
STAFF REPORT

Date: October 8, 2024
To: Planning Commission
From: Brad Medrud, Planning Manager



Development Code Administration Amendments

In May 2023, the Governor of Washington signed into law Senate Bill (SB) 5290 which modified the requirements for local land use permit review. The state amendments to the Local Project Review Act, Chapter 36.70B RCW, were intended to increase the timeliness and predictability of local project development application reviews.

The City must update its development code administration regulations by December 31, 2024, to address these recent changes in state law or state law will preempt the City's development review procedures until City amendments are approved.

The intent of the Planning Commission meeting on Tuesday, August 13, 2024, is to expand on the Commission September 24, 2024 briefing on the scope of amendments and to discuss the content of the proposed amendments that will be presented to the Planning Commission in the form of Ordinance No. O2024-005 at a work session on October 23, 2024, and at a public hearing on November 12, 2024.

The proposed ordinance will primarily amend TMC Title 14 *Development Code Administration* to address revisions needed to bring City's regulations into compliance with amendments to state law and update the City's approval processes, but it also will amend portions of the following sections of the Tumwater Municipal Code:

1. TMC Chapter 2.58 *Hearing Examiner*
2. TMC Chapter 3.30 *Multifamily Housing Tax Exemptions*
3. TMC Title 11 *Telecommunications and Telecommunications Facilities*
4. TMC Title 13 *Public Services*
5. TMC Title 15 *Buildings and Construction*
6. TMC Title 16 *Environment*
7. TMC Title 17 *Land Division*
8. TMC Title 18 *Zoning*

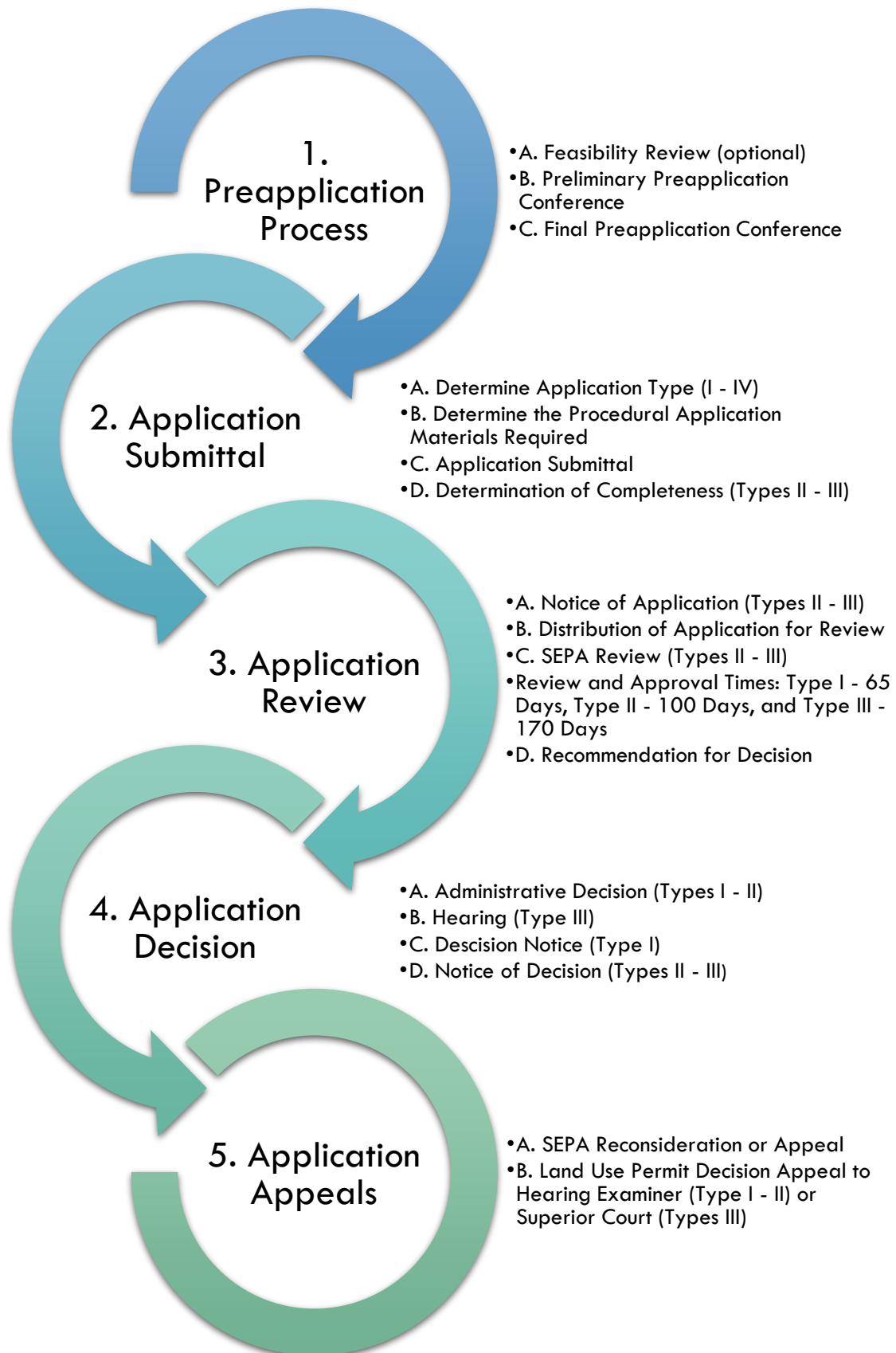
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1. The Project Review Process - Simplified

The diagram below illustrates the review process for Type I – III land use permit applications. The submittal, review, and approval process for Type IV approvals, which include Comprehensive Plan and development code amendments, follows a separate process that is found in TMC 18.60 *Text Amendments and Rezones*.



2. Proposed Amendments to TMC Title 14

This section describes the purpose for each of the new parts the proposed new title and provides proposed language that is intended to become part of the ordinance that the Planning Commission will review at their October 22, 2024, work session.

A. Proposed New Structure for TMC Title 14

The proposed new structure for TMC Title 14 *Development Code Administration* below will replace the entire current chapter and section structure of the title. The intent of the proposed new structure is to make TMC Title 14 more intuitive by starting with key general provisions the first chapter. The new land use permit application framework for the four types of permits is in the second chapter, including examples of permits in each type, the recommendation, decision, and appeal authorities for each permit type, and, most importantly for addressing the new state regulations, the maximum review periods for each permit type. The preapplication process is then described in the third chapter, followed by the land use permit application submittal, review, and decision and appeal processes in the last three chapters.

Chapter 14.02

GENERAL PROVISIONS

- 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.**

Chapter 14.04

LAND USE PERMITS

- 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.**

Chapter 14.06

PREAPPLICATION PROCESS

- 14.06.010 Feasibility review.**
 - 14.06.020 Preapplication conferences.**
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Chapter 14.08

LAND USE PERMIT APPLICATION SUBMITTALS

14.08.010 Land use permit applications.

14.08.020 Determination of completeness.

Chapter 14.10

LAND USE PERMIT APPLICATION REVIEW

14.10.010 Land use action review and determination of consistency.

14.10.020 Initial State Environmental Policy Act 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.

Chapter 14.12

LAND USE PERMIT APPLICATION DECISIONS AND APPEALS

14.12.010 Notice of decision.

14.12.020 Appeals of administrative approvals.

14.12.030 Reconsideration in response to State Environmental Policy Act comments.

14.12.040 Appeal of State Environmental Policy Act related matters.

14.12.050 Notice of open record hearing.

14.12.060 Combined public hearings allowed.

14.12.070 Notice of appeal hearings.

B. General Provisions

The intent of the proposed general provision section of TMC Title 14 is cover the universal elements of the land use permitting process.

1) Intent and Applicability

A) Intent

The proposed new intent section of TMC Title 14 updates the current intent section and is intended to establish the purpose of the title. Portions of the intent section are from the current TMC Title 14 while other parts are based on RCW 36.70B.030.

The proposed new language for the section is as follows:

TMC 14.02.010

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.*

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.*

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.*

An important change to the current TMC Title 14 is that the definition of "project permit" was amended by SB 5290 in RCW 36.70B.020(4) to remove building permits from the state's definition of a project permit. That is why "project permits" are referred to as "land use permits" throughout the proposed TMC Title 14 amendments to differentiate them from "building permits" and "construction permits" that are not part of the RCW definition below but are addressed in TMC Title 15 *Buildings and Construction*. This is important because it reduces the current scope of TMC Title 14.

RCW 36.70B.020(4) states:

"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.

B) Applicability

Building on the change of state definition to “project permits,” which are called “land use permits” in the TMC Title 14 as noted above, the proposed applicability section of the title defines the scope and applicability of TMC Title 14 as follows:

TMC 14.02.030

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 issuance of a building or any other construction permit.

1. A permit holder 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.

C. Land use permit approval under this title is required for the following:

1. A change of use of land, a variance, a planned unit development, 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

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.

2) Term Definitions

The updated definition section of TMC Title 14 is proposed to include the following terms, some of which are based directly on terms defined in RCW 36.70B:

TMC 14.02.020

- 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.*
- 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 as adopted by Ordinance No. O95-023 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.*
- 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.

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.*

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.*

3) Time Limits

The most important changes made to RCW 36.70B by SB 5290 was modifications to the number of days the City may spend reviewing applications before a decision has to be issued and the establishment of monetary penalties to jurisdictions who do not meet these timelines in RCW 36.70B.080.

These new requirements have resulted in changes throughout TMC Title 14, starting with this proposed new section detailing how time limits are calculated and applied and the penalties if they are not met.

TMC 14.02.040

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.

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*
 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.*
 3. *Except as provided in RCW 36.70B.160, the provisions in TMC 14.02.040(C) of this section are not applicable if the city has implemented at least three of the options in RCW 36.70B.160(1)(a) through (j) at the time an application is determined complete under TMC 14.08.020.*
 4. *The city may provide for the collection of only eighty percent of a land use permit application fee initially, and for the collection of the remaining balance if the permitting time limits of TMC Table 14.04.030 are met.*
- 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.*

4) Public Notice Requirements

A number of notices are required to be issued throughout the development review process. The current code language about notice requirements have been revised in the proposed code as follows.

TMC 14.02.050

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 on the city's website and social media;*
- 4. Posting at least one notice on the subject property by the applicant in accordance with specifications provided by the department; and*
- 5. 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;*
- 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 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.

5) Substantially Different Proposals

Another new change to TMC Title 14 proposed by City permitting staff is intended to address development proposals that have land use permit applications currently in for City review that change to such a degree during the review process that they result in a dramatically different project than what was originally proposed.

New code has been proposed to address this issue.

TMC 14.02.060

- 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 early 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.*
- 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.*

6) Land Use Permit Expirations

With exception of variances and reasonable use exemptions, land use permit approvals expire unless building and construction permits are issued, and construction is completed in a timely manner.

The permit expiration section of the current TMC Title 14 is proposed to be updated as follows. Note that there are exceptions to the times for some land use actions such as preliminary and final plats, which is based state subdivision code, and for other City approvals such as conditional

use permits, variances, and reasonable use exemptions, and a special exception addressing projects that need federal incidental take permits.

TMC 14.02.070

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.*

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

2. *Final Plats.*

b. *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 review and design review approvals expire simultaneously with expiration of any associated land use, building, or other construction permit or approval.

G. Variances and Reasonable Use Exceptions.

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

H. 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, with the exception of storm drainage standards, design guidelines, and building and fire codes, unless it would significantly alter the approval.

7) Other General Provisions

The final proposed section of the first chapter of the amended TMC Title 14 addresses some other important general provisions, including how building or construction permits cannot be issued unless the project conforms to the land use approval process of the amended title.

TMC 14.02.080

A. 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.

B. 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 with the provisions of this title.

C. Fees.

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

2. The director may waive appropriate land use permit application fees.

D. Vesting.

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

E. *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.*

C. Land Use Permits

The second proposed chapter of TMC Title 14 establishes the new land use permit application framework for the four types of permits, including examples of permits in each type, the recommendation, decision, and appeal authorities for each permit type, and, most importantly for addressing the new state regulations, the maximum review periods for each permit type.

1) Land Use Permit Application Procedures and Types

The first proposed section of the chapter describes the four permit types (Types I – IV) and provides examples of each type. Note that the recent change in state law excludes building and construction permits from these land use permit requirements.

TMC 14.04.010

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.*
- E. *An applicant seeking approval of a townhouse development shall apply for land division approval and any land use permit approval simultaneously.*

Table 14.04.010
Land Use Permit Application Types¹

Land Use Permit Application Type	Examples
<i>Type I</i>	<i>Boundary line adjustments, critical area requests for determination of applicability, final plats, home occupation permits, land clearing permits, lot consolidations, plat time extensions, preliminary short plats, preliminary SEPA threshold determinations (if EIS required), reasonable use exemptions, shoreline exemptions, sign permits, temporary use permits, tree permits, and variances (administrative)</i>
<i>Type II</i>	<i>Any Type 1 permits that are not SEPA exempt</i>
<i>Type III</i>	<i>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 variances (zoning)</i>
<i>Type IV</i>	<i>Development code amendments, comprehensive plan map and text amendments, development agreements, rezones requiring comprehensive plan amendments, and shoreline master program amendments</i>

TMC Table 14.04.010 Explanatory Notes:

¹ *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.*

2) Land Use Permit Decision and Appeal Authorities

The second proposed section of the chapter describes the final recommendation, decision, and appeal authorities and the public notice requirements for each of the four permit types. The section also describes the role of department staff, the development review committee, and the hearing examiner in the land use permit application review and approval process.

TMC 14.04.020

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:*

1. *Department Staff.*
 - a. *Individual staff as assigned by the director shall have the authority to review and approve, deny, modify, or conditionally approve Type I land use permit applications, and to provide interpretations of codes and regulations applicable to such applications.*
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 interpretations of codes and regulations applicable for Type II and III land use permit applications;*
 - vi. *Make post application determinations in conjunction with the issuance of land use permits; and*
 - vii. *Make staff 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 following 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 State Environmental Policy Act 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

Land Use Permit Application Type	Recommendation	Hearing Body	Decision Authority	Appeal To (Open or Closed Record Appeal)
<i>Type I</i>	<i>DRC</i>	<i>N/A</i>	<i>DIR</i>	<i>HEX</i>
<i>Type II</i>	<i>DRC</i>	<i>N/A</i>	<i>DIR</i>	<i>HEX</i>

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

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:

¹ 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

Land Use Permit Application Type	Determination of Completeness	Notice of Application	Notice of Hearing	Notice of Decision
Type I	No	No	N/A ¹	No
Type II	Yes	Yes	N/A ¹	Yes
Type III	Yes	Yes	Yes	Yes

Land Use Permit Application Type	Determination of Completeness	Notice of Application	Notice of Hearing	Notice of Decision
Type IV	No	No	Yes	Adoption of Ordinance

TMC Table 14.04.020(B) Explanatory Notes:

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

3) Land Use Permit Application Review Periods

The second proposed section of the chapter describes the review periods required for each of the permit types. The number of days shown in the proposed TMC Table 14.04.030 are the maximum days established in state, which may be modified by the City following the process in RCW 36.70B.

TMC 14.04.030

A. Review Period.

1. The decision authority established in TMC Table 14.04.020(A) shall render 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

Land Use Permit Application Type	Time in Review
Type I	65 days <ul style="list-style-type: none"> Final Plat: 30 days (TMC 17.24.050)
Type II	100 days
Type III	170 days <ul style="list-style-type: none"> Preliminary Plat: 90 days (RCW 58.17.140)

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

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 the State Environmental Policy Act.*

D. Preapplication Process

Before a land use permit application is submitted to the City for review and approval, preapplication meetings are required between the applicant and the City’s development review committee to discuss the process, review preliminary materials, and determine the materials that need to be submitted for an application to be determined complete.

1) Feasibility Review

The first level of a feasibility review is an optional step that allows an applicant to meet with development review committee to present a proposed project for an initial review to help determine if it could be viable.

TMC 14.06.010

- 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.*

2) Preliminary and Formal Preliminary Preapplication Conferences

The second level of preliminary and formal preliminary preapplication conferences requires the applicant to present the proposed project for development review committee for review and comment with intent of allowing the subsequent land use permit application to be processed expeditiously.

TMC 14.06.020

- A. *Applications for all land use permits with the exception of minor development proposals such as fences, small detached buildings, 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 the 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:*
 - 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*

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.

E. Land Use Permit Applications Submittals

Significant changes in state law were made to the determination of completeness process. The City now needs to be able to determine if a land use permit application is “procedurally complete.” A determination whether an application is procedurally complete has two parts: 1) a complete definition of the elements that make up a land use permit application and 2) a determination by the City that what an applicant presents to the City when they submit a land use permit application is complete and ready for further review.

1) Land Use Permit Applications

The first section of the fourth chapter of TMC Title 14 details what needs to be in a land use permit application in order for it to be considered procedurally complete.

TMC 14.08.010

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

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 as established by the land use permit application checklist as supplemented in writing by the development review committee from the preapplication conference process in TMC 14.06.020.

C. The director 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 and telephone numbers of the record owner or owners of the land and of the applicant, and, if applicable, the names, addresses and telephone numbers 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

- i. The location and design of off-street parking areas showing their size and locations of internal circulation and parking spaces;*
 - j. The location and design of required bicycle parking;*
 - k. The location of all loading spaces, including, but not limited to, truck loading platforms, loading docks, and garbage and recycling collection areas, and*
 - l. Location and area, in square feet, of all existing and proposed signs;*
- 11. Survey maps which delineate contours, both existing and proposed, at intervals of two feet, and which locate existing lakes, streams, and forested areas;*
 - 12. The existing zone district of the proposed project site and any other zone district within three hundred feet of the site;*
 - 13. 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;*
 - 14. 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;*
 - 15. The proposed number of dwelling units and number of bedrooms in the development;*
 - 16. The proposed number of square feet in gross floor area for each commercial, industrial, and institutional use;*
 - 17. A description of each proposed residential, commercial, industrial, and institutional use;*
 - 18. 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;*
 - 19. All materials required by TMC Title 16 Environment shall be included in the land use permit application; and*
 - 20. 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.*

2) Determination of Completeness

The proposed second section of the fourth chapter of TMC Title 14 amends the current code's process and timelines for determining an application is procedurally complete. Once an application is determined to be complete, the review timelines established by TMC Table 14.04.030 start.

TMC 14.08.020

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.*

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.*

D. *Requesting Additional Information.*

1. *Additional information or studies may be required, or modifications to the project may be undertaken subsequent to 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 at a later time 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:*

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.*

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.*

F. Land Use Permit Application Review

The proposed land use permit application chapter amends the current sections of TMC Title 14 that establish the basis for the City's review of land use permit applications, integrate land use and SEPA environmental review processes, and describes land use permit application review and the notice of application process.

1) Land Use Action Review and Determination of Consistency

The proposed section updates the basis for the land use permit application review process and how consistency of a proposed application and the City's development code and Comprehensive Plan are the basis for land use permit application approvals.

TMC 14.10.010

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:*
 - 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*
 - 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 code interpretation.

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.

G. As part of the land use application review process, development code interpretations as provided in RCW 36.70B.110 are made by the director and appealable to the hearing examiner.

2) Initial SEPA Analysis

The proposed section updates the current regulations in TMC Title 14 that integrates the SEPA environmental review in TMC 16.04 with land use permit application review.

TMC 14.10.020

A. The city shall also review land use permit applications 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 16.04, and shall:

1. *Determine whether the applicable regulations require studies that adequately analyze all of 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.*

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 the State Environmental Policy Act 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 State Environmental Policy Act review are found in TMC 16.04.040, TMC 16.04.070, TMC 16.04.090, and TMC 16.04.160.*

3) Categorically Exempt and Planned Actions

The proposed section updates the current regulations in TMC Title 14 that address land use actions that are categorically exempt from the SEPA environment review process, as well as planned actions.

TMC 14.10.030

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 the State Environmental Policy Act (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 the State Environmental Policy Act but is subject to environmental review and mitigation under the State Environmental Policy Act.*

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. 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 issues of code interpretation.*

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.*

4) Referral and Review of Land Use Permit Applications

The proposed section updates the current regulations in TMC Title 14 that address transmitting land use permit applications that have been determined to be complete to affected City departments and other agencies for their review. It also expands the current regulations that consolidate the review and approval of multiple land use permit applications, as well as the hearing examiner review and approval process for Type III land use applications and appeals.

TMC 14.10.040

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

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.
 - 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 closed record 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.

5) Notice of Application

The proposed section updates the current regulations in TMC Title 14 concerning the Notice of Application process for Type II and Type III land use permit applications established by TMC Table 14.04.020(B).

TMC 14.10.050

A. *Generally.*

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 State Environmental Policy Act review is required.*
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. *State Environmental Policy Act Exempt Projects.*

1. *A notice of application shall not be required for Type I land use permit applications that are categorically exempt under the State Environmental Policy Act 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 on 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*
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.*

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.*
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.*

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.

G. Land Use Permit Application Decisions and Appeals

The final proposed chapter of TMC Title 14 consolidates and updates the current TMC Title 14 sections that address the notice of decision and the appeal processes for the different types of land use and environment approvals.

1) Notice of Decision

The proposed amended section is as follows:

TMC 14.12.010

- A. *The notice of decision shall be issued pursuant to the general notice requirements of TMC 14.02.050.*
- B. *Final hearing examiner decisions.*
 - 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. *A written notice for all final decisions shall be sent to the applicant and all parties of record.*
- C. *In addition to the to the general notice requirements of TMC 14.02.050, the notice shall include:*
 - 1. *Statement of any threshold determination made under Chapter 43.21C RCW; and*
 - 2. *Procedures for administrative or judicial appeal, if any.*
- D. *Notice of decision shall be sent to the applicant pursuant to TMC 17.14.070.*

2) Appeals of Administrative Approvals

The proposed amended section is as follows:

TMC 14.12.020

- 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.*

3) Reconsideration in Response to SEPA Comments

The proposed amended section is as follows:

TMC 14.12.030

- A. *Any interested person may submit written comments and request reconsideration by the development review committee within fourteen days of the date any final recommendation or decision attached to a State Environmental Policy Act threshold determination is issued.*
- B. *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.*

C. *State Environmental Policy Act exempt actions of the committee shall not be subject to reconsideration and shall be subject to only a fourteen day appeal period.*

4) Appeal of State Environmental Policy Act Related Matters

The proposed amended section is as follows:

TMC 14.12.040

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 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 State Environmental Policy Act 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 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 State Environmental Policy Act policies and rules may be appealed to the hearing examiner within six days following the final administrative decision.*
3. *For any appeal under TMC 14.12.040(A) the city shall keep a record of the appeal proceedings, which shall consist of the following:*
 - 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.

5) Notice of Open Record Hearing

The proposed amended section is as follows:

TMC 14.12.050

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*
- 2. The applicant agrees to the schedule in the event that additional time is needed in order 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.

6) Combined Public Hearings

The proposed amended section is as follows:

TMC 14.12.060

In addition to the general notice requirements of TMC 14.12.050(A), notice of appeal hearings shall also include:

- A. For administrative approvals, notice shall be mailed to adjacent property owners.*
- B. For hearing examiner decisions, notice shall be mailed to the parties of record as part of the notice of decision.*

3. Amendments to Other Parts of the Tumwater Municipal Code

While the proposed ordinance will amend primarily TMC Title 14, it will also amend portions of the following sections of the Tumwater Municipal Code to address revisions needed to bring City's regulations into compliance with amendments to state law and update the City's approval processes:

- A. TMC Chapter 2.58 Hearing Examiner*
- B. TMC Chapter 3.30 Multifamily Housing Tax Exemptions*
- C. TMC Title 11 Telecommunications and Telecommunications Facilities*
- D. TMC Title 13 Public Services*

- E. TMC Title 15 *Buildings and Construction*
- F. TMC Title 16 *Environment*
- G. TMC Title 17 *Land Division*
- H. TMC Title 18 *Zoning*

A. TMC Chapter 2.58 Hearing Examiner

Amendments are proposed to be made to two parts of TMC Chapter 2.58: 2.58.090 *Powers of the examiner* and TMC 2.58.120 *Notices and hearings – Appeal rights*. The amendment to TMC 2.58.120 is to update the code reference in TMC Title 14.

The proposed updated TMC 2.58.090 would be as follows:

TMC 2.58.090

The hearing examiner shall have the following duties with respect to applications of matters submitted before 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 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 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;*
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14. *Business license denials or revocations;*
15. *Code violations pursuant to TMC Chapter 1.10;*
16. *Development 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.

B. TMC Chapter 3.30 Multifamily Housing Tax Exemptions

Proposed amendments to TMC 30.30 update the approval authority for multifamily housing tax exemption contracts under which the applicant agrees to the implementation of the development on terms and conditions satisfactory to the City. Currently the City Council approves such contracts. With the proposed amendments, these contracts would be approved by the director of community development, which would correspond with how the director currently administratively approves conditional and final approvals for multifamily housing tax exemptions.

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.

C. TMC Title 11 Telecommunications and Telecommunication Facilities

Proposed amendments to TMC Title 11 will update the code references to TMC Title 14.

D. TMC Title 13 Public Services

Proposed amendments to TMC Title 13 will update the code references to TMC Title 14.

E. TMC Title 15 Buildings and Construction

Proposed amendments to TMC Title 15 will update the code references to TMC Title 14, as well as add a new section on the certificate of occupancy process from the Uniform Building Code.

TMC 15.01.055

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.

F. TMC Title 16 Environment

Proposed amendments to TMC Title 16 will update the code references to TMC Title 14, as well as the approval process for land clearing permits to integrate them into the TMC Title 14 land use permit application review process.

G. TMC Title 17 Land Division

Proposed amendments to TMC Title 17 will update the code references to TMC Title 14.

H. TMC Title 18 Zoning

Proposed amendments to TMC Title 18 will update the code references to TMC Title 14.

4. Next Steps

A. SEPA Environmental Review of the Ordinance

An Environmental Checklist as a non-project action for the ordinance will be prepared under the State Environmental Policy Act (Chapter 43.21C RCW), pursuant to Chapter 197-11 WAC in October 2024, and a Determination of Non-Significance (DNS) is expected to be issued in October 2024.

B. Planning Commission Review and Recommendation Process

The Planning Commission had a briefing on the code amendments on September 24, 2024, and is scheduled to have work sessions on the code amendments on October 8, 2024, and October 22, 2024.

The Planning Commission is scheduled to hold a public hearing on the code amendments on November 12, 2024. It is expected that following the public hearing and deliberations, the Planning Commission will forward a recommendation on the ordinance to the City Council.

C. City Council Review and Approval Process

The General Government Committee is scheduled to be briefed on the Planning Commission's recommendation on the code amendments on November 13, 2024, and the City Council is scheduled to consider the proposed code amendments on December 3, 2024. The City Council will need to find that the provisions of the ordinance are in the best interest of and protect the health, safety, and welfare of the residents of the City.