



CITY OF
TUMWATER

**GENERAL GOVERNMENT COMMITTEE
MEETING AGENDA**

**Online via Zoom and In Person at
Tumwater City Hall, Council Conference
Room, 555 Israel Rd. SW, Tumwater, WA
98501**

**Wednesday, November 13, 2024
8:00 AM**

1. Call to Order
2. Roll Call
3. Approval of Minutes: General Government Committee - October 9, 2024
4. Amendment One to Interlocal Agreement with the Regional Housing Council for the Franz Anderson Project (Community Development Department)
5. Interlocal Agreement with Cities of Lacey, Olympia and Yelm for the update of the Accessory Dwelling Unit Plans (Community Development Department)
6. Ordinance No. O2024-005, Development Code Administration (Community Development Department)
7. Food System Plan (Community Development Department)
8. Additional Items
9. Adjourn

Meeting Information

All committee members will be attending remotely. The public are welcome to attend in person, by telephone or online via Zoom.

Watch Online

<https://us02web.zoom.us/j/81051366477?pwd=ivbYuTSvByzt17G7QYBMCpkAmoVxkE.1>

Listen by Telephone

Call (253) 215-8782, listen for the prompts and enter the Webinar ID 810 5136 6477 and Passcode 752227.

Public Comment

The public may submit comments by sending an email to council@ci.tumwater.wa.us, no later than 5:00 p.m. the day before the meeting. Comments are submitted directly to the Committee members and will not be read individually into the record of the meeting.

Post Meeting

Video of this meeting will be recorded and posted on our City Meeting page: <https://tumwater-wa.municodemeetings.com>.

Accommodations

The City of Tumwater takes pride in ensuring that people with disabilities are able to take part in, and benefit from, the range of public programs, services, and activities offered by the City. To request an accommodation or alternate format of communication, please contact the City's ADA Coordinator directly, call (360) 754-4129 or email ADACoordinator@ci.tumwater.wa.us. For vision or hearing impaired services, please contact the Washington State Relay Services at 7-1-1 or 1-(800)-833-6384.

**TUMWATER GENERAL GOVERNMENT COMMITTEE
MINUTES OF VIRTUAL MEETING
OCTOBER 9, 2024 PAGE 1**

CONVENE: 8:00 a.m.

PRESENT: Chair Michael Althausser and Councilmembers Joan Cathey and Leatta Dahlhoff.

Staff: City Administrator Lisa Parks, Assistant City Attorney Davis Abbott, Community Development Department Director Michael Matlock, Finance Department Director Troy Niemeyer, Planning Manager Brad Medrud, and Housing and Land Use Planner Erika Smith-Erickson.

**APPROVAL OF
MINUTES: GENERAL
GOVERNMENT
COMMITTEE - SPECIAL
SEPTEMBER 11, 2024
MEETING:**

MOTION: **Councilmember Dahlhoff moved, seconded by Councilmember Cathey, to approve the minutes of September 11, 2024 as published. A voice vote approved the motion.**

**2025 COMPREHENSIVE
PLAN PERIODIC
UPDATE – HOUSING
ALLOCATION AND
LAND CAPACITY
ANALYSIS:** Manager Medrud and Planner Smith-Erickson briefed the committee on the results of the housing allocation and land capacity analysis. Following the approval of the final report by the Thurston Regional Planning Council (TRPC), all jurisdictions in the county will use the housing allocation and land capacity analysis as the basis for each jurisdiction’s update of its comprehensive plan.

In 2021, House Bill 1220 added new requirements for the Housing Element. Jurisdictions must now plan for and accommodate housing affordable for all economic segments of the population and identify sufficient capacity of land for housing those economic segments. The City’s 2016 Comprehensive Plan includes policies and goals acknowledging that housing would be affordable to all economic segments in the community but did not identify the number of units and how it was allocated across the City by area median income (AMI). The new requirements added specific actions requiring the City to estimate the number of housing units required for moderate, low-income, low, and extremely low-income households. Additionally, the City must account for emergency housing, emergency shelters, and permanently supportive housing. The requirements also require that sufficient land is available to accommodate all housing needs across the different income levels.

As part of the ongoing work on the Housing Element, the City must identify local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing, and identify policies and regulations to eliminate those impacts to include identifying areas of higher risk of displacement. Staff is working with a consultant to address the new

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requirements with a briefing planned to the Council during a joint work session with the Council and the Planning Commission in December.

The City has a good base to address the new requirements through different policies that promote housing for a range of incomes including the Housing Action Plan, Homeless Crisis Response Plan, efforts in progress with the Regional Housing Council (RHC), and efforts on middle housing. Those previous efforts, policies, and plans will be used to update the Housing Element within the Comprehensive Plan and City regulations.

Manager Medrud reviewed information on different income ranges and general equivalent household income based on a four-person household. The new law defines seven different income levels that each jurisdiction must plan for and accommodate. The information lacks the 120% and above AMI as the City is not required to plan for that specific income group. However, there would be a housing allocation for the income group.

Manager Medrud displayed information on the countywide housing need across the different income sectors. Numbers are expressed as a percentage of the AMI in the county. In 2023, the AMI in the county was \$102,000.00. Countywide, approximately 121,000+ housing units exist of which 40% are affordable to households with incomes of 80% or less of AMI. A significant number of housing units are affordable to households making 50% to 80% of AMI except for the City, the numbers increase for higher income groups in terms of housing supply.

The overall county projected need is an additional 54,000 housing units between 2020 and 2045 based on forecasts produced by the Department of Commerce. The need is acute for the lowest of the income groups. Approximately 29,000 additional housing units will need to be affordable to low-income households with 936 units accounted for emergency housing for those experiencing homelessness.

Chair Althausser questioned whether the need of 936 units of emergency housing is based on the county achieving the additional housing need of 54,000 units. The number of units for emergency housing appears to be too low based on community discussions on homelessness. Manager Medrud said staff lacks the detail in how the state established the numbers. It is likely the state assumed that meeting the need for an additional 54,000 housing units would reduce the targets for very low and permanently supportive housing or reduce the overall need for emergency housing. Based on point in time counts over the previous years, emergency housing needs are likely more than 1,000 units in the county. More research is required to determine the basis of the numbers established by the Department of Commerce. However, the figure appears to be too low based on what is occurring in the community.

Manager Medrud reported the HB 1220 process included two steps. Staff

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worked with Thurston County and the cities of Lacey, Olympia, Tenino, and Yelm and contracted with TRPC to assist, facilitate the process, and complete the data analysis. The first step was identification of the housing need for each jurisdiction and how many low income units each jurisdiction should plan to accommodate based on the larger figure the Department of Commerce identified for Thurston County. The second step was completion of the land capacity analysis to ensure each jurisdiction has sufficient land to accommodate housing needs.

Each jurisdiction was able to determine housing needs based on guidelines established for the planning process and that the separate figures must equal total countywide need. A formal process involving all planning partners included a request to TRPC to accept the recommended housing allocation for the jurisdictions. The formal regional planning effort was initiated in summer 2023. The process identified important goals:

- The process should be fair and distribute low-income housing units across all jurisdictions.
- Recognition of the differences between the jurisdictions and existing housing distribution.
- Recognize the needs of community members, especially those who rely on permanently supportive and emergency housing as part of the process.
- Ensure the process is clear – easy to communicate to the public and elected officials, tailored to each jurisdiction for both housing allocation and land capacity analysis to include all associated urban growth areas.
- Use established methods to limit the risk of legal challenges.
- Process should be multijurisdictional/collaborative.
- The total number of housing units should be consistent with the jurisdictional population and employment projections completed by TRPC in September 2019.

Councilmember Cathey asked whether the smaller southern jurisdictions in the county are predicted to grow at the same rate as the larger cities in the county. Manager Medrud explained that there are different growth rates for jurisdictions in the county. As one example, the City of Lacey likely will not experience the level of growth predicted to occur in the City of Tumwater.

In Tumwater, low-income housing supply for people in households earning less than 80% of AMI is approximately 6,128 units. The additional housing projected need doubles the amount by 2045.

Manager Medrud added that after completion of the initial housing allocation across the county, the state indicated a lack of support in the planning group's method for allocating low-income housing units in rural areas. Subsequently,

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the planning group reallocated the units across all jurisdictions with most of the units located within urban growth areas.

The planning group discussed the land capacity analysis. The Buildable Lands Report served as the basis for the analysis. The planning group explored whether sufficient land would be available to accommodate 20 years of low-income housing need, whether lands meet current zoning for housing, and whether development regulations served as a barrier to low-income housing development. The analysis was completed for all county jurisdictions. Findings from the process determined that Lacey, Olympia, and Tumwater have sufficient capacity to accommodate future low-income housing needs. Other jurisdictions including Tenino, Yelm, and Grand Mound were identified as having some level of deficit of available land and/or regulatory issues to enable jurisdictions to meet housing needs.

HB 1220 requires jurisdictions to ensure that comprehensive plans and zoning do not pose as barriers for affordable housing.

Chair Althauser asked whether the deficits pertain mostly to regulatory barriers that the City might have in place that need to be addressed, as the deficit in the Comprehensive Plan does not address the City's ability to meet housing goals. He asked whether the Comprehensive Plan is required to include a plan as to how to achieve the housing units rather than creating barriers to create housing units. Manager Medrud explained that not creating barriers is the first step followed by some recommendations to include some positive implementation actions to support the requirements.

Councilmember Dahlhoff said she has had conversations with representatives from Habitat for Humanity and Homes First about the challenges the organizations are experiencing with City permitting and the timeline for development of affordable housing. Habitat for Humanity representatives are working on a proposal with a neighboring jurisdiction to create a different track for development of affordable housing. She asked whether that process could be considered an option for the City. She inquired about the possibility or whether the RHC has discussed the potential of exempting non-profits that create affordable housing from some of the permitting requirements to help streamline development.

Chair Althauser advised that the RHC has not engaged in those conversations at this time mainly because of the structure of the RHC, as the entity is responsible for approving distribution of housing grants for non-profits and other affordable housing providers in the region. RHC members have discussed the possibility of the RHC offering policy recommendations across jurisdictional boundaries. However, the conversations have been preliminary.

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Discussion ensued on development timelines associated with housing grants, especially grants that include federal funds. Councilmember Dahlhoff commented that the intent is not affording extensions to organizations encountering development issues as the conversations by the RHC should include information on how some jurisdictions are drafting policies to streamline and exempt some non-profits from some of development guidelines/regulations and whether it is possible for other jurisdictions to review similar options and include those provisions within the housing element of comprehensive plans. It is concerning to receive feedback and concerns from two non-profits. Her concern surrounds how those concerns could be addressed in the process to identify solutions to resolve the issues.

Chair Althaus said the RHC also serves as a forum for jurisdictions to share ideas on effective processes for streamlining development. The feedback could be pursued by the RHC during a conversation and any outcomes shared with the parties. The RHC previously reviewed a crosswalk of development codes for each jurisdiction to compare the differences between jurisdictions in terms of the housing development process. The conversation at that level has been informational rather than action-oriented based on the operating principles of the RHC. He is hopeful, as the Chair of the RHC, to move in a more proactive direction.

Manager Medrud shared that the process for the work required to update the City's Development Code Administration Chapter is very complex. It is easier to explain the process; however, the details of how requirements are aligned are much more difficult. Much of the update is moving toward the path of treating non-profits and affordable housing as a separate category in terms of the City's fee structure and other development requirements. Staff could explore other options to improve the process while staff is also recommending overall process improvements for development to enable construction of more housing.

Manager Medrud reviewed a graph depicting columns of *Income Level*, *Zone Categories*, *Serving Those Needs*, *Housing Need*, *Aggregate Need*, *Total Capacity*, and *Surplus*. Income level categories included Extremely Low Income (0-30% AMI), Very Low-Income (30-50% AMI), Low-Income (50%-80% AMI), and Moderate Income (80%-100% & 100% -120% AMI). He noted that moderate income of 80% -100% AMI does not include single-family housing but does include duplexes, triplexes, and quadplexes. The column, *Housing Need* reflects the specific zoning category serving those needs (Low-rise Multifamily, Mid-rise Multifamily, Accessory Dwelling Units (ADUs), & Moderate Density) that must be built over the next 20 years. The *Total Capacity* column is the calculation completed by TRPC based on the City's current zoning and the actual zoned land. Some factors in the calculation account for critical areas and some acreage within the City to serve as conservation lands for the gopher. The total capacity represents

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housing units. Staff proposes additional work to ensure the numbers account for the 80% AMI income group than what is reflected.

Councilmember Cathey asked whether the discussions also address the different family types and seniors that live in different types of housing units. Manager Medrud replied that the demographics of the income groups are not addressed as part of the housing allocation, as well as the size of the units for families/seniors/singles or for any access needs. However, those factors are considered as a component of implementation.

Manager Medrud said the next step in the process is a request to TRPC to approve the revised housing allocation in December. All the work will be consolidated with the work underway for the Housing Element. Some specific policies will be included in the Housing Element to promote housing affordability, address deficits, and ensure adequate safety margins for housing needs. Staff is working on some draft policies, goals, and implementation actions for future review by the committee. Jurisdictional staff members are also updating joint plans concurrently with the update of comprehensive plans. Thurston County has indicated that by the end of the year, the county will have completed some proposed updates to the county development regulations in urban growth areas and updates to joint plans. The City's Joint Plan was last updated in 2021. The Joint Plan focused on land use with the other elements in the plan based on City adopted regulations, policies, and goals (no amendments). Staff continues to work on planning for both the City and the urban growth area.

Manager Medrud said the next meeting will include amendments to the Development Code Administration Chapter. The update is driven in part to meet state deadlines. The proposed changes at this time likely will not address changing processes to support affordable housing development. However, other process changes will be included reducing the timeline for the City's issuance of various development decisions. The opportunity exists to continue the discussion and propose some changes. The committee will be briefed on the initial draft of the Conservation Element as well.

Manager Medrud commented on the national affordable housing problem. During the update of the Housing Element, staff is outreaching housing stakeholders to include non-profits to provide an update on the status of the update process and next steps.

Councilmember Dahlhoff asked about any opportunity to discuss some examples of areas of clearcut for development as part of the Conservation Element review. One area was clearcut with wetlands no longer existing. She does not understand how the project received approval, as there is no access to transit and no sidewalks. Manager Medrud responded that the Conservation Element and critical area protections under the City and state laws include some nuances. Provisions are included for mitigation of critical

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areas if the proposal for development would be unable to proceed. The committee's review can include a discussion on those issues. Councilmember Dahlhoff encouraged a future conversation on how the City can support both urban and rural lifestyles and where development should be focused. Manager Medrud said it speaks to an ongoing issue of accommodating and concentrating growth in the cities under the requirements of the Growth Management Act while preserving rural areas. It is often difficult to distinguish outlying areas of the City from the county because of the number of large open areas. However, in the future, those areas will change as the City develops and as more people move to the City. Those changes occurring over time will be dramatic.

Councilmember Dahlhoff suggested the discussion could include focusing on future goals, priorities, and rural lifestyle in Tumwater in the next 20 to 40 years, and whether it is a priority by the Council to preserve rural areas.

Councilmember Cathey added that all conversations on development should account for impacts caused by climate change.

Manager Medrud shared information on the amount of progress achieved to date in the development of the Climate Element with assistance by the City's consultant.

ADJOURNMENT:

With there being no further business, Chair Althausser adjourned the meeting at 8:57 a.m.

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net

TO: General Government Committee
 FROM: Brad Medrud, Planning Manager
 DATE: November 13, 2024
 SUBJECT: Amendment One to Interlocal Agreement with the Regional Housing Council for the Franz Anderson Project

1) Recommended Action:

Place the Interlocal Agreement to Support Housing Element Updates on the December 3, 2024, City Council consent calendar with a recommendation to approve and authorize the Mayor to sign.

2) Background:

After the City Council adopted Resolution No. R2018-016 in the summer of 2018, the City has undertaken several actions to address homelessness, increase affordable housing, and continue to work with other jurisdictions and agencies to explore regional solutions to these issues.

With assistance from the City and the other members of the Regional Housing Council, the City of Olympia has been working on a permanently supportive housing project on Franz Anderson Road SE in Olympia near the Interstate 5 Pacific Avenue interchange.

The City has determined it to be an equitable choice to support the Franz Anderson permanently supportive housing project in the City of Olympia, which would result in affordable long-term housing and serve as a public benefit for the region.

The General Government Committee was briefed on the letter of commitment for \$275,000 for the project at their May 10, 2023, meeting and recommended City Council approval of the letter. The City Council approved the letter of commitment on May 16, 2023.

The City of Olympia staff in coordination with the other members of the Regional Housing Council drafted the interlocal agreement between the Cities of Olympia, Lacey, Tumwater, and Thurston County to use ARPA and other funds to facilitate development of the project.

The City Council discussed the interlocal agreement at a work session on November 28, 2023, and recommended that it be placed on the City Council’s December 5, 2023, meeting consent calendar for approval.

The amendment updates the approved interlocal agreement to reflect that the original 2023 interlocal agreement involved the use of Coronavirus State and Local Fiscal Recovery Funds (SLFRF), established by the American Rescue Plan Act of 2021 (ARPA) and that now the project will no longer utilizes those SLFRF/ARPA funds, and instead rely on funding provided by Thurston County and City of Tumwater, which removes requirements related to compliance with the SLFRF/ARPA.

3) Policy Support:

Strategic Priority to Build a Community Recognized for Quality, Compassion and Humanity

with a goal of “Work with government, non-profit, and private partners to develop and implement a performance-based plan for affordable housing and to address homelessness.”

Housing Element Goal H-3: To provide adequate, affordable housing for residents of all income groups, including sufficient housing affordable to low and moderate-income groups.

4) Alternatives:

None.

5) Fiscal Notes:

\$275,000 in City of Tumwater’s general funds will be used to fund the project.

6) Attachment:

- A. Interlocal Agreement with the Regional Housing Council for the Franz Anderson Project
- B. Exhibit A Executed REPSA
- C. Exhibit A Amendment No. 1 to Executed REPSA

**FIRST AMENDMENT AMENDING AND RESTATING
INTERLOCAL AGREEMENT
BETWEEN THE CITY OF OLYMPIA, CITY OF LACEY, CITY OF TUMWATER AND
THURSTON COUNTY
FOR
POOLING AND TRANSFER OF FUNDS
TO
SUPPORT PERMANENT SUPPORTIVE HOUSING PROJECT
AT
FRANZ ANDERSON ROAD**

THIS FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT ("Agreement") amends and restates the December 26, 2023 Interlocal Agreement ("Original Agreement") between the City of Olympia, a municipality organized under the laws of the State of Washington ("OLYMPIA"), the City of Lacey, a municipality organized under the laws of the State of Washington ("LACEY"), the City of Tumwater, a municipality organized under the laws of the State of Washington ("TUMWATER"), and Thurston County, a Washington municipal corporation, ("COUNTY"), jointly referred to herein as "the Parties," or singularly as a "Party."

RECITALS

WHEREAS, the Original Agreement involved the use of Coronavirus State and Local Fiscal Recovery Funds (SLFRF), established by the American Rescue Plan Act of 2021 (ARPA), this Agreement no longer utilizes those SLFRF/ARPA funds, and instead relies on funding provided by Thurston County and City of Tumwater, which removes requirements related to compliance with the SLFRF/ARPA; and

WHEREAS, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

WHEREAS, unsheltered and unmanaged homelessness constitutes a public health emergency that requires the Parties to coordinate their resources and actions to work together to abate detrimental effects that threaten public health and safety; and

Amended and Restated Interlocal Agreement/City of Olympia, City of Lacey, City of Tumwater, and Thurston County/Franz Anderson Road SE Property Permanent Supportive Housing

WHEREAS, the Parties do not have sufficient resources to address the ongoing impacts or needs of unsheltered homelessness without mutual cooperation; and

WHEREAS, the Regional Housing Council supports the development of a permanent supportive housing project at the Franz Anderson Road property; and

WHEREAS, the development of a permanent supportive housing project at Franz Anderson Road property is aligned with the Permanent Supportive Housing Strategic Framework adopted by the Regional Housing Council in 2021 with the intent of funding 200 new permanent supportive housing units in Thurston County by 2024; and

WHEREAS, the Franz Anderson Road project was included in a proposal awarded funding through the State Rights of Way Safety Initiative, an initiative of the Washington State Governor's Office; and

WHEREAS, in March 2021, the American Rescue Plan Act of 2021 (ARPA) established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide State, local, and Tribal Governments with the resources needed to respond to the pandemic and its economic effects; and

WHEREAS, pursuant to RCW 39.34.030, local governments may enter into agreements for the purpose of financing joint projects; and

WHEREAS, the COUNTY has identified \$3,500,000 in local funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property; and

WHEREAS, TUMWATER has identified \$275,000 in General Funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property; and

WHEREAS, LACEY has identified \$3,000,000 in General Funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property; and

WHEREAS, the funds will be pooled and managed by OLYMPIA; and

WHEREAS, the pooled funds will be disbursed by OLYMPIA on a cost reimbursement basis to Low Income Housing Institute (LIHI) to construct the permanent supportive housing at the Franz Anderson Road Property; and;

WHEREAS, LIHI has proposed a development timeline to complete the construction of permanent supportive housing at the Franz Anderson Road Property by December 31, 2026.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Purpose/Objective/Funding

The purpose of this Agreement is to accommodate for the transfer of funding available for affordable housing capital projects and originating from LACEY, TUMWATER, and COUNTY to OLYMPIA so that the funding may be pooled; committed by contract to be applied toward the development of a permanent supportive housing project (hereinafter “the Project”) proposed to occur at the Franz Anderson Road property (hereinafter “the Property”), as legally described in Exhibit “A” attached hereto; and managed by OLYMPIA in connection to the Project.

A. COUNTY has spent \$825,547 in SLFRF funds towards acquisition of the real property located on Franz Anderson Road and has identified \$3,500,000 in local document recording fee and sales tax funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property for households with incomes below 50 percent of area median income.

B. LACEY has identified \$3,000,000 in General Funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property.

C. TUMWATER has identified \$275,000 in General Funds it intends to transfer to OLYMPIA for the facilitation of the development of permanent supportive housing at the Franz Anderson Road Property.

D. OLYMPIA has spent \$825,547 towards acquisition of the real property located on Franz Anderson Road.

E. In the event LIHI is unable to construct the Franz Anderson Road project after financial closing occurs, any party to this Agreement may withdraw. Upon the withdrawal of any party, OLYMPIA shall return to such party all funds transferred by such party to OLYMPIA pursuant to this Agreement.

2. Scope of Agreement/Work

The responsibilities of the Parties are as follows:

A. OLYMPIA shall communicate with LACEY, TUMWATER, and COUNTY to indicate when the Project has demonstrated full funding and is ready to start construction.

B. LACEY, TUMWATER, and COUNTY shall facilitate the transfer of funds intended for the development of the Project to OLYMPIA, on a reimbursement basis, at the time that LIHI can demonstrate the Project is fully funded at the time of financial closing and construction is ready to commence. OLYMPIA will process draws by LIHI of funds only after execution of an agreement between OLYMPIA and LIHI that requires LIHI to submit

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an invoice package to OLYMPIA that includes the percentage of the project completed, what funding amount is being requested, what the funds cover regarding work performed, and approval of the funds requested and activities conducted as issued by the project architect. Prior to any payment to LIHI, OLYMPIA will visit the project site to confirm with photographic evidence the work performed. The agreement between OLYMPIA and LIHI shall require that invoice packages requesting funds shall be submitted by LIHI to all funders.

C. OLYMPIA shall perform the following:

- Coordinate with other State and private funders regarding financing of the Project;
- Approve funding draws submitted by LIHI for the Project;
- Prioritize LACEY, TUMWATER, and COUNTY funds to be drawn prior to other funds;
- Monitor the Project throughout the construction phase to ensure the Project is timely and in compliance with other requirements;
- Ensure that LIHI will perform all covenants in the Real Estate Purchase and Sale Agreement between OLYMPIA and LIHI (see, Exhibit A), including but not limited to LIHI pursuing project-based vouchers from the Housing Authority of Thurston County to meet affordability requirements; that LIHI shall utilize Thurston County's coordinated entry system to place persons into housing units to be constructed upon the Property; that LIHI shall give initial preference to single adults and couples associated with the State of Washington's Rights-of-Way Safety Initiative exiting OLYMPIA's tiny house village and then to single adults and couples associated with the State of Washington's Rights-of-Way Safety Initiative exiting Maple Court until Maple Court has been converted from an enhanced shelter to permanent supportive housing or has been funded for said conversion; that LIHI will use its best efforts to have Sea Mar Community Health Centers provide behavioral health services for tenants in the multi-family housing units to be constructed upon the Property; that LIHI shall provide two case managers who will have offices on-site in the project to be constructed on the Property; and that LIHI will operate with a low-barrier model and will offer consistent and accessible supportive services to eligible tenants but will not require tenants to participate in services as a condition of receiving housing.
- Ensure that LIHI shall execute and record a Restrictive Covenant as required by the Real Estate Purchase and Sale Agreement between OLYMPIA and LIHI, dictating that the Property shall be used for affordable housing in perpetuity;
- Execute any other agreements needed by LIHI to facilitate State, Federal, or private funding necessary to develop the Project;
- Provide periodic Project updates, as requested, to the Regional Housing Council;
- Close out the Project upon completion of development and upon lease up of Project.

D. Each Party to this Agreement is responsible for paying the full cost of its respective staff members to support this project.

E. The Parties shall have the opportunity to jointly participate in any neighborhood outreach or communications to facilitate open communications between the Parties, residents and surrounding businesses, or property owners.

3. Method of Payment

LACEY, TUMWATER, and COUNTY shall provide their respective portions of funding for the Project to OLYMPIA via wire transfer. The parties agree that OLYMPIA shall provide an opportunity to LACEY, TUMWATER, and COUNTY to review all contracts and subawards prior to execution for a period of thirty (30) days before processing same for payment.

4. Indemnification & Insurance

LACEY, TUMWATER, and COUNTY agree to defend, indemnify and hold OLYMPIA, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including reasonable attorney fees, arising out of or in connection with OLYMPIA's responsibilities under this Agreement, except to the extent such injuries and damages are caused by the negligence of OLYMPIA.

OLYMPIA agrees to defend, indemnify and hold LACEY, TUMWATER, and COUNTY, and their officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including reasonable attorney fees, arising out of or in connection with LACEY's, TUMWATER's, and COUNTY's responsibilities under this Agreement, except to the extent such injuries and damages are caused by the negligence of LACEY, TUMWATER, and COUNTY.

5. Duration of Agreement

This Agreement shall be effective until terminated in the manner described under the termination section of this Agreement, or upon completion of construction and issuance of a final certificate of occupancy by OLYMPIA and payment of all obligations under this Agreement.

6. Termination of Agreement

This Agreement may be terminated upon ninety (90) days' written notice to the other Parties using the method of notice provided for in this Agreement in Section 12 below.

7. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the Parties and supersedes any and all prior agreements, oral or otherwise, with respect to the subject matter and property addressed herein.

8. Recitals Incorporated

The recitals set forth above are hereby incorporated into this Agreement as though fully set forth herein.

9. Counterparts

Amended and Restated Interlocal Agreement/City of Olympia, City of Lacey, City of Tumwater, and Thurston County/Franz Anderson Road SE Property Permanent Supportive Housing

This Agreement may be executed in a number of identical counterparts which, taken together, constitute collectively one Agreement; but in making proof of this Agreement, it is not necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically scanned signature, or an electronic or digital signature where permitted by law, shall be deemed to be an original signature for all purposes. All executed counterparts of this Agreement are originals, but all such counterparts, when taken together, constitute one and the same Agreement.

10. Posting or Recording

Prior to its entry into force, this Agreement shall be posted upon the websites of the Parties or other electronically retrievable public source or filed with the Thurston County Auditor's Office or as required by RCW 39.34.040.

11. Employment Relationship

Employees of all Parties shall remain at all times under the direction and control of their original agency and the performance of work for any other agency pursuant to this Agreement shall not change that relationship for any purpose. No Parties shall be deemed to have agreed to pay the other agency's employees any wages or benefits afforded to its own employees. Further, each Party's responsibilities to its own employees for workplace injuries shall remain unchanged by this Agreement.

12. Notice/Contract Representative

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit in the United States Postal Service.

CITY OF OLYMPIA
 Attn: Darian Lightfoot
 Housing Manager
 City of Olympia
 PO Box 1967
 Olympia, WA 98507-1967
dlightfo@ci.olympia.wa.us
 360.753.8033

THURSTON COUNTY
 Attn: Thomas Webster
 Thurston County
 412 Lilly Road
 Olympia, WA 98506
Thomas.webster@co.thurston.wa.us
 360.280.6265

Amended and Restated Interlocal Agreement/City of Olympia, City of Lacey, City of Tumwater, and Thurston County/Franz Anderson Road SE Property Permanent Supportive Housing

CITY OF LACEY
Attn: Rick Walk
City of Lacey
420 College St. SE
Lacey, WA 98503
rwalk@ci.lacey.wa.us
(360) 438-2638

CITY OF TUMWATER
Attn: Lisa Parks
555 Israel Road SW
Tumwater, WA 98501
(360) 754-4120

13. Records

Each party shall maintain its own public records and shall be solely responsible for responding to records requests received about the subject matter of this Agreement. Any public records request addressed to the Parties as if this interlocal created a separate legal entity, shall be deemed to be a request received by each party individually. Each party shall respond separately, unless agreed to otherwise in writing and properly documented. The parties agree to cooperate in responding to requests for public records received about the subject matter of this Agreement.

14. Jurisdiction and Venue

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The Parties hereby agree that venue for enforcement of this Agreement shall be in the Superior Court of Washington for Thurston County.

15. Effective Date

This Agreement shall take effect upon the final signature date affixed hereto.

16. Modification

This Agreement may only be changed, amended, or modified, if in writing, and executed by each of the Parties hereto.

SIGNATURES APPEAR ON NEXT PAGE

CITY OF OLYMPIA

Steven J. Burney, City Manager

Date

Approved as to form:

City Attorney

THURSTON COUNTY

Leonard X. Hernandez
County Manager

Date

Approved as to form:

Deputy Prosecuting Attorney

CITY OF LACEY

Rick Walk, City Manager

Date

Approved as to form:

City Attorney

CITY OF TUMWATER

Debbie Sullivan, Mayor

Date

Approved as to form:

City Attorney

Amended and Restated Interlocal Agreement/City of Olympia, City of Lacey, City of Tumwater, and Thurston County/Franz Anderson Road SE Property Permanent Supportive Housing

DRAFT

Amended and Restated Interlocal Agreement/City of Olympia, City of Lacey, City of Tumwater, and Thurston County/Franz Anderson Road SE Property Permanent Supportive Housing

EXHIBIT "A"
REAL ESTATE PURCHASE AND SALE AGREEMENT
BETWEEN CITY OF OLYMPIA AND LIHI

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DRAFT

Amended and Restated Interlocal Agreement/City of Olympia, City of Lacey, City of Tumwater, and Thurston
County/Franz Anderson Road SE Property Permanent Supportive Housing

REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is between the City of Olympia, a municipality organized under the laws of the State of Washington ("Seller"), and Low Income Housing Institute (LIHI), a Washington nonprofit corporation ("Buyer"), jointly referred to as "the Parties." This Agreement shall not be effective until the "Effective Date" (as defined in Paragraph 18.16 below).

RECITALS

Seller is the owner of certain real property ("Property") located in the **City of Olympia, Thurston County, Washington**, consisting of TPN Nos. 58900000300, 58900000301, 58900000400, 58900000500, and 58900000600 and located near Franz Anderson Road in Olympia, Thurston County, Washington, and more particularly described on **Exhibit "A"** (legal description) and shown on **Exhibit "B"** (sketch) attached hereto and by this reference incorporated herein.

Pursuant to the Washington State Constitution, Article VIII, § 7, Seller is permitted to make provision for the necessary support of the poor and infirm. The Seller intends, and the Parties agree, that the Property shall be used to construct permanent supportive housing and facilities in a multi-family rental project as the term "permanent supportive housing" is defined in RCW 36.70A.030(19), which is defined as subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors, and no other purpose except as expressly agreed by the Parties herein.

The Parties specifically agree that the Property shall in perpetuity be used to provide affordable housing as defined in RCW 36.70A.030(2) and permanent supportive housing as defined in RCW 36.70A.030(19). Buyer proposes, and Seller agrees, that the project to be constructed upon the Property will consist of approximately seventy (70) studio and one-bedroom housing units, with one additional one-bedroom unit for an on-site manager (the "Project"). Unit sizes will range from approximately 470 to 630 square feet. An estimated thirty (30) housing units will be accessible to disabled persons. Approximately thirty-five (35) housing units will be studio units designated for households with Area Median Income (AMI) of thirty percent (30%) or less by household size. The remaining thirty-five (35) units will be one-bedroom housing units designated for households with Area Median Income (AMI) at or below thirty percent (30%) by household size. At no time will tenants occupying these housing units pay an amount for rent and utilities that exceeds thirty percent (30%) of their income. Buyer agrees it will pursue project-based vouchers from the Housing Authority of Thurston County to meet affordability requirements.

It is further agreed by the Parties that Buyer shall utilize Thurston County's coordinated entry system to place persons into housing units to be constructed upon the Property. Preference will be given by Buyer to single adults and couples exiting Seller's tiny house village associated

with the State of Washington's Rights-of-Way Safety Initiative. Further, it is proposed by Buyer, and agreed by Seller, that best efforts will be made to have Sea Mar Community Health Centers provide behavioral health services for tenants in the multi-family housing units to be constructed upon the Property. Further, Buyer shall provide two case managers who will have offices on-site in the Project. Buyer proposes, and Seller agrees, that the Project will operate with a low-barrier model and will offer consistent and accessible supportive services to eligible tenants but will not require tenants to participate in services as a condition of receiving housing.

Buyer anticipates utilizing regional funds, including American Rescue Plan Act funds in an amount of approximately \$6.7 million in the development of the Project. Buyer shall use all reasonable due diligence to enter into an agreement to commit these regional funds no later than November 2024, and to fully draw these funds no later than December 2026 in connection with the housing project. The goal of the Parties is to have housing units upon the Property in service no later than April 2026.

The Parties agree and covenant that the use of the Property shall be subject to a restrictive covenant limiting the Property's use in perpetuity for affordable housing as defined in RCW 36.70A.030(2) and (19), as now or hereafter amended by law.

Buyer has determined that the Property is suitable for providing affordable housing and housing-related services and programs for persons experiencing homelessness, housing insecurity, or inability to secure affordable housing in Thurston County, Washington. Seller and Buyer agree that the Property is appropriate and suitable for redevelopment to provide new construction of affordable housing and facilities providing housing-related facilities and programs. Further, as additional consideration to Seller, Buyer agrees to comply with Olympia City Council Resolution No. M-2289, a copy of which is attached hereto and incorporated herein as "**Exhibit F**" to this Agreement, requiring new construction of housing units upon the Property to meet requirements for electrification, except where exemptions are necessary due to physical space limitations, availability of technology, or cost constraints as set forth in Section 2 of Resolution No. M-2289.

The signatories to this Agreement acknowledge they are authorized to execute associated documents, to correct legal descriptions, if necessary, and to correct scrivener's errors and other errors or omissions that are otherwise in substantial conformance with this Agreement.

The Parties now enter into this Agreement to memorialize the terms and conditions under which Seller will sell the Property to Buyer and Buyer will purchase the Property from Seller.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Property. Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the following:

1.1 **Land.** The real property constituting the Property legally described on **Exhibit "A"** to this Agreement and generally shown on a sketch attached as **Exhibit "B"** to this Agreement "as is."

1.2 **Appurtenances.** All rights, privileges, and easements appurtenant to the Property owned by Seller, including without limitation any and all leases, subleases, easements, rights-of-way and other appurtenances, including any buildings, structures or fixtures, if any, used in connection with the beneficial use and enjoyment of the Property (the "Appurtenances").

The Property and Appurtenances described in Paragraph 1 above are collectively referred to in this Agreement as the "Property."

2. **Escrow.** Within thirty (30) business days after the Effective Date of this Agreement as defined in Paragraph 18.16, the Parties shall confirm that an escrow account is opened for the transaction contemplated by this Agreement with Thurston County Title Company (in such capacity, "Escrow Company"). Jen Dempsey or another designee of Escrow Company will serve as escrow agent for Closing of this Agreement ("Escrow Agent"). The Parties shall deliver a fully executed copy of this Agreement to Escrow Agent.

3. **Purchase Price.** The purchase price to be paid by Buyer to Seller for the Property (the "Purchase Price") is **One Dollar and NO/100 Cents** (\$1.00) U.S., together with other additional nonmonetary consideration consisting of a Restrictive Covenant to be recorded upon the Property, limiting the Property's use in perpetuity for affordable housing as defined in RCW 36.70A.030(2) and (19), as now or hereafter amended by law, and providing for electrification of all new construction upon the Property, except where exemptions are necessary due to physical space limitations, availability of technology, or cost constraints as set forth in Section 2 of Olympia City Council Resolution No. M-2289, a copy of which is attached hereto and incorporated herein as "**Exhibit F**" to this Agreement.

4. **Payment of Purchase Price.** On the Closing Date, Buyer shall deposit with Escrow Agent the amount of the Purchase Price, less any amounts to be credited against the Purchase Price, pursuant to this Agreement.

5. **Closing Date.** The Closing (the "Closing") of the purchase and sale of the Property under this Agreement shall be held at the offices of the Escrow Company, and shall occur on or before February 29, 2024, unless otherwise agreed in writing by the Parties. Closing shall occur when the Deed to Buyer and the Restrictive Covenant (as hereinafter defined) are executed and recorded, and the Purchase Price is delivered to the Escrow Company for delivery to Seller.

6. **Title and Survey Matters.**

6.1 **Title Binder and Survey.** Buyer shall order a preliminary commitment for an ALTA owner's extended coverage title insurance policy provided by Thurston County Title Insurance Company ("Title Company") describing the Property, showing all matters of record pertaining to the Property and listing Buyer as the prospective named insured. Following the mutual execution of this Agreement, Buyer shall obtain from Title Company a written

supplemental report to such preliminary commitment in a form acceptable to Buyer, updating the preliminary commitment to the execution date of the Agreement. Such preliminary commitment, supplemental reports and true, correct, and legible copies of all documents referred to in such preliminary commitment and supplemental reports as conditions or exceptions to title to the Property are collectively referred to herein as the "Title Binder." Buyer may order a survey of the Property (the "Survey").

6.2 **Title Review.** Within sixty (60) business days after Buyer's receipt of the updated Title Binder and Survey, Buyer shall review the Title Binder and any surveys of the Property, and shall notify Seller what exceptions to title, if any, affect the marketability or insurability of the title to the Property or which adversely affect the use of the Property (the "Title Review Period"). If no title matters appear in the updated Title Binder since the initial preliminary commitments, then the Parties shall proceed to Closing as set forth in this Agreement. If any title matters appear and Buyer objects to any of the same during the Title Review Period, then Seller shall have thirty (30) business days after receiving Buyer's objections to notify Buyer if Seller will remove any of the exceptions objected to prior to the Closing Date or if Seller elects not to remove such objected to exceptions. If Seller shall fail to remove any such exceptions objected to by Buyer from title prior to the Closing Date, and Buyer is unwilling to take title subject thereto, Buyer may elect to either terminate this Agreement, or take title despite the existence of such exception. If Buyer elects to terminate, neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement which shall then become null and void and of no further force or effect.

6.3 **Title Policy.** At Closing, Seller and Buyer shall cause Title Company to issue a standard ALTA owner's policy ("Title Policy") to Buyer, at Buyer's cost. The Title Policy shall (a) be satisfactory to Buyer, (b) be issued in the amount of the total Purchase Price and (c) insure fee simple, indefeasible title to the Property in Buyer. The Title Policy shall contain endorsements as Buyer may require. Buyer's obligation to close this transaction shall be contingent on Buyer's approval, in its sole and absolute discretion of the Title Policy required under this Paragraph 6.

7. **Conditions and/or Contingencies to Buyer's Obligations.**

7.1 **Documents and Reports.** Within sixty (60) business days after the execution and delivery of this Agreement (the "Document Delivery Date"), Seller shall deliver to Buyer copies of the documents and reports listed on attached **Exhibit "C"** to this Agreement and in Seller's possession. Seller shall certify to Buyer, as of the Document Delivery Date, as to any documents listed on **Exhibit "C"** not in Seller's possession.

7.2 **Inspection of the Property.** Buyer shall have the right and permission from the date Seller signs this Agreement through the Closing Date (or earlier termination of this Agreement) to enter upon the Property or any part thereof at all reasonable times and from time to time for the purpose, at Buyer's cost and expense, of making all tests and/or studies of the Property that Buyer may wish to undertake, including, without limitation, soils tests (including borings), toxic and hazardous waste studies, surveys, structural studies and review of zoning, fire, safety and other compliance matters; provided, however, Buyer shall indemnify and hold

harmless Seller from and against any mechanic's or other liens or claims that may be filed or asserted against the Property or Seller as a direct result of any actions taken by Buyer in connection with the Property, including but not limited to permitting Seller to review a written description of Buyer's proposed testing and work to ensure same is properly done and will not exacerbate any existing condition of contamination on the property. Buyer shall also provide Seller with a copy of all soil or environmental test results for the property upon Seller's request. Buyer shall reasonably restore the Property to its condition immediately prior to any invasive testing. The effect of the representations and warranties made by Seller in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.

7.3 Appraisal of the Property. Buyer shall have the right to obtain an appraisal. Buyer's appraiser may enter onto the property upon reasonable notice to Seller as is necessary to appraise the Property.

7.4 Approval of Property/Feasibility Contingency. Buyer's obligation to purchase the Property shall be subject to and contingent upon Buyer's approval, in its sole and absolute discretion, prior to the expiration of the Contingency Period, of all aspects of the Property, including, without limitation, the physical condition of the Property and documents delivered by Seller pursuant to Paragraph 7.1 above, or otherwise obtained by Buyer regarding the Property. Buyer's approval and obligation to purchase the Property under this paragraph shall be for the period set forth in Paragraph 7.5. Upon waiver by Buyer or expiration of the feasibility contingency, the Parties shall move on to Closing.

7.5 Feasibility Contingency Period. As used herein, the term "Contingency or Feasibility Period" shall mean the period from the Effective Date of this Agreement as defined in Paragraph 18.16 until the period ending on October 1, 2023.

7.6 Buyer's Right to Terminate. If in Buyer's sole and absolute discretion, Buyer is not satisfied with the condition of the Property, Buyer may terminate this Agreement by sending written notice to Seller and Escrow Agent (such notice referred to as a "Termination Notice") prior to the expiration of the Contingency/Feasibility Period. If Buyer gives its Termination Notice to Seller, this Agreement shall terminate and neither Buyer nor Seller shall have any further liability to the other under this Agreement.

7.7 Additional Closing Conditions. Buyer's obligation to purchase the Property shall also be subject to the following conditions that must be satisfied as of Closing.

(i) Prior to Closing, all Contracts or Leases (whether written or oral) with respect to the Property, if any, shall be terminated in writing by Seller. Seller shall provide Buyer, prior to Closing, with written termination agreements with respect to all Contracts or Leases, which are not assumed by Buyer;

(ii) All representations and warranties of Seller contained herein, to the best of Seller's knowledge, shall be true, accurate and complete at the time of the Closing as if made again at such time;

(iii) Seller shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance);

(iv) At Closing, title to the Property shall be in the condition required by Paragraph 6 of this Agreement and Escrow Agent shall deliver the Title Policy to Buyer; and

If the conditions set forth in this Paragraph 7 are not satisfied as of Closing and Buyer does not waive the same, Buyer may terminate this Agreement, and thereafter neither Buyer nor Seller shall have any further liability to the other under this Agreement.

8. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties, to the best of Seller's knowledge, which representations and warranties shall be deemed made by Seller to Buyer also as of the Closing Date:

8.1 Title. Seller is the sole owner of the Property, except for reservations of record. At Closing, Seller shall convey the entire fee simple estate and right, title and interest in and to the Property by statutory warranty deed to Buyer with a restrictive covenant limiting use of the Property to affordable housing as provided in the Recitals hereto, free and clear of unapproved encumbrances of record.

8.2 Compliance with Law; Compliance with Property Restrictions. The Property complies in all material respects (both as to condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over the Property related to zoning, building, subdivision, and engineering.

8.3 Bankruptcy, etc. No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened, by a third party, or contemplated by Seller.

8.4 Taxes and Assessments. Other than amounts disclosed by the Title Binder, no other property taxes have been or will be assessed against the Property for the current tax year, and there are no general or special assessments or charges that have been levied, assessed or imposed on or against the Property.

8.5 Foreign Person. Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a) (30) of the Internal Revenue Code of 1986, as amended (the "Code") and shall deliver to Buyer prior to the Closing an affidavit evidencing such fact and such other documents as may be required under the Code.

8.6 Mechanics' Liens. No labor, material or services have been furnished in, on or about the Property or any part thereof as a result of which any mechanics', laborer's or materialmen's liens or claims might arise.

8.7 Underground Storage Tanks. Seller has knowledge of one underground storage tank, and a decommissioned well. Other than as previously stated, Seller has no knowledge of other (a) subterranean storage or underground storage tanks that exist on the Property, and (b) any previously existing underground storage tanks that have been removed or filled in compliance with applicable law. If there had been an underground storage tank on the site, to the best of Seller's knowledge, the tank was decommissioned in compliance with applicable law.

8.8 Leases and Other Agreements. Seller represents that there are no leases, occupancy agreements, service agreements, licenses, easements, or option agreements with regard to the Property, except those of record or disclosed pursuant to Paragraph 7.1.

8.9 Assumption of Liabilities. Buyer, by virtue of the purchase of the Property, will not be required to satisfy any obligation of Seller arising prior to the Closing Date.

8.10 Defaults. Seller is not in default and there has occurred no uncured event, which, with notice, the passage of time or both would be a default, under any contract, agreement, lease, encumbrance, or instrument pertaining to the Property.

8.11 Utilities. The Property may or may not be served by water, storm and sanitary or septic sewer, electricity, and telephone supplied directly to the Property by facilities of public utilities. All such utilities are located within the boundaries of the Property or within lands dedicated to public use or within recorded easements for the same.

8.12 Public Improvements. Seller has no knowledge of any federal, state, county, municipal or other governmental plans to change the road system in the vicinity of the Property.

8.13 Subdivision. The conveyance of the Property will not constitute a violation of any subdivision ordinance. The improvements on the Property comply in all material respects with all applicable subdivision ordinances and statutes.

8.14 Due Authority. Seller and Buyer have all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and Buyer and constitute their legal, valid and binding obligation enforceable against Seller and Buyer in accordance with its terms.

8.15 No Omissions. The copies of any documents furnished to Buyer in connection with this transaction are true and complete copies of the documents they purport to be and contain no untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained therein not misleading.

9. Covenants of Seller. Seller covenants and agrees as follows:

9.1 **Perform Obligations.** From the date of this Agreement to the Closing Date, Seller will perform any monetary and non-monetary obligations they have regarding the Property.

9.2 **No Liens.** From the date of this Agreement to the Closing Date, Seller will not allow any lien to attach to the Property, nor will Seller grant, create, or voluntarily allow the creating of, or amend, extend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option or other right affecting the Property or any part thereof without Buyer's written consent first having been obtained.

9.3 **Provide Further Information.** From the date of this Agreement to the Closing Date, Seller will notify Buyer of each event of which Seller becomes aware affecting the Property or any part thereof immediately upon learning of the occurrence of such event.

10. Covenants of Buyer. Buyer covenants and agrees as follows:

10.1 **Perform Obligations.** Buyer shall perform all obligations from the date of this Agreement, including all provisions herein that shall survive the Closing, including those relating to its obligations to provide affordable low-income housing units upon the Property.

10.2 **Application for Impact Fee Reduction.** Buyer may apply for impact fee reductions as permitted by OMC Section 15.04.060.C. for any form of low-income housing occupied by households whose income meets the definition of low-income housing in OMC 15.04.020.Y when adjusted for size is at or below eighty percent (80%) of the area median income as annually adjusted by the U.S. Department of Housing and Urban Development (HUD) from paying school impact fees, provided a covenant is approved by the Olympia School District No. 111 to assure continued use for low income housing and that the covenant is recorded against the title to the Property. As provided in OMC 15.04.060.F, upon application a partial exemption of not more than eighty percent (80%) of park, transportation and school impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds, may be granted to a low-income housing development.

10.3 **Application for Land Use Approval.** Buyer covenants and agrees it shall promptly submit the Project to Seller for land use approval following written removal of the contingency/feasibility period set forth in Paragraphs 7.4 and 7.5 herein; however, Buyer further agrees to schedule with Seller's planning staff a preapplication conference prior to submittal of Buyer's land use application for the Property.

10.4 **Seller's Option to Repurchase.** Buyer agrees that Seller shall have an option to repurchase the Property at the same price as the Property is sold to Buyer in this Agreement in the event Buyer fails to commence construction of the housing units contemplated in this Agreement within twenty-four (24) months of the Closing date. Seller agrees that Buyer will have an option to extend its period of construction for an additional year based upon an economic or financial circumstance beyond Buyer's control upon a showing of its best efforts to

move forward with the construction of affordable housing units contemplated in this Agreement. In the event the City (Seller) exercises its option to repurchase the Property, the City (Seller) shall pay any real estate excise tax due on repurchase. In no event shall any period of delay caused by the City permit approval process be counted against Buyer. Such approval process shall toll the deadlines in this paragraph.

11. Closing.

11.1 **Time and Place.** Provided that all the contingencies set forth in this Agreement have been previously fulfilled, the Closing shall take place at the place and time determined as set forth in Paragraph 5 of this Agreement.

11.2 **Documents to be Delivered by Seller.** For and in consideration of, and as a condition precedent to the payment to Seller of the Purchase Price, Seller shall obtain and deliver to Buyer at Closing the following documents (all of which shall be duly executed and acknowledged where required):

(i) **Title Documents.** Such other documents, including, without limitation, lien waivers, indemnity bonds, indemnification agreements, and certificates of good standing as shall be required by Buyer, or by the Title Company as a condition to its insuring Buyer's good and marketable fee simple title to the Property.

(ii) **Authority.** Such evidence as the Title Company shall require as to authority of Seller to convey the Property to Buyer.

(iii) **Surveys and Drawings.** All surveys, site plans, and plans and specifications relating to the Property as are in the possession or control of Seller, if any.

(iv) **Assignment.** Seller and Buyer agree any assignment of Buyer's rights under this Agreement shall be subject to Seller's approval, which shall not be unreasonably withheld, conditioned or denied except as provided in this Agreement. Seller acknowledges and agrees that Buyer shall either assign this Agreement or transfer the Property after Closing to an entity that is affiliated with Buyer. Such transfer or assignment shall not require the consent of Seller.

(v) **Warranty Deed.** A statutory warranty deed ("Deed") conveying to Buyer a good, marketable and indefeasible title in fee simple absolute to the Property in the form set forth in **Exhibit "D"** attached hereto.

(vi) **Restrictive Covenant.** A covenant restricting use of the Property in perpetuity for the specific purposes as defined in RCW 36.70A.030(2) and (19), and as otherwise agreed by the Parties, in the form set forth in **"Exhibit E"** attached hereto.

11.3 **Payment of Costs.** At Closing, Buyer shall pay all charges for title insurance for a standard ALTA owner's title policy insuring Buyer's title, the escrow fee, all

recording fees, technology fees, and real property excise taxes, if any, and any other costs of Closing.

11.4 **Taxes.** Seller is exempt from payment of real property excise taxes for the Property pursuant to WAC 458-61A-205(2).

11.5 **Monetary Liens.** Seller shall pay or cause to be satisfied at or prior to Closing all monetary liens on or with respect to all or any portion of the Property, including, but not limited to, mortgages, deeds of trust, security agreements, assignments of leases, rents and/or easements, judgment liens, tax liens (other than those for taxes not yet due and payable) and financing statements, except where Seller is exempt by statute or administrative rule or regulation.

11.6 **Possession.** Possession of the Property shall be delivered to Buyer at Closing. The Property, including without limitation the improvements, if any, shall be delivered to Buyer in good order.

11.7 **Proration.** All amounts required to be prorated hereunder as of Closing, shall be calculated as if Buyer were in possession of the Property as of the date of Closing.

12. Environmental.

12.1 Notwithstanding anything to the contrary in this Agreement or otherwise, the Parties agree that Seller shall have no obligation to defend, indemnify, or hold Buyer harmless with respect to any loss, liability, claim, demand, damage, or expense of any kind, including attorneys' fees, costs, and expenses (collectively, "Loss") arising (a) out of the release or threatened release of Hazardous Substances on, under, above, or about the Property after Closing, or (b) out of the past release or threatened release of any Hazardous Substance on, under, above, or about the Property caused or contributed to by Buyer, or any employee, agent, tenant, or contractor of Buyer.

12.2 **Definitions.** The term "Hazardous Substance" includes without limitation (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," or "solid wastes" in any Environmental Law; (b) petroleum products and petroleum byproducts; (c) polychlorinated biphenyls; (d) chlorinated solvents; and (e) asbestos. The term "Environmental Law" includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions, or hazardous substances.

13. **Indemnification.** Seller shall pay, protect, pay the defense costs of, indemnify and hold Buyer and their successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of Seller set forth in this Agreement, (b) the failure of Seller to perform any obligation required by this Agreement to be performed by Seller, (c) the ownership, maintenance, and/or operation of the Property by Seller prior to the Closing not in conformance with this Agreement, or (d) any injuries to persons or property from any cause

occasioned in whole or in part by any acts or omissions of the Seller, its representatives, employees, contractors or suppliers that occurred before Closing; provided, however, that nothing in this Paragraph 12 applies to Losses arising out of the presence of Hazardous Substances on, under, above, or about the Property, including Hazardous Substances that migrate or migrated to or from the Property except as specifically provided in Paragraph 11 above.

14. Condemnation. In the event of any commenced, to be commenced or consummated proceedings in eminent domain or condemnation (collectively “Condemnation”) respecting the Property or any portion thereof, Buyer may elect, by written notice to Seller, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Property. If Buyer terminates this Agreement, neither Buyer nor Seller shall have any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect, there shall be no reduction in the Purchase Price, and Seller shall, prior to the Closing Date, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, Seller’s entire right, title and interest in and to any condemnation award or settlement made or to be made in connection with such Condemnation proceeding. Buyer shall have the right at all times to participate in all negotiations and dealings with the condemning authority and approve or disapprove any proposed settlement in respect to such matter. Seller shall forthwith notify Buyer in writing of any such Condemnation respecting the Property.

15. Casualty. If any fire, windstorm or casualty occurs and materially affects all or any portion of the Property on or after the date of this Agreement and prior to the Closing, Buyer may elect, by written notice to Seller, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Property. If Buyer terminates this Agreement, neither Buyer nor Seller has any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect. The Purchase Price shall not be reduced by the amount of loss or damage occasioned by such casualty not covered by insurance, and Seller shall, prior to the Closing Date, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, its entire right, title and interest in and to all insurance claims and proceeds to which Seller may be entitled in connection with such casualty. Buyer shall have the right at all times to participate in all negotiations and other dealings with the insurance carrier providing such coverage and to approve or disapprove any proposed settlement in respect to such matter. Seller shall forthwith notify Buyer in writing of any such casualty respecting the Property.

16. Notices. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, “Notices”) shall be in writing and shall be validly given or made to another party if delivered either personally or by FedEx, UPS, USPS or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such Notice is delivered by FedEx or other overnight delivery service of recognized standing, it shall be deemed given twenty-four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given seven days (7) days after the deposit thereof in the

United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To Seller: Steven J. Burney, City Manager
City of Olympia
601 4th Ave E
PO Box 1967
Olympia, WA 98507-1967
Email: jburney@ci.olympia.wa.us

With a copy to: Mark Barber, City Attorney
City of Olympia
601 4th Ave E
PO Box 1967
Olympia, WA 98507-1967
Email: mbarber@ci.olympia.wa.us

To Buyer: Low Income Housing Institute (LIHI)
Attn: Lynne Behar, Chief Financial Officer
1253 S Jackson Street, Suite A
Seattle, WA 98144
Email: lynneb@lihi.org

Any party hereto may change its address for receiving notices as herein provided by a written notice given in the manner aforesaid to the other Party hereto.

17. Event of Default. In the event of a default under this Agreement by Seller (including a breach of any representation, warranty or covenant set forth herein), Buyer shall be entitled, in addition to all other remedies, to seek monetary damages and specific performance of Seller's obligations hereunder.

18. Miscellaneous.

18.1 Applicable Law. This Agreement shall in all respects, be governed by the laws of the State of Washington.

18.2 Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder to carry out the intent of the Parties hereto.

18.3 Modification or Amendment, Waivers. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the Parties hereto. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in

this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

18.4 Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assigns. Any assignment shall be subject to Seller's approval, which shall not be unreasonably withheld, conditioned or denied except by the terms of this Agreement. Buyer must notify and, if required, request approval by Seller of any such assignment prior to the Closing. Any such assignee shall for all purposes be regarded as Buyer under this Agreement.

18.5 Entire Agreement and No Third Party Beneficiaries. This Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

18.6 Jurisdiction, Venue, and Attorneys' Fees. Jurisdiction and venue shall be in the Superior Court of Thurston County for the State of Washington. Should either party bring suit to enforce this Agreement, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

18.7 Construction. Captions are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. If the date on which Buyer or Seller are required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

18.8 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

18.9 Survival. The recitals, covenants, agreements, obligations to indemnify, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof and are fully enforceable by either Party.

18.10 Finders' or Brokers' Fees. Seller represents and warrants that it has not engaged the services of any broker or finder to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement. Seller agrees to indemnify, defend and hold harmless Buyer against any loss, liability, damage, cost, claim or

expense, including interest, penalties and reasonable attorneys' fees that Buyer shall incur or suffer by reason of a breach by Seller of the representation and warranty set forth above.

18.11 **Time.** Time is of the essence of every provision of this Agreement.

18.12 **Risk of Loss.** All of Seller's personal property, of any kind or description whatsoever that is on the Property after Closing, shall be at Seller's sole risk of loss.

18.13 **Force Majeure.** Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

18.14 **Recitals.** The Recitals set forth above are incorporated by this reference into this Agreement and are made a part hereof and shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof and are fully enforceable by either Party.

18.15 **Counterparts.** This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one Agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically scanned or digital signature, where permitted by law, shall be deemed to be an original signature for all purposes. All executed counterparts of this Agreement shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same Agreement.

18.16 **Effective Date.** The term "date of this Agreement" or "date hereof" or "Effective Date," as used in this Agreement, shall mean the later of the following dates: (1) the date of Buyer's signature on this Agreement; or (2) the date of Seller's signature on this Agreement.

*****SIGNATURES APPEAR ON NEXT PAGE*****

BUYER:

LOW INCOME HOUSING INSTITUTE (LIHI), a Washington nonprofit corporation

Lynne Behar
Lynne Behar, Chief Financial Officer

Date: 06/07/2023

SELLER:

CITY OF OLYMPIA, a Washington municipal corporation

Steven J. Burney
Steven J. Burney, City Manager

Date: 06/21/2023

APPROVED AS TO FORM:

Mark Barber
Mark Barber, City Attorney

Date: 06/06/2023

EXHIBIT "A"
LEGAL DESCRIPTION

Lots 3, 4, 5, and 6 of Leach's Johnson Hill Tracts as recorded April 3, 1923, under Auditor's File No. 126186, in Volume 10 of Plats, Page 2, records of Thurston County, Washington.

TOGETHER WITH an easement for ingress and egress, over the North 12-feet of the South 77-feet of the East 200-feet of said Lot 3.

EXCEPTING therefrom those portions of said Lot 6 conveyed to the State of Washington for highway purposes by deeds recorded December 21, 1956 under Auditor's File No. 579323 and February 20, 1985 under Auditor's File No. 8502200047.

All situated in the Southeast Quarter of Section 18, Township 18 North, Range 1 West, W.M., Thurston County, Washington.

Subject to reservations, restrictions, and easements of record.

EXHIBIT "B" GENERAL VICINITY SKETCH

Vol. 10 Pg. 2
AF # 126186

Vol. 10, Pg. 2

LEACH'S JOHNSON HILL TRACTS

THURSTON COUNTY

WASHINGTON

DEDICATION AND DESCRIPTION

This is to certify that Gertrude E. Leach, owner in her own right and as her separate estate of the following described premises:- Commencing at the 1/4 corner between Sections 17 and 18 T. 16 N., R. 1 W., W.M., thence N 89°-09'-32" W 307.612 feet, thence S 01°-06'-10" E 772.900 feet to the true place of beginning, thence S 84°-05'-09" W 395.70 feet, thence N 0°-38'-28" E 122.01 feet, thence S 89°-42'-16" E 974.59 feet to the place of beginning, containing 24.98 acres and that I have caused the same to be surveyed and platted to be hereafter known as "Leach's Johnson Hill Tracts". All streets and roads are hereby dedicated as highways for use and benefits of the public forever.

In witness hereof I have hereunto set my hand and seal this 21 day of March, A.D. 1923.

Gertrude E. Leach

Scale 1 inch = 100 feet

ACKNOWLEDGMENT

State of Washington } ss
County of Thurston }

This is to certify on this 21 day of March, A.D. 1923, personally appeared before me, a Notary Public in and for the State of Washington, Gertrude E. Leach, well and truly known to me to be the person described in and who executed the foregoing instrument, and acknowledged the same as her voluntary act and deed for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year first above written.

W.C. Billings
Notary Public in and for the State of Washington, residing at Olympia.

Certificate of Surveyor

This is to certify that I have surveyed and staked the above plat, and the same is correct.

W.C. Billings
Surveyor

Certificate of Treasurer

This is to certify that all of the taxes on the land herein platted have been fully paid and discharged up to and including the year 1922.

W.C. Billings
County Treasurer

Certificate of County Engineer

Approved this 30 day of March, A.D. 1923.

Frank W. ...
County Engineer

Certificate of County Commissioners

Approved by the Board of County Commissioners this 22 day of April, A.D. 1923.

Attest: *Ed. Han ...*
County Auditor & Clerk of Board

No. _____

Filed for record _____ 1923 at _____ o'clock
at the request of Gertrude E. Leach, and recorded in Vol. _____ of Plat Records of Thurston County Washington.

W.C. Billings
County Auditor

by _____ Deputy.

EXHIBIT “C”
DOCUMENTS AND REPORTS

1. Copies of all leases or other occupancy agreements relating to the Property, if any, with originals to be delivered at Closing.
2. Copies of all licenses, permits and approvals, if any, issued by governmental authorities for the use and occupancy of the Property or any facility located thereon.
3. Any other information about the Property reasonably requested by Buyer if in the possession or control of Seller.
4. Any service contracts or other similar agreements related to the Property.
5. Reports of environmental conditions related to the Property, if any.
6. Surveys, if any.
7. Soils reports, if any.

**EXHIBIT “D”
FORM OF STATUTORY WARRANTY DEED**

Low Income Housing Institute (LIHI)
Attn: Lynne Behar, Chief Financial Officer
1253 S Jackson Street, Suite A
Seattle, WA 98144

Document Title:	Statutory Warranty Deed
Grantor:	City of Olympia, a Washington municipal corporation
Grantee:	Low Income Housing Institute (LIHI), a Washington nonprofit corporation
Abbreviated Legal Description:	Lots 3, 4, 5, and Ptn. of Lot 6, Leach’s Johnson Hill Tracts SE 18-18-1W
Assessor’s Tax Parcel Numbers:	58900000300, 58900000301, 58900000400, 58900000500, and 58900000600

The Grantor, **CITY OF OLYMPIA**, a Washington municipal corporation, for and in consideration of the sum of ONE and NO/100---(\$1.00) Dollar, and other good and valuable considerations, in hand paid, hereby conveys and warrants to the Grantee, **LOW INCOME HOUSING INSTITUTE (LIHI)**, a Washington nonprofit corporation, the following described real property and all rights thereto, situated in the City of Olympia, County of Thurston, in the State of Washington, including all after acquired title:

Lots 3, 4, 5, and 6 of Leach’s Johnson Hill Tracts as recorded April 3, 1923, under Auditor’s File No. 126186, in Volume 10 of Plats, Page 2, records of Thurston County, Washington.

TOGETHER WITH an easement for ingress and egress, over the North 12-feet of the South 77-feet of the East 200-feet of said Lot 3.

EXCEPTING therefrom those portions of said Lot 6 conveyed to the State of Washington for highway purposes by deeds recorded December 21, 1956 under Auditor’s File No. 579323 and February 20, 1985 under Auditor’s File No. 8502200047.

All situated in the Southeast Quarter of Section 18, Township 18 North, Range 1 West, W.M., Thurston County, Washington.

Subject to easements, restrictions, and reservations of record.

DATED this ____ day of _____, 202__.

GRANTOR, CITY OF OLYMPIA,
a Washington municipal corporation:

Steven J. Burney, City Manager,

Approved as to legal form:

Mark Barber, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On the ____ day of _____ 2023, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steven J. Burney, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

Signature
Print Name: _____
NOTARY PUBLIC in and for the State of
Washington
Residing at _____
My appointment expires: _____

**EXHIBIT “E”
FORM OF RESTRICTIVE COVENANT**

After Recording Return to:

City of Olympia
Attn: Legal Department
P.O. Box 1967
Olympia, WA 98507-1967

Document Title:	Restrictive Covenant
Grantor:	Low Income Housing Institute (LIHI), a Washington nonprofit corporation
Grantee:	City of Olympia, a Washington municipal corporation
Abbreviated Legal Description:	Lots 3, 4, 5, and Ptn. of Lot 6, Leach’s Johnson Hill Tracts SE 18-18-1W
Assessor’s Tax Parcel Numbers:	58900000300, 58900000301, 58900000400, 58900000500, and 58900000600

RESTRICTIVE COVENANT

As additional consideration to the City of Olympia, a Washington municipal corporation (“Grantee”), for the purchase of its real property by Low Income Housing Institute (LIHI), a Washington nonprofit corporation (“Grantor”), Grantor and Grantee agree that the real property legally described as:

Lots 3, 4, 5, and 6 of Leach’s Johnson Hill Tracts as recorded April 3, 1923, under Auditor’s File No. 126186, in Volume 10 of Plats, Page 2, records of Thurston County, Washington.

TOGETHER WITH an easement for ingress and egress, over the North 12-feet of the South 77-feet of the East 200-feet of said Lot 3.

EXCEPTING therefrom those portions of said Lot 6 conveyed to the State of Washington for highway purposes by deeds recorded December 21, 1956 under Auditor’s File No. 579323 and February 20, 1985 under Auditor’s File No. 8502200047.

All situated in the Southeast Quarter of Section 18, Township 18 North, Range 1 West, W.M., Thurston County, Washington.

Subject to easements, restrictions, and reservations of record.

shall be held, transferred, sold, conveyed, leased, used, assigned, and occupied in perpetuity subject to the following covenants and restrictions:

1. The above legally described real property shall be used in perpetuity to provide affordable housing as defined in RCW 36.70A.030(2) and (19), as now or hereafter lawfully amended, and providing housing-related facilities and programs; and
2. The residential units to be constructed upon the real property shall have approximately seventy (70) studio and one-bedroom units, and one additional one-bedroom unit for an on-site housing manager; and
3. An estimated thirty (30) residential units shall be accessible to disabled persons; and
4. The real property shall be used to construct permanent supportive housing and facilities in a multi-family rental project as the term “permanent supportive housing” is defined in RCW 36.70A.030(19), as now or hereafter lawfully amended, which means subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors, and no other purpose except as expressly agreed by the Parties herein; and
5. The residential units to be constructed upon the property shall be for households with Area Median Income (AMI) of thirty percent (30%) or less. At no time will tenants occupying these housing units pay an amount for rent and utilities that exceeds thirty percent (30%) of their income; provided, however, if a tenant is not receiving a project-based Section 8 voucher, such tenant may be charged the applicable restricted rent for such unit at 30% AMI; and
6. Grantor agrees it will seek project-based vouchers from the Housing Authority of Thurston County to meet affordability requirements; and
7. Grantor shall select persons for residential placement upon the real property by use of Thurston County’s Coordinated Entry system to prioritize persons who are homeless or facing housing insecurity in Thurston County, Washington; and
8. Grantor shall provide for electrification of all new construction upon the Property, except where exemptions are necessary due to physical space limitations, availability of technology, or cost constraints as set forth in Section 2 of Olympia City Council Resolution No. M-2289.

It is the express intent of the Grantor and Grantee that the provisions of the Restrictive Covenants stated herein shall be deemed to run with the land in perpetuity unless otherwise stated, and shall pass to and be binding upon Grantor’s successors in title, including any subsequent purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the real property and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser,

grantee, owner, assignee, trustee, trustor, or lessee of any portion of the real property and any other person or entity having any right, title or interest therein.

It is further agreed by Grantor and Grantee, that Grantee shall have the right to enforce the aforesaid Restrictive Covenants running with the land by either a request for equitable relief and specific performance or an action at law for damages, or by both such equitable relief and monetary damages, in the Superior Court of Thurston County for the State of Washington, as permitted by law. The prevailing party shall be entitled to recover its attorneys' fees and costs of litigation to enforce the covenants set forth herein.

GRANTOR: LOW INCOME HOUSING INSTITUTE (LIHI),
a Washington nonprofit corporation

Lynne Behar, Chief Financial Officer

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that **Lynne Behar**, Chief Financial Officer of the Low Income Housing Institute (LIHI), a Washington nonprofit corporation, appeared before me, and that said person acknowledged that she signed this instrument, and on oath stated that she is authorized to execute this instrument, and acknowledged it as her free and voluntary act for the uses and purposes mentioned in the instrument.

Signature
Print Name _____
NOTARY PUBLIC in and for the State of _____
Residing at _____
My appointment expires: _____

ACCEPTED AND APPROVED :

GRANTEE : CITY OF OLYMPIA,
a Washington municipal corporation

Steven J. Burney, City Manager

Dated: _____

Approved as to form:

Mark Barber, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On the _____ day of _____ 2023, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Steven J. Burney**, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

Signature
Print Name _____
NOTARY PUBLIC in and for the State of

Residing at _____
My appointment expires: _____

EXHIBIT "F"

RESOLUTION NO. M-2289**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, TO RESPOND TO THE CLIMATE EMERGENCY, DECLARING THE INTENT OF THE CITY TO ELECTRIFY CITY-OWNED FACILITIES AND OLYMPIA'S BUILT ENVIRONMENT**

WHEREAS, climate change is an existential crisis posing one of the most serious threats to the existence of humanity and all species on the planet; a threat that intersects and compounds all other crises facing humanity and our earth; and

WHEREAS, the 11th United Nations Intergovernmental Panel on Climate Change ("IPCC") report from October 2018 states that we must cut greenhouse gas emissions in half by 2030 to limit devastating global warming and avoid a climate catastrophe; and

WHEREAS, in 2018, the City of Olympia adopted Resolution No. M-1976 adopting common targets to reduce communitywide greenhouse gas emissions 45 percent below 2015 levels by 2030, and then 85 percent below 2015 levels by 2050. In 2019 these goals were placed in the Comprehensive Plan via amendment; and

WHEREAS, in 2019, in collaboration with Olympia High School students, Olympia approved a Resolution Expressing a Commitment to Protect the Youth of this Community from the Risks of Climate Destruction (M-2045), which among other things committed the City to achieve net zero emissions by 2040; and

WHEREAS, in February 2021, the City passed a Resolution Declaring a Climate Emergency (M-2194). A declaration that challenges our regional partners and community members to "to help further the Thurston County Climate Mitigation Plan through partnership with local jurisdictions and other entities" and to "adopt a lens of climate change and climate equity" in planning, zoning, permitting, budgeting, expenditures, ordinances, and all other city efforts, policies, and practices to further climate action efforts and our accepted regional climate mitigation plan; and

WHEREAS, in February 2021, the City accepted the Thurston Climate Mitigation Plan (TCMP), committing the City to working with Thurston County, the cities of Lacey and Tumwater and the Thurston Regional Planning Council to substantially reduce regional greenhouse gas emissions; and

WHEREAS, a Greenhouse Gas Inventory Report for Calendar Years 2015 – 2019 found that Thurston County greenhouse gas emissions have increased 15% since 2015, and the built environment was responsible for 63% of all emissions in 2019; and

WHEREAS, in Washington State, homes and buildings are the single fastest growing source of carbon pollution, up 50 percent since 1990, and now account for 27 percent of Washington's carbon emissions; and

WHEREAS, natural gas consumption represents the second largest source of greenhouse gas emissions from the built environment in Thurston County and the Thurston Climate Mitigation Plan identifies reducing natural gas use as a key strategy to achieve the most substantial reductions in local greenhouse gas emissions; and

WHEREAS, methane leaks during the production, processing, transmission, and distribution of natural gas can be substantial, releasing a potent greenhouse gas with 84 times the warming potential of carbon dioxide; and

WHEREAS, the United States and other leading economies recently agreed to the Global Methane Pledge to reduce Methane emissions 30 percent by 2030; and

WHEREAS, in 2019, Washington State passed the Clean Energy Transformation Act (CETA), which sets milestones for electric utilities to transition toward a 100% clean electricity. Under CETA, utilities must eliminate coal-fired electricity from their mix by 2025, become greenhouse-gas neutral by 2030 (using offsets, if necessary), and provide 100 percent renewable energy by 2045; and

WHEREAS, Olympia must take additional measures to decarbonize, transitioning from fossil fuel powered space-heating, water-heating, and cooking equipment to all-electric buildings powered by affordable, renewable electricity; and

WHEREAS, electrification will improve indoor air quality and overall health, by eliminating natural gas combustion inside homes that produces harmful indoor air pollution; and

WHEREAS, there are well-documented risks to respiratory health from gas stove pollution, and infants and children are particularly vulnerable to respiratory illnesses associated with gas stove pollution; and

WHEREAS, lower-income households are more likely to suffer from health impacts from outdoor and indoor air pollution, which are exacerbated when exposed to pollution from gas stoves; and

WHEREAS, electrification is widely recognized as a powerful strategy to address both climate change and poor air quality in the frontline communities most vulnerable to climate impacts; and

WHEREAS, every new building relying on fossil fuels for heating, cooling, and cooking will have a negative impact on the climate for decades to come and require additional investments to be retrofitted to electric systems as the climate emergency worsens; and

WHEREAS, in June of 2021, the Olympia City Council supported a referral to require the electrification of all new City-owned buildings and major renovations of existing City buildings; and

WHEREAS, in June of 2021, the Olympia City Council supported a referral directing staff to develop a scope, schedule, and budget to conduct a regional cost assessment of requiring non-fossil fuel sourced heating and power in new commercial and residential development in the City; and

WHEREAS, the City has the opportunity to lead by example to make decisive, transformative, and sustainable changes in its municipal energy consumption, and can significantly lower the City's greenhouse gas emissions and overall carbon impact; and

WHEREAS, citywide building electrification is necessary to achieve Olympia's greenhouse gas reduction targets, and such actions will also improve public health and increase the quality of life throughout the City;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OLYMPIA, that the City of Olympia recognizes the global and local benefits of accelerating the transition to all-electric buildings throughout the City; and be it

FURTHER RESOLVED as follows:

Section 1. The City Manager is directed to electrify all newly constructed City-owned buildings and major renovations of existing City buildings, except where exemptions are necessary due to physical space limitations, availability of technology, or cost constraints. Additional upfront costs of five percent (5%) or less shall not be considered a cost constraint. Exemptions must be approved by the City Council and exempt buildings should be built in a manner to support the easy transition to electric systems at any time during the life of the building. This policy will become effective January 12, 2022.

Section 2. The City Manager is directed to require the electrification of all new projects and major renovations of existing buildings receiving City funding of \$50,000 or more, a donation of City property with an appraised value of \$50,000 or more, or a sale of City-owned property where the difference between the appraised value and sale price is \$50,000 or more, except where exemptions are necessary due to physical space limitations, availability of technology, or cost constraints. Council may consider the total cost of construction and operating costs in determining the issue of cost constraints. Exemptions must be approved by the City Council and exempt buildings should be built in a manner to support the easy transition to electric systems at any time during the life of the building. This policy will become effective following a work session to discuss citywide electrification on or before April 1, 2022.

Section 3. The City Manager is directed to inventory City-owned facilities that use fossil fuels and evaluate the feasibility of retrofitting existing buildings to become all-electric by 2030. The inventory and evaluation will make use of existing reports and data to prepare preliminary feasibility recommendations by January 1, 2024.

Section 4. The City of Olympia will encourage the Washington State Legislature and State Building Code Council, and other local entities, such as Thurston County, neighboring cities, school districts, and major institutions, to join in this step to address regional greenhouse emissions from our built environment, by adopting similar building electrification policies to invest in clean energy assets.

Section 5. The City Manager is directed to schedule a City Council work session no later than April 1, 2022, to discuss policy pathways and potential challenges to citywide electrification of all new buildings

PASSED BY THE OLYMPIA CITY COUNCIL this 18th day of January 2022.

C. Selby
MAYOR

ATTEST:

Sean Krier
CITY CLERK

APPROVED AS TO FORM:

Mark Barber
CITY ATTORNEY

**AMENDMENT NO. 1
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT**

This AMENDMENT NO. 1 to the Real Estate Purchase and Sale Agreement is made by and between the CITY OF OLYMPIA, a municipal corporation organized under the laws of the State of Washington (“Seller”), and LOW INCOME HOUSING INSTITUTE (LIHI), a Washington nonprofit corporation (“Buyer”), jointly referred to as “the Parties,” to modify and amend the Real Estate Purchase and Sale Agreement dated June 21, 2023.

1. Modification. The Parties wish to amend the Real Estate Purchase and Sale Agreement (“Agreement”) pursuant to Paragraph 5 of the Agreement, as regards the Closing Date.

2. Closing Date. The Closing Date in Paragraph 5 of the Agreement between the Parties is hereby modified and amended to provide that Closing will occur on or before February 28, 2025. All other terms and conditions in Paragraph 5 remain unchanged.

SELLER: LOW INCOME HOUSING INSTITUTE(LIHI)

A Washington nonprofit corporation

By: Lynne Behar
Lynne Behar, Chief Financial Officer

Date: 02/28/2024

CITY OF OLYMPIA, a Washington municipal corporation

BUYER:

By: Steven J Burney
Steven J. Burney, City Manager

Date: 02/28/2024

Approved as to form:

Mark Barber
Mark Barber, City Attorney

TO: General Government Committee
 FROM: Brad Medrud, Planning Manager
 DATE: November 13, 2024
 SUBJECT: Interlocal Agreement with Cities of Lacey, Olympia and Yelm for the update of the Accessory Dwelling Unit Plans

1) Recommended Action:

Place the Interlocal Agreement with Cities of Lacey, Olympia and Yelm for the update of the Accessory Dwelling Unit Plans on the November 19, 2024, City Council consent calendar with a recommendation to approve and authorize the Mayor to sign.

2) Background:

In 2020, the City approved the first interlocal agreement with the cities of Lacey and Olympia to work with The Artisans Group, LLC to develop pre-approved accessory dwelling unit plans. The plans were made available to property owners in the City who wanted to build an accessory dwelling unit as a means of reducing the time and cost required to build such units.

Recent changes to the state energy code have prompted a need to update the original plans, and the purpose of this interlocal agreement is to allow that work to be completed so that the program can continue and to expand the program to include the city of Yelm.

3) Policy Support:

- Strategic Priority to Build a Community Recognized for Quality, Compassion and Humanity with the goals of
 - Support and advance intergenerational housing opportunities.
 - Implement the Tumwater Housing Action Plan.
 - Continue to streamline permitting processes for development and construction projects.
-

4) Alternatives:

None.

5) Fiscal Notes:

N/A

6) Attachments:

- A. Interlocal Agreement
- B. Interlocal Agreement, Exhibit A

- C. Interlocal Agreement, Exhibit B
- D. Interlocal Agreement, Exhibit C

INTERLOCAL AGREEMENT

Between the Cities of Lacey, Olympia, Tumwater, and Yelm for the Update of Accessory Dwelling Unit Plans

THIS AGREEMENT is entered into as of the date of the last signature below (which is the effective date) by and between the City of Lacey, a Washington municipal corporation, (hereinafter "LACEY"); the City of Olympia, a Washington municipal corporation, (hereinafter "OLYMPIA"); the City of Tumwater, a Washington municipal corporation, (hereinafter "TUMWATER"), and the City of Yelm, a Washington municipal corporation, (hereinafter "YELM") collectively referred to as "the Parties."

WHEREAS, Section 39.34.010 RCW permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner pursuant to forms of governmental organization that will accord best with geographic, economic, populations, and other factors influencing the needs and development of local communities; and

WHEREAS, pursuant to Section 39.34.080 RCW, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

WHEREAS, the City of Lacey entered into a Professional Services Agreement with the Artisans Group Inc. on August 15th, 2019 to develop 2 sets of unique Accessory Dwelling Unit (ADU) construction documents with all engineering for the City of Lacey to make available to individual homeowners within city limits; and

WHEREAS, on April 14th, 2020, the City of Lacey amended the Professional Services Agreement with the Artisans Group Inc. to add two additional sets of fully engineered ADU construction documents for a total of 4 unique designs ranging in size from 480 square feet to 800 square feet; and

WHEREAS, on April 27th, 2020, the City of Lacey entered into an Interlocal Agreement with the City of Olympia, and the City of Tumwater to share in the costs associated with the production of the four Accessory Dwelling Units, and in doing so, gain access to, and the right to distribute the final stamped plans; and

WHEREAS, on February 10th, 2021, the Artisans Group Inc. delivered four sets of fully engineered ADU construction documents to the cities of Lacey, Olympia, and Tumwater for use within their respective communities; and

WHEREAS, the Parties believe that updating the ADU plans previously developed consistent with the latest construction code updates for Lacey, Olympia, and Tumwater would

be more efficient and effective than individual actions; and

WHEREAS, the City of Yelm would like to join the program to offer pre- approved ADU plans in order to promote in-fill density and more affordable housing options, and

WHEREAS, the expected cost to update the ADU plans is \$6,048.00 not including taxes and the expected cost to add a 1,000 square foot ADU option is \$24,954.00 not including taxes; and

WHEREAS, the cost for Yelm to purchase rights of the current 4 ADU plans is \$10,000; and

WHEREAS, the Parties believe that splitting the cost based on total population percentage is fair and appropriate, provided that Yelm pay 100% of the buy-in cost. Population estimates determined based on the Office of Financial Management April 1st 2024 report (EXHIBIT C).

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows;

1. Services Provided by LACEY

- A. LACEY shall contract with the Artisans Group Inc. for all services as set forth in Exhibit A and Exhibit B, attached hereto, and incorporated herein by reference.
- B. LACEY shall appropriately monitor the activities of the Artisans Group, Inc. to assure fiscal conditions of the contract.
- C. LACEY shall pay the Artisans Group, Inc. for services rendered in the month following the actual delivery of the work and will remit payment within thirty days from the date of receipt of invoice.
- D. No payment shall be made for any work performed by the Artisans Group, Inc., except for work identified and set forth in this Agreement and Exhibits A and B incorporated by reference into this Agreement.

2. Services Provided by OLYMPIA. Olympia shall:

- A. Reimburse LACEY \$2,227.15 upon delivery of the four (4) completed ADU construction document sets;
- B. Reimburse LACEY \$9,189.20 upon delivery of the new, 1,000 square foot ADU construction document set;
- C. Provide timely review and comments on concept designs, 90% construction documents, and final pre-approval of 100% construction documents to Lacey; and
- D. Maintain the final pre-approved construction documents for all plan sets at the customer service counter for citizens.

3. Services Provided by TUMWATER. Tumwater shall:

- A. Reimburse LACEY \$1,064.92 upon delivery of the four (4) completed ADU construction document sets;
- B. Reimburse LACEY \$4,393.86 upon delivery of the new, 1,000 square foot ADU construction document set;
- C. Provide timely review and comments on concept designs, 90% construction documents, and final pre-approval of 100% construction documents to Lacey; and
- D. Maintain the final pre-approved construction documents for all plan sets at the customer service counter for citizens.

4. Services Provided by YELM. Yelm shall:

- A. Reimburse LACEY \$10,000.00 for rights to the current four (4) pre-approved ADU construction document sets for \$10,000;
- B. Reimburse LACEY \$421.78 upon delivery of the four (4) completed ADU construction document sets;
- C. Reimburse LACEY \$1,740.27 upon delivery of the new, 1,000 square foot ADU construction document set;
- C. Provide timely review and comments on concept designs, 90% construction documents, and final pre-approval of 100% construction documents to Lacey; and
- D. Maintain the final pre-approved construction documents for all plan sets at the customer service counter for citizens.

5. Indemnification and Insurance

Each Party agrees to defend, indemnify, and hold the other Parties, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses, or suits including reasonable attorney's fees, arising out of or in connection with the indemnifying Party's performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying Party's officers, officials, and employees.

The Parties agree to maintain liability insurance; this may be fulfilled by a party's membership and coverage in WCIA, a self-insured municipal insurance pool.

6. No Separate Legal Entity Created

This Agreement creates no separate legal entity. No joint organization is created. No common budget is to be established. No personal or real property is to be jointly acquired or held.

7. Relationship of the Parties

The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party. This Agreement is for the benefit of the Parties, and no third-party beneficiary relationship is intended.

8. Duration of Agreement

This Agreement shall terminate on December 31, 2027, unless sooner terminated by the Parties as provided herein.

9. Dispute Resolution

A. Step One—Negotiation.

In the event of a dispute concerning any matter pertaining to this Agreement, the Parties involved shall attempt to adjust their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Parties in writing of the general nature of the issues. The letter shall be identified as a formal request for negotiation and it shall propose a date for representatives of the Parties to meet. The other Parties shall respond in writing within ten (10) business days. The response shall succinctly and directly set out that Party's view of the issues or state that there is no disagreement. The Parties shall accept the date to meet or shall propose an alternate meeting date not more than ten (10) business days later than the date proposed by the Party initiating dispute resolution. The representatives of the Parties shall meet in an effort to resolve the dispute. If a resolution is reached, the resolution shall be memorialized in a memorandum signed by all Parties, which shall become an addendum to this Agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step One expenses. Negotiation under this provision shall not exceed ninety (90) days. If a resolution is not reached within ninety (90) days,

the Parties shall proceed to mediation.

B. Step Two — Mediation.

If the dispute has not been resolved by negotiation within ninety (90) days of the initial letter proposing negotiation, any Party may demand mediation. The mediator shall be chosen by agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step Two expenses. The parties to the mediation will share the cost of the mediator. A successful mediation shall result in a memorandum agreement, which shall become an addendum to this Agreement.

Mediation under this provision shall not exceed ninety (90) days. If the mediation is not successful within ninety (90) days, the Parties may proceed to litigation.

C. Step Three — Litigation.

Unless otherwise agreed by the Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any legal action. A Party may initiate an action without exhausting Steps One or Two if the statute of limitations is about to expire and the Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened.

10. Amendments

This Agreement may be amended only by written agreement executed in accordance with Chapter 39.34 RCW.

11. Termination of Agreement

This Agreement may be terminated upon mutual agreement of the Parties.

12. Interpretation and Venue

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The Parties hereby agree that venue for enforcement of any provisions shall be the Superior Court of Thurston County.

13. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the

Parties and supersedes all prior agreements oral or otherwise with respect to the specific subject matter addressed herein.

14. Counterparts

This Agreement may be executed in counterparts, and all such counterparts once so executed shall together be deemed to constitute one final agreement, as if all Parties had signed one document, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding on the Parties. A faxed or email copy of an original signature shall be deemed to have the same force and effect as the original signature.

15. Notice

Any notice required under this Agreement shall be to the party at the address listed below and it shall become effective three days following the date of deposit with the United States Postal Service.

CITY OF LACEY

Vanessa Dolbee, Community and Economic Development Director 420
College Street SE
Lacey, WA 98503
Vanessa.dolbee@cityoflacey.org

CITY OF OLYMPIA

Tim Smith, Interim Director of Community Planning and Development
P.O. Box 1967
Olympia, WA 98507-1967
tsmith@ci.olympia.wa.us

CITY OF TUMWATER

Brad Medrud, Planning Manager 555
Israel Road SW
Tumwater, WA 98501
bmedrud@ci.tumwater.wa.us

CITY OF YELM

Gary Cooper, Planning & Building Manager 901
Rhoton Road SE
Yelm, WA 98597
garyc@ci.yelm.wa.us

16. Waiver

A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party and attached to the original Agreement.

17. Severability

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

18. Records Retention and Audit

During the progress of the work and for a period not less than six (6) years from the completion of the tasks set forth herein, the records and accounts pertaining to the work and accounting therefore are to be kept available for inspection by any Party and the Federal and State Government and copies of all records, accounts, documents, or other data pertaining to the work will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six-year retention period.

This Agreement is hereby entered between the Parties and it shall take effect on the date of the last authorizing signature affixed hereto:

[Signatures are affixed to next page]

GOVERNMENT AGENCY EXECUTIVE

APPROVED AS TO FORM

CITY OF LACEY
420 College Street SE Lacey, WA 98503

CITY OF LACEY
420 College Street SE Lacey, WA 98503

Rick Walk, City Manager Date

David Schneider, City Attorney

CITY OF OLYMPIA
601 4th Avenue East Olympia, WA 98501

CITY OF OLYMPIA
601 4th Avenue East Olympia, WA 98501

Jay Burney, City Manager Date

CITY OF TUMWATER
555 Israel Road SW Tumwater, WA 98501

CITY OF TUMWATER
555 Israel Road SW Tumwater, WA 98501

Debbie Sullivan, Mayor Date

CITY OF YELM
106 Second St. SE
Yelm, WA 98597

CITY OF YELM
106 Second St. SE
Yelm, WA 98597

Todd Stancil, City Administrator Date

EXHIBIT A

1,000 SF Accessory Dwelling Unit (ADU) Design

	Artisans Staff/Hourly Rates	Principals/ Staff 3	Design Staff 2	Design Staff 1	Projected
WORK ITEMS AND PROJECTED HOURS	\$158	\$138	\$118		Subtotals
1. Project Initiation and Concept Design					
a. Initial Meeting	2	0	0		\$316
b. Architectural Design- Floor Plans and Renderings	28	5	0		\$5,114
MILESTONE 1: Deliver Concept Designs					
c. Review and refine designs per Lacey CEDD comments	2	4	0		\$868
2. Construction Documents development (Two Sets)					
a. Floor Plans		5	16		\$2,578
b. Foundation Plans		5	16		\$2,578
c. Roof Plans		5	16		\$2,578
d. Section views for floor, walls, and roof		5	16		\$2,578
e. Energy code comp sheets		6			\$828
f. Notation including Material types for siding		5	16		\$2,578
MILESTONE 2: Deliver 90% Construction Documents					
3. Engineering and Plans Completion					
a. Construction Documents finalized	2	2	5		\$1,182
b. Engineering review and incorporation*	0	4	10		\$1,732
c. 3D Perspective view	2	0	6		\$1,024
MILESTONE 3: Deliver 100% Construction Documents					
Subtotal Projected Hours	36	46	101		183
Subtotal Projected Fees	\$5,688	\$6,348	\$11,918		
			Projected Total Fee		\$23,954
			Projected Reimbursement with Markup*		\$1,000
			Projected Total Fees and Reimbursement**		\$24,954

* Artisans Group will cover the cost of engineering with no compensation in amounts exceeding the "Not to Exceed" limit of \$24,954 as established by this agreement.

** If additional services are requested in writing by the City of Lacey, said additional services will be paid for at the above rates for number of hours worked by staff of Artisans Group while performing the additional services requested.

EXHIBIT B

PROJECT DESCRIPTION: City of Lacey, Olympia and Tumwater ADU's, Stock Plans

	Artisans Staff/Hourly Rates	Principals	Staff III	Staff II	Staff I	Projected
WORK ITEMS AND PROJECTED HOURS		\$158	\$158	\$138	\$125	Subtotals
4. Additional Services not covered in Exhibit A						\$0
Drawing Revisions per 2021 IRC (4 Drawing Sets)		2		16		\$2,524
Drawing Revisions per 2021 WESC Energy Code (4 Drawing Sets)		2		16		\$2,524
Yelm Licensing Fees						\$10,000
Subtotal Projected Hours		4	0	32	0	36
Subtotal Projected Fees		\$632	\$0	\$4,416	\$0	
					Projected Total Fee	\$15,048
					Projected Reimbursement with Markup	\$1,000
					Projected Total Fees and Reimbursement	\$16,048

**April 1, 2024 Population of
Cities, Towns and Counties
Used for Allocation of Selected State Revenues
State of Washington**

County Municipality	Census 2020	Estimate 2021	Estimate 2022	Estimate 2023	Estimate 2024
Thurston	294,793	297,800	300,500	303,400	307,000
Unincorporated	144,856	145,255	143,760	143,980	145,735
Incorporated	149,937	152,545	156,740	159,420	161,265
Bucoda	600	595	610	620	620
Lacey	53,526	54,850	58,180	59,430	60,210
Olympia	55,382 \$	55,960	56,370	56,900	57,450
Rainier	2,369	2,440	2,510	2,555	2,565
Tenino	1,870	2,010	2,030	2,045	2,070
Tumwater	25,573 \$	26,050	26,360	27,100	27,470
Yelm	10,617	10,640	10,680	10,770	10,880

* - State certified special census.

+ - Informal count. A population count that is considered accurate but does not meet all special census certification requirements.

- Informal census. A population and housing count that is considered accurate but does not meet all special census certification requirements.

\$ - Corrected Federal Census. Census 2020 population and housing adjusted for misallocated group quarters and annexations effective and approved by OFM from January 2, 2020 to April 1, 2020. The 2020 federal census count for Bonney Lake was corrected in 2022.

The 2020 populations are, with a few exceptions, equal to the federal census PL 94-171 counts.

With the exception of corrections or updates to the federal census counts, annual estimates in this official series are not revised on the basis of other information that becomes available after the estimate date.

TO: General Government Committee
FROM: Brad Medrud, Planning Manager
DATE: November 13, 2024
SUBJECT: Ordinance No. O2024-005, Development Code Administration

1) Recommended Action:

Place Ordinance No. O2024-005 on the December 3, 2024, City Council consideration calendar with a recommendation to approve and authorize the Mayor to sign.

2) Background:

SB 5290 amended the Local Project Review Act, Chapter 36.70B RCW in 2023, with the intent to increase the timeliness and predictability of local project review of development applications.

Following a briefing on September 24, 2024, and work sessions on October 8, 2024, and October 22, 2024, on the draft content of the ordinance, the Planning Commission conducted a hearing on the ordinance on November 12, 2024, to take public testimony and forward a recommendation of approval to the City Council, so that the amendments in the ordinance to meet state requirements become effective before the state mandated changes replace the existing City requirements on January 1, 2025.

At the conclusion of the hearing, the Planning Commission recommended that the ordinance move forward to the City Council for approval.

3) Policy Support:

Land Use Goal LU-2: Ensure development takes place in an orderly and cost-efficient manner in order to best utilize available land and public services, conserve natural resources, protect critical areas, preserve open space, and reduce sprawl.

4) Alternatives:

None.

5) Fiscal Notes:

Internally funded.

6) Attachments:

- A. Staff Report
- B. Ordinance No. O2024-005

STAFF REPORT



Date: November 13, 2024
To: General Government Committee
From: Brad Medrud, Planning Manager

Ordinance No. O2024-005 – Development Code Administration

In May 2023, the Governor of Washington signed into law Senate Bill (SB) 5290 which modified the state 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 Planning Commission held a public hearing on Ordinance No. O2024-005 on Tuesday, November 12, 2024, to take public testimony on the ordinance and, after deliberations, recommended that the City Council approve the ordinance. The Planning Commission was briefed on the proposed amendments on September 24, 2024, and held work sessions on October 8, 2024, and October 22, 2024, to discuss the proposed amendments.

The proposed ordinance will primarily modify 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 modify portions of the following titles and chapters 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

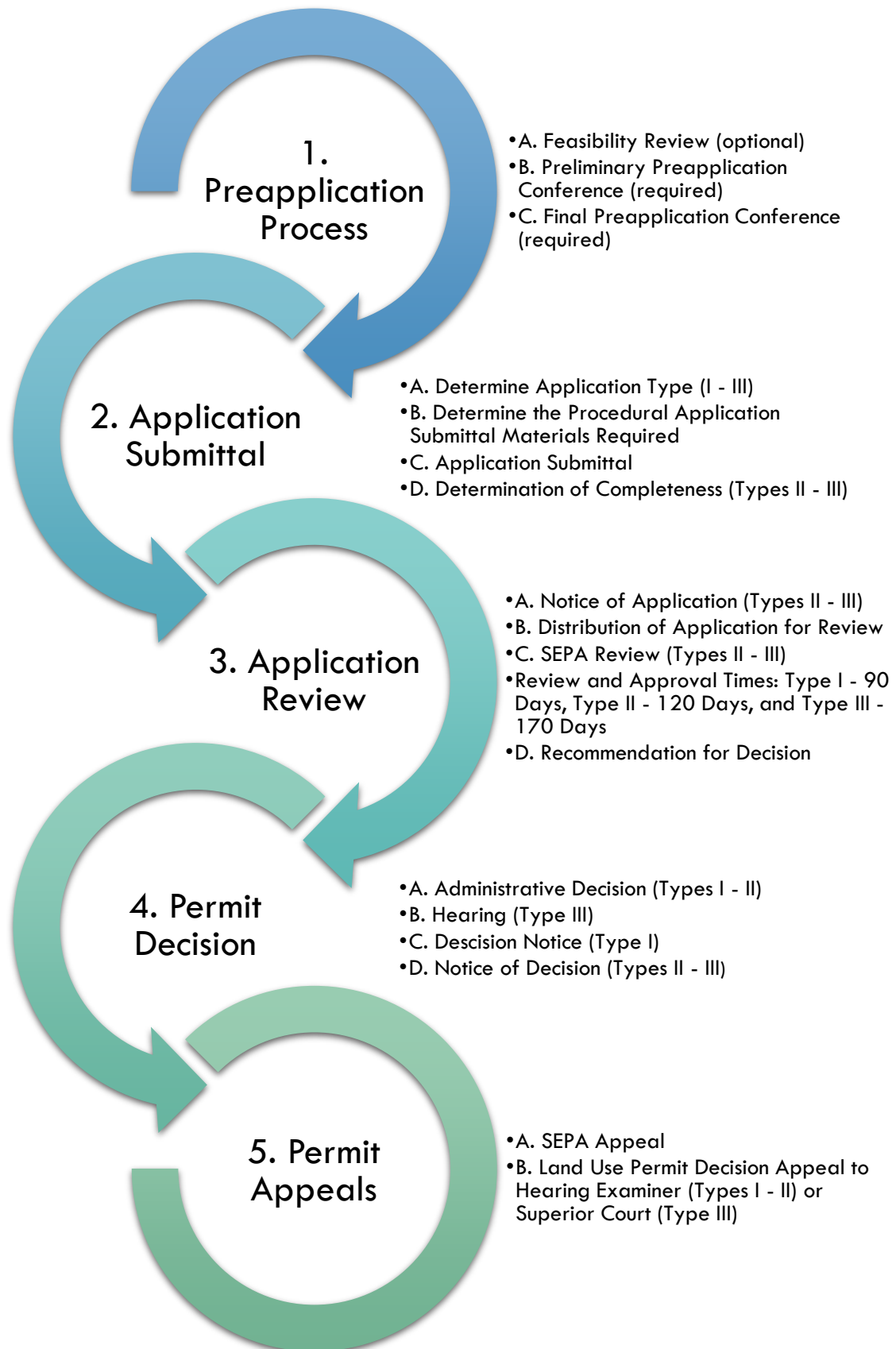
The amendments to TMC Title 14 are intended to establish the review and approval processes for three types of land use permit applications:

Type I – Land use permits that are approved administratively by the director of community development and do not require SEPA review.

Type II – Land use permits that are approved administratively by the director of community development and require SEPA review.

Type III – Land use permits that require a hearing before the hearing examiner.

The diagram below illustrates the review process for the proposed Type I – III land use permit applications.



2. Proposed Amendments to TMC Title 14

The proposed ordinance will replace all the current regulatory language in TMC Title 14 *Development Code Administration* with new regulatory language. This section describes the purpose for each of the parts of the proposed new title with the proposed amendments found in Ordinance No. O2024-005.

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 in the first chapter. The new land use permit application framework for the three 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 and land use permit application submittal process is then described in the third chapter, followed by the land use permit application review and decision and appeal processes in the last two chapters.

Chapter 14.10

GENERAL PROVISIONS

- 14.10.010 Intent.**
- 14.10.020 Definitions.**
- 14.10.030 Applicability.**
- 14.10.040 Time limits.**
- 14.10.050 General notice requirements.**
- 14.10.060 Determination of a substantially different proposal.**
- 14.10.070 Expiration of approvals.**
- 14.10.080 Other provisions.**

Chapter 14.12

LAND USE PERMITS

- 14.12.010 Land use permit application procedures and types.**
- 14.12.020 Decision and appeal authorities.**
- 14.12.030 Land use permit application review periods.**

Chapter 14.14

LAND USE PERMIT PREAPPLICATION AND APPLICATION PROCESS

- 14.14.010** Feasibility review.
- 14.14.020** Preapplication conferences.
- 14.14.030** Land use permit applications.
- 14.14.040** Determination of completeness.

Chapter 14.16

LAND USE PERMIT APPLICATION REVIEW

- 14.16.010** Land use action review and determination of consistency.
- 14.16.020** Initial State Environmental Policy Act analysis.
- 14.16.030** Categorically exempt and planned actions.
- 14.16.040** Referral and review of land use permit applications.
- 14.16.050** Notice of application.

Chapter 14.18

LAND USE PERMIT APPLICATION DECISIONS AND APPEALS

- 14.18.010** Notice of decision.
- 14.18.020** Appeals of administrative approvals.
- 14.18.030** Appeals of State Environmental Policy Act related matters.
- 14.18.040** Notice of open record and appeal hearings.
- 14.18.050** Combined public hearings allowed.

B. General Provisions

The intent of the proposed general provision section of TMC Title 14 is to address 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 proposed amendments are based on RCW 36.70B.030.

The proposed new language for the section is as follows:

TMC 14.10.010

- A. *The purpose of this title is to combine and consolidate the application, review, and approval processes for land use 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 director of 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 permit approvals within the period established by this title, the city 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. The definition in RCW 36.70B.020(4) also refers to a "'project permit' or 'project permit application' means any land use or environmental permit or license required from a local government for a project action." This is why staff proposed to refer to "project permits" as "land use permits" throughout the proposed TMC Title 14 amendments to differentiate them from "building permits" and "construction permits," which are not part of the RCW definition below but are addressed elsewhere in the RCW and by the City in TMC Title 15 *Buildings and Construction*.

This is important because it reduces the current scope of permits covered by 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 14.10.030

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

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

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

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

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

1. A change of use of land, variance, planned unit development, site plan review, application of citywide design guidelines, or other land use permit approvals in TMC Title 18 Zoning, aside from those approvals excluded in TMC 14.10.030(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 14.10.060;

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 pursuant to TMC Title 16 Environment;

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

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

5. Site-specific rezones that do not require a comprehensive plan amendment pursuant to TMC 18.60.

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

1. Building and construction approvals pursuant to TMC Title 15 Buildings and Construction;

2. *Floodplain development permits pursuant to TMC 18.38;*
3. *Text amendments to the municipal code, general area rezones, site-specific rezones that require a comprehensive plan amendment, and comprehensive plan text or map amendments pursuant to TMC 18.60; and*
4. *Any other approvals not listed in TMC 14.10.030(C).*

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, such as the definition of “days” and “open record hearing” for example:

TMC 14.10.020

- 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 department. This determination initiates the statutory review period for the application, if any, and subject to certain exceptions, entitles the applicant to have the application considered and reviewed pursuant to the laws, regulations, and standards in effect on the date the application was complete.*
- F. *“Development guide” means the Tumwater development guide pursuant to TMC 15.02.010 or as subsequently amended.*
- G. *“Development review committee” means a group of development review staff from city departments assigned by the director to conduct preapplication conferences and review 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 oversees 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 submitting 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. A land use action also includes any proposal for the 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 14.12.020(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 14.16.030(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 such applications designed to evaluate developing application submittal documents, to answer questions and provide procedural information to prospective applicants, and to guide applicants with preparation of a land use 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 submitting the land use permit application.*

3) Time Limits

The most important changes made to RCW 36.70B by SB 5290 were modifications to the number of days the City has to review 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 monetary penalties if they are not met.

Note that the time limits start the day that an application is determined to be complete until the day a final decision is made by the director or hearing examiner. The time limits also include all required notice and comment periods.

TMC 14.10.040

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 14.12.030 after notifying the applicant that such an application is complete, as provided in TMC 14.14.040.*

B. *In determining the number of days that have elapsed after the director has established that a land use permit 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 land use 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 14.14.040(A)(2), the director shall notify the applicant of the deficiencies and the procedures under TMC 14.14.040(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 director has notified the applicant in writing that additional information is required to further process the land use permit 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 director to the applicant that additional information is required to further process the land use permit 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 such an application will expire pursuant to TMC 14.10.040(B)(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 additional requested 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 14.12.030 do not apply if a land use permit application:*
- 1. Requires approval of the siting of an essential public facility as provided in RCW 36.70A.200; or*
 - 2. Is substantially revised by the applicant as determined by the process in TMC 14.10.060, in which case the time period shall start from the date at which the revised land use permit application is determined to be complete under TMC 14.14.040.*
- 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 14.12.030, as extended as allowed by TMC 14.10.070, 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 14.12.030 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 14.12.030 to the time of the issuance of the final decision exceeded twenty percent of the original time period.*
- E. Regardless of whether any period is a minimum or maximum, when any land use permit review, notice, or decision time limit of this title terminates on a weekend or city holiday, such time limit automatically extends to the first following non-holiday weekday.*

4) Public Notice Requirements

Several notices are required to be issued throughout the development review process. The current code language about notice requirements has been revised in the proposed code as follows to establish general guidelines for such notices.

TMC 14.10.050

- 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 director has determined the area notified does not provide adequate notice to neighbors affected by the pending action. Addressed, prestamped envelopes shall be provided by the applicant;*
 - 3. Posting at least one notice on the subject property by the applicant in accordance with specifications provided by the department; and*
 - 4. Whenever practical, the director may utilize additional forms of notice.*
- B. Content of Notice. The public notice shall include:*
- 1. The address, location, and a vicinity map or sketch of the property which is the subject of the land use permit application;*
 - 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 shall specify the first and last date and time by which written public comment may be submitted.*
- E. 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.*

- F. Optional Public Notice. In addition to required public notice, the city may provide notice to other individuals or organizations interested in or possibly affected by the proposal.*
- G. 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.

A new code section has been proposed to address this issue.

TMC 14.10.060

- 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 a new land use permit application.*
- B. In reaching a determination whether a revision is so substantial as to constitute a new land use permit application, the director shall consider:*
- 1. The relative and absolute magnitude of the revision;*
 - 2. The environmental sensitivity of the site; and*
 - 3. Any changes in location of significant elements of the proposed project and their relation to public facilities, surrounding lands and land uses, and the stage of review of the proposal.*
- C. Lesser revisions that would not constitute substantial revisions during preliminary stages of review may be substantial during later stages due to the reduced time and opportunity remaining for interested parties to review and comment upon such changes.*
- D. The director shall provide a written notice of the determination that the revision is so substantial as to constitute a new land use permit 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 14.12.030 to restart from the date when such a 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 a revised application.*

6) Land Use Permit Expirations

Except for 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 are based on the state subdivision code, and for other City approvals such as conditional use permits, variances, site plan review, and reasonable use exemptions, and a special exception addressing projects that need federal incidental take permits.

TMC 14.10.070

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 shall be valid for a period of eighteen months.*

a. *A land use permit approval expires and is null and void eighteen months from the date the final approval was issued unless complete applications for necessary building and construction permits have been submitted or 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 building and construction permit 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 the 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 a written request for extension is not received by the department prior to expiration, the director shall deny such extension.*

2. *If there are multiple land use permit approvals for a project with conflicting approval periods, the longest approval period shall be followed.*

C. *Land Divisions.*

1. *Preliminary Plats. The duration of preliminary plat approvals is found in TMC 17.14.080.*

2. *Final Plats. The time limit for filing an approved final land division is found in TMC 17.24.100.*

D. *Conditional Use Permits. Time limitations for conditional use permit approvals are found in TMC 18.56.070.*

E. *Planned Unit Developments. Time limitations for planned unit development approvals are found in TMC 18.36.170.*

F. *Site Plan Reviews. Time limitations for site review approvals are found in TMC 18.55.070.*

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

H. *Variances and Reasonable Use Exceptions. Unless utilized, a variance or reasonable use exception expires eighteen months from the date a final decision is issued.*

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

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

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

3. *During such extensions granted pursuant to this subsection, approvals shall continue to be subject to the conditions of approval and vested rights that applied to the approval prior to the extension, except for storm drainage standards, design standards, and building and fire codes, unless the incidental take permit 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 the land use code interpretation process and how building or construction permits cannot be issued unless the project conforms to the land use approval process of the amended title.

TMC 14.10.080

A. *Land Use Code Interpretations.*

1. *Purpose and applicability.*

a. *The purpose of this section is to establish the procedure for interpreting provisions of city land use codes to clarify conflicting or ambiguous wording.*

b. *The director is authorized to make written interpretations of the provisions of the following titles of the Tumwater Municipal Code:*

i. *TMC Title 14 Development Code Administration;*

- ii. *TMC Title 16 Environment;*
 - iii. *TMC Title 17 Land Division;*
 - iv. *TMC Title 18 Zoning; and*
 - v. *Shoreline Management Program.*
- c. *Issuance of an interpretation of the provisions of the codes cited in TMC 14.10.080(A)(1)(b) shall not amend the code.*
2. *Interpretation requests.*
- a. *Requests may be made by an applicant prior to the submission of a land use permit application.*
 - i. *A written request on a form provided by the department shall be submitted that specifies each provision of the code in TMC 14.10.080(A)(1)(b) for which an interpretation is requested.*
 - ii. *The written request shall specify why an interpretation of each provision is necessary and any reasons or materials in support of the proposed interpretation.*
 - b. *Code interpretations after a land use permit application has been submitted shall be made as part of the applicable land use permitting process pursuant to TMC Title 14 Development Code Administration.*
3. *Procedure.*
- a. *The director shall evaluate the request and determine whether the request is justified or not;*
 - b. *If the director determines that the request is justified, the request shall be:*
 - i. *Processed as a Type I land use permit application type decision; or*
 - ii. *Consolidated with the process associated with a preliminary or formal preapplication conference.*
 - c. *The director shall consult with the State Department of Ecology regarding any interpretation of the shoreline management program.*
4. *Factors for consideration. In making an interpretation of the provisions of the land use code, the director shall consider the following criteria:*
- a. *The applicable provisions of the land use code including their purpose and context;*
 - b. *The impact of the interpretation on other provisions of the code;*
 - c. *The implications of the interpretation for development within the city as a whole; and*
 - d. *The applicable provisions of the comprehensive plan and other relevant codes and policies.*
5. *Issuance of interpretation.*

- a. *The director shall issue a written interpretation within thirty days of the department's receipt of the interpretation request.*
 - b. *Issuance of the interpretation shall include notification of the person making the request and publication of the interpretation on the city's website.*
 - c. *Issued interpretations are not project approvals.*
6. *Appeals.*
- a. *The applicant may file an appeal of an issued interpretation.*
 - b. *The appeal shall follow all rules and procedures for appeals of Type I land use permit applications to the hearing examiner as set forth in TMC Title 14 Development Code Administration.*
- B. *Dedication, Improvements, and Performance Bonds. As a condition of land use permit approval, the city may require an applicant to dedicate property, construct public improvements, or furnish performance bonds to the city to secure an obligation to complete the provisions and conditions of the land use permit as approved.*
- C. *Building and Construction Permits. The city shall not issue any building permit for the construction, alteration, or relocation of any building, structure, or part thereof or construction permit for the construction of any site improvements unless the plans, specifications, and intended use of such building or structure and site conforms in all respects to the final land use permit approval(s) required by this title.*
- D. *Fees. Land use permit application fees are established by city council resolution.*
- E. *Vesting. Land use permit approvals vest according to TMC 15.44 and other applicable state and federal laws.*
- F. *Conflicts. In the event of conflicts between the procedural requirements of this title and other development regulations of the city, the provisions of this title shall control.*

C. Land Use Permits

The second proposed chapter of TMC Title 14 establishes the new land use permit application framework for the three 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 three permit types (Types I – III) and provides examples of each type. Note that the recent change in state law excludes building and construction permits which are addressed in TMC Title 15 *Buildings and Construction* from these land use permit requirements.

TMC 14.12.010

- 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, or Type III.*
 - 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.*
 3. *TMC Table 14.12.010 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 14.12.020(A).*
 5. *Permit notice requirements for each land use permit application type is identified in TMC Table 14.12.020(B).*
 6. *Review times for each land use permit application type is identified in TMC Table 14.12.030.*

Table 14.12.010
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, land use code interpretations, lot consolidations, plat time extensions, preliminary short plats, preliminary SEPA threshold determinations (if EIS is required), reasonable use exemptions, shoreline exemptions, site plan review, sign permits, temporary use permits, and tree permits</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 zoning variances</i>

TMC Table 14.12.010 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 three permit types. The section also describes the role of department staff, the development review committee,, the director, and the hearing examiner in the land use permit application review and approval process.

TMC 14.12.020

A. TMC Table 14.12.020(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 14.16.040(B) the final decision and appeal shall be rendered by the highest authority designated for any part of the consolidated application in TMC Table 14.12.020(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 14.12.020(B) provides public notice requirements for each land use permit application type. When separate land use permit applications are consolidated under TMC 14.16.040(B), the public notice requirements in TMC Table 14.12.020(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 the original land use permit application approval and is subject to TMC 14.10.060.*
- D. The review process for a land use permit application may include review and approval by the following entities:*
- 1. Department Staff. Individual department staff shall have the authority to:*
 - a. Review and make recommendations to the director to approve, deny, modify, or conditionally approve Type I land use permit applications, and*
 - b. Provide recommendations to the director regarding land use code interpretations.*
 - 2. Development Review Committee.*
 - a. The development review committee shall have authority to:*
 - i. Conduct feasibility review;*
 - ii. Conduct preapplication conferences;*
 - iii. Provide recommendations to the director regarding land use code interpretations;*
 - iv. Make post application determinations in conjunction with the issuance of land use permits;*
 - v. Make recommendations to the director to approve, deny, modify, or conditionally approve Type II land use permit applications; and*
 - vi. Make recommendations to the hearing examiner to approve, deny, modify, or conditionally approve Type III land use permit applications;*
 - b. The committee shall adopt rules of procedure for the purpose of ensuring fair, lawful, and timely recommendations; and*
 - c. The committee agenda shall be prepared and posted by the department pursuant to the notification standards found in TMC 14.10.050.*
 - 3. Director. The director shall have the authority to:*
 - a. Approve, approve with conditions, or deny Type I or II land use permit applications including SEPA determinations, so long as such actions are in conformity with the Tumwater Municipal Code;*
 - b. Consider pertinent facts bearing on land use permit applications in making their decision; and*

- c. Refer a Type I or Type II land use permit application to the hearing examiner for an open record public hearing, if the director’s determines such an application is extraordinarily complex or presents significant environmental, design, or compatibility issues.
- 4. Hearing Examiner. The hearing examiner shall have the authority vested pursuant to TMC 2.58.090 to:
 - a. Conduct open record public hearings on Type III land use permit applications and appeals of director decisions on Type I and II land use permit applications, including SEPA determinations;
 - b. Approve, approve with conditions, or deny Type III land use permit applications including SEPA determinations, so long as such actions are in conformity with the Tumwater Municipal Code;
 - c. Decide appeals of director decisions on Type I and II land use permit applications, including SEPA determinations; and
 - d. Consider pertinent facts bearing on land use permit applications in making their decision.

Table 14.12.020(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>
<i>Type III</i>	<i>DIR - site-specific rezones not requiring a comprehensive plan amendment. DRC – All others.¹</i>	<i>HEX</i>	<i>HEX</i>	<i>Superior Court or WA State ELUHO for shoreline permits (closed record)</i>

TMC Table 14.12.020(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 14.12.020(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 14.12.020(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

TMC Table 14.12.020(B) Explanatory Notes:

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

3) Land Use Permit Application Review Periods

The third 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 14.12.030 are the maximum days established in state, which may be modified by the City following the process in RCW 36.70B.

TMC 14.12.030

A. Review Period.

1. The decision authority established in TMC Table 14.12.020(A) shall make a final decision on a land use permit application within the time limits set forth in TMC Table 14.12.030.

a. When separate land use permit applications are consolidated under TMC 14.16.040(B), the time limits for review in TMC Table 14.12.030 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 14.12.020(A) within the time limits set forth in TMC Table 14.12.030.

Table 14.12.030

Land Use Permit Application Review Times

Land Use Permit Application Type	Time in Review
Type I	90 days <ul style="list-style-type: none"> Final Plat: 30 days (TMC 17.24.050)
Type II	120 days
Type III	170 days <ul style="list-style-type: none"> Preliminary Plat: 90 days (RCW 58.17.140)

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

1. Up to the first twenty-eight days after receipt of a land use permit application, during which the city determines whether the application is complete pursuant to TMC 14.14.040.
2. Any period during which the applicant has been requested by the city to correct plans, perform studies, or provide additional information pursuant to TMC 14.14.040(D).
3. Any appeal period. See TMC Chapter 14.18 for appeal procedures.
4. Any extension of time mutually agreed upon by the applicant and the city under TMC 14.10.040.
5. The time required to prepare and issue an environmental impact statement in accordance with SEPA.

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 the development review committee to present a proposed project for an initial review to help determine if it could be viable.

TMC 14.14.010

- A. *At the option of the applicant, the development review committee will provide limited information through a feasibility review as a precursor to a preapplication conference as described in TMC 14.14.020.*
- 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. *Feasibility review applications 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 14.14.020

- A. *All land use permit applications except for minor development proposals such as fences, small detached buildings, and individual single-family residences, duplexes, triplexes, and quadplexes, shall not be accepted for processing until the applicant has scheduled and attended preapplication conferences.*
- B. *The purpose of preapplication conferences is to enable the applicant to present the project proposal to the development review committee to understand the intent, standards and provisions of the applicable development regulations that will be required in land use permit applications. The intent is to eliminate as many potential problems as possible in order for land use permit applications to be processed without delay or undue expense.*
- C. *At the preapplication conferences, the development review committee shall make available all pertinent information related to the project area. The preapplication conferences should take place prior to detailed work by the applicant’s engineer or surveyor. Discussion topics at conferences would include such things as:*
 - 1. *The comprehensive plan and subarea plans;*
 - 2. *The shoreline master program;*
 - 3. *The regulatory requirements of the following titles:*
 - a. *TMC Title 14 Development Code Administration;*
 - b. *TMC Title 15 Buildings and Construction;*

- c. *TMC Title 16 Environment;*
- d. *TMC Title 17 Land Division, if applicable; and*
- e. *TMC Title 18 Zoning;*
- 4. *Transportation requirements:*
 - a. *The transportation plan and transportation concurrency;*
 - b. *Sidewalk requirements;*
 - c. *Bike paths; and*
 - d. *Bus stops;*
- 5. *Utilities:*
 - a. *Availability of sewer and water; and*
 - b. *Need for utility extension or oversizing;*
- 6. *Phasing of off-site requirements such as sidewalks, streetlights, traffic signals, utilities, or improvement of adjacent streets;*
- 7. *Latecomer charges;*
- 8. *Storm drainage and erosion control;*
- 9. *Citywide design guidelines;*
- 10. *Other city requirements and permits;*
- 11. *Features of the development, and the rationale behind them;*
- 12. *If the applicant owns adjacent land, the possibilities of future development shall be discussed; and*
- 13. *Application review process and timelines.*
- D. *The development review committee will provide the applicant with written comments on how the proposed project conforms to city policies and regulations, which will include a list of all the materials needed to make land use permit applications procedurally complete and the requirements for development approval.*
- E. *Preapplication conferences shall consist of two stages:*
 - 1. *Preliminary Review.*
 - a. *At preliminary review, the applicant shall present to the development review committee preliminary studies or conceptual sketches which contain in a rough and approximate manner based on the information required in the preliminary review preapplication conference application.*
 - b. *The preliminary review of development proposal documents is intended to analyze and identify potential issues and develop the preliminary proposal toward submittal of land use permit applications.*

2. Formal Review.

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

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

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

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

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.”

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 that in turn can be modified by each kind of land use permit; 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 third section of the third chapter of TMC Title 14 details what needs to be in a land use permit application for it to be considered procedurally complete.

TMC 14.14.030

A. *Land use permit applications 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 listed in the land use permit application checklist, which are prepared pursuant to TMC 14.14.030(C), as supplemented in writing by the development review committee pursuant to the preapplication conference process in TMC 14.14.020.*

- C. *The director shall approve the content of the land use permit application checklists and may waive in writing submittal items required by TMC 14.14.030(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 land use permit application form containing:*
 - a. *The title and location of the proposed project;*
 - b. *The names, addresses, telephone numbers, and email addresses of the record owner or owners of the land and of the applicant, and, if applicable, the names, addresses, telephone numbers, and email addresses of any architect, planner, designer, engineer, or other consultants responsible for the preparation of the land use permit application, and of any authorized representative of the applicant; and*
 - c. *The designation of a single person or entity by the applicant to receive land use permit application determinations and notices required by this title;*
 2. *A verified statement by the applicant that the property affected by the land use permit application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all the owners of the affected property;*
 3. *A legal description of the site;*
 4. *A title report or plat certificate issued by a title company which shows property ownership, and any easements or other encumbrances shall be submitted with the land use permit application package. Such title report or plat certificate shall be dated no more than thirty days prior to submittal;*
 5. *The applicable land use permit application fee;*
 6. *Evidence of adequate water supply as required by RCW 19.27.097;*
 7. *Evidence of sewer availability, or approval and authorization to construct a community or individual sewer or septic system;*
 8. *Complete plans, studies, and/or reports identified in the land use permit application checklist and the preapplication conferences;*
 9. *A complete description of the each proposed use of the land and buildings, including the size of each use, and if a residential use, the number, size, and number of bedrooms of each dwelling unit;*
 10. *The written recommendations of the Thurston County health department, the building division, transportation & engineering department, water resources & sustainability department, parks and recreation department, and fire department as to any portion of the land use permit application covering areas within their respective jurisdictions;*
 11. *All materials required by TMC Title 16 Environment shall be included in the land use permit application, including a SEPA environmental checklist if required; and*

12. *For land use actions proposing land division pursuant to TMC Title 17 Land Division, all materials required by that title shall be included in the land use permit application.*
13. *A site plan drawing or drawings at a scale of not less than one inch for each twenty feet which shall show:*
- a. *General Information.*
 - i. *Project name;*
 - ii. *Street address of property;*
 - iii. *Title block containing the drawing title, scale, revision number, if applicable, north arrow, and date;*
 - iv. *Vicinity map including streets and surrounding landmarks within five hundred feet of the property or enough information to easily locate the site on a large city map;*
 - v. *Legal description of the property as provided by the Thurston County assessor's office;*
 - vi. *Parcel numbers as provided by the Thurston County assessor's office;*
 - vii. *Parcel map as provided by the Thurston County assessor's office showing all adjacent parcels;*
 - viii. *Existing zoning;*
 - ix. *Lot size;*
 - x. *Square footage of floor area in each structure;*
 - xi. *Parking spaces and parking lot dimensions;*
 - xii. *Type of construction proposed;*
 - xiii. *The proposed number of square feet in paved or covered surfaces, whether covered by buildings, driveways, parking lots, or any other structure covering land; and the total amount of square feet in the entire proposed project site;*
 - xiv. *The proposed number of dwelling units and project density, including the number of dwelling units for each existing or proposed structure on the site and number of units per gross acre, if applicable;*
 - xv. *The proposed number of square feet in gross floor area for each commercial, industrial, and institutional use, if applicable; and*
 - xvi. *If the project will be developed in phases, the number of phases, the size of each phase, and the number of units or buildings for each phase;*
 - b. *Site Information.*
 - i. *Location of property lines, indicating exterior lines with bold solid lines and interior lines with long dashed lines;*

- ii. *If the property is to be divided pursuant to TMC Title 17 Land Division, the boundaries of each proposed lot and tract within the property;*
- iii. *Survey maps which delineate topographic contour lines showing both existing and proposed elevations, at two foot intervals, extending a minimum of ten feet beyond the property line. The interval should be such that the existing and proposed slopes of the property can be determined on the drawing. Proposed contours shall show ties to existing contours and show spot elevations as needed;*
- iv. *All existing and proposed public and private easements;*
- v. *The number and size of all phases in the proposed project, if applicable;*
- vi. *Proposed building(s), including dimensions;*
- vii. *Front, rear, and side building setbacks with clear dimensions;*
- viii. *Distance to adjacent structures on site, if applicable;*
- ix. *Locations and dimensions of off-street and on-street parking, including accessible parking, parking designated per unit if applicable, lot striping, wheel stops and curbing, including turning radii in the circulation pattern;*
- x. *Locations and dimensions of existing and proposed driveways, traffic flow, emergency vehicle access, and parking lot circulation and maneuvering areas;*
- xi. *Locations and dimensions of existing and proposed rights-of-way, streets, curbs, gutters, and street centerlines, including pavement edges;*
- xii. *Dimensions and locations of walkways, trails, sidewalks, and curb cuts;*
- xiii. *Sizes and locations of solid waste containers showing details of any site screening fences or structures and screening of dumpsters;*
- xiv. *Location of existing and proposed signs including elevation, size, material, color, design, and method of illumination;*
- xv. *Dimensions, types, and locations of fencing;*
- xvi. *Locations, dimensions, and types of critical areas and buffers pursuant to TMC Title 16 Environment;*
- xvii. *Information required by TMC 16.08.050 addressing trees and vegetation;*
- xviii. *Locations, dimensions, and types of open space;*
- xix. *Information required by the shoreline master program, if the property the project is located on is within shoreline jurisdiction;*
- xx. *The existing zone district of the proposed project site and any other zone district within three hundred feet of the site; and*
- xxi. *All special districts, including, but not limited to school or water districts, in which the proposed project shall be located and all such districts within three hundred feet of the proposed project;*

- c. *Building Information.*
 - i. *Architectural elevations of existing and proposed buildings, including height and number of stories, along with any mechanical roof-mounted equipment; and*
 - ii. *Generalized floor plans, planned uses for each area of building (including occupancy type, if known), finished floor elevations, and exiting and accessibility accommodations;*
- d. *Infrastructure Improvements.*
 - i. *Location of existing and proposed storm sewers, catch basins, utility holes, parking lot storm drains, detention structures, etc.;*
 - ii. *Locations and dimensions of stormwater treatment, flow control, and low impact development facilities;*
 - iii. *Location and size of existing and proposed water mains, valves, service lines, size of water meters, sprinkler systems, fire hydrants, and backflow devices;*
 - iv. *Location and size of existing and proposed sanitary sewer collectors, utility holes, pumping stations, force main and side services, including cleanouts; and*
 - v. *Location of other existing and proposed utilities, including, but not limited to, gas, power, telephone, streetlights.*
- e. *Landscaping.*
 - i. *The applicant shall submit a stamped landscape plan pursuant to TMC 18.47 Landscaping that is consistent with the proposed site plan.*

2) Determination of Completeness

The proposed third section of the third 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 14.12.030 start.

TMC 14.14.040

- 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 land use permit application is complete and that the procedural submission requirements of this title have been met; or*
 - 2. *That the land use permit 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 aspects of the land use permit application in the determination of completeness.*

C. *Definition of a Complete Application.* A land use permit application is complete for purposes of TMC 14.14.040 when it meets the procedural submission requirements of TMC 14.14.030, 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 after the procedural review of the land use permit application by the city.*
2. *The city's determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the determination of completeness or later if additional information is required or where there are substantial changes in the proposed land use action as defined in TMC 14.10.060.*

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

1. *A preliminary determination of those development regulations that will be used for mitigation of the proposed project;*
2. *A preliminary determination of consistency pursuant to TMC 14.16.010;*
3. *Other information the city chooses to include; or*
4. *The notice of application pursuant to the requirements in TMC 14.16.050.*

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 14.10.040(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 14.14.040(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 14.10.040(B)(2).*
4. *Upon failure to cure any deficiency the department shall refund fifty percent of the filing or land use permit application fees submitted with the incomplete application.*

G. *City's Failure to Provide Determination of Completeness.* A land use permit application shall be deemed procedurally complete under TMC 14.14.040 if the city does not provide a written determination to the applicant that the application is incomplete as provided in TMC 14.14.040(A)(2).

H. *When the city determines that the land use permit application is complete, the City shall note the date of the determination and the land use permit application review time to render a decision, as identified in TMC Table 14.12.030, 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 establishes how consistency of a proposed application and the City's development code and Comprehensive Plan is the basis for land use permit application approvals.

TMC 14.16.010

- A. *Purpose. When the department 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 department shall determine whether the items listed in TMC 14.16.010(B)(3) are defined in the development regulations applicable to the proposed project.*
 2. *In the absence of applicable development regulations, the department shall determine whether the items listed in TMC 14.16.010(B)(3) are defined in the city's comprehensive plan.*
 3. *At a minimum, a determination of consistency shall include the following information:*
 - a. *The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;*
 - b. *The level of development, such as units per acre, density of residential development, or other measures of development intensity;*
 - c. *Availability and adequacy of infrastructure and public facilities identified in the comprehensive plan if the plan or development regulations provide for funding of these facilities as required by Chapter 36.70A RCW; and*
 - d. *Characteristics of the development, such as development standards and guidelines.*
- C. *Nothing in TMC 14.16.010 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 14.16.010(B)(3) as part of land use permit application review.*

D. During land use permit application review, the city shall not reexamine alternatives to or hear appeals on the items identified in TMC 14.16.010(B)(3).

E. Nothing in TMC 14.16.010 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 permit 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.

2) Initial SEPA Analysis

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

TMC 14.16.020

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

- 1. Determine whether the applicable regulations require studies that adequately analyze all the land use permit application's specific probable adverse environmental impacts;*
- 2. Determine if the applicable regulations require measures that adequately address such environmental impacts;*
- 3. Determine whether additional studies are required and/or whether the land use permit application should be considered with additional mitigation measures; and*
- 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 14.16.020(A), the city shall not impose additional mitigation under SEPA during land use permit 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 regarding 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 permit approval on compliance with these other existing rules or laws.

F. Nothing in TMC 14.16.020 limits the authority of the city in its review or mitigation of a proposed project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by Chapter 43.21C RCW.

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

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 14.16.030

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

B. Planned Actions.

1. *A planned action does not require a threshold determination or the preparation of an environmental impact statement under SEPA but is subject to environmental review and mitigation under SEPA.*
2. *A “planned action” means one or more types of project action that:*
 - a. Are designated planned actions by an ordinance or resolution adopted by the city;*
 - 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 14.16.030(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 permit application review, the city shall not reexamine alternatives to or hear appeals on the items identified in TMC 14.16.010(B)(3), except for land use code interpretations pursuant to TMC 14.10.080.*
 - 2. *Land use permit 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 14.16.040

- A. *Within fourteen days of accepting a complete land use permit application, the director shall take the following actions:*
- 1. *Transmit a copy of the land use permit application, or appropriate parts of the application, to each affected agency and city department for review and comment, including those responsible for determining compliance with state and federal requirements.*
 - a. *The affected agencies and city departments shall have fourteen days to comment.*
 - 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 14.12.020(A)(1);*
 - b. *Follow the public notice requirements specified in TMC 14.12.020(B)(1);*
 - c. *Follow the permit review timelines specified in TMC 14.12.030(A)(1)(a); and*
 - d. *Follow the processes specified in TMC Chapter 14.16 and TMC Chapter 14.18.*
 - 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 Process.*
 - 1. *Notice shall be provided pursuant to TMC 14.10.050.*
 - 2. *Except for the appeal of a determination of significance as provided in RCW 43.21C.075, there shall be no more than one open record hearing and one appeal for land use permits.*
 - 3. *When a public hearing is required in conjunction with a land use permit, the development review committee or director shall provide their recommendation in sufficient time for the hearing examiner to issue a notice of final decision within the number of days established by TMC Table 14.12.030 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 14.12.020(B).

TMC 14.16.050

A. *Generally.*

- 1. *A notice of application shall be issued on all Type II and Type III land use permit applications for which SEPA review is required or the hearing examiner has decision making authority pursuant to TMC Table 14.12.020(B).*

2. *The notice of application shall be issued pursuant to the general notice requirements of TMC 14.10.050.*
 3. *The notice of application shall be issued prior to and is not a substitute for any other required notice of a public hearing.*
- B. *SEPA Exempt Projects. A notice of application shall not be required for Type I land use permit applications that are categorically exempt under SEPA.*
- 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 14.14.030 or other permits;*
 3. *The identification of other permits not included in the land use permit application, to the extent known by the city;*
 4. *The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated in the document providing notice of application, the location where the land use permit application and any studies can be reviewed;*
 5. *A statement of the limits of the public comment period, which shall not be less than fourteen nor more than thirty days following the date of notice of application, and a statement of the right of any person to comment on the land use permit application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;*
 6. *The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of application;*
 7. *A statement of the preliminary determination of consistency, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation and of consistency as provided in TMC 14.16.010; 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 pursuant to TMC 14.14.040, 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 for land use permit applications 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 14.18.010

- A. *The notice of decision shall be issued pursuant to the general notice requirements of TMC 14.10.050.*
- B. *Final hearing examiner decisions.*
 1. *Not later than ten working days following the decision of the hearing examiner granting or denying a land use permit application or an appeal, the applicant and parties of record shall be notified of the decision in writing.*
 2. *Such written notification shall include the findings of fact for denial or approval, whichever is applicable.*
- B. *Written notice for all final decisions shall be sent to the applicant and all parties of record.*
- C. *The notice shall include:*
 1. *A statement of any threshold determination made under Chapter 43.21C RCW;*
 2. *Procedures for administrative or judicial appeal, if any; and*
 3. *A statement that affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. The department shall provide the notice of decision to the county assessor's office.*

2) Appeals of Administrative Approvals

The proposed amended section is as follows:

TMC 14.18.020

- A. *Written appeals of Type I and Type II land use permit application decisions may be filed with the city clerk within fourteen days of the final director decision pursuant to TMC Table 14.12.020(B).*
- B. *The appeal shall specify the grounds for the appeal and be accompanied by a fee as established by a resolution of the city council.*
- C. *Upon receiving such an appeal, the city clerk shall immediately forward the appeal to the hearing examiner, along with all records and proceedings pertaining to the decision, together with such additional written report as the director deems pertinent.*
- D. *The hearing examiner shall set a date for a hearing of the appeal.*
- E. *Notice of any required public hearing, stating the nature of the appeal with time and location of hearing, shall follow the procedures outlined in TMC 14.18.040.*
- F. *In exercising their powers, so long as such action is in conformity with the terms of the Tumwater Municipal Code, the hearing examiner may reverse or affirm, wholly or partly, or may modify the decision, and to that end, shall have all power of the director from whom the appeal is being taken, insofar as the decision on the particular issue is concerned, and in making the determination, the hearing examiner may hear any pertinent facts bearing on the case.*

3) Appeals of State Environmental Policy Act Related Matters

The proposed amended section is as follows:

TMC 14.18.030

- A. *The city establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:*
 - 1. *Any aggrieved agency or person may file an appeal concerning the city's conditioning, lack of conditioning or denial of an action pursuant to Chapter 197-11 WAC. All such appeals shall be made to the hearing examiner and must be filed within six days after the comment period for the threshold decision has expired. This appeal and any other appeal of a land use action shall be considered together.*
 - 2. *The following threshold decisions or actions are subject to timely appeal:*
 - a. *Determination of Significance. Appeal of a determination of significance or a claim of error for failure to issue a determination of significance may only be appealed to the hearing examiner within that fourteen-day period immediately following issuance of such initial determination.*
 - b. *Determination of Nonsignificance or Mitigated Determination of Nonsignificance. Conditions of approval and the lack of specific conditions may be appealed to the hearing examiner within six calendar days after the SEPA comment period expires.*
 - c. *Environmental Impact Statement. A challenge to a determination of adequacy of a final EIS may be heard by the hearing examiner in conjunction with any appeal or*

hearing regarding the associated land use permit. Where no hearing is associated with the proposed action, an appeal of the determination of adequacy must be filed within fourteen days after the thirty-day comment period has expired.

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

3. For any appeal under TMC 14.18.030(A) the city shall keep a record of the appeal proceedings, which shall consist of the following information:

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

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

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

4) Notice of Open Record and Appeal Hearings

The proposed amended section is as follows:

TMC 14.18.040

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

- 1. Time, Form, and Content of Notices. Except as otherwise required, public notification of meetings, hearings, and pending actions under TMC Title 14 Development Code Administration, TMC Title 16 Environment, TMC Title 17 Land Division, and TMC Title 18 Zoning shall be made at least ten days before the date of the public meeting, hearing, or pending action pursuant to the general notice procedures in TMC 14.10.050.*
- 2. Continuations. If, for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date certain and no further notice under TMC 14.18.040 is required.*

5) Combined Public Hearings

The proposed amended section is as follows:

TMC 14.18.050

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 if additional time is needed to combine the hearings.*

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

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;*
 14. *Business license denials or revocations;*
 15. *Code violations pursuant to TMC Chapter 1.10; and*
 16. *Land use code interpretations.*
- B. The examiner shall have any duties and related authority prescribed to the hearing examiner by this code or other city ordinance.*
- C. The examiner is authorized to act in lieu of the building board of appeals. Wherever existing ordinances, codes, or policies authorize or direct the building board of appeals to undertake certain activities, such ordinances, codes, or policies shall be construed to refer to the hearing examiner.*
- D. The decision of the hearing examiner shall be final unless such decision is appealed to Thurston County superior court pursuant to TMC 2.58.180.*

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 as allowed by state law 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, require completed SEPA determination and land use permits approvals for a complete building permit application, 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 and add a new chapter that details the requirements for site plan review and approval, which are not currently part of the TMC.

1) Site Plan Review

Chapter 18.55

SITE PLAN REVIEW

Sections:

18.55.010 Purpose.

18.55.020 Applicability.

18.55.030 Exemptions.

18.55.040 Application requirements.

18.55.050 Review process.

18.55.060 Appeals.

18.55.070 Duration of site plan approval.

18.55.080 Exception to duration of approval for phased projects.

18.55.090 Minor modifications.

18.55.100 Major modifications.

18.55.110 Revocation of site plan approval.

18.55.120 Compliance.

18.55.130 Penalty for noncompliance.

18.55.010 Purpose.

A. *The purpose of the site plan approval process is to:*

1. *Facilitate project design that is consistent with the city’s comprehensive plan and regulations and in keeping with the physical constraints of the project site;*
2. *Promote orderly community growth;*

3. *Minimize discordant and undesirable impacts of development both on site and off site;*
4. *Coordinate public or quasi-public elements, such as walkways, driveways, paths, and landscaping within segments of larger developments and between individual developments;*
5. *Ensure convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;*
6. *Protect the desirable aspects of the natural landscape and environmental features of the city by minimizing the undesirable impacts of proposed developments on the physical environment; and*
7. *Minimize conflicts that might otherwise be created by a mix of uses within an allowed area.*

B. The site plan review is not intended to determine whether a particular land use activity is appropriate on a particular site.

C. Land uses that are otherwise permitted in this title shall not be denied through the site plan review process unless such uses cannot meet the development standards required for the use.

D. Site plan review shall be consolidated with other land use permit approvals pursuant to TMC Title 14 Development Code Administration.

E. Site plan review does not replace any required environmental, land division or zoning approvals.

18.55.020 Applicability.

A. Site plan elements subject to this chapter include, but are not limited to:

1. *Site layout;*
2. *Building orientation;*
3. *Pedestrian and vehicular access;*
4. *Signage;*
5. *Landscaping and natural features of the site;*
6. *Integration of stormwater management techniques;*
7. *Screening and buffering;*
8. *Parking and loading arrangements, and illumination; and*
9. *Design review.*

B. Site planning is the horizontal and vertical arrangement of the elements in TMC 18.55.020(A) that is compatible with the city's comprehensive plan and regulations, and the physical characteristics of a site and the surrounding area.

- C. *Site plan review shall be required in the following instances:*
1. *Construction or expansion of new facilities or structures, except for individual single-family dwellings, duplexes, triplexes, quadplexes, townhouses, and stacked units or*
 2. *Where, in the opinion of the director, the magnitude and character of the project is sufficiently complex to warrant site plan review, or the project could result in an adverse effect on adjacent properties or the subject property or other public facilities if not planned early and carefully.*

18.55.030 Exemptions.

- A. *Site plan review shall not be required for remodeling existing buildings or structures provided:*
1. *The alterations conform with any prior approved site plan review approval; or*
 2. *The alterations do not modify the existing site layout.*
- B. *The following types of uses are not exempt from site plan review unless they meet the conditions of TMC 18.55.030(A):*
1. *Individual single family dwellings, duplexes, triplexes, or quadplexes located on property with critical areas; or*
 2. *Two or more single family dwellings, duplexes, triplexes, or quadplexes built on the same lot.*

18.55.040 Application requirements.

- A. *Site plan review applications shall not be accepted for processing until the applicant has scheduled and attended preapplication conferences pursuant to TMC 14.14.020.*
- B. *For any project requiring a site plan approval as identified in TMC 18.55.020, a site plan review application shall be submitted to the community development department for review and approval pursuant to TMC Chapter 14.12 as either a Type I land use permit application, if SEPA review is not required, or as a Type II land use permit application, if SEPA review is required.*
- C. *Application for site plan review shall include the information required by TMC 14.14.030, unless waived by the director.*

18.55.050 Review process.

- A. *Upon receipt of the complete site plan review application, the director shall circulate the site plan review application pursuant to the requirements of TMC 14.16.040.*
- B. *Site plan review applications shall be reviewed as either a Type I land use permit application, if SEPA review is not required, or as a Type II land use permit application, if SEPA review is required.*
- C. *Modifications and conditions may be imposed to meet city regulations and to the extent reasonably necessary to eliminate or minimize adverse effects on adjacent properties, subject properties, or public facilities.*

1. *The decision to require modifications or conditions shall be based upon the following factors:*
 - a. *Noise level;*
 - b. *Traffic flow, internal circulation, sight obstruction, and parking;*
 - c. *Drainage and flood control;*
 - d. *Location, size, and availability of public facilities;*
 - e. *Requests for variance or conditional use;*
 - f. *Environmental or land division approvals;*
 - g. *Effect of the project on adjacent and surrounding properties; and*
 - h. *Landscaping, and site or building design.*
- D. *Modifications and conditions required by the director shall be limited to:*
 1. *Location, dimensions, and method of improvements to all property to be dedicated to the public or to public utilities including, but not limited to, street right-of-way and utility easements;*
 2. *Location, size, dimensions of yards, courts, setbacks, and all other open spaces between buildings and structures;*
 3. *Location, dimensions, and method of improvement of all driveways, curbs and gutters, parking areas, walkways and means of access, ingress and egress, and drainage;*
 4. *Location, size, bulk, exterior surfaces, height, and number of stories of all buildings and structures, including signs, walls, and fences;*
 5. *Location, size, dimensions, design elements, and materials used in landscaped areas; and*
 6. *Improvements to city standards of adjacent streets by the applicant, including paving, curbs, gutters, sidewalks, provisions of streetlights, and traffic-control facilities where the city determines that traffic generation, flow, and circulation patterns warrant such improvement.*

18.55.060 Appeals.

- A. *Appeals of decisions by the director relating to site plan applications may be appealed to the hearing examiner by submitting to the city clerk a written notice of appeal within fourteen days of the director's decision.*

18.55.070 Duration of site plan approval.

- A. *The approval of a site plan shall vest the applicant to the land use regulations in effect at the time of the application for a period of eighteen months after approval; provided that the applicant files a complete application for a building permit within this timeframe.*
- B. *The director may grant an extension pursuant to TMC 14.10.070(B).*

18.55.080 Exception to duration of approval for phased projects.**A. Phasing Permitted.**

1. For development proposed on only a portion of a particular site, an applicant may choose to submit a site plan application for either the entire site or a portion of the site.
2. For development proposed on only a portion of a particular site, the application shall clearly state the area of the portion of the site and the proposed development, including phases, for which site plan approval is being requested.
3. In every case, the site plan application and review shall cover at least that portion of the site which is directly related to or may be impacted by the actual proposed development, as determined by the director.

B. Authority for Extension of Time.

1. The director may grant site plan approval for large projects planned to be developed or redeveloped in phases over a period of years, exceeding the normal time limits of this chapter.
2. Such approval shall include clearly defined phases and specific time limits for each phase.

C. Expiration of Phase(s).

1. If the time limits of a particular phase are not satisfied then site plan approval for that phase and subsequent phases shall expire.
2. The director shall determine if such a phased project will be eligible for any extensions of the time limits.

D. Vesting.

1. If the development of a phased project conforms to the approved phasing plan, the land use regulations in effect at the time of the original approval shall continue to apply.
2. However, all construction shall conform to the current regulations in TMC Title 15 Buildings and Construction and stormwater regulations in force at the time of building permit application.

18.55.090 Minor modifications.**A. Minor modifications to an approved site plan may be permitted by the director.****B. To be considered a minor modification, the amendment must not:**

1. Involve more than a ten percent increase in area or scale of the development in the approved site plan;
2. Have a significantly greater impact on the environment and facilities than the approved site plan; or
3. Change the boundaries of the originally approved site plan.

18.55.100 Major modifications.

- A. *Major modifications to an approved site plan require a new application.*
- B. *The review and approval shall be by the approval body which approved the original site plan.*
- C. *Major modifications involve a substantial change in the basic site design plan, intensity, density, use and the like involving more than a ten percent change in area or scale.*

18.55.110 Compliance.

No person shall violate or fail to comply with the provisions of this chapter or any adopted site plan approval or any conditions or provisions thereof, nor shall a building permit be issued for any structure which would violate or fail to comply with any adopted site plan approval for the parcel or parcels on which such structure is to be located.

18.55.120 Penalty for noncompliance.

- A. *Anyone found in violation of this chapter shall be guilty of a misdemeanor as defined in TMC Chapter 1.10.*
- B. *Each day the violation continues may be considered as a separate violation.*

2) Comprehensive Plan and Development Code Amendments

A new section was added to TMC Chapter 18.60 *Text amendments and Rezones* to address the recommendation and approval procedures for comprehensive plan amendments, general area rezones, development regulation amendments, and site-specific rezones required because of a proposed comprehensive plan amendment that were formerly addressing TMC Title 14.

18.60.027 Procedure – Recommendation and Approval.

- A. *For comprehensive plan amendments, general area rezones, development regulation amendments, and site-specific rezones required as a result of a proposed comprehensive plan amendment, the review and approval authorities shall be as follows:*
 1. *The planning commission shall conduct an open record predetermination hearing on all the amendments collectively and provide a recommendation to the city council.*
 2. *The city council will consider the recommendation of the planning commission and make the final decision on all the amendments collectively.*
- B. *Site-specific rezones not requiring a comprehensive plan amendment shall be processed as a Type III land use permit application pursuant to TMC Title 14 Development Code Administration.*

4. Next Steps

A. Planning Commission Review and Recommendation Process

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

The Planning Commission conducted a hearing on the ordinance on November 12, 2024, to take public testimony and forward a recommendation of approval to the City Council.

B. 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.

ORDINANCE NO. O2024-005

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

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

WHEREAS, the modified state requirements for local land use permit review will preempt the City's development review procedures on January 1, 2025 until City amendments are approved; and

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

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

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

WHEREAS, the Attorney General *Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property* (October 2024) was reviewed and utilized by the City in objectively evaluating the proposed amendments; and

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

WHEREAS, on September 30, 2024, the Washington State Department of Commerce notified the City that the requirements for State Agency notification for the proposed amendments had been met, as required by RCW 36.70A.106; and

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

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

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

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

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

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

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

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

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

2.58.090 Powers of the examiner.

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

A. The examiner shall receive and examine all available information, conduct public hearings, and prepare a record thereof and enter findings of fact and conclusions based upon these facts, which conclusions shall represent the final action on the application, unless appealed as provided for herein, for the following matters:

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

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

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

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

(Ord. O2013-018, Amended, 09/17/2013; Ord. O2012-009, Amended, 08/06/2012; Ord. O2010-014, Amended, 06/15/2010; Ord. O2009-018, Amended, 01/19/2010; Ord. O2005-021, Amended, 09/06/2005; Ord. O96-024, Amended, 09/17/1996; Ord. O96-004, Amended, 04/16/1996; Ord. O95-022, Amended, 11/07/1995; Ord. 1333, Amended, 10/20/1992; Ord. 1278, Amended, 08/20/1991; Ord. 1259, Added, 11/06/1990)

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

2.58.120 Notices and hearings – Appeal rights.

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

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

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

3.30.050 Project eligibility.

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

A. Location. The project must be located within a residential target area as designated in TMC 3.30.030.

B. Tenant Displacement Prohibited. The project must not displace existing residential tenants of structures that are proposed for redevelopment. Existing dwelling units proposed for rehabilitation must have been unoccupied for a minimum of twelve months prior to submission of an application and must have one or more violations of the International Property Maintenance Code of the city of Tumwater. Applications for new construction cannot be submitted for vacant property upon which an occupied residential rental structure previously stood,

unless a minimum of twelve months has elapsed from the time of most recent occupancy.

C. **Size.** The project must include at least four units of multifamily housing within a residential structure or as part of an urban development. A minimum of four new units must be constructed or at least four additional multifamily units must be added to existing occupied multifamily housing. Existing multifamily housing that has been vacant for twelve months or more does not have to provide additional units so long as the project provides at least four units of new, converted, or rehabilitated multifamily housing.

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

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

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

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

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

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

3.30.070 Application review and issuance of conditional certificate.

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

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

1. A minimum of four new units are being constructed or in the case of occupied rehabilitation or conversion a minimum of four additional multifamily units are being developed;

2. If applicable, the proposed multi-unit housing project meets the affordable housing requirements as described in RCW 84.14.020;
3. The proposed project is or will be, at the time of completion, in conformance with all local plans and regulations that apply at the time the application is approved;
4. The owner has complied with all standards and guidelines adopted by the city under this chapter; and
5. The site is located in a residential targeted area of an urban center that has been designated by the city council in accordance with procedures and guidelines of this chapter.

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

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

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

11.20.040 Processing procedures – Issuing authority and appeals.

A. Fully complete applications for WCF permits shall be processed in accordance with the ~~project land use~~ permit processing requirements of TMC ~~Title 14 Development Code Administration Chapter 14.02~~. Final decisions and appeal authorities for such permits are as described in TMC ~~Table 14.12.020(A)14.08.030~~.

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

1. Time Frame for Review. Subject to the tolling provisions of subsection (B)(2) of this section, within sixty days of the date on which an applicant submits a

~~complete written~~ application seeking approval under this chapter, the city shall act on the application unless it determines that the application is not covered by this subsection.

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

a. To toll the time frame for incompleteness, the city must provide written notice to the applicant within thirty days of receipt of the application, specifically delineating all missing documents or information required in the application;

b. The time frame for review begins running again when the applicant makes a supplemental written submission in response to the city's notice of incompleteness; and

c. Following a supplemental submission, the city will notify the applicant within ten days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in subsection (B)(2)(a) of this section. In the case of a second or subsequent notice of incompleteness, the city may not specify missing information or documents that were not delineated in the original notice of incompleteness if no new information submitted by the applicant alters a previously reviewed aspect of the application.

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

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

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

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

13.12.020 Stormwater management.

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

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

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

water does not increase the pollutant load of the receiving urban stormwater;
and

8. Other nonstormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed and approved by the director, which addresses control of such discharges by applying AKART to prevent pollutants from entering surface or ground water.

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

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

D. Storm Drainage System – Inspections and Maintenance.

1. Maintenance of Stormwater Drainage System by Owners.
 - a. Any person(s) holding title to a premises for which a stormwater drainage system and BMPs have been required shall be responsible for the continual operation, maintenance and repair of said stormwater facilities and BMPs in accordance with the provisions of this chapter.
 - b. For privately maintained stormwater facilities, the maintenance requirements specified in this chapter, including the manual, shall be enforced against the owner(s) of the property served by the stormwater facility.

2. Maintenance Agreement Required for Privately Maintained Stormwater Facilities.

- a. When applicable, prior to the issuance of a certificate of occupancy, the person(s) holding title to a premises for which a stormwater system has been required shall record a maintenance agreement which guarantees the city that the stormwater facilities shall be properly operated, maintained and inspected. Restrictions set forth in such agreement shall be included in any instrument of conveyance of the premises and shall be recorded with the Thurston County auditor.
- b. The director may require the person(s) responsible for existing stormwater facilities, for which the city has not previously received a maintenance agreement, to record a maintenance agreement for the premises.
- c. Maintenance agreements shall remain in force for the life of the development, or until the responsibility for the operation and maintenance of the subject stormwater facilities is accepted by the city.

3. City Acceptance of Existing Stormwater Facilities.

- a. The city is responsible for the maintenance, including performance and operation, of stormwater facilities which have formally been accepted for maintenance by the director.
- b. The city may assume maintenance of privately maintained stormwater facilities only if the following conditions have been met:
 - i. All necessary easements or dedications entitling the city to properly maintain the stormwater facility have been conveyed to the city;
 - ii. The director has determined that the stormwater facility is in the dedicated public road right-of-way or that maintenance of the facility will contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:
 - (A) Flooding,
 - (B) Downstream erosion,
 - (C) Property damage due to improper function of the facility,
 - (D) Safety hazard associated with the facility,
 - (E) Degradation of water quality or in-stream resources, or
 - (F) Degradation to the general welfare of the community; and

- iii. The director has declared in writing acceptance of maintenance responsibility by the city. Copies of this document will be kept on file in the public works department.
 - c. The director may terminate the city's assumption of maintenance responsibilities in writing after determining that continued maintenance will not significantly contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:
 - i. Flooding;
 - ii. Downstream erosion;
 - iii. Property damage due to improper function of the facility;
 - iv. Safety hazard associated with the facility;
 - v. Degradation of water quality or in-stream resources; or
 - vi. Degradation to the general welfare of the community.
 - d. A stormwater facility which does not meet the criteria of this section shall be the responsibility of the person(s) holding title to the premises for which the facility was required.
 - e. Director may recover costs for maintenance activities incurred by the city from the person(s) holding title to the premises served by the stormwater facility.
- 4. City Inspections of Privately Maintained Stormwater Facilities.
 - a. The director is authorized to develop and implement an inspection program for privately owned and maintained stormwater facilities in the city. The purpose of this inspection program shall be to determine if said stormwater facilities, conveyance structures and water quality facilities are in good working order and are properly maintained, and to ensure that stormwater quality BMPs are in place and that nonpoint source pollution control is being implemented.
 - b. As part of the inspection program, or whenever there is cause to believe that a violation of this chapter has been or is being committed, the city is authorized to inspect during regular working hours, or at other reasonable times, any and all stormwater drainage facilities within the city to determine compliance with the provisions of this chapter.
 - c. When making any inspections, the director or designee shall follow the procedures delineated in subsection (D)(5) of this section.
- 5. Inspection Procedures.

- a. Prior to making any inspections, the city shall present identification, state the reason for the inspection and request entry.
- b. If the premises is unoccupied, the city shall make a reasonable effort to locate the person(s) having charge or control of the property or portions of the property and request entry.
- c. If, after reasonable effort, the city is unable to locate the person(s) having charge or control of the property, and has reason to believe the condition of the site or of the stormwater drainage system creates an imminent hazard to persons or property, the city may enter.
- d. If entry is not consented to by the owner or person(s) in control of the property or portion of the property, and no conditions are reasonably believed to exist which create a risk of imminent hazard, the inspector shall obtain a search warrant prior to entry. To the extent authorized by the laws of the state of Washington, the Tumwater municipal court is hereby authorized to issue a warrant permitting the inspection of privately owned stormwater facilities, upon a showing of probable cause to believe that a provision of this title has been or is being violated.
- e. The inspector may also inspect the stormwater drainage system without obtaining a search warrant provided for in subsection (D)(5)(d) of this section, provided the inspection can be conducted while remaining on public property or other property on which permission to enter is obtained.

E. Illicit Connections – Inspection and Removal.

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

F. Administration.

1. General. The director is authorized to implement and enforce the provisions of this chapter. The director will coordinate the implementation and enforcement of this chapter with other city departments.

2. Treatment BMPs. In the event that a person discharges stormwater into a municipal separate storm sewer system (MS4) that is not of a quality that complies with city, county, state, and/or federal requirements, or where determined necessary, water quality-based requirements, the person shall provide necessary source control/stormwater treatment BMPs as required to comply with these requirements.

a. The manual shall be used to select acceptable technologies.

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

c. Upon completion of the treatment facility, the person responsible for the premises shall furnish its operations and maintenance procedures to the city for review and approval. Any subsequent changes in the treatment facilities or operation and maintenance procedures shall be reported to and be accepted by the city prior to initiation of the changes.

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

G. Enforcement.

1. Authorization. The director is authorized to enforce this chapter and any permit, order or approval issued pursuant to this chapter, against any violation

or threatened violation thereof. Violations of this chapter shall constitute a public nuisance. The director is authorized to take enforcement action for violations of this chapter including but not limited to illicit discharges and connections, as well as dumping as described in this chapter.

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

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

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

- i. Owner Information. Name and address of the property owner and/or other person(s) to whom the notice and order is directed.
- ii. Description of Violation. The specific nature, extent, and time of violation.
- iii. Code Reference. Reference to the provision of code which has been violated.
- iv. Corrective Measures. The order may include specific corrective measures to be taken to correct the violation and a date or time by which correction is to be completed.
- v. Correction Required. The order shall include a statement that the person(s) to whom the notice is directed must:
 - (A) Complete correction by the date stated in the notice;
 - (B) Appeal the notice and order to the hearing examiner within fourteen days as provided in TMC ~~1.10.07014.08.030~~; or
 - (C) Enter into and comply with a voluntary correction agreement with the city.
- vi. Nonaction. The order shall include a statement that if the violation is not corrected, the notice and order not appealed, a voluntary correction

agreement not entered or complied with, or hearing examiner order not complied with, a penalty as specified in this chapter shall accrue, and that the violation may be abated by the city and costs assessed against the person(s) as authorized by this chapter.

vii. Service. The notice and order shall be served by personal delivery or mailing a copy by registered or certified mail and/or by posting a copy conspicuously on the affected property, etc. The order issued under this section shall become effective immediately upon personal delivery or posting, or, in the case of mailing, three days after deposited in the U.S. mail.

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

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

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

(C) Within fourteen days of receiving the notice of violation, the person may appeal the penalty or action to the hearing examiner as provided in TMC [1.10.07014.08.030](#).

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

c. Abatement by City. The city may perform the abatement required upon noncompliance with the terms of an unappealed notice and order, a voluntary correction agreement, or a final order of the hearing examiner. The city may utilize city employees or a private contractor under city direction to

accomplish the abatement. The city, its employees and agents using lawful means are expressly authorized to enter upon the property of the violator for such purposes.

- i. **Recovery of Abatement Costs.** The city shall bill its costs, including incidental expenses, of abating the violation to the person obligated to perform the work under the notice and order, voluntary correction agreement or the hearing examiner's decision, which costs shall become due and payable thirty days after the date of the bill. The term "incidental expenses" shall include, but not be limited to, personnel costs, both direct and indirect, including attorney's fees incurred by the city; costs incurred in documenting the violation; the actual costs and expenses in the preparation of notices, specifications and contracts, and in inspecting the work; and the cost of any required printing and mailing. The director, or the hearing examiner, may in ~~his or her~~their discretion waive in whole or part the assessment of any costs of abatement upon a showing that abatement has occurred or is no longer necessary, or that the costs would cause a significant financial hardship for the person(s) responsible for the violation. The city may authorize the use of collection agencies to recover costs. The city attorney is authorized to collect the costs by use of appropriate legal remedies.
- ii. **Obstruction with Work Prohibited.** No person shall obstruct, impede or interfere with the city, its employees or agents, or any person who owns or holds any interest or estate in any property in the performance of any necessary act, preliminary or incidental to carrying out the requirements of a notice and order to correct, voluntary correction agreement, or order of the hearing examiner issued pursuant to this chapter. A violation of this provision shall constitute a misdemeanor.
- iii. **Report to the City Council on Cost of Abatement.** Where costs are assessed under this section and the person(s) responsible fails to pay within the thirty-day period, the director shall prepare a written itemized report to the city council showing the cost of abatement, including rehabilitation, demolition, restoration or repair, including such salvage relating thereto plus the amount of any outstanding penalties.
 - (A) A copy of the report and a notice of the time and date when the report shall be heard by the city council shall be served on the person(s) responsible for payment at least five days prior to the hearing before the city council.
 - (B) The city council shall review the report and such other information on the matter as it receives and deems relevant to the

hearing. The city council shall confirm or revise the amounts in the report, authorize collection of that amount or, in the case of a debt owed by a property owner, authorize placement of an assessment lien on the property as provided herein.

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

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

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

4. **Records Retention.** All persons subject to these regulations shall retain and preserve for no less than three years any records, books, documents, memoranda, reports, correspondence, and any and all summaries thereof, relating to operation, maintenance, monitoring, sampling, and chemical analysis

made by or on behalf of a person in connection with its discharge. All records which pertain to matters which are the subject of enforcement or litigation activities brought by the director pursuant to this chapter shall be retained and preserved by the person until all enforcement activities have concluded.

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

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

Title 14

DEVELOPMENT CODE ADMINISTRATION

Chapters:

14.10 GENERAL PROVISIONS

14.12 LAND USE PERMITS

14.14 LAND USE PERMIT PREAPPLICATION AND APPLICATION PROCESS

14.16 LAND USE PERMIT APPLICATION REVIEW

14.18 LAND USE PERMIT APPLICATION DECISIONS AND APPEALS

Chapter 14.10

GENERAL PROVISIONS

Sections:

14.10.010 Intent.

14.10.020 Definitions.

14.10.030 Applicability.

14.10.040 Time limits.

14.10.050 General notice requirements.

14.10.060 Determination of a substantially different proposal.

14.10.070 Expiration of approvals.

14.10.080 Other provisions.

14.10.010 Intent.

A. The purpose of this title is to combine and consolidate the application, review, and approval processes for land use 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 director of 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 permit approvals within the period established by this title, the city should strive to process land use permits in a timely manner. Provided, however, permit processing should not be conducted so as to adversely affect the public's right to provide appropriate input to the process and exercise appeal rights.

14.10.020 Definitions.

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

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

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

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 department. This determination initiates the statutory review period for the application, if any, and subject to certain exceptions, entitles the applicant to have the application considered and reviewed pursuant to the laws, regulations, and standards in effect on the date the application was complete.

F. "Development guide" means the Tumwater development guide pursuant to TMC 15.02.010 or as subsequently amended.

G. “Development review committee” means a group of development review staff from city departments assigned by the director to conduct preapplication conferences and review 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 oversees 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 submitting 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. A land use action also includes any proposal for the 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 14.12.020(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 14.16.030(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 such applications designed to evaluate developing application submittal documents, to answer questions and provide procedural information to prospective applicants, and to guide applicants with preparation of a land use 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 submitting the land use permit application.

14.10.030 Applicability.

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

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

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

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

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

1. A change of use of land, variance, planned unit development, site plan review, application of citywide design guidelines, or other land use permit approvals in TMC Title 18 Zoning, aside from those approvals excluded in TMC 14.10.030(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 14.10.060;

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 pursuant to TMC Title 16 Environment;

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

4. Shoreline approvals pursuant to the city's shoreline master program; and

5. Site-specific rezones that do not require a comprehensive plan amendment pursuant to TMC 18.60.

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

1. Building and construction approvals pursuant to TMC Title 15 Buildings and Construction;

2. Floodplain development permits pursuant to TMC 18.38;

3. Text amendments to the municipal code, general area rezones, site-specific rezones that require a comprehensive plan amendment, and comprehensive plan text or map amendments pursuant to TMC 18.60; and

4. Any other approvals not listed in TMC 14.10.030(C).

14.10.040 Time limits.

A. Except as otherwise provided in this title, the director shall issue a notice of final decision or approve a land use permit application within the number of days established by TMC Table 14.12.030 after notifying the applicant that such an application is complete, as provided in TMC 14.14.040.

B. In determining the number of days that have elapsed after the director has established that a land use permit 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 land use 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 14.14.040(A)(2), the director shall notify the applicant of the deficiencies and the procedures under TMC 14.14.040(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 director has notified the applicant in writing that additional information is required to further process the land use permit 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 director to the applicant that additional information is required to further process the land use permit 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 such an application will expire pursuant to TMC 14.10.040(B)(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 additional requested 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 14.12.030 do not apply if a land use permit application:

1. Requires approval of the siting of an essential public facility as provided in RCW 36.70A.200; or
2. Is substantially revised by the applicant as determined by the process in TMC 14.10.060, in which case the time period shall start from the date at which the revised land use permit application is determined to be complete under TMC 14.14.040.

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 14.12.030, as extended as allowed by TMC 14.10.070, 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 14.12.030 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 14.12.030 to the time of the issuance of the final decision exceeded twenty percent of the original time period.

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

14.10.050 General notice requirements.

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

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

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

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

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

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

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 shall specify the first and last date and time by which written public comment may be submitted.

E. 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.

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

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

14.10.060 Determination of a substantially different proposal.

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

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

1. The relative and absolute magnitude of the revision;

2. The environmental sensitivity of the site; and

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

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

D. The director shall provide a written notice of the determination that the revision is so substantial as to constitute a new land use permit 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 14.12.030 to restart from the date when such a 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 a revised application.

14.10.070 Expiration of approvals.

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

B. Land Use Permit Approval.

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

a. A land use permit approval expires and is null and void eighteen months from the date the final approval was issued unless complete applications for necessary building and construction permits have been submitted or 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 building and construction permit 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 the 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 a written request for extension is not received by the department prior to expiration, the director shall deny such extension.

2. If there are multiple land use permit approvals for a project with conflicting approval periods, the longest approval period shall be followed.

C. Land Divisions.

1. Preliminary Plats. The duration of preliminary plat approvals is found in TMC 17.14.080.

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

D. Conditional Use Permits. Time limitations for conditional use permit approvals are found in TMC 18.56.070.

E. Planned Unit Developments. Time limitations for planned unit development approvals are found in TMC 18.36.170.

F. Site Plan Reviews. Time limitations for site review approvals are found in TMC 18.55.070.

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

H. Variances and Reasonable Use Exceptions. Unless utilized, a variance or reasonable use exception expires eighteen months from the date a final decision is issued.

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

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

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

3. During such extensions granted pursuant to this subsection, approvals shall continue to be subject to the conditions of approval and vested rights that

applied to the approval prior to the extension, except for storm drainage standards, design standards, and building and fire codes, unless the incidental take permit would significantly alter the approval.

14.10.080 Other provisions.

A. Land Use Code Interpretations.

1. Purpose and applicability.

a. The purpose of this section is to establish the procedure for interpreting provisions of city land use codes to clarify conflicting or ambiguous wording.

b. The director is authorized to make written interpretations of the provisions of the following titles of the Tumwater Municipal Code:

i. TMC Title 14 Development Code Administration;

ii. TMC Title 16 Environment;

iii. TMC Title 17 Land Division;

iv. TMC Title 18 Zoning; and

v. Shoreline Management Program.

c. Issuance of an interpretation of the provisions of the codes cited in TMC 14.10.080(A)(1)(b) shall not amend the code.

2. Interpretation requests.

a. Requests may be made by an applicant prior to the submission of a land use permit application.

i. A written request on a form provided by the department shall be submitted that specifies each provision of the code in TMC 14.10.080(A)(1)(b) for which an interpretation is requested.

ii. The written request shall specify why an interpretation of each provision is necessary and any reasons or materials in support of the proposed interpretation.

b. Code interpretations after a land use permit application has been submitted shall be made as part of the applicable land use permitting process pursuant to TMC Title 14 Development Code Administration.

3. Procedure.

a. The director shall evaluate the request and determine whether the request is justified or not;

b. If the director determines that the request is justified, the request shall be:

- i. Processed as a Type I land use permit application type decision; or
 - ii. Consolidated with the process associated with a preliminary or formal preapplication conference.
 - c. The director shall consult with the State Department of Ecology regarding any interpretation of the shoreline management program.
 - 4. Factors for consideration. In making an interpretation of the provisions of the land use code, the director shall consider the following criteria:
 - a. The applicable provisions of the land use code including their purpose and context;
 - b. The impact of the interpretation on other provisions of the code;
 - c. The implications of the interpretation for development within the city as a whole; and
 - d. The applicable provisions of the comprehensive plan and other relevant codes and policies.
 - 5. Issuance of interpretation.
 - a. The director shall issue a written interpretation within thirty days of the department's receipt of the interpretation request.
 - b. Issuance of the interpretation shall include notification of the person making the request and publication of the interpretation on the city's website.
 - c. Issued interpretations are not project approvals.
 - 6. Appeals.
 - a. The applicant may file an appeal of an issued interpretation.
 - b. The appeal shall follow all rules and procedures for appeals of Type I land use permit applications to the hearing examiner as set forth in TMC Title 14 Development Code Administration.
- B. Dedication, Improvements, and Performance Bonds. As a condition of land use permit approval, the city may require an applicant to dedicate property, construct public improvements, or furnish performance bonds to the city to secure an obligation to complete the provisions and conditions of the land use permit as approved.
- C. Building and Construction Permits. The city shall not issue any building permit for the construction, alteration, or relocation of any building, structure, or part thereof or construction permit for the construction of any site improvements unless the plans, specifications, and intended use of such building or structure and

site conforms in all respects to the final land use permit approval(s) required by this title.

D. Fees. Land use permit application fees are established by city council resolution.

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

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

Chapter 14.12

LAND USE PERMITS

Sections:

14.12.010 Land use permit application procedures and types.

14.12.020 Decision and appeal authorities.

14.12.030 Land use permit application review periods.

14.12.010 Land use permit application procedures and types.

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, or Type III.

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.

- 3. TMC Table 14.12.010 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 14.12.020(A).
- 5. Permit notice requirements for each land use permit application type is identified in TMC Table 14.12.020(B).
- 6. Review times for each land use permit application type is identified in TMC Table 14.12.030.

Table 14.12.010
Land Use Permit Application Types¹

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

TMC Table 14.12.010 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.

14.12.020 Decision and appeal authorities.

A. TMC Table 14.12.020(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 14.16.040(B) the final decision and appeal shall be rendered by the highest authority designated for any part of the consolidated application in TMC Table 14.12.020(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 14.12.020(B) provides public notice requirements for each land use permit application type. When separate land use permit applications are consolidated under TMC 14.16.040(B), the public notice requirements in TMC Table 14.12.020(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 the original land use permit application approval and is subject to TMC 14.10.060.

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

1. Department Staff. Individual department staff shall have the authority to:

a. Review and make recommendations to the director to approve, deny, modify, or conditionally approve Type I land use permit applications, and

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

2. Development Review Committee.

a. The development review committee shall have authority to:

i. Conduct feasibility review;

ii. Conduct preapplication conferences;

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

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

v. Make recommendations to the director to approve, deny, modify, or conditionally approve Type II land use permit applications; and

vi. Make recommendations to the hearing examiner to approve, deny, modify, or conditionally approve Type III land use permit applications;

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

c. The committee agenda shall be prepared and posted by the department pursuant to the notification standards found in TMC 14.10.050.

3. Director. The director shall have the authority to:

a. Approve, approve with conditions, or deny Type I or II land use permit applications including SEPA determinations, so long as such actions are in conformity with the Tumwater Municipal Code;

b. Consider pertinent facts bearing on land use permit applications in making their decision; and

c. Refer a Type I or Type II land use permit application to the hearing examiner for an open record public hearing, if the director’s determines such an application is extraordinarily complex or presents significant environmental, design, or compatibility issues.

4. Hearing Examiner. The hearing examiner shall have the authority vested pursuant to TMC 2.58.090 to:

a. Conduct open record public hearings on Type III land use permit applications and appeals of director decisions on Type I and II land use permit applications, including SEPA determinations;

b. Approve, approve with conditions, or deny Type III land use permit applications including SEPA determinations, so long as such actions are in conformity with the Tumwater Municipal Code;

c. Decide appeals of director decisions on Type I and II land use permit applications, including SEPA determinations; and

d. Consider pertinent facts bearing on land use permit applications in making their decision.

Table 14.12.020(A)

Decision and Appeal Authority

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

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

TMC Table 14.12.020(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 14.12.020(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 14.12.020(B)
Public Notice Requirements

<u>Land Use Permit Application Type</u>	<u>Determination of Completeness</u>	<u>Notice of Application</u>	<u>Notice of Hearing</u>	<u>Notice of Decision</u>
<u>Type I</u>	<u>No</u>	<u>No</u>	<u>N/A¹</u>	<u>No</u>
<u>Type II</u>	<u>Yes</u>	<u>Yes</u>	<u>N/A¹</u>	<u>Yes</u>
<u>Type III</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>

TMC Table 14.12.020(B) Explanatory Notes:

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

14.12.030 Land use permit application review periods.

A. Review Period.

1. The decision authority established in TMC Table 14.12.020(A) shall make a final decision on a land use permit application within the time limits set forth in TMC Table 14.12.030.

a. When separate land use permit applications are consolidated under TMC 14.16.040(B), the time limits for review in TMC Table 14.12.030 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 14.12.020(A) within the time limits set forth in TMC Table 14.12.030.

Table 14.12.030

Land Use Permit Application Review Times

<u>Land Use Permit Application Type</u>	<u>Time in Review</u>
<u>Type I</u>	<u>90 days</u> <u>• Final Plat: 30 days (TMC 17.24.050)</u>
<u>Type II</u>	<u>120 days</u>
<u>Type III</u>	<u>170 days</u> <u>• Preliminary Plat: 90 days (RCW 58.17.140)</u>

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

1. Up to the first twenty-eight days after receipt of a land use permit application, during which the city determines whether the application is complete pursuant to TMC 14.14.040.

2. Any period during which the applicant has been requested by the city to correct plans, perform studies, or provide additional information pursuant to TMC 14.14.040(D).

3. Any appeal period. See TMC Chapter 14.18 for appeal procedures.

4. Any extension of time mutually agreed upon by the applicant and the city under TMC 14.10.040.

5. The time required to prepare and issue an environmental impact statement in accordance with SEPA.

Chapter 14.14

LAND USE PERMIT PREAPPLICATION AND APPLICATION PROCESS

Sections:

14.14.010 Feasibility review.

14.14.020 Preapplication conferences.

14.14.030 Land use permit applications.

14.14.040 Determination of completeness.

14.14.010 Feasibility review.

A. At the option of the applicant, the development review committee will provide limited information through a feasibility review as a precursor to a preapplication conference as described in TMC 14.14.020.

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. Feasibility review applications shall be scheduled for specific time periods on the agenda prepared for development review committee meetings each week.

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

14.14.020 Preapplication conferences.

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

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

C. At the preapplication conferences, the development review committee shall make available all pertinent information related to the project area. The

preapplication conferences should take place prior to detailed work by the applicant's engineer or surveyor. Discussion topics at conferences would include such things as:

1. The comprehensive plan and subarea plans;
2. The shoreline master program;
3. The regulatory requirements of the following titles:
 - a. TMC Title 14 Development Code Administration;
 - b. TMC Title 15 Buildings and Construction;
 - c. TMC Title 16 Environment;
 - d. TMC Title 17 Land Division, if applicable; and
 - e. TMC Title 18 Zoning;
4. Transportation requirements:
 - a. The transportation plan and transportation concurrency;
 - b. Sidewalk requirements;
 - c. Bike paths; and
 - d. Bus stops;
5. Utilities:
 - a. Availability of sewer and water; and
 - b. Need for utility extension or oversizing;
6. Phasing of off-site requirements such as sidewalks, streetlights, traffic signals, utilities, or improvement of adjacent streets;
7. Latecomer charges;
8. Storm drainage and erosion control;
9. Citywide design guidelines;
10. Other city requirements and permits;
11. Features of the development, and the rationale behind them;
12. If the applicant owns adjacent land, the possibilities of future development shall be discussed; and
13. Application review process and timelines.

D. The development review committee will provide the applicant with written comments on how the proposed project conforms to city policies and regulations,

which will include a list of all the materials needed to make land use permit applications procedurally complete and the requirements for development approval.

E. Preapplication conferences shall consist of two stages:

1. Preliminary Review.

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

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

2. Formal Review.

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

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

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

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

14.14.030 Land use permit applications.

A. Land use permit applications 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 listed in the land use permit application checklist, which are prepared pursuant to TMC 14.14.030(C), as supplemented in writing by the

development review committee pursuant to the preapplication conference process in TMC 14.14.020.

C. The director shall approve the content of the land use permit application checklists and may waive in writing submittal items required by TMC 14.14.030(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 land use permit application form containing:

 - a. The title and location of the proposed project;
 - b. The names, addresses, telephone numbers, and email addresses of the record owner or owners of the land and of the applicant, and, if applicable, the names, addresses, telephone numbers, and email addresses of any architect, planner, designer, engineer, or other consultants responsible for the preparation of the land use permit application, and of any authorized representative of the applicant; and
 - c. The designation of a single person or entity by the applicant to receive land use permit application determinations and notices required by this title;
2. A verified statement by the applicant that the property affected by the land use permit application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all the owners of the affected property;
3. A legal description of the site;
4. A title report or plat certificate issued by a title company which shows property ownership, and any easements or other encumbrances shall be submitted with the land use permit application package. Such title report or plat certificate shall be dated no more than thirty days prior to submittal;
5. The applicable land use permit application fee;
6. Evidence of adequate water supply as required by RCW 19.27.097;
7. Evidence of sewer availability, or approval and authorization to construct a community or individual sewer or septic system;
8. Complete plans, studies, and/or reports identified in the land use permit application checklist and the preapplication conferences;
9. A complete description of the each proposed use of the land and buildings, including the size of each use, and if a residential use, the number, size, and number of bedrooms of each dwelling unit;

10. The written recommendations of the Thurston County health department, the building division, transportation & engineering department, water resources & sustainability department, parks and recreation department, and fire department as to any portion of the land use permit application covering areas within their respective jurisdictions;

11. All materials required by TMC Title 16 Environment shall be included in the land use permit application, including a SEPA environmental checklist if required; and

12. For land use actions proposing land division pursuant to TMC Title 17 Land Division, all materials required by that title shall be included in the land use permit application.

13. A site plan drawing or drawings at a scale of not less than one inch for each twenty feet which shall show:

a. General Information.

i. Project name;

ii. Street address of property;

iii. Title block containing the drawing title, scale, revision number, if applicable, north arrow, and date;

iv. Vicinity map including streets and surrounding landmarks within five hundred feet of the property or enough information to easily locate the site on a large city map;

v. Legal description of the property as provided by the Thurston County assessor's office;

vi. Parcel numbers as provided by the Thurston County assessor's office;

vii. Parcel map as provided by the Thurston County assessor's office showing all adjacent parcels;

viii. Existing zoning;

ix. Lot size;

x. Square footage of floor area in each structure;

xi. Parking spaces and parking lot dimensions;

xii. Type of construction proposed;

xiii. The proposed number of square feet in paved or covered surfaces, whether covered by buildings, driveways, parking lots, or any other

structure covering land; and the total amount of square feet in the entire proposed project site;

xiv. The proposed number of dwelling units and project density, including the number of dwelling units for each existing or proposed structure on the site and number of units per gross acre, if applicable;

xv. The proposed number of square feet in gross floor area for each commercial, industrial, and institutional use, if applicable; and

xvi. If the project will be developed in phases, the number of phases, the size of each phase, and the number of units or buildings for each phase;

b. Site Information.

i. Location of property lines, indicating exterior lines with bold solid lines and interior lines with long dashed lines;

ii. If the property is to be divided pursuant to TMC Title 17 Land Division, the boundaries of each proposed lot and tract within the property;

iii. Survey maps which delineate topographic contour lines showing both existing and proposed elevations, at two foot intervals, extending a minimum of ten feet beyond the property line. The interval should be such that the existing and proposed slopes of the property can be determined on the drawing. Proposed contours shall show ties to existing contours and show spot elevations as needed;

iv. All existing and proposed public and private easements;

v. The number and size of all phases in the proposed project, if applicable;

vi. Proposed building(s), including dimensions;

vii. Front, rear, and side building setbacks with clear dimensions;

viii. Distance to adjacent structures on site, if applicable;

ix. Locations and dimensions of off-street and on-street parking, including accessible parking, parking designated per unit if applicable, lot striping, wheel stops and curbing, including turning radii in the circulation pattern;

x. Locations and dimensions of existing and proposed driveways, traffic flow, emergency vehicle access, and parking lot circulation and maneuvering areas;

- xi. Locations and dimensions of existing and proposed rights-of-way, streets, curbs, gutters, and street centerlines, including pavement edges;
 - xii. Dimensions and locations of walkways, trails, sidewalks, and curb cuts;
 - xiii. Sizes and locations of solid waste containers showing details of any site screening fences or structures and screening of dumpsters;
 - xiv. Location of existing and proposed signs including elevation, size, material, color, design, and method of illumination;
 - xv. Dimensions, types, and locations of fencing;
 - xvi. Locations, dimensions, and types of critical areas and buffers pursuant to TMC Title 16 Environment;
 - xvii. Information required by TMC 16.08.050 addressing trees and vegetation;
 - xviii. Locations, dimensions, and types of open space;
 - xix. Information required by the shoreline master program, if the property the project is located on is within shoreline jurisdiction;
 - xx. The existing zone district of the proposed project site and any other zone district within three hundred feet of the site; and
 - xxi. All special districts, including, but not limited to school or water districts, in which the proposed project shall be located and all such districts within three hundred feet of the proposed project;
- c. Building Information.
- i. Architectural elevations of existing and proposed buildings, including height and number of stories, along with any mechanical roof-mounted equipment; and
 - ii. Generalized floor plans, planned uses for each area of building (including occupancy type, if known), finished floor elevations, and exiting and accessibility accommodations;
- d. Infrastructure Improvements.
- i. Location of existing and proposed storm sewers, catch basins, utility holes, parking lot storm drains, detention structures, etc.;
 - ii. Locations and dimensions of stormwater treatment, flow control, and low impact development facilities;

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

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

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

e. Landscaping.

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

14.14.040 Determination of completeness.

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

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

2. That the land use permit 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 aspects of the land use permit application in the determination of completeness.

C. Definition of a Complete Application. A land use permit application is complete for purposes of TMC 14.14.040 when it meets the procedural submission requirements of TMC 14.14.030, 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 after the procedural review of the land use permit application by the city.

2. The city's determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the determination of completeness or later if additional information is required or where there are substantial changes in the proposed land use action as defined in TMC 14.10.060.

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

1. A preliminary determination of those development regulations that will be used for mitigation of the proposed project;
2. A preliminary determination of consistency pursuant to TMC 14.16.010;
3. Other information the city chooses to include; or
4. The notice of application pursuant to the requirements in TMC 14.16.050.

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 14.10.040(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 14.14.040(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 14.10.040(B)(2).
4. Upon failure to cure any deficiency the department shall refund fifty percent of the filing or land use permit application fees submitted with the incomplete application.

G. City's Failure to Provide Determination of Completeness. A land use permit application shall be deemed procedurally complete under TMC 14.14.040 if the city does not provide a written determination to the applicant that the application is incomplete as provided in TMC 14.14.040(A)(2).

H. When the city determines that the land use permit application is complete, the City shall note the date of the determination and the land use permit application review time to render a decision, as identified in TMC Table 14.12.030, begins.

Chapter 14.16

LAND USE PERMIT APPLICATION REVIEW

Sections:

- 14.16.010 Land use action review and determination of consistency.
- 14.16.020 Initial State Environmental Policy Act analysis.
- 14.16.030 Categorically exempt and planned actions.
- 14.16.040 Referral and review of land use permit applications.
- 14.16.050 Notice of application.

14.16.010 Land use action review and determination of consistency.

A. Purpose. When the department 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 department shall determine whether the items listed in TMC 14.16.010(B)(3) are defined in the development regulations applicable to the proposed project.

2. In the absence of applicable development regulations, the department shall determine whether the items listed in TMC 14.16.010(B)(3) are defined in the city's comprehensive plan.

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

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

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

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

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

C. Nothing in TMC 14.16.010 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 14.16.010(B)(3) as part of land use permit application review.

D. During land use permit application review, the city shall not reexamine alternatives to or hear appeals on the items identified in TMC 14.16.010(B)(3).

E. Nothing in TMC 14.16.010 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 permit application review shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, the payment of impact fees, or other

measures to mitigate a proposal's probable adverse environmental impacts, if applicable.

14.16.020 Initial State Environmental Policy Act analysis.

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

1. Determine whether the applicable regulations require studies that adequately analyze all the land use permit application's specific probable adverse environmental impacts;
2. Determine if the applicable regulations require measures that adequately address such environmental impacts;
3. Determine whether additional studies are required and/or whether the land use permit application should be considered with additional mitigation measures; and
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 14.16.020(A), the city shall not impose additional mitigation under SEPA during land use permit 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 regarding 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 permit approval on compliance with these other existing rules or laws.

F. Nothing in TMC 14.16.020 limits the authority of the city in its review or mitigation of a proposed project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by Chapter 43.21C RCW.

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

14.16.030 Categorically exempt and planned actions.

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

B. Planned Actions.

1. A planned action does not require a threshold determination or the preparation of an environmental impact statement under SEPA but is subject to environmental review and mitigation under SEPA.
2. A “planned action” means one or more types of project action that:
 - a. Are designated planned actions by an ordinance or resolution adopted by the city;
 - 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 14.16.030(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 permit application review, the city shall not reexamine alternatives to or hear appeals on the items identified in TMC 14.16.010(B)(3), except for land use code interpretations pursuant to TMC 14.10.080.

2. Land use permit application review shall be used to identify specific project design and conditions relating to the character of development or other measures to mitigate a proposal's probable adverse environmental impacts.

14.16.040 Referral and review of land use permit applications.

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

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

a. The affected agencies and city departments shall have fourteen days to comment.

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 14.12.020(A)(1);

b. Follow the public notice requirements specified in TMC 14.12.020(B)(1);

c. Follow the permit review timelines specified in TMC 14.12.030(A)(1)(a); and

d. Follow the processes specified in TMC Chapter 14.16 and TMC Chapter 14.18.

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 Process.

1. Notice shall be provided pursuant to TMC 14.10.050.

2. Except for the appeal of a determination of significance as provided in RCW 43.21C.075, there shall be no more than one open record hearing and one appeal for land use permits.

3. When a public hearing is required in conjunction with a land use permit, the development review committee or director shall provide their recommendation in sufficient time for the hearing examiner to issue a notice of final decision within the number of days established by TMC Table 14.12.030 from the date of the complete land use permit application.

14.16.050 Notice of application.

A. Generally.

1. A notice of application shall be issued on all Type II and Type III land use permit applications for which SEPA review is required or the hearing examiner has decision making authority pursuant to TMC Table 14.12.020(B).

2. The notice of application shall be issued pursuant to the general notice requirements of TMC 14.10.050.

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

B. SEPA Exempt Projects. A notice of application shall not be required for Type I land use permit applications that are categorically exempt under SEPA.

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 14.14.030 or other permits;

3. The identification of other permits not included in the land use permit application, to the extent known by the city;

4. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated in the document providing notice of application, the location where the land use permit application and any studies can be reviewed;

5. A statement of the limits of the public comment period, which shall not be less than fourteen nor more than thirty days following the date of notice of application, and a statement of the right of any person to comment on the land use permit application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;

6. The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of application;

7. A statement of the preliminary determination of consistency, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation and of consistency as provided in TMC 14.16.010; 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 pursuant to TMC 14.14.040, 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.

Chapter 14.18

LAND USE PERMIT APPLICATION DECISIONS AND APPEALS

Sections:14.18.010 Notice of decision.14.18.020 Appeals of administrative approvals.14.18.030 Appeals of State Environmental Policy Act related matters.14.18.040 Notice of open record and appeal hearings.14.18.050 Combined public hearings allowed.**14.18.010 Notice of decision.**A. The notice of decision shall be issued pursuant to the general notice requirements of TMC 14.10.050.B. Final hearing examiner decisions.1. Not later than ten working days following the decision of the hearing examiner granting or denying a land use permit application or an appeal, the applicant and parties of record shall be notified of the decision in writing.2. Such written notification shall include the findings of fact for denial or approval, whichever is applicable.B. Written notice for all final decisions shall be sent to the applicant and all parties of record.C. The notice shall include:1. A statement of any threshold determination made under Chapter 43.21C RCW;2. Procedures for administrative or judicial appeal, if any; and3. A statement that affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. The department shall provide the notice of decision to the county assessor's office.**14.18.020 Appeals of administrative approvals.**A. Written appeals of Type I and Type II land use permit application decisions may be filed with the city clerk within fourteen days of the final director decision pursuant to TMC Table 14.12.020(B).B. The appeal shall specify the grounds for the appeal and be accompanied by a fee as established by a resolution of the city council.C. Upon receiving such an appeal, the city clerk shall immediately forward the appeal to the hearing examiner, along with all records and proceedings pertaining to the decision, together with such additional written report as the director deems pertinent.D. The hearing examiner shall set a date for a hearing of the appeal.

E. Notice of any required public hearing, stating the nature of the appeal with time and location of hearing, shall follow the procedures outlined in TMC 14.18.040.

F. In exercising their powers, so long as such action is in conformity with the terms of the Tumwater Municipal Code, the hearing examiner may reverse or affirm, wholly or partly, or may modify the decision, and to that end, shall have all power of the director from whom the appeal is being taken, insofar as the decision on the particular issue is concerned, and in making the determination, the hearing examiner may hear any pertinent facts bearing on the case.

14.18.030 Appeals of State Environmental Policy Act related matters.

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

1. Any aggrieved agency or person may file an appeal concerning the city's conditioning, lack of conditioning or denial of an action pursuant to Chapter 197-11 WAC. All such appeals shall be made to the hearing examiner and must be filed within six days after the comment period for the threshold decision has expired. This appeal and any other appeal of a land use action shall be considered together.
2. The following threshold decisions or actions are subject to timely appeal:
 - a. Determination of Significance. Appeal of a determination of significance or a claim of error for failure to issue a determination of significance may only be appealed to the hearing examiner within that fourteen-day period immediately following issuance of such initial determination.
 - b. Determination of Nonsignificance or Mitigated Determination of Nonsignificance. Conditions of approval and the lack of specific conditions may be appealed to the hearing examiner within six calendar days after the SEPA comment period expires.
 - c. Environmental Impact Statement. A challenge to a determination of adequacy of a final EIS may be heard by the hearing examiner in conjunction with any appeal or hearing regarding the associated land use permit. Where no hearing is associated with the proposed action, an appeal of the determination of adequacy must be filed within fourteen days after the thirty-day comment period has expired.
 - d. Denial of a Proposal. Any denial of a project or nonproject action using SEPA policies and rules may be appealed to the hearing examiner within six days following the final administrative decision.
3. For any appeal under TMC 14.18.030(A) the city shall keep a record of the appeal proceedings, which shall consist of the following information:

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

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

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

14.18.040 Notice of open record and appeal hearings.

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

- 1. Time, Form, and Content of Notices. Except as otherwise required, public notification of meetings, hearings, and pending actions under TMC Title 14 Development Code Administration, TMC Title 16 Environment, TMC Title 17 Land Division, and TMC Title 18 Zoning shall be made at least ten days before the date of the public meeting, hearing, or pending action pursuant to the general notice procedures in TMC 14.10.050.
- 2. Continuations. If, for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date certain and no further notice under TMC 14.18.040 is required.

14.18.050 Combined public hearings.

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

- 1. The hearing is held within the city; and
- 2. The applicant agrees to the schedule if additional time is needed to combine the hearings.

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

Title 14

DEVELOPMENT CODE ADMINISTRATION

Chapters:

14.02—PROJECT PERMIT PROCESSING/APPLICATIONS

~~14.04 — PROJECT CONSISTENCY/TIME LIMITS~~~~14.06 — PUBLIC NOTICE REQUIREMENTS~~~~14.08 — APPROVAL, REVIEW AND APPEAL AUTHORITY~~~~Chapter 14.02~~~~PROJECT PERMIT PROCESSING/APPLICATIONS~~

Sections:

~~14.02.010 — Intent/applicability.~~~~14.02.020 — Definitions.~~~~14.02.030 — Development review committee established.~~~~14.02.040 — Application.~~~~14.02.050 — Exempt actions.~~~~14.02.060 — Feasibility review.~~~~14.02.070 — Preapplication conferences — When required.~~~~14.02.080 — Project permit application.~~~~14.02.090 — Submission and acceptance of application.~~~~14.02.100 — Optional consolidated permit processing.~~~~**14.02.010 — Intent/applicability.**~~

~~The purpose of this title is to combine and consolidate the application, review, and approval processes for land development in the city of Tumwater in a manner that is clear, concise, and understandable. It is further intended to comply with state guidelines for combining and expediting development review and integrating environmental review and land use development plans. Final decision on development proposals shall be made within one hundred twenty days of the date of the determination of completeness except as provided in TMC 14.02.050. The provisions apply to all land use permits under TMC Titles 15, 16, 17 and 18, and to the related regulation implementing these provisions or any other ordinance or law. Unless another department is the primary agency in a permit process, the department of community development shall administer the provisions hereof and may adopt such rules as will assist in administering these provisions.~~

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

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

~~**14.02.020 — Definitions.**~~

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

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

~~C.—“Days” means calendar days, including weekends and holidays.~~

~~D.—“Department” means the department of community development.~~

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

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

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

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

~~I.—“Feasibility review” means an optional preapplication meeting between a prospective applicant or development proponent and the DRC to provide limited information on applicable development and site requirements as a precursor to a “preapplication conference.”~~

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

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

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

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

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

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

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

~~**14.02.030 — Development review committee established.**~~

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

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

~~**14.02.040 — Application.**~~

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

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

~~**14.02.050—Exempt actions.**~~

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

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

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

- ~~1.—Determination of completeness;~~
- ~~2.—Notice of application, except as provided in TMC 14.06.010(B);~~
- ~~3.—Except as provided in RCW 36.70B.140, optional consolidated project permit review processing;~~
- ~~4.—Joint public hearings;~~
- ~~5.—Single report stating all the decisions and recommendations made as of the date of the report that do not require an open record hearing;~~
- ~~6.—Notice of decision;~~
- ~~7.—Completion of project review within any applicable time periods (including the one hundred twenty day permit processing time).~~

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

~~**14.02.060—Feasibility review.**~~

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

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

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

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

- ~~1.— Preapplication conferences shall consist of two stages: (a) preliminary review, and (b) formal review. Preliminary review is an analysis of an initial development proposal by an applicant based on information received from a feasibility review. The preliminary review is the initial review of development proposal documents to identify potential problems and develop the preliminary proposal toward submittal of the project permit application. Formal review is the final preapplication evaluation of a development proposal to determine suitability for submittal of the project permit application.~~
- ~~2.— Applications for preliminary and formal reviews shall be scheduled for specific time periods on the DRC agenda each week. Preliminary and formal reviews shall be scheduled open meetings.~~
- ~~3.— A DRC agenda shall be prepared and posted by the department on public bulletin boards at Tumwater City Hall, Tumwater Timberland Library, and in any additional public location the director may deem appropriate.~~
- ~~4.— The director may waive the requirement for either or both stages of preapplication conference in individual cases where the department and the development proponent agree a proposal is ready for application submittal.~~

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

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

- ~~1.—The comprehensive plan;~~
- ~~2.—The transportation plan and transportation concurrency;~~
- ~~3.—The shoreline master plan;~~
- ~~4.—Zoning ordinance;~~
- ~~5.—Availability of sewer and water, or need for utility oversizing;~~
- ~~6.—Storm drainage and erosion control;~~
- ~~7.—Latecomer charges;~~
- ~~8.—Features of the development, and the rationale behind them;~~
- ~~9.—Sidewalk requirements;~~
- ~~10.—Bike paths;~~
- ~~11.—Bus stops;~~
- ~~12.—Phasing of off site requirements such as sidewalks, street lights, traffic signals, utilities or improvement of adjacent streets;~~
- ~~13.—The regulatory requirements of TMC Title 16, Environment;~~
- ~~14.—Design concepts (architectural goals and themes);~~
- ~~15.—Other city requirements and permits;~~
- ~~16.—If the applicant owns adjacent land, the possibilities of future development shall be discussed;~~
- ~~17.—Process and timelines.~~

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

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

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

~~14.02.080 — Project permit application.~~

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

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

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

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

~~A. Determination of Completeness. Within twenty eight days after receiving a project permit application or sooner, if completed, the department shall mail or personally provide a written determination to the applicant which states either: (1) that the application is complete; or (2) that the application is incomplete and what is necessary to make the application complete. (RCW 36.70B.070.)~~

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

~~C. "Complete" Application/Additional Information. A project permit application is complete for purposes of this section when it meets the requirements of TMC 14.02.080, as well as the submission requirements contained in all other applicable development regulations of the city. This determination of completeness shall be made when the application is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The city's determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the notice of~~

~~completeness or at some later time, if new information is required or where there are substantial changes in the proposed action. (RCW 36.70B.090(1).)~~

~~D.—Incomplete Application Procedure.~~

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

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

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

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

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

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

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

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

Chapter 14.04

PROJECT CONSISTENCY/TIME LIMITS

Sections:

~~14.04.010—Determination of consistency.~~

~~14.04.020—Initial SEPA analysis.~~

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

~~14.04.040—Determining time limits.~~

14.04.010 — Determination of consistency.

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

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

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

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

14.04.020 — Initial SEPA analysis.

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

- ~~1.— Determine whether the applicable regulations require studies that adequately analyze all of the project permit application's specific probable adverse environmental impacts;~~
- ~~2.— Determine if the applicable regulations require measures that adequately address such environmental impacts;~~
- ~~3.— Determine whether additional studies are required and/or whether the project permit application should be considered with additional mitigation measures;~~
- ~~4.— Provide prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including~~

~~mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level.~~

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

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

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

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

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

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

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

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

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

~~B.—Planned Actions.~~

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

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

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

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

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

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

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

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

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

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

~~C.—Limitation on Planned Actions. The city shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the city, and may limit a planned action to a time period identified in the environmental impact statement or in the ordinance or resolution designating the planned action under RCW 36.70A.040. (RCW 43.21C.031.)~~

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

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

~~**14.04.040 — Determining time limits.**~~

~~A.—Except as otherwise provided in subsection B of this section and TMC 14.02.050, the director shall issue his/her notice of final decision on a project permit application within one hundred twenty days, or sooner if possible, after notifying~~

~~the applicant that the application is complete, as provided in TMC 14.02.090(A). In determining the number of days that have elapsed after the director has established that the application is complete, the following periods shall be excluded:~~

~~1.— Any period during which the applicant has been requested to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the director notifies the applicant of the need for additional information until the earlier of the date the director determines whether the additional information satisfies the request for information or fourteen days after the date the information has been provided. A project permit application shall expire if an applicant does not respond to a request for additional information within 180 calendar days;~~

~~2.— If the director determines that the information submitted by the applicant under subsection (A)(1) of this section is insufficient, he/she shall notify the applicant of the deficiencies and the procedures under subsection (A)(1) of this section shall apply as if a new request for studies had been made;~~

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

~~4.— Any period for administrative appeals of project permits, if an open record appeal hearing or a closed record appeal, or both, are allowed. The time period for considering and deciding shall not exceed: (a) ninety days for an open record appeal hearing; and (b) sixty days for a closed record appeal. The parties to an appeal may agree to extend these time periods; and~~

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

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

~~1.— Requires an amendment to the comprehensive plan or a development regulation;~~

~~2.— Requires approval of a new fully contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.70A.200; or~~

~~3.— Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete. An application is substantially revised if proposed changes would have affected decisions in the approval process.~~

~~C.—If the director is unable to issue its final decision within the time limits provided for in this section, he/she shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.~~

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

~~Chapter 14.06~~

~~PUBLIC NOTICE REQUIREMENTS~~

~~Sections:~~

~~14.06.010—Notice of application.~~

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

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

~~14.06.040—Administrative approvals.~~

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

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

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

~~14.06.080—Notice of appeal hearings.~~

~~14.06.090—Notice of decision.~~

~~14.06.010—Notice of application.~~

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

~~B.—SEPA Exempt Projects. A notice of application shall not be required for project permits that are categorically exempt under SEPA and fall below the thresholds established in WAC 197-11-800(1)(b)(i) through (v), unless a public comment period or an open record predecision hearing is required.~~

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

~~1.—The date of application, the date of the notice of completion for the application and the date of the notice of application;~~

~~2.—A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070;~~

~~3.—The identification of other permits not included in the application, to the extent known by the city;~~

~~4.—The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;~~

~~5.—A statement of the limits of the public comment period, which shall not be less than fourteen nor more than thirty days following the date of notice of application, and a statement of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;~~

~~6.—The date, time, place and type of hearing, if applicable and scheduled at the date of notice of the application;~~

~~7.—A statement of the preliminary determination of consistency, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation and of consistency as provided in TMC 14.04.010.~~

~~8.—Any other information determined appropriate by the department, such as the city's threshold determination, if complete at the time of issuance of the notice of application. (RCW 36.70B.110.)~~

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

~~1.—Within fourteen days after the city has made a determination of completeness of a project permit application, the city shall issue a notice of application.~~

~~2.—If any open record predecision hearing is required for the requested project permit(s), the notice of application shall be provided at least fifteen days prior to the open record hearing. (RCW 36.70B.110.)~~

~~E.—Public Comment on the Notice of Application. All public comments received on the notice of application must be received by the department of community development by 5:00 p.m. on the last day of the comment period. Comments may be mailed, personally delivered or sent by facsimile. Comments should be as specific as possible.~~

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

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

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

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

~~A.—Transmit a copy of the application, or appropriate parts of the application, to each affected agency and city department for review and comment, including those responsible for determining compliance with state and federal requirements. The~~

~~affected agencies and city departments shall have fifteen days to comment. The referral agencies or city departments are presumed to have no comments if comments are not received within the specified time period. The director shall grant an extension of time for comment only if the application involves unusual circumstances. Any extension shall only be for a maximum of three additional days. (RCW 36.70B.070.)~~

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

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

14.06.030—Notice of application/distribution.

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

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

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

- ~~1.—Application for building permits.~~
- ~~2.—Application for boundary line adjustments.~~
- ~~3.—Application for administrative approvals.~~

~~(Ord. O2018-007, Amended, 10/16/2018; Ord. 096-004, Added, 04/16/1996)~~

14.06.040—Administrative approvals.

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

- ~~A.—All administrative interpretations/determinations.~~
- ~~B.—Boundary line adjustments.~~
- ~~C.—Building permits.~~
- ~~D.—Home occupation permits.~~

~~E.—Preliminary short plats.~~

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

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

~~H.—Sign permits.~~

~~I.—Final plats.~~

~~J.—Variances, administrative.~~

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

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

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

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

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

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

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

~~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 project permit. Where no hearing is associated with the proposed action, an appeal of the determination of adequacy must be filed within fourteen days after the thirty-day comment period has expired.~~

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

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

~~a.—Findings and conclusions; and~~

~~b.—Testimony under oath; and~~

~~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 permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.~~

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

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

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

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

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

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

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

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

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

~~3.—Posting on the city's website;~~

~~4.—Posting at least one notice on the subject property by the applicant in accordance with specifications provided by the community development department; and~~

~~5.—Whenever practical, the director may utilize additional forms of notice including, but not limited to, presentation on one or more radio or television bulletin boards or similar media commonly used for public notices or announcements.~~

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

~~1.—The address and location, and/or a vicinity map or sketch of the property which is the subject of the public hearing; and~~

~~2.—The date, time, location, and purpose of the public hearing; and~~

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

~~4.—A place where further information about the hearing may be obtained.~~

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

~~C.—Continuations. If, for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date certain and no further notice under this section is required.~~

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

14.06.080—Notice of appeal hearings.

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

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

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

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

14.06.090—Notice of decision.

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

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

Chapter 14.08

APPROVAL, REVIEW AND APPEAL AUTHORITY

Sections:

~~14.08.010—Approval and appeal authorities.~~

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

~~14.08.030—Review and appeal authority.~~

~~14.08.040—Conflicts.~~

~~14.08.010—Approval and appeal authorities.~~

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

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

~~B.—Development Review Committee (DRC). Pursuant to TMC Chapter 14.02, the development review committee shall have authority to conduct feasibility review and hold preapplication conferences and to grant, conditionally grant, deny, or modify, land use approvals regarding projects for which an open record predetermination hearing is not required.~~

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

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

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

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

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

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

14.08.030 — Review and appeal authority.

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

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

14.08.040 — Conflicts.

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

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

Table 14.08.030

Key: R

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

~~A~~

~~= Appeal Decision; C = Closed Record Appeal Hearing;~~

~~OP~~

~~= Open Record Predetermination Hearing~~

	HISTORIC COMMISSION	COMMUNITY DEVELOPMENT DEPARTMENT STAFF	DEVELOPMENT REVIEW COMMITTEE	HEARING EXAMINER	PLANNING COMMISSION	CITY COUNCIL
ZONING						
CONDITIONAL USE PERMITS			R	D(OP)		
VARIANCE			R	D(OP)		
SITE-SPECIFIC REZONES REQUIRED AS A RESULT OF A COMPREHENSIVE PLAN CHANGE					R(OP)	D(OP)
SITE-SPECIFIC REZONES NOT REQUIRING A		R		D(OP)		

	HISTORIC COMMISSION	COMMUNITY DEVELOPMENT DEPARTMENT STAFF	DEVELOPMENT REVIEW COMMITTEE	HEARING EXAMINER	PLANNING COMMISSION	CITY COUNCIL
COMPREHENSIVE PLAN AMENDMENT						
ZONING TEXT AMENDMENT (DEV. REG. CHANGES)					R(OP)	D(OP)
AREA WIDE MAP AMENDMENT					R(OP)	D(OP)
HOME OCCUPATION		D		A(OP)		
CERTIFICATE OF APPROPRIATENESS	D	R		A(C)		
COMPREHENSIVE PLAN						
COMPREHENSIVE PLAN TEXT AMENDMENT					R(OP)	D(OP)
COMPREHENSIVE PLAN MAP AMENDMENT					R(OP)	D(OP)
LAND DIVISION						
REPLAT			R	D(OP)		
PLAT VACATION			R	D(OP)		
BLA		D		A(OP)		
LOT CONSOLIDATION		D		A(OP)		
PRELIMINARY PLAT			R	D(OP)		
SHORT PLAT		D		A(OP)		
FINAL PLAT		D		A(OP)		
PUD			R	D(OP)		
BINDING SITE PLAN			D	A(OP)		
BINDING SITE PLAN – PHASED			R	D(OP)		
PLAT TIME EXTENSION		D		A(OP)		
PLAT ALTERATION W/ HEARING		R		D(OP)		
PLAT ALTERATION W/O HEARING		D		A(OP)		
ENVIRONMENTAL						

	HISTORIC COMMISSION	COMMUNITY DEVELOPMENT DEPARTMENT STAFF	DEVELOPMENT REVIEW COMMITTEE	HEARING EXAMINER	PLANNING COMMISSION	CITY COUNCIL
WETLAND PERMIT		D		A(OP)		
TREE PLANS		D		A(OP)		
SEPA-DET.		D		A(OP)		
SHORELINES						
SUB. DEV. PERMIT			R	D(OP)		
CONDITIONAL USE PERMIT			R	D(OP) (1)		
VARIANCE			R	D(OP) (1)		
EXEMPT		D		A(OP)		
OTHER						
DEV. CODE INTERPRETATIONS		D		A(OP)		
BUILDING PERMIT PER IBC		D		A(OP)		
ADMINISTRATIVE ORDERS		D		A(OP)		
CIVIL PENALTIES		D		A(OP)		
REASONABLE USE EXCEPTIONS		R		D(OP)		
BUILDING MOVING PERMIT		D		A(OP)		
GRADING PERMIT PER IBC		D		A(OP)		
IMPACT FEE DETERMINATIONS		D		A(OP)		
CONCURRENCY DETERMINATIONS		D		A(OP)		

Table 14.08.030 Explanatory Notes:

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

Section 8. A new TMC 15.01.045 is hereby added to the Tumwater Municipal Code to read as follows:

15.01.045 Timeline provisions.

As authorized by RCW 36.70B.140, permits issued under this title are exempt from the timeline provisions of RCW 36.70B.060 through RCW 36.70B.090 and 36.70B.110 through 36.70B.130.

Section 9. A new TMC 15.01.055 is hereby added to the Tumwater Municipal Code to read as follows:

15.01.055 Certificate of occupancy.

A. A building or structure shall not be used or occupied in whole or in part, and a change of occupancy of a building or structure or portion thereof shall not be made, until the building official has issued a certificate of occupancy that reflects the conclusion of the work allowed by the permit.

B. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the city. Certificates presumed to give authority to violate or cancel the provisions of this code or other ordinances of the city shall not be valid.

C. The city shall not issue business and occupational licenses unless the applicant has a valid certificate of occupancy.

Section 10. TMC 15.44.030 of the Tumwater Municipal Code is hereby amended to read as follows:

15.44.030 Definition.

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

1. The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor.
2. The property owner’s name, address and phone number.
3. The prime contractor’s business name, address, phone number, and current state contractor registration number.
4. Either:
 - a. The name, address and phone number of the office of the lender administering the interim construction financing, if any; or
 - b. The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the

bond is for an amount not less than fifty percent of the total amount of the construction project.

5. If any of the information required by subsection (A)(4) of this section is not available at the time the application is submitted, the applicant shall so state, and the application shall be processed forthwith and the permit issued as if the information had been supplied. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.

6. Plans, specifications and reports, as required by this title.

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

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

- ~~a. Preliminary site plan review application;~~
- ~~b. Zoning conditional use permit;~~
- ~~c. Zoning variance;~~
- ~~d. Zoning planned unit development;~~
- ~~e. Zoning certificate of appropriateness;~~
- ~~f. Shoreline permit, conditional use permit or variance;~~
- ~~g. Site development/grading permit;~~
- ~~h. Land clearing permit;~~
- ~~i. Wetland permit;~~
- ~~j. Wireless communications facility permit;~~
- ~~k. Wetland or fish and wildlife habitat protection reasonable use exception;~~
- ~~l. Any other land use or environmental permit in effect on the date of application.~~

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

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

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

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

Section 11. TMC 15.48.020 of the Tumwater Municipal Code is hereby amended to read as follows:

15.48.020 Definitions.

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

- A. "Adequate transportation facilities" means transportation facilities that meet or exceed the adopted standard of service set forth in the city's comprehensive plan.
- B. "Transportation facility capacity" means the maximum number of vehicles that can be accommodated during a specified travel period at a specified level of service. Capacity will be calculated according to the methodology used in the most current highway capacity manual. An alternative methodology may be used only if it is preapproved by the director of ~~public works transportation and engineering~~ or ~~his/her~~their designee.
- C. "Completion of development" means:
 1. The certificate of occupancy, or other approval, has been issued by the city authorizing occupancy and the use of a development.
 2. Final plat approval in the case of residential plats ~~involving single-family, townhouse or duplex development.~~

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

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

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

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

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

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

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

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

plan and/or transportation element in effect at the time the city approves the development.

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

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

Section 12. TMC 15.48.040 of the Tumwater Municipal Code is hereby amended to read as follows:

15.48.040 Concurrency test – Finding of concurrency.

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

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

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

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

E. In conducting the concurrency test, the city will use the trip generation rates set forth in the latest edition of the Institute of Transportation Engineers, Information Report – Trip Generation. The presumption is that the rates used by the city are accurate unless proven otherwise.

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

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

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

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

Section 13. TMC 15.48.050 of the Tumwater Municipal Code is hereby amended to read as follows:

15.48.050 Exemptions from the concurrency test.

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

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

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

Section 14. TMC 15.48.060 of the Tumwater Municipal Code is hereby amended to read as follows:

15.48.060 Traffic study.

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

A. Development that generates fifty or more vehicle trips in the peak hour on the adjacent streets and intersections; or

B. Development that generates twenty-five percent or more of peak-hour traffic through a signalized intersection or the critical movement at an unsignalized intersection.

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

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

Section 15. TMC 15.48.070 of the Tumwater Municipal Code is hereby amended to read as follows:

15.48.070 Finding of concurrency.

A. The city shall make a finding of concurrency for each land use permit application or, if a land use permit application is not required, building permit application that passes the concurrency test.

B. The finding of concurrency shall be valid for the same time period as the underlying building permit, including any extensions thereof.

C. A finding of concurrency shall expire if the underlying land use permit or, if a land use permit is not required, building permit expires or is revoked by the city.

D. A finding of concurrency accompanying a land use permit or, if a land use permit is not required, a building permit for a particular parcel of property shall be valid for the period of validity of the permit, even if the ownership of the property changes.

E. All land use permits or, if a land use permit is not required, building permits that require one or more transportation facilities to be provided by the applicant shall be and are hereby conditioned upon an appropriate financial commitment by the applicant which is binding upon subsequent owners, heirs, executors, successors or assigns, and upon the completion of such transportation facilities in a timely manner, prior to the issuance of the certificate of occupancy or prior to occupancy, unless stated otherwise in writing by the city. Such financial commitment shall be subject to the approval of the city attorney, including performance bond, escrowed funds, or other similar instrument.

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

Section 16. TMC 15.48.090 of the Tumwater Municipal Code is hereby amended to read as follows:

15.48.090 Concurrency system.

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

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

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

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

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

Section 17. TMC 16.04.090 of the Tumwater Municipal Code is hereby amended to read as follows:

16.04.090 Mitigated DNS.

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

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

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency;
2. Precede the city's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within fifteen working days. The response shall:

1. Be written;
2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that are leading the city to consider a DS;
3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

E. When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the city shall base its threshold determination on the changed or clarified proposal:

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a determination of nonsignificance under WAC 197-11-340(2).
2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate.
3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct two-hundred-square-foot stormwater retention pond at Y location" are adequate provided sufficient preliminary design data has been included to indicate the proposed mitigation will mitigate the environmental impacts.
4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

F. A mitigated DNS is issued under WAC 197-11-340(2), requiring a ~~fifteen~~fourteen-day comment period and public notice.

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

H. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal,

the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

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

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

Section 18. TMC 16.08.050 of the Tumwater Municipal Code is hereby amended to read as follows:

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

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

B. Requirement Established. The application for land clearing permit shall be submitted with any ~~project-land use~~ permit as defined in TMC ~~14.02~~14.10.020(~~OK~~), including ~~single-family and duplex structures~~residential developments of four units or less unless a land clearing permit was previously reviewed as part of prior ~~project land use or building~~ permit. A tree protection plan is required to obtain a land clearing permit and is also required for any land development not exempt under TMC 16.08.080. The tree protection plan shall be developed by a qualified professional forester and be submitted in conjunction with other environmental submittals and site plan development permits. For single-family homes on lots created prior to November 1994, the applicant has the option of using the city tree protection professional to prepare the permit application. This service will be provided at the same hourly rates charged to the city under its contractual arrangement with the tree protection professional.

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

1. General vicinity map;
2. Date, north arrow and scale;
3. Property boundaries, the extent and location of proposed clearing and major physical features of the property (streams, ravines, etc.);

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

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

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

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

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

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

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

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

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

D. In addition to the requirements noted in subsection C of this section, on timbered property greater in size than one acre or commercial property with more than fifteen trees, or other sites the city deems necessary because of special circumstances or complexity, the code administrator may require review of the site and proposed plan and submittal of a report by the city's tree protection professional for compliance with the requirements of this chapter.

Further provided, that the code administrator may modify the submittal requirements of subsections C and D of this section, on individual applications where the information is not needed or is unavailable.

E. Each application shall be submitted with a fee established by resolution of the city council, to help defray the cost of handling the application, no part of which fee is refundable.

F. The code administrator shall notify the applicant whether the application is complete ~~within twenty-eight calendar days of receipt of the application pursuant to the determination of completeness process in TMC 14.14.040~~. If incomplete, the code administrator shall ~~indicate in the notice the information required to make the application complete, follow the process in TMC 14.14.040~~.

G. ~~The code administrator shall approve, approve with conditions or deny the permit within thirty calendar days of receipt of the complete application, or within~~

~~thirty calendar days of completion of any environmental review, whichever is later. For applications such as site development proposals where there is more than a land clearing permit pending, the code administrator shall, whenever feasible, coordinate reviews, notices and hearings, and act upon the land clearing permit concurrently with other pending permits.~~ review and approval process for land clearing permits shall follow the land use permit application review process in TMC Title 14.

~~GH. The expiration and extension of land clearing permits shall follow the requirements of TMC 14.10.070. Any permit granted under this chapter shall expire eighteen months from the date of issuance, unless said permit is associated with another development permit. If it is associated with another development permit, the restrictions and deadlines of that approval will apply. Upon a written request, a permit not associated with another development permit may be extended by the code administrator for one six month period.~~

I. Approved plans shall not be amended without being resubmitted to the city. Minor changes consistent with the original permit intent will not require a new permit fee or full application standards to be followed.

J. The permit may be suspended or revoked by the city because of incorrect information supplied or any violation of the provisions of this chapter.

HK. Once issued, the permit shall be posted by the applicant on the site, in a manner so that the permit is visible to the general public.

(Ord. O2017-022, Amended, 12/05/2017; Ord. O2006-014, Amended, 04/17/2007; Ord. O2002-012, Amended, 07/16/2002; Ord. O97-029, Amended, 03/17/1998; Ord. O94-029, Amended, 09/20/1994; Ord. 1190, Added, 05/16/1989)

Section 19. TMC 16.08.100 of the Tumwater Municipal Code is hereby amended to read as follows:

16.08.100 Appeal procedure.

The appeal procedure for land clearing permits is found in TMC Chapter 14.18.

~~Any person aggrieved by a decision or an action of the code administrator in the enforcement or implementation of this chapter may, within fourteen calendar days of such decision or action, file a written appeal to the hearing examiner. Any decision of the hearing examiner may be appealed to the Thurston County superior court in accordance with the provisions of TMC Chapter 2.58.~~

(Ord. O2017-022, Amended, 12/05/2017; Ord. O2006-014, Amended, 04/17/2007; Ord. O2002-012, Amended, 07/16/2002; Ord. O94-029, Amended, 09/20/1994; Ord. 1259, Amended, 11/06/1990; Ord. 1190, Added, 05/16/1989)

Section 20. TMC 16.28.150 of the Tumwater Municipal Code is hereby amended to read as follows:

16.28.150 Permit processing.

A. Consolidation. The city shall, to the extent practicable and feasible, consolidate the processing of wetlands related aspects of other city of Tumwater regulatory programs which affect activities in wetlands, such as subdividing, clearing and grading, floodplain, and environmentally sensitive chapter, etc., with the wetland permit process established herein so as to provide a timely and coordinated permit process.

B. Completeness of Application. After receipt of the permit application, the city shall notify the applicant as to the completeness of the application in accordance with the procedures outlined in TMC ~~Chapter 14.02~~14.14.040. An application shall not be deemed complete until and unless all information necessary to evaluate the proposed activity, its impacts, and its compliance with the provisions of the chapter have been provided to the satisfaction of the city. Such determination of completeness shall not be construed as approval or denial of the permit application. (Ord. O96-008, Amended, 11/05/1996; Ord. 1278, Added, 08/20/1991)

Section 21. TMC 17.04.170 of the Tumwater Municipal Code is hereby amended to read as follows:

17.04.170 Development review committee.

The composition of the DRC is as provided in TMC ~~14.02~~14.10.020(~~FG~~). (Ord. O96-004, Amended, 04/16/1996; Ord. 1308, Added, 10/15/1991)

Section 22. TMC 17.14.010 of the Tumwater Municipal Code is hereby amended to read as follows:

17.14.010 Preliminary subdivisions, short subdivisions, binding site plans, and large lot subdivisions.

Preliminary land divisions shall be reviewed as described below:

A. Administrative Review. Short plats, binding site plans and large lot subdivisions shall be reviewed by the development review committee, the composition of said committee is defined in TMC ~~14.02~~14.10.020(~~G~~). See also TMC ~~14.08.030~~12.020(~~A~~) regarding jurisdictional authority.

B. Hearing Examiner Review. Preliminary plats shall be reviewed by the development review committee which shall forward their recommendation to the hearing examiner for ~~his/her~~their decision.

(Ord. O96-004, Amended, 04/16/1996; Ord. 1308, Added, 10/15/1991)

Section 23. TMC 17.14.020 of the Tumwater Municipal Code is hereby amended to read as follows:

17.14.020 Preapplication/application procedures.

The land divider shall comply with procedures set forth in TMC ~~14.02.060 through 14.02.090~~ Title 14 Development Code Administration in processing ~~project~~ land use permit applications.

(Ord. O96-004, Amended, 04/16/1996; Ord. 1308, Added, 10/15/1991)

Section 24. TMC 17.14.030 of the Tumwater Municipal Code is hereby amended to read as follows:

17.14.030 Submission.

A. Application. Each land division submitted to the city shall be accompanied by a completed application form and application materials as provided in TMC Chapter ~~14.02~~ 16.030. Such blank form shall be provided by the community development department. The information requested on such form shall be revised and updated from time to time by the community development department.

B. Environmental Checklist. With the exception of short plats not located on or adjacent to a water body or other environmentally sensitive areas such as wetlands, all other applications for divisions of land shall be accompanied by a completed environmental checklist. Such environmental checklist form shall be provided by the community development department.

C. Title Report. A title report or plat certificate issued by a title company which shows property ownership and any easements or other encumbrances shall be submitted with the application package. Such title report or plat certificate shall be dated no more than thirty days prior to submittal.

D. Format of Plan. All drawings of preliminary land divisions shall be prepared on sheet(s) not exceeding twenty-four by thirty-six inches.

A scale of fifty feet to the inch is preferred, although other engineering scales may be used at the discretion of the designer. Architectural scales shall not be used.

E. Number of Copies. The number of copies of a proposed preliminary division of land required for submittal shall be set by the community development department in direct response to the needs of the review authorities. The number of copies shall be clearly indicated on the application form and may vary depending on the type of land division proposed.

F. Content of Plan. Generally, the information required to be submitted with or on a proposed preliminary division of land plan shall be specified on the application form as provided by the community development department. The type and amount

of information required may be changed from time to time by the department to respond to the needs of the reviewing authorities. Generally, such information shall be the minimum required to properly review the proposed division of land and determine its potential environmental impacts. While it is the intent of the city to standardize as much as possible the submittal requirements, it may be necessary from time to time for the staff or other reviewing authorities to request additional information from the applicant beyond that specified on the application forms, in order to adequately review plans for sites with unique characteristics or unique development plans.

G. Adjacent Property Owners. Included with the application packet for any proposed preliminary division of land must be a list of properties located within three hundred feet of the subject property, its registered owner(s) and their mailing addresses as listed in the office of the county assessor. This list must be submitted on the form provided by the community development department for that purpose in order to facilitate the mailing of notices to the property owners. The director may extend the area of the required list beyond three hundred feet in cases where three hundred feet does not adequately identify neighbors affected by the pending action.

If the list is not prepared at the assessor's office, or at an office having direct computer access to the assessor's ownership records, the date of receipt of the master list from which the information was taken shall be indicated on the form when submitted to the city. In no case shall the information be based on a master list more than three months old at the time of filing the application.

H. Public Notification. In the case of preliminary land divisions going before the hearing examiner, notification of the required public hearing shall be as provided by this code. Notification of administrative consideration of preliminary land divisions shall be by posting of the site in three conspicuous places.

I. Time Limit for Action. As provided in TMC ~~14.02.080 and 14.02.090~~ Title 14 Development Code Administration, when the community development department has received a complete application, it shall be approved or disapproved ~~within one hundred twenty days according to the review times established by TMC Table 14.12.030~~ or as soon as reasonably practicable; provided, that if an expanded environmental checklist, environmental assessment or environmental impact statement is required as provided in Chapter 43.21C RCW, the ~~one hundred twenty day period required review time~~ shall not include the time spent preparing and circulating the environmental documents.

J. Specific Requirements.

1. Phasing. If phasing of the land division is anticipated, such phasing must be indicated on the plan. When projects are phased, care must be taken to ensure that each phase or combination of phases can meet all applicable requirements

on their own. Examples would include utility systems, emergency vehicle access, and adequate turnaround areas. When an applicant owns adjacent land, the phasing plan shall include preliminary draft layouts of the master plan for the total property. Special attention shall be given to the compatibility of layouts and the provision of transportation and pedestrian linkages.

2. **Distribution of Information.** The staff of the department shall distribute copies of the preliminary land division plan and pertinent information to the members of the development review committee and other agencies and utilities as appropriate. A copy of the proposed land division shall also be sent to the State Department of Transportation and the Port of Olympia.

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

Section 25. TMC 17.14.090 of the Tumwater Municipal Code is hereby amended to read as follows:

17.14.090 Phased development.

A. Residential preliminary plats containing more than one hundred dwelling units and commercial or industrial preliminary plats covering more than twenty acres are eligible to attain final plat approval in phases. Residential binding site plans containing ten or more dwelling units and commercial or industrial binding site plans covering more than twenty acres are eligible to attain approval in phases. Phased approval of final plats and binding site plans is limited to developments with at least two but not more than four phases.

Upon receipt of the recommendation from the development review committee, the hearing examiner shall hold a public hearing and shall review the phased land division in accordance with this title, the recommendations of the development review committee, reports of other agencies and officials, if any, and the hearing testimony. At the hearing, the hearing examiner shall consider and may alter any part of the proposed phased development. The hearing examiner may approve, approve with conditions, or disapprove the phasing plan. The phasing of binding site plans shall follow the procedures for binding site plan-phasing approval in ~~Table 14.08.030~~ [TMC Title 14 Development Code Administration](#).

The preliminary plat or binding site plan for a phased development shall show the number of phases, the area each phase encompasses, and the sequence for submission for recording of the various phases. A submittal for a phased development shall demonstrate how transportation, access, traffic, stormwater, parks and open space, critical areas, and utilities will be addressed for all phases of the development.

The period of time between the date of the preliminary approval of the phased land division by the hearing examiner and the date of filing for final plat approval for the first phase shall be consistent with TMC 17.14.080. The period of time between the date of preliminary approval of the phased land division by the hearing examiner and the completion of the first phase of a phased binding site plan, and the recording of such document(s) shall be consistent with TMC 17.14.080.

Construction plans for each phase of a phased development shall include stormwater management facilities that comply with all state and local requirements in effect at the beginning of the time period allotted for that phase.

Applications for final plat or binding site plan approval for each successive phase must be submitted within three years of the submittal for final plat or binding site plan approval on the previous phase, except as provided below.

B. For phased preliminary plats approved prior to January 1, 2008, which are affected by the United States Fish and Wildlife Service's requirement for a habitat conservation plan protecting federally listed habitat and/or species, the community development director or his/her designee may issue time extensions in one-year increments until a citywide or individual habitat conservation plan is completed, but in no case shall time extensions exceed three years. During such extensions granted pursuant to this subsection, the plat shall continue to be subject to the conditions of approval and vested rights that applied to the approved phased preliminary plat prior to the extension, with the exception of storm drainage standards, design guidelines and building and fire codes, unless it would significantly alter the plat as approved by the hearing examiner.

C. Time extensions that are granted pursuant to these regulations shall continue to be subject to the conditions of approval and vested rights that applied to the approved phased preliminary plat or binding site plan prior to the extension, with the exception of stormwater management regulations and building and fire codes, except as provided under subsection B of this section. If time extensions are granted pursuant to these regulations, subsequent phases shall meet current stormwater management regulations and building and fire codes. The director's decision shall be a final decision of the city of Tumwater and not subject to administrative appeal.

(Ord. O2022-004, Amended, 06/07/2022; Ord. O2016-022, Amended, 01/03/2017; Ord. O2016-010, Amended, 08/02/2016; Ord. O2011-015, Amended, 12/20/2011; Ord. O2010-004, Amended, 05/04/2010; Ord. O2000-004, Added, 07/18/2000)

Section 26. TMC 17.24.010 of the Tumwater Municipal Code is hereby amended to read as follows:

17.24.010 Final plats, short plats, binding site plans, and large lot subdivisions.

Recommendations, decision-making authority, and appeal authority shall be as provided in TMC ~~14.08.030~~Table 14.12.020(A).

(Ord. O96-004, Amended, 04/16/1996; Ord. 1308, Added, 10/15/1991)

Section 27. TMC 17.24.050 of the Tumwater Municipal Code is hereby amended to read as follows:

17.24.050 Time to act.

After the city certifies in writing that the applicant has completed all required improvements and the applicant has submitted all the required elements of final land division application, Final land divisions shall be approved, disapproved or returned to the applicant within thirty days from the date of filing unless the applicant consents to an extension of such time period.

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

Section 28. TMC 17.28.040 of the Tumwater Municipal Code is hereby amended to read as follows:

17.28.040 Procedure for approval.

The hearing examiner shall consider a variance request concurrently with the land division or plan to which it applies in accordance with the provisions of TMC Title 14 Development Code Administration. The hearing examiner shall act on all requested modifications prior to acting upon the plat or short plat to which they apply. The hearing examiner shall detail his/her/their findings with respect to requested variances. At no time shall the hearing examiner’s action on a variance be finalized unless accompanied by the hearing examiner’s action on the land division or plan, or short plat, or vice versa.

(Ord. O96-004, Amended, 04/16/1996; Ord. 1308, Amended, 10/15/1991; Ord. 1063, Amended, 03/18/1986; Ord. 1016, Added, 10/02/1984)

Section 29. TMC 18.07.010 of the Tumwater Municipal Code is hereby amended to read as follows:

18.07.010 Residential zone districts permitted and conditional uses.

If there are any inconsistencies between Table 18.07.010 and the specific requirements in the underlying zoning district, the requirements in the underlying zoning district shall be followed.

TABLE 18.07.010

RESIDENTIAL ZONE DISTRICTS PERMITTED AND CONDITIONAL USES

RESIDENTIAL DISTRICTS Note: See Figure 18.23.020 for residential uses allowed in the TC town center zone district; and Table 18.27.040 for residential uses allowed in the BD brewery district zone	RSR	SFL	SFM	MFM	MFH	MHP	Applicable Regulations
Adult family homes, residential care facilities	P	P	P	P	P	P	18.53
Agriculture up to 30 acres in size	P	P	P	P			18.42.070
Animals (the housing, care and keeping of)	P	P	P	P			6.08
Attached wireless communication facilities	P	P	P	P	P		11.20
Bed and breakfasts	C ¹	C ¹	C ¹	P		C ¹	18.56
Cemeteries	C	C	C	C	C	C	18.56
Child day care center	C	C	C	C	C	C	18.56
Churches	C	C	C	C	C	C	18.56
Community garden	P	P	P	P	P		
Cottage housing	P	P	P	P			18.51
Designated manufactured home parks				P			18.48; 18.49
Designated manufactured homes	P	P	P	P		P	18.48
Duplexes	P ²	P ²	P ³	P			
Emergency communication towers or antennas	C	C	C	C	C	C	18.56; 11.20
Family child care home, child mini-day care center	P	P	P	P	P	P	18.52
Fourplexes				P	P		
Group foster homes	C	C	C	C	C	C	18.56
Inpatient facilities				C	C		18.56

RESIDENTIAL DISTRICTS Note: See Figure 18.23.020 for residential uses allowed in the TC town center zone district; and Table 18.27.040 for residential uses allowed in the BD brewery district zone	RSR	SFL	SFM	MFM	MFH	MHP	Applicable Regulations
Medical clinics or hospitals				C	C		18.56
Mental health facilities				C	C		18.56
Multifamily dwellings				P	P		
Manufactured home parks in accordance with the provisions of TMC Chapter 18.48						P	18.48
Mobile home parks which were legally established prior to July 1, 2008						P	18.48
Neighborhood community center	C	C	C	C	C	C	18.56
Neighborhood-oriented commercial center		C	C	C	C	C	18.56
Parks, trails, open space areas and recreational facilities	P	P	P	P	P	P	
Permanent supportive housing	P	P	P	P	P	P	18.42.150
Planned unit developments		P	P	P	P	P	18.36
Private clubs and lodges			C	C	C		18.56
Recreational vehicle parks				C			18.56
Schools	C	C	C	C	C	C	18.56
Senior housing facilities, assisted				C	C		18.56
Senior housing facilities, independent				P	P		
Single-family detached dwellings	P	P	P			P	

RESIDENTIAL DISTRICTS Note: See Figure 18.23.020 for residential uses allowed in the TC town center zone district; and Table 18.27.040 for residential uses allowed in the BD brewery district zone	RSR	SFL	SFM	MFM	MFH	MHP	Applicable Regulations
Single-family detached dwellings existing prior to April 15, 2021				P ⁴			
Support facilities	P	P	P	P	P	P	
Temporary expansions of schools, such as portable classrooms	C	C	C	C	C	C	18.56
Townhouses and rowhouses			P ⁵	P	P		18.16.050 (F)(1)(a)
Transitional housing	P	P	P	P	P	P	18.42.150
Triplexes				P	P		
Wildlife refuges and forest preserves	P	P	P	P	P		
Wireless communication towers	C	C	C	C	C	C	11.20; 18.56

LEGEND

P = Permitted Use

C = Conditional Use

RSR = Residential/Sensitive Resource

SFL = Single-Family Low Density Residential

SFM = Single-Family Medium Density Residential

MFM = Multifamily Medium Density Residential

MFH = Multifamily High Density Residential

MHP = Manufactured Home Park

Table 18.07.010 Footnotes:

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(1) “Bed and breakfasts” with only one guest room are a permitted use, but a public notice that an application has been submitted shall be sent to immediate neighbors. Administrative decisions may be appealed pursuant to TMC Chapter 14.12. ~~are subject to the notice of application requirements in TMC Chapter 14.06 to allow for public notice for neighbors and an appeal of the administrative decision to the hearing examiner.~~

(2) “Duplexes” are allowed in the residential/sensitive resource (RSR) and single-family low density residential (SFL) zone districts on individual lots legally established before or on April 15, 2021. Duplexes shall not occupy more than twenty percent of the total lots in a new short plat or subdivision, which was legally established after April 15, 2021. In such cases, the community development director shall have the discretion to alter the percentage in order to allow the new short plat or subdivision to meet minimum required densities due to topography or other special conditions related to the site, such as critical areas.

(3) “Duplexes” are allowed in the single-family medium density residential (SFM) zone district on individual lots legally established before or on April 15, 2021. Duplexes shall not occupy more than thirty percent of the total lots in a new short plat or subdivision, which was legally established after April 15, 2021. In such cases, the community development director shall have the discretion to alter the percentage in order to allow the new short plat or subdivision to meet minimum required densities due to topography or other special conditions related to the site, such as critical areas.

(4) Single-family detached dwellings constructed after April 15, 2021, are not allowed in the multifamily medium density residential (MFM) zone district.

(5) “Townhouses and rowhouses” are allowed within a residential planned unit development in the single family medium density residential (SFM) zone district.

Table 18.07.010 Explanatory Notes:

1. If the box is shaded, the use is not allowed in that zone district.
2. Accessory uses are listed in each zone ~~d~~ district chapter.

(Ord. O2022-013, Amended, 10/04/2022; Ord. O2022-006, Amended, 08/01/2022; Ord. O2021-019, Amended, 01/18/2022; Ord. O2020-005, Amended, 03/16/2021; Ord. O2020-003, Amended, 09/15/2020; Ord. O2019-007, Amended, 09/03/2019; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-006, Added, 07/18/2017)

Section 30. TMC 18.08.040 of the Tumwater Municipal Code is hereby amended to read as follows:

18.08.040 Conditional uses.

Conditional uses in the RSR zone district are as follows:

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- A. Churches;
- B. Wireless communication towers;*
- C. Cemeteries;
- D. Child day care center;
- E. Schools;
- F. Neighborhood community center;
- G. Group foster homes;
- H. The following essential public facilities:
 - 1. Emergency communications towers and antennas;*
- I. Temporary expansions of schools, such as portable classrooms;
- J. Bed and breakfasts.**

*Emergency communication towers and antennas and wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore both uses are subject to provisions for wireless communication facilities in TMC Chapter 11.20, Wireless Communication Facilities.

**Bed and breakfasts with only one guest room are permitted use, but a public notice that an application has been submitted shall be sent to immediate neighbors. Administrative decisions may be appealed pursuant to TMC Chapter 14.12.~~are subject to the notice of application requirements in TMC Chapter 14.06 to allow for public notice for neighbors and an appeal of the administrative decision to the hearing examiner.~~

(Ord. O2020-003, Amended, 09/15/2020; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-006, Amended, 07/18/2017; Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Amended, 12/19/1995; Ord. O95-014, Added, 07/18/1995)

Section 31. TMC 18.10.040 of the Tumwater Municipal Code is hereby amended to read as follows:

18.10.040 Conditional uses.

Conditional uses in the SFL zone district are as follows:

- A. Churches;
- B. Wireless communication towers;*
- C. Cemeteries;
- D. Child day care center;
- E. Schools;

- F. Neighborhood community center;
- G. Neighborhood-oriented commercial center;
- H. The following essential public facilities:
 - 1. Emergency communications towers and antennas;*
- I. Group foster homes;
- J. Bed and breakfasts;**
- K. Temporary expansions of schools, such as portable classrooms.

*Emergency communication towers and antennas and wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore both uses are subject to provisions for wireless communication facilities in TMC Chapter 11.20, Wireless Communication Facilities.

**Bed and breakfasts with only one guest room are permitted use, but a public notice that an application has been submitted shall be sent to immediate neighbors. Administrative decisions may be appealed pursuant to TMC Chapter 14.12~~are subject to the notice of application requirements in TMC Chapter 14.06 to allow for public notice for neighbors and an appeal of the administrative decision to the hearing examiner.~~

(Ord. O2019-007, Amended, 09/03/2019; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-006, Amended, 07/18/2017; Ord. O2010-029, Amended, 06/07/2011; Ord. O2001-012, Amended, 03/19/2002; Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Added, 12/19/1995)

Section 32. TMC 18.10.040 of the Tumwater Municipal Code is hereby amended to read as follows:

18.12.040 Conditional uses.

Conditional uses in the SFM zone district are as follows:

- A. Churches;
- B. Wireless communication towers;*
- C. Cemeteries;
- D. Child day care center;
- E. Schools;
- F. Neighborhood community center;
- G. Neighborhood-oriented commercial center;
- H. Private clubs and lodges;

- I. The following essential public facilities:
 - 1. Emergency communications towers and antennas;*
- J. Group foster homes;
- K. Bed and breakfasts;**
- L. Temporary expansions of schools, such as portable classrooms.

*Emergency communication towers and antennas and wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore both uses are subject to provisions for wireless communication facilities in TMC Chapter 11.20, Wireless Communication Facilities.

**Bed and breakfasts with only one guest room are permitted use, but a public notice that an application has been submitted shall be sent to immediate neighbors. Administrative decisions may be appealed pursuant to TMC Chapter 14.12. are subject to the notice of application requirements in TMC Chapter 14.06 to allow for public notice for neighbors and an appeal of the administrative decision to the hearing examiner.

(Ord. O2019-007, Amended, 09/03/2019; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-006, Amended, 07/18/2017; Ord. O2010-029, Amended, 06/07/2011; Ord. O2001-012, Amended, 03/19/2002; Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Added, 12/19/1995)

Section 33. TMC 18.49.040 of the Tumwater Municipal Code is hereby amended to read as follows:

18.49.040 Conditional uses.

Conditional uses within the MHP zone district are as follows:

- A. Churches;
- B. Wireless communication towers;*
- C. Cemeteries;
- D. Child day care center;
- E. Schools;
- F. Neighborhood community center;
- G. Neighborhood-oriented commercial center;
- H. The following essential public facilities:
 - 1. Emergency communications towers and antennas;
- I. Group foster homes;

J. Bed and breakfasts;**

K. Temporary expansions of schools, such as portable classrooms.

*Wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore are subject to provisions for wireless communication facilities in TMC Chapter 11.20, Wireless Communication Facilities.

~~**Bed and breakfasts with only one guest room are permitted use, but a public notice that an application has been submitted shall be sent to immediate neighbors. Administrative decisions may be appealed pursuant to TMC Chapter 14.12. are subject to the notice of application requirements in TMC Chapter 14.06 to allow for public notice for neighbors and an appeal of the administrative decision to the hearing examiner.~~

(Ord. O2019-007, Amended, 09/03/2019; Ord. O2018-025, Amended, 12/18/2018; Ord. O2017-006, Amended, 07/18/2017; Ord. O2008-009, Added, 02/17/2009)

Section 34. TMC 18.50.075 of the Tumwater Municipal Code is hereby amended to read as follows:

18.50.075 Modification of off-street parking space standards.

A. Minor Modifications. A modification to increase or decrease parking standards in Figure 18.50.070(A) by up to ten percent shall automatically apply at the request of the project applicant.

B. Administrative Modifications. A modification to increase or decrease the parking standard in Figure 18.50.070(A) by ten percent to forty percent shall be considered by the city at the request of the project applicant.

1. The criteria for an administrative modification request are set forth below:

a. The project ~~developer~~applicant shall present all findings, evidence, and reports to the community development director prior to any final, discretionary approvals; e.g., site plan approval, environmental review, or any planning, building, or engineering permits.

b. Modification requests may be granted based on the effectiveness of proposed transportation demand management strategies, significance and magnitude of the proposed modification, and compliance with this chapter.

c. Modification requests may be denied or altered if the community development director has reason to believe, based on experiences and existing development practices, that the proposed modification may lead to excessive or inadequate parking or may inhibit or prevent regular and intended functions of either the proposed or existing use, or adjacent uses.

2. Submittal Requirements. A report shall be submitted by the applicant providing the basis for more or less parking and will include the following information:

- a. For requests of up to twenty percent:
 - i. Describe the site and use characteristics, specifically:
 - (A) Site accessibility and proximity to transit infrastructure and transit times;
 - (B) Site accessibility and proximity to bicycle and pedestrian infrastructure;
 - (C) Shared and combined parking opportunities; and
 - (D) Employee or customer density and transportation practices.
 - ii. Describe and demonstrate alternative transportation strategies such as carpooling, flexible work schedules, telecommuting, or parking fees, if used;
 - iii. Demonstrate compliance with commute trip reduction measures as required by state law, if applicable;
 - iv. Identify possible negative effects on adjacent uses and mitigation strategies, if applicable; and
 - v. If increasing, employers with one hundred or more employees must meet the design and facility requirements in TMC 18.50.060(L).
- b. For requests greater than twenty percent and up to forty percent:
 - i. Provide the contents of a twenty percent or less request;
 - ii. If increasing, provide a parking demand study prepared by a transportation engineer licensed in the state of Washington, which supports the need for more parking;
 - iii. Increased parking in excess of twenty percent shall be banked in accordance with TMC 18.50.100 for a minimum of three years; and
 - iv. If decreasing, show that the site is within a one-quarter-mile walk to transit service, or that it will be within six months of occupancy to be verified by Intercity Transit.

3. Administrative decisions may be appealed pursuant to TMC Chapter 14.0812.

(Ord. O2014-008, Added, 10/07/2014)

Section 35. TMC 18.50.120 of the Tumwater Municipal Code is hereby amended to read as follows:

18.50.120 Required bicycle facilities.

The following requirements shall apply to any off-street parking area designed to accommodate ten or more vehicles and any non-single-family/duplex development over three thousand square feet. This requirement excludes auxiliary buildings that are not a primary arrival location for employees, visitors, or residents, such as storage buildings.

A. Bicycle parking spaces shall be provided in accordance with Figure 18.50.120(A). Bicycle facilities satisfying Figure 18.50.120(A) shall meet the following requirements. Bicycle facilities provided in excess of Figure 18.50.120(A) shall only be required to meet subsections (A)(4) through (6) of this section:

1. Covered to protect bicycles from weather;
2. Visible from primary entrances or provide signs indicating location;
3. Illuminated;
4. Secure to protect bicycles from theft through the use of racks, cages, lockers, or other approved methods;
5. Located within one hundred feet of primary entrances for employees, visitors, or residents unless combined with other uses on site for convenience, in which case bicycle facilities shall be located within two hundred feet of a primary entrance. Bicycle facilities should be located no farther away from the main entrance than the nearest nonaccessible space;
6. Accessible for bicycles, defined as the following:
 - a. Provide proper maneuvering space (usually a minimum of twenty-four inches) between landscaping, buildings, and other obstructions;
 - b. Not interfere with means of ingress or egress from the building; and
 - c. Accessible without using stairs.

B. Short-term (class 2) bicycle facilities shall provide a secure and quickly accessible space to lock a bicycle to a bicycle rack.

1. Racks shall enable the use of a U-lock between the bicycle frame and the rack. Additionally, racks shall support the bicycle frame in two or more places (e.g., “inverted U”).
2. Racks shall provide a bicycle parking space equal to twenty-two inches by six feet, unless placed side to side, in which case they may be placed thirty-six inches apart.

3. Prohibited racks include grid/comb/wheelbenders which only secure a wheel, and wave/ribbon racks.
4. Encouraged racks include inverted “U,” “A,” post and loop racks, and security rails.
5. Long-term bicycle facilities provided in excess of the minimum requirements shall serve to meet up to fifty percent of short-term bicycle facility requirements at the request of the land-owner.

C. Long-term (class 1) bicycle facilities shall protect bicycles and their components from theft, unauthorized access, and weather. Examples include a lockable bike cage or class 1 bicycle lockers.

1. Each bicycle must be able to be individually locked or secured unless the facility is designed to only be used by an individual or family (such as in a private garage). If racks are used, they must be compliant with subsection B of this section.
2. Bicycle lockers are encouraged, but no site should depend solely on bicycle lockers for long-term storage. Bicycle lockers should have a see-through window or view-hole to discourage improper use.
3. Each residential unit shall have access to the required long-term bicycle space.
4. Long-term bicycle facilities shall be provided as specified in Figure 18.50.120(A).

D. All major employers or major worksites as defined by RCW 70.94.524 shall provide a minimum of one shower and changing facility per gender.

E. Administrative Modification. If, in the judgment of the community development director, required bicycle facilities are demonstrated by the ~~applicant project developer~~ to be excessive for a particular development given its use (such as with a residential care facility or rest home), or if there are unusual circumstances which preclude the establishment of required bicycle facilities, the community development director may allow reduced standards. Administrative decisions may be appealed pursuant to TMC Chapter 14.~~1208~~.

(Ord. O2022-013, Amended, 10/04/2022; Ord. O2014-008, Added, 10/07/2014)

Section 36. A new TMC Chapter 18.55 is hereby added to the Tumwater Municipal Code to read as follows:

Chapter 18.55 SITE PLAN REVIEW

Sections:

- 18.55.010 Purpose.
- 18.55.020 Applicability.
- 18.55.030 Exemptions.
- 18.55.040 Application requirements.
- 18.55.050 Review process.
- 18.55.060 Appeals.
- 18.55.070 Duration of site plan approval.
- 18.55.080 Exception to duration of approval for phased projects.
- 18.55.090 Minor modifications.
- 18.55.100 Major modifications.
- 18.55.110 Revocation of site plan approval.
- 18.55.120 Compliance.
- 18.55.130 Penalty for noncompliance.

18.55.010 Purpose.

A. The purpose of the site plan approval process is to:

1. Facilitate project design that is consistent with the city's comprehensive plan and regulations and in keeping with the physical constraints of the project site;
2. Promote orderly community growth;
3. Minimize discordant and undesirable impacts of development both on site and off site;
4. Coordinate public or quasi-public elements, such as walkways, driveways, paths, and landscaping within segments of larger developments and between individual developments;
5. Ensure convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;
6. Protect the desirable aspects of the natural landscape and environmental features of the city by minimizing the undesirable impacts of proposed developments on the physical environment; and
7. Minimize conflicts that might otherwise be created by a mix of uses within an allowed area.

B. The site plan review is not intended to determine whether a particular land use activity is appropriate on a particular site.

C. Land uses that are otherwise permitted in this title shall not be denied through the site plan review process unless such uses cannot meet the development standards required for the use.

D. Site plan review shall be consolidated with other land use permit approvals pursuant to TMC Title 14 Development Code Administration.

E. Site plan review does not replace any required environmental, land division or zoning approvals.

18.55.020 Applicability.

A. Site plan elements subject to this chapter include, but are not limited to:

1. Site layout;
2. Building orientation;
3. Pedestrian and vehicular access;
4. Signage;
5. Landscaping and natural features of the site;
6. Integration of stormwater management techniques;
7. Screening and buffering;
8. Parking and loading arrangements, and illumination; and
9. Design review.

B. Site planning is the horizontal and vertical arrangement of the elements in TMC 18.55.020(A) that is compatible with the city's comprehensive plan and regulations, and the physical characteristics of a site and the surrounding area.

C. Site plan review shall be required in the following instances:

1. Construction or expansion of new facilities or structures, except for individual single-family dwellings, duplexes, triplexes, quadplexes, townhouses, and stacked units or
2. Where, in the opinion of the director, the magnitude and character of the project is sufficiently complex to warrant site plan review, or the project could result in an adverse effect on adjacent properties or the subject property or other public facilities if not planned early and carefully.

18.55.030 Exemptions.

A. Site plan review shall not be required for remodeling existing buildings or structures provided:

1. The alterations conform with any prior approved site plan review approval; or
2. The alterations do not modify the existing site layout.

B. The following types of uses are not exempt from site plan review unless they meet the conditions of TMC 18.55.030(A):

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1. Individual single family dwellings, duplexes, triplexes, or quadplexes located on property with critical areas; or
2. Two or more single family dwellings, duplexes, triplexes, or quadplexes built on the same lot.

18.55.040 Application requirements.

A. Site plan review applications shall not be accepted for processing until the applicant has scheduled and attended preapplication conferences pursuant to TMC 14.14.020.

B. For any project requiring a site plan approval as identified in TMC 18.55.020, a site plan review application shall be submitted to the community development department for review and approval pursuant to TMC Chapter 14.12 as either a Type I land use permit application, if SEPA review is not required, or as a Type II land use permit application, if SEPA review is required.

C. Application for site plan review shall include the information required by TMC 14.14.030, unless waived by the director.

18.55.050 Review process.

A. Upon receipt of the complete site plan review application, the director shall circulate the site plan review application pursuant to the requirements of TMC 14.16.040.

B. Site plan review applications shall be reviewed as either a Type I land use permit application, if SEPA review is not required, or as a Type II land use permit application, if SEPA review is required.

C. Modifications and conditions may be imposed to meet city regulations and to the extent reasonably necessary to eliminate or minimize adverse effects on adjacent properties, subject properties, or public facilities.

1. The decision to require modifications or conditions shall be based upon the following factors:
 - a. Noise level;
 - b. Traffic flow, internal circulation, sight obstruction, and parking;
 - c. Drainage and flood control;
 - d. Location, size, and availability of public facilities;
 - e. Requests for variance or conditional use;
 - f. Environmental or land division approvals;
 - g. Effect of the project on adjacent and surrounding properties; and
 - h. Landscaping, and site or building design.

- D. Modifications and conditions required by the director shall be limited to:
1. Location, dimensions, and method of improvements to all property to be dedicated to the public or to public utilities including, but not limited to, street right-of-way and utility easements;
 2. Location, size, dimensions of yards, courts, setbacks, and all other open spaces between buildings and structures;
 3. Location, dimensions, and method of improvement of all driveways, curbs and gutters, parking areas, walkways and means of access, ingress and egress, and drainage;
 4. Location, size, bulk, exterior surfaces, height, and number of stories of all buildings and structures, including signs, walls, and fences;
 5. Location, size, dimensions, design elements, and materials used in landscaped areas; and
 6. Improvements to city standards of adjacent streets by the applicant, including paving, curbs, gutters, sidewalks, provisions of streetlights, and traffic-control facilities where the city determines that traffic generation, flow, and circulation patterns warrant such improvement.

18.55.060 Appeals.

- A. Appeals of decisions by the director relating to site plan applications may be appealed to the hearing examiner by submitting to the city clerk a written notice of appeal within fourteen days of the director's decision.

18.55.070 Duration of site plan approval.

- A. The approval of a site plan shall vest the applicant to the land use regulations in effect at the time of the application for a period of eighteen months after approval; provided that the applicant files a complete application for a building permit within this timeframe.

- B. The director may grant an extension pursuant to TMC 14.10.070(B).

18.55.080 Exception to duration of approval for phased projects.

- A. Phasing Permitted.

1. For development proposed on only a portion of a particular site, an applicant may choose to submit a site plan application for either the entire site or a portion of the site.
2. For development proposed on only a portion of a particular site, the application shall clearly state the area of the portion of the site and the proposed development, including phases, for which site plan approval is being requested.

3. In every case, the site plan application and review shall cover at least that portion of the site which is directly related to or may be impacted by the actual proposed development, as determined by the director.

B. Authority for Extension of Time.

1. The director may grant site plan approval for large projects planned to be developed or redeveloped in phases over a period of years, exceeding the normal time limits of this chapter.

2. Such approval shall include clearly defined phases and specific time limits for each phase.

C. Expiration of Phase(s).

1. If the time limits of a particular phase are not satisfied then site plan approval for that phase and subsequent phases shall expire.

2. The director shall determine if such a phased project will be eligible for any extensions of the time limits.

D. Vesting.

1. If the development of a phased project conforms to the approved phasing plan, the land use regulations in effect at the time of the original approval shall continue to apply.

2. However, all construction shall conform to the current regulations in TMC Title 15 Buildings and Construction and stormwater regulations in force at the time of building permit application.

18.55.090 Minor modifications.

A. Minor modifications to an approved site plan may be permitted by the director.

B. To be considered a minor modification, the amendment must not:

1. Involve more than a ten percent increase in area or scale of the development in the approved site plan;

2. Have a significantly greater impact on the environment and facilities than the approved site plan; or

3. Change the boundaries of the originally approved site plan.

18.55.100 Major modifications.

A. Major modifications to an approved site plan require a new application.

B. The review and approval shall be by the approval body which approved the original site plan.

C. Major modifications involve a substantial change in the basic site design plan, intensity, density, use and the like involving more than a ten percent change in area or scale.

18.55.110 Compliance.

No person shall violate or fail to comply with the provisions of this chapter or any adopted site plan approval or any conditions or provisions thereof, nor shall a building permit be issued for any structure which would violate or fail to comply with any adopted site plan approval for the parcel or parcels on which such structure is to be located.

18.55.120 Penalty for noncompliance.

A. Anyone found in violation of this chapter shall be guilty of a misdemeanor as defined in TMC Chapter 1.10.

B. Each day the violation continues may be considered as a separate violation.

Section 37. TMC 18.56.030 of the Tumwater Municipal Code is hereby amended to read as follows:

18.56.030 Hearing.

A. Upon the filing of an application for a conditional use permit, the hearing examiner shall set a time and place for a public hearing to consider the application under the provisions of TMC ~~Chapter 2.58~~ Title 14 Development Code Administration.

B. Notice of any public hearing shall be in accordance with the provisions of TMC ~~Chapter 14.06~~ Title 14 Development Code Administration.

(Ord. O2017-006, Amended, 07/18/2017; Ord. O95-035, Amended, 12/19/1995; Ord. 1259, Amended, 11/06/1990; Ord. 883, Added, 05/06/1984)

Section 38. TMC 18.56.050 of the Tumwater Municipal Code is hereby amended to read as follows:

18.56.050 Notification of hearing examiner decision.

Notification of the hearing examiner decision shall be in accordance with the provisions of TMC Chapter 2.58 and TMC 14.~~06-090~~18.010.

(Ord. O2017-006, Amended, 07/18/2017; Ord. O2000-004, Amended, 07/18/2000; Ord. O95-035, Amended, 12/19/1995; Ord. 1259, Amended, 11/06/1990; Ord. 883, Added, 05/06/1984)

Section 39. TMC 18.60.015 of the Tumwater Municipal Code is hereby amended to read as follows:

18.60.015 Site-specific rezones.

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Applications for site-specific rezones required as a result of a proposed comprehensive plan amendment shall be processed with the proposed comprehensive plan amendment as set forth in ~~this chapter~~[TMC 14.08.030](#).

(Ord. O96-024, Amended, 09/17/1996; Ord. O95-035, Amended, 12/19/1995; Ord. 1259, Added, 11/06/1990)

Section 40. A new section TMC 18.60.027 is hereby added to the Tumwater Municipal Code to read as follows:

18.60.027 Procedure – Recommendation and Approval.

A. For comprehensive plan amendments, general area rezones, development regulation amendments, and site-specific rezones required as a result of a proposed comprehensive plan amendment, the review and approval authorities shall be as follows:

1. The planning commission shall conduct an open record predetermination hearing on all the amendments collectively and provide a recommendation to the city council.
2. The city council will consider the recommendation of the planning commission and make the final decision on all the amendments collectively.

B. Site-specific rezones not requiring a comprehensive plan amendment shall be processed as a Type III land use permit application pursuant to TMC Title 14 Development Code Administration.

Section 41. TMC 18.60.040 of the Tumwater Municipal Code is hereby amended to read as follows:

18.60.040 Zoning amendments.

Requests for zone changes shall be reviewed and decided as set forth in TMC ~~14.08.030~~[18.60.027](#) and shall be processed in accordance with the procedures and notice requirements set forth in TMC 18.60.020.

(Ord. O96-024, Added, 09/17/1996)

Section 42. 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 43. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 44. 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 45. Effective Date. This ordinance shall become effective immediately after passage, approval and publication as provided by law.

ADOPTED this _____ day of _____, 20__.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:_____

Effective Date:_____

TO: General Government Committee
FROM: Brad Medrud, Planning Manager
DATE: November 13, 2024
SUBJECT: Food System Plan

1) Recommended Action:

No action is requested. This is an opportunity for discussion with the consultant about the initial steps in the process of developing a Food System Plan for the City.

2) Background:

The City Council included the preparation of a City Food System Plan to address community concerns with food insecurity on the local level on the 2024 Long Range Planning Work Program.

The City will be working with our consultant Rebeca Potasnik to prepare a Plan that focuses on supporting ways to access food more effectively and consider the role of local and community based agriculture activities, such as community gardens and local producers and processers to build a more resilient food system.

The Plan will focus on how to provide healthy food to the community, reduce food waste, support local food processing, eliminate barriers, address gaps in the current system, produce solutions to implement at appropriate scale, and identify how to maintain and update resource materials through jurisdictional and community partners.

This first meeting with the General Government Committee will focus on describing the plan preparation process, reviewing the stakeholder list, and the questions for the stakeholders.

3) Policy Support:

Strategic Priority: Build a Community Recognized for Quality, Compassion and Humanity.

4) Alternatives:

None

5) Fiscal Notes:

Preparation of the Plan is internally funded.

6) Attachments:

A. Memorandum

City of Tumwater Food System Plan
Project Overview**Summary**

The City of Tumwater wants to address food insecurity at the local level by focusing on 1) how to provide healthy food for all members of the community, 2) reduce food waste, and 3) support local food production and processing. This project will prepare a Food System Plan which will identify the most impactful activities in addressing core food insecurity issues, identify how to eliminate barriers and address gaps in the current system, and offer appropriately scaled solutions implemented at the municipal level through collaborations between the City and community partners. The Plan will include key performance indicators to assist the City in monitoring the effectiveness of the activities. It will also provide a method by which the City and its jurisdictional and community partners can maintain and update relevant resource materials.

Methodology & Approach

Guiding principles. The Plan will be grounded in the principles of equity, sustainability, stability, resiliency, and efficacy.

- Equity. A food system should support food security with an emphasis on those community members that experience the greatest inequities.
- Sustainability. A balance between environmental health, economic profitability, and social equity creates a resilient food system that meets current food needs without compromising the ability of future generations to meet their own needs.
- Stability. All community members should have reliable access to sufficient, safe, appropriate, and nutritious food, even in the face of unexpected challenges.
- Resiliency. The food system should maintain its functionality and continue to provide food security and nutrition under various adverse conditions.
- Efficacy. The audience for the plan is the City of Tumwater, therefore, the objectives and actions in this plan will be the areas where this level of government can have the most impact.

Community engagement. Subject matter experts (SMEs) from the community will be identified to holistically represent Tumwater's current food system including natural, physical/built, political, and social aspects. SMEs will be consulted via interviews and survey tools to aid in creating an inventory and evaluation of the current landscape. City staff, Planning Commission, and City Council members will be consulted in identifying SMEs.

Community Food Assessment. Information obtained from SMEs will be synthesized in a Community Food Assessment to show key challenges, developments, current collaborations, and opportunities. The key findings from the assessment will inform the strategies addressed in the Food System Plan.

Develop goals. The overarching goals of the Food System Plan will be developed using the key findings of the Community Food Assessment. These goals will be drafted and then shared with SMEs, City staff, and Planning Commission and City Council members. The final goals of the Plan will reflect feedback received from these reviewers.

Develop recommendations. Recommended strategies and actions will support the vetted goals and be informed by the opportunities highlighted by SMEs in the Community Food Assessment. SMEs will have the opportunity to review the recommendations and provide feedback before the Food System plan is finalized.

Food System Plan

The Food System Plan will summarize the trends and current conditions revealed from the Community Food Assessment and focus on the recommended actions to meet the community’s goals. The actions may include opportunities for policy solutions, potential partners and community collaborations, infrastructure, education, and programming. All actions will be grounded in the feasibility of what can be accomplished at the municipal level. The Plan will include suggested metrics to evaluate its efficacy over time.

City of Tumwater Food System Plan
Subject Matter Experts

Your feedback is requested on the following preliminary list of subject matter experts (SMEs). This list is organized alphabetically by affiliation. These community members were identified to represent Tumwater’s current food system including natural, physical/built, political, and social aspects. Select SMEs will be consulted via interviews and the remainder via survey tools to aid in creating an inventory and evaluation of the current landscape.

- Who else should be consulted?
- What voices and perspectives are missing?
- Should any of these be excluded due to duplication, obsolescence, etc.?

NAME	TITLE	AFFILIATION	CATEGORY		
			hunger relief	processing / production	food waste
Rae Lee	Director	Adventist Community Service Center	X		
Dani Madrone	Pacific Northwest Senior Policy & Planning Manager	American Farmland Trust		X	
Khurshida Begum	Executive Director	ASHHO Cultural Community Center		X	
Mark Clark	Owner, farmer	Bush Prairie Farm		X	
Peter Epperson	Community Kitchen volunteer	Catholic Community Services	X		
Rhys Roth	Executive Director	Center for Sustainable Infrastructure		X	X
Deborah Sioux-Lee	Interim Executive Director	CIELO	X	X	
Todd Anderson	Old Town Center	City of Tumwater, Parks & Rec Dept		X	
Alyssa Jones Wood	Sustainability Coordinator	City of Tumwater, Water Resources & Sustainability			X
Kim Gaffi	Consultant	co-founder of GRuB, QUEST Consortium	X	X	
Jennifer Colvin	Owner, rancher	Colvin Ranch		X	
Jeanine Toth	Editor in Chief of <i>Fresh from the Farm Guide</i>	Community Farm Land Trust		X	
Pat Labine	board member, committee member, faculty emeritus	Community Farm Land Trust, Thurston County Agriculture Advisory Committee, Evergreen State College Ecological Agriculture		X	

NAME	TITLE	AFFILIATION	CATEGORY		
			hunger relief	hunger relief	hunger relief
John Peters	Managing Member & Lead Developer	Tumwater Craft District		X	X
Margaret Garrett	Farm-to-School Coordinator	Educational Service District 113	X	X	X
Meredith Arseneau	Child Nutrition Cooperative Supervisor	Educational Service District 113	X	X	X
Beth Henriquez	Executive Director	Enterprise for Equity		X	
Tanikka Watford	board member, Executive Director	Enterprise for Equity, The Moore Wright Group, Deep Roots Foods	X	X	X
	Basic Needs Navigator	Family Education and Support Services	X		
Joel Hansen	Tumwater citizen	former Tumwater Planning Commission member, Tumwater Farmers Market, Thurston Union of Low Income People	X	X	X
Cathy Visser	nutritionist, dietician	South Sound Food System Network & Senior Services for South Sound; True for You Nutrition, LLC	X	X	X
Kerensa Mabwa	Growing Home Collective Manager	GRuB	X	X	
Deb Crockett	Executive Director	GRuB, South Sound Food System Network	X	X	X
		Haki Farmers Collective		X	
James Wirth	Field to Food Bank Coordinator	Kiwanis Food Bank Gardens	X	X	
		Mountain View Church	X		
Elise Krohn	Co-Director	Native Plants & Foods Institute, Tahoma Peak		X	
Tony & Kira DeRito	owners	Olympia Seafood, Tumwater Craft District		X	
Treacy Kreger	owner	Our Community Kitchen, South Sound Fresh, Vern's Foods		X	X
Robby Rutledge		Rutledge Family Farm		X	
Stephanie Penland	Senior Nutrition Program Director	Senior Services of South Sound	X	X	X
Jenni Crain	board chair	Slow Food Greater Olympia	X	X	X
Chris Hyde		Souper Sunday	X	X	X

NAME	TITLE	AFFILIATION	CATEGORY		
			hunger relief	hunger relief	hunger relief
	Food Pantry, Student Life	South Puget Sound Community College	X		
Kyle Rogers	Executive Director	South Puget Sound Intertribal Planning Agency	X	X	X
Annie Salafsky	Ag Research Tech, former owner Helsing Junction Farm	SW WA Growers Cooperative & SW WA Food Hub		X	X
Dave & Karissa Jekel	owners	Spud's Produce Market		X	X
Mitch Lewis	owner, farmer, President Tumwater Farmers Market	Summit Farms		X	X
Leejay & Lea Lee	owners	Sweet Lee's Ice Cream, Tumwater Craft District		X	
Aherlow Kasjaka	Program Coordinator	Thurston Asset Building Coalition, South Sound Food System Network	X	X	
Tina Wager	Community Agriculture Programs Coordinator	Thurston Conservation District, Farm My Yard Program		X	
Judy Jones	Senior Director of Operations	Thurston County Food Bank	X		X
Michaela Winkley	Community Engagement Coordinator / School Gardens	Thurston County Food Bank	X	X	
Mackenzie McCall	Agricultural Resources Supervisor	Thurston County Food Bank; South Sound Food System Network	X	X	X
Raymona Smiedala	Community Wellness: Education & Outreach Specialist	Thurston County Public Health & Social Services	X		
Al Quioco	Environmental Health: Food & Environmental Services	Thurston County Public Health & Social Services		X	
Hope Springer	Recycling & Waste Reduction Specialist	Thurston County Public Works			X
Aslan Meade	Director of Strategic Alliances	Thurston Economic Development Council		X	X
Tina Sharp	Regional Agricultural Development Manager	Thurston Economic Development Council		X	X
Meghan Sullivan	Deputy Director	TOGETHER!	X		
Brooke P	Market Manager	Tumwater Farmers Market		X	X

Kristen Maring	lead instructor, Tumwater FRESH Program (Farm Rooted Education for Sustainability & Health)	Tumwater High School	X	X	
NAME	TITLE	AFFILIATION	CATEGORY		
			hunger relief	hunger relief	hunger relief
Carrie Lerud		Tumwater Rotary	X		
Akemi Nagano	Support Services Technician	Tumwater School District, Food Services	X	X	X
Bob Gibson	Food Service supervisor	Tumwater School District, Food Services	X	X	X
Tammi Morgan	Food Service Coordinator	Tumwater School District, Food Services	X	X	X
Chris Wells	Executive Director	United Way of Thurston County	X		
Nate Lewis	Conservation Manager, owner	Washington Farm Land Trust, Oyster Bay Farm		X	
Katie Rains	Food Policy Advisor	Washington State Dept of Agriculture	X	X	X
Dillion Johnson	Business Solutions Navigator	WorkSource Business Solutions Navigator for the Food Production sector at the Thurston Chamber of Commerce		X	X
Stephen Bramwell	Extension Director & Agricultural Specialist	WSU Thurston County Extension		X	X

1. When you think about our local food system, what comes to mind?
2. How would you describe your role in the local food system?
3. What is the biggest barrier to accessing local, nutritious food?
4. What are some emerging issues in your sector of the food system?
5. What unmet needs, challenges, or barriers do you see in your sector of the food system?
6. How is your sector impacted by external market forces?
7. How is your sector impacted by climate change?
8. How has your sector been affected by waste management practices?
9. What are the biggest upcoming or current opportunities for improving our local food system that you know about?
10. What policies or practices are currently in place in Tumwater that hinder a thriving local food system from your sector's perspective?
11. What policies or practices could we enact in Tumwater to support a thriving local food system from your sector's perspective?
12. Are there any best practices you've seen in other places you'd like to see replicated in Tumwater?
13. Is there anyone else you think I should speak to?