteries;
- D. Child day care center;
- E. Schools;
- F. Neighborhood community center;
- G. Group foster homes;
- H. The following essential public facilities:
  - 1. Emergency communications towers and antennas;\*
- I. Temporary expansions of schools, such as portable classrooms;
- J. Bed and breakfasts.\*\*

\*Emergency communication towers and antennas and wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore both uses are subject to provisions for wireless communication facilities in TMC Chapter 11.20, Wireless Communication Facilities.

\*\*Bed and breakfasts with only one guest room are permitted use, but are subject to the notice of application requirements in ~~TMC Chapter 14.10.05006~~ to allow for public notice for neighbors and an appeal of the administrative decision to the hearing examiner.

(Ord. O2020-003, Amended, 09/15/2020; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-006, Amended, 07/18/2017; Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Amended, 12/19/1995; Ord. O95-014, Added, 07/18/1995)

**Section 30.** TMC 18.10.040 of the Tumwater Municipal Code is hereby amended to read as follows:

**18.10.040 Conditional uses.**

Conditional uses in the SFL zone district are as follows:

- A. Churches;
- B. Wireless communication towers;\*

Commented [BM95]: Is this allowable under state law if SEPA exempt?

- C. Cemeteries;
- D. Child day care center;
- E. Schools;
- F. Neighborhood community center;
- G. Neighborhood-oriented commercial center;
- H. The following essential public facilities:
  - 1. Emergency communications towers and antennas;\*
- I. Group foster homes;
- J. Bed and breakfasts;\*\*
- K. Temporary expansions of schools, such as portable classrooms.

\*Emergency communication towers and antennas and wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore both uses are subject to provisions for wireless communication facilities in TMC Chapter 11.20, Wireless Communication Facilities.

\*\*Bed and breakfasts with only one guest room are permitted use, but are subject to the notice of application requirements in ~~TMC Chapter 14.10.05006~~ to allow for public notice for neighbors and an appeal of the administrative decision to the hearing examiner.

(Ord. O2019-007, Amended, 09/03/2019; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-006, Amended, 07/18/2017; Ord. O2010-029, Amended, 06/07/2011; Ord. O2001-012, Amended, 03/19/2002; Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Added, 12/19/1995)

**Section 31.** TMC 18.10.040 of the Tumwater Municipal Code is hereby amended to read as follows:

**18.12.040 Conditional uses.**

Conditional uses in the SFM zone district are as follows:

- A. Churches;
- B. Wireless communication towers;\*
- C. Cemeteries;
- D. Child day care center;
- E. Schools;
- F. Neighborhood community center;

Commented [BM96]: Is this allowable under state law if SEPA exempt?

- G. Neighborhood-oriented commercial center;
- H. Private clubs and lodges;
- I. The following essential public facilities:
  - 1. Emergency communications towers and antennas;\*
- J. Group foster homes;
- K. Bed and breakfasts;\*\*
- L. Temporary expansions of schools, such as portable classrooms.

\*Emergency communication towers and antennas and wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore both uses are subject to provisions for wireless communication facilities in TMC Chapter 11.20, Wireless Communication Facilities.

\*\*Bed and breakfasts with only one guest room are permitted use, but are subject to the notice of application requirements in ~~TMC Chapter 14.10.05006~~ to allow for public notice for neighbors and an appeal of the administrative decision to the hearing examiner.

(Ord. O2019-007, Amended, 09/03/2019; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-006, Amended, 07/18/2017; Ord. O2010-029, Amended, 06/07/2011; Ord. O2001-012, Amended, 03/19/2002; Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Added, 12/19/1995)

**Section 32.** TMC 18.49.040 of the Tumwater Municipal Code is hereby amended to read as follows:

**18.49.040 Conditional uses.**

Conditional uses within the MHP zone district are as follows:

- A. Churches;
- B. Wireless communication towers;\*
- C. Cemeteries;
- D. Child day care center;
- E. Schools;
- F. Neighborhood community center;
- G. Neighborhood-oriented commercial center;
- H. The following essential public facilities:
  - 1. Emergency communications towers and antennas;

Commented [BM97]: Is this allowable under state law if SEPA exempt?

- I. Group foster homes;
- J. Bed and breakfasts;\*\*
- K. Temporary expansions of schools, such as portable classrooms.

\*Wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore are subject to provisions for wireless communication facilities in TMC Chapter 11.20, Wireless Communication Facilities.

\*\*Bed and breakfasts with only one guest room are permitted use, but are subject to the notice of application requirements in ~~TMC Chapter 14.10.05006~~ to allow for public notice for neighbors and an appeal of the administrative decision to the hearing examiner.

(Ord. O2019-007, Amended, 09/03/2019; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-006, Amended, 07/18/2017; Ord. O2008-009, Added, 02/17/2009)

**Section 33.** TMC 18.50.075 of the Tumwater Municipal Code is hereby amended to read as follows:

**18.50.075 Modification of off-street parking space standards.**

A. Minor Modifications. A modification to increase or decrease parking standards in Figure 18.50.070(A) by up to ten percent shall automatically apply at the request of the project applicant.

B. Administrative Modifications. A modification to increase or decrease the parking standard in Figure 18.50.070(A) by ten percent to forty percent shall be considered by the city at the request of the project applicant.

1. The criteria for an administrative modification request are set forth below:

a. The project ~~developer~~ applicant shall present all findings, evidence, and reports to the community development director prior to any final, discretionary approvals; e.g., site plan approval, environmental review, or any planning, building, or engineering permits.

b. Modification requests may be granted based on the effectiveness of proposed transportation demand management strategies, significance and magnitude of the proposed modification, and compliance with this chapter.

c. Modification requests may be denied or altered if the community development director has reason to believe, based on experiences and existing development practices, that the proposed modification may lead to excessive or inadequate parking or may inhibit or prevent regular and intended functions of either the proposed or existing use, or adjacent uses.

**Commented [BM98]:** Is this allowable under state law if SEPA exempt?

2. Submittal Requirements. A report shall be submitted by the applicant providing the basis for more or less parking and will include the following information:

- a. For requests of up to twenty percent:
  - i. Describe site and use characteristics, specifically:
    - (A) Site accessibility and proximity to transit infrastructure and transit times;
    - (B) Site accessibility and proximity to bicycle and pedestrian infrastructure;
    - (C) Shared and combined parking opportunities; and
    - (D) Employee or customer density and transportation practices.
  - ii. Describe and demonstrate alternative transportation strategies such as carpooling, flexible work schedules, telecommuting, or parking fees, if used;
  - iii. Demonstrate compliance with commute trip reduction measures as required by state law, if applicable;
  - iv. Identify possible negative effects on adjacent uses and mitigation strategies, if applicable; and
  - v. If increasing, employers with one hundred or more employees must meet the design and facility requirements in TMC 18.50.060(L).
- b. For requests greater than twenty percent and up to forty percent:
  - i. Provide the contents of a twenty percent or less request;
  - ii. If increasing, provide a parking demand study prepared by a transportation engineer licensed in the state of Washington, which supports the need for more parking;
  - iii. Increased parking in excess of twenty percent shall be banked in accordance with TMC 18.50.100 for a minimum of three years; and
  - iv. If decreasing, show that the site is within a one-quarter-mile walk to transit service, or that it will be within six months of occupancy to be verified by Intercity Transit.

3. Administrative decisions may be appealed pursuant to TMC ~~Chapter 14.082.58.090~~.

(Ord. O2014-008, Added, 10/07/2014)

**Section 34.** TMC 18.50.120 of the Tumwater Municipal Code is hereby amended to read as follows:

**18.50.120 Required bicycle facilities.**

The following requirements shall apply to any off-street parking area designed to accommodate ten or more vehicles and any non-single-family/duplex development over three thousand square feet. This requirement excludes auxiliary buildings that are not a primary arrival location for employees, visitors, or residents, such as storage buildings.

A. Bicycle parking spaces shall be provided in accordance with Figure 18.50.120(A). Bicycle facilities satisfying Figure 18.50.120(A) shall meet the following requirements. Bicycle facilities provided in excess of Figure 18.50.120(A) shall only be required to meet subsections (A)(4) through (6) of this section:

1. Covered to protect bicycles from weather;
2. Visible from primary entrances or provide signs indicating location;
3. Illuminated;
4. Secure to protect bicycles from theft through the use of racks, cages, lockers, or other approved methods;
5. Located within one hundred feet of primary entrances for employees, visitors, or residents unless combining with other uses on site for convenience, in which case bicycle facilities shall be located within two hundred feet of a primary entrance. Bicycle facilities should be located no farther away from the main entrance than the nearest nonaccessible space;
6. Accessible for bicycles, defined as the following:
  - a. Provide proper maneuvering space (usually a minimum of twenty-four inches) between landscaping, buildings, and other obstructions;
  - b. Not interfere with means of ingress or egress from the building; and
  - c. Accessible without using stairs.

B. Short-term (class 2) bicycle facilities shall provide a secure and quickly accessible space to lock a bicycle to a bicycle rack.

1. Racks shall enable the use of a U-lock between the bicycle frame and the rack. Additionally, racks shall support the bicycle frame in two or more places (e.g., “inverted U”).
2. Racks shall provide a bicycle parking space equal to twenty-two inches by six feet, unless placed side to side, in which case they may be placed thirty-six inches apart.

3. Prohibited racks include grid/comb/wheelbenders which only secure a wheel, and wave/ribbon racks.
  4. Encouraged racks include inverted “U,” “A,” post and loop racks, and security rails.
  5. Long-term bicycle facilities provided in excess of the minimum requirements shall serve to meet up to fifty percent of short-term bicycle facility requirements at the request of the land-owner.
- C. Long-term (class 1) bicycle facilities shall protect bicycles and their components from theft, unauthorized access, and weather. Examples include a lockable bike cage or class 1 bicycle lockers.
1. Each bicycle must be able to be individually locked or secured unless the facility is designed to only be used by an individual or family (such as in a private garage). If racks are used, they must be compliant with subsection B of this section.
  2. Bicycle lockers are encouraged, but no site should depend solely on bicycle lockers for long-term storage. Bicycle lockers should have a see-through window or view-hole to discourage improper use.
  3. Each residential unit shall have access to the required long-term bicycle space.
  4. Long-term bicycle facilities shall be provided as specified in Figure 18.50.120(A).
- D. All major employers or major worksites as defined by RCW 70.94.524 shall provide a minimum of one shower and changing facility per gender.
- E. Administrative Modification. If, in the judgment of the community development director, required bicycle facilities are demonstrated by the ~~applicant project developer~~ to be excessive for a particular development given its use (such as with a residential care facility or rest home), or if there are unusual circumstances which preclude the establishment of required bicycle facilities, the community development director may allow reduced standards. Administrative decisions may be appealed pursuant to TMC ~~14.04-Chapter 14.08~~.

(Ord. O2022-013, Amended, 10/04/2022; Ord. O2014-008, Added, 10/07/2014)

**Section 35.** A new TMC Chapter 18.55 is hereby added to the Tumwater Municipal Code to read as follows:

**Chapter 18.55**  
**SITE PLAN REVIEW**

Sections:

- 18.55.010 Purpose.
- 18.55.020 Applicability.
- 18.55.030 Exemptions.
- 18.55.040 Application requirements.
- 18.55.050 Review process.
- 18.55.060 Appeals.
- 18.55.070 Duration of site plan approval.
- 18.55.080 Exception to duration of approval for phased projects.
- 18.55.090 Minor modifications.
- 18.55.100 Major modifications.
- 18.55.110 Revocation of site plan approval.
- 18.55.120 Compliance.
- 18.55.130 Penalty for noncompliance.

**18.55.010 Purpose.**

- A. The purpose of the site plan approval process is to:
  - 1. Facilitate project design that is consistent with the city's comprehensive plan and regulations and in keeping with the physical constraints of the project site;
  - 2. Promote orderly community growth;
  - 3. Minimize discordant and undesirable impacts of development both on site and off site;
  - 4. Coordinate public or quasi-public elements, such as walkways, driveways, paths, and landscaping within segments of larger developments and between individual developments;
  - 5. Ensure convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;
  - 6. Protect the desirable aspects of the natural landscape and environmental features of the city by minimizing the undesirable impacts of proposed developments on the physical environment; and
  - 7. Minimize conflicts that might otherwise be created by a mix of uses within an allowed area.
- B. The site plan review is not intended to determine whether a particular land use activity is appropriate on a particular site.
- C. Land uses that are otherwise permitted in this title shall not be denied through the site plan review process unless such uses cannot meet the development standards required for the use.

D. Site plan review shall be consolidated with other land use permit approvals pursuant to TMC Title 14 Development Code Administration.

E. Site plan review does not replace any required environmental, land division or zoning approvals.

**18.55.020 Applicability.**

A. Site plan elements subject to this chapter include, but are not limited to:

1. Site layout;
2. Building orientation;
3. Pedestrian and vehicular access;
4. Signage;
5. Landscaping and natural features of the site;
6. Integration of stormwater management techniques;
7. Screening and buffering;
8. Parking and loading arrangements, and illumination; and
9. Design review.

B. Site planning is the horizontal and vertical arrangement of the elements in TMC 18.55.020(A) that is compatible with the city's comprehensive plan and regulations, and the physical characteristics of a site and the surrounding area.

C. Site plan review shall be required in the following instances:

1. Construction or expansion of new facilities or structures, except for individual single-family dwellings, duplexes, triplexes, quadplexes, townhouses, and stacked units or
2. Where, in the opinion of the director, the magnitude and character of the project is sufficiently complex to warrant site plan review, or the project could result in an adverse effect on adjacent properties or the subject property or other public facilities if not planned early and carefully.

**18.55.030 Exemptions.**

A. Site plan review shall not be required for remodeling existing buildings or structures provided:

1. The alterations conform with any prior approved site plan review approval; or
2. The alterations do not modify the existing site layout.

B. The following types of uses are not exempt from site plan review:

1. Individual single family dwellings, duplexes, triplexes, or quadplexes located on property with critical areas; or
2. Two or more single family dwellings, duplexes, triplexes, or quadplexes built on the same lot.

**18.55.040 Application requirements.**

- A. Site plan review applications shall not be accepted for processing until the applicant has scheduled and attended preapplication conferences pursuant to TMC 14.06.020 Preapplication Conferences.
- B. For any project requiring a site plan approval as identified in TMC 18.55.020, a site plan review application shall be submitted to the community development department for review and approval pursuant to TMC Chapter 14.04 Land Use Permits as either a Type I land use permit application, if SEPA review is not required, or as a Type II land use permit application, if SEPA review is required.
- C. Application for site plan review shall include the information required by TMC 14.08.010 Land Use Permit Applications, unless waived by the director.

**18.55.050 Review process.**

- A. Upon receipt of the complete site plan review application, the director shall circulate the site plan review application pursuant to the requirements of TMC 14.10.040 Referral and Review of Land Use Permit Applications.
- B. Site plan review applications shall be reviewed as either a Type I land use permit application, if SEPA review is not required, or as a Type II land use permit application, if SEPA review is required.
- C. Modifications and conditions may be imposed to meet city regulations and to the extent reasonably necessary to eliminate or minimize adverse effects on adjacent properties, subject properties, or public facilities.
  1. The decision to require modifications or conditions shall be based upon the following factors:
    - a. Noise level;
    - b. Traffic flow, internal circulation, sight obstruction, and parking;
    - c. Drainage and flood control;
    - d. Location, size, and availability of public facilities;
    - e. Requests for variance or conditional use;
    - f. Environmental or land division approvals;
    - g. Effect of the project on adjacent and surrounding properties; and
    - h. Landscaping, and site or building design.

- D. Modifications and conditions required by the director shall be limited to:
1. Location, dimensions, and method of improvements to all property to be dedicated to the public or to public utilities including, but not limited to, street right-of-way and utility easements;
  2. Location, size, dimensions of yards, courts, setbacks, and all other open spaces between buildings and structures;
  3. Location, dimensions, and method of improvement of all driveways, curbs and gutters, parking areas, walkways and means of access, ingress and egress, and drainage;
  4. Location, size, bulk, exterior surfaces, height, and number of stories of all buildings and structures, including signs, walls, and fences;
  5. Location, size, dimensions, design elements, and materials used in landscaped areas; and
  6. Improvements to city standards of adjacent streets by the applicant, including paving, curbs, gutters, sidewalks, provisions of streetlights, and traffic-control facilities where the city determines that traffic generation, flow, and circulation patterns warrant such improvement.

**18.55.060 Appeals.**

- A. Appeals of director decisions relating to site plan applications may be appealed to the hearing examiner by submitting to the director a written notice of appeal within fourteen days of the director decision.

**18.55.070 Duration of site plan approval.**

- A. The approval of a site plan shall vest the applicant to the land use regulations in effect at the time of the application for a period of eighteen months after approval; provided that the applicant files a complete application for a building permit within this timeframe.
- B. The director may grant one extension in writing of up to one year upon good cause shown.

**18.55.080 Exception to duration of approval for phased projects.**

- A. Phasing Permitted.
1. For development proposed on only a portion of a particular site, an applicant may choose to submit a site plan application for either the entire site or a portion of the site.
  2. For development proposed on only a portion of a particular site, the application shall state clearly the area of the portion of the site and the proposed development, including phases, for which site plan approval is being requested.

3. In every case, the site plan application and review shall cover at least that portion of the site which is directly related to or may be impacted by the actual proposed development, as determined by the director.

B. Authority for Extension of Time.

1. The director may grant site plan approval for large projects planned to be developed or redeveloped in phases over a period of years, exceeding the normal time limits of this chapter.

2. Such approval shall include clearly defined phases and specific time limits for each phase.

C. Expiration of Phase(s).

1. If the time limits of a particular phase are not satisfied then site plan approval for that phase and subsequent phases shall expire.

2. The director shall determine if such a phased project will be eligible for any extensions of the time limits.

D. Vesting.

1. If the development of a phased project conforms to the approved phasing plan, the land use regulations in effect at the time of the original approval shall continue to apply.

2. However, all construction shall conform to the current regulations in Title 15 Buildings and Construction and stormwater regulations in force at the time of building permit application.

**18.55.090 Minor modifications.**

A. Minor modifications to an approved site plan may be permitted by the director.

B. To be considered a minor modification, the amendment must not:

1. Involve more than a ten percent increase in area or scale of the development in the approved site plan;

2. Have a significantly greater impact on the environment and facilities than the approved site plan; or

3. Change the boundaries of the originally approved site plan.

**18.55.100 Major modifications.**

A. Major modifications to an approved site plan require a new application.

B. The review and approval shall be by the approval body which approved the original site plan.

C. Major modifications involve a substantial change in the basic site design plan, intensity, density, use and the like involving more than a 10 percent change in area or scale.

**18.55.110 Revocation of site plan approval.**

A. Revocation or Modification Allowed. Approval of a site plan and design review application may be revoked or modified by the planning commission after a public hearing on any one or more of the following grounds:

1. That the approval was obtained by fraud or misrepresentation of facts;
2. That the development or use pursuant to the approved site plan and design review is being or has been exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law, or regulation; or
3. That the development or use for the site plan and design review for which the approval was granted is being or has been so exercised as to be detrimental to the public health, safety, or welfare.

B. Upon determination by the director that possible grounds for revocation of the site plan and design review approval exist, the matter shall be forwarded to the hearing examiner. After a public hearing, the hearing examiner shall:

1. Revoke the site plan and design review approval;
2. Affirm the approval of the site plan and design review as previously granted; or
3. Modify previously imposed conditions or require additional conditions including periodic review to ensure development or use is in conformance with the site plan and design review, and requirements of the municipal code.

**18.55.120 Compliance.**

A. No person shall violate or fail to comply with the provisions of this chapter or any adopted site plan approval or any conditions or provisions thereof, nor shall a building permit be issued for any structure which would violate or fail to comply with any adopted site plan approval for the parcel or parcels on which such structure is to be located.

**18.55.130 Penalty for noncompliance.**

A. Anyone found in violation of this chapter shall be guilty of a civil infraction as defined in TMC 1.10.

B. Each day the violation continues may be considered as a separate violation.

**Section 36.** TMC 18.56.030 of the Tumwater Municipal Code is hereby amended to read as follows:

**Commented [BM99]:** See also TMC 14.02.030(B)

**18.56.030 Hearing.**

A. Upon the filing of an application for a conditional use permit, the hearing examiner shall set a time and place for a public hearing to consider the application under the provisions of TMC Chapter 2.58.

B. Notice of any public hearing shall be in accordance with the provisions of TMC Chapter 14.0612.

(Ord. O2017-006, Amended, 07/18/2017; Ord. O95-035, Amended, 12/19/1995; Ord. 1259, Amended, 11/06/1990; Ord. 883, Added, 05/06/1984)

**Section 37.** TMC 18.56.050 of the Tumwater Municipal Code is hereby amended to read as follows:

**18.56.050 Notification of hearing examiner decision.**

Notification of the hearing examiner decision shall be in accordance with the provisions of TMC Chapter 2.58 and TMC 14.06.09012.010.

(Ord. O2017-006, Amended, 07/18/2017; Ord. O2000-004, Amended, 07/18/2000; Ord. O95-035, Amended, 12/19/1995; Ord. 1259, Amended, 11/06/1990; Ord. 883, Added, 05/06/1984)

**Section 38.** TMC 18.60.015 of the Tumwater Municipal Code is hereby amended to read as follows:

**18.60.015 Site-specific rezones.**

Applications for site-specific rezones required as a result of a proposed comprehensive plan amendment shall be processed with the proposed comprehensive plan amendment as a Type IV land use permit application as set forth in TMC Table 14.08.03004.020(A) and in accordance with the procedures and notice requirements set forth in TMC 18.60.020.

(Ord. O96-024, Amended, 09/17/1996; Ord. O95-035, Amended, 12/19/1995; Ord. 1259, Added, 11/06/1990)

**Section 39.** TMC 18.60.040 of the Tumwater Municipal Code is hereby amended to read as follows:

**18.60.040 Zoning amendments.**

Requests for zone changes shall be reviewed and decided as set forth in TMC Table 14.04.020(A)08.030 and shall be processed in accordance with the procedures and notice requirements set forth in TMC 18.60.020.

(Ord. O96-024, Added, 09/17/1996)

**Section 40. Corrections.** The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not

limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 41. Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 42. Severability.** The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

**Section 43. Effective Date.** This ordinance shall become effective immediately after passage, approval and publication as provided by law.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF TUMWATER

\_\_\_\_\_  
Debbie Sullivan, Mayor

ATTEST:

\_\_\_\_\_  
Melody Valiant, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Kirkpatrick, City Attorney

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_