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The City of Covington is a destination community where citizens, businesses and civic leaders collaborate to preserve and foster a strong sense of unity.

PLANNING COMMISSION AGENDA

October 6 2016

6:30 PM

CALL TO ORDER

ROLL CALL

Chair Bill Judd, Vice Chair Paul Max, Chele Dimmett, Jennifer Gilbert-Smith, Jonathan Ingram, Jim Langehough, & Alex White

PLEDGE OF ALLEGIANCE

APPROVAL OF CONSENT AGENDA

1. Minutes from September 1, 2016

CITIZEN COMMENTS - *Note: The Citizen Comment period is to provide the opportunity for members of the audience to address the Commission on items either not on the agenda or not listed as a Public Hearing. The Chair will open this portion of the meeting and ask for a show of hands of those persons wishing to address the Commission. When recognized, please approach the podium, give your name and city of residence, and state the matter of your interest. If your interest is an Agenda Item, the Chair may suggest that your comments wait until that time. Citizen comments will be limited to four minutes for Citizen Comments and four minutes for Unfinished Business. If you require more than the allotted time, your item will be placed on the next agenda. If you anticipate, in advance, your comments taking longer than the allotted time, you are encouraged to contact the Planning Department ten days in advance of the meeting so that your item may be placed on the next available agenda.*

UNFINISHED BUSINESS – No Action Required

2. Status & Review on Interim Sign Code Revisions (Supreme Court Decision: Reed v. Town of Gilbert)

PUBLIC HEARING – Action Required

3. Public Hearing on Amendments to CMC 16.10 State Environmental Policy Act policies and procedures, CMC 14.30 Permit Decision Types and CMC 14.45 Appeal Procedures.
4. Public Hearing on Amendments to Repeal CMC 18.100 Property Specific Development Standards/Special Overlay Districts

NEW BUSINESS – No Action Required

ATTENDANCE VOTE

PUBLIC COMMENT: (Same rules apply as stated in the 1st CITIZEN COMMENTS)

COMMENTS AND COMMUNICATIONS OF COMMISSIONERS AND STAFF

ADJOURN

*Any person requiring a disability accommodation should contact the City at least 24 hours in advance.
For TDD relay service please use the state's toll-free relay service (800) 833-6384 and ask the operator to dial (253) 480-2400
Web Page: www.covingtonwa.gov*

**CITY OF COVINGTON
Planning Commission Minutes**

September 1, 2016

City Hall Council Chambers

CALL TO ORDER

Vice Chair Max called the regular meeting of the Planning Commission to order at 6:39 p.m.

MEMBERS PRESENT

Chele Dimmett, Jennifer Gilbert-Smith, Jim Langehough, Paul Max and Alex White

MEMBERS ABSENT – Bill Judd

STAFF PRESENT

Brian Bykonen, Associate Planner and Code Enforcement Officer
Richard Hart, Community Development Director
Kelly Thompson, Planning Commission Secretary

APPROVAL OF MINUTES AND AGENDA

- **1. Commissioner White moved and Commissioner Gilbert–Smith seconded to approve the May 19, 2016 minutes and agenda. Motion carried 5-0.**

CITIZEN COMMENTS - None

UNFINISHED BUSINESS

2. Status & Review on Sign Code Revisions (Supreme Court Decision: Reed v. Gilbert)

Community Development Director, Richard Hart reviewed the Draft Temporary Sign Code in the Planning Commission Agenda Packet. The proposed regulations require permits for only banner signs and signs placed in public parks, trails, open space and public rights-of-way. Signs contain either a commercial or non-commercial message. Mr. Hart reviewed the most significant changes to the Draft Temporary Sign Code and opened the discussion for questions.

Vice Chair Max asked about the maximum sign height of 6' and maximum size of 12 square feet under Section 18.55.270(6)(d)(ii). Associate Planner and Code Enforcement Officer, Brian Bykonen, shared that holiday decorations are now being regulated as signs. Commissioner White and Commissioner Gilbert-Smith

shared that they felt that size was small for a holiday decoration. Mr. Bykonen shared that any other non-commercial sign is regulated by that size as well.

The record is noted to show that Commissioner Dimmett arrived at 6:50pm.

Commissioner Dimmett asked about how a flag is regulated. Mr. Hart said that the height and size regulation shall not apply to a flag placed on a flag pole according to Section 18.55.270(6)(d)(iii). It is viewed as a permanent sign with a temporary message that can change by raising, lowering or adding a flag.

Commissioner Gilbert-Smith asked about holiday lights. Mr. Bykonen shared that staff has discussed this and they could propose that a light could remain on if it is under a certain amount of illuminants. Mr. Hart reminded the Planning Commission that the enforcement of these regulations is handled only on the basis of a complaint.

Staff plans to take the Draft Temporary Sign Regulations to the City Council for approval on an interim basis in October. Discussion and public outreach will continue before the Planning Commission will make a recommendation to the City Council for permanent regulations sometime next year.

PUBLIC HEARING - None

NEW BUSINESS

3. Discuss Council Decision on Impact Fee Deferral Program

Mr. Hart shared that state law has required that cities adopt an impact fee deferral program to defer impact fees on new residential development by September 1, 2016. The state law also allowed the cities to cap the number of homes that could defer the impact fees to 20 units per year, per developer.

4. Discuss Proposed Code Amendment to Delete Special Overlay Districts

Several references to Covington Municipal Code 18.100 related to Property Specific Development Standards/Special District Overlays are no longer necessary and are proposed to be repealed.

5. Discuss Proposed Code Amendment to SEPA Rules

Under the city's current environmental review procedure, it was noted that the City Council makes legislative decisions but the appeal procedures are unclear. A

summary of proposed amendments are listed within the Agenda Item 5 memorandum from the city's consultant, Lisa Grueter at Berk Consulting.

ATTENDANCE VOTE

- **Commissioner Gilbert-Smith moved and Commissioner White seconded to excuse the absence of Chair Judd. Motion carried 5-0.**

PUBLIC COMMENTS - None

COMMENTS AND COMMUNICATIONS FROM STAFF

No comments.

ADJOURN

The September 1, 2016 Planning Commission Meeting adjourned at 7:24 p.m.

Respectfully submitted,

Kelly Thompson, Planning Commission Secretary



City of Covington
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Memo

To: Planning Commission

From: Richard Hart, Community Development Director
Brian Bykonen, Associate Planner/Code Enforcement Officer
Sara Springer, City Attorney

Date: October 6, 2016

Re: Review and Discussion of Working Draft of Proposed Interim Sign Code Revisions CMC 18.55

Background

City staff has been working on the proposed revisions to our sign code for about 18 months. In 2015, the US Supreme Court issued a decision in *Reed v. Town of Gilbert*, a suburban city in the Phoenix, Arizona metropolitan area, that has provided new guidance for all cities and counties across the country. At question is the major issue of content neutrality of local jurisdiction's sign regulations. The city staff has held several study sessions with the city council to develop the goals, objectives, and purpose of new sign regulations, which is an important step required by the Supreme Court decision to lay the framework for content neutral sign regulations. City staff has also held several discussion sessions with the planning commission to review progress on the proposed sign code revisions. At this point city staff has concluded it is best to adopt interim sign code regulations that are content neutral and address the major points of temporary signs, as they were the major issue involved with the Supreme Court decision of *Reed v. Gilbert*.

Process for Interim Regulations

City staff has now chosen to follow an approach of adopting interim sign regulations for six months for both temporary signs and permanent signs. The major focus of the interim regulations is for temporary signs. The interim regulation process will involve a public hearing before the city council on October 25, 2016. During the six months of interim regulations, staff will conduct an extensive public outreach program with planning commission participation to involve a variety of interest groups, provide education on the proposed regulations and listen to feedback on the specific numerical provisions for governing signs. After that task, the planning commission will hold their required public hearing on the permanent sign regulations and make their final recommendation to the city council in 2017.

Discussion of Working Draft for Interim Sign Regulations

The accompanying draft of the proposed interim sign code regulations before you this evening is a partially completed working draft, which is provided for general reference and discussion only. The intent of tonight's meeting is to outline the structure of the proposed interim regulations, discuss process, and answer any questions the planning commission might have.



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Memo

To: Planning Commission
From: Ann Mueller, Senior Planner
Richard Hart, Community Development Director

Date: September 30, 2016

Re: Public Hearing on Amendments to CMC 16.10 State Environmental Policy Act policies and procedures, CMC 14.30 Permit Decision Types and CMC 14.45 Appeal Procedures.

Background

CMC Chapter 16.10 State Environmental Policy Act contains the city's SEPA procedures and policies which are consistent with the requirements of RCW 43.21C- the State Environmental Policy Act (SEPA) and implementing rules (WAC 197-11). However, staff and our consultant, BERK, have previously identified some unclear procedures for the review and potential appeal of environmental determinations. Specifically, in additional language and clarification is being proposed related to processing appeals in the case of legislative proposals (e.g. plans, codes and area-wide rezones) that are considered by the Planning Commission with a final decision by the City Council. As written the city's rules do not clearly state what items under SEPA can be appealed administratively. Additionally, staff is proposing amendments to CMC 14.30 Permit Decision Types related to the timing of EIS review by the Planning Commission for nonproject actions. Furthermore, some out of date references to SEPA state laws and rules are being corrected.

Summary of Proposed Amendments

- Proposed code amendments (Attachment A) would clarify SEPA appeal procedures for legislative matters.
 - Legislative matters are policy choices typically brought before the Planning Commission for recommendation and always subject to City Council decisions for action or no action.
 - Currently, city code indicates that appeals should be heard by the decision-making body on the action. Therefore, the City Council would hear SEPA appeals associated with legislative actions.
 - Typically, the underlying action would need to be appealed in addition to the SEPA determination. This is problematic since the City Council would have to make its decision first and then be the body to hear an appeal.
 - In any case, City Council decisions regarding the Comprehensive Plan or development regulations are appealable to the Growth Management Hearings Board, including associated SEPA determinations. This is stated appropriately in the City's code.
 - It is recommended that administrative appeal opportunities be retained for project permits but excluded for legislative matters since there are appeal opportunities to the Growth Management Hearings Board.

- Amendments would allow for Draft Environmental Impact Statements (Draft EISs) to go to the Planning Commission instead of the Final EIS. This would allow the comment period to overlap the Planning Commission hearing process, and offer the Planning Commission a greater role in shaping the preferred alternative to be included in a Final EIS. It would create more flexibility in the overall legislative review schedule.
- Washington Administrative Code (WAC) 197-11 rules are included by reference throughout the City's code. Several changes to SEPA (RCW 43.21C) in 2012 have not been carried forward into implementing rules in WAC 197-11; these SEPA law references should be included in the City's SEPA procedures to ensure that noticing and other technical procedures are followed. Proposed amendments add references to relatively newer RCW provisions.
- Some cross references to statutes and rules are incorrect and would be amended.

A 60-day notice of the proposed change to the Zoning Code was sent to the Washington State Department of Commerce on August 9, 2016. On September 16, 2016, public notice of this proposed code amendment was published in the Covington Reporter, placed on the City website, and posted at City Hall.

PUBLIC HEARING

The Planning Commission will hold a public hearing on the proposal to amend CMC 16.10 State Environmental Policy Act rules, CMC 14.30 Permit Decision Types and CMC 14.45 Appeal Procedures at its October 6, 2016 regularly scheduled meeting. At the public hearing the Planning Commission will hear any public testimony and then discuss the proposed code amendments. After the Planning Commission discussion, you may direct staff to bring back items for further clarification and modification, make a final recommendation to the City Council, or continue review and discussion at a future meeting.

Applicable Decision Criteria for Review of Development Regulation Amendments

Following is the criteria (*in italics*) that the Planning Commission must use to determine if they will recommend the proposed code amendments to the City Council for their final review and decision.

(1) The proposed amendment is consistent with the goals, objectives, and policies of the comprehensive plan;

Staff Findings: The proposed amendments to amend CMC 16.10 State Environmental Policy Act rules, CMC 14.30 Permit Decision Types regulations and CMC 14.45 Appeal Procedures are consistent with the goals, objectives and policies of Covington's Comprehensive Plan.

(2) The proposed amendment is consistent with the scope and purpose of the City's zoning ordinances and the description and purpose of the zone classification applied for;

Staff Findings: The proposed amendments to CMC 16.10 State Environmental Policy Act rules, CMC 14.30 Permit Decision Types regulations and CMC 14.45 Appeal Procedures are not-site specific and apply across all zones of the City.

(3) Circumstances have changed substantially since the establishment of the current zoning map or district to warrant the proposed amendment;

Staff Findings: N/A. The proposed amendments will not affect the current zoning map or zoning district designations.

(4) The proposed zoning is consistent and compatible with the uses and zoning of surrounding property;

Staff Findings: N/A. The proposed amendments do not affect the existing zoning of land in the City of Covington.

(5) The property that is the subject of the amendment is suited for the uses allowed in the proposed zoning classification;

Staff Findings: N/A. The proposed amendments are not site-specific.

(6) The amendment is in compliance with the three-year limitation rule as specified in CMC 14.27.030(3); and

Staff Findings: Amendments to CMC 16.10 State Environmental Policy Act rules and CMC 14.30 Permit Decision Types regulations have not been proposed or subject to review by the City in the past three years.

(7) Adequate public services could be made available to serve the full range of proposed uses in that zone.

Staff Findings: N/A. The proposed amendments will not change the zoning of any property in the City and will not create any increase demand for public services.

Recommendation

Recommended motion: Move to recommend to the City Council that they approve the proposed amendments to CMC 16.10 State Environmental Policy Act procedures and policies, CMC 14.30 Permit Decision Types regulations and CMC 14.45 Appeal Procedures.

Alternative motion: Move to continue the Planning Commission's discussion and final recommendation to a future meeting date to allow staff to make recommended modifications for Planning Commission review.

**Chapter 16.10
STATE ENVIRONMENTAL POLICY ACT**

Sections:

- [16.10.010 Authority.](#)
- [16.10.020 General requirements.](#)
- [16.10.030 Additional definitions.](#)
- [16.10.040 Designation of responsible official.](#)
- [16.10.050 Lead agency determination and responsibilities.](#)
- [16.10.060 Transfer of lead agency status to a State agency.](#)
- [16.10.070 Additional timing considerations.](#)
- [16.10.080 Categorical exemptions \(threshold determinations\).](#)
- [16.10.090 Categorical exemptions \(flexible thresholds\).](#)
- [16.10.100 Use of exemptions.](#)
- [16.10.110 Environmental checklist.](#)
- [16.10.120 Mitigated determination of nonsignificance.](#)
- [16.10.130 Environmental impact statement \(EIS\).](#)
- [16.10.140 Preparation of EIS \(additional considerations\).](#)
- [16.10.150 Commenting.](#)
- [16.10.160 Public notice.](#)
- [16.10.170 Designation of official to perform consulted agency responsibilities for the City.](#)
- [16.10.180 Using existing environmental documents.](#)
- [16.10.190 SEPA and agency decisions.](#)
- [16.10.200 Substantive authority.](#)
- [16.10.210 Appeals.](#)
- [16.10.220 Notice – Statute of limitations.](#)
- [16.10.230 Definitions.](#)
- [16.10.240 Categorical exemptions.](#)
- [16.10.250 Agency compliance.](#)
- [16.10.260 Fees.](#)
- [16.10.270 Forms.](#)

16.10.010 Authority.

The City adopts this chapter under the State Environmental Policy Act (SEPA), RCW [43.21C.120](#) and the SEPA rules, WAC [197-11-904](#). This chapter contains the City’s SEPA procedures and policies. The SEPA rules, Chapter [197-11](#) WAC, must be used in conjunction with this chapter. (Ord. 102-98 § 2)

16.10.020 General requirements.

This section contains the basic requirements that apply to the SEPA process. The City adopts the following provisions of the Washington Administrative Code by reference, as now existing or as hereafter amended:

- WAC
- [197-11-040](#) Definitions
 - [197-11-050](#) Lead agency
 - [197-11-055](#) Timing of the SEPA process
 - [197-11-060](#) Content of environmental review
 - [197-11-070](#) Limitations on actions during SEPA process
 - [197-11-080](#) Incomplete or unavailable information

197-11-090	Supporting documents
197-11-100	Information required of applicants
197-11-158	GMA project review – Reliance of existing plans and regulations
197-11-210	SEPA/GMA integration
197-11-220	SEPA/GMA definitions
197-11-228	Overall SEPA/GMA integration procedures
197-11-229	Timing of an integrated SEPA/GMA process
197-11-232	SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping
197-11-235	Documents
197-11-238	Monitoring
197-11-250	SEPA/Model Toxics Control Act (MTCA) integration
197-11-253	SEPA/lead agency for MTCA actions
197-11-256	Preliminary evaluation
197-11-259	Determination of nonsignificance for MTCA remedial actions
197-11-262	Determination of significance and EIS for MTCA remedial actions
197-11-265	Early scoping for MTCA remedial actions
197-11-268	MTCA interim actions

(Ord. 102-98 § 2)

16.10.030 Additional definitions.

In addition to the definitions contained within WAC [197-11-700](#) through [197-11-799](#) and [197-11-220](#), when used in this chapter, the following terms have the following meanings, unless the context indicates otherwise:

- (1) “Department” means any unit of the City established by ordinance, rule, or order.
- (2) “SEPA rules” means Chapter [197-11](#) WAC adopted by the Department of Ecology.
- (3) “Ordinance” means the ordinance, resolution, or other procedure used by the City to adopt regulatory requirements.
- (4) “Early notice” means the City’s response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant’s proposal (mitigated determination of nonsignificance (MDNS) procedures). (Ord. 102-98 § 2)

16.10.040 Designation of responsible official.

- (1) For those proposals for which the City is the lead agency, the responsible official will be the City Manager, or the City Manager’s designee.
- (2) For all proposals for which the City is the lead agency, the responsible official will make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that are listed in this chapter.
- (3) The City will retain all documents required by the SEPA rules and make them available in accord with Chapter [42.17](#) RCW. (Ord. 102-98 § 2)

16.10.050 Lead agency determination and responsibilities.

(1) Any Department within the City receiving an application for or initiating a proposal that involves a nonexempt action will forward the environmental documents to the responsible official for a determination of lead agency under WAC [197-11-050](#), [197-11-253](#), and [197-11-922](#) through [197-11-940](#), unless the lead agency has been previously determined or the responsible official is aware that another agency is in the process of determining the lead agency.

(2) When the City is the lead agency for a proposal, the responsible official will supervise compliance with the threshold determination requirements and, if an EIS is necessary, will supervise preparation of the EIS.

(3) When the City is not the lead agency for a proposal, all Departments will use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decision on the proposal. No Department will prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC [197-11-600](#). In some cases, the City may conduct supplemental environmental review under WAC [197-11-600](#).

(4) If the City receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC [197-11-253](#) or [197-11-922](#) through [197-11-940](#), it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of receipt of the determination, or the City will petition the Department of Ecology for a lead agency determination under WAC [197-11-946](#) within the 15-day time period. The responsible official may initiate any such petition after approval of the City Council.

(5) The responsible official is authorized to make agreements as to the lead agency status of shared lead agency duties for a proposal under WAC [197-11-942](#) and [197-11-944](#); provided, that the responsible official and any Department that will incur responsibilities as a result of such agreement approve the agreement.

(6) When making a lead agency determination for a private project, the responsible official will require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

(7) When the City is the lead agency for an MTCA remedial action, the Department of Ecology will be provided an opportunity under WAC [197-11-253](#)(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC [197-11-253](#)(6), the City will decide jointly with the Department of Ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency. (Ord. 102-98 § 2)

16.10.060 Transfer of lead agency status to a State agency.

For any proposal for a private project where the City would be the lead agency and for which one or more State agencies have jurisdiction, the City's responsible official may elect to transfer the lead agency duties to a State agency. The State agency with jurisdiction appearing first on the priority listing in WAC [197-11-936](#) shall be the lead agency and the City will be an agency with jurisdiction. To transfer lead agency duties, the City's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate State agency with jurisdiction. The responsible official of the City will also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal. (Ord. 102-98 § 2)

16.10.070 Additional timing considerations.

A. For nonexempt proposals, the determination of nonsignificance or in the case where an EIS has been required, a final environmental impact statement (FEIS) for the proposal will accompany the staff recommendation, if any, in a quasi-judicial proceeding on a non-exempt application by the Hearing Examiner to any appropriate advisory body, such as the Planning Commission. (Ord. 102-98 § 2)

B. For nonexempt legislative proposals, the DNS or draft EIS or other threshold determination and SEPA environmental documentation for the proposal shall accompany the City's staff recommendation to the appropriate advisory body, such as the Planning Commission.

16.10.080 Categorical exemptions (threshold determinations).

This section contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This section also contains rules for evaluating the impacts of proposals not requiring an EIS.

The City adopts the following provisions of the Washington Administrative Code by reference, as now existing or as hereafter amended:

WAC	
197-11-300	Purpose
197-11-305	Categorical exemptions
197-11-310	Threshold determination required
197-11-315	Environmental checklist
197-11-330	Threshold determination process
197-11-335	Additional information
197-11-340	Determination of nonsignificance (DNS)
197-11-350	Mitigated DNS
197-11-355	Optional DNS process
197-11-360	Determination of significance (DS) – Initiation of scoping
197-11-390	Effect of threshold determination

The city adopts the following section of the Revised Code of Washington by reference, as supplemented in this chapter:

RCW

43.21C.410 Battery charging and exchange station installation

(Ord. 19-11 § 1 (Exh. 1); Ord. 102-98 § 2)

16.10.090 Categorical exemptions (flexible thresholds).

(1) The City establishes the following exempt levels for minor new construction under WAC [197-11-800\(1\)\(bc\) and \(d\)](#) based on local conditions:

(a) The construction or location of any single-family residential structures of nine or fewer dwelling units;

(b) The construction or location of any multifamily residential structures of 60 or fewer units located within the mixed housing/office (MHO), mixed commercial (MC), and general commercial (GC) downtown zoning districts and the R-18 multifamily zone;

(c) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 30,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots;

(d) The construction of an office, school, commercial, recreational, service or storage building with 12,000 square feet of gross floor area, and with associated parking facilities designated for 40 automobiles;

(e) The construction of a parking lot designated for 40 automobiles;

(f) Any landfill or excavation of 500 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW [76.09.050](#) or regulations thereunder; provided, that the categorical exemption threshold shall be 250 cubic yards for any fill or excavation that occurs on a site that contains critical areas as defined in Chapter [18.65](#) CMC and the Shoreline Master Program, as amended.

[\(2\) The City adopts the following provisions of the Revised Code of Washington by reference, as now existing or as hereafter amended regarding exemptions for nonproject proposals:](#)

[RCW 43.21C.450](#) [Nonproject actions exempt from requirements of chapter.](#)

[\(32\)](#) Whenever the City establishes new exempt levels under this section, it will send them to the Department of Ecology, Headquarters Office, Olympia, Washington 98504, pursuant to WAC [197-11-800\(1\)\(c\)](#). (Ord. 08-13 § 2 (Exh. A); Ord. 102-98 § 2)

16.10.100 Use of exemptions.

(1) Each Department that receives an application, or in the case of governmental proposals, the Department initiating the proposal, will forward the application to the responsible official for determination of whether the proposal is exempt. The determination that a proposal is exempt is final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The City will not require completion of an environmental checklist for an exempt proposal.

(2) In determining if a proposal is exempt, the responsible official will make certain the proposal is properly defined and will identify the governmental licenses required (WAC [197-11-060](#)). If a proposal includes exempt and nonexempt actions, the responsible official will determine the lead agency, even if the license application that triggers the responsible official's consideration is exempt.

(3) If a proposal includes both exempt and nonexempt actions, the responsible official may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

(a) The responsible official will not give authorization for:

(i) Any nonexempt action;

(ii) Any action that would have an adverse environmental impact; or

(iii) Any action that would limit the choice of alternatives;

(b) The responsible official may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

(c) The responsible official may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved. (Ord. 102-98 § 2)

16.10.110 Environmental checklist.

(1) Except as provided in subsection (4) of this section, a completed environmental checklist, in the form provided in WAC [197-11-906](#), [197-11-960](#) must be filed at the same time as an application for a permit, license or other approval not exempted in this chapter; except, a checklist is not needed if the City and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The City will use the environmental checklist to determine the lead agency and, if the lead agency, for making the threshold determination.

(2) For private proposals, the City will require the applicant to complete the environmental checklist, providing assistance as necessary. For City proposals, the Department initiating the proposal must complete the environmental checklist.

(3) The City may complete or revise all or part of the environmental checklist for a private proposal, if either of the following occurs:

(a) The City has technical information on a question or questions that is unavailable to the applicant; or

(b) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

(4) For projects submitted as planned actions under WAC [197-11-164](#), the City will use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC [197-11-315](#). The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance, or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the Department of Ecology to allow at least a 30-day review prior to use. (Ord. 102-98 § 2)

16.10.120 Mitigated determination of nonsignificance.

(1) As provided in this section and WAC [197-11-350](#), the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarification of, the proposal made by the applicant.

(2) An applicant may request in writing early notice of whether a declaration of significance is likely under WAC [197-11-350](#). The request must:

(a) Follow submission of an application and adequate environmental checklist; and

(b) Precede the City's actual threshold determination for the proposal.

(3) The City should respond to the request for early notice within 15 working days. The response will:

(a) Be written;

(b) State whether the City currently considers issuance of a DS likely and, if so, indicate the general or specific areas of concern that are leading to the City to consider a DS; and

(c) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, refiling the environmental checklist and/or application as necessary to reflect the changes or clarifications.

(4) As much as possible, the City will assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

(5) When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the responsible official will base the threshold determination on the changed or clarified proposal and make the determination within 15 days of receiving the changed or clarified proposal:

(a) If the responsible official 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 will issue and circulate a DNS under WAC [197-11-340\(2\)](#).

(b) If the responsible official indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the responsible official will make the threshold determination, issuing a DNS or DS as appropriate.

(c) 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 storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot storm water retention pond at Y location" are adequate.

(d) 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.

(6) A mitigated DNS is issued under either WAC [197-11-340\(2\)](#) requiring a 14-day comment period and public notice, or WAC [197-11-355](#), which may require no additional comment period beyond the comment period of the notice of application.

(7) Mitigation measures incorporated in the mitigated DNS will 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.

(8) 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 responsible official will evaluate the threshold determination to assure consistency with WAC [197-11-340\(3\)\(a\)](#) (withdrawal of DNS).

The responsible official's written response under subsection (2) of this section will 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 will not bind the City to consider the clarifications or changes in its threshold determination. (Ord. 102-98 § 2)

16.10.130 Environmental impact statement (EIS).

A. This section contains the rules for preparing environmental impact statements. The City adopts the following provisions of the Washington Administrative Code by reference, as now existing or as hereafter amended:

WAC

197-11-400	Purpose of EIS
197-11-402	General requirements
197-11-405	EIS types
197-11-406	EIS timing
197-11-408	Scoping
197-11-410	Expanded scoping
197-11-420	EIS preparation
197-11-425	Style and size
197-11-430	Format
197-11-435	Cover letter or memo
197-11-440	EIS contents
197-11-442	Contents of EIS on nonproject proposals
197-11-443	EIS contents when prior nonproject EIS
197-11-444	Elements of the environment
197-11-448	Relationship of EIS to other considerations
197-11-450	Cost-benefit analysis
197-11-455	Issuance of DEIS
197-11-460	Issuance of FEIS

(Ord. 102-98 § 2)

B. Regarding the preparation of an EIS in support of a Planned Action, the City adopts the following provisions of the Revised Code of Washington and Washington Administrative Code by reference, as now existing or as hereafter amended:

RCW 43.21C.440	Planned action—Defined—Authority of a county, city, or town—Community meetings.
WAC 197-11-164	Planned actions—Definition and criteria.
WAC 197-11-168	Ordinances or resolutions designating planned actions—Procedures for adoption.
WAC 197-11-172	Planned actions—Project review.

C. The City adopts reference the following optional provisions for nonproject EIS preparation in the Revised Code of Washington. Unless specified in notices that the City is implementing these optional provisions, standard provisions in Subsection A or Subsection B shall apply.

RCW 43.21C.420	Comprehensive plans and development regulations—Optional elements—Nonproject environmental impact statements—Subarea plans—Transfer of development rights program—Recovery of expenses.
RCW 43.21C.428	Recovery of expenses of nonproject environmental impact statements—Fees for subsequent development.

16.10.140 Preparation of EIS (additional considerations).

(1) Preparation of draft and final EIS (DEIS and FEIS) and draft and final supplemental EIS (SEIS) is the responsibility of the responsible official. Before the City issues an EIS, the responsible official must be satisfied that it complies with this chapter and Chapter [197-11](#) WAC.

(2) The DEIS and FEIS or draft and final SEIS will be prepared by City staff, the applicant, or by a consultant selected by the City or the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the City will prepare the EIS, the responsible official will notify the applicant immediately after completion of the threshold determination. The responsible official will also notify the applicant of the City's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(3) The responsible official may require an applicant to provide information the City does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. This does not apply to information the City may request under another ordinance or statute.

(4) The following additional elements ~~are part of the environment for the purpose of EIS content~~ may optionally be addressed in an EIS to aid in decision-making at the direction of the SEPA Responsible Official, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter [consistent with WAC 197-11-448 and WAC 197-11-450](#):

- (a) Economy;
- (b) Social policy analysis;
- (c) Cost-benefit analysis. (Ord. 102-98 § 2)

16.10.150 Commenting.

This section contains rules for consulting, commenting and responding on all environmental documents under SEPA, including rules for public notice and hearings. The City adopts the following provisions of the Washington Administrative Code by reference, as now existing or as hereafter amended:

WAC	
197-11-500	Purpose
197-11-502	Inviting comment
197-11-504	Availability and cost of environmental documents
197-11-508	SEPA register
197-11-510	Public notice
197-11-535	Public hearings and meetings
197-11-545	Effect of no comment
197-11-550	Specificity of comments
197-11-560	FEIS response to comments
197-11-570	Consulted agency costs to assist lead agency

(Ord. 102-98 § 2)

16.10.160 Public notice.

(1) Whenever possible, the City will integrate the public notice required under this section with existing notice procedures for the City's nonexempt permit(s) or approval(s) required for the proposal.

(2) Whenever the City issues a DNS under WAC [197-11-340](#)(2) or a DS under WAC [197-11-360](#)(3) the City will give public notice as follows:

(a) If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application in RCW [36.70B.110](#)(4) will suffice to meet the SEPA public notice requirements in WAC [197-11-510](#)(1);

(b) If no public notice is otherwise required for the permit or approval, the City will give notice of the DNS or DS by:

(i) Posting the property, for site-specific proposals;

(ii) Notifying public or private groups, which have expressed interest in a certain proposal or in the type of proposal being considered;

(iii) Sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas); or

(c) Whenever the City issues a DS under WAC [197-11-360](#)(3), the City will state the scoping procedure for the proposal in the DS as required in WAC [197-11-408](#) and in the public notice.

(3) If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in RCW [36.70B.110](#)(4), as supplemented by the requirements in WAC [197-11-355](#), will suffice to meet the SEPA public notice requirements in WAC [197-11-510](#)(b).

(4) Whenever the City issues a DEIS under WAC [197-11-455](#)(5) or an SEIS under WAC [197-11-620](#), notice of the availability of those documents will be given by indicating the availability of the DEIS in any public notice required for a nonexempt license, and by at least one of the following:

(a) Posting the property, for site-specific proposals;

(b) Publishing the notice in a newspaper of general circulation in the County, City, or general area where the proposal is located;

(c) Notifying public or private groups, which have expressed interest in a certain proposal or in the type of proposal being considered;

- (d) Notifying the news media;
- (e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or
- (f) Publishing notice in agency newsletter and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas); or
- (g) Such other method as determined by the responsible official.

(5) Public notice for projects that qualify as planned actions will be tied to the underlying permit as specified in WAC [197-11-172\(3\)](#) and meet requirements for notices to tribes and agencies with jurisdiction as provided in RCW 43.21C.440 (3)(b).

(6) The City may require an applicant to complete the public notice requirement for the applicant's proposal at applicant's expense. (Ord. 102-98 § 2)

16.10.170 Designation of official to perform consulted agency responsibilities for the City.

(1) The responsible official will be responsible for preparation of written comments for the City in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

(2) The responsible official will be responsible for the City's compliance with WAC [197-11-550](#) whenever the City is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate Departments of the City. (Ord. 102-98 § 2)

16.10.180 Using existing environmental documents.

This section contains rules for using and supplementing existing environmental documents prepared under SEPA or NEPA for the City's own environmental compliance. The City adopts the following provisions of the Washington Administrative Code by reference, as now existing or as hereafter amended:

- WAC
- [197-11-164](#) Planned actions – Definition and criteria
 - [197-11-168](#) Ordinances or resolutions designating planned actions – Procedures for adoption
 - [197-11-172](#) Planned actions – Project review
 - [197-11-600](#) When to use existing environmental documents
 - [197-11-610](#) Use of NEPA documents
 - [197-11-620](#) Supplemental environmental impact statement – Procedures
 - [197-11-625](#) Addenda – Procedures
 - [197-11-630](#) Adoption – Procedures
 - [197-11-635](#) Incorporation by reference – Procedures
 - [197-11-640](#) Combining documents

(Ord. 102-98 § 2)

16.10.190 SEPA and agency decisions.

A. This section contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This section also contains procedures for appealing SEPA determinations to agencies or the courts. The City adopts the following provisions of the Washington Administrative Code by reference, as now existing or as hereafter amended:

WAC

[197-11-650](#) Purpose
[197-11-655](#) Implementation
[197-11-660](#) Substantive authority and mitigation
[197-11-680](#) Appeals

(Ord. 102-98 § 2)

B. Administrative appeal procedures are addressed in CMC 16.10.210.

16.10.200 Substantive authority.

(1) The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the City.

(2) The City may attach conditions to a permit or approval for a proposal so long as:

(a) Such conditions are necessary to mitigate specific probable significant adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and

(b) Such conditions are in writing; and

(c) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

(d) The City has considered whether other local, State or Federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

(e) Such conditions are based on one or more policies in subsection (4) of this section and cited in the license or other decision document.

(3) The City may deny a permit or approval for a proposal on the basis of SEPA so long as:

(a) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in an FEIS or final SEIS prepared pursuant to this chapter; and

(b) A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

(c) The denial is based on one or more policies identified in subsection (4) of this section and identified in writing in the decision document.

(4) The City designates and adopts the following policies as the basis for the City's exercise of authority pursuant to this section:

(a) The City will use all practicable means, consistent with other essential consideration of State policy, to improve and coordinate plans, functions, programs, and resources to the end that the State and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degrading, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(b) The City recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(c) The City adopts by reference the policies and regulations in the following documents:

(i) The City's ~~current~~ most recently adopted comprehensive plan, as amended;

(ii) The City's zoning code (CMC Title 18), as amended;

(iii) The City's subdivision code (CMC Title 17), as amended;

(iv) The City's most recently adopted International Building Code, as amended;

- (v) The City's most recently adopted International Residential Code;
- (vi) The City's most recently adopted Uniform Plumbing Code, as amended;
- (vii) The City's most recently adopted International Mechanical Code, as amended;
- (viii) The City's most recently adopted International Fire Code, as amended;
- (ix) The City's most recently adopted International Existing Building Code;
- (x) The City's most recently adopted International Energy Conservation Code, as amended;
- (xi) The City's most recently adopted International Property Maintenance Code, as amended;
- (xii) The City's street, sidewalk and bridges code (CMC Title 12), as amended;
- (xiii) The City's planning- and development code (CMC Title 14), as amended;
- (xiv) The City's most recently adopted shoreline ~~management code~~ master program, as amended;
- ~~(xv) The City's water and sewer systems code~~ State Department of Health's Water System Planning Handbook, as amended;
- (xvi) The City's ~~surface water management code~~ stormwater manuals (CMC Title 13), as amended;
- (xvii) The City's current six-year transportation improvement program, as amended;
- (xviii) The City's current capital improvement program, as amended;
- ~~(xix) The current King County transportation needs report, as amended;~~
- (xx) All other City-adopted land development ordinances and policies; and
- (xxi) The City's current Design and Construction Standards ~~and Specifications~~. (Ord. 06-05 § 1; Ord. 23-04 § 7; Ord. 52-02 § 2; Ord. 102-98 § 2)

16.10.210 Appeals.

(1) The City establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:

(a) Project Permits: Any agency or person may appeal the City's procedural compliance with Chapter 197-11 WAC for issuance of the following (the appeal must be made to the Administrative

Hearing Examiner within fourteen (14) days of the date of issuance. A decision involving a SEPA determination of nonsignificance which required public comments shall have the appeal period extended an additional seven (7) days:

(i) A ~~final~~ DNS;

(ii) A DS; or

(iii) A Final EIS.

(b) Legislative Proposals: There is no administrative appeal of a DNS, DS, or Final EIS adequacy associated with a legislative decision.

(24) Appeals of an environmental determination will be in the same manner as the project requiring the environmental determination.

(a) For any appeal under this section, the City will provide for a record that will consist of the following:

(i) Findings and conclusions;

(ii) Testimony under oath; and

(iii) A taped or written transcript.

(b) The City may require the appellant to provide an electronic transcript.

(c) The procedural determination by the responsible official will carry substantial weight in any appeal proceeding.

(32) The City will give official notice under WAC [197-11-168](#)(5) whenever it issues a permit or approval for which a statute or ordinance established a time limit for commencing judicial appeal. (Ord. 102-98 § 2)

16.10.220 Notice – Statute of limitations.

(1) The City, applicant for, or proponent of an action may publish a notice of action pursuant to RCW [43.21C.080](#) for any action.

(2) The form of the notice must be substantially in the form provided in WAC [197-11-990](#). The notice will be published by the City Clerk, applicant, or proponent pursuant to RCW [43.21C.080](#). (Ord. 102-98 § 2)

16.10.230 Definitions.

This section contains uniform usage and definitions of terms under SEPA. The City adopts the following provisions of the Washington Administrative Code by reference, as now existing or as hereafter amended, and as supplemented:

WAC

197-11-700	Definitions
197-11-701	Act
197-11-704	Action
197-11-706	Addendum
197-11-708	Adoption
197-11-710	Affected tribe
197-11-712	Affecting
197-11-714	Agency
197-11-716	Applicant
197-11-718	Built environment
197-11-720	Categorical exemption
197-11-721	Closed record appeal
197-11-722	Consolidated appeal
197-11-724	Consulted agency
197-11-726	Cost-benefit analysis
197-11-728	County/City
197-11-730	Decision maker
197-11-732	Department
197-11-734	Determination of nonsignificance (DNS)
197-11-736	Determination of significance (DS)
197-11-738	Environmental impact statement (EIS)
197-11-740	Environment
197-11-742	Environmental checklist
197-11-744	Environmental document
197-11-746	Environmental review
197-11-750	Expanded scoping
197-11-752	Impacts
197-11-754	Incorporation by reference
197-11-756	Lands covered by water
197-11-758	Lead agency
197-11-760	License
197-11-762	Local agency
197-11-764	Major action
197-11-766	Mitigated DNS (MDNS)
197-11-768	Mitigation
197-11-770	Natural environment
197-11-772	National Environmental Policy Act (NEPA)
197-11-774	Nonproject
197-11-775	Open record hearing
197-11-776	Phased review
197-11-778	Preparation
197-11-780	Private project
197-11-782	Probable
197-11-784	Proposal
197-11-786	Reasonable alternative
197-11-788	Responsible official
197-11-790	State Environmental Policy Act (SEPA)
197-11-792	Scope
197-11-793	Scoping
197-11-794	Significant
197-11-796	State agency
197-11-797	Threshold determination
197-11-799	Underlying governmental action

(Ord. 102-98 § 2)

16.10.240 Categorical exemptions.

The City adopts the following provisions of the Washington Administrative Code by reference, as now existing or as hereafter amended and as supplemented in this chapter:

WAC

- [197-11-800](#) Categorical exemptions
 - [197-11-880](#) Emergencies
 - [197-11-890](#) Petitioning DOE to change exemptions
- (Ord. 102-98 § 2)

16.10.250 Agency compliance.

This section contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The City adopts the following provisions of the Washington Administrative Code by reference, as now existing or as hereafter amended:

WAC

- [197-11-900](#) Purpose of this part
 - [197-11-902](#) Agency SEPA policies
 - [197-11-916](#) Application to ongoing actions
 - [197-11-920](#) Agencies with environmental expertise
 - [197-11-922](#) Lead agency rules
 - [197-11-924](#) Determining the lead agency
 - [197-11-926](#) Lead agency for governmental proposals
 - [197-11-928](#) Lead agency for public and private proposals
 - [197-11-930](#) Lead agency for private projects with one agency with jurisdiction
 - [197-11-932](#) Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a County/City
 - [197-11-934](#) Lead agency for private projects requiring licenses from a local agency, not a City/County, and one or more State agencies
 - [197-11-938](#) Lead agencies for specific proposals
 - [197-11-940](#) Transfer of lead agency status to a State agency
 - [197-11-942](#) Agreements on lead agency status
 - [197-11-944](#) Agreements on division of lead agency duties
 - [197-11-946](#) DOE resolution of lead agency disputes
 - [197-11-948](#) Assumption of lead agency status
- (Ord. 102-98 § 2)

16.10.260 Fees.

(1) Threshold Determination. For every environmental checklist review, the City will collect a fee as set forth in the current fee resolution. The time periods provided by this chapter for making a threshold determination will not begin until payment of the fee.

(2) Environmental Impact Statement.

(a) As lead agency, the City shall charge a fee based on an hourly rate as set forth in the fee resolution for review of an EIS submitted by an applicant.

(b) For all proposals requiring an EIS where the City is lead agency and the responsible official determines that the EIS will be prepared by City employees, the City will charge and collect a reasonable fee from the applicant to cover costs incurred by the City in the preparation of the EIS. If it is determined that an EIS is required, applicants will be advised of projected costs of the EIS prior to actual preparation and must post a bond or otherwise ensure payment of all such costs.

(c) The responsible official may determine that the City will contract directly with a consultant for preparation of environmental documents for activities initiated by some persons or entity other than the City. The applicant shall be responsible for payment of any such costs and expenses, and must post bond or otherwise ensure payment of such costs. Such consultants will be selected by mutual agreement of the City and applicant after a call for bids.

(d) If the proposal is modified so that an EIS is no longer required, the responsible official will refund any fees collected under subsections (2)(a) or (b) of this section which remain after incurred costs are paid. (Ord. 20-07 § 91; Ord. 102-98 § 2)

16.10.270 Forms.

The City adopts the following provisions of the Washington Administrative Code by reference, as now existing or as hereafter amended:

WAC

[197-11-960](#) Environmental checklist
[197-11-965](#) Adoption notice
[197-11-970](#) Determination of nonsignificance (DNS)
[197-11-980](#) Determination of significance (DS) and scoping notice
[197-11-985](#) Notice of assumption of lead agency status
[197-11-990](#) Notice of action

(Ord. 102-98 § 2)

Chapter 14.30 PERMIT DECISION TYPES

Sections:

[14.30.010 Purpose.](#)
[14.30.020 Classification of permit decision types.](#)
[14.30.030 Determination of proper decision type.](#)
[14.30.040 Decision types.](#)
[14.30.050 Requirements by decision type.](#)
[14.30.060 Legislative actions.](#)
[14.30.070 Administrative interpretations.](#)

14.30.010 Purpose.

The purpose of Chapters [14.30](#), [14.35](#), [14.40](#) and [14.45](#) CMC is to establish standard procedures for land use permit applications, public notice, hearings and appeals in the City. These procedures are designed to promote timely and informed public participation in discretionary land use decisions; eliminate redundancy in the application, permit review, hearing and appeal processes; provide for uniformity in public notice procedures; minimize delay and expense; and result in development approvals that implement the policies of the comprehensive plan. These procedures also provide for an integrated and consolidated land use permit and environmental review process. (Ord. 02-09 § 2)

14.30.020 Classification of permit decision types.

Decisions on permit applications shall be classified as either Type 1, 2, 3 or 4, based on the amount of discretion associated with each decision. Procedures for the four different types are distinguished according to who makes the decision, whether public notice is required, whether a public hearing is required before a decision is made, and whether an administrative appeal process is provided. The types of decisions are set forth in CMC [14.30.040](#) and the requirements for each type are set forth in CMC [14.30.050](#). (Ord. 02-09 § 2)

14.30.030 Determination of proper decision type.

(1) Determination by Director. The Director shall determine the proper procedure for all permit applications. If there is a question as to the appropriate type of process, the Director shall resolve it in favor of the higher type number.

(2) Optional Consolidated Permit Processing. An application that involves two or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or processed individually under each of the procedures identified by the code. The applicant may determine whether the application shall be processed collectively or individually. If the application is processed under the individual procedures option, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure. If the individual procedure option is chosen, the applicant will be eligible for any fee reduction contained in the current fee resolution.

(3) SEPA Review. SEPA review shall be conducted concurrently with development project review. The following are exempt from concurrent review:

(a) Projects categorically exempt from SEPA; and

(b) Components of previously completed planned actions, to the extent permitted by law and consistent with the EIS for the planned action.

(4) Decisionmaker(s). Applications processed in accordance with subsection (2) of this section which have the same highest numbered procedure but are assigned different hearing bodies shall be heard

collectively by the highest decisionmaker(s). The City Council is the highest, followed by the Hearing Examiner or Planning Commission, as applicable, and then the Director.

(5) Hearings. Permits are allowed only one open record hearing and one closed record appeal hearing, except for the appeal of a determination of significance. (Ord. 02-09 § 2)

14.30.040 Decision types.1

Type 1	Type 2	Type 3	Type 4
Building Permit (15.05)	Short Plat (Including Revisions and Alterations) (17.20)	Preliminary Plat (17.20)	Final Subdivision ⁴ (17.25)
Grading Permit (14.60)	Design and Construction Standards Variance (12.60)	Preliminary Plat Revisions (17.20)	Shoreline Environment Redesignations (16.05)
Boundary Line Adjustment (17.40)	Clearing and Grading Design Variance (14.60)	Zoning Variance (18.125)	Plat or Short Plat Vacations (17.25)
Right-of-Way Use Permit (12.35)	Design Departure from the City of Covington Design Guidelines and Standards (18.31)	Conditional Use Permits (18.125)	Street Vacations (12.55)
Design and Construction Standards Deviation (12.60)	Downtown Permitted Use Determination (18.31)	New Wireless Communication Facility Towers and Height Modifications (18.70)	
Clearing and Grading Design Deviation (14.60)	Temporary Use (18.85)		
Shoreline Exemption (16.05)	Shoreline Substantial Development Permit ² (16.05)		
Code Interpretation (14.30)	SEPA Threshold Determination ³		
Miscellaneous Administrative Decisions	Commercial Site Development Permit (18.31 and 18.110)		
Minor Tree Removal (18.45)	Re-use of Facilities (18.85)		
WCF Collocation on a Transmission Structure or WCF Tower (18.70)	Critical Areas Reasonable Use Exceptions (18.65)		

	Binding Site Plan (17.30) Major Tree Removal (18.45) Stormwater Manuals Variance (13.25) Wireless Communication Facilities Collocations (18.70)		
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¹ If a conflict between this chart and the text of the CMC exists, the text of the CMC controls.

² When applications for shoreline permits are combined with other permits requiring Type 3 or 4 land use decisions, the Examiner, not the Director, makes the decision. All shoreline permits, including shoreline variances and conditional uses, are appealable to the State Shorelines Hearings Board and not to the Hearing Examiner.

³ Appeal to Examiner is limited to the SEPA threshold determination [for a project permit](#). The decision on the Type 1 permit itself is appealable to Superior Court.

⁴ Final subdivisions are submitted directly to the City Council for final decision without a recommendation by the Hearing Examiner.

(Ord. 08-13 § 3 (Exh. A); Ord. 06-13 § 2 (Exh. A); Ord. 09-12 § 2 (Exh. B); Ord. 10-10 § 3 (Exh. C); Ord. 13-09 § 17; Ord. 02-09 § 2)

14.30.050 Requirements by decision type.1

	Type 1	Type 2	Type 3	Type 4
Recommendation made by:	n/a	n/a	Director	Hearing Examiner
Final decision made by:	Director	Director	Hearing Examiner	City Council
Notice of permit application:	No	Yes	Yes	Yes
Notice of final decision:	No	Yes	Yes	Yes

Open record public hearing:	No	No	Yes, before the Hearing Examiner	Yes, before the Hearing Examiner
Closed record appeal hearing:	No	Yes, before the Hearing Examiner regarding project proposals	No	No
Judicial appeal:	King County Superior Court	King County Superior Court	King County Superior Court	King County Superior Court

¹ If a conflict between this chart and the text of the CMC exists, the text of the CMC controls.

(Ord. 02-09 § 2)

14.30.060 Legislative actions.

(1) Defined. Legislative actions involve the creation, amendment, or implementation of policy or law by ordinance. In contrast to other types of actions, legislative actions apply to large geographic areas and are of interest to many property owners and citizens. Legislative actions are only taken after an open record hearing.

(2) Decisions. The following decisions are legislative, and are not subject to the procedures in this chapter, unless otherwise specified:

- (a) Zoning code amendments;
- (b) Adoption of development regulations and amendments;
- (c) Zoning map amendments;
- (d) Adoption of the comprehensive plan and any plan amendments; and
- (e) Annexations.

(3) Planning Commission. The Planning Commission shall hold a public hearing and make recommendations to the City Council on the decisions listed in subsection (2) of this section.

(4) City Council. The City Council may hold a public hearing on the decisions listed in subsection (2) of this section prior to passage of an ordinance or entry of a decision.

(5) Public Notice. Unless otherwise provided for herein, notice of the public hearing shall be provided to the public at least 14 days prior to the hearing by publishing notice as provided for in CMC [14.40.040](#)(2). In addition to publishing notice and posting notice at City Hall, at least 14 days prior to the hearing the City shall mail notice of the public hearing to the applicant, relevant government agencies, and other interested parties who have requested in writing to be notified of the hearing. If the legislative action is for a comprehensive plan amendment, notice of the public hearing shall also be posted and mailed pursuant to CMC [14.40.040](#)(3). The City may also provide optional methods of public notice as provided in CMC [14.40.050](#).

(6) Appeals. The City Council's final legislative decision may be appealed together with any SEPA [final](#) threshold determination by filing a petition with the Growth Management Hearings Board pursuant to the requirements set forth in RCW [36.70A.290](#), as currently adopted and hereafter amended from time to time. (Ord. 09-16 § 4 (Exh. C); Ord. 02-09 § 2)

14.30.070 Administrative interpretations.

Unless otherwise specified and except for other agencies with authority to implement specific provisions of this chapter, the Director is delegated the authority to issue official interpretations of all development regulations. Requests for an official interpretation must be submitted in writing and be accompanied by the required fee as set forth in the City's current fee resolution. (Ord. 02-09 § 2)

Chapter 14.45 APPEAL PROCEDURES

Sections:

- [14.45.010 Decisions final unless appealed.](#)
- [14.45.020 Appeals of administrative decisions.](#)
- [14.45.030 Procedures.](#)
- [14.45.040 Judicial appeal.](#)
- [14.45.050 Procedural irregularity.](#)

14.45.010 Decisions final unless appealed.

All administrative decisions shall be final unless the applicant or an aggrieved party files an appeal as set forth in this chapter. (Ord. 02-09 § 5)

14.45.020 Appeals of administrative decisions.

The procedures set forth in this chapter shall apply to all appeals to the Hearing Examiner or to the City Council that are authorized by the Covington Municipal Code, unless a conflicting procedure or action is required by the code provision authorizing the appeal. (Ord. 02-09 § 5)

14.45.030 Procedures.

(1) An administrative appeal of a Type 2, 3, or 4 [project](#) decision and of any environmental determination issued at the same time as the project decision shall be filed with the City Clerk within 14 days after the

notice of the decision or after other notice that the decision has been made and is appealable. The appeal fee as set forth in the current fee resolution shall also be filed with the City within this time frame. The appeal period shall be extended for an additional seven days if public comment is allowed on a determination of nonsignificance issued as part of the appealable project permit decision.

(2) Content of Appeal. Appeals shall be in writing, be accompanied by the required appeal fee, and contain the following information:

- (a) Appellant's name, address and phone number;
- (b) Appellant's statement describing his or her standing to appeal;
- (c) Identification of the application which is the subject of the appeal;
- (d) Appellant's statement of grounds for appeal and the facts upon which the appeal is based;
- (e) The relief sought, including the specific nature and extent;
- (f) A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

(3) Upon timely receipt of a notice of appeal and fee, the City Clerk shall set the matter for a hearing before the Hearing Examiner.

(4) The City Clerk shall provide notice of the hearing at which the appeal shall be considered at least 14 calendar days prior to the hearing, or as otherwise provided by law. The hearing notice shall be provided by:

- (a) Posting notice as provided in CMC [14.40.040\(1\)](#);
- (b) Publishing notice as provided in CMC [14.40.040\(2\)](#);
- (c) Mailing notice to the appellant, to the applicant, and to any person who requested notice of decision or submitted substantial comments on the application.

(5) The time period for considering and deciding an appeal shall not exceed 90 days for an open record appeal hearing or 60 days for a closed record appeal. The parties to an appeal may agree to extend these time periods.

(6) The Hearing Examiner shall render a decision based upon the written record of the previous proceedings, including, but not limited to, written materials, exhibits and minutes. The Hearing Examiner may consider a tape recording of the previous proceedings. The Hearing Examiner may hear oral

argument from the appellant, the applicant if the appellant is not the applicant, and the City. The Hearing Examiner may affirm the decision, reverse the decision, affirm the decision with modification, or remand the decision to the decisionmaker for further consideration. The Hearing Examiner shall affirm the decision unless from a review of the record it is determined the decision being appealed meets one of the following criteria:

- (a) The body or officer that made the decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
- (b) The decision is an erroneous interpretation by the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
- (c) The decision is not supported by evidence that is substantial when viewed in light of the whole record;
- (d) The decision is a clearly erroneous application of the law to the facts;
- (e) The decision is outside the authority or jurisdiction of the body or officer making the decision;
- (f) The decision violates the constitutional rights of the party seeking relief.

(7) The Hearing Examiner shall issue a written decision on the appeal containing:

- (a) A statement of the decision on appeal, including any conditions;
- (b) A statement of the facts upon which the decision is based and the conclusions of law derived from these facts; and
- (c) A statement of the right of an affected party to appeal the decision of the Hearing Examiner.

(8) If a permit is granted, the City official administering the permit may allow the applicant to begin all or a portion of the construction or commence all or a portion of the operations during the pendency of any appeal; provided, that such construction or operation is begun at the applicant's own risk. If the decision being appealed is reversed or modified, the applicant may be required to remove or alter any development or action inconsistent with the final decision and/or restore the environment to its pre-existing condition. (Ord. 02-09 § 5)

14.45.040 Judicial appeal.

An appeal from the decision of the Hearing Examiner for which no other administrative appeal is provided shall be filed and served within 21 days of the issuance of the decision in accordance with Chapter [36.70C](#) RCW. (Ord. 02-09 § 5)

14.45.050 Procedural irregularity.

No procedural irregularity or informality in the notice, consideration, hearing or other matter relating to the decision or the appeal shall affect the final decision, or any other action leading to the final decision, unless substantial rights of a person with demonstrable beneficial interests are adversely affected and unless objection is made to the City at the earliest possible time after discovery. (Ord. 02-09 § 5)



City of Covington
 16720 SE 271st St. Suite 100
 Covington, WA 98042
 City Hall – 253.480.2400
 www.covingtonwa.gov

Memo

To: Planning Commission
From: Ann Mueller, Senior Planner
Richard Hart, Community Development Director

Date: September 30, 2016

Re: Public Hearing on Amendments to Repeal CMC 18.100 Property Specific Development Standards/Special Overlay Districts

Background

City staff has identified sections of the existing Covington Municipal Code that were not previously repealed or deleted when new and updated regulations were adopted to address the same issue. These regulations were initially adopted from King County Code shortly after the city incorporated. These regulations are now out of date, and in some instances, reference non-applicable county zoning and standards that are not implemented by staff in the review of land use applications.

Repealing Regulations relating to Property Specific Development Standards/Special Overlay Districts (CMC 18.100)

Staff recommends repealing CMC Chapter 18.100 in its entirety. The city’s comprehensive plan does not identify the need for special property specific development standards or overlay districts to implement land use policies or environmental regulations. CMC 18.68 Critical Area regulations and the city’s Shoreline Master Program have been approved by the city to address groundwater, aquifer, erosion hazards, and urban stream protection. CMC 18.31 Downtown Development and Design Standards have been adopted to promote economic development in the downtown zones.

Attachment A is a copy of the DNS issued on August 26, 2016, with a 14-day comment period which ended on September 9, 2016 – no comments were received on the SEPA determination. Attachment A includes the regulations from CMC 18.100 proposed to be repealed.

A 60-day notice of the proposed change to the Zoning Code was sent to the Washington State Department of Commerce on August 9, 2016. On September 16, 2016, public notice of this proposed code amendment was published in the Covington Reporter, placed on the City website and posted at City Hall.

Public Hearing

The Planning Commission will hold a public hearing on the proposal to repeal CMC 18.100 regulations at its October 6, 2016 regularly scheduled meeting. At the public hearing the Planning Commission will hear any public testimony and then may discuss the proposed code amendment. After the Planning Commission discussion, they may direct staff to bring back items for further clarification and modification, make a final recommendation to the City Council, or continue review and discussion at a future meeting.

Applicable Decision Criteria for Review of Development Regulation Amendments

Following is the criteria (*in italics*) that the Planning Commission must use to determine if they will recommend the proposed code amendments to the City Council for their final review and decision.

(1) The proposed amendment is consistent with the goals, objectives, and policies of the comprehensive plan;

Staff Findings: The proposed amendments to repeal CMC 18.100 Property Specific Development Standards/Special Overlay Districts development regulations are consistent with the goals, objectives and policies of Covington’s Comprehensive Plan.

(2) The proposed amendment is consistent with the scope and purpose of the City’s zoning ordinances and the description and purpose of the zone classification applied for;

Staff Findings: The proposed amendments are not-site specific and apply across all zones of the City. The amendments are consistent with the existing zoning code, and more recent standards have been previously adopted to ensure that critical areas are protected and economic development opportunities in the downtown are promoted.

(3) Circumstances have changed substantially since the establishment of the current zoning map or district to warrant the proposed amendment;

Staff Findings: N/A. The proposed amendments will not affect the current zoning map or zoning district designations. There are no overlay districts or property specific zoning in use in the City of Covington.

(4) The proposed zoning is consistent and compatible with the uses and zoning of surrounding property;

Staff Findings: N/A. The proposed amendments do not affect the existing zoning of land in the City of Covington.

(5) The property that is the subject of the amendment is suited for the uses allowed in the proposed zoning classification;

Staff Findings: N/A. The proposed amendments are not site-specific.

(6) The amendment is in compliance with the three-year limitation rule as specified in CMC 14.27.030(3); and

Staff Findings: Amendments to repeal CMC 18.100 Property Specific Development Standards/Special Overlay Districts have not been proposed or subject to review by the City in the past three years.

(7) Adequate public services could be made available to serve the full range of proposed uses in that zone.

Staff Findings: N/A. The proposed amendments will not change the zoning of any property in the City and will not create any increased demand for public services.

Recommendation

Recommended motion: Move to recommend to the City Council that they approve the repeal of CMC Chapter 18.100 Property Specific Development Standards/Special Overlay Districts.

Alternative motion: Move to continue the Planning Commission’s discussion and final recommendation to a future meeting date to allow staff to make recommended modifications for Planning Commission review.



DETERMINATION OF NON-SIGNIFICANCE (DNS)

Project Name: Amendments to CMC 18.100 repealing regulations relating to Property Specific Development Standards/Special District Overlays.

File Number: SEPA16-04

Applicant/Contact: Ann Mueller, Senior Planner
 City of Covington, Community Development Department
 16720 SE 271st Street, Suite 100
 Covington, WA 98042
amueller@covingtonwa.gov
 253-480-2444

Date of Issuance: August 26, 2016

Project Location: The proposed code amendments cover all zones in the city.

Project Description: Amend code to repeal CMC Chapter 18.100 Property Specific Development Standards/Special District Overlays. The Chapter CMC 18.100 to be repealed includes Sections: 18.100.010 Purpose; 18.100.020 Authority and application; 18.100.030 Special district overlay – General provisions; 18.100.040 Special district overlay – Urban planned development (UPD) purpose and designation; 18.100.050 Special district overlay – Economic redevelopment; 18.100.060 Special district overlay – Ground water protection; 18.100.070 Special district overlay – Urban aquifer protection area; 18.100.080 Special district overlay – Erosion hazards near sensitive water bodies; 18.100.090 Special district overlay – Urban stream protection area; 18.100.110 Special district overlay – Floodplain density.

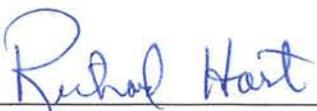
Documents Reviewed: City’s Comprehensive Plan (adopted January 2016) as amended, SEPA Environmental Checklist (City of Covington, August 10, 2016), and other information on file with the lead agency.

Responsible Official/Lead Agency: Richard Hart, Community Development Director
 City of Covington SEPA Official
 16720 SE 271st Street, Suite 100
 Covington, Washington 98042
 253-480-2442

This DNS is issued under WAC 197-11-350. Notice is hereby provided for the SEPA non-project GMA action. The comment period is 14 calendar days and ends **September 9, 2016 at 5 PM.**

Comments and Appeals Notice: *Comments and appeals on this DNS may be submitted by first class mail or delivered to the responsible official at the above lead agency address. Any notice of appeals must be filed in writing, with the required filing fee paid in cash or check and received within 14 calendar days of the end of the comment period at Covington City Hall Offices, i.e. by September 23, 2016 at 5 PM. You must make specific factual objections, identify error, harm suffered, or identify anticipated relief sought and raise specific issues in the statement of appeal. Contact the Community Development Department at Covington City Hall to read or to ask about the procedures for SEPA appeals.*

Signature of Responsible Official:

 _____ Date: 08/26/2016

REPEAL- CMC 18.100

~~Chapter 18.100~~

~~PROPERTY SPECIFIC DEVELOPMENT STANDARDS/SPECIAL DISTRICT OVERLAYS~~

Sections:

- ~~18.100.010 — Purpose.~~
- ~~18.100.020 — Authority and application.~~
- ~~18.100.030 — Special district overlay — General provisions.~~
- ~~18.100.040 — Special district overlay — Urban planned development (UPD) purpose and designation.~~
- ~~18.100.050 — Special district overlay — Economic redevelopment.~~
- ~~18.100.060 — Special district overlay — Ground water protection.~~
- ~~18.100.070 — Special district overlay — Urban aquifer protection area.~~
- ~~18.100.080 — Special district overlay — Erosion hazards near sensitive water bodies.~~
- ~~18.100.090 — Special district overlay — Urban stream protection area.~~
- ~~18.100.100 — Repealed.~~
- ~~18.100.110 — Special district overlay — Floodplain density.~~

~~18.100.010 — Purpose.~~

~~The purposes of this chapter are to provide for alternative development standards to address unique site characteristics and to address development opportunities which can exceed the quality of standard developments, by:~~

- ~~(1) Establishing authority to adopt property specific development standards for increasing minimum requirements of this title on individual sites; or~~
- ~~(2) Establishing special district overlays with alternative standards for special areas designated by community plans or the comprehensive plan. (Ord. 42-02 § 2 (21A.38.010))~~

~~18.100.020 — Authority and application.~~

~~(1) This chapter authorizes City of Covington to increase development standards or limit uses on specific properties beyond the general requirements of this title through property specific development standards, and to carry out comprehensive plan policies and map designations and community, subarea, or neighborhood plan policies through special overlay districts which supplement or modify standard zones through different uses, design or density standards or review processes;~~

~~(2) Property specific development standards shall be applied to specific properties through either area zoning or reclassifications of individual properties; and~~

~~(3) Special district overlays shall be applied to specific properties or areas containing several properties through the area zoning process as provided in Chapter 14.15 CMC. (Ord. 01-09 § 20; Ord. 42-02 § 2 (21A.38.020))~~

~~18.100.030 — Special district overlay — General provisions.~~

~~Special district overlays shall be designated on the zoning maps and Department files as follows:~~

~~(1) A special district overlay shall be designated through the area zoning process as provided in Chapter 14.15 CMC. Designation of an overlay district shall include policies that prescribe the purposes and location of the overlay;~~

~~(2) A special district overlay shall be applied to land through an area zoning process as provided in Chapter 14.15 CMC and shall be indicated on the zoning map and shall be designated in files maintained by the Department;~~

~~(3) The special district overlays set forth in this chapter are the only overlays authorized by the code. New or amended overlays to carry out new or different goals or policies shall be adopted as part of this chapter and be available for use in all appropriate community, subarea or neighborhood planning areas;~~

~~(4) The special district overlays set forth in this chapter may waive, modify and substitute for the range of permitted uses and development standards established by this title for any use or underlying zone;~~

~~(5) Unless they are specifically modified by the provisions of this chapter, the standard requirements of this title and other City ordinances and regulations govern all development and land uses within special district overlays; and~~

~~(6) A special district overlay on an individual site may be modified by property-specific development standards as provided in this chapter. (Ord. 42-02 § 2 (21A.38.040))~~

~~**18.100.040 — Special district overlay — Urban planned development (UPD) purpose and designation.**~~

~~(1) The purpose of the UPD special district overlay is to provide a means for community, subarea or neighborhood plans to designate urban areas, which are appropriate for development on a large scale basis.~~

~~(2) In designating an overlay district, the comprehensive plan, subarea plan, neighborhood plan or area zoning shall delineate UPD overlay district boundaries.~~

~~(3) The community plan, subarea plan, neighborhood plan; or area zoning shall designate and adopt urban residential zoning consistent with comprehensive plan policies.~~

~~(4) In designating an overlay district, the community plan, subarea plan, neighborhood plan or area zoning may:~~

~~(a) Set a maximum or range of the number of dwelling units within the UPD; and~~

~~(b) Incorporate project description elements or requirements to the extent known, including but not limited to the following: conceptual site plan; mix of attached and detached housing; affordable housing goals and/or programs; major transportation or other major infrastructure programs and the UPD's participation therein; and any other provision or element deemed appropriate. (Ord. 42-02 § 2 (21A.38.070))~~

~~**18.100.050 — Special district overlay — Economic redevelopment.**~~

~~(1) The purpose of the economic redevelopment special district overlay is to provide incentives for the redevelopment of large existing, under-utilized concentrations of commercial/ industrial lands within urban areas.~~

~~(2) The economic redevelopment special district overlay shall only be designated through the area zoning process; located in areas designated within a community, subarea or neighborhood; and zoned DN;~~

~~(3) The standards of this title and other City codes shall be applicable to development within the economic redevelopment special district overlay except as follows:~~

~~(a) Commercial or industrial uses that exist within an area as of the effective date of legislation applying the economic redevelopment special district overlay, but that are not otherwise permitted by the zoning, shall be considered permitted uses upon only the lots that they occupied as of that date.~~

~~(b) The minimum parking requirements of this title shall be reduced as follows; provided, that such reductions do not apply to new construction on vacant property or the vacant portions of partially developed property where that construction is not an enlargement or replacement of an existing building:~~

~~(i) The parking stall requirements are reduced 100 percent; provided, that:~~

~~(A) The square footage of any enlargement or replacement of an existing building does not in total exceed 125 percent of the square footage of the existing building;~~

~~(B) The building fronts on an existing roadway improved to urban standards or a roadway programmed to be improved to urban standards as a capital improvement project, that accommodates on-street parking; and~~

- ~~(C) There is no net decrease in existing off-street parking space.~~
- ~~(ii) The parking-stall requirements are reduced 50 percent; provided, that:

 - ~~(A) The square footage of any enlargement or replacement of an existing building in total exceeds 125 percent of the square footage of the existing building;~~
 - ~~(B) The height of the enlarged or replacement building does not exceed the base height of the zone in which it is located;~~
 - ~~(C) The building fronts on an existing roadway improved to urban standards or a roadway programmed to be improved as a capital improvement project, that accommodates on-street parking; and~~
 - ~~(D) There is no net decrease in existing off-street parking spaces, unless it exceeds the minimum requirements of subsection (3)(b)(ii) of this section.~~~~
- ~~(e) The landscaping requirements of this title shall be waived; provided, that:

 - ~~(i) Street trees, installed and maintained by the adjacent property owner, shall be substituted in lieu of landscaping; and~~
 - ~~(ii) Any portion of the overlay district that directly abuts properties outside of the district shall provide, along said portions, a landscape buffer area no less than 50 percent of that required by this title.~~~~
- ~~(d) The setback requirements of this title shall be waived; provided, that:

 - ~~(i) Setback widths along any street forming a boundary of the overlay district shall comply with this title; and~~
 - ~~(ii) Any portion of the overlay district that directly abuts properties outside of the district shall provide, along said portions, a setback no less than 50 percent of that required by this title.~~~~
- ~~(e) The building height limits of this title shall be waived; provided, that the height limit within 50 feet of the perimeter of the overlay district shall be 30 feet.~~
- ~~(f) Signage shall be limited to that allowed within the DN zone.~~
- ~~(g) The roadway improvements of the City of Covington Municipal Code shall be waived, provided a no-protest agreement to participate in future road improvement districts (RID) is signed by an applicant and recorded with the City.~~
- ~~(h) The pedestrian circulation requirements of this title shall be waived.~~
- ~~(i) The impervious surface and lot coverage requirements of this title shall be waived.~~
- ~~(j) On I-zoned lands that are designated in the comprehensive plan as unincorporated activity centers, conditional use permits shall not be issued where the resulting impacts such as noise, smoke, odor and glare would be inconsistent with the maintenance of nearby viable commercial and residential areas.~~
- ~~(4) For properties that have frontage on pedestrian street(s) or routes as designated in an applicable plan or area-zoning process, the following conditions shall apply:

 - ~~(a) Main building entrances shall be oriented to the pedestrian street;~~
 - ~~(b) At the ground floor (at grade), buildings shall be located no more than five feet from the sidewalk or sidewalk improvement, but in no instance shall encroach on the public right-of-way;~~
 - ~~(c) Building facades shall comprise at least 75 percent of the total pedestrian street frontage for a property, and if applicable, at least 75 percent of the total pedestrian route frontage for a property;~~~~

- ~~(d) Minimum side setbacks of the underlying zoning are waived;~~
- ~~(e) Building facades of ground floor retail, general business service, and professional office land uses, that front onto a pedestrian street or route shall include windows and overhead protection;~~
- ~~(f) Building facades, along a pedestrian street or route, that are without ornamentation, or are comprised of uninterrupted glass curtain walls or mirrored glass are not permitted; and~~
- ~~(g) Vehicle access shall be limited to the rear access alley or rear access street where such an alley or street exists. (Ord. 10-10 § 3 (Exh. C); Ord. 42-02 § 2 (21A.38.090))~~

18.100.060— Special district overlay— Ground water protection.—

~~(1) The purpose of the ground water protection special district overlay is to limit land uses that have the potential to severely contaminate ground water supplies and to provide increased areas of permeable surface to allow for infiltration of surface water into ground resources.—~~

~~(2) For all commercial and industrial development proposals, at least 40 percent of the site shall remain in natural vegetation or planted with landscaping, which area shall be used to maintain predevelopment infiltration rates for the entire site. For purposes of this special district overlay, the following shall be considered commercial and industrial land uses:~~

- ~~(a) Amusement/entertainment land uses as defined by CMC 18.25.040 except golf facilities;—~~
- ~~(b) General services land uses as defined by CMC 18.25.050 except health and educational services, day care I, churches, synagogues, and temples;—~~
- ~~(c) Government/business services land uses as defined by CMC 18.25.060 except government services;~~
- ~~(d) Retail/wholesale land uses as defined by CMC 18.25.070 except forest product sales and agricultural product sales;~~
- ~~(e) Manufacturing land uses as defined by CMC 18.25.080; and~~
- ~~(f) Mineral extraction and processing land uses as defined by CMC 18.25.090.~~

~~(3) Permitted uses within the area of the ground water protection special district overlay shall be those permitted in the underlying zone, excluding the following as defined by Standard Industrial Classification number and type:~~

- ~~(a) SIC 4581— Airports, flying fields, and airport terminal services;~~
- ~~(b) SIC 4953— Refuse systems (including landfills and garbage transfer stations operated by a public agency);~~
- ~~(c) SIC 4952— Sewerage systems (including wastewater treatment facilities);—~~
- ~~(d) SIC 7996— Amusement parks; SIC 7948— Racing, including track operation; or other commercial establishments or enterprises involving large assemblages of people or automobiles except where excluded by subsection (2) of this section;~~
- ~~(e) SIC 0752— Animal boarding and kennel services;~~
- ~~(f) SIC 1721— Building painting services;~~
- ~~(g) SIC 3260— Pottery and related products manufacturing;~~
- ~~(h) SIC 3599— Machine shop services;~~
- ~~(i) SIC 3732— Boat building and repairing;~~
- ~~(j) SIC 3993— Electric and neon sign manufacturing;~~

- ~~(k) SIC 4226—Automobile storage services;~~
- ~~(l) SIC 7334—Blueprinting and photocopying services;~~
- ~~(m) SIC 7534—Tire retreading and repair services;~~
- ~~(n) SIC 7542—Car washes;~~
- ~~(o) SIC 8731—Commercial, physical and biological research laboratory services;~~
- ~~(p) SIC 02—Interim agricultural crop production and livestock quarters or grazing on properties five acres or larger in size;~~
- ~~(q) SIC 0752—Public agency animal control facility;~~
- ~~(r) SIC 2230, 2260—Textile dyeing;~~
- ~~(s) SIC 2269, 2299—Textile and textile goods finishing;~~
- ~~(t) SIC 2700—Printing and publishing industries;~~
- ~~(u) SIC 2834—Pharmaceuticals manufacturing;~~
- ~~(v) SIC 2844—Cosmetics, perfumes and toiletries manufacturing;~~
- ~~(w) SIC 2893—Printing ink manufacturing;~~
- ~~(x) SIC 3000—Rubber products fabrication;~~
- ~~(y) SIC 3111—Leather tanning and finishing;~~
- ~~(z) SIC 3400—Metal products manufacturing and fabrication;~~
- ~~(aa) SIC 3471—Metal electroplating;~~
- ~~(bb) SIC 3691, 3692—Battery rebuilding and manufacturing;~~
- ~~(cc) SIC 3711—Automobile manufacturing; and~~
- ~~(dd) SIC 4600—Petroleum pipeline operations. (Ord. 42-02 § 2 (21A.38.150))~~

~~18.100.070—Special district overlay—Urban aquifer protection area.~~

~~(1) The purpose of the urban aquifer protection area special district overlay is to provide additional protection for urban areas that are highly susceptible to ground water contamination. An urban aquifer protection area special district overlay shall only be established within areas designated in the comprehensive plan as highly susceptible to ground water contamination, including the surrounding area up to one-half mile, and zoned R, NC, CC, DN and M.~~

~~(2) Permitted uses shall be those permitted in the underlying zone, excluding the following as defined by Standard Industrial Classification (SIC) number and type:~~

- ~~(a) SIC 4953, refuse systems (including hazardous waste recycling or treatment and solid waste landfills);~~
- ~~(b) SIC 461, pipelines, except natural gas (including petroleum pipelines); and~~
- ~~(c) Businesses maintaining open storage of toxic substances.~~

~~(3) New septic tank drain field systems shall be prohibited. (Ord. 10-10 § 3 (Exh. C); Ord. 42-02 § 2 (21A.38.170))~~

~~18.100.080— Special district overlay— Erosion hazards near sensitive water bodies.—~~

~~(1) The purpose of the erosion hazards near sensitive water bodies special overlay district is to provide a means to designate sloped areas posing erosion hazards which drain directly to lakes or streams of high resource value which are particularly sensitive to the impacts of increased erosion and the resulting sediment loads from development.~~

~~(2) The following development standards shall be applied in addition to all applicable requirements of Chapter 18.65 CMC to development proposals located within erosion hazards near a sensitive water bodies district overlay:~~

~~(a) A no-disturbance area shall be established on the sloped portion of the special district overlay to prevent damage from erosion. Land clearing or development shall not occur in the no-disturbance area, except for the clearing activities listed in subsection (2)(a)(i) of this section. Clearing activities listed in subsection (2)(a)(i) of this section shall only be permitted if they meet the requirements of subsection (2)(a)(ii) of this section.—~~

~~(i) Clearing activities may be permitted as follows:~~

~~(A) For the construction of single family residences on pre-existing separate lots;~~

~~(B) For the construction of utility corridors to service existing development along existing rights-of-way including any vacated portions of otherwise contiguous rights-of-way;—~~

~~(C) For the construction of roads providing sole access to buildable property and associated utility facilities within those roadways; or—~~

~~(D) For the construction of development within an isolated no-disturbance area of two acres or less in size. The isolated no-disturbance area is either geologically separated from other no-disturbance areas or lies completely within a separate drainage sub-basin and is, therefore, hydrologically isolated from the rest of the no-disturbance area.~~

~~(ii) The clearing activities listed in subsection (2)(a)(i) of this section may be permitted only if the following requirements are met:~~

~~(A) A report which meets the requirements of CMC 18.65.120 shall show that the clearing activities will not subject the area to risk of landslide or erosion and that the purpose of the no-disturbance area is not compromised in any way;~~

~~(B) The clearing activities shall be mitigated, monitored and bonded consistent with the mitigation requirements applicable to sensitive areas regulated in Chapter 18.65 CMC;~~

~~(C) The clearing activities are limited to the minimal area and duration necessary for construction; and~~

~~(D) The clearing activities are consistent with Chapter 18.65 CMC.~~

~~(3) The following conditions shall apply to the wetland or along the main channel of the stream riparian zone containing the heron rookery (tributary streams are excluded).—~~

~~(a) The upslope boundary of the no-disturbance area lies at the first obvious break in slope from the upland plateau over onto the steep valley walls. The downslope boundary of this zone includes those areas designated as erosion or landslide hazard areas pursuant to CMC 18.65.220 and 18.65.280. The sensitive areas folio indicates the general location of these hazard areas, but it cannot be used to specify the areas' precise boundaries. Maps of the approximate boundaries of these no-disturbance zones shall be available at the Department. Single family or multifamily residential density from the no-disturbance area may be reallocated onto any buildable portion of the site pursuant to CMC 18.30.080, or transferred to other sites pursuant to Chapter 18.95 CMC.~~

~~(b) New development proposals for sites which drained predeveloped runoff to the no-disturbance zone shall evaluate the suitability of on-site soils for infiltration. All runoff from newly constructed impervious surfaces shall be retained on-site unless this requirement precludes the ability to meet minimum density requirements in Chapter 18.30 CMC. When minimum density cannot be met, runoff shall be retained on site as follows:~~

- (i) Infiltration of all site runoff shall be required in granular soils as defined in the stormwater manuals adopted pursuant to Chapter 13.25 CMC;
- (ii) Infiltration of downspouts shall be required in granular soils and in soil conditions defined as allowable in the stormwater manuals when feasible to fit the required trench lengths on site;
- (iii) When infiltration of downspouts is not feasible, downspout dispersion trenches shall be required when minimum flow paths defined in the stormwater manuals can be met on site or into adjacent open space; and
- (iv) When dispersion of downspouts is not feasible, downspouts shall be connected to the drainage system via perforated pipe.

(e) For the portions of proposed subdivisions, short subdivisions and binding site plans that cannot infiltrate runoff up to the 100-year peak flow, at least 25 percent shall remain undisturbed and set aside in an open space tract consistent with CMC 18.65.150 through 18.65.180.

(d) For the portions of all development proposals that cannot infiltrate runoff up to the 100-year peak flow, no more than 35 percent of the gross site area shall be covered by impervious surfaces. For new subdivisions and short subdivisions, maximum lot coverage should be specified for subsequent residential building permits on individual lots.

(e) If the application of this section would deny all reasonable use of property, the applicant may apply for a reasonable use exception pursuant to CMC 18.65.070(2).

(f) The Director may modify the property specific development standards required by subsections (3)(a) through (e) of this section, when a development proposal complies with the following:

- (i) The proposed development is subject to public/private partnerships such as an approved community block grant or other such water quality program designed to improve water quality in the basin;
- (ii) The proposed development is designated by City of Covington as a demonstration project designed to implement best management practices and state of the art technology that assures the greatest possible improvement to water quality; and
- (iii) A site-specific study is conducted by the applicant and approved by the Director, which demonstrates that the proposed development substantially increases water quality by showing the following:
 - (A) Water quality on-site is improved;
 - (B) The development project will not subject downstream channels to increased risk of landslide or erosion;
 - (C) The development project will not subject the nearest sensitive water body to additional erosion hazards; and
 - (D) The project is consistent with subsections (3)(f)(i) and (ii) of this section, and provides predictable improvements to water quality. (Ord. 13-09 § 38; Ord. 42-02 § 2 (21A.38.200))

18.100.090—Special district overlay—Urban stream protection area—

(1) The purpose of the urban stream protection area special district overlay is to provide a means to designate areas with substantial fisheries resources that have severe flooding and stream damage problems from high storm water volumes. This district overlay limits land coverage along significant urban stream corridors to reduce storm water volumes and the costs associated with flooding problems and loss of salmon resources.

(2) The following development standards shall be applied to development proposals on R-1 zoned parcels located within an urban stream protection area district overlay:

- ~~(a) Clearing is limited to and development shall be clustered on 30 percent of the site. Parcels adjacent to streams or wetlands shall place structures as far as feasible from streams and wetlands. For binding site plans, subdivisions and short subdivisions, the remaining 70 percent of the site shall be placed in a contiguous permanent open space tract retaining the native vegetation. For individual lots, the remaining 70 percent of the parcel shall retain the native vegetation and be placed in a County approved conservation easement, or notice shall be placed on the title of the lot. The notice shall be approved by the City of Covington and filed with the Records and Elections Division. The notice shall inform the public of the presence and location of an urban stream protection area on the property and that limitations on actions in or affecting the corridor exist;~~
- ~~(b) Where existing clearing has already exceeded 30 percent of the gross acreage of the site, reforestation according to a County approved plan shall be provided to restore native forested cover to 70 percent of the site;~~
- ~~(c) The maximum impervious surface area shall be eight percent of the gross acreage of the site. Proposed short subdivisions, subdivisions, and binding site plans shall record the distribution of allowable impervious area among individual parcels on the face of the plat. Impervious surface of roads shall not be counted towards the allowable impervious area. This condition may be modified by the Director only as necessary to accommodate unusual site access conditions;~~
- ~~(d) Keeping or grazing of livestock shall be prohibited; and~~
- ~~(e) No road crossings of streams defined in CMC 18.20.1240 shall be allowed. Crossing of streams by utilities shall be limited to existing road or utility rights of way unless no feasible alternative exists. (Ord. 42-02 § 2 (21A.38.220))~~

~~18.100.100 — Special district overlay — Significant trees.
 Repealed by Ord. 04-08. (Ord. 42-02 § 2 (21A.38.230))~~

~~18.100.110 — Special district overlay — Floodplain density.~~

- ~~(1) The purpose of the floodplain density special district overlay is to provide a means to designate areas that cannot accommodate additional density due to severe flooding problems. This district overlay limits development in sensitive areas to reduce potential future flooding.~~
- ~~(2) The following development standards shall be applied to all development proposals on RA-5 zoned parcels located within a floodplain density special district overlay:~~
 - ~~(a) Density is limited to one home per 10 acres for any property that is located within a sensitive area; and~~
 - ~~(b) All development shall be clustered outside of the identified sensitive areas, unless the entire parcel is a mapped sensitive area. (Ord. 42-02 § 2 (21A.38.240))~~