

ORDINANCE NO. 17-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, AMENDING SELECT SECTIONS OF CHAPTERS 16.10, 14.30, AND 14.45 OF THE COVINGTON MUNICIPAL CODE, RELATING TO THE STATE ENVIRONMENTAL POLICY ACT POLICIES AND PROCEDURES FOR PERMITS AND APPEALS; PROVIDING FOR CORRECTIONS AND SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Chapter 35A.63 of the Revised Code of Washington (RCW) empowers the City of Covington ("City") to enact planning and environmental regulations, including State Environmental Policy Act (SEPA) rules and policies and procedure for permits and appeals; and

WHEREAS, amending portions of Chapters, 16.10, State Environmental Policy Act Rules; 14.30, Permit Decision Types; and 14.45, Appeal Procedures, of the Covington Municipal Code (CMC) is necessary to resolve inconsistencies within the CMC and to clean up inconsistencies and outdated provisions from the King County Code originally adopted upon incorporation of the City; and

WHEREAS, City staff transmitted the proposed amendments to Chapters 16.10, 14.30, and 14.45 of the CMC to the Washington State Department of Commerce on August 9, 2016, as required under RCW 36.70A.106, and has received no comments from state agencies; and

WHEREAS, on October 6, 2016, the Covington Planning Commission held a duly noticed public hearing and considered and reviewed the proposed amendments to Chapters 16.10, 14.30, and 14.45 of the CMC and forwarded a recommendation to the city council on October 25, 2016, to approve the proposed amendments; and

WHEREAS, the proposed amendments to Chapters 16.10, 14.30, and 14.45 of the CMC are consistent with the goals, objectives, and policies of the City's comprehensive plan; and

WHEREAS, the proposed amendments to Chapters 16.10, 14.30, and 14.45 of the CMC serve; and

WHEREAS, the City Council of the City of Covington, upon review of the facts, findings, and recommendations of the Covington Planning Commission, and after reviewing information provided by City staff, find that all applicable and substantive requirements of the law have been met, that the adoption of this ordinance promotes the public health, safety, and general welfare of the community, and that the adoption of this ordinance serves the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Findings of Fact. The “Whereas” provisions above shall constitute Findings of Fact and are incorporated by reference as if fully set forth herein.

Section 2. CMC Section 16.10.070 Amended. Covington Municipal Code Section 16.10.070 is hereby amended as follows:

16.10.070 Additional timing considerations.

(1) 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.

(2) 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.

Section 3. CMC Section 16.10.090 Amended. Covington Municipal Code Section 16.10.090 is hereby amended as follows:

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:

<u>RCW</u>	<u>Nonproject actions exempt from</u>
<u>43.21C.450</u>	<u>requirements of chapter.</u>

(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).

Section 4. CMC Subsection 16.10.110(1) Amended. Covington Municipal Code Subsection 16.10.110(1) is hereby amended as follows:

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 ~~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.

Section 5. CMC Section 16.10.130 Amended. Covington Municipal Code Section 16.10.130 is hereby amended as follows:

16.10.130 Environmental impact statement (EIS).

(1) 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

(2) 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:

<u>RCW</u>	<u>Planned action—Defined—Authority of a</u>
<u>43.21C.440</u>	<u>county, city, or town—Community meetings.</u>
<u>WAC 197-11-164</u>	<u>Planned actions—Definition and criteria.</u>

WAC 197-11-168 Ordinances or resolutions designating planned actions—Procedures for adoption.

WAC 197-11-172 Planned actions—Project review.

(3) 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 Comprehensive plans and development
43.21C.420 regulations—Optional elements—Nonproject
environmental impact statements—Subarea
plans—Transfer of development rights program—
Recovery of expenses.

RCW Recovery of expenses of nonproject environmental
43.21C.428 impact statements—Fees for subsequent
development.

Section 6. CMC Subsection 16.10.140(4) Amended. Covington Municipal Code Subsection 16.10.140(4) is hereby amended as follows:

16.10.140 Preparation of EIS (additional considerations).

...

(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.

Section 7. CMC Subsection 16.10.160(5) Amended. Covington Municipal Code Subsection 16.10.160(5) is hereby amended as follows:

16.10.160 Public notice.

...

(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).

Section 8. CMC Section 16.10.190 Amended. Covington Municipal Code Section 16.10.190 is hereby amended as follows:

16.10.190 SEPA and agency decisions.

(1) 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

(2) Administrative appeal procedures are addressed in CMC 16.10.210.

Section 9. CMC Subsection 16.10.200(4)(c) Amended. Covington Municipal Code Section 16.10.200(4)(c) is hereby amended as follows:

16.10.200 Substantive authority.

...

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

...

(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;~~
- (~~xxxix~~) All other City-adopted land development ordinances and policies; and
- (xxi) The City's current Design and Construction Standards ~~and Specifications~~.

Section 10. CMC Section 16.10.210 Amended. Covington Municipal Code Section 16.10.210 is hereby amended as follows:

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 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.

(42) 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.

(23) 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.

Section 11. CMC Section 14.30.040 Amended. Section 14.30.040 of the Covington Municipal Code is hereby amended as follows:

14.30.040 Decision types. 1

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

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Section 12. CMC Section 14.30.050 Amended. Section 14.30.050 of the Covington Municipal Code is hereby amended as follows:

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 <u>regarding project proposals</u>	No	No
Judicial appeal:	King County Superior Court	King County Superior Court	King County Superior Court	King County Superior Court

Section 13. CMC Subsection 14.30.060(6) Amended. Subsection 14.30.060(6) of the Covington Municipal Code is hereby amended as follows:

14.30.060 Legislative actions.

...

(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.

Section 14. CMC Subsection 14.45.030(1) Amended. Subsection 14.45.030(1) of the Covington Municipal Code is hereby amended as follows:

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.

Section 15. Savings. The enactment of this ordinance shall not affect any application, case, proceeding, appeal, or other matter currently pending administratively or judicially in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this ordinance.

Section 16. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 17. Corrections. Upon approval of the city attorney, the city clerk and/or code codifier is authorized to make necessary corrections to this ordinance, including, but not limited to, the correction of clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or section/subsection numbering.

Section 18. Effective Date. This ordinance shall be in full force and effect five (5) days after publication in the city's newspaper of record. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety.

**PASSED BY THE CITY COUNCIL OF THE CITY OF COVINGTON,
WASHINGTON, at a regular meeting thereof on the 25th day of October, 2016, and signed
in authentication of its passage.**



Mayor Jeff Wagner

PUBLISHED: 10-28-2016
EFFECTIVE: 11-02-2016

ATTESTED:



Sharon Scott, City Clerk

APPROVED AS TO FORM ONLY:



Sara Springer, City Attorney