

ORDINANCE NO. O2022-004

AN ORDINANCE of the City Council of the City of Tumwater, Washington amending Tumwater Municipal Code (TMC) Titles 15 *Buildings and Construction* and 17 *Land Division*.

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

WHEREAS, TMC Chapter 17.08 *Binding site plans* contains some 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; and

WHEREAS, TMC Chapter 15.44 *Vesting of development rights* needs updating 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, TMC Chapter 17.08 *Binding site plans* does not clearly relate to the vesting requirements in TMC Chapter 15.44 *Vesting of development rights*; 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 February _____, 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 _____, 2022, pursuant to Chapter 197-11 WAC, and a Determination of Non-Significance (DNS) was issued on February _____, 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, held a worksession on February 22, 2022, and held a public hearing on March 8, 2022; and

WHEREAS, a Notice of Public Hearing for the Planning Commission was issued on _____, 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 8, 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 April 13, 2022; and

WHEREAS, the City Council discussed the proposed code amendments in a worksession on April 26, 2022; and

WHEREAS, the City Council considered the proposed code amendments May 17, 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. 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 2. 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 3. 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 4. Section 17.08.010 of the Tumwater Municipal Code is hereby amended to read as follows:

17.08.010 Binding site plans.

A. 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.

B. 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 5. Section 17.14.040 of the Tumwater Municipal Code is hereby amended to read as follows:

17.14.040 Review criteria.

A. Hearing Examiner and/or Community Development Department Inquiry into Public Use and Interest. The hearing examiner and/or community development department shall inquire into the public use and interest proposed to be served by the establishment of the proposed land division and dedication. The hearing examiner and/or staff shall determine: if appropriate provisions are made for, but not limited to, the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, other grounds, transit stops, potable water supplies, sanitary wastes, parks and recreation playgrounds, schools and school grounds, fire protection and other public facilities, and shall consider all other relevant facts, including the physical characteristics of the site, and determine whether the public interest will be served by the land division and dedication. Further, consideration shall be given for sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school. If the hearing examiner and/or staff find that the proposed division of land makes appropriate provisions for the above, and makes written findings to that effect, then it shall be approved. If the hearing examiner and/or staff find that the proposed land division does not make such appropriate provisions or that the public use and interest will not be served, then the hearing examiner or staff shall disapprove the proposed division of land.

B. Dedication. Dedication of land, provision of public improvements to serve the land division, and/or payment of impact fees allowed by state law, to any public body, may be required as a condition of land division approval. Evidence of such dedication and/or payment shall accompany final land division approval. No dedication, provision of public improvements, or impact fees imposed in conformance with state law shall be allowed that constitutes an unconstitutional taking of private property.

C. Release from Damages from Other Property Owners. The hearing examiner and/or staff shall not, as a condition of approval, require an applicant to obtain a release from damages from other property owners.

D. Flood Hazard Areas. The hearing examiner and/or staff shall consider the physical characteristics of a proposed land division site, and may disapprove a proposed division because of flood, inundation, or wetland conditions. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final land division.

E. Health Department. As a condition of preliminary land division approval, the health department may require plan modifications in those instances where topography, soils, water table, or other conditions are such that the changes are necessary in order to prevent possible health hazards due to ground or surface water contamination or sewage disposal system malfunction.

F. School District. When a proposed division wholly or partially contains a school site proposed in the comprehensive plan or other officially adopted plans, as a mitigation measure in an environmental document or determination or when the school district finds a reasonable foreseeable need for such a site, the applicant may be required to dedicate a portion of the division or reserve it for future purchase by the school district. The city shall require evidence of need from the school district as a prerequisite to requiring dedication or reservation. The hearing examiner and/or staff may recommend a time limit on the effective period of any reservation.

G. Fire Department. When the affected fire department finds a reasonably foreseeable need for a site wholly or partially contained within the preliminary land division, the applicant may be required to dedicate a portion of the site or reserve it for future dedication. Evidence of need from the fire department is a prerequisite to requiring dedication or reservation. The hearing examiner and/or staff may recommend a time limit on the effective period of any reservation.

H. Parks. When a preliminary division includes the area of a trail or open space network which is indicated in the park plan element of the comprehensive plan or other officially adopted plan, an area encompassing such trail or open space network may be required to be set aside for its intended purpose. It may be provided by the granting of a trail or open space easement to the city, dedication, or reservation for future purchase by the public. The hearing examiner and/or staff may determine a reasonable time or specify the event, limiting the effective period of the reservation.

Where land is set aside in accordance with this provision, the area of such land may be counted toward satisfaction of open space/park requirements of TMC 17.12.210.

I. Shoreline Management. Whenever a preliminary division of land is wholly or partially located within an area subject to the jurisdiction of the Shoreline Management Act of 1971, Chapter 90.58 RCW, as amended, the applicant shall comply with the Shoreline Master Program for the Thurston Region, Chapter 90.58 RCW, as amended.

J. Binding site plans. In addition to the review criteria of subsections A-I above, binding site plans shall meet the following:

1. A binding site plan shall depict building envelopes and all existing and proposed land uses.

2. 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.

3. 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.

4. 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.

5. A binding site plan cannot amend or conflict with previously granted use permit approvals or conditions of approval.

6. A binding site plan shall depict any open space tract, required recreational areas, critical area buffers, and utility easements.

7. 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 permits.

8. 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 is congruent with future adjacent development.

9. Binding site plans shall account for the development of all of the land of a parcel and parcels under the same ownership.

(Ord. O2017-022, Amended, 12/05/2017; Ord. O2011-002, Amended, 03/01/2011; Ord. O96-021, Amended, 12/02/1997; Ord. 1308, Added, 10/15/1991)

Section 6. 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;

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; and

4. The criteria contained in TMC 17.14.040 have been met.

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

Section 7. 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 8. 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 plat 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 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 9. 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 10. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 11. 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 12. 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:_____