CALL TO ORDER

ROLL CALL
Chair David Caudle, Vice Chair Elizabeth Porter, Jennifer Gilbert-Smith, Jonathan Ingram, Kathy Fosjord, and Murray Williams

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

APPROVAL OF CONSENT AGENDA
C1. Minutes from September 5, 2019

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 your comments taking longer than the allotted time, you are encouraged to contact the Planning Department ten days in advance of the meeting so your item may be placed on the next available agenda.

PUBLIC HEARING AND RECOMMENDATION
1. Proposed Code Amendments to (Covington Municipal Code) CMC 14.30.040, Decision types; CMC 14.30.050, Requirements by decision type; Chapter 17.10 CMC, Definitions; Chapter 17.15 CMC, Administration; Chapter 17.20, Subdivisions and Short Subdivisions; and Chapter 17.25 CMC, Final Plat and Final Short Plat Maps for Preliminary Approved Subdivisions and Short Subdivisions.

NEW BUSINESS
2. Open Public Meetings Act Training – 16 mins

OLD BUSINESS - None

ATTENDANCE VOTE

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

COMMENTS AND COMMUNICATIONS OF STAFF AND COMMISSIONERS

ADJOURN

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

September 5, 2019

City Hall Council Chambers

CALL TO ORDER
The regular meeting of the Planning Commission was called to order at 6:30 p.m. by Chair Caudle.

MEMBERS PRESENT
David Caudle, Kathy Fosjord, Jennifer Gilbert-Smith, Jonathan Ingram, Elizabeth Porter and Murray Williams

MEMBERS ABSENT - None

STAFF PRESENT
Gina Estep, Community Development Director
Ryan Harriman, Planning Manager
Kelly Thompson, Permit Center Manager

APPROVAL OF AGENDA
➢ Commissioner Ingram moved and Commissioner Williams seconded the motion to approve the agenda. The motion carried 5-0.

APPROVAL OF MINUTES
➢ C1. Commissioner Williams moved and Commissioner Porter seconded to approve the August 15, 2019 minutes. The motion carried 5-0.

The record is noted to reflect that Commissioner Gilbert-Smith arrived at 6:34 p.m.

CITIZEN COMMENTS - None

UNFINISHED BUSINESS – None

PUBLIC HEARING – None

NEW BUSINESS - None

OLD BUSINESS
1. Discussion of Proposed Code Amendments to (Covington Municipal Code) CMC 14.30.040, Decision types; CMC 14.30.050, Requirements by decision type; Chapter 17.10 CMC, Definitions; Chapter 17.15 CMC, Administration; Chapter 17.20, Subdivisions and Short Subdivisions; and Chapter 17.25 CMC, Final Plat and Final Short Plat Maps for Preliminary Approved Subdivisions and Short
Mr. Harriman gave a presentation on the proposed code amendments and reminded the Commission of the Public Hearing scheduled for September 19, 2019. The Planning Commission and staff continued discussion with questions and answers. No action taken.

ATTENDANCE VOTE - None

PUBLIC COMMENTS
Rick Holland, Covington resident, had questions and requested clarification regarding short subdivision versus long subdivision.

COMMENTS AND COMMUNICATIONS FROM STAFF AND COMMISSIONERS

ADJOURN
The September 5, 2019, Planning Commission Meeting adjourned at 7:30 p.m.

These minutes are intended to reflect the action taken during the Planning Commission meeting. The audio recording is available upon request.

Respectfully submitted,

______________________________
Kelly Thompson, Permit Center Manager
TO: Planning Commissioners
FROM: Ryan Harriman, EMPA, AICP
CC: Gina Estep, Community Development Director
DATE: September 9, 2019
RE: Staff Report: Proposed Code Amendments to (Covington Municipal Code) CMC 14.30.040, Decision types; CMC 14.30.050, Requirements by decision type; Chapter 17.10 CMC, Definitions; Chapter 17.15 CMC, Administration; Chapter 17.20, Subdivisions and Short Subdivisions; and Chapter 17.25 CMC, Final Plat and Final Short Plat Maps for Preliminary Approved Subdivisions and Short Subdivisions.

A. INTRODUCTION:
The public hearing is evening is for proposed code amendments to the Covington Municipal Code (CMC) 14.30.040, Decision types; CMC 14.30.050, Requirements by decision type; Chapter 17.10 CMC, Definitions; Chapter 17.15 CMC, Administration; Chapter 17.20, Subdivisions and Short Subdivisions; and Chapter 17.25 CMC, Final Plat and Final Short Plat Maps for Preliminary Approved Subdivisions and Short Subdivisions. See Attachment A for the proposed amendments.

The proposed amendments would:
- Streamline the process;
- Retain public involvement in decision-making;
- Reduce administrative cost and required staff resources; and
- Reduce required City Council resources and time.

The proposed amendments would not:
- Alter the density and minimum lot size allowed under the existing regulations;
- Increase the number of lots allowed under the existing zoning density; and
- Allow for lots smaller than what is allowed under the existing zoning regulations.

B. GENERAL INFORMATION:
The proposed amendments addressed within this staff report have been on the 2018 and 2019 Planning Commission workplan as approved by City Council.

Administrative decision for final plats:
The subdivision process generally consists of three distinct phases: preliminary plat, site construction, and final plat. The final plat process occurs at the end of the development process, after all improvements are installed and before building permits are issued.
The Community Development Department is responsible for reviewing final plats and providing a recommendation to the City Council when a final plat is ready for approval. Subsequently, the City Council considers the facts related to the final plat prior to granting or denying approval.

Pursuant to RCW 58.17.170(1), if the applicant meets the terms of preliminary approval and the plan conforms with state law and local ordinances, final approval must be granted. There is no public hearing involved and the City Council may not add additional conditions or make changes to the plans.

The proposed amendment delegates final plat approval from a legislative approval (by City Council) to an administrative determination (by the City Manager or his/her designee, which would be the Community Development Director). See Attachment A for the proposed amendments.

RCW 58.17.100 enables cities to implement administrative decisions for final plats. The proposed amendments would streamline the final plat process by eliminating the legislative review and approval requirement.

What other jurisdictions do:

- King County – Administrative Decision
- Snohomish County – Administrative Decision
- Pierce County – Administrative Decision
- Auburn – Administrative Decision
- Bothell – Administrative Decision
- Bonney Lake – Administrative Decision
- Kent – Administrative Decision
- Lynnwood – Administrative Decision
- Maple Valley – Administrative Decision
- Marysville – Administrative Decision
- Mercer Island – Administrative Decision
- Mountlake Terrace – Administrative Decision
- Renton – Administrative Decision
- Woodinville – Administrative Decision
- Algona – City Council
- Black Diamond – City Council
- Burien – City Council
- Des Moines – City Council
- Enumclaw – City Council
- Federal Way – City Council
- Issaquah – Hearing Examiner
- Kenmore – City Council
- Kirkland – City Council
- Newcastle – City Council
- Redmond – City Council
- Sammamish – City Council
- Shoreline – City Council
- Tukwila – City Council

Of the 28 jurisdictions examined as part of this process, 14 use the administrative decision process and 13 use the legislative review process, and one (1) uses a hearing examiner.

Increasing number of lots allowed under a short subdivision and subdivision:

The proposed amendment does not allow developers to build more units than what is allowed under the zoning controls of the CMC. The proposed amendment is a procedural shift in how short subdivisions and subdivisions are processed by the City. Nothing in the proposed amendment would circumvent the provisions of the zoning code to allow a greater rate of development than what is already allowed.

The CMC currently allows for a short subdivision of up to four (4) lots and a subdivision of five (5) lots or more. The proposed amendment would increase the number of lots allowed under a short subdivision to nine (9) and increase the number of lots allowed under a subdivision to ten (10) or more.
Pursuant to RCW 58.17.020 "Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. However, the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine.

**Other jurisdictions allow:**
- King County – 9 or less, Within UGA
- Snohomish County – 9 or less, Within UGA
- Pierce County – 9 or less, Within UGA
- Algona – 4 or less
- Auburn – 9 or less
- Black Diamond – 6 or less
- Bonney Lake – 9 or less
- Bothell – 4 or less
- Burien – 4 or less
- Des Moines – 9 or less
- Enumclaw – 4 or less
- Federal Way – 9 or less
- Issaquah – 4 or less
- Kenmore – 9 or less
- Kent – Depends**
- Kirkland – 9 or less
- Lynnwood – 9 or less
- Maple Valley – 9 or less
- Marysville – 9 or less
- Mercer Island – 4 or less
- Mountlake Terrace – 9 or less
- Newcastle – 9 or less
- Redmond – 9 or less
- Renton – 9 or less
- Sammamish – 9 or less
- Shoreline – 9 or less
- Tukwila – 9 or less
- Woodinville – 4 or less

**Kent - Short subdivision, type I: 4 lots or less. Short subdivision, type II: more than 4 less than 10**

Of the 28 jurisdictions examined as part of this process, 19 follow the process as recommended by staff.

The City of Covington currently exempts short subdivisions of up to nine lots from the provisions of the State Environmental Policy Act (SEPA). This change took place in 2014. The proposed amendment would align the SEPA threshold allowance with the number of lots allowed in a short subdivision.

**Other changes:**
There are a few minor revisions to reflect definitions not referenced in Chapter 17.10 CMC. The revision allows the definitions located within Chapter 18.20 CMC to be used in addition to those provided in Chapter 17.10 CMC. If there is a conflict, the definitions in Chapter 18.20 CMC shall govern. If a term is not defined within Chapter 17.10 CMC or defined within Chapter 18.20 CMC, the usual and customary meaning shall apply.

Other changes within this revision reflect the difference between the definition of a subdivision/short subdivision and plat (final plat or final short plat). Pursuant to RCW 58.17.020 a "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys, or other divisions and dedications. Basically, the subdivision is the act of dividing land while the plat is a visual representation of the subdivision.

**Applicable Comprehensive Plan Goals and Policies:**
Policy LU-24. Ensure timely, thorough, consistent, fair, and predictable project review by allocating adequate resources to the permit review process, and minimizing review time.

Policy LU-25. Promote public involvement in the planning process.
Goal HO-IV. Covington participates in a coordinated and regional response to providing affordable housing, based on local understanding of Covington’s housing needs, issues and strategies and high quality urban design.

Policy HO-8. Promote infill and redevelopment designed to be compatible with existing neighborhoods while creating new housing opportunities.

Policy HO-11. Support affordable housing throughout the city for all economic segments and special needs populations, especially in areas with good access to transit, employment, healthcare, education, and shopping.

Goal ED-IV. Build on the City’s existing assets and stable growth, and focus on being a desirable place to live, work, play, shop, and learn by continuing to provide high quality services (including schools, safety, and recreation) and making strategic investments in infrastructure.

Goal ED-V. Grow the City’s tax base, prioritize investments, and efficiently provide City services.

Policy ED-15. Maintain development regulations that are predictable and that balance public costs with public benefits as well as assure competitiveness with other Puget Sound jurisdictions.

C. REGULATORY REQUIREMENTS:
   1) SEPA Compliance (SEPA19-07): A SEPA Threshold Determination of Nonsignificance (DNS) was issued on August 16, 2019, with the comment period that will ended on August 30, 2019. A legal public notice will published in the Covington Reporter on August 16, 2019, as well as posted on the city website and at City Hall.

   2) Public Notice, Public Comment & Planning Commission Review: Per CMC 14.27.050 and CMC 14.27.060 Planning Commission Review, legal notice on these proposed amendments was published August 16, 2019 in the Covington Reporter as well as posted on the city’s website and at City Hall on August 16, 2019. The Planning Commission is required to hold a noticed public hearing and make a recommendation to the City Council as to whether each proposed amendment meets the criteria in CMC 14.27.040.

   3) Washington State Department of Commerce: Pursuant to CMC 14.27.050(4) and RCW 36.70A.106, the proposed amendments were transmitted to Washington State Department of Commerce on August 14, 2019.

D. PROPOSED MUNICIPAL CODE AMENDMENTS: See Attachment A.

E. CMC 14.27.040 DECISION CRITERIA:
The Planning Commission recommendation and City Council’s approval, modification, deferral, or denial of an amendment proposal shall be based on the following criteria:

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

   Staff Findings: Yes, the proposed code amendment is expected to comply with the Growth Management Act of Washington State and goals, objectives and policies of the City’s Comprehensive Plan and other applicable laws.
(2) The proposed amendment is consistent with the scope and purpose of the City’s zoning ordinances and the description and purpose of the zone classification applied for;

Staff Findings: Not Applicable – this is not a zoning map amendment.

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

Staff Findings: Not Applicable – this is not a zoning map amendment.

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

Staff Findings: Not Applicable – this is not a zoning map amendment.

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

Staff Findings: Not Applicable – this is not a zoning map amendment.

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

Staff Findings: Yes, the proposed amendment complies with the three-year limitation rule specified in CMC 14.27.030(3).

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

Staff Findings: Not Applicable – this is not a zoning map amendment.

F. STAFF RECOMMENDATION:
Staff recommends approval of the proposed Municipal Code Amendment as shown in Attachment A of this staff report.

___________________________  ______________
Planning Staff  Date

G. MOTION/PLANNING COMMISSION RECOMMENDATION:
Planning Commission recommends approval of the proposed Municipal Code Amendment as shown in Attachment A of this staff report.

____________________________  ______________
Planning Commission Chair  Date
### Attachment A

#### 14.30.040 Decision types

<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 Subdivision (Including Revisions and Alterations (17.20)</td>
<td>Preliminary Subdivision Plat (17.20)</td>
<td>Final Subdivision (17.25)</td>
</tr>
<tr>
<td>Grading Permit (14.60)</td>
<td>Design and Construction Standards Variance (12.60)</td>
<td>Preliminary Plat Subdivision Revisions (17.20)</td>
<td>Shoreline Environment Redesignations (16.05)</td>
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<tr>
<td>Boundary Line Adjustment (17.40)</td>
<td>Clearing and Grading Design Variance (14.60)</td>
<td>Zoning Variance (18.125)</td>
<td>Plat or Short Plat Vacations (17.25)</td>
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<tr>
<td>Design and Construction Standards Deviation (12.60)</td>
<td>Downtown Permitted Use Determination (18.31)</td>
<td>New Wireless Communication Facility Towers and Height Modifications (18.70)</td>
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<tr>
<td>Clearing and Grading Design Deviation (14.60)</td>
<td>Temporary Use (18.85) Shoreline Substantial Development Permit (16.05)</td>
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<tr>
<td>Shoreline Exemption (16.05)</td>
<td>Code Interpretation Permit (18.31)</td>
<td>SEPA Threshold Determination³ Commercial Site Development Permit (18.31 and 18.110)</td>
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<tr>
<td>Miscellaneous Administrative Decisions</td>
<td>Miscellaneous Administrative Decisions</td>
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<tr>
<td>Minor Tree Removal (18.45)</td>
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<tr>
<td>WCF Collocation on a Transmission Structure or WCF Tower (18.70)</td>
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<td>Final Subdivision (17.25)</td>
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</tr>
<tr>
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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.

4 Final subdivisions are submitted directly to the City Council for final decision without a recommendation by the Hearing Examiner. Final subdivisions are submitted to the Department for review and are approved by City Manager or by his or her designee.

(Ord. 17-16 § 11; Ord. 08-13 § 3 (Exh. A); Ord. 06-13 § 2 (Exh. A); Ord. 09-12 § 2 (Exh. B); Ord. 10-10 § 3 (Exh. C); Ord. 13-09 § 17; Ord. 02-09 § 2)

14.30.050 Requirements by decision type. 41

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<td>Open record public hearing:</td>
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<td>King County Superior Court</td>
<td>King County Superior Court</td>
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</table>

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(Ord. 07-19 § 1; Ord. 17-16 § 12; Ord. 02-09 § 2)
Chapter 17.10
DEFINITIONS

Sections:

17.10.010 Acre.
17.10.020 Alteration.
17.10.030 Applicant.
17.10.040 Binding site plan.
17.10.050 Building envelope.
17.10.060 Building site.
17.10.070 Civil engineer.
17.10.080 Condominium.
17.10.090 Dedication.
17.10.100 Department.
17.10.110 Development Engineer.
17.10.120 Director.
17.10.130 Easement.
17.10.140 Engineered preliminary drainage plan.
17.10.150 Financial guarantee.
17.10.160 General site plan.
17.10.170 Homeowners’ association.
17.10.180 Improvements.
17.10.190 Innocent purchaser.
17.10.200 Land surveyor.
17.10.210 Lot.
17.10.215 Lot, flag.
17.10.220 Nonbuilding lot.
17.10.230 Ownership interest.
17.10.240 Parent parcel.
17.10.250 Plat, final.
17.10.260 Plat, preliminary.
17.10.270 Revisions.
17.10.280 Segregation.
17.10.290 Short plat, final.
17.10.300 Short plat, preliminary.
17.10.310 Short subdivision.
17.10.320 Subdivision.
17.10.330 Tract.
17.10.335 Definitions not listed.

17.10.010 Acre.
“Acre” means an area of land equal to 43,560 square feet. (Ord. 53-02 § 2 (19A.04.010))

17.10.020 Alteration.
“Alteration” means the modification of a previously recorded plat, short plat, binding site plan, or any portion thereof that results in modifications to conditions of approval, the addition of new lots or more land, or the deletion of existing lots or the removal of plat or lot restrictions or dedications that are shown on the recorded plat. (Ord. 53-02 § 2 (19A.04.020))

17.10.030 Applicant.
“Applicant” means a property owner, or a public agency or public or private utility that owns a right-of-way or other easement or has been adjudicated the right to such easement pursuant to RCW 8.12.090, or any person or entity designated or named in writing by the property or easement owner to be the applicant, in an application for a development proposal, permit or approval. (Ord. 53-02 § 2 (19A.04.030))

17.10.040 Binding site plan.
“Binding site plan” means a plan drawn to scale processed in accordance with CMC 17.30.010 through 17.30.060 and Chapter 58.17 RCW. (Ord. 53-02 § 2 (19A.04.040))

17.10.050 Building envelope.
“Building envelope” means the area of a lot that delineates the limits of where a building may be placed on a lot. (Ord. 53-02 § 2 (19A.04.050))

17.10.060 Building site.
“Building site” means a parcel, consisting of one or more lots or portions thereof, that is capable of being developed under current Federal, State, and local statutes, including zoning and use provisions, dimensional standards, minimum lot area for construction, minimum lot width, shoreline master program provisions, sensitive area provisions, health and safety provisions. (Ord. 53-02 § 2 (19A.04.060))

17.10.070 Civil engineer.
“Civil engineer” means an individual registered and licensed as a professional civil engineer in the State of Washington, pursuant to Chapter 18.43 RCW. (Ord. 53-02 § 2 (19A.04.070))
17.10.080 Condominium.
“Condominium” means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions as defined in Chapters 64.32 and 64.34 RCW. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners and unless a declaration, survey map and plans have been recorded pursuant to Chapter 64.32 or 64.34 RCW. (Ord. 53-02 § 2 (19A.04.080))

17.10.090 Dedication.
“Dedication” means the deliberate conveyance of land by an owner for any general and public uses, reserving no rights other than those that are compatible with the full exercise and enjoyment of the public uses for which the property has been conveyed. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat, short plat or binding site plan showing the dedication thereon or quit claim deed. The acceptance by the public shall be evidenced by the approval of such plat, short plat, binding site plan or quit claim deed for filing by the City. (Ord. 53-02 § 2 (19A.04.090))

17.10.100 Department.
“Department” means the Community Development Department. (Amended at request of department 2/08; Ord. 53-02 § 2 (19A.04.100))

17.10.110 Development Engineer.
“Development Engineer” means the Director of the Community Development Department or his or her designee, authorized to oversee the review, conditioning, inspection and acceptance of right-of-way use permits, road and drainage projects constructed pursuant to permits administered by the Community Development Department and required pursuant to this title. (Amended at request of department 2/08; Ord. 53-02 § 2 (19A.04.110))

17.10.120 Director.
“Director” means the Director of the Community Development Department or his or her designee. (Amended at request of department 2/08; Ord. 53-02 § 2 (19A.04.120))

17.10.130 Easement.
“Easement” means a right granted by a property owner to specifically named parties or to the public for the use of certain land for specified purposes that may include, but are not limited to, road access, pedestrian or bicycle pathways, minerals, utility easements, drainage and open space. (Ord. 53-02 § 2 (19A.04.130))

17.10.140 Engineered preliminary drainage plan.
“Engineered preliminary drainage plan” means a preliminary plan, consistent with the stormwater manuals adopted pursuant to Chapter 13.25 CMC, that shows the locations, types and approximate sizes of the proposed drainage and conveyance facilities, including any required bioswales, wetponds or other water quality facilities. (Ord. 13-09 § 22; Ord. 53-02 § 2 (19A.04.140))

17.10.150 Financial guarantee.
“Financial guarantee” means a form of financial security posted to ensure timely and proper completion of improvements, compliance with this code or to warrant materials, workmanship of improvements and design and maintenance of same. Financial guarantees include assignments of funds, cash deposits, surety bonds and other forms of financial security acceptable to the Director. (Ord. 53-02 § 2 (19A.04.150))

17.10.160 General site plan.
“General site plan” means a site plan approved pursuant to this title that is not based on a recorded final planned unit development, a building permit, an as-built site plan for developed sites or a site development permit issued for the entire site. (Ord. 53-02 § 2 (19A.04.160))

17.10.170 Homeowners’ association.
“Homeowners’ association” means any combination or grouping of persons or any association, corporation or other entity that represents homeowners residing on property created by a short subdivision, subdivision or binding site plan. A homeowners’ association need not have any official status as a separate legal entity under the laws of the State of Washington. (Ord. 53-02 § 2 (19A.04.170))

17.10.180 Improvements.
“Improvements” means constructed appurtenances, including but not limited to road and drainage construction, utility installation, recreational features, lot grading prior to a building permit, plat monument signs, survey monuments. (Ord. 53-02 § 2 (19A.04.180))

17.10.190 Innocent purchaser.
“Innocent purchaser” means an individual who has found by the City’s Hearing Examiner to have purchased real property for value and is also found to have had no knowledge of or complicity in the creation of a lot in violation of the provisions of this title. A purchaser applying for “innocent purchaser” status must provide the City with a statement, under oath, that he or she had no knowledge at any time prior to or during the sale that the lot had been or is being created in violation of the provisions of this title. (Ord. 53-02 § 2 (19A.04.190))

17.10.200 Land surveyor.
“Land surveyor” means an individual licensed as a land surveyor, in the State of Washington, pursuant to Chapter 18.43 RCW. (Ord. 53-02 § 2 (19A.04.200))

17.10.210 Lot.
“Lot” means a physically separate and distinct parcel of property that has been created pursuant to the provisions of this title, or pursuant to any previous laws governing the subdivision, short subdivision or segregation of land. (Ord. 53-02 § 2 (19A.04.210))

17.10.215 Lot, flag.
“Lot, flag/panhandle” means an interior lot which gains public road access by means of a lot extension. (Ord. 03-04 § 1)

17.10.220 Nonbuilding lot.
“Nonbuilding lot” means a lot created and defined as a nonbuilding lot on the face of the plat or short plat for which improvements for the purpose of human habitation or occupancy are prohibited. (Ord. 53-02 § 2 (19A.04.220))

17.10.230 Ownership interest.
“Ownership interest” means having property rights as a fee owner or contract purchaser. (Ord. 53-02 § 2 (19A.04.230))

17.10.240 Parent parcel.
“Parent parcel” means each existing lot that is located within the perimeter of a proposed boundary line adjustment application. (Ord. 53-02 § 2 (19A.04.240))

17.10.250 Plat, final.
“Final plat” means the final drawing of the subdivision and dedication prepared for filing with the County Office of Records and Elections and containing all elements and requirements set forth in this title and in Chapter 58.17RCW. (Ord. 53-02 § 2 (19A.04.250))

17.10.260 Plat, preliminary.
“Preliminary plat” means a neat and approximate drawing of a proposed subdivision showing the general layout of streets, alleys, lots, blocks and other elements of a subdivision required by this title and Chapter 58.17 RCW. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision. (Ord. 53-02 § 2 (19A.04.260))

17.10.270 Revisions.
“Revisions” means a change prior to recording of a previously approved preliminary plat subdivision, preliminary short plat subdivision or binding site plan that includes, but is not limited to, the addition of new lots, tracts or parcels. (Ord. 53-02 § 2 (19A.04.270))

17.10.280 Segregation.
“Segregation” means a division of land by any of the following means: subdivision, short subdivision, or binding site plan. (Ord. 53-02 § 2 (19A.04.280))

17.10.290 Short plat, final.
“Final short plat” means the final drawing of the short subdivision and dedication prepared for filing with the County Office of Records and Elections and containing all elements and requirements set forth in this title and in Chapter 58.17 RCW. (Ord. 53-02 § 2 (19A.04.290))

17.10.300 Short plat, preliminary.
“Preliminary short plat” means a neat and approximate drawing of a proposed short subdivision showing the general layout of streets, alleys, lots, blocks and other elements of a short subdivision required by this title and Chapter 58.17 RCW. The preliminary short plat shall be the basis for the approval or disapproval of the general layout of a subdivision. (Ord. 53-02 § 2 (19A.04.300))

17.10.310 Short subdivision.
“Short subdivision” means a division or redivision of land into four-nine or fewer lots, tracts, parcels or sites for the purpose of sale, lease or transfer of ownership. (Ord. 53-02 § 2 (19A.04.310))

17.10.320 Subdivision.
“Subdivision” means a division or redivision of land into five ten or more lots, tracts or parcels for the purpose of sale, lease or transfer of ownership. (Ord. 53-02 § 2 (19A.04.320))

17.10.330 Tract.
“Tract” means land reserved for specified uses including, but not limited to, reserve tracts, recreation, open space, sensitive areas, surface water retention, utility facilities and access. Tracts are not considered lots or building sites for purposes of residential dwelling construction. (Ord. 53-02 § 2 (19A.04.330))

17.10.335 Definitions not listed.
Certain words and phrases used in this chapter, unless otherwise clearly indicated by their context, mean as follows. Unless otherwise defined in this chapter the definitions provided in Chapter 18.20 CMC shall be applicable. If there is a conflict, the definitions in Chapter 18.20 CMC this section shall govern. If a
term is not defined within this chapter or defined within Chapter 18.20 CMC, the usual and customary meaning shall apply.
Chapter 17.15
ADMINISTRATION

Sections:

17.15.010 Scope of chapter.
17.15.020 Adverse possession lawsuit – Consent or judgment required.
17.15.030 Transfer of land or granting of an easement to a public agency.
17.15.040 Exemptions – Subdivision and short subdivision.
17.15.050 Recording map and legal descriptions.
17.15.060 Review for conformity with other codes, plans and policies.
17.15.070 Determining and maintaining legal status of a lot.
17.15.080 Removing limitations on nonbuilding lots.
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17.15.100 Public street rights-of-way.
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17.15.150 Application requirements for preliminary plat subdivisions, preliminary short plat subdivisions, boundary line adjustments/lot consolidations and preliminary binding site plans.
17.15.160 Minimum subdivision and short subdivision improvements.
17.15.170 Violations and enforcement.
17.15.180 Circumvention of zoning density prohibited.
17.15.190 Rules.
17.15.200 Electronic version – Required.

17.15.010 Scope of chapter.
This chapter contains provisions general to the administration of land segregation. Any segregation of land is subject to the provisions of this title except as stated herein. (Ord. 53-02 § 2 (19A.08.010))

17.15.020 Adverse possession lawsuit – Consent or judgment required.
Applications for segregation allowed by this title concerning lands on which there is a pending lawsuit for adverse possession will not receive final approval without the consent of the adverse possession claimant or until a trial court judgment settling the lawsuit is entered. (Ord. 53-02 § 2 (19A.08.020))
17.15.030 Transfer of land or granting of an easement to a public agency.
The transfer of land or granting of an easement to a public agency for road and utility purposes shall not be considered a segregation of land. (Ord. 53-02 § 2 (19A.08.030))

17.15.040 Exemptions – Subdivision and short subdivision.
The subdivision and short subdivision provisions of this title shall not apply to:

(1) Divisions of lands for cemeteries and other burial plots while used for that purpose.

(2) Divisions of land into lots or tracts each one of which is one-sixteenth of a section of land or larger, or 40 acres or larger if the land is not capable of description as a fraction of a section of land; provided, that for purposes of computing the size of a lot that borders on a street or road, the lot size shall be expanded to include that area that would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line; and further provided, that within the resource zones, each lot or tract shall be of a size that meets the minimum lot size requirements of CMC 18.30.040(A) for the respective zone.

(3) Divisions of land into lots or tracts that are one-one-hundred-twenty-eighth of a section, or five acres or larger only for the purpose of allowing fee simple purchase or deeding of such lots or tracts to public agencies.

(4) Divisions of land into lots or tracts consistent with RCW 58.17.040(7) for which a condominium binding site plan has been recorded in accordance with the binding site plan provisions set forth in this title.

(5) An adjustment of boundary lines in accordance with the provisions of this title.

(6) Divisions of land for the purpose of lease when no residential structures other than mobile homes are permitted to be placed upon the land and for which the Director has approved a binding site plan for the use of the land as a mobile home park.

(7) Divisions of land by binding site plan into lots or tracts classified for industrial or commercial use consistent with the binding site plan provisions of this title.

(8) Divisions of land by a public roadway or freeway, as defined by the City of Covington roadway functional classification system, that is planned, established, financed and constructed by a State or County or City agency after January 1, 2002. (Ord. 53-02 § 2 (19A.08.040))

17.15.050 Recording map and legal descriptions.
The final recording map and legal description of a plat, short plat, boundary line adjustment or binding site plan shall be prepared by a land surveyor in accordance with Chapter 58.09 RCW and Chapter 332-130 WAC, Surveys and Recording, and be recorded with the County Office of Records and Elections as required by this title. (Ord. 53-02 § 2 (19A.08.050))

17.15.060 Review for conformity with other codes, plans and policies.

Applications for approvals pursuant to this title shall be reviewed in accordance with the applicable procedures of any combination of this title and Chapters 2.25, 14.30, 14.35, 14.40, and 14.45 CMC. Furthermore, applications for subdivisions, short subdivisions and binding site plans may be approved, approved with conditions or denied in accordance with the following adopted City and State rules, regulations, plans and policies including, but not limited to:

(1) Chapter 43.21C RCW (SEPA);

(2) Chapter 58.17 RCW (Subdivisions);

(3) Chapters 36.70A and 36.70B RCW (Growth Management and Project Review);

(4) County Office of Records and Elections;

(5) CMC Title 13, Public Utilities;

(6) Repealed by Ord. 13-09;

(7) CMC Title 12 (Streets, Sidewalks and Bridges);

(8) Chapter 15.20 CMC (Fire Code);

(9) Chapter 16.10 CMC (SEPA);

(10) CMC Title 18 (Zoning);

(11) Chapter 1.30 CMC (Code Enforcement);

(12) Chapter 16.05 CMC (Shoreline Master Program);

(13) Administrative rules adopted pursuant to this title;

(14) King County Board of Public Health rules and regulations;

(15) Approved utility comprehensive plans;
17.15.070 Determining and maintaining legal status of a lot.

(1) A property owner may request that the Department determine whether a lot was legally segregated. A request for such a determination shall be accompanied by the fee for a Type 1 decision letter as set forth in the current fee resolution. The property owner shall demonstrate to the satisfaction of the Department that a lot was created in compliance with applicable State and local land segregation statutes or codes in effect at the time the lot was created including, but not limited to, demonstrating that the lot was created:

(a) Prior to June 9, 1937, and the lot has been:

   (i) Provided with approved sewage disposal or water systems or roads; or

   (ii) Conveyed as an individually described parcel to separate, noncontiguous ownerships through a fee simple transfer or purchase prior to October 1, 1972;

   (iii) Recognized prior to October 1, 1972, as a separate tax lot by the County Assessor;

(b) Through a review and approval process recognized by the County for the creation of four lots or less from June 9, 1937, to October 1, 1972, or the subdivision process on or after June 9, 1937;

(c) Through the short subdivision process on or after October 1, 1972; or

(d) Through the following alternative means allowed by State statute or County code:

   (i) For the raising of agricultural crops or livestock, in parcels greater than 10 acres, between September 3, 1948, and August 11, 1969;

   (ii) For cemeteries or other burial plots, while used for that purpose, on or after August 11, 1969;

   (iii) At a size five acres or greater, recorded between August 11, 1969, and October 1, 1972, and did not contain a dedication;
(iv) At a size 20 acres or greater, recognized prior to the effective date of this title; provided, however, for remnant lots not less than 17 acres and no more than one per quarter section;

(v) Upon a court order entered between August 11, 1969, to July 1, 1974;

(vi) Through testamentary provisions or the laws of descent after August 10, 1969;

(vii) Through an assessor’s plat made in accordance with RCW 58.18.010 after August 10, 1969;

(viii) As a result of deeding land to a public body after April 3, 1977, and that is consistent with City Code, access and Board of Health requirements (where applicable) so as to qualify as a building site pursuant to CMC 17.10.050; or

(ix) By a partial fulfillment deed pursuant to a real estate contract recorded prior to October 1, 1972, and no more than four lots were created per the deed.

(2) In requesting a determination, the property owner shall submit evidence, deemed acceptable to the Department, such as:

   (a) Recorded subdivisions or division of land into four lots or less;

   (b) King County documents indicating approval of a short subdivision;

   (c) Recorded deeds or contracts describing the lot or lots either individually or as part of a conjunctive legal description (e.g., Lot 1 and Lot 2); or

   (d) Historic tax records or other similar evidence describing the lot as an individual parcel. The Department shall give great weight to the existence of historic tax records or tax parcels in making its determination.

(3) Once the Department has determined that the lot was legally created, the Department shall continue to acknowledge the lot as such, unless the property owner re-aggregates or merges the lot with another lot or lots in order to:

   (a) Create a parcel of land that would qualify as a building site; or

   (b) Implement a deed restriction or condition a covenant or court decision.
(4) The Department’s determination shall not be construed as a guarantee that the lot constitutes a building site as defined in CMC 17.10.050.

(5) Re-aggregation of lots shall only be the result of a deliberate action by a property owner expressly requesting a permanent merger of two or more lots. (Ord. 20-07 § 94; Ord. 53-02 § 2 (19A.08.070))

17.15.080 Removing limitations on nonbuilding lots.
Limitations placed on a nonbuilding lot may be removed and the lot recognized by the City as a building lot by approval of a subdivision, short subdivision, binding site plan or alteration of a plat, short plat or binding site plan. (Ord. 53-02 § 2 (19A.08.080))

17.15.090 Determining innocent purchaser status.
(1) An innocent purchaser of a parcel divided in violation of City of Covington subdivision requirements who files a notarized affidavit of innocent purchase with the Department on forms approved by the Director may seek to establish the parcel’s eligibility for development approvals and for lawful future conveyance; provided, that nothing herein is intended to exempt development on innocent purchaser lots from compliance with development standards of CMC Title 18. A request for such a determination shall be accompanied by the fee for a Type 1 decision letter as set forth in the current fee resolution.

(2) All contiguous parcels divided in violation of this title that are under common ownership at the time of application for innocent purchaser status shall be recognized only as a single lot.

(3) Innocent purchaser status shall not be granted to any individual or group more than once. (Ord. 20-07 § 95; Ord. 53-02 § 2 (19A.08.090))

17.15.100 Public street rights-of-way.
Dedication or deeding to the City of right-of-way or a portion thereof for public streets shall be required within or along the boundaries of all binding site plans, subdivisions and short subdivisions or of any lot or lots within them, under the following circumstances, where facts support that such dedication is reasonably necessary as a result of the impact created by the proposed development or any future development:

(1) Where the six-year capital improvement plan or transportation needs report indicates the necessity of a new right-of-way or portion thereof for street purposes;

(2) Where necessary to extend or to complete the existing or future neighborhood street pattern;

(3) Where necessary to provide additions of right-of-way to existing right-of-way;
(4) Where necessary to comply with City street standards and/or City street plans;

(5) Where necessary to provide a public transportation system that supports future development of abutting property consistent with the City of Covington comprehensive plan or City of Covington zoning code; provided, that the right-of-way shall:

(a) Provide for vehicular and pedestrian circulation within and between neighborhoods;

(b) Provide local traffic alternatives to the use of arterial streets;

(c) Reduce potential traffic impacts to existing residential access streets; and

(d) Provide future connectivity of transportation corridors. (Ord. 53-02 § 2 (19A.08.100))

17.15.110 Limitations within future road corridors.
In order to allow for the development of future road corridors that would complete the public circulation system or that would provide a sole source of access for an abutting property, the City may limit improvements within specific areas of a proposed binding site plan, subdivision or short subdivision. These limitations may preclude the construction of buildings, driveways, drainage facilities or other improvements within the specified areas. (Ord. 53-02 § 2 (19A.08.110))

17.15.120 Affidavit of correction.
(1) Any map page or document recorded with the County Office of Records and Elections, or its successor agency, under the provisions of this title that contains an error in fact or omission may be amended by an affidavit of correction. The following types of errors may be corrected by affidavit:

(a) Any courses, distances or elevations omitted from the recorded document;

(b) An error in any courses, distances or elevations shown on the recorded document;

(c) An error in the description of the real property shown on the recorded document;

(d) An error in the field location of any shown easement; or

(e) Any other error or omission where the error or omission is ascertainable from the data shown on the recorded document.

(2) Nothing in this section shall be construed to permit changes in courses, distances or elevations for the purpose of redesigning lot or tract configurations.
(3) The affidavit of correction shall contain the seal and signature of the land surveyor making the correction.

(4) The affidavit of correction shall set forth in detail the corrections made and show the names of the present fee owners of the property materially affected by the correction. The notarized signatures of the owners shall be required, if deemed necessary by the Department.

(5) The affidavit of correction form, as provided by the Department, shall be submitted to the Department for review and approval and shall include signatures of the Development Engineer, the Director of the Department, the King County Assessor and the Manager of the King County Records and Elections Division, or its successor agency. After Department approval, the affidavit shall be recorded with the King County Recorder’s Office or its successor agency. Submittals shall include payment of a fee as set forth in the current fee resolution, which shall include compensation for review and recording.

(6) Should a nonsurvey-related error occur on the recorded document as a result of information required to be placed on the document by the Department, the an alternate land surveyor, as approved by the Director, may prepare the affidavit providing the original land surveyor has no objections. The seal and signature of the alternate land surveyor making the correction shall be affixed to the affidavit. A copy of the affidavit shall be mailed by the Department to the original land surveyor following recording. (Ord. 20-07 § 96; Ord. 53-02 § 2 (19A.08.120))

17.15.130 Vertical and horizontal survey controls.

(1) Vertical Requirements. The vertical datum on all engineering plans, plats, binding site plans and short plats shall be the North American Vertical Datum of 1988 and shall be tied to at least one King County or City of Covington survey control network benchmark. The benchmark will be shown on the plans. If a County or City survey control network benchmark does not exist within one-half mile of the subject property, or 250 feet or greater of total vertical difference exists between the starting benchmark and the project, an alternate vertical datum may be used.

(2) Horizontal Requirements. The horizontal component of all platsubdivisions, binding site plans and short platsubdivisions shall have the North American Datum of 1983/91 as its coordinate base and basis for bearings. All horizontal control for these projects shall be referenced to a minimum of two King County or City of Covington survey horizontal control monuments. If two horizontal control monuments do not exist within one mile of these projects, an alternate coordinate base and basis of bearings may be used. (Ord. 53-02 § 2 (19A.08.130))

17.15.140 Financial guarantees.
Notwithstanding any other provision of this title, the Director is authorized to require all applicants that are issued permits or approvals under the provisions of this title to post financial guarantees consistent with the provisions of CMC Title 14. Pursuant to RCW 58.17.130, an applicant may request recording of a subdivision prior to the completion of the construction of required improvements subject to the posting of a performance financial guarantee. Performance guarantees for subdivisions which record prior to completing all improvements shall be subject to the following requirements:

(1) A performance guarantee shall be posted with the Department in an amount equal to the Director’s estimate for such improvements as assurance that the applicant will, within two years from the date of recording of the final subdivision, complete the improvements in accordance with the requirements and to the satisfaction of the Development Engineer (as defined in this title or its successor);

(2) Requests for performance guarantees shall be in writing, shall be correlated with the original terms and conditions of preliminary approval, and shall be accompanied by a detailed schedule for completion of the improvements and conditions;

(3) Performance guarantees for improvements required pursuant to this title (or its successor) shall be sufficient to cover the cost of conformance with conditions of the preliminary approval and approved construction plans, including corrective work necessary to protect the public health, safety, and welfare;

(4) Maintenance guarantees and defect guarantees shall be posted with the Director:

   (a) Prior to final construction approval and recording of the final plat when the applicant has constructed improvements in accordance with the approval of the Director and the Development Engineer; or

   (b) Prior to final construction approval and the release of performance guarantees when the applicant has previously recorded the plat;

(5) Maintenance guarantees and defect guarantees shall be released following a final maintenance and defect inspection and, if applicable, acceptance of the facilities for City maintenance. (Ord. 20-07 §§ 84, 97; Ord. 53-02 § 2 (19A.08.140); Ord. 43-02 § 2)

17.15.145 Subdivision review fees.

(1) Fees shall be collected to compensate the Department for reviewing subdivision, short subdivision, boundary line adjustments, and binding site plan applications (including commercial binding site plans) pursuant to the provisions of this title and the current fee resolution. Review fees may be collected for both initial review and for revisions.
(2) A fee, as outlined in the current fee resolution, shall be charged to help defray the costs associated with the traffic engineering review for all applications that increase trips or internal circulation to a project.

(3) Engineering Plan Review. Engineering plan review includes engineering plan screening and intake; review of engineering plans for consistency with adopted design standards, guidelines, and conditions of preliminary approval; establishment of construction bond amounts; and administrative support for file updating and maintenance. Initial engineering plan review fees cover plan screening/intake and the first detailed engineering review of plans. Corrections and additions requiring additional engineering review shall be charged a resubmittal fee composed of a base handling fee and an hourly review fee. Post engineering approval revisions requiring plan resubmittal and additional engineering review shall be charged a resubmittal fee. Initial engineering review fees shall be collected upon plan submittal. The base handling portion of resubmittal fees shall be collected upon plan resubmittal. Hourly resubmittal fees shall be collected at the completion of engineering review and prior to engineering approval.

(4) Construction Inspection Fees. Construction inspection fees shall compensate the Department for the inspection of facilities required for final construction approval. Initial construction inspection fees shall cover inspections during the first 12 months from engineering plan approval and are payable upon engineering approval. Initial fees shall be based upon City of Covington’s estimate of construction costs. Annual construction inspection fees shall be charged an hourly rate for the inspection of facilities required after the first 12 months from engineering plan approval and until final construction approval. Annual construction inspection fees shall be charged only where the delay in final construction approval is not attributable to unwarranted delay by the Department. Supplemental inspection fees shall be charged for reinspection of facilities if the time period from construction approval to final facility acceptance exceeds 60 days. Supplemental inspection fees shall combine a base fee to cover file administration and hourly inspection fees, and shall be collected prior to facility acceptance. Supplemental construction inspection fees shall be charged only where the delay in final acceptance is not attributable to unwarranted delay by the Department.

(5) Final Approval Fees. Final approval fees compensate the Department for engineering review of the final recording forms and for final application review to assure compliance with all conditions of approval, including construction or bonding of required improvements, dedications, and drainage or sensitive areas depictions. Separate review fees shall be charged for any alterations to final approvals authorized by either this title or the current fee resolution.

(6) Post-Approval Site Maintenance Fees. Post-approval site maintenance fees compensate the Department for inspections necessary to assure that adequate post-approval maintenance of facilities has occurred and that facilities to be accepted for future City maintenance are free of defects.
maintenance/defect bond inspection fee shall consist of a base fee to cover file administration and updating, and a variable fee based on the bond amount to cover actual inspections.

(7) Additional Review Fees. In addition to the subdivision products review fees set forth in this section, other fees may also be applicable to individual subdivision product applications. Such fees include, but are not limited to, shoreline management, SEPA, right-of-way use, grading, drainage, or critical areas review fees. (Ord. 20-07 §§ 72, 79; Ord. 43-02 § 2 (27.28.010). Formerly 14.75.010; 14.100.040)

17.15.150 Application requirements for preliminary platsubdivisions, preliminary short platsubdivisions, boundary line adjustments/lot consolidations and preliminary binding site plans. The following application requirements shall be required in addition to those application requirements described in CMC 14.35.020:

(1) A title report issued within 30 days of application, showing all persons having an ownership interest, a legal description describing the exterior boundary of the application site and listing all encumbrances affecting the site.

(2) A map prepared by a land surveyor showing the following:

(a) Location of all physical and legal description encroachments affecting the boundary between the application site and the adjoining parcels. Encroachments may be from the application site onto the adjoining parcels or from the adjoining parcels onto the application site;

(b) Contours based upon topographic field survey. Contour intervals shall be at two-foot intervals when slopes are 15 percent or less and five-foot intervals for slopes exceeding 15 percent. The preliminary map shall contain notes indicating that contours are based upon field survey. A field topographic base map shall accompany the application. If approved by the Department, field survey may be waived for large areas of open space or extensive sensitive area tracts. Two temporary benchmarks must be shown within the application site along with the appropriate elevation and datum;

(c) A legal description of application site as shown in the title report;

(d) The proposed layout of lots, tracts, rights-of-way and easements, along with existing utilities and areas of proposed dedications;

(e) The purpose of any tracts and dedications proposed within the application site;

(f) All easements, listed in the title report, capable of being plotted on the map;
(g) Field-verified survey of location of all known sensitive areas including, but not limited to, streams, wetlands and steep slopes that may affect the proposal. Show the approximate 100-year floodplain of sensitive areas, where applicable;

(h) Name and full description of the proposal, including but not limited to a full description of all proposed land uses;

(i) North arrow, scale and date of map and revisions when applicable;

(j) Location of adjoining parcels and buildings within 100 feet of the site shall be shown and delineated by dashed lines. The zoning of the parcels shall also be identified;

(k) Name and location of all existing adjoining right-of-way along with the name and location of any adjoining or internal right-of-way proposed to be vacated with the proposal;

(l) A vicinity map; and

(m) An engineered preliminary drainage plan.

(3) A proposed binding site plan shall be deemed to have satisfied the requirements of subsection (2) of this section when the binding site plan is based on a recorded final planned unit development, building permit, as-built site plan for developed sites or a site development permit for the entire site. (Ord. 02-09 § 8; Ord. 53-02 § 2 (19A.08.150))

17.15.160 Minimum subdivision and short subdivision improvements.

(1) Prior to final recording of a plat or short plat, the following minimum improvements shall be constructed consistent with the approved plans, except that the Director of Community Development may allow posting of a financial guarantee per this title and CMC Title 14, for that portion not completed, in the event that expiration of the plat or short plat is imminent or other extraordinary circumstances prevent the construction of such improvements:

(a) Drainage facilities and erosion control measures consistent with Chapter 13.25 CMC;

(b) Water mains and hydrant installed and fire flow available, as required;

(c) Streets graded to all lots within the subdivision or short subdivision and capable of providing access per the City of Covington Design and Construction Standards adopted in Chapter 12.60 CMC, current edition;
(d) Specific site improvements required by the preliminary subdivision approval ordinance or preliminary short subdivision approval decision;

(e) Delineation of sensitive areas that are to remain undeveloped;

(f) Temporary control monuments set by a land surveyor, located in conformance with this title, and in place at final inspection. Permanent monuments and control points shall be set and verified by a land surveyor within 90 days of the final lift of asphalt; and

(g) Improvements without which the Director determines a safety hazard would exist.

(2) The City shall have right of entry onto any lot, tract, easement or parcel that is part of the final plat or short plat to ensure compliance with the minimum subdivision improvements required in this title. (Ord. 27-16 § 11; amended at request of department 2/08; Ord. 20-07 § 98; Ord. 53-02 § 2 (19A.08.160))

17.15.170 Violations and enforcement.
Any person or entity who violates any provision of this title shall, in addition to any remedies and sanctions provided for under State law, be subject to the enforcement provisions of Chapter 1.30 CMC. (Ord. 10-07 § 9; Ord. 53-02 § 2 (19A.08.170))

17.15.180 Circumvention of zoning density prohibited.
A legal lot, which has been subject to a boundary line adjustment or created through a legally recognized land segregation process and is of sufficient land area to be subdivided at the density applicable to the lot, may be further segregated. However, such further segregation of the lot shall not be permitted if the total number of lots contained within the external boundaries of the lots subject to the original boundary line adjustment or the total number of lots contained within the external boundary of the parcel subject to the original land segregation exceed the density allowed under current zoning. (Ord. 53-02 § 2 (19A.08.180))

17.15.190 Rules.
The Director is authorized to adopt rules to implement the provisions of this title. (Ord. 53-02 § 2 (19A.08.190))

17.15.200 Electronic version – Required.
An electronic version of the approved plans and as-builts, in current version of CAD on a compact disk, is required for all final plat, final short plats, and binding site plans. (Ord. 53-02 § 2 (19A.08.200))
Chapter 17.20
SUBDIVISIONS AND SHORT SUBDIVISIONS

Sections:
17.20.010 Purpose.
17.20.020 Preliminary approval of subdivision.
17.20.030 Revisions of preliminary subdivisions.
17.20.040 Preliminary short subdivision – Approval time.
17.20.050 Limitations for short subdivisions.
17.20.060 Revisions of preliminary short subdivisions.

17.20.010 Purpose.
The purpose of this chapter is to specify requirements for the segregation of land into short subdivisions, which are four nine or fewer lots, and subdivisions, which are five ten or more lots, in accordance with applicable Washington State and City of Covington laws, rules and regulations, including permit processing procedures required by Chapters 14.30 through 14.45 CMC. (Ord. 02-09 § 9; Ord. 53-02 § 2 (19A.12.010))

17.20.020 Preliminary approval of subdivision.
(1) Preliminary subdivision approval shall be effective for a period of 60 months. The permit applicant may apply for a single one-year extension to the preliminary approval, upon written application for an extension, payment of the fee for a request for extension as set forth in the current fee resolution, and being found to have fully complied with the conditions and requirements of the original approval. The application for extension may be made only after the first 48 months of the original preliminary subdivision approval, and no later than 60 days prior to its expiration.

(2) Preliminary subdivision approval shall be considered the basis upon which the applicant may proceed toward development of the subdivision and preparation of the final plat subject to all the conditions of the preliminary subdivision approval.

(3) If the final plat is being developed in divisions, and final plats for all of the divisions have not been recorded within the time limits provided in this section, preliminary subdivision approval for all unrecorded divisions shall become void. The preliminary subdivision for any unrecorded divisions must again be submitted to the Department with a new application, subject to the fees and regulations applicable at the time of submittal. (Ord. 06-13 § 2 (Exh. A); Ord. 20-07 § 99; Ord. 53-02 § 2 (19A.12.020))

17.20.030 Revisions of preliminary subdivisions.
Applications to revise subdivisions that have received preliminary approval shall comply with the following:

(1) Major Revisions. Major revisions are those that result in any substantial changes as determined by the Department. An application for a major revision shall be treated as a new application for purposes of vesting, shall be accompanied by the required fee as set forth in the current fee resolution, and shall be reviewed as a Type 3 land use decision pursuant to CMC 14.30.020. For the purpose of this section, substantial change includes the creation of additional lots, the elimination of open space or changes to conditions of approval on an approved preliminary subdivision.

(2) Minor Revisions. Approval of the following modifications by the Department shall be considered minor revisions, are not subject to additional fees, and shall not require a public hearing:

   (a) Engineering design, unless the proposed design alters or eliminates features specifically required as a condition of preliminary subdivision approval;

   (b) Changes in lot dimensions that are consistent with CMC Title 18;

   (c) A decrease in the number of lots to be created so long as the decrease allows for future compliance with the minimum density provisions of CMC Title 18, if applicable. (Ord. 20-07 § 100; Ord. 53-02 § 2 (19A.12.030))

17.20.040 Preliminary short subdivision – Approval time.
Preliminary approval of a short subdivision shall be effective for a period of 60 months. The permit applicant may apply for a single one-year extension to the preliminary approval, upon written application for an extension, payment of the fee for a request for extension as set forth in the current fee resolution, and being found to have fully complied with the conditions and requirements of the original approval. The application for extension may be made only after the first 48 months of the original preliminary approval, and no later than 60 days prior to its expiration. (Ord. 20-07 § 101; Ord. 53-02 § 2 (19A.12.040))

17.20.050 Limitations for short subdivisions.
(1) A maximum of **four-nine** lots may be created by a single application.

(2) An application for further segregation may not be submitted within a period of five years after recording, except through the filing of a subdivision application, or unless the short **platsubdivision** contains fewer than **four-nine** lots, in which case an alteration application may be submitted to create a cumulative total of up to **four-nine** lots within the original short plat boundary.
(3) A maximum of eight-nine lots may be created from two or more contiguous parcels with any common ownership interest. (Ord. 53-02 § 2 (19A.12.050))

17.20.060 Revisions of preliminary short subdivisions.
Applications to revise short subdivisions that have received preliminary approval shall comply with the following:

(1) Major Revisions. Major revisions are those that result in any substantial changes as determined by the Department. An application for a major revision shall be treated as a new application for purposes of vesting, shall be accompanied by the required fee as set forth in the current fee resolution, and shall be reviewed as a Type 2 land use decision pursuant to CMC 14.30.020. For the purpose of this section, substantial change includes the creation of additional lots, the elimination of open space or changes to conditions of approval on an approved preliminary short subdivision.

(2) Minor Revisions. Approval of the following modifications by the Department shall be considered minor revisions, are not subject to additional fees:

(a) Engineering design, unless the proposed design alters or eliminates features specifically required as a condition of preliminary short subdivision approval;

(b) Changes in lot dimensions that are consistent with CMC Title 18;

(c) A decrease in the number of lots to be created so long as the decrease allows for future compliance with the minimum density provisions of CMC Title 18, if applicable. (Ord. 20-07 § 102; Ord. 53-02 § 2 (19A.12.060))
Chapter 17.25
FINAL PLAT AND FINAL SHORT PLAT MAPS FOR PRELIMINARILY APPROVED SUBDIVISIONS AND SHORT SUBDIVISIONS

Sections:

17.25.010 Purpose.
17.25.020 Phased development.
17.25.030 Final plat and final short plat review procedures.
17.25.040 Final plat and final short plat engineering plan review requirements.
17.25.050 Contents of final plat and final short plat.
17.25.060 Final forms.
17.25.070 Alterations of final plats.
17.25.080 Alterations of final short plats.
17.25.090 Vacations of a final plat or final short plat.

17.25.010 Purpose.
The purpose of this chapter is to specify provisions that must be satisfied prior to the final approval and recording of final plat and final short plat maps for preliminarily approved subdivisions and short subdivisions. (Ord. 53-02 § 2 (19A.16.010))

17.25.020 Phased development.
Portions of an approved preliminary subdivision may be processed separately by the Department for the purpose of recording divisions. All divisions shall be approved within the prescribed time limits for the preliminary subdivision, and all conditions of approval for each particular division must be met. (Ord. 53-02 § 2 (19A.16.020))

17.25.030 Final plat and final short plat review procedures.
(1) Following submittal and approval of the engineering plans, and upon the City’s inspection and determination that the site improvements required by CMC 17.15.160 have been substantially completed pursuant to the approved engineering plans, a final plat or final short plat shall be surveyed by a land surveyor and submitted to the Department for review and approval by the Development Review Division prior to recording. If more than one sheet is required, an index sheet shall be included that must show the entire segregation with road names and lot numbers;

(2) All final plats and final short plats shall conform to the conditions of preliminary subdivision or short subdivision approval;
(3) Plat certificates or owner’s duplicate certificates for land registered pursuant to Chapter 65.12 RCW shall be provided to the Department prior to recording along with a copy of the last real estate transaction for all adjoining unplatted parcels. Supplemental plat certificates shall be provided to the Department if the final plat or final short plat is not recorded within 30 days of the original certificate or supplemental certificate date;

(4) All applicable processing fees as set forth in the current fee resolution and any civil penalty assessed pursuant to Chapter 1.30 CMC against a site being reviewed under this section shall be paid prior to recording;

(5) A deposit to cover anticipated taxes and assessments is required for final plats pursuant to Chapter 58.08 RCW. A deposit, however, shall not be required for the filing of a final short plat. The applicant shall also provide certification from the King County Office of Finance that property taxes for the subject property are not delinquent prior to the issuance of a final approval;

(6) Proof of sewer and water availability, including any required water rights, shall be submitted to the Department and final Health Department approval shall be obtained prior to recording, if applicable;

(7) Upon approval by the Department, the final plat or short plat shall be recorded with the County Records and Elections Division; and

(8) A typewritten copy of protective deed covenants shall accompany the final plat or short plat, if applicable. (Ord. 20-07 § 103; Ord. 10-07 § 10; Ord. 03-04 § 2; Ord. 53-02 § 2 (19A.16.030))

17.25.040 Final plat and final short plat engineering plan review requirements.
(1) Engineering plans for roads, drainage controls and other proposed or conditioned improvements shall be prepared, submitted and reviewed for approval by the Development Engineer prior to the commencement of on-site clearing or construction activities.

(2) Approval of the engineering details of the proposed sanitary sewer and water systems and other proposed public facilities by the applicable utility agency, Development Engineer and the King County Department of Public Health will be required prior to the approval of the final plat.

(3) Plans and technical information reports shall be submitted to the Department and prepared consistent with the requirements of the City of Covington Street Standards, Chapter 12.60 CMC, the stormwater manuals adopted pursuant to Chapter 13.25 CMC, and conditions of preliminary approval. Each plan set or document shall be stamped, signed and dated by a civil engineer.
(4) Prior to approval of engineering plans, the applicant shall post a site restoration guarantee consistent with the provisions of this title and CMC Title 14, and shall pay all applicable fees pursuant to this title and the current fee resolution. (Ord. 13-09 § 24; Ord. 20-07 § 104; Ord. 53-02 § 2 (19A.16.040))

17.25.050 Contents of final plat and final short plat.
The following information shall be shown on a final plat or final short plat:

(1) Name of subdivision and Department file number for final plats or Department file number for final short plats;

(2) Location by section, township and range, and by legal description;

(3) The signature and seal of the land surveyor;

(4) Survey map requirements as specified in Chapter 332-130 WAC and Chapter 58.09 RCW;

(5) Boundary of plat or short plat based on relative accuracy procedures or field traverse standards, and meeting or exceeding those standards specified in WAC 332-130-090;

(6) Exact location, width and name of all streets within and adjoining the plat or short plat, the address of each lot, and the exact location and widths of all alleys. The naming of a street shall conform to the City’s process for naming streets;

(7) Courses and distances to the nearest established street lines or official monuments that shall accurately describe the location of the plat or short plat;

(8) Municipal, township, County or section lines accurately tied to the lines of the plat or short plat distances and courses;

(9) All easements for rights-of-way, access and utility easements, NGPA areas, slope easements, flood elevations, wetland buffers, and building setback boundary lines (BSBL);

(10) Lots designated by number on the plat or short plat within the area of the lot, and tracts similarly designated by letter. Each tract shall be clearly identified with the ownership, purpose and maintenance responsibility;

(11) Blocks in numbered additions to plats bearing the same name may be numbered or lettered consecutively through the several additions;
(12) Accurate location of all existing and proposed permanent control monuments at each corner of the subdivision or short subdivision consistent with RCW 58.17.240 and at all road intersections and curve control points that fall within the pavement;

(13) A traverse line established along the shore not more than 20 feet landward of the ordinary high water line when a subdivision or short subdivision borders on a body of water. This line shall be labeled "plat traverse line" or "short plat traverse line," as applicable, on the final plat or short plat documents;

(14) Accurate boundary delineation for any areas to be dedicated or reserved for public use, along with the purposes of the use indicated thereon, and the accurate delineation of any areas to be reserved by deed covenant for common uses of all property owners;

(15) The boundary description of the property being platted subdivided or short platted subdivided matching the description recorded in the most recent real estate transfer document encompassing the property. If the description is incorrect, a true and exact description shall be shown upon the plat or short plat together with the original description. The original description shall be labeled "original description" and the true and exact description shall be labeled "surveyor’s corrected description." The surveyor’s corrected description shall be preceded by the verbiage: “The intent of the original description is to encompass all of the property described within the surveyor’s corrected description”;

(16) Dedication with notarized acknowledgments by all parties having an ownership interest, as required by RCW 58.17.165 and 19A.04.230, acknowledging the adoption of the plat and the dedication of streets and other public areas. Dedications by corporations shall include corporate acknowledgment and dedications by individuals shall include individual acknowledgment;

(17) Restrictions, title encumbrances and notes required by the conditions of approval;

(18) Certification by a land surveyor to the effect that the plat or short plat correctly represents a survey made by the surveyor, or under the surveyor’s direction, and that the existing monuments are located as shown on the final plat or final short plat;

(19) Approval and signature blocks for the Department, the County Office of Records and Elections;

(20) Approval of the City Council Manager or Director, as applicable, to the extent such approval is required; and

(21) Recording certificate required for the signature of the King County Records and Elections Division.

(Ord. 06-17 § 5 (Exh. C); Ord. 53-02 § 2 (19A.16.050))
17.25.060 Final forms.
(1) A final plat or final short plat shall be prepared on forms 18 inches by 24 inches in size, allowing for a two-inch border on one of the 18-inch sides, to allow for binding, and one-half-inch borders on the other three sides. The two-inch border will typically be on the top or left side depending on the configuration of the drawing.

(2) Forms shall be printed with materials acceptable for filing as specified in WAC 332-130-050 and be formatted consistent with forms provided by the Department. (Ord. 53-02 § 2 (19A.16.060))

17.25.070 Alterations of final plats.
(1) Alterations shall be processed in accordance with RCW 58.17.215 through 58.17.218 and shall comply with regulations in effect at the time the alteration application was submitted. Alteration applications and recording documents shall contain the signatures of the majority of those persons having an ownership interest in lots, tracts, parcels or divisions in the subject subdivision to be altered or any portion to be altered. Requests for alterations shall be subject to a fee as set forth in the current fee resolution to compensate for review and recording.

(2) If the subdivision is subject to restrictive covenants that were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

(3) Notice of alterations shall comply with the notice provisions of CMC Title 14. Mailing notification shall also include owners of each lot or parcel of property within the subdivision to be altered.

(4) An application shall be processed as a Type 3 permit pursuant to Chapter 14.30 CMC.

(5) After approval of an alteration, the applicant shall produce a revised drawing of the approved alteration of the final plat, to be processed in the same manner as set forth for final plats in this title. (Ord. 20-07 § 105; Ord. 53-02 § 2 (19A.16.070))

17.25.080 Alterations of final short plats.
An applicant may request an alteration of a final short plat, subject to a fee as set forth in the current fee resolution to compensate for review and recording. Such alterations shall be consistent with the following requirements:
(1) Alterations shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new short plat application, as set forth in this chapter.

(2) Alteration applications and recording documents shall contain the signatures of the majority of those persons having an ownership interest in lots, tracts, parcels or divisions in the subject short plat to be altered or any portion to be altered.

(3) If the short subdivision is subject to restrictive covenants that were filed at the time of the approval of the short subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the short subdivision or portion thereof.

(4) Notice of alterations shall comply with the notice provisions of CMC Title 14.

(5) An alteration may be allowed to remove nonbuilding lot status on short subdivisions; provided, that no public dedications are required and original conditions of approval do not prohibit conversion of a nonbuilding lot to a building lot. Approval of such alteration requires completion of the original conditions of approval, and the application of new conditions for the lot, consistent with current standards, preparation of a new map page prepared by a land surveyor for recording and payment of all fees required for such review. (Ord. 20-07 § 106; Ord. 53-02 § 2 (19A.16.080))

17.25.090 Vacations of a final plat or final short plat.

(1) Plat and short plat vacations shall be processed as follows and in accordance with the provisions of RCW 58.17.212, subject to a fee for a request for vacation as set forth in the current fee resolution.

(2) All plat and short plat vacation applications shall be referred to the Hearing Examiner for public hearing and consideration.

(3) Applications for vacations of City streets may be processed pursuant to this chapter only when such vacations are proposed in conjunction with the vacation of the plat. Vacations limited to streets shall be processed in accordance with Chapter 35.79 RCW. (Ord. 20-07 § 107; Ord. 53-02 § 2 (19A.16.090))
RCW 58.17.100

Review of preliminary plats by planning commission or agency—Recommendation
—Change by legislative body—Procedure—Approval.

If a city, town or county has established a planning commission or planning agency in accordance with state law or local charter, such commission or agency shall review all preliminary plats and make recommendations thereon to the city, town or county legislative body to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city, town or county. Reports of the planning commission or agency shall be advisory only: PROVIDED, That the legislative body of the city, town or county may, by ordinance, assign to such commission or agency, or any department official or group of officials, such administrative functions, powers and duties as may be appropriate, including the holding of hearings, and recommendations for approval or disapproval of preliminary plats of proposed subdivisions.

Such recommendation shall be submitted to the legislative body not later than fourteen days following action by the hearing body. Upon receipt of the recommendation on any preliminary plat the legislative body shall set the date for the public meeting where it shall consider the recommendations of the hearing body and may adopt or reject the recommendations of such hearing body based on the record established at the public hearing. If, after considering the matter at a public meeting, the legislative body deems a change in the planning commission’s or planning agency’s recommendation approving or disapproving any preliminary plat is necessary, the legislative body shall adopt its own recommendations and approve or disapprove the preliminary plat.

Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.

A record of all public meetings and public hearings shall be kept by the appropriate city, town or county authority and shall be open to public inspection.

Sole authority to adopt or amend platting ordinances shall reside in the legislative bodies. The legislative authorities of cities, towns, and counties may by ordinance delegate final plat approval to an established planning commission or agency, or to such other administrative personnel in accordance with state law or local charter.

[ 2017 c 161 § 1; 1995 c 347 § 428; 1981 c 293 § 6; 1969 ex.s. c 271 § 10.]

NOTES:

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1981 c 293: See note following RCW 58.17.010.
**RCW 58.17.170**

**Written approval of subdivision—Original of final plat to be filed—Copies—Periods of validity, governance.**

(1) When the legislative body of the city, town, or county, or such other agency as authorized by RCW 58.17.100, finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town, or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance.

(2)(a) Except as provided by (b) of this subsection, any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of seven years from the date of filing if the date of filing is on or before December 31, 2014, and for a period of five years from the date of filing if the date of filing is on or after January 1, 2015.

(b) Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of ten years from the date of filing if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of filing is on or before December 31, 2007.

(3)(a) Except as provided by (b) of this subsection, a subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 for a period of seven years after final plat approval if the date of final plat approval is on or before December 31, 2014, and for a period of five years after final plat approval if the date of final plat approval is on or after January 1, 2015, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

(b) A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 for a period of ten years after final plat approval if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of final plat approval is on or before December 31, 2007, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

[ 2017 c 161 § 2; 2013 c 16 § 2; 2012 c 92 § 2; 2010 c 79 § 2; 1981 c 293 § 10; 1969 ex.s. c 271 § 17.]

**NOTES:**

Severability—1981 c 293: See note following RCW 58.17.010.
Chapter 3
OPEN PUBLIC MEETINGS ACT

Chapter last revised: October 31, 2016

3.1 Introduction

The Open Public Meetings Act ("OPMA"), chapter 42.30 RCW (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30), was passed by the Legislature in 1971 as a part of a national wide effort to make government affairs more open, accessible and responsive. It was modeled on a California law known as the "Brown Act" and a similar Florida statute. The OPMA and the Public Records Act (PRA), chapter 42.56 RCW (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.56), create important and powerful tools enabling the people to inform themselves about their government, both state and local.

3.2 The Courts Will Interpret the OPMA to Accomplish Its Stated Intent

As with all laws, the courts will interpret the OPMA to accomplish the Legislature's intent. RCW 42.30.010 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.010) declares the OPMA's purpose in a strongly worded statement:

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly. The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

The OPMA also provides that, "The purposes of this chapter are hereby declared remedial and shall be liberally construed." RCW 42.30.910 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.910). Exceptions to the openness requirements of the OPMA (such as the grounds for executive sessions) are narrowly construed. Miller v. City of Tacoma (http://courts.mrsc.org/mc/courts/zsupreme/138wn2d/138wn2d0318.htm) (1999).

3.3 Enymes Subject to the OPMA

The OPMA requires that meetings of the "governing body" of a "public agency" be open to the public. RCW 42.30.030 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.030).

A. "Public Agency"

A "public agency" is defined in RCW 42.30.020 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.020)(1) to include:

- Any state board, commission, committee, department, educational institution, or other state agency that is created by statute;
- Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state;
- Any "subagency" of a public agency that is created by statute, ordinance, or other legislative act, such as planning commissions and library or park boards.

A "public agency" for purposes of the OPMA does not include:

- Any court;
- The Legislature.


B. "Subagency"

C. Other Enes

The courts have interpreted the OPMA to apply to “an associaon or organizaon created by or pursuant to statute which serves a statewide public funcon.” West v. Wash. Ass’n ofCnty. Officials (http:// courts.mrsc.org/mc/courts/zappeellate/162wnapp/162wnapp0120.htm) (2011).

The OPMA may also apply to the “funconal equiv alent” of a public agency, though the courts have yet to address that issue squarely. In a 1991 opinion, the Attorney General suggested a four-part test to be used in determining whether an entity is a “public ag ency” and subject to the OPMA: “(1) whether the organizaon perf orms a governmental funcon; (2) the level of government funding; (3) the extent of government involvement or regulaon; and (4) whe ther the organizaon was created by the government.” 1991 A’y Gen. Op. No. 5. (jago-opinions/public-records-open-public-meings-act -corporaons-small-business- e xport-finance) The courts have applied these factors to determine whether an entity is the “funconal equiv alent” of a public agency for purposes of the Public Records Act. Telford v. Thurston County Board of Commissioners (http:// courts.mrsc.org/mc/courts/zappeellate/095wnapp/095wnapp0149.htm) (1999); Clarke v. Tri-Cies Animal Care & Con trol Shelter (http:// courts.mrsc.org/mc/courts/zappeellate/144wnapp/144wnapp0185.htm) (2008); Woodland Park Zoo v. Fortgang (http:// courts.mrsc.org/wacourtdecisions/192wnapp418slip.pdf) (2016). However, the courts have yet to apply this test to that queson for purposes of the OPMA.

3.4 “Governing Body”

A. Definicion

A “governing body” is defined in the OPMA as “the mulmember board, commission, commi ee, council, or other policy or rule-making body of a public agency, or any commi ee thereof when the commi ee acts on behalf of the governing body, conducts hearings, or takes tesmon y or public comment.” RCW 42.30.020 (http:// app.leg.wa.gov/rcw/default.aspx?cite=42.30.020)[2].

All local public agencies and some state agencies have governing bodies and those governing bodies are subject to the OPMA. Examples of governing bodies of local public agencies include the city council, county council, port commission and school board; examples of governing bodies of state agencies include the Gambling Commission, the Utilities and Transpor taon Commission and the Public Disclosure Commission.

Some agencies do not have governing bodies. For example, many state agencies, such as the Department of Labor and Industries, the Department of Licensing, the Department of Social and Health Services, the Department of Employment Security, and the Washington State Patrol are governed by an individual, not a mulmember body, and thus are not subject to the OPMA. See Salmon for All v. Department of Fisheries (http:// courts.mrsc.org/mc/courts/zsupreme/118wn2d/118wn2d0270.htm) (1999), in which the Court held that the Department of Fisheries was not subject to the OPMA because it was governed by an individual, the director.

With subagencies, the governing body of the subagency is on the subagency itself, as in the example of a county planning commission or city parks board.

B. Commi ees of a Governing Body

The definition of governing body includes “any commi ee thereof when the commi ee acts on behalf of the governing body, conducts hearings, or takes tesmon y or public comment.” RCW 42.30.020 (http:// app.leg.wa.gov/rcw/default.aspx?cite=42.30.020)[2]. In 2015, the State Supreme Court concluded that: (1) a “commi ee thereof” means commi ees created by a governing body pursuant to its execu ve authority, regardless of whether the commi ee includes members of the governing body; and (2) a commi ee acts on behalf of the governing body “when it exercises actual or de facto decision-making authority for the governing body.” Ciz ens Alliance v. San Juan County (http:// courts.mrsc.org/wacourtdecisions/184wn2d428slip.pdf) (2015). A commi ee is not exercising such authority when it is simply conducing in ternal discussions or providing advice or informaon to the governing body. Id.; see also Clark v. City of Lakewood (http:// openjurist.org/259/f3d/996/brian-clark-v-city-of-lakewood-) (2001).

It is not clear whether a commi ee of a governing body is required to give noce for all of its meings when it is only a t some of its meings that it is acng so as to come within the deﬁni on of “ governing body.” Nevertheless, it would be pragmac for such commi ees that sometimes eng age in such acvies - acng on behalf of the governing body, conducng hearings, or t aking tesmon y or public comment - to conduct all their business in open meings.

Case Example: The seven-member city council is considering the purchase of public art. The council agrees that public input would assist the selecon proc ess. Some councilmembers believe that the crean of an arts commi ee would acquire policies for the city’s acquisition of public art would “ get polics out of the world of art.” Other councilmembers express concern that an arts commi ee...
control too much of the process without significant council input. Three resolutions are drafted for council consideration:

The first establishes a city arts commission and details the method of selecting the members, including three city councilmembers and two citizen members, who would serve specific terms. The commission is directed to establish policies for the selection and placement of public art in the city. Its recommended policies will be subject to city council approval. It is directed to obtain public input before the adoption of the recommended policies. As funding becomes available, it will make recommendations to the city council regarding the purchase of works of public art and their location in the city.

The second resolution establishes a public arts committee of the city council consisting of three members of the council. Five interested citizens will be asked to participate in its determination of worthy projects. The citizens would serve at the pleasure of the council. The public arts committee is directed to develop a list of citizens who have expressed interest in public art and to hold hearings seeking public comment regarding any recommendations that the committee might make to the full city council.

The third resolution recognizes the existence of a citizen's committee known as "Public Art Now!" that was formed by a councilmember. The committee would be authorized to use city's meeting rooms. The council would welcome the committee's advice regarding the selection and placement of public art and its recommendations would be considered at any public hearing when the council decided to purchase works of art.

What would be the consequences under the OPMA of the adoption of each resolution?

Resolution: The city arts commission is probably a "subagency" under the OPMA. It has been created by legislative act and its governing body is directed to develop policy for the city. As such, all of its meetings would be subject to the OPMA's requirements.

The public arts committee is probably a "committee" of the governing body, the city council. It is not a separate entity (subagency). Since it will be obtaining public input, at least some of its meetings would be subject to the OPMA. However, it is advisable that it hold all its meetings in open session.

"Public Art Now!" is not subject to the OPMA. The city council did not establish it or grant it any authority.

3.5 OPMA Meeting Procedures

A. "Acon," "Final Acon" and "Meeting"

In its definition section, the OPMA first defines "acon" before defining a "meeting" as a meeting "at which acon is taken." RCW 42.30.020(4) (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.020). "Acon" is defined to mean "the transact of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions." RCW 42.30.020(3) (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.020) (2015).

Final acon is defined as "a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when singing as a body or entity, upon a motion, proposal, resolution, or order, or ordinance." Id. It is not necessary for a governing body to take "final acon" for there to be a "meeting" that is subject to the requirements of the OPMA; mere "acon," such as a discussion of agency business, is sufficient. However, it is not "acon" for members of a governing body to individually review material in advance of a meeting that would be subject to the OPMA occurs if a majority of the members of a governing body were to discuss or consider the selection and placement of public art in the city. In its definition section, the OPMA first defines "acon" before defining a "meeting" as a meeting at which acon is taken.

Ordinarily, a quorum (majority) of the members of a governing body must be present at a meeting for the governing body to be able to transact agency business. Ciz ens Alliance v. San Juan County (http://courts.mrs.org/wacourtdecisions/184wn2d428slip.pdf) (2015). As such, a meeting that would be subject to the OPMA occurs if a majority of the members of a governing body were to discuss or consider agency business, no matter where that discussion or consideration might occur. "Acon" by less than a quorum is generally not subject to the OPMA. Eugster v. City of Spokane (http://courts.mrs.org/mc/courts/zappellate/128wnapp/128wnapp0001.htm) (2005); Ciz ens Alliance v. San Juan County (http://courts.mrs.org/wacourtdecisions/184wn2d428slip.pdf) (2015). However, as discussed above, a committee of a governing body that includes less than a quorum of the body may be subject to the OPMA in certain circumstances.

Physical presence by the members of a governing body is not necessary for there to be a "meeting." For example, an email exchange among a quorum of a governing body in which "acon" takes place is a "meeting" under the OPMA. Wood v. Bale Ground School District (http://courts.mrs.org/mc/courts/zappellate/107wnapp/107wnapp0550.htm) (2001). Since an email exchange among a quorum of the members of a governing body is not open to the public, such an exchange in which "acon" takes place would violate the OPMA. In contrast, mere passive receipt of emails does not constitute participation in a meeting. Wood v. Bale Ground School District (http://courts.mrs.org/mc/courts/zappellate/107wnapp/107wnapp0550.htm) (2001); Ciz ens Alliance v. San Juan County (http://courts.mrs.org/wacourtdecisions/184wn2d428slip.pdf) (2015).
It is generally agreed that an agency may authorize one or more of its members to end a meeting by telephone or video-conferencing, using technologies such as Skype or WebEx, when a speaker phone or video screen is available at the official location of the meeting so the governing body and the public can hear the member’s input and the member can hear what is said at the meeting. See also Wood v. Bale Ground School Dist. (http://courts.mrsc.org/mc/courts/zappellate/107wnapp/107wnapp0550.htm) (2001) (physical presence not required in order for meeting to occur); 2014 A’y Gen. Op. No. 7 (ago-opinions/whether-county-legislative-authority-can-meet-outside-county-hold-join-meeting-another) (discussion of videoconferencing).

A quorum of members of a governing body may end a meeting of another organization provided that the body takes no “acon.” 2006 A’y Gen. Op. No. 6 (ago-opinions/applicability-open-meetings-act-when-quorum-members-governing-body-are-present). For example, a majority of a city council could end a meeting of a regional chamber of commerce or a county commission meeting provided that the council members did not discuss city business or do anything else that constitutes an “acon.”

The OPMA expressly permits the members of the governing body to travel together or engage in other activities, such as ending social functions, so long as they do not take “acon.” RCW 42.30.070 (http://apps.leg.wa.gov/rcw/default.aspx?cite=42.30.070).

Case example: The five-member school board ends the annual convenon of the State School Association. Over dinner, three members discuss some of the ideas presented during the convenon, but refrain from any conversation about how they might apply them to the school district. All five travel together to and from the convenon and the only discussion is over whether they are lost.

Resolution: No violation occurred but the board members must be careful. The example is offered to highlight the level of awareness members of a governing body must have. It is not unusual for such situations to arise. For instance, the dinner discussion was among a majority of the members so a discussion about school district business would have been “acon” and, without the required notice, would be in violation of the OPMA.

B. Types of Meetings Not Covered by the OPMA

The OPMA does not apply to certain types of meetings. RCW 42.30.140 (http://apps.leg.wa.gov/rcw/default.aspx?cite=42.30.140) provides that the OPMA does not apply to:

- Meetings involved with the issuing, denying, suspending, or revoking business, professional, and certain other licenses, including disciplinary proceedings
- Quasi-judicial proceedings
- Meetings involved with matters subject to the Administrative Procedure Act, chapter 34.05 RCW (http://apps.leg.wa.gov/rcw/default.aspx?cite=34.05)
- Collective bargaining sessions and related discussions, and meetings involved with planning for such sessions and for grievance mediation proceedings

The exact wording of RCW 42.30.140 (http://apps.leg.wa.gov/rcw/default.aspx?cite=42.30.140) should be consulted to determine whether an exemption applies.

When a governing body engages in any of these exempt activities, it is not required to comply with the OPMA, although other public notices requirements may apply. Some exempt activities, such as quasi-judicial matters or hearings governed by the Administrative Procedure Act (chapter 34.05 RCW (http://apps.leg.wa.gov/rcw/default.aspx?cite=34.05)), have their own notice requirements. Quasi-judicial matters are those where the governing body is required to determine the rights of individuals based on legal principles. Common examples of quasi-judicial proceedings are certain local land use decisions, such as site-specific rezones, conditional use permits, and variances.

Case example: During a break in the regular meeting, the city council gets together in the chambers to decide what they should do with regard to the union’s latest offer. They authorize the negotiator to accept the offer on wages if the union will accept the seniority amendments. When they return to the meeting, nothing is said about the decision.

Answer: The OPMA specifically exempts the discussion and decisions about the collective bargaining strategy or position from its requirements. Since it was exempt, the discussion was not required to be open.

The OPMA does not provide grounds for exempting public records from disclosure. See Am. Civil Liberers Union v. City of Seale (http://courts.mrsc.org/mc/courts/zappellate/121wnapp/121wnapp0544.htm) (2004). An independent exemption under the Public Records Act or other statute must exist to exempt records from disclosure. See Chapter 2.1 (/Open-Government-Internet-Manual/Chapter-2#Chapter2.1). Therefore, even though collective bargaining matters can be discussed in a closed session, this is not a basis for withholding public records reviewed in the executive session related to that topic.

C. Public Notice of Meetings

Under the OPMA, public agencies must give notice of regular and special meetings. See Chapter 3.6 for details.

D. Secret Votes Prohibited
3.5E. Attendance at Meetings

The OPMA provides that any member of the public may attend the meetings of a public agency. The agency may not require people to sign in, complete questionnaires, or establish other conditions to attend. RCW 42.30.040 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.040). For instance, an agency could not limit attendance to those persons subject to its jurisdiction. The OPMA does not address whether an agency is required to hold its meeting at a location that would permit every person to attend. However, it seems clear that the courts would discourage any attempt to deliberately schedule a meeting at a location that was too small to permit full attendance or that was locked. RCW 42.30.050 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.050).

A person may record (audio or video) a meeting provided that it does not disrupt the meeting. 1998 A’y Gen. Op. No. 15 (http://ago-opinions/authority-county-restrict-video-andor-sound-recording-county-meetings). A standing audio or video recording device would not normally disrupt a meeting.

If those in attendance are disruptive and make further conduct of the meeting impossible, they can be removed. RCW 42.30.050 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.050). In re Recall of Kast (http://courts.mrsc.org/courts/zsupreme/144wn2d/144wn2d0807.htm) (2001). If order cannot be restored to the meeting by the removal of persons disrupting the meeting, either the meeting room may be cleared or the meeting may be reconvened in another location. However, members of the media are entitled to attend the adjourned meeting and the governing body is limited to act only on those matters on the agenda. The governing body may also authorize reading persons not responsible for disrupting the meeting. Id.

Case example: The school board schedules a special meeting to discuss a controversial policy question. It becomes obvious that the regular meeting room is too small for all of those trying to attend the meeting. The board announces that the meeting will be adjourned to an auditorium in the same building. The chair announces that those who wish to speak should sign in on the sheet on the table. She states that given the available space, speakers will be limited to three minutes each. At one point, the meeting is adjourned to remove an apparently intoxicated person who had been interrupting comments of speakers.

Resolution: While the OPMA allows the public to attend all meetings, it does not allow for the possibility of insufficient space. Presumably, if a nearby location is available, the governing body should move there to allow attendance by adjourning the meeting to that location and posting a notice on the door (RCW 42.30.090 (http://app.leg.wa.gov/RCW/default.aspx?cite=42.30.090)). The chair can require those who wish to speak (but not all attendees) to sign in. The sign-in requirement for speaking does not restrict attendance, only participation. Since the OPMA does not require the governing body to allow public participation, the meeting of each speaker can also be limited. The governing body can maintain order by removing those who are disruptive.

F. Right to Speak at Meetings

The OPMA does not require a governing body to allow public comment at a public meeting. If a governing body does allow public comment, it has authority to limit the number of speakers to a uniform amount (such as three minutes) and the topics speakers may address.

3.6 The OPMA Requires Notice of Meetings

A “meeting” under the OPMA is either a “regular” meeting or a “special” meeting, with different notice requirements for each. So, for example, a regular meeting is a “retreat,” “study session,” or “workshop” for OPMA purposes, or either a regular or a special meeting, depending on how it is held.

A. Regular Meetings

The OPMA requires agencies to identify the meeting and place the meeting on the meeting agenda, which are defined as “recurring meetings held in accordance with a periodic schedule declared by statute or rule.” RCW 42.30.075 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.075). State agencies subject to the OPMA must publish their schedule in the Washington State Register (http://www.leg.wa.gov/codereviser/pages/washington_state_register.aspx), while local agencies (such as cities and counties) must adopt the schedule “by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body.” RCW 42.30.075 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.075); RCW 42.30.070 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.070). Although the OPMA does not require local agency governing bodies to meet inside the boundaries of their jurisdiction, there is general agreement that agencies should not schedule meetings at locations that effectively exclude the public. Other statutes may require certain meetings to hold their meetings at particular locations, such as RCW 36.32.080 (http://apps.leg.wa.gov/RCW/default.aspx?cite=36.32.080), which requires a board of county commissioners to hold regular meetings at the county seat, or at the alternate locations specified in the statute.

If a scheduled regular meeting falls on a holiday, it must be held on the next business day. RCW 42.30.070 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.070).
The OPMA requires agencies with governing bodies to make the agenda of regular meetings available online at least 24 hours in advance of the meeting. RCW 42.30.077 (http://apps.leg.wa.gov/rcw/default.aspx?cite=42.30.077). This requirement does not apply if the agency does not have a website or if it employs fewer than 10 full-time equivalent employees. Also, an agency can modify the agenda as it is posted online. A failure to comply with the noce requirement with respect to a regular meeting will not in validate an otherwise legal acron taken at the meeting.


B. Special Meetings

Whenever an agency has a meeting other than a scheduled regular meeting, it is conducting a "special meeting." RCW 42.30.080 (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.080). For each special meeting, the OPMA requires at least 24 hours' written notice to:

- the members of the governing body, delivered personally, or by mail, fax, or email;
- media representatives (newspaper, radio, and television) who have filed a written request for notices of a particular special meeting or of all special meetings, delivered personally, or by mail, fax, or email; and
- the public, by posting on the agency website and by prominently posting it at the main entrance of the agency's principal location and at the meeting site if the meeting will not be held at the agency's principal location.

An agency is not required to post the public notice on its website if it does not have one, if it has fewer than 10 full-time equivalent employees, or if doesn't employ personnel whose job it is to maintain the website.

The OPMA does not provide any guidance as to whether the media's written request for notice must be renewed; it is advisable, however, to periodically renew such requests to ensure that they contain the proper contact information for the noce and have not been misplaced or inadvertently overlooked due to changes in agency personnel.

The notice of a special meeting must specify the date and place of the meeting and "the business to be transacted," which would normally be an agenda. At a special meeting, final disposition by the agency is limited to the matters identified as the business to be conducted in the notice. The statutory language suggests that the governing body could discuss, but not finally dispose of, matters not included in the notice of the special meeting.

A member of the governing body may waive the required notice by filing a written waiver or by simply appearing at the special meeting. Estey v. Dempsey (http://courts.mrsc.org/mc/courts/zsupreme/104wn2d/104wn2d0597.htm) (1985). The failure to provide notice to a member of the governing body can only be asserted by the person who should have received the notice, not by any person affected by the action at the meeting. Kirk v. Pierce County Fire Protection Dist. No. 21 (http://courts.mrsc.org/mc/courts/zsupreme/095wn2d/095wn2d0769.htm) (1981).

C. Emergency Meetings

The OPMA provides that, in the event of an emergency such as a fire, flood, or earthquake, meetings may be held at a site other than the regular meeting site, and the notice requirements of the OPMA are suspended during the emergency. RCW 42.30.070 (http://apps.leg.wa.gov/rcw/default.aspx?cite=42.30.070). An agency should, however, provide special-meeting notice of an emergency meeting, if practicable. RCW 42.30.080 (http://apps.leg.wa.gov/rcw/default.aspx?cite=42.30.080)(d).

The courts have found that an agency must be confronted with a true emergency that requires immediate action, such as a natural disaster, for its governing body to hold an emergency meeting that does not comply with the OPMA. It has been held that a strike by teachers did not justify an "emergency" meeting by the school board. Mead School Dist. No. 354 v. Mead Educational Ass'n (http://courts.mrsc.org/mc/courts/zsupreme/085wn2d/085wn2d0140.htm) (1975).

D. Adjournments, Cancellations and Convenances

The OPMA establishes procedures for a governing body to adjourn a regular or special meeting and convene a meeting at another time and place identified in an order of adjournment. RCW 42.30.090 (http://apps.leg.wa.gov/rcw/default.aspx?cite=42.30.090). Less than a quorum of a governing body may adjourn and continue a meeting under these procedures, or the clerk or secretary of the body may do so if no members are present. Notice of the meeting adjournment must be the same that is required for special meetings in RCW 42.30.080 (http://apps.leg.wa.gov/rcw/default.aspx?cite=42.30.080), and a copy of the order or notice of adjournment must be posted on or near the door of the place where the meeting was held. Although the OPMA does not address cancellations, presumably the same process could be followed in cancelling a meeting.

Public hearings held by a governing body may be convened to a subsequent meeting of the governing body following the procedures for adjournment in RCW 42.30.090 (http://apps.leg.wa.gov/rcw/default.aspx?cite=42.30.090). RCW 42.30.100 (http://apps.leg.wa.gov/rcw/default.aspx?cite=42.30.100).
3.7 Execuive Sessions Are Allowed for Specific Topics, Following OPMA Procedures

"Execuive session" is not expressly defined in the OPMA, but the term is commonly understood to mean that part of a regular or special meeting of a governing body that is closed to the public. A governing body may hold an execuive session only for specified purposes, which are identified in RCW 42.30.110(1)(a)-(m), and only during a regular or special meeting. Nothing, however, prevents a governing body from holding a meeting, which complies with the OPMA’s procedural requirements, for the sole purpose of having an execuive session.

A. Procedures for Holding an Execuive Session

To convene an execuive session, the governing body’s presiding officer must announce: (1) the purpose of the execuive session, and (2) the meeting when the execuive session will end. The announcement is to be given to those in attendance at the meeting. RCW 42.30.110(2).

The announced purpose of the execuive session must be one of the statutorily identified purposes for which an execuive session may be held. The announcement therefore must contain enough information to identify the purpose as falling within one of those identified in RCW 42.30.110(1)(a)-(m). It would not be sufficient, for example, for a mayor to declare simply that the council will now meet in execuive session to discuss "personnel matters." Discussion of personnel matters, in general, is not an authorized purpose for holding an execuive session; only certain specific issues relating to personnel may be addressed in an execuive session. See RCW 42.30.110(1)(f), (g).

Another issue that may arise concerning these procedural requirements for holding an execuive session involves the estimated length of the session. If the governing body concludes the execuive session before the meeting that was stated it would conclude, it should not reconvene in open session until the stated time. Otherwise, the public may, in effect, be excluded from that part of the open meeting that occurs between the close of the execuive session and the meeting when the presiding officer announced the execuive session would conclude.

If the execuive session is not over at the stated time, it may be extended only if the presiding officer announces to the public at the meeting place that it will be extended to a stated time. RCW 42.30.030. See also adjournment discussion in MRSC’s Open Public Meetings Act public annotated (http://mrsc.org/getmedia/9d43-4868-8987-a626ad2cea9f/opma14.pdf.aspx).

Case Example: Three members of a five-member school board meet privately, without calling a meeting, to exchange opinions of candidates for the school superintendent position. The y just if y this private meeting on the ground that the board may mee t in execuive session to discuss the qualifications of applicants for the superintendent position, under RCW 42.30.110(1)(g). Have these school board members complied with RCW 42.30.110?

Resolution: Clearly, they have not. Although a governing body may discuss certain matters in closed session under this statute, that closed session must occur during an open regular or special meeting and it may be commenced only by following the procedures in RCW 42.30.110(1). The public must know the board is meeting in execuive session and why. Although, as discussed above, some matters are not subject to the Open Public Meetings Act under RCW 42.30.140; however, the above example is not one of them.

B. Grounds for Holding an Execuive Session

An execuive session may be held only for one of the purposes identified in RCW 42.30.110(1), as follows:

(a) Matters Affecting National Security

After September 11, 2001, state and local agencies have an increased role in national security. Therefore, discussions by agency governing bodies of security matters relating to possible terrorist activity should come within the scope of this execuive session provision.
(b) Acquisition of Real Estate by Lease or Purchase

This provision has two elements: (1) the governing body must be considering either selecting real property for purchase or lease or it must be considering purchasing or leasing specific property; and (2) public knowledge of the governing body's consideration would likely cause an increase in the price of the real property.

For the purposes of this provision, the consideration of the purchase of real property can involve condemnation of the property, including the amount of compensation to be offered for the property. See Port of Seale v. Rio (http://courts.mrscc.org/mc/courts/zappellate/016wnapp/016wnapp0718.htm) (1977).

However, it remains unclear exactly what the scope is of "considering" the acquisition of real property. Since this subection recognizes that the process of purchasing or leasing real property or selecting real property to purchase or lease may, in some circumstances, justify an executive session, it implies that the governing body may need to reach some consensus in a closed session as to the price to be offered or the particular property to be selected. See Port of Seale (http://courts.mrscc.org/mc/courts/zappellate/016wnapp/016wnapp0718.htm) (1977). However, the Washington Supreme Court in Miller v. City of Tacoma (http://courts.mrscc.org/mc/courts/zsupreme/138wn2d/138wn2d0318.htm) (1999) emphasized that "only the action explicitly specified by the exemption ["consider"] may take place in an executive session." See also Feature Realty, Inc. v. City of Spokane (http://caselaw.findlaw.com/us-9th-circuit/1158500.html) (2003). Taken literally, this limitation would preclude a governing body in an executive session from actually selecting a piece of property to acquire or sell at which the body would be willing to purchase property, because such an action would be beyond the power to merely "consider." Yet, the purpose of an executive session under this subsection would be defeated if the governing body would be required to vote in open session to select the property or to decide how much it would be willing to pay for the property, where public knowledge of those matters would likely increase its price.

c) Sale or Lease of Agency Property

This subsection, the reverse of the previous one, also has two elements: (1) the governing body must be considering the minimum price at which real property belonging to the agency will be offered for sale or lease; and (2) public knowledge of the governing body's consideration will likely cause a decrease in the price of the property.

This provision also states that final action selling or leasing public property must be taken in an open meeting. That statement may seem unnecessary, since all final actions must be taken in a meeting open to the public. However, its possible purpose may be to indicate that, although the decision to sell or lease the property must be in open session, the governing body may decide in an executive session the minimum price at which it will do so. A contrary interpretation would seem to defeat the purpose of this subsection. But see Miller v. City of Tacoma (http://courts.mrscc.org/mc/courts/zsupreme/138wn2d/138wn2d0318.htm) (1999) and discussion in Chapter 3.98(b) above.

Governing bodies should exercise caution when meeting in closed session under this and the preceding provision so that they are not unnecessarily, since all final actions must be taken in meetings open to the public. However, its possible purpose may be to indicate that, although the decision to sell or lease the property must be in open session, the governing body may decide in executive session the minimum price at which it will do so. A contrary interpretation would seem to defeat the purpose of this subsection. But see Miller v. City of Tacoma (http://courts.mrscc.org/mc/courts/zsupreme/138wn2d/138wn2d0318.htm) (1999) and discussion in Chapter 3.98(b) above.

(d) Performance of Publicly Bid Contracts

This subsection indicates that when a public agency and a contractor performing a publicly bid contract are negotiating concerning how the contract is being performed, the governing body may "review" those negotiations in an executive session if public knowledge of the review would likely cause an increase in contract costs.

(e) Consideration of Certain Information by an Export Trading Company

This provision, which authorizes consideration in an executive session of financial and commercial information supplied by private persons to an export trading company, applies to export trading companies that can be created by port districts under chapter 53.31 RCW (http://apps.leg.wa.gov/RCW/default.aspx?cite=53.31). Under RCW 53.31.050 (http://apps.leg.wa.gov/RCW/default.aspx?cite=53.31.050), financial and commercial information supplied by private persons to an export trading company must be kept confidential.

(f) Complaints or Charges Against Public Officer or Employee

This provision authorizes executive sessions to receive and evaluate complaints or charges brought against a public officer or employee. It should be distinguished from subsection (g), discussed below, concerning reviewing the performance of a public employee in an executive session. For purposes of meeting in an executive session under this provision, a charge or complaint must have been brought against a public officer or employee. The complaint or charge could come from within the agency or from the public. Bringing the complaint or charge triggers the opportunity for the officer or employee to request that a public hearing or open meeting be held regarding the complaint or charge.

(g) Evaluating Qualifications or Performance of a Public Employee/Official

There are two different purposes under this provision for which a governing body may meet in executive session. For both purposes, the references to "public employment" and to "public employee" include within their scope public offices and public officials, so that a governing body may evaluate in executive sessions persons who apply for appointive office positions, such as state university president or...
city manager, as well as for employee positions.

The first purpose involves evaluating the qualifications of applicants for public employment. This could include personal interviews with an applicant, discussions concerning an applicant’s qualifications for a position, and discussions concerning salaries, wages, and other conditions of employment personal to the applicant. The authority to “evaluate” applicants in closed session allows a governing body to discuss the qualifications of applicants, not to choose which one to hire. Although this subsection expressly mandates that “final action hiring” an applicant for employment be taken in open session, this does not mean that the governing body may take preliminary votes in an executive session that eliminate candidates from consideration. Miller v. City of Tacoma (http://courts.mrsc.org/mc/courts/zsupreme/138wn2d/138wn2d0318.htm) (1999).

The second part of this provision concerns reviewing the performance of a public employee. This provision would be used typically either where the governing body is considering a promotion or a salary or wage increase for an individual employee or where it may be considering disciplinary action based on an employee’s performance. It should be distinguished from subsection 1, which concerns specific complaints or charges brought against an employee and which, at the request of the employee, must be discussed in open session.

The result of a governing body's closed session review of the performance of an employee may be that the body will take some action either beneficial or adverse to the officer or employee. That action, whether raising a salary or disciplining an officer or employee, must be made in open session.

When a discussion involves salaries, wages, or conditions of employment to be "generally applied" in the agency, it must take place in open session. However, if that discussion involves collective bargaining negotiations or strategies, it is not subject to the OPMA and may be held in closed session without being subject to the procedural requirements for an executive session in RCW 42.30.110(2) (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.110). See RCW 42.30.140(4) (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.30.140).

**Case Example:** A school board selecting a superintendent may evaluate qualifications of applicants in an executive session under this provision. Under this provision, the board must confine its executive session discussion to applicant evaluations only, and must make decisions in a meeting open to the public. For more information, see the Attorney General's Office “Open Public Meetings Act Guidance on Frequently Asked Questions About Processes to Fill Vacant Positions by Public Agency Governing Boards and Some Suggested Practice Tips” (https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About_the_Office/Open_Government/Open_Government_Ombudsman/OPMA%20FAQ%20-%20Agency%20Searches%20%20June%20%201%20%2016.pdf)” (June 1, 2016).

**(h) Evaluating Candidates for Elected Office**

This provision applies when an elected governing body is filling a vacant position on that body. Examples of such bodies include a board of county commissioners, a city council, a school board, and the boards of special purpose districts, such as fire protection and water-sewer districts. Under this provision, an elected governing body may evaluate the qualifications of an applicant for a vacant position on that body in executive session. However, unlike when it is filling other positions, the governing body may interview an applicant for a vacancy in an executive office in open session. As with all other appointments, the vote to fill the position must also be in open session.


**(i) Litigation, Potential Litigation, or Enforcement Actions**

An agency must meet three basic requirements before it can invoke this provision to meet in closed session. First, "legal counsel representing the agency" must attend the executive session to discuss the enforcement action, or the litigation or potential litigation. This is the only executive session provision that requires an audience of someone other than the members of the governing body. The legal counsel may be the "regular" legal counsel for the agency, such as a city attorney or the county prosecutor, or it may be legal counsel hired specifically to represent the agency in particular litigation.

Second, the discussion with the legal counsel either must concern an agency enforcement action or it must concern litigation or "potential litigation" to which the agency, the governing body, or one of its members acting in an official capacity is or is likely to become a party. Discussions concerning enforcement actions or potential litigation involving an official capacity, for example, involve matters such as strategy or settlement.

This provision for an executive session defines "potential litigation" as matters that are protected by an attorney-client privilege concerning:

- Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;
- Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or
• Legal risks of a proposed action or current practice that the agency has identified when public discussion of the legal or financial consequences of an action is likely to result in an adverse legal or financial consequence to the agency.

This definition permits discussions by an agency governing body of actions that involve a genuine legal risk to the agency. This allows a governing body to freely consider the legal implications of a proposed decision without the concern that it might be jeopardizing some future legal position.

The third requirement for meeting in closed session under this subsection is that public knowledge of the discussion would likely result in adverse legal or financial consequence to the agency. In Port of Seale v. Rio (http://courts.mrsc.org/appellate/016wannp/016wannp0718.htm) (1977), the Court of Appeals stated that a closed executive session with legal counsel to discuss settlement or avoidance of legal action is proper because “a public agency should neither be given an advantage, nor placed at a disadvantage in legal action.” The Washington Supreme Court, in Recall of Lakewood City Council (http://courts.mrsc.org/mc/courts/zsupreme/144wn2d/144wn2d0583.htm) (2001), held that a governing body is not required to determine beforehand whether disclosure of the discussion with legal counsel would likely have adverse consequences; it is sufficient if the agency, from an objective standard, should know that the discussion is not benign and will likely result in adverse consequences.

Since the purpose of the executive session provision is only to allow the governing body to discuss legal or enforcement matters with legal counsel, the governing body is not authorized to take final action regarding such matters in an executive session. Case law suggests that a governing body may do no more than discuss legal or enforcement matters and may therefore be precluded from decisions in the context of such a discussion in order to advance the legal or enforcement action. In Feature Realty, Inc. v. City of Spokane (http://law.resource.org/pub/us/case/reporter/F3/331/F3d.1082.01-36137.02-35430.html) (2003), the federal Ninth Circuit Court of Appeals invalidated a “collective decision” of a governing body in executive session to approve a settlement agreement. The Feature Realty court relied on the Washington Supreme Court’s holding in Miller v. City of Tacoma (http://courts.mrsc.org/mc/courts/zsupreme/138wn2d/138wn2d0318.htm) (1999) that a governing body can only take an action in executive session “explicitly specified” in an exemption to the OMA.

This provision is, in practice, often used as a justification for executive sessions, particularly because “potential legal action” is susceptible to a broad reading. Indeed, many public agencies do subject itself to the possibility of a lawsuit. However, a court will construe “potential legal action” or any other grounds for an executive session narrowly and in favor of requiring open meetings. Miller v. City of Tacoma (http://courts.mrsc.org/mc/courts/zsupreme/138wn2d/138wn2d0318.htm) (1999). To avoid a reading of this subsection that may be broader than that intended by the Legislature — and to avoid a suit alleging a violation of the OMA — it is important for a governing body to look at the facts of each situation in the context of all the requirements of this subsection.

**Case Example:** A board of county commissioners is considering adopting a stringent adult entertainment ordinance, and a company that had announced its intention to locate a nude dancing establishment in the county states that it will sue the county if it passes this ordinance. The commissioners call an executive session to discuss with the prosecutor an opinion as to the proposed ordinance’s constitutionality. May the commissioners meet in executive session to discuss this?

**Resolution:** The county commissioners may discuss with their legal counsel in executive session the constitutionality of the proposed ordinance, particularly in light of the threatened legal challenge. They want to have a strong position coming into the litigation. The company’s knowledge of their discussion would give it an unfair advantage in framing the constitutional theories in support of its threatened suit against the county. Also, the prosecutor may not feel he can be totally candid with the commissioners in open session.

The company, on the other hand, may also argue that the commissioners are not discussing the potential litigation, but rather are only discussing the ordinance. The commissioners should always be aware of the constitutionality of the actions they take. But, that does not mean the commissioners have the authority to meet in executive session any more than they are proposing legislation that may impact constitutional issues. However, given the circumstances here – specifically that the company threatened to sue the commissioners’ position should prevail. Consistent with the definition of “potential litigation” added by the Legislature in 2001, the county commissioners may discuss the “legal risks of a proposed action,” in this case, the legal risks of adopting a stringent adult entertainment ordinance, particularly when the company has threatened litigation if the county adopts the ordinance.

(j) Western Library Network Prices, Products, Equipment, and Services

This provision for executive session no longer has any applicability, as the State Library Commission has been abolished and the Western Library Network statutes have been repealed. See RCW 27.04.900 (http://apps.leg.wa.gov/RCW/default.aspx?cite=27.04.900) and former chapter 27.26 RCW (http://apps.leg.wa.gov/RCW/dispo.aspx?cite=27.26).

(k) State Investment Board Consideration of Financial and Commercial Information

This provision allows the State Investment Board, established and governed by chapter 43.33A RCW (http://apps.leg.wa.gov/RCW/default.aspx?cite=43.33A), to consider commercial and financial information regarding the investment of public trust or retiree ement funds in closed session, if discussion in open session would result in loss to those funds or to the private providers of the information.
**Agenda Item 2**

(1) Informaon Related to State Purchased Health Care Services

This provision allows executive sessions to consider proprietary or confidenal nonpublished in formaon related to the development, acquisition, or implemen taon of state purchased health care services as provided in RCW 41.05.026 (hp:// apps.leg.wa.gov/rcw/default.aspx?cite=41.05.026).

(2) Life Sciences Discovery Fund Authority Grant Applicaons and Grant Awards

The above two provisions allow executive sessions to “consider...the substance of grant applicaons and grant awards” related to the Life Sciences Discovery Fund Authority and the Health Sciences and Services Authority “when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this informaon.”

3.8 The OPMA Provides Remedies/Penalties for Violations

The OPMA’s standing requirements are very broad; any person may challenge an ac on based on a viola on of the OPMA thr ough a suit in superior court as provided in RCW 42.30.120 (hp:// apps.leg.wa.gov/rcw/default.aspx?cite=42.30.120) and RCW 42.30.130 (hp:// apps.leg.wa.gov/rcw/default.aspx?cite=42.30.130). See also West v. Seale P ort Commission, et al. (hp:// courts.mrsc.org/wacourtcdecisions/194wn2d/194wn2d0807.htm) (2016) (holding that West, a “person,” had standing to bring an OPMA challenge related to a series of confidenal mee ngs be tween Port of Seale and P ort of Tacoma commissioners). Four disnct r emedies are available to persons under the OPMA:

- Nullificaon of ac ons t aken in illegal meengs (RCW 42.30.060 (hp:// apps.leg.wa.gov/rcw/default.aspx?cite=42.30.060)(1))
- Civil penales of $500 per member of the g overning body for the ﬁrst knowing viola on of the OPMA and $1000 per member f or any successive knowing viola on (RCW 42.30.120 (hp:// apps.leg.wa.gov/rcw/default.aspx?cite=42.30.120)(1) and (2))
- An award of costs and reasonable a orney fees for any person prevailing in an ac on alleging an OPMA viola on (RCW 42.30.120 (hp:// apps.leg.wa.gov/rcw/default.aspx?cite=42.30.120)(2))
- Mandamus or injunction to stop OPMA viola ons or pr event threatened viola ons (RCW 42.30.130 (hp:// apps.leg.wa.gov/rcw/default.aspx?cite=42.30.130))

If the court determines that a public agency has taken an ac on in viola on of the OPMA, that ac on is null and void. RCW 42.30.060 (hp:// apps.leg.wa.gov/rcw/default.aspx?cite=42.30.060)(1). If an agency’s ac on is null and void as a result of an OPMA viola on, the agency must re-trace its steps by taking the ac on in acc ordance with the OPMA in order to make that ac on valid. See Henry v. Town of Oakville (hp:// courts.mrsc.org/mc/courts/zappellate/030wn2d/030wn2d0124.htm) (1981); Feature Rea on v. City of Spokane (hp:// law.resource.org/pub/us/case/reporter/F3/331/331.F3d.1082.01-36137.02-35430.html) (2003) (agency re-tracing of steps must be done in public). But if the OPMA viola on occur s early in the governing body’s considera on of a ma er, subsequent ac ons t aken in compliance with the OPMA, including the ﬁnal ac on, are e valid. OPAL v. Adams County (hp:// courts.mrsc.org/mc/courts/zsupreme/128wn2d/128wn2d0869.htm) (1996); see also 1971 A ‘y Gen. Op. No. 33 (/ago-opinions/meengs-public-applic ability-open-public-meengs-act -state-and-local-governmental) at 40.

If a court determines that a governing body violated the OPMA, each member of the governing body who a ended the meeng with knowledge that the meeng w as in viola on of the OPMA is subject t o a $500 civil penalty. RCW 42.30.120 (hp:// apps.leg.wa.gov/rcw/default.aspx?cite=42.30.120). A viola on of the OPMA is not a criminal off ense.

A court must award all costs, including a orney fees, to a party who is successful in asserng an OPMA viola on ag ainst an agency. RCW 42.30.120(2). (hp:// apps.leg.wa.gov/rcw/default.aspx?cite=42.30.120) If the court ﬁnds that the lawsuit against the agency is frivolous, the agency may recover its a orney fees and expenses. The only statutory remedy is an ac on ﬁled in superior c ourt as provided in RCW 42.30.120(2).

Also, an OPMA viola on ma y provide a suﬃcient legal basis for a recall eﬀort against a local elected oﬃcial. See, e.g., In re Recall of Lakewood City Council Members (hp:// courts.mrsc.org/mc/courts/zsupreme/144wn2d/144wn2d0583.htm) (2001); In re Recall of Kast (hp:// courts.mrsc.org/mc/courts/zsupreme/144wn2d/144wn2d0807.htm) (2001).

Case example: In July 2016 and prior to a regular meeng, two members of a three-member board of c ounty commissioners communicate by email about an ordinance to be considered at the upcoming regular meeng. A t that meeng, the board discusses and then adop ts the ordinance the two commissioners had discussed by email. After making a PRA request for the commissioners’ emails, a county resident challenges the validity of the ordinance based on an alleged viola on of the OPMA when the two c ommissioners discussed the ordinance by email.

Answer: The email discussion by the two commissioners was “acon” under the OPMA, and, since it did not occur in a meeng open t o the public, it was a viola on of the OPMA. The two commissioners are personally liable for the $500 penalty if they knew the email discussion was in viola on of the OPMA. It seems unlikely that the commissioners would not have known that their email discussion was in viola on of the OPMA, and so they will likely be subject to that penalty.
3.9 The OPMA Requires Training

All members of state and local governing bodies must receive training on the requirements of the OPMA. RCW 42.30.205 (https://app.leg.wa.gov/rcw/default.aspx?cite=42.30.205). The training must be completed within 90 days after a governing body member takes the oath of office or otherwise assumes the duties of the position. The training must be repeated at intervals of no longer than four years, as long as an individual is a member of the governing body. The law does not specify the training that must be received or the manner in which it is to be received, other than to state that it may be taken online. For information on the training requirement and for access to training developed by the Office of the Attorney General, see the Attorney General’s Open Government Training Web page. (https://open-government-training)


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Employment
Memo

To: Planning Commissioners
From: Amber Kellison, Planning Technician
CC: Gina Estep, Community Development Director

Meeting Date: September 19th, 2019

Re: Code Amendments related to CMC Chapters 18.20 Technical Terms and Land Use Definitions, Chapter 18.25.030 Land use tables and 18.25.040 Recreational/cultural land uses.

Attachments:
Attachment A - Proposed amendments to Chapter 18.25.030 Land use tables
Attachment B - Proposed amendments to Chapter 18.25.040 Recreational/cultural land uses.
Attachment C – Proposed amendments to Chapter 18.20 Technical Terms and card use definitions.

INTRODUCTION/GENERAL INFORMATION: The Planning Commission’s 2019 work plan included an evaluation of the City’s permitted uses found in Chapter 18.25 of the Covington Municipal Code (CMC). This effort will include all permitted use charts found in Chapter 18.25 Permitted Uses, however broke up into manageable portions over the next couple months. One SEPA process, encapsulating the entire Chapter 18.25 will be completed as part of this effort. The CMC sections that will be included in this effort includes; 18.25.030 Residential land uses, 18.25.040 Recreational/cultural land uses, 18.25.050 General services and land uses, 18.25.060 Government/business services land uses, 18.25.070 Retail land uses, 18.25.080 Manufacturing land uses, 18.25.090 Resource land uses, and 18.25.100 Regional land uses.

This Staff Report is associated with Chapter 18.25.030 Land use tables and 18.25.040 Recreational/cultural land uses only and are intended to update and expand on the permitted uses and associated footnotes related to said sections.

Staff conducted a thorough review of CMC 18.25.030 Residential Land Uses, along with 18.25.040 Recreational/Cultural Land Uses and compared it for consistency with Chapter 18.31.080 Permitted lands uses related to the Downtown zoning districts. In addition, staffed compared said sections to neighboring cities, Renton, Sammamish, Maple Valley, Kent and Newcastle among others. Based on the analysis conducted by Staff, amendments to CMC 18.25.030 Residential Land Uses and 18.25.040 Recreational/Cultural Land Uses are proposed and shown in Attachment A.

PURPOSE: The purpose of the proposed amendments is as follows:
1) Provide a consistent and comprehensive list of identified “lands uses” throughout all applicable sections of the Covington Municipal Code. Previously the City hired a land use consultant tasked to update the permitted lands use chart for the Downtown zoning districts, Chapter 18.31.080. This work has been completed, however Chapter 18.25 Permitted uses, which relates to all other zones in the city, was never updated to provide consistency with the identified land uses listed in Chapter 18.31.080.
2) Deletes the reference to Standard Industrial Code (SIC) numbers. Historically, the King County Code used the SIC numbers as a reference tool to describe the primary business activity. Currently, the North American Industry Classification System is also used as a reference tool. When CMC 18.31.080 Permitted Land Uses was amended the reference to the SIC numbers was not included allowing for flexibility to use either reference tool. For consistency, this is the preferred approach for all permitted land use charts found in CMC 18.25 Permitted Uses.

3) Updates all applicable footnotes related to the listed land uses.

4) Updates CMC 18.20 Technical Terms and Land Use Definitions, (see Attachment C) as follows;
   a. 18.20.207 Commercial recreation – Term was amended.
   b. 18.20.342 Duplex – Term was added.
   c. 18.20.355 Dwelling unit, multifamily – Term was amended.
   d. 18.20.1284.7 Townhouses/townhome – Term was added.

A. REGULATORY REQUIREMENTS:
   1) SEPA Compliance (SEPA19-07): A SEPA Determination will be issued at a later date with the entire package of code amendments related to the following permitted use charts: 18.25.030 Residential land uses, 18.25.040 Recreational/cultural land uses, 18.25.050 General services and land uses, 18.25.060 Government/business services land uses, 18.25.070 Retail land uses, 18.25.080 Manufacturing land uses, 18.25.090 Resource land uses, and 18.25.100 Regional land uses.

   2) Public Notice, Public Comment & Planning Commission Review: A public hearing will be scheduled at a later date to solicit comment on the entire package of code amendments related to permitted uses as listed above.

   3) Department of Commerce: Pursuant to CMC 14.27.050(4) and RCW 36.70A.106, the proposed amendments will be transmitted to Washington State Department of Commerce at a later date along with the entire package of code amendments related all permitted use charts.

B. PROPOSED MUNICIPAL CODE AMENDMENT: See Attachment’s A, B and C

C. CMC 14.27.040 DECISION CRITERIA
   The Planning Commission recommendation and City Council’s approval, modification, deferral, or denial of an amendment proposal shall be based on the following criteria:

   (1) The proposed amendment is consistent with the goals, objectives, and policies of the comprehensive plan; Staff Findings: Yes, the proposed code amendment is expected to comply with the Growth Management Act of Washington State and goals, objectives and policies of the City’s Comprehensive Plan and other applicable laws.

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

   (3) Circumstances have changed substantially since the establishment of the current zoning map or district to warrant the proposed amendment; Staff Findings: No, circumstances have not changed substantially since the establishment of the current zoning map or district to warrant the proposed amendment, however the proposed code amendment provides needed updates and an expanded list of uses allowing for better administration of the current zoning map and zoning districts.
(4) The proposed zoning is consistent and compatible with the uses and zoning of surrounding property; 
Staff Findings: Not Applicable – this is not a zoning map amendment.

(5) The property that is the subject of the amendment is suited for the uses allowed in the proposed zoning 
classification; 
Staff Findings: Not Applicable – this is not a zoning map amendment nor site specific.

(6) The amendment is in compliance with the three-year limitation rule as specified in CMC 14.27.030(3); and 
Staff Findings: Yes, the proposed amendment complies with the three-year limitation rule specified in 
CMC 14.27.030(3).

(7) Adequate public services could be made available to serve the full range of proposed uses in that zone. 
Staff Findings: Yes, adequate public services could be made available to serve the full range of proposed 
uses in that zone.

D. STAFF RECOMMENDATION: Staff recommends approval of the proposed Municipal Code 
amendment as shown in Attachment’s A, B and C of this staff report.

________________________________________  ______________
Planning Staff          Date

E. MOTION/PLANNING COMMISSION RECOMMENDATION: A recommended motion will be 
provided at a later date.
### Conditional Use

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### Footnotes of Table A

**B. Development Conditions.**

(1) For all single-family preliminary plats of 20 lots or more, 18 percent of the units must be constructed as multiple-family dwelling units. The City will consider a reduction in the required number of multiple-family units if an agreement can be reached to assure the affordable housing income figures mandated by the comprehensive plan can be achieved. This condition shall not apply within the Lakepoint Urban Village¹ subarea.

(1) Must be in accord with CMC Chapter 18.35 Development Standards – Design Requirements.
(2) Required before approving more than one dwelling on individual lots, except on lots in subdivisions, short subdivisions or binding site plans approved for multiple unit lots, and except as provided for accessory dwelling units in Condition No. 6.

(3) Only as part of a mixed-use/integrated development subject to the conditions of Chapter 18.35 CMC.

(4) Permitted only in the R-18 zone.

(5) Must be in accord with Chapter 18.35 CMC.

(4) See CMC 18.37 Development Standards and Design Requirements for Cottage Housing.

(5) See CMC 18.80.100 for requirements associated with Home Occupations.

(6) Accessory Dwelling Units.

(a) Only one accessory dwelling per primary single detached dwelling unit. Accessory dwelling units shall not be allowed on the same property as a duplex;

(b) Only in the same building as the primary dwelling unit on an urban lot that is less than 10,000 square feet in area, on a rural lot that is less than the minimum lot size, or on a lot containing more than one primary dwelling;

(c) The primary dwelling unit or the accessory dwelling unit shall be owner-occupied;

(d) One of the dwelling units shall not exceed a floor area of 1,000 square feet except when one of the dwelling units is wholly contained within a basement or attic;

(e) When the primary and accessory dwelling units are located in the same building, only one entrance may be located on each street side of the building;

(f) One additional off-street parking space shall be provided;

(g) The accessory dwelling unit shall be converted to another permitted use or shall be removed if one of the dwelling units ceases to be owner occupied;

(h) An applicant seeking to build an accessory dwelling unit shall file a notice approved by the Department with the Records and Elections Division which identifies the dwelling unit as accessory. The notice shall run with the land. The applicant shall submit proof that the notice was filed before the Department shall approve any permit for the construction of the accessory dwelling unit. The
Attachment A

required contents and form of the notice shall be set forth in administrative rules. If an accessory dwelling unit in a detached building in the rural zone is subsequently converted to a primary unit on a separate lot, either the original lot or the new lot may have an additional detached accessory dwelling unit constructed unless the lot is at least twice the minimum lot area required in the zone; and

(i) Must be in accord with Chapter 18.35 CMC.

(7) Only as an accessory to the permanent residence of the operator, provided:

(a) Serving meals to paying guests shall be limited to breakfast; and

(b) The number of persons accommodated per night shall not exceed five, except that a structure which satisfies the standards of the International Building Code for R-1 occupancies may accommodate up to 10 persons per night.

(8) On-street electric vehicle charging stations are not permitted in the R-1 through R-18 zones. Individual electric vehicle charging stations for a single-family residence shall follow the Installation Guide for Charging Stations, prepared by Puget Sound Regional Council, and as amended.

(9) Within the Lakepoint Urban Village second subarea, single-family detached residences shall not be allowed around or abutting the pond.

(10) Within the Lakepoint Urban Village* subarea, townhouses shall not abut the pond except as part of a mixed-use development, unless otherwise separated from the pond by a public trail, park, green space or street. (Ord. 11-17 § 4; Ord. 03-14 § 1; Ord. 01-14 § 1 (Exh. A); Ord. 19-11 § 1 (Exh. 1); Ord. 10-10 § 3 (Exh. C); Ord. 06-05 § 1; Ord. 23-04 § 10; Ord. 42-02 § 2 (21A.08.030))

"Townhouse" is defined as a dwelling unit in a group of two or more attached units in which each unit extends from foundation to roof and with a yard or public way on at least two sides.

"Duplex" means a building containing two separate units with a common wall.

18.20.355 Dwelling unit, multifamily.

"Dwelling unit, multifamily" means a dwelling unit contained in a building consisting of three two or more dwelling units which may be stacked, or one or more dwellings included in a structure with nonresidential uses.
## Attachment B

18.25.040  Recreational/cultural land uses.
A. Table.

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<thead>
<tr>
<th>SIC #</th>
<th>SPECIFIC LAND USE</th>
<th>US</th>
<th>R4-8</th>
<th>R-12</th>
<th>R-18</th>
<th>MR</th>
<th>CC</th>
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<td>Adult entertainment businesses (2)</td>
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</table>
| Cinema, Performing Arts and Museums | P | P | P
| Meeting Hall/Other Group Assembly | P | P |
| Physical Fitness/Recreation Club | P | P | P | P |
| Recreation, Indoor[RH2] | C | C | P | P |
| Recreation, Outdoor | C | C | P | P |
| Bowling center | P | P | P | P |
| Golf course facility | P | P | P | P | P |

| 7099(4x6) Amusement and recreation services[RH4] | B5 | B5 | - | - | - | - | - | - | [AK5] |
| 2 | Commercial recreation | - | - | - | - | - | - | - | - |
| 2 | Physical fitness/recreation clubs | - | - | - | - | - | - | - | - |
| 2 | Theaters | - | - | - | - | - | - | - | - | [AK6][AK7][AK8] |

<table>
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<tr>
<td>841</td>
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<tr>
<td>842</td>
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</tbody>
</table>

B. Development Conditions: Footnotes of Table A.

1. Lighting for structures and fields shall be directed away from residential areas through the use of exterior full cut-off shields or through optics within the fixture.

2. Adult entertainment businesses shall be prohibited within 550 feet of any property zoned R or containing schools, licensed day care centers, public parks or trails, community centers, public libraries or churches. In addition, adult entertainment businesses shall not be located closer than 3,000 feet to any other adult entertainment business. These distances shall be measured from the property line of the parcel or parcels proposed to contain the
adult entertainment business to the property line of the parcels zoned R or that contain the uses identified in this subsection.

(3) Clubhouses, maintenance buildings, equipment storage areas and driving range tees shall be at least 50 feet from residential property lines. Lighting for practice greens and driving range ball impact areas shall be directed away from adjoining residential zones. Applications shall comply with adopted best management practices for golf course development. Ancillary facilities associated with a golf course are limited to practice putting greens, maintenance buildings and other structures housing administrative offices or activities that provide convenience services to players. These convenience services are limited to a pro shop, food services and dressing facilities and shall occupy a total of no more than 10,000 square feet.

(4) Excluding amusement and recreational uses classified elsewhere in this chapter.

(5) A conditional use permit is required unless the use is an accessory to a park or in a building listed on the National Register as a historic site or designated as a King County landmark subject to Chapter 18.47 CMC.

(6) The operation of an indoor shooting range, as defined in CMC 18.20.1080, is not permitted. Outdoor shooting ranges are not permitted. (Ord. 11-17 § 5; Ord. 03-14 § 1; Ord. 01-14 § 1 (Exh. A); Ord. 01-12 § 1 (Exh. 1); Ord. 10-10 § 3 (Exh. C); Ord. 42-02 § 2 (21A.08.040))
18.20.207 Commercial recreation.

“Commercial recreation” means any recreational activity whose main purpose is to provide indoor or outdoor amusement or entertainment activities. This includes, but is not limited to, skating rinks, pool halls, water slides, miniature golf courses, arcades, bowling alleys, go-carts, batting cages, laser tag, concessions, skate park, basketball, ice/hockey rinks, etc.

18.20.342 Duplex.

“Duplex” means a building containing two separate units with a common wall.

18.20.355 Dwelling unit, multifamily.

“Dwelling unit, multifamily” means a dwelling unit contained in a building consisting of three or more dwelling units which may be stacked, or one or more dwellings included in a structure with nonresidential uses.

18.20.1284.7 Townhouse.

“Townhouse/townhome” is defined as a single-family dwelling unit in a group of two or more attached units in which each unit extends from foundation to roof and with a yard or public way on at least two sides. Each townhouse/townhome shall be on a separate lot.

“Duplex” means a building containing two separate units with a common wall.