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
September 1 2016
6:30 PM

CALL TO ORDER

ROLL CALL
Chair Bill Judd, Vice Chair Paul Max, Jennifer Gilbert-Smith, Alex White, Jim Langehough, & Chele Dimmett.

PLEDGE OF ALLEGIANCE

APPROVAL OF CONSENT AGENDA

1. Minutes from May 19, 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 –

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

PUBLIC HEARING – None

NEW BUSINESS – No Action Required

3. Discuss Council Decision on Impact Fee Deferral Program
4. Discuss Proposed Code Amendment to Delete Special Overlay Districts
5. Discuss Proposed Code Amendment to SEPA Rules

ATTENDANCE VOTE

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

COMMENTS AND COMMUNICATIONS OF COMMISSIONERS AND STAFF

ADJOURN
CALL TO ORDER
Vice Chair Max called the regular meeting of the Planning Commission to order at 6:37 p.m.

MEMBERS PRESENT
Chele Dimmett, Jennifer Gilbert-Smith, Jim Langehough, Paul Max, Krista Bates, 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 Dimmett moved and Commissioner White seconded to approve the May 5, 2016 minutes and agenda. Motion carried 6-0.

CITIZEN COMMENTS - None

UNFINISHED BUSINESS - None

PUBLIC HEARING - None

NEW BUSINESS

2. Discussion of Sign Code Revisions for Temporary Signs

Community Development Director, Richard Hart, introduced the draft temporary sign code regulations. Mr. Hart provided the background on the Reed Supreme Court Decision which has dramatically changed the landscape of temporary sign regulations. The new regulations will evaluate the number, location, size, duration and the type of sign. Mr. Hart reviewed the template outlining the types of signs allowed which have been categorized as residential uses and non-residential uses.
Commissioner Dimmett asked for clarification on the letter identification in the template. Associate Planner and Code Enforcement Officer, Brian Bykonen explained the matrix in the table. Mr. Bykonen described a couple of sign types for clarification. Mr. Hart shared that staff is working to make the sign code easy to understand and easy to enforce. The Planning Commission went on to discuss how time limitations and number of signs are not proposed to be regulated; rather, the location, size and material of signs will be. Commissioner Dimmett asked for a clear definitions section in the final code.

Mr. Hart shared that we anticipate having more discussion with the Planning Commission and public outreach prior to having a Public Hearing. The proposed temporary sign regulations will go to City Council following the Planning Commission Public Hearing.

Commissioner Dimmett asked about legal non-conforming signs once the new sign code is adopted. Mr. Hart responded that we have not yet written in a provision for amortization to remove legal non-conforming signs.

ATTENDENCE VOTE

➤ Commissioner Gilbert-Smith moved and Commissioner Dimmett seconded to excuse the absence of Chair Judd. Motion carried 6-0.

PUBLIC COMMENTS - None

COMMENTS AND COMMUNICATIONS FROM STAFF

Mr. Hart shared that we anticipate reviewing the Critical Areas Ordinance and continuing discussion on the Temporary Sign Code Regulations at the next Planning Commission meeting on June 16, 2016.

The proposed Marijuana Zoning Regulations will be discussed at the City Council meeting on June 14, 2016.

ADJOURN

The May 19, 2016 Planning Commission Meeting adjourned at 7:31 p.m.

Respectfully submitted,

______________________________
Kelly Thompson, Planning Commission Secretary
Section 18.55.270 Temporary Signs.

(1) **Permits.** No permit is required for a temporary sign except as follows:
   (a) **Banner signs.** Banner signs listed in subsection (5) below require a temporary sign permit.
   (b) **Public parks, trails, and open space and public rights-of-way signs.** In accordance with Chapter 12.40 CMC, a special event permit is required to display temporary signs within a public park, trail, and open space, and on public rights-of-way.

(2) **Removal.** Temporary signs shall be removed if the sign is in need of repair, is worn, dilapidated, or creates a public nuisance.

(3) **Materials.** See CMC 18.55.100 and the definition of “temporary sign” in Chapter 18.20 CMC.

(4) **Residential use (single and multi-family).** Temporary signs on single and multi-family properties are allowed with the following requirements. All temporary signs shall display a non-commercial message only.
   (a) **Number.** There is no restriction on the number of signs allowed.
   (b) **Location.** Signs shall not be located on or within interior setback locations, the roof of the dwelling or any accessory structure, fences, or temporarily placed on vehicles.
   (c) **Building coverage.** Signs shall not cover more than 10 percent of the dwelling that faces a public street.
   (d) **Height and size.** The height and size limits of temporary signs shall be as follows:
      (i) Signs shall not be greater than six (6) feet in height and 12 square feet in size, with no sign face exceeding six (6) square feet; and
      (ii) The height and size requirements shall not apply to a flag(s) placed on a permanent flagpole, and
      (iii) Building mounted signs attached flush to the face of the building shall not have a maximum height.
   (e) **Sign types.**
      (i) Signs on stakes that can be manually pushed or hammered into the ground; and
      (ii) Portable signs in accordance with Section 18.55.220 CMC. No permit is required for portable signs displaying a non-commercial message; and
      (iii) Inflatables; and
      (iv) Banners; and
      (v) String lights.
   (f) **Lighted signs.** Signs that have either internal or external illumination shall not be displayed from the hours of 11 p.m. to 8 a.m. Signs with illumination shall not emit more than ___ nits.
(g) **Audio.** Sound generated by any sign shall not be audible past any property line.

(h) **Duration of display.** A temporary sign shall not be displayed longer than 180 days in a calendar year.

(2) **Commercial uses (does not include school facilities, religious facilities, government facilities, public parks, trails and open space, and public rights-of-way).** Temporary signs on commercial use properties are allowed with the following requirements. All temporary signs shall display a non-commercial message, except as allowed under subsection (a)(ii) below. Portable signs displaying a commercial message are considered permanent and need to abide by the regulations provided in Chapter 18.55.220 CMC.

(a) **Number.**

   (i) There is no restriction on the number of temporary signs displaying a non-commercial message.

   (ii) One temporary sign per business or use displaying a commercial message is allowed subject to the following requirements:

      (A) The sign shall be a banner only; and

      (B) The maximum size shall be 32 square feet; and

      (C) The banner shall be attached to the face of the building only, with no height limitation; and

      (D) The banner shall be displayed a total of 120 days in a calendar year; and

      (E) A temporary sign permit is required.

(b) **Location.** Signs shall not be located in interior setback locations, the roof of any structure, fences, or temporarily placed on vehicles.

(c) **Building coverage.** Signs shall not cover more than 10 percent of the structure that faces a public street.

(d) **Height and size.** The height and size limits of signs shall be as follows:

   (i) One freestanding sign per property shall not be greater than six (6) feet in height and shall not be larger than 24 square feet in size, with no sign face larger than 12 square feet.

   (ii) All other temporary signs displayed on a property shall not be greater than three (3) feet in height and shall not be greater than six (6) square feet in size, with no sign face exceeding three (3) square feet.

   (iii) The height and size requirements shall not apply to a flag(s) placed on a permanent flagpole.

(e) **Sign type.**

   (i) Signs on stakes or posts that are not permanently attached to the ground; and

   (ii) Portable signs in accordance with Chapter 18.55.220 CMC. No permit is required for portable signs displaying a non-commercial message; and

   (iii) Banners; and
(iv) **String lights.**

(f) **Lighted signs.** No restrictions.

(g) **Audio.** Sounds generated by any sign shall not be audible past any property line.

(h) **Duration of display.** A temporary sign shall not be displayed longer than 180 days in a calendar year.

(6) **School facility, religious facility, and government facility uses.** Temporary signs on school facility, religious facility, and government facility properties are allowed with the following requirements. All temporary signs shall display a non-commercial message.

(a) **Number.**
   (i) There is no restriction on the number of temporary signs displaying a non-commercial message except for banner signs under section (a)(ii) below.
   (ii) One banner sign per 500 feet of street frontage, not to exceed four (4) per property, and as long as the banner(s) conforms to the regulations of subsection (d)(i) below.

(b) **Location.** Temporary signs shall not be located in interior setback locations, the roof of any structure, or temporarily placed on vehicles.

(c) **Building coverage.** Temporary signs shall not cover more than 10 percent of the structure that faces a public street.

(d) **Height and size.** The height and size limits of temporary signs shall be as follows:
   (i) Banners shall not be greater than five (5) feet in height, unless attached to the face of the primary structure on the property. A banner shall not be larger than a total of 32 square feet in size.
   (ii) All other temporary signs displayed on a property shall not be greater than three (3) feet in height and shall not be greater than six (6) square feet in size, with no sign face exceeding three (3) square feet.
   (iii) The height and size requirements shall not apply to a flag(s) placed on a permanent flagpole.

(e) **Sign type.**
   (v) Signs on stakes that can be manually pushed or hammered into the ground; and
   (vi) Portable signs in accordance with Section 18.55.220 CMC. No permit is required for portable signs displaying a non-commercial message; and
   (vii) Banners; and
   (viii) String lights.

(f) **Lighted signs.** Signs that have either internal or external illumination shall not be displayed from the hours of 11 p.m. to 8 a.m.
(g) **Audio.** Sounds generated by any sign shall not be audible past any property line.

(h) **Duration of display.** A temporary sign shall not be displayed longer than 180 days in a calendar year.

(7) **Use of public parks, trails, and open space.** Temporary signs displayed within a public park, trail, and open space are allowed with the following requirements. All temporary signs shall display a non-commercial message only.

(a) **Number.**
   
   (i) Five (5) signs per special event permit.
   
   (ii) Of the five (5) signs in section (b)(i) above, one (1) banner sign per 500 feet of street frontage is allowed, not to exceed two (2) per property per special event permit.

(b) **Location.**

   (i) Signs shall not be located on the roof of any structure or temporarily placed on vehicles.
   
   (ii) Signs displayed within a public park, trail, or open space shall only be for special events held within the public park, trail, or open space.

(c) **Building coverage.** Temporary signs shall not cover more than 10 percent of the structure that faces a public street.

(d) **Height and size.** The height and size limits of temporary signs shall be as follows:

   (i) Banners shall not be greater than five (5) feet in height, unless attached to the face of the primary structure on the property. A banner shall not be larger than 32 square feet in size.
   
   (ii) All other temporary signs displayed on a public park, trail, or open space property shall not be greater than three (3) feet in height and shall not be greater than six (6) square feet in size, with no sign face exceeding three (3) square feet.
   
   (iii) The height and size requirements shall not apply to a flag(s) placed on a permanent flagpole.

(e) **Sign type.**

   (ix) Signs on stakes that can be manually pushed or hammered into the ground; and
   
   (x) Portable signs in accordance with Section 18.55.220 CMC. No permit is required for portable signs allowed under a special event permit; and
   
   (xi) Banners; and
   
   (xii) String lights.

(f) **Lighted signs.** Signs that have either internal or external illumination shall not be displayed from the hours of 11 p.m. to 8 a.m.

(g) **Audio.** Sounds generated by any sign shall not be audible past any property line.
(h) **Duration of Display.** Signs displayed within a public park, trail, or open space property shall not be displayed more than 30 days prior to an event and must be removed five (5) days after the event.

(8) **Use of public rights-of-way.** Temporary signs on public rights-of-way are allowed with the following requirements. All temporary signs shall display a non-commercial message only.

(a) **Number.** There is no restriction on the number of temporary signs allowed within public rights-of-way.

(b) **Location.**
   (i) Signs can be placed within planter strips and undeveloped portions of public rights-of-way; and
   (ii) Signs to be located on a street tree, within a roundabout, or across SE 272nd Street shall be placed by city staff only. An additional fee for staff time and equipment will be required based on the city Fee Resolution in effect at the time; and
   (iii) Signs shall not be placed in a manner that obstructs sight distance of vehicle and pedestrian traffic, or to cause any other safety issues; and
   (iv) Signs shall not be located on or within medians, sidewalks, utility poles, lampposts, traffic signs and signals, or other public structures.

(c) **Building coverage.** There are no restrictions.

(d) **Height and size.** Signs shall not be greater than three (3) feet in height and six (6) square feet in size, with no sign face exceeding three (3) square feet. The size requirements shall not be applicable for string lights within street trees, and banners and flags located on permanent poles designed for flags and banners.

(e) **Sign type.**
   (xiii) Signs on stakes that can be manually pushed or hammered into the ground; and
   (xiv) Portable signs in accordance with Section 18.55.220 CMC. No permit is required for portable signs allowed under a special event permit; and
   (xv) Banners; and
   (xvi) String lights on street trees.

(f) **Lighted signs.** There are no restrictions.

(g) **Audio.** Sounds generated by any sign shall not be audible past any property line.

(h) **Duration of display.** A temporary sign shall not be displayed longer than 180 days in a calendar year.

CMC 18.20.XXX “Temporary sign (which may include special event sign)” means any sign that is used temporarily and is not permanently mounted, painted or otherwise affixed, excluding portable signs as defined by this Chapter, including any poster, banner, placard, stake sign or
sign not placed in the ground with concrete or other means to provide permanent support, stability and rot prevention. Temporary signs may be made of non-durable materials including, but not limited to, paper, corrugated board, flexible, bendable or foldable plastics, foamcore board, vinyl canvas or vinyl mesh, vinyl canvas and vinyl mesh products without polymeric plasticizers and signs painted or drawn with water soluble paints or chalks.

Section 18.55.040 Prohibited Signs. No person shall erect, alter, maintain, or relocate any of the following signs in the city.

1. Animated signs. A rotating or revolving sign or signs where all or a portion of the sign moves in some manner. This includes any sign animated by any means, including fixed aerial displays, balloons, pennants, spinners, propellers, whirling, or similar devices designed to flutter, rotate or display other movement under the influence of the wind, including flag canopies not otherwise allowed in CMC 18.55.160, streamers, tubes, or other devices affected by the movement of air or other atmospheric or mechanical means.
2. Rotating signs. Any sign in which the sign body or any portion rotates, moves up and down, or any other type of action involving a change in position of the sign body or any portion of the sign, whether by mechanical or any other means.
3. Nuisance signs. Any signs which emit smoke, visible particles, odors and sound, except that speakers in drive-through facilities shall be permitted.
4. Bench signs greater than one (1) square foot in area.
5. Flashing signs or lights. A sign unless allowed under the provisions of CMC 18.55.270 that contains an intermittent or flashing light source, or a sign that includes the illusion of intermittent or flashing light by means of animation, or an externally mounted intermittent light source. Flashing light sources are prohibited. Signs with an exposed light source, including clear light bulbs which do not flash on a theater marquee except for neon incorporated into the design of the sign are also prohibited. Electronic message center signs and digital signs are allowed under the provisions of Section 18.55.200 (Electronic Message Center Signs).
6. Hazardous signs. Any sign that is dangerous or confusing to motorists and pedestrians on the public right-of-way, including any sign which by its color, wording, design, location or illumination resembles or conflicts with any official traffic control device or which otherwise impedes the safe and efficient flow of traffic is prohibited.
7. No sign may impede free ingress and egress from any door, window, or exit way required by building and fire regulations.
8. Permanent signs on vacant lots, parcels, or easements. No permanent sign shall be located on a vacant lot, parcel or easement. No permanent sign shall be located on a lot, parcel, or easement as the principal use of that lot, parcel, or easement. Signs may only be established as an accessory use to a principally permitted use.
9. Portable signs on wheels (trailer signs).
10. Abandoned signs.
11. Signs on or within medians, roundabouts, utility poles, lampposts, traffic poles and signals, or public structures, unless allowed by a Special Event permit issued by the city.
Section 18.55.100. Sign Materials.

(1) Temporary signs. The construction of temporary signs is described in the definition of “temporary sign,” (Section 18.20.XXXX, Definitions). However, temporary signs may be made of any material, provided that the temporary sign otherwise conforms to the requirements of this Chapter, including, but not limited to CMC 18.55.270.

(2) Permanent signs. Permanent signs must be manufactured of durable materials that withstand the effects of water and wind. The following additional requirements apply to any permanent signs larger than 30 square feet, except for window signs located inside glass:

   (a) Paper-faced signs, including vinyl-coated paper and those applied with adhesives, are not allowed. Canvas or vinyl signs must be made of minimum 20 oz. materials with polymeric plasticizers for durability.

   (b) Sign faces made of canvas, fabric, vinyl, or similar pliable materials that are attached to permanent sign structures must be mounted behind a perimeter frame or trim cap so that the edges of the sign face are not exposed, except that flags made of 100% spun polyester are exempt from this requirement.

Section 18.55.220. Portable Signs. No permit shall issue for a portable sign (includes sandwich board and pole mounted signs, Figure 19) displaying a commercial message which does not comply with the following standards:

(1) Zone: Allowed in all zones.

(2) Design and Materials: Must be designed with durable materials, otherwise they will be regulated as temporary signs under Section 18.55.270. Portable signs must be designed to withstand wind and include a heavy weighted base for pole-mounted signs, and a heavy weight suspended between the opposing faces of a sandwich board sign.

Figure 19
Portable Signs
(3) **Size and Height.** Sandwich board signs: Maximum of four (4) feet in height, maximum of three (3) feet in width. (Note: sandwich board sign height is measured in the flat standing position, rather than in open standing position.) Pole-mounted signs: Maximum of three (3) square feet per side, four (4) feet high.

(4) **Number:** Not more than one (1) portable sign may be displayed per business with an approved city business license.

(5) **Location:** On private property only. No portable sign may be located on the city right-of-way (which includes the sidewalk), without a Special Event permit.

(6) **Display Hours:** Portable signs may be displayed during business or operating hours only.

**Chapter 12.40**
**SPECIAL EVENTS ON CITY PROPERTY**

Sections:

12.40.010 **Definitions.**

12.40.020 **Permit requirement.**

12.40.030 **Repealed.**

12.40.040 **Permit issuance.**

12.40.050 **Liability.**

12.40.060 **Additional requirements.**

12.40.070 **Fee.**
12.40.080 Interpretation.

12.40.090 Enforcement.

12.40.010 Definitions.
(1) “City property” herein means all City real property, including but not limited to recreational trails, City road rights-of-way and dedicated open space.

(2) “Special event permit” means a permit for the use of City property issued pursuant to this chapter.

(3) “Custodial Departments” means those City Departments whose function it is to manage and control City use of said rights-of-way or other City property. (Ord. 20-07 § 11; Ord. 38-02 § 2 (12.08.010))

12.40.020 Permit requirement.
(1) Special event permits shall be required for any use of City property except uses relating to utility permits or relating to City rights-of-way use or construction permits.

(2) Upon receipt of an application for a special event permit upon City property, the Community Development Department shall determine whether the proposed use is upon City-owned property.

(3) The Community Development Department shall forward the application to all City Departments for review.

(4) The City Departments shall review the application and forward their recommendation whether the permit shall be issued. If a Department recommends denial, the Community Development Department shall deny the permit.

(5) If there is no Department with jurisdiction over the City property, the Community Development Department shall evaluate the feasibility of the proposed use, its impact on other uses of the City property and its impact on public health and safety. Based on this evaluation, the Community Development Department shall determine whether the permit should be issued.

(6) In all cases, the Community Development Department shall develop recommendations on sensitive area issues and the Department shall be responsible for assuring that any application meets the requirements of the sensitive areas code set out in Covington Municipal Code and the administrative rules promulgated thereunder before the permit is issued. (Amended at request of department 2/08; Ord. 20-07 § 12; Ord. 38-02 § 2 (12.08.020))

12.40.030 Inspection fee.
Repealed by Ord. 20-07. (Ord. 38-02 § 2 (12.08.025))

12.40.040 Permit issuance.
(1) Upon filing of a complete application, necessary approval of said application and the payment of the administrative fee and posting of any required bond, the Community Development Department may issue a permit authorizing the special event use of City property by the permittee.

(2) The permit may require restoration of the City property to standards prescribed by the City in view of the nature and duration of the special event. In addition, conditions may be set by the Community Development Department to assure compliance of the permit with City policies, ordinances and other applicable laws and regulations.

(3) The permit applicant may be required to post a performance bond, consistent with the provisions of CMC Title 14, in an amount which will:

(a) Guarantee the special event will be in compliance with standards and conditions prescribed by the Public Works and Community Development Departments;

(b) Guarantee restoration of the City property to a condition consistent with the special event permit and the City’s own use of its property. (Amended at request of department 2/08; Ord. 20-07 § 14; Ord. 38-02 § 2 (12.08.030))

12.40.050 Liability.

The permit applicant shall be solely responsible for the adequate operation and maintenance of any improvements constructed by the permittee to the City property and shall assume liability for all injuries to persons or property as the result of activities pursuant to a special event permit. (Ord. 20-07 § 15; Ord. 38-02 § 2 (12.08.040))

12.40.060 Additional requirements.

(1) Survey. When considered necessary by the Community Development Department to adequately determine the limits of the City property, the permit applicant shall cause the City property to be surveyed by a licensed land surveyor. Such survey shall be recorded in accordance with the Survey Recording Act. The cost of such survey shall be paid by the permit applicant.

(2) Dedication. A permit applicant may be required to deed additional right-of-way across property under his authority when necessary to fulfill any City policy, ordinance or laws. (Amended at request of department 2/08; Ord. 38-02 § 2 (12.08.050))

12.40.070 Fee.

(1) An applicant shall pay a nonrefundable application fee, as set forth in the current fee resolution, to recover the cost of processing the application. The Community Development Director shall have the authority to waive a permit fee when the waiver is in the best interest of the public health, safety, and welfare.

(2) The Community Development Department shall have the authority to charge an annual fee for uses of City property when determined by the Director to be appropriate considering the duration of the special event.
(3) The Community Development Department shall have the authority to require applicants to reimburse the City of Covington for all expenses to be incurred by the City of Covington as a result of issuance of a special event permit. Payment for such expenses shall be made at the time of permit issuance. (Amended at request of department 2/08; Ord. 20-07 § 16; Ord. 38-02 § 2 (12.08.060))

12.40.080 Interpretation.

Permits issued pursuant to this chapter shall not be construed to convey any vested right of ownership interest in any City property. (Ord. 38-02 § 2 (12.08.070))

12.40.090 Enforcement.

The Director of Community Development is authorized to enforce the provisions of this chapter. (Amended at request of department 2/08; Ord. 38-02 § 2 (12.08.080))
SUBJECT: RECEIVE TESTIMONY FROM THE PUBLIC AND CONSIDER AN
ORDINANCE ESTABLISHING A NEW TITLE 19 CMC—IMPACT FEES,
INCLUDING THE ADDITION OF AN IMPACT FEE DEFERRAL PROGRAM,
AND CONSIDER AN AMENDMENT TO THE CITY’S FEE RESOLUTION TO
INCLUDE THE COLLECTION OF AN ADMINISTRATIVE FEE FOR THE
SAME

RECOMMENDED BY: Richard Hart, Director of Community Development

ATTACHMENT(S):
1. Blue Sheet for July 26, 2016, agenda item on impact fee deferral program
2. Proposed Ordinance establishing a new Title 19 CMC—Impact Fees
3. Proposed Resolution establishing an administrative fee for Impact Fee Deferral Program

PREPARED BY: Salina Lyons, Principal Planner
Kelly Thompson, Senior Permit Center Coordinator

EXPLANATION:

A. Impact Fee Deferral Program
At the July 26, 2016, regular council meeting, community development staff provided the
council an overview of the new impact fee deferral program that the city is required by state law
to adopt by September 1, 2016 (ESB 5923). (Attachment 1) In brief, the new state law requires
the city to adopt an impact fee deferral system for the collection of impact fees for new single-
family (detached and attached) residential construction. At the same regular council meeting, the
council directed staff to draft the impact fee deferral ordinance to allow impact fee payment
deferrals until the time of final inspection/issuance of the certificate of occupancy and to cap the
amount of impact fee payment deferrals to the state minimum of twenty (20) annual deferrals per
applicant.

B. New Title 19—Impact Fees
Also as previously presented by city staff, as part of the process of drafting new code provisions
for the above required impact fee deferral program, city staff took the opportunity to reorganize
all existing impact fee code provisions into a new Title 19—Impact Fees. (Currently,
transportation impact fees are included in chapter 12.105 CMC and school impact fees are
included in chapter 18.120 CMC.)

The attached proposed ordinance (Attachment 2), creates the new Title 19—Impact Fees. As
noted, Title 19 represents a restructuring and reorganization of the city’s existing impact fee
provisions, and includes the following code changes and updates (generally):
• New impact fee deferral program.

• Caps waivers of impact fees for low-income housing to eighty percent (80%) of the impact fees assessed for that project.
  o State statutes allow for up to an 80% waiver of impact fees for low-income housing developments without requiring the waived impact fees to be matched by the city from funds other than the impact fee funds. Any waiver amount above 80% would require the city to pay the additional amount waived above 80%.

• Clarifies that impact fees are assessed for a change of use if that change of use impacts public facilities.

• Inclusion of additional building permit types as exceptions to the collection of impact fees (i.e. building permits that do not affect or have an impact on public facilities, such as fences, decks, etc.).

• Numerous housekeeping edits to update the existing code language for clarity and accuracy.

ALTERNATIVES:
1. Recommend amendments to the proposed ordinance.
2. Return the issue to city staff for further study and analysis.

State law requires the city to adopt an impact fee deferral program by September 1, 2016. As the second council meeting in August is cancelled, council must, at a minimum, take action on adopting the impact fee deferral program. As noted, the council may alter the select policy decisions local governments may exercise regarding the new impact fee deferral program (i.e. the timing of collection of payment and the number of allowed deferrals per applicant per year); however, state law closely prescribes the remaining impact fee code provisions.

FISCAL IMPACT:
The implementation of the impact fee deferral program will cause a delay in the city’s collection of transportation and school impact fees. Accordingly, staff anticipates a corresponding delay in the availability of those same funds for application towards the city’s capital facilities projects.

The city may collect reasonable administrative fees to cover the costs of implementing the impact fee deferral program. Staff is proposing that the council adopt a non-refundable administrative fee of $143 for each Impact Fee Deferral Request. ($143 is the current billable rate for 1 hour of community development staff time.) Staff will include this new administrative fee into the next fee resolution update, and it will be subject to future increases as set forth by the council. The applicant will responsible for all recording costs associated with the liens and the release of lien forms required by the impact fee deferral program.
The deferral of impact fees does not preclude the developer from paying administrative fees for the collection and processing of payment of impact fees, generally, as currently set forth in the fee resolution. The current administrative fee is $70 per impact fee assessed.

CITY COUNCIL ACTION:    X     Ordinance       Resolution    X  Motion         Other

Council member ____________ moves, Council member _________________ seconds, to pass an Ordinance, in substantial form as presented, to repeal Chapter 12.110 CMC and Chapter 18.120 CMC and replace with a new Title 19 CMC—Impact Fees, which includes adoption of a new impact fee deferral program as required pursuant to ESB 5923.

Council member ____________ moves, Council member _________________ seconds, to adopt an amendment to Resolution No. 15-12, in substantial form as that presented, to include a non-refundable administrative fee of $143.00 to be collected for each Impact Fee Deferral Request.

REVIEWED BY:  City Manager; Community Development Director, Finance Director; City Attorney.
RESOLUTION NO. 15-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, AMENDING RESOLUTION NO. 15-12 TO ADD AN ADMINISTRATIVE FEE OF $143.00 FOR IMPACT FEE DEFERRAL REQUESTS.

WHEREAS, certain sections of the Covington Municipal Code (CMC) authorize the City of Covington (the “City”) to charge an administrative fee for services; and

WHEREAS, the city council passed Ordinance No.16-2016 at their regular council meeting on August 9, 2016, establishing a new Title 19 CMC, Impact Fees, including a new impact fee deferral program required by state law; and

WHEREAS, Section 19.20.050 CMC authorizes the City to collect an administrative fee for impact fee deferral requests pursuant to the City’s current fee resolution; and

WHEREAS, the city council desires to amend the City’s current 2016 fee resolution to add a non-refundable administrative fee of $143.00 (the current equivalent of one hour of community development staff time) for impact fee deferral requests;

NOW THEREFORE, be it resolved by the City Council of the City of Covington as follows:

Section 1. Fee Resolution Amended; Adoption of Fee. Resolution No. 15-12, adopting the City’s 2016 fee schedule, is hereby amended to add a new, non-refundable administrative fee of $143.00 for impact fee deferral requests. All other provisions of Resolution 15-12 shall remain unchanged.

Section 2. Fee Waiver. The city manager shall have the right to waive all or part of a fee assessed by the City if deemed in the best interest of the City.

ADOPTED by the City Council of the City of Covington, Washington, in open and regular session this 9th day of August, 2016, and signed in authentication of its adoption.

______________________________
Mayor, Jeff Wagner

ATTESTED:

Sharon Scott, City Clerk

APPROVED AS TO FORM ONLY:

______________________________
Sara Springer, City Attorney
ORDINANCE NO. 16-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, ESTABLISHING A NEW TITLE 19 OF THE COVINGTON MUNICIPAL CODE ENTITLED, “IMPACT FEES”; REPEALING CHAPTERS 12.105 AND 18.120 CMC; AMENDING AND ADDING DEFINITIONS TO CHAPTER 18.20 CMC RELATED TO THE SAME; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Washington State Legislature passed the Growth Management Act of 1990 and 1991, Chapter 36.70A RCW and Chapter 82.02 RCW (the “Act”), which authorizes the collection of impact fees on development activity to provide public facilities to serve new development; and

WHEREAS, the City of Covington (the “City”), has adopted code provisions governing the assessment and collection of impact fees for transportation in chapter 12.105 of the Covington municipal Code (CMC), and for schools in chapter 18.120 CMC; and

WHEREAS, in the 2015 legislative session, the state legislature enacted ESB 5923, which requires cities, towns, and counties to adopt a deferral system for the collection of impact fees for new single-family detached and attached residential construction; and

WHEREAS, the deadline for cities, towns, and counties to implement an impact fee deferral system by September 1, 2016; and

WHEREAS, the City desires to restructure and combine all existing CMC chapters and future impact fee code provisions, including a new deferral system, into one new Title 19 CMC, to be entitled “Impact Fees”, for ease of review and application; and

WHEREAS, in addition to restructuring and reorganizing existing CMC impact fee chapters into the new Title 19 CMC, city staff has identified additional housekeeping edits needed to update existing impact fee code provisions for consistency and clarity, all of which are incorporated into the new Title 19 CMC; and

WHEREAS, as a result of adopting the new Title 19 CMC, city staff have also identified several amendments and additions needed in chapter 18.20 CMC, “Technical Terms and Land Use Definitions”, to correspond with the new Title 19 CMC; and

WHEREAS, the City’s SEPA Responsible Official for the City determined that adoption of this ordinance is categorically exempt as a procedural action under WAC 197-11-800(19);
WHEREAS, upon providing appropriate public notice, the Covington City Council conducted a public hearing on August 9, 2016, to receive testimony regarding the proposed new Title 19 CMC, Impact Fees, which includes the addition of the state required impact fee deferral program;

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

Section 1. Title 19 CMC, Impact Fees, Established. A new Title 19 of the Covington Municipal Code (CMC), entitled “Impact Fees”, is hereby established in its entirety as set forth in Exhibit A, attached hereto and incorporated fully herein by this reference.

Section 2. Chapter 12.105 CMC, Transportation Impact Fees, Repealed. Chapter 12.105 CMC, “Transportation Impact Fees”, as adopted by Ordinance No. 38-02 and all amendments thereafter, is hereby repealed in its entirety and replaced by Title 19 CMC established in Section 1 of this ordinance. All references in the CMC to Chapter 12.105 shall hereby be amended to reference Title 19 CMC.

Section 3. Chapter 18.120 CMC, School Impact Fees, Repealed. Chapter 18.120 CMC, “School Impact Fees”, as adopted by Ordinance No. 42-02 and all amendments thereafter, is hereby repealed in its entirety and replaced by Title 19 CMC established in Section 1 of this ordinance. All references in the CMC to chapter 18.120 shall hereby be amended to reference Title 19 CMC.

Section 4. CMC 18.20.170 Amended. Section 18.20.170 CMC, “Capital facilities plan, school” is hereby amended as follows:

18.20.170 Capital facilities plan, school.
“Capital facilities plan, school” means a district’s facilities plan adopted by the Kent School District school board consisting of:
1. A forecast of future needs for school facilities based on the district’s enrollment projections;
2. The long-range construction and capital improvements projects of the district;
3. The schools under construction or expansion;
4. The proposed locations and capacities of expanded or new school facilities;
5. At least a six-year financing plan component, updated as necessary to maintain at least a six-year forecast period, for financing needed school facilities within projected funding levels, and identifying sources of financing for such purposes, including bond issues authorized by the voters and projected bond issues not yet authorized by the voters;
6. Any other long-range projects planned by the district;
7. The current capacity of the district’s school facilities based on the districts adopted standard of service, and a plan to eliminate existing deficiencies, if any, without the use of impact fees; and
8. An inventory showing the location and capacity of existing school facilities.

Section 5. CMC 18.20.171 Adopted. A new section 18.20.171 CMC, “Capital facilities plan, transportation”, is hereby adopted as follows:
18.20.171 Capital Facilities plan, transportation
“Capital facilities plan, transportation” means the transportation capital facilities plan adopted by the city of Covington’s comprehensive plan.

Section 6. CMC 18.20.912 Adopted. A new section 18.20.912 CMC, “Proportionate share”, is hereby adopted as follows:

18.20.912 Proportionate share
“Proportionate share” means that portion of the cost of public facility improvements and facilities that are reasonably related to the service demands and needs of new development.

Section 7. CMC 18.20.1268.5 Adopted. A new section 18.20.1268.5 CMC, “System Improvements”, is hereby adopted as follows:

18.20.1268.5 System Improvements
“System improvements” means public facilities that are included in the City’s capital facilities plan and are designed to provide service to service areas within the City, in contrast to project improvements.

Section 8. Savings Clause. The repeal of any section of Chapter 12.105 CMC and/or Chapter 18.120 CMC, or amendment to chapter 18.20 CMC, pursuant to this ordinance shall not affect any right or duty accrued or any proceeding commenced under the provisions of such repealed sections which were in existence on the effective date of the repealed CMC chapters herein.

Section 9. 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 10. Corrections. Upon the approval of the city attorney, the city clerk and/or code publisher is authorized to make any necessary technical corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

Section 11. Effective Date. This ordinance shall be published in the official newspaper of the city and shall take full force and effect five (5) days after the date of publication. A summary of this ordinance in the form of the ordinance title may be published in lieu of publishing the ordinance in its entirety.

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SIGNATURES TO APPEAR ON THE NEXT PAGE]
PASSED BY THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, at a regular meeting thereof on the 9th day of August, 2016, and signed in authentication of its passage.

Mayor Jeff Wagner

PUBLISHED:
EFFECTIVE:

ATTESTED:

_________________________
Sharon Scott
City Clerk

APPROVED AS TO FORM ONLY:

_________________________
Sara Springer
City Attorney
EXHIBIT A

TITLE 19
IMPACT FEES

19.10  GENERAL PROVISIONS
19.20  IMPOSITION OF FEES
19.30  TRANSPORTATION IMPACT FEES
19.50  SCHOOL IMPACT FEES

CHAPTER 19.10
GENERAL PROVISIONS

19.10.010  Purpose.
The purpose of this title is to implement the Capital Facilities Element of the Covington Comprehensive Plan and the policies and requirements of the Growth Management Act by:

(1)    Ensuring that adequate public facilities are available to serve new development;

(2)    Maintaining a high quality of life in Covington by requiring that new development bear a proportionate share of the cost of capital facilities necessary to support planned land uses and does not decrease the level of service available to existing residents and businesses;

(3)    Allowing recovery of the cost of completed public facilities to the extent that new growth is served by those facilities; and

(4)    Ensure fair collection and administration of such impact fees.

19.10.020  Authority.
This title is enacted pursuant to the City’s police powers, the Growth Management Act as codified in Chapter 36.70A RCW ("the Act"), and the impact fee statutes as codified in RCW 82.02.050 through 82.02.100. The provisions of this title shall be liberally construed in order to carry out the purposes of the city council in providing for the assessment of impact fees.

19.10.030  Definitions.
Except for as provided herein, and unless the context clearly requires otherwise, the words and terms in this title shall have the ascribed meaning as provided for in chapter 18.20 CMC. Words and terms otherwise not defined in chapter 18.20 CMC shall be defined pursuant to RCW 82.02.090, or given their
usual and customary meaning.

(1) For the purposes of this title, these words and terms shall have the following meaning:

(a) “Applicant” is any person, collection of persons, corporation, partnership, an incorporated association, or any other similar entity, or department or bureau of any governmental entity or municipal corporation obtaining a building permit. “Applicant” includes an applicant and owner for the purpose of the impact fee deferral program pursuant to Title 19.

(b) “Department” means both and either the City of Covington Community Development department and/or the City of Covington Public Works department.

(c) “Director” means both and either the City of Covington Community Development Director and/or the City of Covington Public Works Director, or each of their respective designees.

(d) “Feepayer” is a person, corporation, partnership, an incorporated association, or any other similar entity, or department or bureau of any governmental entity or municipal corporation commencing a development activity which creates the demand for additional system improvements and which requires the issuance of a permit for a given development activity. “Feepayer” includes an applicant for a transportation impact fee credit.

(e) "Low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent (30%) of eighty percent (80%) of the median family income adjusted for family size, for the county where the project is located, as reported by the United States Department of Housing and Urban Development, in accordance with RCW 82.02.060.

19.10.040 Relationship to SEPA authority.
Nothing in this title shall preclude the City from also requiring the applicant for a land use or building permit, or a change in use if no building permit is required, to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, based on the environmental documents accompanying the underlying development approval process, and/or Chapter 58.17 RCW, governing plats and subdivisions; provided, that the exercise of this authority is consistent with the provisions of RCW 82.02.050.
CHAPTER 19.20
IMPOSITION OF IMPACT FEES

19.20.010 Application.
This chapter shall apply to all impact fees imposed under this title.

19.20.020 Impact fee program elements.
(1) The City shall impose impact fees on every development activity in the city for which an impact fee schedule has been established.

(2) Any impact fee imposed shall be reasonably related to the impact caused by the development and shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development. The impact fee formula shall account in the fee calculation for future revenues the City will receive from the development.

(3) The impact fee shall be based on the capital facilities element adopted by the City as part of the City’s comprehensive plan.

19.20.030 Service area.
(1) Generally. Except as provided for herein, the City of Covington is hereby established as the service area for impact fees under this title, including all property located within the corporate limits of the City.

(2) School impact fees. For purposes of the school impact fees established in chapter 19.40 CMC of this title, all land within the boundaries of the Kent School District shall be considered a single service area and the City shall impose impact fees within that portion of the Kent School District lying within City corporate limits.
The scope of the service areas identified in this section is hereby found to be reasonable, established on the basis of sound planning and engineering principles, and consistent with RCW 82.02.060.

19.20.040 Imposition of impact fees.

(1) The City shall collect applicable impact fees adopted under this title from any feepayer seeking development permits or plat or other land use approval from the City where such development activity requires the recording of a residential subdivision, issuance of a building permit, or approval for a change in use, except for as provided otherwise in this title. This shall include, but is not limited to, the development of residential, commercial, retail, office, and industrial land, and includes the expansion of existing uses that creates a demand for additional system improvements as well as a change in existing use that creates a demand for additional system improvements.

(2) For a change in use of an existing building or dwelling unit, including any alteration, expansion, replacement or new accessory building that generates additional impact, the impact fee shall be the applicable impact fee for the land use category of the new use, less any impact fee previously paid for the land use category of the prior use. If no impact fee was paid for the prior use, the impact fee for the new use shall be reduced by an amount equal to the current impact fee rate of the current use.

(3) The impact fees assessed for developments containing more than one type of use shall be calculated separately for each type of use pursuant to this title and the City’s current fee resolution.

(4) Development activities that have been allowed credits pursuant to CMC 19.20.XXX prior to the submittal of the complete building permit application or an application for a permit for a change in land use shall submit, along with the complete permit application, a copy of the letter issued by the Director pursuant to CMC 19.20.XXX setting forth the dollar amount and basis of the approved credit. The net impact fees, as determined after the reduction of appropriate credits, shall be collected from the feepayer in accordance with this section.

19.20.050 Fee calculations; payment.

(5) A preliminary impact fee assessment will be provided by the Department during the review and approval of a given development activity, typically a building permit application or a permit for a change in land use.

(6) A final impact fee assessment, based upon the impact fee rate in effect as of the date the actual permit is issued, shall be made by the Department, and the fee(s) shall be due and payable in full at the time of issuance of the permit.

(7) All feePAYERS shall be required to pay an administrative fee for each impact fee collected at the rate set forth for each in the City’s current fee schedule.

(8) Failure to pay the impact fees assessed for a given development activity at the time that such impact fees are due and payable shall result in denial of the underlying permit for which the feepayer has
applied, except for as provided in CMC 19.20.XXX.

19.20.060 Exclusions.

(1) The following development activities and building permit applications do not create additional impact public facilities and are excluded from the imposition of impact fees adopted under this title.
(Additional exceptions from individual impact fees can be found in chapters 19.30 and 19.40 of this title):

(a) Shelters or dwelling units for temporary placement, which provide housing to persons on a temporary basis as defined in CMC 18.20.220.

(b) Reconstruction, remodeling, alteration, or replacement of existing legally established single-family or multi-family dwelling unit(s) that does not result in the creation of additional dwelling units or a change of use.

(c) Reconstruction, remodeling, alteration, or replacement of an existing legally established nonresidential building that does not expand the usable space.

(d) Replacement of a structure with a new structure of the same gross floor area at the same site or lot when such replacement occurs within one (1) year of the demolition or destruction of the prior structure; provided that there is no change in use.

(e) A legal accessory dwelling unit approved under CMC 18.20.350 and 18.25.030(7), as it is considered part of the single-family use associated with this title.

(f) Any development activity that is exempt from the payment of an impact fee pursuant to RCW 82.02.100 due to full mitigation of the same system improvement under the State Environmental Policy Act.

(g) Mobile homes permitted as temporary dwellings pursuant to CMC 18.85.170.

(h) Miscellaneous site improvements that do not affect the use of the property or the primary structure, including, but not limited to, fences, retaining walls, swimming pools, mechanical units, and signs. Determination of the building and land use permits that qualify for exclusion under this subsection shall be at the sole discretion of the Community Development Director, or his/her designee, and shall be final.

(i) Demolition or moving of a structure.

(2) The Director shall be authorized to determine whether a particular development activity falls within an exemption identified in this section or under other applicable law. Determinations of the Director shall be in writing and shall be subject to the appeals procedures set forth in CMC 14.30.XXX.
19.20.070 Deferral of impact fee payment.

At any time prior to building permit issuance, and pursuant to the requirements of this section, an applicant for a single-family attached or detached dwelling unit may request to defer payment of impact fees assessed on such dwelling unit until final inspection.

(1) The applicant shall submit a deferred impact fee application, provided by the City, that shall include the following information, as applicable:

(a) the applicant’s corporate identity and contractor registration number;

(b) the full names of all legal owners of the property upon which the development activity allowed by the building permit is to occur;

(c) the legal description of the property upon which the development activity allowed by the building permit is to occur;

(d) the tax parcel identification number of the property upon which the development activity allowed by the building permit is to occur; and

(e) the address of the property upon which the development activity allowed by the building permit is to occur.

(f) All applications shall be accompanied by payment of an administrative fee according to the City’s current fee resolution.

(2) The impact fee amount due under any request to defer payment of impact fees shall be based on the schedule in effect at the time the applicant provides the City with the information required in subsection (1) of this section.

(3) Prior to the issuance of a building permit that is the subject of a request for a deferred payment of impact fees, all applicants and/or legal owners of the property upon which the development activity allowed by the building permit is to occur must sign a deferred impact fee payment lien in a form acceptable to the City.

(a) The deferred impact fee payment lien shall be recorded against the property subject to the building permit and be granted in favor of the City in the amount of the deferred impact fee. Any such lien shall be junior and subordinate only to one mortgage for the purpose of construction upon the same real property subject to the building permit.

(b) In addition to the administrative fee required in subsection (1) of this section, the applicant shall pay to the City the fees necessary for recording the lien agreement with the King County recorder.

(4) The City shall not approve a final inspection until the impact fees identified in the deferred impact fee payment lien are paid in full.
In no case shall payment of the impact fee be deferred for a period of more than eighteen (18) months from the date of building permit issuance.

Upon receipt of final payment of the deferred impact fee as identified in the deferred impact fee payment lien, the City shall execute a release of lien for the property. The property owner shall be responsible, at their own expense, to record the lien release.

In the event that the deferred impact fee is not paid within the time provided in this section, the City shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW.

An applicant is entitled to defer impact fees pursuant to this section for no more than twenty (20) single-family dwelling unit building permits per year in the city.

19.20.080 Low-income housing exemption.

Pursuant to RCW 82.02.060, any feepayer intending to develop low-income housing projects developed or owned by public housing agencies, or private nonprofit housing feepayers, may request to be exempt from up to eighty percent (80%) of the impact fees imposed on the low-income housing units to be developed, subject to the following:

1. The feepayer shall be responsible for providing documentation to the City that their project qualifies for a low-income housing impact fee exemption pursuant to this section.

2. Any claim or request for a waiver under this section shall be made no later than the time of issuance of a building permit. If a building permit is not required for the development activity, the claim shall be made when the impact fees are tendered. Any claim not made when required by this section shall be deemed waived.

3. Except for as provided otherwise in this title, the determination to grant or deny an exemption from impact fees under this section shall be in the sole discretion of the city council after consideration in an open public meeting of the following criteria:

   a. public benefit of the specific project;

   b. the hardship to the project of the impact fees;

   c. the impacts of the project; and

   d. any other factors deemed relevant by the city council.

4. As a condition of receiving an exemption under this section, the owner shall execute and record in King County’s real property title records a City-drafted lien, covenant, or other contractual provision against the property that provides that the proposed housing unit or development will continue to be used for low-income housing and remain affordable to those households under the regulations of the
U.S. Department of Housing and Urban Development.

(a) The term of this lien, covenant, or contractual provision shall be ten (10) years for individual owners and fifteen (15) years for private and private nonprofit applicants/builders.

(b) The lien, covenant, or other contractual provision shall run with the land and apply to subsequent owners and assigns.

(c) In the event that the housing unit(s) is no longer used for low-income housing during the term of the lien, covenant, or contractual provision, the owner shall be required to promptly pay to the City all impact fees owed for the property according to the current fee resolution at the time of payment.

19.20.090 Credits.
(1) A feepayer may request that a credit or credits for the value of system improvements, including dedications of land, improvements, and/or construction provided by the feepayer, be applied toward assessed impact fees.

(a) Any claim for credit must be made no later than fourteen (14) calendar days after the submission of an application for a building permit or an application for a permit for a change in use. The failure to timely file such a claim shall constitute a final bar to later request any such credit.

(b) Requests for a credit shall be made in writing and on the applicable City form, if provided.

(c) Each request for a credit or credits shall include, at a minimum, a legal description of the dedicated land and/or a detailed description of the improvements or construction provided, and a legal description or other adequate description of the development to which the credit will be applied.

(2) For each request for a credit or credits, the Director shall determine the value of the dedicated land, improvements, and/or construction on a case-by-case basis.

(a) If appropriate, the Director may select an appraiser from a list of independent appraisers. The appraiser shall be directed to determine the value of the dedicated land, improvements, or construction provided by the developer for the City.

(b) The developer shall pay for the cost of an appraisal conducted by the Department pursuant to this subsection, including time for review by City staff. An estimate of the appraisal and review costs will be prepared by the Department, and the feepayer shall pay the estimated costs prior to commencement of the appraisal and review. If the final cost of the appraisal and review is in excess of the initial estimate and payment, any difference will be due prior to the issuance of a letter or certificate from the Director. If the final cost of the appraisal and review is less than the initial estimate and payment, the Department shall give a refund for the difference.
(3) In the event that that feepayer disagrees with the Director’s valuation of land, improvements, or construction provided under subsection (2) of this section, the feepayer may submit a valuation for the Director’s consideration.

(a) The appraiser (or review engineer) used by the feepayer must be qualified, licensed, and shall not have a fiduciary or personal interest in the property being appraised. A description of the appraiser’s certification shall be included with the appraisal, and the appraiser shall certify that he/she does not have a fiduciary or personal interest in the property being appraised.

(b) Appraisals and/or engineering valuations submitted by the feepayer shall be subject to review by the Director and, at the Director’s discretion, an independent review appraiser/engineer selected by the Director. The feepayer shall pay for the actual costs for the appraisal/valuation and the independent review pursuant to subsection (2)(b) of this section.

(4) A credit will be given only if the land, improvements, and/or the facility constructed are:

(a) Included within the capital facilities plan or would serve the goals and objectives of the capital facilities plan; and

(b) Are at suitable sites and constructed at acceptable quality as determined by the Director; and

(c) Serve to offset impacts of the feepayer’s development activity; and

(d) Are for one or more of the projects listed as the basis for calculating the respective impact fee.

(e) No credit shall be given for project improvements required of the development by City code and/or SEPA; only dedications in excess of those required by law are eligible for credit.

(5) The Director shall determine if requests for credits meet the criteria of this section, or under other applicable law.

(a) Nothing herein shall be interpreted to limit the discretion of the Director to decline to accept any proposed dedication.

(b) In no event shall the credit exceed the amount of the impact fees due. If the total value of any credit for such dedication, improvement, or construction costs exceeds the amount of the applicable impact fee assessment, the feepayer will not be entitled to reimbursement of the difference.

(c) If credit is awarded, the Director shall provide the feepayer with a letter setting forth the dollar amount of any credit, the reason for the credit, the legal description of the real property dedicated where applicable, and the legal description or other adequate description of the project or development to which the credit may be applied. The feepayer must sign and date a duplicate copy of such letter indicating his/her agreement to the terms of the letter and return such signed
document to the Director before the Department will apply the impact fee credit. The failure of the feepayer to sign, date, and return such document within (sixty) 60 calendar days of the Director’s issuance of the letter shall nullify the credit.

(d) If credit is denied, the Director shall provide the feepayer with a letter setting forth the reasons for denial.

(6) Determinations made by the Director pursuant to this section shall be subject to the appeal procedures set forth in CMC 14.30.XXX.

19.20.100 Independent fee calculation.

(1) As an alternative to the payment of impact fees as provided in the schedules set forth in this title, if, in the judgment of the Director, none of the fee categories or fee amounts set forth in this title accurately describes or captures the impacts of a new development, the Department may conduct independent fee calculations and the Director may impose alternative impact fees on a specific development based on those calculations.

(2) A feepayer may also request that assessed impact fees on the proposed development be calculated according to an independent fee calculation study submitted by the feepayer and approved by the Department as provided in this section. A feepayer may submit an independent fee calculation study for one or more impact fees and use the impact fee schedules in this title for one or more impact fees.

(3) All independent fee calculation studies by a feepayer shall be submitted to the Department for review and approval. The study shall be accompanied by the administrative fee required for conducting the review, as set forth in the current fee schedule, or billed by the hour at the current hourly rate for Department staff time if no corresponding fee is included in the fee schedule. The independent fee calculation study shall meet the following standards:

(a) The study shall follow accepted impact fee assessment practices and methodologies.

(b) The study shall use acceptable data sources, and the data shall be comparable with the uses and intensities proposed for the proposed development activity.

(c) The study shall comply with applicable state laws governing impact fees, including but not limited to RCW 82.02.060, or its successor.

(d) The study, including any data collection and analysis, shall be prepared and documented by professionals qualified in their respective fields.

(e) The study shall show the basis upon which the independent fee calculation was made.

(4) Director’s determination.

(a) There is a rebuttable presumption that the methodologies and rates set for the impact fees imposed by this title are valid.
(b) The Director shall consider the documentation submitted by the feepayer, but is not required to accept such documentation or analysis which the Director reasonably deems to be inapplicable, inaccurate, or not reliable.

(c) The Director may require the feepayer to submit additional or different documentation for consideration.

(d) The Director is authorized to adjust the impact fees on a case-by-case basis based on the independent fee calculation, the specific characteristics of the development, and/or principles of fairness.

(e) The Director’s determination regarding the fees or alternative fees, and any associated calculations, shall be provided to the feepayer in writing.

(5) Determinations made by the Director pursuant to this section shall be subject to the appeals procedures set forth in CMC 14.30.XXX.

19.20.110 Adjustment of fees.

(1) Impact fees may be adjusted by the City if one of the following circumstances exists and only if any applicable discount set forth in the applicable fee formula fails to adjust for the error in the calculation or fails to ameliorate for the unfairness of the fee:

(a) The feepayer demonstrates that the impact fee assessment was incorrectly calculated; or

(b) Unusual circumstances identified by the feepayer demonstrate that if the standard impact fee were applied it would unfair or unjust.

(2) Request for adjustment.

(a) Any request by a feepayer for an adjustment pursuant to this section shall be provided to the Department in writing. The feepayer shall pay an administrative fee as set forth in the City’s current fee schedule for an individually determined impact fee.

(b) A feepayer may provide studies and data to demonstrate that any particular factor used by the City may not appropriately apply to the development proposal; provided that the City’s data shall be presumed valid unless clearly demonstrated to be otherwise by the feepayer.

(3) Director’s Determination.

(a) The Director shall be authorized to determine whether any adjustment of impact fees shall be awarded pursuant to this section.
(b) There is a rebuttable presumption that the individual impact fee rate calculations adopted pursuant to this title are valid.

(c) The Director shall consider the documentation submitted by the feepayer, but is not required to accept such documentation or analysis which the Director reasonably deems to be inapplicable, inaccurate or not reliable.

(d) The Director may require the feepayer to submit additional or different documentation for consideration.

(e) The Director is authorized to adjust the impact fees on a case-by-case basis based on the specific characteristics of the development and/or principles of fairness.

(f) The Director’s final determination shall be made in writing and must set forth the reasons for the decision.

(4) For requests to adjust a transportation impact fee assessed pursuant to chapter 19.30 CMC, specifically, the Director shall consider the following sources of information:

(a) The Institute of Transportation Engineers (ITE) Trip Generation User’s Guide, latest edition.

(b) If the feepayer proposes a trip generation rate other than that set forth in the ITE Trip Generation User’s Guide, latest edition, the feepayer shall provide supporting studies or data for a minimum of three comparison sites, at the same level of detail as would be necessary for the data to be accepted by ITE for inclusion in its database for trip generation.

(c) Any other data or studies submitted by a qualified transportation professional affiliated with the Institute of Transportation Engineers or a professional engineer licensed by the State of Washington.

(5) Determinations made by the Director pursuant to this section shall be subject to the appeals procedures set forth in CMC 14.30.XXX.

19.20.120 Refunds.

(1) The City shall, in accordance with RCW 82.02.080:

(a) Refund to the current owners of property on which an impact fee has been paid any impact fees paid with respect to such property that has not been expended or encumbered for public facilities of the type of which such impact fees were collected within the time frame required under RCW 82.02.080.

(b) Refund to the current owner of property on which an impact fee has been paid all impact fees paid with respect to such property if the development activity for which the impact fee was
imposed did not occur and no impact has resulted.

(c) Refund all unexpended or unencumbered funds, including interest earned, when the City seeks to terminate any or all impact fee requirements.

(2) If some, but not all, of the development activity for which the impact fee was imposed occurred, the impact will be deemed to have occurred, and no refund will be payable; provided, however, that the property on which the impact fee was paid shall be eligible to receive a credit toward any subsequent development activity on the property up to the full amount of the payment.

(3) Owners seeking a refund of impact fees must submit a written request for a refund of impact fees to the Director or designee within one (1) year of the date the right to claim the refund arises, which, for purposes of refund claims authorized pursuant to subsection (1)(b) of this section only, shall be the date of voluntary or involuntary abandonment of the permit, or the date that notice is given, whichever occurs later.

(4) Any impact fees not expended within the time limitations, and for which no application for a refund has been made within the one-year claim period, shall be retained and expended on system improvements for which such impact fees were initially collected, without further limitation as to the time of expenditure.

(5) The interest due on the refund of impact fees as required by RCW 82.02.080, or its successor, shall be calculated according to the average rate received by the City on invested funds throughout the period during which the impact fees were retained.

19.20.130  Payments under protest; appeals.

(1) The determination of the Director or designee regarding the applicability of an impact fee to a given development activity within the service area shall be final; however, a feepayer may pay an impact fee imposed pursuant to this title under protest in order to obtain a permit and, after such payment, file an appeal regarding the amount of the impact fee or a determination made pursuant to this title to the Hearing Examiner pursuant to the procedures for Type II decisions under CMC 14.30.XXX.

(2) Appeals regarding the amount of the impact fee imposed on any development activity may only be filed by the applicant of the development activity, pursuant to chapter 14.45 CMC.

(3) In addition to specific appeal procedures outlined in this title, any decision made by the Department in the course of administering this title may be appealed in accordance with the procedures for appealing the underlying permit and shall not be required to pursue a separate appeal process. This shall include the requirement to pay impact fees.

19.20.140  Impact fee accounts; reporting.

(1) The City of Covington Finance Department shall earmark all impact fees collected under this title as to the person paying them, the date paid, and the type of impact fee paid. The Finance Department shall
promptly deposit all fees collected in appropriate special interest-bearing accounts. A separate account shall be established for each type of impact fee. All interest shall be retained in the account and expended for the purposes for which the impact fee was imposed. While maintaining fees in separate accounts, pooled investments may be used.

(2) Funds withdrawn from the impact fee accounts must be used in accordance with the provisions of this title and applicable state law.

(3) On an annual basis, the finance director shall provide a report to the city council on the impact fee accounts showing the source and amount of all moneys collected, earned, or received, and the public improvements that were financed in whole or in part by impact fees.

(4) Impact fees shall be expended or encumbered for a permissible use within ten (10) years of receipt, unless the city council identifies in written findings that there exists an extraordinary and compelling reason for impact fees to be held longer than (10) ten years. Under such circumstances, the council shall establish the period of time within which the impact fees shall be expended or encumbered.
CHAPTER 19.30
TRANSPORTATION IMPACT FEE

19.30.010 Purpose.
The purpose of this chapter is to:

(1) Develop a program consistent with the City’s comprehensive plan for joint public and private financing of public streets and roads ("transportation facilities") consistent with the capital facilities plan of the City of Covington comprehensive plan, as such transportation facilities are necessitated in whole or in part by development in the City;

(2) Ensure adequate levels of service in transportation facilities; and

(3) Establish a mechanism to charge and collect fees to ensure that all new development bears its proportionate share of the capital costs of transportation facilities reasonably related to new development, in order to ensure the availability of adequate transportation facilities at the time new development occurs.

Except as otherwise provided for under this title, development activity in the City’s service area shall be charged a transportation impact fee pursuant to this chapter.

19.30.030 Administrative guidelines.
The Director shall be authorized to adopt internal guidelines for the administration of transportation impact fees under this chapter, which may include the adoption of standard operating procedures and administrative policy for transportation impact fees.

19.30.040 Exemptions.
Public school districts, as feepayer, shall be exempt from the assessment and collection of transportation impact fees under this chapter, as authorized by exemptions for a broad public purpose under RCW 82.02.060(2).

19.30.050 Assessment of fee.
The transportation impact fee shall be assessed according to the units of daily vehicle trips applicable to

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the type of development as set forth in the current transportation impact fee schedule as created pursuant to this chapter and adopted by the city council.

19.30.060 Rate methodology; fee schedule.
(1) Rate methodology. The City has conducted extensive research and analysis documenting the procedures for measuring the impact of new developments on public facilities, has prepared the “Rate Study for Transportation Impact Fees, City of Covington” dated 2009 (“rate study”), as may be amended from time to time, and incorporates that rate study into this chapter by this reference. The rate study utilizes a methodology (or formula) for calculating impact fees that fulfills all of the requirements of RCW 82.02.060(1). A copy of the rate study shall be kept on file with the City Clerk and is available to the public for review.

(2) Transportation impact fee schedule.

(a) The City's transportation impact fee schedule is generated from the formula for calculating impact fees set forth in the rate study adopted in subsection (1) herein (“transportation impact fee schedule”).

(b) Either the Department shall establish the traffic impact fee rate for a land use that is not listed in the transportation impact fee schedule.

(c) The feepayer shall submit all information requested by the Department for purposes of determining the impact fee rate pursuant to this section.

(d) Alternatively, the transportation impact fee schedule may be amended by a City Council resolution.

(3) For mixed use developments, traffic impact fees shall be imposed for the proportionate share of each land use based on the applicable measurement in the traffic impact as set forth in the traffic impact fee schedule.

19.30.070 Use of funds.
(1) Pursuant to this chapter, traffic impact fees:

(a) Shall be used for public improvements that will reasonably benefit new development; and

(b) Shall not be imposed to make up for deficiencies in public facilities serving existing developments; and

(c) Shall not be used for maintenance or operations.

(2) Transportation impact fees may be spent for public improvements to streets and such other uses, including, but not limited to, transportation planning, engineering design studies, land surveying, land
acquisition, right-of-way acquisition, site improvements, necessary off-site improvements, construction, architectural, permitting, financing, and administrative expenses, applicable impact fees or mitigation costs, and any other expenses that can be capitalized.

(3) Transportation impact fees may also be used to recoup public improvement costs previously incurred by the City to the extent that new growth and development will be served by the previously constructed improvements or incurred costs.

(4) In the event that bonds or similar debt instruments are or have been issued for the advanced provision of public improvements for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section and are used to serve the new development.

19.30.080 Relationship to Concurrency
Neither compliance with this chapter nor the payment of any fee hereunder shall constitute a determination of concurrency under chapter 12.95 CMC.
CHAPTER 19.40
SCHOOL IMPACT FEE

19.40.010  Purpose; authority.
The continuing growth and development in the City of Covington will create additional demand and need for school facilities. The Washington State Growth Management Act requires that new growth and development should pay a proportionate share of the cost of new facilities needed to serve the new growth and development.

Therefore, pursuant to Chapter 82.02 RCW, the purpose of this chapter is to authorize the assessment and collection of school impact fees. The provisions of this chapter shall be liberally construed in order to carry out the purposes of the city in establishing the school impact fee program.

19.40.020  Interlocal agreement required.
As a condition of the City's authorization and adoption of a school impact fee ordinance, the city and district shall enter into an interlocal agreement governing the operation of the school impact fee program, and describing the relationship and liabilities of the parties thereunder.

19.40.030  Submission of district capital facilities plan and data.
(1) On an annual basis, the district shall submit the following materials to the city council:

(a) The district’s capital facilities plan and adopted by the school board;

(b) The district’s enrollment projections over the next six (6) years, its current enrollment and the district’s enrollment projections and actual enrollment from the previous year;

(c) The district’s standard of service;

(d) The district’s overall capacity over the next six (6) years, which shall take into account the available capacity from school facilities planned by the district but not yet built and be a function of the district’s standard of service as measured by the number of students which can be housed in district facilities; and

(e) An inventory of the district’s existing facilities.
(2) To the extent that the district’s standard of service identifies a deficiency in its existing facilities, the district’s capital facilities plan must identify the sources of funding other than impact fees for building or acquiring the necessary facilities to serve the existing student population in order to eliminate the deficiencies within a reasonable period of time.

(3) Facilities to meet future demand shall be designed to meet the adopted standard of service. If sufficient funding is not projected to be available to fully fund a capital facilities plan which meets the adopted standard of service, the district’s capital facilities plan should document the reason for the funding gap, and identify all sources of funding that the district plans to use to meet the adopted standard of service.

(4) The district shall also submit an annual report to the city council showing the capital improvements which were serviced in whole or in part by the school impact fees.

(5) In its development of the financing plan component of the capital facilities plan, the district shall plan on a six (6) year horizon and shall demonstrate its best efforts by taking the following steps:

(a) Establish a six (6) year financing plan, and propose the necessary bond issues and levies required by and consistent with that plan and as-approved by the school board consistent with RCW 28A.53.020, 84.52.052 and 84.52.056 as amended; and

(b) Apply to the state for funding, and comply with the state requirements for eligibility to the best of the district’s ability.

19.40.040 Annual council review.
The city council shall review on an annual basis the materials received from the district and required under this chapter. The city council may make adjustments to the school impact fee schedule as necessitated by its review or applicable law, and, if the city council deems appropriate, shall adopt the school impact fee schedule by resolution. The review and fee schedule adoption decision may occur in conjunction with the annual update of the capital facilities plan element of the City’s comprehensive plan.

19.40.050 Exclusions
(1) The following development activities do not create any additional school impacts, or fully mitigate for any school impacts, and are exempt from the collection and assessment of school impact fees under this chapter:

(a) Any development of housing for the elderly, including nursing homes, retirement centers, and any type of housing units for persons age fifty-five (55) and over, which have recorded covenants or recorded declaration of restrictions precluding school-aged children as residents in those units.

(b) Any construction or building permit that does not include residential sleeping/bedroom space.

(a) Any change of use that does not increase the scope or nature of the residential use of the
(b) Any development activity for which school impacts have been fully mitigated pursuant to a condition of development approval (e.g. plat approval) to pay fees, dedicate land, or construct or improve school facilities, unless the condition of the development approval provides otherwise.

(c) Any development activity for which school impacts have been fully mitigated pursuant to a voluntary agreement entered into with the district to pay fees, dedicate land, or construct or improve school facilities, unless the terms of the voluntary agreement provide otherwise; provided that the agreement predates the effective date of impact fee imposition.

(2) The Director shall be authorized to determine whether a particular development activity falls within an exclusion identified in this section or under other applicable law. Determinations of the Director shall be in writing and shall be subject to the appeals procedures set forth in CMC 14.30.XXX.

19.40.060 Fee calculations.

(1) The school impact fee shall be based on a formula based on the capital facilities plan developed by the district and approved by the school board, and adopted by reference by the City as part of the capital facilities element of the City’s comprehensive plan.

(2) The school impact fees for the district shall be calculated based on a formula that takes into account:

(a) the capital facilities needs of the district as identified in the district’s capital facilities plan;

(b) the district’s student generation rates for single-family and multifamily dwelling units;

(c) the school site and school construction costs per student per grade level;

(d) the district’s standard of service; and

(e) the relocatable facilities cost per student per grade level.

(3) Separate fees shall be calculated for single-family and multifamily dwelling units, and separate student generation rates must be determined by the district for each type of dwelling unit. For purposes of this chapter, manufactured homes shall be treated as single-family dwelling units and duplexes shall be treated as multifamily dwelling units.

(4) The fee calculations shall be made on a district-wide basis to assure maximum utilization of all school facilities in the district currently used for instructional purposes. Impact fees shall be calculated annually and set forth in a fee schedule adopted by city council.

19.40.070 Assessment of fees.

(1) The City shall collect school impact fees, based on the fee schedule adopted by city council pursuant to this chapter, from any feepayer seeking development approval from the City where such
development activity requires the issuance of a residential building permit or a manufactured home permit, except as otherwise provided for herein.

(2) School impact fees will be imposed on a district by district basis, on behalf of any school district which provides to the city a capital facilities plan, the district’s standards of service for the various grade spans, estimates of the cost of providing needed facilities and other capital improvements, and the data from the district. Any school impact fee imposed shall be reasonably related to the impact caused by the development and shall not exceed a proportionate share of the cost of system improvements that are reasonably related to the development. The school impact fee shall account in the fee calculation for future revenue the district will receive from the development. The resolution adopting the fee schedule shall specify under what circumstances the fee may be adjusted in the interests of fairness.

19.40.080 Use of funds.
School impact fees for the district’s system improvements shall be expended by the district only for capital improvements, including, but not limited to, school planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, relocatable facilities, capital equipment pertaining to educational facilities, and any other expenses that could be capitalized and are consistent with the district’s capital facilities plan.

19.40.090 Impact fee accounts; payment.
(1) The district shall establish a school impact fee account. The account shall be an interest-bearing account, and the school impact fees received shall be prudently invested in a manner consistent with the investment policies of the district.

(2) For administrative convenience while processing the fee payments, school impact fees may be temporarily deposited in a City account. On a monthly basis, the City shall deposit the school impact fees collected for the district in the district’s school impact fee account.
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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:

[Signature]

Date: 08/26/2016
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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.
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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 and other major infrastructure programs and the UPD’s participation therein; and any other provision or element deemed appropriate. (Ord. 42-02 § 2 (21A.38.040))

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
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(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;

(e) 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;
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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 pre-development 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 centers, 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—Sewage 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;
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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.38.150))
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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 these 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:
Agenda Item 4

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:

- Infiltration of all site runoff shall be required in granular soils as defined in the stormwater manual adopted pursuant to Chapter 13.25 CMC;
- Infiltration of downspouts shall be required in granular soils and in soil conditions defined as allowable in the stormwater manual when feasible to fit the required trench lengths on site;
- When infiltration of downspouts is not feasible, downspout dispersion trenches shall be required when minimum flow paths defined in the stormwater manual can be met on site or into adjacent open space;
- When dispersion of downspouts is not feasible, downspouts shall be connected to the drainage system via perforated pipe.
- 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;
- 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;
- 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);
- 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:
  - 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;
  - 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
  - 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:
    - Water quality on site is improved;
    - The development project will not subject downstream channels to increased risk of landslide or erosion;
    - The development project will not subject the nearest sensitive water body to additional erosion hazards; and
    - 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))
Agenda Item 4

(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.
Repeated 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 mapped sensitive area. (Ord. 42-02 § 2 (21A.38.240))
MEMORANDUM

DATE: August 8, 2016

TO: Ann Mueller, Senior Planner, City of Covington

FROM: Lisa Grueter, Manager, BERK Consulting

RE: State Environmental Policy Act Rules and Proposed Amendments

PURPOSE

The State Environmental Policy Act (SEPA) provides a review process to consider the potential physical impacts to the natural and built environment as a result of projects and future development allowed by plans and policies (non-project actions). The process allows the City to identify potential impacts and mitigation measures and to solicit agency and public review and comment on the proposals before actions are taken (e.g. approval of permits or ordinances).

The City of Covington’s environmental review procedures are generally consistent with the requirements of RCW 43.21C (SEPA) and implementing rules (WAC 197-11). However, there are some unclear procedures for the review and potential appeal of environmental determinations. This is particularly the case for legislative proposals (plans, codes, area-wide rezones) that are considered by the Planning Commission and decided by the City Council. The City’s rules do not clarify what items under SEPA can be appealed administratively. Additionally, there are some suggestions for improving the timing of EIS review by the Planning Commission for nonproject actions. Last, some out of date references to SEPA laws and rules should be corrected.

This memo provides an overview of proposed changes, background information on SEPA appeal provisions (Attachment A), and the text of proposed amendments (Attachment B).

SUMMARY OF AMENDMENTS

This document provides proposed amendments to the City’s SEPA procedures. Key changes are highlighted below.

- Proposed code amendments 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, the City 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.
ATTACHMENT A: APPEAL PROVISIONS UNDER SEPA

Appeal Options and Requirements

Local governments offer administrative appeals to allow other agencies, property owners, and interested residents to appeal determinations regarding environmental review under SEPA. Appeals may be about the conditions applied to a project under SEPA, denial of a project under SEPA, the procedures the City followed in issuing SEPA determinations, and the adequacy of final SEPA documents. The City is not required to offer administrative appeals, and may offer some administrative appeal opportunities and not others. Judicial appeal is an avenue in any case; for Growth Management Act decisions, appeals are heard by the Growth Management Hearings Board. The bullet list below summarizes state allowances and requirements for offering SEPA appeals consistent with WAC 197-11-680.

- Lead agencies may offer an administrative (internal) appeal of SEPA procedural or substantive actions. However, the appeal procedures need to be specified by ordinance, resolution, or rules. Most agencies do so in their SEPA rules.
- Appeal procedures may allow some kinds of appeals but not all types.
- Per the SEPA Handbook¹ final threshold determinations and substantive decisions (conditions, denial on the basis of SEPA) are appealable locally: The only decisions that may be appealed at the agency level are a final threshold determination or EIS (including a final supplemental EIS), and SEPA substantive decisions. Other decisions, for example the applicability of categorical exemptions, may only be appealed to the courts.
- SEPA appeals must be consolidated with a hearing or appeal on the underlying action (e.g. permit application), except for:
  - An appeal of a determination of significance;
  - An agency proposal – An appeal of a procedural determination made by an agency when the agency is a project proponent, or is funding a project, and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction.
  - An appeal of a procedural determination made by an agency on a nonproject action; and
  - Appeal of a substantive decision to local legislative bodies: An appeal to the local legislative authority under RCW 43.21C.060 [Conditioning or denial of governmental action] or other applicable state statutes.
- The SEPA handbook includes the following guidance on who should hear the appeal of SEPA prior to the decision on the action – the ultimate decision maker: Procedural and substantive SEPA appeals in most instances must be combined with a hearing or appeal on the underlying governmental action (such as the approval or denial of a permit). If a SEPA appeal is held prior to the agency making a decision on the underlying action, it must be heard at a proceeding where the person(s) deciding the appeal will also be considering what action to take on the underlying action.

¹ http://www.ecy.wa.gov/programs/sea/sepa/handbk/hbch11.html#11.1
• A decision maker in SEPA is defined as: "Decision maker" means the agency's official or officials who make the agency's decision on a proposal. The decision maker and responsible official are not necessarily synonymous, depending on the agency and its SEPA procedures (WAC 197-11-906 and 197-11-910). (WAC 197-11-730)

**Approaches to SEPA Appeals**

Many agencies allow administrative appeals for substantive determinations (conditions, denial) or procedures (determination of significance, determination of nonsignificance, and Final EIS).

Some send all appeals to a Hearing Examiner where a record is created, and others distinguish appeals of SEPA associated with legislative items as going to the City Council or Board of County Commissioners (e.g. Clark County, City of Covington). Some allow administrative appeals of SEPA determinations and procedures only for project permits and not for legislative items (e.g. City of Kenmore). Some allow no administrative appeals whether for project permits or legislative items, and instead appellants may use the judicial process (e.g. City of Sumner).

Currently, the City of Covington’s rules would require appeals of SEPA documents to go with the decision-making body, which for legislative items is the City Council; however, the City’s rules also indicate that SEPA appeals should go to the Growth Management Hearings Board. The City’s rules do not clarify what items under SEPA can be appealed administratively.

• The Covington Municipal Code (CMC) indicates that amendments to the Comprehensive Plan are legislative decisions made by the City Council, following a Planning Commission recommendation. (CMC 14.25.010 Purpose and 14.25.080 Final review and action)

• SEPA documentation associated with legislative items is to accompany the proposal to advisory bodies and decision makers (e.g. the Planning Commission and City Council; see CMC 16.10.070 Additional timing considerations; WAC 197-11-055 and 640).

• The City allows for administrative SEPA appeals of nonexempt proposals. (CMC 16.10.210 Appeals)

• The City’s appeal process indicates the “appeals of an environmental determination will be in the same manner as the project requiring the environmental determination” (CMC 16.10.210 Appeals)

• The City’s appeal process applies to appeals before the Hearing Examiner or City Council (CMC 14.45.020)

• It is also recognized that City Council legislative decisions can be appealed to the Growth Management Hearings Board. (CMC 14.30.060)

• Since the City Council is the decision maker on Comprehensive Plan amendments, if an appeal is filed regarding the SEPA process or substantive decision on a legislative matter such as the Comprehensive Plan Update, the appeal should be heard by the City Council. Such a hearing could be combined with the hearing on the proposal itself.
ATTACHMENT B: PROPOSED AMENDMENTS

The proposed amendments in Attachment B address editorial items such as correcting references to State laws and rules, and clarifying the appeal process for project permits and legislative proposals.

It is recommended that the City allow no administrative SEPA appeals for legislative items (similar to the City of Kenmore example). The SEPA appeal could occur after City Council action to the Growth Management Hearings Board. In any case administrative project permit SEPA appeals would continue to go to the Hearing Examiner.

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.
16.10.230 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
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 posses, 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[LG12].

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.

(2) 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)


(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
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
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

<table>
<thead>
<tr>
<th>Type 1</th>
<th>Type 2</th>
<th>Type 3</th>
<th>Type 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Permit (15.05)</td>
<td>Short Plat (Including Revisions and Alterations) (17.20)</td>
<td>Preliminary Plat (17.20)</td>
<td>Final (17.25)</td>
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<tr>
<td>Grading Permit (14.60)</td>
<td>Design and Construction Standards Variance (12.60)</td>
<td>Plat Alterations (17.25)</td>
<td>Subdivision† (17.25)</td>
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<tr>
<td>Boundary Line Adjustment (17.40)</td>
<td>Clearing and Grading Design Variance (14.60)</td>
<td>Preliminary Plat Revisions (17.20)</td>
<td>Shoreline Environment Redesignations (16.05)</td>
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<td>Right-of-Way Use Permit (12.35)</td>
<td>Design Departure from the City of Covington Design Guidelines and Standards (18.31)</td>
<td>Zoning Variance (18.125)</td>
<td>Plat or Short Plat Vacations (17.25)</td>
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<td>Design and Construction Standards Deviation (12.60)</td>
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<td>Conditional Use Permits (18.125)</td>
<td>Street Vacations (12.55)</td>
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<tr>
<td></td>
<td></td>
<td>New Wireless Communication Facility Towers and Height Modifications (18.70)</td>
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</tr>
<tr>
<td>Clearing and Grading Design Deviation (14.60)</td>
<td>Downtown Permitted Use Determination (18.31)</td>
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<td>Shoreline Exemption (16.05)</td>
<td>Temporary Use (18.85)</td>
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<td>Code Interpretation (14.30)</td>
<td>Shoreline Substantial Development Permit (16.05)</td>
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<td>Miscellaneous Administrative Decisions</td>
<td>SEPA Threshold Determination³</td>
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<td></td>
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<tr>
<td>Minor Tree Removal (18.45)</td>
<td>Commercial Site Development Permit (18.31 and 18.110)</td>
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<tr>
<td>WCF Collocation on a Transmission Structure or WCF Tower (18.70)</td>
<td>Re-use of Facilities (18.85)</td>
<td></td>
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</tr>
</tbody>
</table>

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 [LG16].

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

<table>
<thead>
<tr>
<th></th>
<th>Type 1</th>
<th>Type 2</th>
<th>Type 3</th>
<th>Type 4</th>
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</thead>
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<td>Recommendation made by:</td>
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<td>Director</td>
<td>Hearing Examiner</td>
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<tr>
<td>Final decision made by:</td>
<td>Director</td>
<td>Director</td>
<td>Hearing Examiner</td>
<td>City Council</td>
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<td>Notice of permit application:</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Notice of final decision:</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Open record public hearing:</td>
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<td>Yes, before the Hearing Examiner</td>
<td>Yes, before the Hearing Examiner</td>
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<td>Closed record appeal hearing:</td>
<td>No</td>
<td>Yes, before the Hearing Examiner regarding project proposals[LG17]</td>
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<td>No</td>
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<td>Judicial appeal:</td>
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<td>King County Superior Court</td>
<td>King County Superior Court</td>
<td>King County Superior Court</td>
</tr>
</tbody>
</table>

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[LG18])

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.[LG19]

(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)