

ORDINANCE NO. O2022-004

AN ORDINANCE of the City Council of the City of Tumwater, Washington updating binding site plan requirements by amending Tumwater Municipal Code (TMC) Titles 15, *Buildings and Construction*, and 17, *Land Division*, as more particularly described herein.

WHEREAS, TMC Title 17 *Land Division* contain the requirements for binding site plans; and

WHEREAS, TMC Chapter 17.08 *Binding site plans* has not been substantially updated since 1996; and

WHEREAS, TMC Chapter 17.08 *Binding site plans* does not clearly relate to the requirements for binding site plans found elsewhere in TMC Title 17 *Land Division*; and

WHEREAS, TMC Chapter 15.44 *Vesting of development rights* contains the requirements for vesting for preliminary plat or preliminary short plat applications but needs to be updated to address binding site plan applications; and

WHEREAS, TMC Chapter 15.44 *Vesting of development rights* has not been substantially updated since it was adopted in 2010; and

WHEREAS, the City is required to plan under Chapter 36.70A RCW, the Growth Management Act; and

WHEREAS, Goal #7 of the Growth Management Act states “...applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability”; and

WHEREAS, this ordinance establishes concise requirements for the application, review process, and approval of binding site plans; and

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

WHEREAS, the City has adopted a Comprehensive Plan, in accordance with the Growth Management Act; and

WHEREAS, the Economic Development Plan and the Land Use Element are elements of the Comprehensive Plan; and

WHEREAS, Goal 1 of the Economic Development Plan is “Establish a development climate that stimulates economic activity and desirable investment”; and

WHEREAS, the Economic Development Plan mentions that one of the ways to support Goal 1 is “...by making ongoing improvements to existing development regulations, systems, and processes”; and

WHEREAS, Strategy 1.D of the Economic Development Plan is “Ensure a predictable and efficient experience for business owners and developers seeking to invest in Tumwater”; and

WHEREAS, clear and consistent development regulations support Goal 1 and Strategy 1.D of the Economic Development Plan; and

WHEREAS, the proposed amendments to TMC Titles 15, *Buildings and Construction*, and 17, *Land Division*, improve the clarity and specificity of the regulations for the submission, review process, decision making, and approval for binding site plans; and

WHEREAS, the proposed amendments to TMC Titles 15, *Buildings and Construction*, and 17, *Land Division*, are consistent with the Economic Development Plan; and

WHEREAS, Implementation Policy 11 of Section 3.3 of the Land Use Element states, “Modify the land use regulatory review, permitting, and approval system for consistency with the Growth Management Act and adopted plans to ensure predictability and allow processing of development permits in a timely and fair manner”; and

WHEREAS, this ordinance is consistent with Implementation Policy 11 of Section 3.3 of the Land Use Element because it clarifies and refines the process for reviewing and approving binding site plans; and

WHEREAS, this ordinance is consistent with the Comprehensive Plan; and

WHEREAS, in accordance with RCW 36.70A.106 and WAC 365-196-630, a notice of intent to adopt the proposed new development regulations was sent to the State of Washington Department of Commerce and to other state agencies on January 6, 2022 to allow for a sixty-day review and comment period, which comment period ended prior to adoption of this ordinance; and

WHEREAS, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act (Chapter 43.21C RCW) on

February 1, 2022, pursuant to Chapter 197-11 WAC, and a Determination of Non-Significance (DNS) was issued on February 17, 2022; 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, the Planning Commission received a briefing on the proposed code amendments on February 8, 2022 and held a worksession on February 22, 2022; and

WHEREAS, a Notice of Public Hearing for the Planning Commission was issued on March 11, 2022 prior to the public hearing. The notice was posted, published as a press release, distributed to interested individuals and entities that have requested such notices, and published in *The Olympian*; and

WHEREAS, the Planning Commission held a public hearing on March 22, 2022 and continued the discussion on April 12, 2022; and

WHEREAS, following the public hearing and deliberations, the Planning Commission recommended the proposed code amendments to the Tumwater Municipal Code to the City Council; and

WHEREAS, the General Government Committee held a briefing on the proposed code amendments on May 11, 2022; and

WHEREAS, the City Council discussed the proposed code amendments in a worksession on May 24, 2022; and

WHEREAS, the City Council considered the proposed code amendments June 7, 2022; 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. Table 14.08.030 of the Tumwater Municipal Code is hereby amended to read as follows:

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
ZONING						
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 APPROPRIATENES S	D	R		A(C)		
COMPREHENSIVE PLAN						
<u>COMPREHENSIVE</u> -PLAN- TEXT AMENDMENT					R(OP)	D(OP)
<u>COMPREHENSIVE</u> -PLAN- MAP AMENDMENT					R(OP)	D(OP)
LAND DIVISION						
REPLAT			R	D(OP)		
PLAT VACATION			R	D(OP)		
BLA		D		A(OP)		
LOT CONSOLIDATION		D		A(OP)		
PRELIMINARY PLAT			R	D(OP)		
SHORT PLAT		D		A(OP)		
FINAL PLAT		D		A(OP)		

	HISTORIC COMMISSION	COMMUNITY DEVELOPMENT DEPARTMENT STAFF	DEVELOPMENT REVIEW COMMITTEE	HEARING EXAMINER	PLANNING COMMISSION	CITY COUNCIL
PUD			R	D(OP)		
BINDING SITE PLAN			D	A(OP)		
BINDING SITE PLAN - PHASED			<u>R</u>	<u>D (OP)</u>		
PLAT TIME EXTENSION		D		A(OP)		
PLAT ALTERATION W/ HEARING		R		D(OP)		
PLAT ALTERATION W/O HEARING		D		A(OP)		
ENVIRONMENTAL						
WETLAND PERMIT		D		A(OP)		
TREE PLANS		D		A(OP)		
SEPA DET.		D		A(OP)		
SHORELINES						
SUB. DEV. PERMIT			R	D(OP)		
CONDITIONAL USE PERMIT			R	D(OP) (1)		
VARIANCE			R	D(OP) (1)		
EXEMPT		D		A(OP)		
OTHER						
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)		
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(6).

Section 2. Section 15.44.020 of the Tumwater Municipal Code is hereby amended to read as follows:

15.44.020 Intent.

It is the intent of the city of Tumwater to comply with RCW 19.27.095 and 58.17.033 by defining when a valid and fully complete building permit application for a structure and a valid and fully complete binding site plan, preliminary plat, or preliminary short plat application exists for the purpose of establishing the point of vesting of development rights.

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

Section 3. Section 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 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;
- 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.

9. 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. O2010-017, Amended, 12/21/2010; Ord. 1332, Added, 07/07/1992)

Section 4. Section 15.44.040 of the Tumwater Municipal Code is hereby amended to read as follows:

15.44.040 Vesting of development rights.

A. A valid and fully complete building permit application for a structure that is allowable under TMC Title 18, Zoning, or other land use control ordinances in effect on the date of the application shall be vested 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.

B. A valid and fully complete binding site plan, preliminary plat, or preliminary short plat application that is allowable under TMC Title 17, Land Division, and TMC Title 18, Zoning, or other land use control ordinances in effect on the date of the application shall be vested under binding site plan, subdivision, or short subdivision ordinances and zoning or other land use control ordinances in effect on the date of application; provided, that the provisions of RCW 58.17.170 shall dictate the development regulations applicable to a preliminary plat application for development or use of land subject to an unexpired subdivision approval (this provision shall not apply to land subject to an unexpired short subdivision approval).

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

Section 5. Section 17.08.010 of the Tumwater Municipal Code is hereby amended to read as follows:

17.08.010 Binding site plans.

A. The intent of this section is to provide an alternative method of land division for the sale or lease of commercial or industrial zoned properties, condominiums, and manufactured home parks that is more flexible than traditional land division procedures. Binding site plans allow for shared access, parking, streets and other required aspects of development such as park and open space areas. Binding site plans promote orderly and efficient growth and expedite the land use review process.

AB. Divisions of land into lots, parcels, or tracts zoned for industrial and/or commercial use or specifically intended for condominiums or manufactured home parks may be processed as a binding site plan. The city shall approve a binding site plan following the process in TMC Title 17, Land Division, when it has been shown to conform to the requirements of the zoning code; provided, that said lots, parcels or tracts shall not be sold or transferred unless the binding site plan and a record of survey map, which is prepared in compliance with Chapter 58.09 RCW, and which includes a legal description of each lot, parcel or tract being created, is approved by the department of community development and filed for record in the county auditor's office.

C. The department of community development shall certify that the survey map conforms to the requirements of the zoning code, land division code, and development standards, and affix its signature to the survey prior to recording; provided further, that the binding site plan and all of its requirements shall be legally enforceable on the purchaser or other person acquiring ownership of the lot, parcel or tract; and provided further, that sale or transfer of such a lot, parcel or tract in violation of the binding site plan, or without obtaining binding site plan approval, shall be considered a violation of this title and shall be restrained by injunctive action and be illegal as provided in Chapter 58.17 RCW.

(Ord. O2011-002, Amended, 03/01/2011; Ord. O96-004, Amended, 04/16/1996; Ord. 1308, Added, 10/15/1991)

Section 6. Section 17.14.045 of the Tumwater Municipal Code is hereby created and is to read as follows:

17.14.045 Review criteria for binding site plans.

In addition to the review criteria of TMC 17.14.040, binding site plans shall meet the following:

- A. A binding site plan shall depict building envelopes and all existing and proposed land uses if known.
- B. A parking lot plan is required for the binding site plan. The plan shall allocate parking to each lot or condominium unit or specify joint use parking. Proposed lots containing legally existing structures and uses need not meet current parking regulations. Proposed lots without legally existing structures or uses must meet current parking regulations.
- C. Access to each lot or condominium unit within the binding site plan shall be depicted. Existing access to legally existing structures and uses need not meet emergency vehicle access standards. Access to proposed lots and new development without legally established structures or uses shall meet current standards.
- D. Binding site plans shall be reviewed for storm drainage, roads, water supply, existing sanitary sewage disposal, access or easement for vehicles, survey requirements, utilities, and fire protection for any lot, tract, parcel or site, and for zoning requirements, previous decisions, accuracy of legal description, ownership, lot dimensions, and improvements on the lots.
- E. A binding site plan cannot amend or conflict with previously granted use permit approvals or conditions of approval.
- F. A binding site plan shall depict any open space tract, required recreational areas, critical area buffers, and utility easements.
- G. Proposed uses must be as allowed in the underlying zone district. Should the proposed use require a conditional use permit, said permit shall be requested and

reviewed concurrently or prior to approval of the binding site plan. Binding site plan approval does not constitute approval for other required use permits.

H. If there is adjacent property that is under the same ownership as the property being divided, then the location and sizing of shared and public amenities such as streets, access, utilities, and open space and recreation areas shall be taken into account so the development does not preclude future adjacent development.

I. Binding site plans shall account for the development of all of the land of a parcel or lot or parcels or lots under the same ownership.

Section 7. Section 17.14.050 of the Tumwater Municipal Code is hereby amended to read as follows:

17.14.050 Administrative consideration.

A. All preliminary short plats, binding site plans, and large lot subdivisions shall be reviewed by the development review committee based on the standards contained in this title and any other applicable ordinances or policies. If the proposed division is determined to meet the applicable standards and only if written findings that are appropriate, as provided in RCW 58.17.110, are made, it shall be approved.

B. Additional findings required for binding site plan approval.

1. The limitations and conditions for the uses depicted on the binding site plan are consistent with applicable ordinances, plans, and policies, including but not limited to, the comprehensive plan, the development guide, the municipal code, and state laws;

2. Specific use types and conditions shall be binding on the property and shall remain in effect for all future owners of the site unless altered in accordance with TMC 17.14.110; and

3. The binding site plan does not create a nonconforming use or structure or increase the nonconformity of any nonconforming uses or structures on the site in accordance with TMC 18.54.

(Ord. 1308, Added, 10/15/1991)

Section 8. Section 17.14.080 of the Tumwater Municipal Code is hereby amended to read as follows:

17.14.080 Duration of approval.

Approvals under RCW 58.17.140 are valid for a period of seven years if the date of preliminary plat approval is on or before December 31, 2014; five years if the preliminary plat or binding site plan approval is issued on or after January 1, 2015; and ten years if the project is located within city limits, not subject to the Shoreline Management Act, and the preliminary plat is approved on or before December 31, 2007.

A. An initial one-year extension, which has been filed at least thirty days prior to the expiration of the period of approval, may be granted by the community development director or his/her designee upon a finding that the applicant has attempted in good faith to submit the final plat or binding site plan within the period of approval. Submittal of complete engineering plans for the land division plat prior to the expiration of the approval period time limit shall constitute a good faith effort.

B. Two additional one-year extensions may be administratively granted, which shall be reviewed for compliance with the following:

1. The applicant has pursued submitting the final plat or binding site plan in good faith. Submittal of complete engineering plans for the plat-land division prior to the expiration of the approval period time limit shall constitute a good faith effort on the part of the applicant;

2. There have been no changes to the comprehensive plan, zoning ordinance, development standards or other applicable codes which are inconsistent with the approved preliminary plat or binding site plan, unless such changes can be incorporated into the existing plat-land division without significantly altering the plat as originally approved by the hearing examiner or binding site plan as originally approved administratively or by the hearing examiner; and

3. There are no other significant changed conditions that would render filing of the preliminary plat or recording of the binding site plan contrary to the public health, safety, or general welfare.

C. For 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 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 approved by the U.S. Fish and Wildlife Service, 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.

(Ord. O2016-022, Amended, 01/03/2017; Ord. O2016-010, Amended, 08/02/2016; Ord. O2011-002, Amended, 03/01/2011; Ord. O2010-004, Amended, 05/04/2010; Ord. O2000-004, Amended, 07/18/2000; Ord. O96-004, Amended, 04/16/1996; Ord. 1308, Added, 10/15/1991)

Section 9. Section 17.14.090 of the Tumwater Municipal Code is hereby amended to read as follows:

17.14.090 Phased development.

A. ~~Residential developments-preliminary plats~~ containing more than one hundred dwelling units and commercial or industrial ~~developments-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.

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. 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 10. 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 11. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 12. 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 13. Effective Date. This ordinance shall become effective thirty (30) days after passage, approval, and publication as provided by law.

ADOPTED this _____ day of _____, 2022.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:_____

Effective Date:_____