Commissioners
Kelly Cochran, Chair
Jeff Craig, Co-Chair
Chris Rule
Erika Bartholomew
Dan Swanson
Joe Pestinger
Tom Bush

City Representation
Scott Larson, City Administrator
Kim Gunderson, Community Development Director
Danielle Charchenko, Secretary

City of Orting
Planning Commission Agenda

Monday, July 7th, 2025
7:00pm
City Hall Council Chambers

If joining virtually:

Phone Dial-in - Charges may apply
+1.253.215.8782

To join the meeting on a computer or mobile phone:

https://us06web.zoom.us/j/81575063008?pwd=BhWWWbyXsu3x2jferE9bipxZ808xDf.1

Meeting ID: 815 7506 3008
Passcode: 317078

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1. **CALL MEETING TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL**
   The public may attend this meeting virtually via the platform Zoom by clicking the link above or by telephone, or in person at City Hall.
   A. Is there a motion to excuse Commissioner(s) from this meeting?
2. **AGENDA APPROVAL**
   A. Does the agenda require an addition or removal of a topic?
3. **PUBLIC COMMENTS**
   Comments may be sent to the Planning Commission Secretary Danielle Charchenko at clerk@cityoforting.org by 1:00pm on the day of the meeting and will be read into the record at the meeting. In the case of a question, the chair will refer the matter to the appropriate administrative staff member. Comments that come in after the deadline will be read into the record at the next Planning Commission meeting.
4. **APPROVAL OF MINUTES**
   A. Are the minutes of the June 2nd, 2025 meeting correct and accurate?
5. **OLD BUSINESS**
   A. AB25-20 - Orting Municipal Code Update.
   B. Dumpster Violations.
   C. Sign Code Violations.
6. **GOOD OF THE ORDER**
   A. Planned Absences.
   B. Report on Council Meetings.
   C. Agenda setting.
7. **ADJOURN**

NEXT PLANNING COMMISSION MEETING: Monday, August 4th, 2025

Commissioners
Kelly Cochran, Chair
Jeff Craig, Co-Chair
Chris Rule
Erika Bartholomew
Dan Swanson
Joe Pestinger
Tom Bush

ORTING PLANNING COMMISSION
Planning Commission Meeting Minutes
104 Bridge Street S, Orting, WA
Zoom – Virtual
June 2nd, 2025
7:00 p.m.

1. CALL MEETING TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL.

Chair Cochran called the meeting to order at 7:00pm. Co-Chair Craig led the pledge of allegiance.

Commissioners present: Chair Kelly Cochran, Co-Chair Jeff Craig, Commissioners Erika Bartholomew, Dan Swanson, and Tom Bush.

Absent: Commissioners Chris Rule and Joe Pestinger.

Staff present: Planning Commission Secretary Danielle Charchenko and Community Development Director Kim Gunderson.

Co-Chair Craig made a motion to excuse Commissioner Chris Rule. Seconded by Commissioner Swanson.

Motion passed (4-0)

2. AGENDA APPROVAL.

Co-Chair Craig made a motion to approve the agenda as presented. Seconded by Commissioner Bartholomew.

Motion passed (4-0).

3. PUBLIC COMMENTS.

None.

4. APPROVAL OF MINUTES.

Co-Chair Craig made a motion to approve the May 5th, 2025 minutes with the addition of Los Pinos string lights included under Sign Violations. Seconded by Commissioner Swanson.

Motion passed (4-0).

5. ARCHITECTURAL DESIGN REVIEW

A. ADR 2025-03 – Daisy's Boutique Signage.

Planning Commission Secretary Danielle Charchenko read the staff report for ADR 2025-03 and stated that recommendation was approval as presented.

Planning Commission discussion followed.

Co-Chair Craig made a motion for approval of ADR 2025-03 as submitted. Seconded by Commissioner Bush.

Motion passed (4-0).

6. PUBLIC HEARING

A. AB25-10 – Critical Areas Ordinance Update.

Chair Cochran laid out the rules for the public hearing.

Chair Cochran opened the public hearing at 7:15pm.

Community Development Director Kim Gunderson gave a presentation briefing draft ordinance 2025-1143, updating the Critical Areas Ordinance in Title 11 of the Orting Municipal Code to meet compliance with RCW 36.70A.130(7).

Planning Commission discussion followed.

Chair Cochran closed the meeting at 7:33pm.

Co-Chair Craig made a motion to recommend the City Council to adopt the CAO amendments, as they are presented in draft Ordinance 2025-1143. Seconded by Commissioner Swanson.

Motion passed (4-0).

6. OLD BUSINESS

A. AB25-20 – Orting Municipal Code Update

Community Development Director Kim Gunderson briefed Planning Commission on needed updates to OMC and draft schedule for workshops to review Titles 13 and 15. Community Development Director Kim Gunderson proceeded with the workshop and reviewed proposed updates to Title 15 chapters 1-7, Administrative Code of Governing Bodies, of the OMC.

Planning Commission discussion followed.

B. Dumpster Violations

Community Development Director Kim Gunderson stated Code Enforcement spoke with the owners of Arrow Lumber about the location of their dumpsters and received prompt action.

C. Sign Code Violations

Community Development Director Kim Gunderson stated they are preparing a letter to send to Café Elite to address their wooden sign. Daisy's sandwich board signs have been addressed during the ADR process. The Planning Commission requested staff to reach out to Aceituno's about their corrugated signs and WAWA Teriyaki about their vinyl signs.

7. GOOD OF THE ORDER.

A. Planned Absences.

Co-Chair Craig and Commissioner Dan Swanson will be absent for the July 7th, 2025 meeting.

B. Report on Council Meetings

Planning Commission Secretary briefed the May Council items covering:

- Public Hearing for ADR Guidelines.
- Public Hearing for LGIP Resolution.

Next Planning Commission Meeting: Monday, July 7th, 2025 - 7:00pm

- Public Hearing for Six-Year TIP 2026-2031.
- Public Hearing for Surplus of Public Works vehicles.
- Summerfest Special Event Sponsorship.

C. Agenda setting
The Planning Commission requested to bring back Orting Municipal Code update, dumpster violations and sign code violations under Old Business.

8. ADJOURNMENT.

Co-Chair Craig made a motion to adjourn. Seconded by Commissioner Bush.

Motion passed (4-0).

Chair Cochran adjourned the meeting at 8:10pm.

ATTEST:

_____	_____
Kelly Cochran, Commission Chair	Danielle Charchenko, Planning Commission Secretary

CITY OF ORTING

104 BRIDGE ST S, PO BOX 489, ORTING WA 98360
Phone: (360) 893-2219 FAX: (360) 893-6809
www.cityoforting.org

Planning Commission Staff Report

Project Name:	Orting Municipal Code (OMC) Update
Date of Staff Report:	July 2, 2025
Date of Meeting:	July 7, 2025
Staff Recommendation:	N/A – anticipated fall 2025
City Staff Contact:	Kim Gunderson, Community Development Director
Commerce 60-Day NOI Adopt:	Anticipated to commence August 5, 2025
Public Notice:	various – anticipated summer-fall 2025

Exhibits:

1. Title 15, Development Code Administration, Chapters 8-15, with staff recommended edits in redline

Background

The City is in need of holistic updates to the Orting Municipal Code (OMC) as they are applied by the Community Development Department (CDD). CDD staff regularly maintain a log of updates to provisions throughout the OMC needed for staff to apply the OMC consistently, apply best practice in our field, correct ambiguity, align the OMC with new or revised RCW and ICC requirements, and reflect the current goals and intentions of the Orting City Council. While OMC Titles 12, 13, and 15 were updated in December 2024, the edits that were adopted only reflected changes that implemented the 2024 Comprehensive Plan Periodic Update, as those were the only changes staff were authorized by Council to make. The body of work presented via Ord. 2025-1144 is not limited to work governed by RCW; rather, it is a voluntary effort recommended by staff to improve the readability, applicability, and defensibility of the OMC.

Staff intend to present recommended edits to OMC Title 1, Administration; Title 10, Building and Construction; Title 12, Subdivision Regulations; Title 13, Development Regulations, and; Title 15, Development Code Administration.

OMC 15-12-4(A) governs the initiation of amendments to development regulations in Orting. OMC 15-12-4(A)(1) sets forth that City Council can request an amendment to the zoning title or other official controls by requesting Orting's Planning Commission to set the matter for hearing and recommendations. At its February meeting, the City's Community and Government Affairs Committee authorized staff to

deliberate the OMC Update with the Planning Commission. Staff proposes the OMC Update follow the project schedule (Exhibit 1), which affords four workshopping sessions with the Planning Commission and all required public noticing and hearings before a recommendation is prepared by Planning Commission for Council's consideration on the matter.

Workshop Goals

Workshopping revisions to the OMC with Planning Commission is proposed to follow the schedule outlined in Exhibit 1. The goal of these workshopping sessions is to meet staff's end in amending OMC titles for which the Community Development Department is responsible for administering to be more readable, implementable, and defensible.

Schedule

The project schedule intends on affording adequate time to consider all facets of the project without rushing the exercise. The schedule intends on adopting revised OMC provisions by the end of 2025 so as to avoid dense legislative agendas for the City Council at the end of the year, and to otherwise leave space in 2026 for staff's focused efforts on the 2027 Orting Shoreline Master Program Update.

- **July 7, 2025**
  - Review and deliberate staff recommended edits to Title 15, OMC (2 of 2)
- **August 4, 2025**
  - Review and deliberate staff recommended edits to Title 13, OMC (1 of 2).
- **August 5, 2025**
  - Send Notice of Intent to Adopt to WA Department of Commerce (60-day notice period ends October 4, 2025).
- **September 4, 2025**
  - Review and deliberate staff recommended edits to Title 13, OMC (2 of 2).
- **September 5, 2025**
  - SEPA Responsible Official to issue SEPA Threshold Determination with 14-day comment period noticed to all agencies, parties of interest, and the City of Orting (comment period ends September 19; appeal period ends September 26).
- **October 6, 2025**
  - Public Hearing and Planning Commission's issuance of a recommendation for Council on whether to adopt Ord. 2025-1144.
- **October 15, 2025**
  - Staff to present City Council with Planning Commission recommendation on Ord. 2025-1144 and request public hearing be scheduled for November 12, 2025.
- **November 12, 2025**
  - Public Hearing at City Council for Ord. 2025-1144 and request for Council to adopt Ord. 2025-1144.
- **November 13, 2025 (or no later than November 22, 2025)**
  - Staff to transmit decision on adoption of Ord. 2025-1144 to WA Department of Commerce.

TITLE 15
DEVELOPMENT CODE ADMINISTRATION

CHAPTER 8
CONCURRENCY AND ADEQUACY

SECTION:

15-8-1: Intent

15-8-2: Authority

15-8-3: Exemptions

15-8-4: Concurrency Procedures

15-8-5: Check For Adequacy (Rep. by Ord. 887, 9-8-2010)

15-8-6: Approval Or Denial Of Permits

15-8-7: Concurrency Test Request Without Application

15-8-1: INTENT:

The purpose of this chapter is to ensure that public facilities and services owned, operated, or provided by the city and public facilities and services owned, operated or provided by other governments, special districts and applicable organizations within the city (these public facilities and services are recognized as "service providers") are provided simultaneous to or within a reasonable time after development occurs consistent with the capital facilities element of the comprehensive plan and Revised Code Of Washington 36.70A.070(6)(e). This chapter shall apply to all applications for development or redevelopment permit approvals that will result in:

A. More than fifteen (15) new P.M. peak hour vehicle trips; and

B. Connection to city water and~~/or~~ sanitary sewer systems. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-8-2: AUTHORITY:

The administrator or his/her designee shall be responsible for enforcing the provisions of this chapter. (Ord. 778, 10-30-2003, eff. 11-11-2003)

Commented [KG1]: @Ryan McBee and JC, this chapter will need to be carefully reviewed and edited by you both to ensure its content is current. This is much more in your wheelhouse than mine.

Commented [KG2]: JC to review and revise this chapter by 6/6

Commented [KG3]: This addition adds validity to the statement under 15-8-4(B)(2), which is that "service providers" are defined in 15-8-1.

Commented [KG4]: JC, still accurate?

15-8-3: EXEMPTIONS:

The test for concurrency shall not be required for exempted developments as specified below:

A. No Impact: Development which creates no additional impacts on public water, sanitary sewer, surface water management, streets, schools and parks are exempt from the test for concurrency. Such development includes, but is not limited to:

1. Additions, accessory structures, or interior renovations to or replacement of a residence which do not result in a change in use or increase in the number of dwelling units or residential unit equivalents;

2. Additions to or replacement of a nonresidential structure which do not result in a change in use, expansion in use, or otherwise increase demand in public facilities as defined above;

3. Temporary uses as defined in title 13, chapter 4 of this code; and

4. Demolitions.

B. Permits And Actions: The following are exempt from the test for concurrency:

1. Boundary line adjustments;

2. Temporary use permits;

3. Variances and shoreline variances;

4. Approvals pursuant to site development regulations;

5. Administrative interpretations;

6. Sign permits;

7. Street vacations;

8. Demolition permits;

9. Street use or right of way permits;

10. Clearing, grading, excavation permits;

11. Mechanical, electrical and plumbing permits;

12. Fire code permits;

13. Architectural design review approvals; and

14. Other permits as determined by the city that will not result in impacts on public services or utilities.

Commented [KG5]: This is why it's important to have a site plan review process. Use changes/expansions and their need to compensate for concurrency can be easily missed otherwise.

Commented [KG6]: JC, what does this mean? Sounds like any site development would be exempt which can't be true.

Commented [JH7R6]: delete

C. SEPA: Applications exempt from the test for concurrency are not necessarily exempt from SEPA.

D. Exemptions: The portion of any development used for any of the following purposes is exempt from the requirements of this chapter:

1. Public transportation facilities;

2. Public parks and recreational facilities; and

3. Public libraries. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-8-4: CONCURRENCY PROCEDURES:

A. Concurrency Review Procedures: Concurrency of necessary public facilities shall be determined during the processing of all nonexempt permit applications through a review process conducted by the city in consultation with the individual service providers prior to the issuance of any permit.

B. Concurrency Review; Roles:

1. The administrator shall provide the overall coordination of the test for concurrency by~~:~~

~~a.~~ n~~N~~otifying the service providers of all applications requiring a test for concurrency.

2. Service providers as defined in section 15-8-1 of this chapter shall:

a. Be responsible for providing the city with current information describing system capacities, available services, and any factors affecting the review and approval of applications;

b. Reserve the capacity needed for each application; and

c. Charge applicable fees to recover the costs of concurrency testing and monitoring their concurrency systems.

C. Capacity: For sanitary sewer and domestic water supply, only available capacity shall be used in conducting the test for concurrency. For streets, available and planned capacity may be used in conducting the test for concurrency. The adopted level of service standards outlined in the comprehensive plan shall be the basis for determining whether adequate capacity will be available.

D. Concurrency Determination: The test for concurrency is passed when the capacity of public facilities and services is equal to or greater than the capacity required to maintain the level of service standards established by the city. Approval of permit applications shall constitute certificates of concurrency. (Ord. 887, 9-8-2010)

15-8-5: CHECK FOR ADEQUACY:

(Rep. by Ord. 887, 9-8-2010)

15-8-6: APPROVAL OR DENIAL OF PERMITS:

A. Approvals: Permits which would not result in a reduction of an adopted level of service standard for a public facility or service may be approved as long as all other provisions of this code are met.

B. Denials: Permits which would result in a reduction of an adopted level of service standard for a public facility or service are subject to denial. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-8-7: CONCURRENCY TEST REQUEST WITHOUT APPLICATION:

A test for concurrency may be requested without an accompanying permit application. Any available capacity found at the time of the test cannot be reserved and no certificate of capacity will be issued. (Ord. 778, 10-30-2003, eff. 11-11-2003)

CHAPTER 9
REVIEW AND APPROVAL PROCESS

SECTION:

15-9-1: ADMINISTRATIVE APPROVALS WITHOUT NOTICE:

A. Specified: The administrator may approve, approve with conditions, or deny the following:

1. Type 1 and 2 permits as described in section 15-4-1 of this title.

2. Extension of time for approval.

3. Minor amendments or modifications to approved developments or permits. Minor amendments are those which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect: a) overall project character; b) increase the number of lots, dwelling units, or density; or c) decrease the quality or amount of open space.

Administrator's decisions under this section shall be final on the date issued, unless specified otherwise in the notice of decision, or unless appealed. (Ord. 778, 10-30-2003, eff. 11-11-2003)

Commented [KG8]: This is being added because we specify in Notices of Decision that admin decisions don't go into effect until the 15th day after the notice of decision.

15-9-2: PLANNING COMMISSION REVIEW AND RECOMMENDATION:

Planning commission decision and action authority is defined in chapter 4 of this title.

A. Staff Report: The administrator or his/her designee shall prepare a staff report on the proposed development or action summarizing the comments and recommendations of city departments, affected agencies and special districts, and evaluating the development's consistency with the comprehensive plan, development code, and other adopted plans and regulations. The staff report shall include findings, conclusions and proposed recommendations for disposition of the development application. (Ord. 778, 10-30-2003, eff. 11-11-2003)

B. Hearing: The planning commission shall conduct an open public hearing on development proposals requiring type 3a approvals ~~except for architectural design reviews~~. The purpose of public hearings is for taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the city's comprehensive plan, development code, appropriate decision criteria and other adopted plans and regulations. Notice of the planning commission hearing shall be in accordance with chapter 7 of this title. (Ord. 887, 9-8-2010)

Commented [KG9]: ADRs are Type 2a permits, they don't need to be excepted in this statement. This edit removes confusion.

C. Required Findings: The planning commission shall not approve or recommend approval of a proposed development unless it first makes the findings and conclusions consistent with the criteria set forth in titles 11, 12 and 13 of this code for the specific permit involved.

D. Recommendation: Upon completion of its review of a development proposal, the planning commission shall prepare and adopt a resolution setting forth the planning commission's findings, conclusions and recommendations and promptly forward it to the city council for consideration. The recommendation may be for approval, approval with conditions, or denial based on the findings and conclusions of subsection C of this section. Findings and conclusions pertaining to architectural design review shall become part of the decision record for planning commission approval, approval with conditions, or denial. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-9-3: CITY COUNCIL ACTION:

A. Actions: Upon receiving a recommendation from the planning commission or notice of any other matter requiring the city council's attention, the city council shall perform the following actions as appropriate:

1. Make a decision on a planning commission recommendation.

2. At the city council's discretion, hold a closed record hearing and make a decision on the following matters:

a. Appeal of administrative interpretations.

b. Appeal of administrative approvals.

c. Appeal of determinations of significance.

d. Appeal of a planning commission recommendation.

e. Other matters not prohibited by law.

B. Decisions: The city council shall make its decision by motion, resolution, or ordinance as appropriate.

1. A city council decision on a planning commission recommendation shall include one of the following actions:

a. Approve as recommended.

b. Approve with additional conditions.

c. Modify, with or without the applicant's concurrence, provided that the modifications do not:

(1) Enlarge the area or scope of the project.

(2) Increase the density or proposed building size.

(3) Significantly increase adverse environmental impacts as determined by the responsible official.

d. ~~(4)~~ Deny (reapplication or resubmittal is permitted).

e. ~~(5)~~ Deny with prejudice (reapplication or resubmittal is not allowed for 1 year).

f. ~~(6)~~ Remand for further proceedings and/or evidentiary hearing in accordance with section 15-9-7 of this chapter. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-9-4: PROCEDURES FOR OPEN RECORD PUBLIC HEARINGS:

Commented [SL10]: Is this for legislative recommendations or permit recommendations?

Commented [KG11]: KD, let's talk about this. I don't think Council should hear appeals for executive-level functions of SEPA determinations of significance, right? The former I think should be via LUPA appeal. What about appeals to planning commission recommendations?

Commented [KG12]: KD, is this even legal without a moratorium?

Commented [SL13]: Other than an appeal, what would the council deny with prejudice?

Commented [KG14]: These all read to be different actions the Council could take, not components of a modification decision. Changing the list structure.

Open record public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. The chair shall open the public hearing and, in general, observe the following sequence of events:

A. Staff Presentation: Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff.

B. Applicant Presentation: Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.

C. Public Testimony Or Comments: Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed by the chair at its discretion.

D. Rebuttal, Response Or Clarifying Statements: Rebuttal, response or clarifying statements by the staff and the applicant.

E. Deliberation: The hearing body shall close the evidentiary portion of the public hearing and shall deliberate on the matter before it. (Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1136, 12-11-2024)

15-9-5: PROCEDURES FOR CLOSED RECORD APPEALS:

Closed record appeals shall be conducted in accordance with the hearing body's rules of procedure and shall serve to provide argument and guidance for the hearing body's decision. Closed record appeals shall be conducted generally as provided for public hearings. Except as provided in section 15-9-7 of this chapter, no new evidence or testimony shall be given or received. The parties to the appeal may submit timely written statements or arguments. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-9-6: RECONSIDERATION:

A party to a public hearing or closed record appeal may seek reconsideration only of a final decision by filing a written request for reconsideration with the administrator within five (5) days of the oral or written announcement of the final decision. The request shall comply with subsection 15-10-4(B) of this title. The city council or hearing body shall consider the request at its next regularly scheduled meeting, without public comment or argument by the party filing the request. If the request is denied, the previous action shall become final. If the request is granted, the city council or hearing body may immediately revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals. Reconsideration should be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-9-7: REMAND:

In the event the city council determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the city council may, if the applicant waives the prohibition of one open public record hearing, remand the matter back to the hearing body to correct the deficiencies. The city council shall specify the items or issues to be considered and the time frame for completing the additional work. The city council may hold a public hearing on a closed record appeal only for the limited purposes identified in Revised Code ~~O~~of Washington 34.05.562(1). (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-9-8: FINAL DECISION:

A. Time: The final decision on a project permit application shall be issued within the following timeframes based on the permit application type assigned in OMC Table 15-4-1:

1. For Type 1~~, Type 2,~~ and Type 2a permit application types, the final decision shall be issued within ~~sixty five~~sixty-five (65) days from the date of the determination of completeness.

2. For Type 2 permit application types, the final decision shall be issued within one hundred (100) days from the date of the determination of completeness.

3~~2~~. For Type 3, Type 3a, Type 4, and Type 5 permit application types, the final decision shall be issued within one hundred seventy (170) days from the date of the determination of completeness.

B. Time Calculation and Exclusions: The number of days that an application is in review with the city shall be calculated from the day completeness is determined to the date a final decision is issued. The number of days required under paragraph A above shall be calculated by counting every calendar day and excluding the following time periods:

1. Any period between the day that the city has notified the applicant, in writing, that additional information is required to further process the project permit application and the day when responsive information is resubmitted by the applicant.

2. Any period after an applicant informs the city, in writing, that they would like to temporarily suspend review of the project permit application until the time that the applicant notifies the city, in writing, that they would like to resume the application.

3. Any period after an administrative appeal is filed until the administrative appeal is resolved and any additional time period provided by the administrative appeal has expired.

4. All time required for the preparation and review of an environmental impact statement.

5. Projects involving the siting of an essential public facility.

6. Subdivisions.

Commented [KG15]: We're recommending Type 2 applications require a Notice of Application. Per RCW 36.70B.080, these permits would need to be decided on within 100 days.

Commented [SL16]: is this saying that subdivisions aren't subject to the 170 day limit? Are they subject to another limit?

Commented [KG17R16]: I let this slip past me during the comp plan update; we can't codify this. The state's new laws are directly in conflict with the time limits in RCW 58.17 for plat decisions, BUT, until they pass legislation correcting their error, we have "project permit application" defined in RCW 36.70B.020 to specifically include "subdivisions, binding site plans, and planned unit developments," and RCW 36.70B.080(1)(d) saying "The time periods for local government action to issue a final decision for each type of complete project permit application or project type subject to this chapter…" and then establishing the 65/100/170 day timelines we have codified. I think we need to correct our code here - the leg had an opportunity this year to pass legislation correcting this and didn't.

~~7~~6. All time required for the administrative appeal of a SEPA determination of significance.

~~8~~7. All time required to determine landmark designations.

~~9~~8. All time required to complete street vacations.

~~10~~9. All time required to approve street use permits.

~~11. All time required to approve architectural design review.~~

~~12~~10. All scheduled extensions resulting from a request by the applicant for a joint public hearing as defined under subsection 15-9-9 B of this chapter.

~~13~~11. The time periods for the city to process a permit shall start over if an applicant proposes a change in use that adds or removes commercial or residential elements from the original application that would make the application fail to meet the determination of procedural completeness for the new use.

~~14~~12. If, at any time, an applicant informs the city, in writing, that the applicant would like to temporarily suspend the review of the project for more than sixty (60) days, or if an applicant is not responsive for more than sixty (60) consecutive days after the city has notified the applicant, in writing, that additional information is required to further process the application, an additional thirty (30) days may be added to the time periods for the city to issue a final decision for the project permit application. Any written notice from the city to the applicant that additional information is required to further process the application must include a notice that nonresponsiveness for sixty (60) consecutive days may result in thirty (30) days being added to the time for review.

~~15~~13. Annual amendments to the comprehensive plan are not subject to the requirements of this section.

~~16~~14. All time following any notice of public hearing for the subject application. (Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1136, 12-11-2024)

Commented [SL18]: Could this be more clear? I interpert it to mean that once we publish notice of a public hearing, the clock stops.

Commented [KG19R18]: That's true - we wrote this in because we didn't want to be liable if the Hearing Examiner takes forever to schedule a hearing and/or takes more than his allowed 2 weeks to issue his decision. Do you want to change this?

Commented [SL20R18]: OK, I think it is good how it is written

15-9-9: JOINT PUBLIC HEARINGS:

A. Administrator's Decision To Hold A Joint Hearing: The administrator may combine any public hearing on a development proposal with any hearing that may be held by another local, state, regional, federal, or other agency as long as: 1) the hearing is held within the city limits; and 2) the requirements of subsection C of this section are met.

B. Applicant's Request For Joint Hearing: The applicant may request that the public hearing on a development proposal be combined as long as the joint hearing can be held within the time periods set forth in this title. In the alternative, the applicant may agree to a particular schedule if that additional time is needed in order to complete the hearings.

C. Prerequisites To Joint Public Hearings: A joint public hearing may be held with another local, state, regional, federal, or other agency and the city as long as:

1. The other agency is not expressly prohibited by statute from doing so;

2. Sufficient notice of the hearing is given to each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and

3. The agency has received the necessary information about the proposed project from the applicant in enough time to hold its hearing at the same time as the local government hearing. (Ord. 778, 10-30-2003, eff. 11-11-2003)

CHAPTER 10
APPEALS

SECTION:

15-10-1: APPEAL OF ADMINISTRATIVE INTERPRETATIONS AND APPROVALS:

Type 1 and Type 2 administrative ~~approvals~~ decisions may be appealed, by applicants or parties of record, to the hearing examiner. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-10-2: APPEAL OF PLANNING COMMISSION RECOMMENDATIONS AND DECISION:

Recommendations of the planning commission may be appealed, by applicants or parties of record who participated in the planning commission hearing, to the ~~city council~~ hearing examiner. (Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1136, 12-11-2024)

15-10-3: APPEAL OF HEARING EXAMINER DECISIONS:

Decisions of the hearing examiner may be appealed to Pierce County superior court as a land use petition, by parties of record with standing to file. The appeal must be filed within twenty one (21) days after issuance of the decision, as provided for or as amended in Chapter 36.70C RCW. (Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1136, 12-11-2024)

Commented [KG21]: KG to work with Kenyon Disend on revamping the appeals chapter and how open/closed record appeals read in Table 15-4-1. What's required by law? What's recommended? **There are a lot of inconsistencies in appeal language in the OMC:** 15-4-1 does not mention closed record hearings; 15-9-3:A.2 does not list prelminary plats under closed record hearings; Title 15, Chapter 9 does not contain procedures for closed record hearings; 12-5-4 says the Council shall hold a closed record hearing to decide preliminary plats

Commented [KG22]: We also need to correct the appeals process for shoreline permits. Those go to the shoreline hearings board.

Commented [KG23]: KD, this seems like a much better process than language otherwise throughout this chapter suggesting that council should hear these appeals. Concur?

Commented [KG24]: Need to add context around how decisions of the PC (not just their recommendations) are appealed

Commented [SL25]: can this be superior court?

Commented [KG26R25]: KD?

Commented [KG27]: KG to ensure this is reflected in Tables 15-4-1 and 15-4-2

15-10-4: FILING OF APPEALS:

A. Filing: Every appeal to the city council or hearing examiner shall be filed with the administrator within ten (10) days after the date of the recommendation or decision of the matter being appealed.

B. Contents: The notice of appeal shall contain a concise statement identifying:

1. The decision being appealed.

2. The name and address of the appellant and his or her interest(s) in the matter.

3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong.

4. The desired outcome or requested changes to the decision.

5. The appeals fee. (Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1136, 12-11-2024)

15-10-5: STANDING:

Appeals to decisions made by the administrator, hearing examiner, planning commission, and city council as set forth in this title can only be made by parties of record, including, but not limited to:

A. Applicants and property owners to which a land use decision is directed;

B. Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:

1. The land use decision has prejudiced or is likely to prejudice that person;

2. That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;

3. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and

4. The petitioner has exhausted his or her administrative remedies to the extent required by law. (Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1136, 12-11-2024)

15-10-6: JUDICIAL APPEAL:

Commented [SL28]: superior court?

Commented [KG29R28]: KD?

Commented [KG30]: In working with KD on revisions to this chapter, ensure that specificity is added that shoreline permit decisions are appealed to the shoreline hearings board, not LUPA or Council

A. Authority; Time Limit: Appeals from the final decision of the city council, hearing examiner, or other city board or body involving this title or titles 12 and 13 of this code and for which all other appeals specifically authorized have been timely exhausted, shall be made to Pierce County superior court within twenty one (21) days of the date the decision or action became final, unless another time period is established by state law or local ordinance.

B. Notice: Notice of the appeal and any other pleadings required to be filed with the court shall be served on the city clerk, administrator, and city attorney within the applicable time period. This requirement is jurisdictional.

Commented [KG31]: KD, do we need to say this?

C. Costs: The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The appellant shall post an advance fee deposit with the city clerk prior to the preparation of any records. The fee deposit amount shall be specified by the city clerk. Any overage will be promptly returned to the appellant. (Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1136, 12-11-2024)

CHAPTER 11
ENFORCEMENT

SECTION:

15-11-1: ENFORCING OFFICIAL; AUTHORITY:

The administrator or his/her designee shall be the code enforcement officer responsible for enforcing this title and titles 11, 12 and 13 of this code, and the Orting Shoreline Master Program, and may adopt administrative rules to meet that responsibility. The administrator may designate or appoint other department heads, the building inspector, fire chief, chief of police or other employees or agents of the city, as appropriate, as code enforcement officers authorized to enforce this title and titles 11, 12 and 13 of this code, and the Orting Shoreline Master Program. (Ord. 912, 9-14-2011; amd. Ord. 2024-1136, 12-11-2024)

15-11-2: GENERAL PENALTY:

A. Compliance Mandatory: Compliance with the requirements of this title and titles 11, 12 and 13 of this code, the Orting Shoreline Master Program, any provision of a rule or regulation adopted pursuant thereto, and any civil regulatory order, project permit or approval granted or issued under authority of this title, titles 11, 12 or 13 of this code or the Orting Shoreline Master Program, shall be mandatory.

B. Violation; Civil Violation; Civil Infraction: Any act or omission by a person responsible for compliance with any of the provisions of this title, titles 11, 12 or 13 of this code, the Orting Shoreline Master Program, any provision of a rule or regulation adopted pursuant thereto, a civil regulatory order issued pursuant to this title, titles 11, 12 or 13 of this code, the Orting Shoreline Master Program, or any provision or condition of a project permit or approval issued or granted pursuant to this title, titles 11, 12 or 13 of this code, or the Orting Shoreline Master Program shall constitute a violation and shall be subject to enforcement as a civil infraction or civil violation pursuant to title 1, chapters 13, "Code Enforcement", and 4, "Penalties", of this code. Any act or omission by a person responsible for compliance that constitutes a failure to obtain a project permit or approval required pursuant to this title, titles 11, 12 or 13 of this code, or the Orting Shoreline Master Program, shall constitute a violation and shall be subject to enforcement as a civil infraction or civil violation pursuant to title 1, chapters 13, "Code Enforcement", and 4, "Penalties", of this code.

C. Violation; Misdemeanor: It shall be unlawful to willfully fail to comply with any provision of this title, titles 11, 12 or 13 of this code, or the Orting Shoreline Master Program, willfully fail to comply with any provision of a rule or regulation adopted pursuant thereto, willfully fail to comply with a civil regulatory order issued pursuant to this title, titles 11, 12 or 13 of this code, or the Orting Shoreline Master Program, willfully fail to obtain a project permit or approval required by this title, titles 11, 12 or 13 of this code, or the Orting Shoreline Master Program, or willfully fail to comply with a provision of a project permit or approval issued under authority of this title, titles 11, 12 or 13 of this code, or the Orting Shoreline Master Program. Such willful failure shall constitute a misdemeanor.

D. Remedies Not Exclusive: The enforcement actions authorized under this chapter shall be supplemental to those general penalties and remedies and enforcement actions that may be available at law or in equity. (Ord. 912, 9-14-2011; amd. Ord. 2024-1136, 12-11-2024)

15-11-3: VIOLATIONS SUBJECT TO ENFORCEMENT:

Violations of the development code are subject to enforcement pursuant to the provisions of title 1, chapter 13, "Code Enforcement", of this code. (Ord. 912, 9-14-2011)

15-11-4: CIVIL REGULATORY ORDER:

A. Authority: A civil regulatory order may be issued by the administrator and served upon a person responsible for compliance with the development code in accordance with title 1, chapter 13, "Code Enforcement", of this code.

B. Remedial Action: The administrator may require any lawful action reasonably calculated to avoid, abate or mitigate the violation, including, but not limited to, replacement, repair, supplementation, revegetation, rehabilitation, removal, or restoration. (Ord. 912, 9-14-2011)

15-11-5: REVIEW OF APPROVED PERMITS:

A. Review: Any activity subject to an approval or project permit granted or issued under the authority of the development code may be reviewed for compliance with the requirements of the development code, or the project permit or approval, or to determine if the action is creating a nuisance or hazard, has been abandoned, or the approval or project permit was obtained by fraud or deception.

B. Initiation Of Review: The review of activity described in subsection A of this section may be initiated by the administrator, other designated code enforcement officer, or mayor, or by petition to the administrator by three (3) owners of property located in whole or in part within the jurisdictional boundaries of the city, or three (3) residents of separate dwelling units within the jurisdictional boundaries of the city, stating their knowledge and belief as to the noncompliance, nuisance or hazard of the activity.

C. Administrator's Investigation: Upon receipt of information indicating the need for review, the administrator shall notify the person responsible for compliance, investigate the matter and, if there is found to be reasonable cause to take enforcement action, take one or more of the following actions:

1. Take enforcement action pursuant to title 1, chapters 13, "Code Enforcement", and 4, "Penalties", of this code; and/or

2. Refer the matter to the city attorney or city prosecutor for review and possible enforcement action. (Ord. 912, 9-14-2011; amd. Ord. 2024-1136, 12-11-2024)

CHAPTER 12
AMENDMENTS

SECTION:

15-12-5: Comprehensive Plan

15-12-1: PURPOSE:

The purpose of this chapter is to define types of amendments to approved permits issued under titles 11, 12, or 13 of this code, the development regulations, comprehensive plan, and other official controls and to identify procedures for those actions. Amendments to the comprehensive plan and development regulations are legislative functions separate from any permit process otherwise set forth in this chapter. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-12-2: MINOR AMENDMENT STANDARDS:

The following provisions include methods for approving minor amendments to approved permits issued under titles 11, 12, or 13 of this code:

A. Requests for minor amendments shall be in writing from the property owner or the owner's authorized agent.

B. Minor amendment applications may be circulated to any city department or agency with jurisdiction at the discretion of the administrator.

C. Minor amendments may be approved or modified with conditions of approval by the administrator, provided all of the following requirements are met and provided that any request does not amount to the need for an administrative or general variance which shall be separately applied for, if needed per title 13 chapter 6 of this code:

1. Any proposal that results in a change of use must be permitted outright in the current zone classification.

2. A change to a condition of approval does not modify the intent of the original condition.

3. The perimeter boundaries of the original site shall not be extended by more than five percent (5%) of the original lot area.

4. The proposal does not add more than ten percent (10%) gross square footage of structures on the site.

5. The proposal does not increase the overall impervious surface on the site by more than ten percent (10%).

6. Any additions or expansions approved through minor amendments that cumulatively exceed the requirements of this section shall be reviewed as a major amendment.

D. Minor amendment decisions shall be in writing and attached to the official file.

E. Copies of the decision shall be mailed to all parties of record. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-12-3: MAJOR AMENDMENTS:

Major amendments are those amendments which exceed the thresholds established for "minor amendments" set forth in OMC 15-12-2. All major amendments resulting from proposed changes to a permitted project shall require resubmittal and be subject to review and approval procedures according to the provisions of this title. (Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1136, 12-11-2024)

15-12-4: DEVELOPMENT REGULATIONS AND OTHER OFFICIAL CONTROLS:

This section is intended to provide the method for adopting amendments to the text and official map of the city's development regulations and other official controls. Requests to change a regulatory zone affecting a parcel of land, or portion of a lot, are processed under section 15-12-5 of this chapter.

A. Initiation Of Amendment: An amendment to the zoning title or other official controls may be initiated by:

1. The city council requesting the planning commission to set the matter for hearing and recommendations.

2. The planning commission with the concurrence of the administrator.

3. One or more property owners of land within the jurisdictional boundaries of the city who is/are directly affected by a proposal through a petition to the city.

4. Citizen advisory committees or organizations through a petition to the city.

B. Application Required: Application for a change to the official map or regulatory changes specific to a parcel of land or portion of a lot shall be made in writing to the administrator. Applications shall include:

1. Property owners' and agents' names, addresses, and other contact information;

2. Parcel identification number and address of the parcel or parcels;

3. Description of the requested amendment and r~~R~~eason for the ~~requested~~ change;

4. An explanation of how the proposed amendment implements the comprehensive plan; and~~and~~

5~~4~~. Other relevant information regarding the proposal.

C. Fees: As may be established by resolution of the city council.

D. Staff Report: The administrator shall prepare a written report on each amendment pending before the planning commission. The report shall be transmitted to the planning commission and to the applicant before the public hearing. Each report shall contain:

1. Any factual findings pertaining to the amendment.

2. Any comments from city departments or other agencies with jurisdiction.

3. The environmental assessment, SEPA determination and/or final environmental impact statement.

4. The staff's recommendation.

E. Public Hearing By Planning Commission: The city shall give notice and the planning commission shall hold ~~the~~ a public hearing prior to the recommendation for adoption or amendment of any official control to the city council. See section 15-9-4 of this title for hearing procedures and rules.

F. Adoption By City Council: City Council shall consider the Planning Commission's recommendation and the project record for all requested a~~A~~mendments to the development regulations or other official controls at a public hearing. The City Council may adopt, adopt with conditions, or deny a requested amendment to the development regulations or other official controls. If adopted or conditionally adopted, the requested amendment shall be adopted by the city council by ordinance after a public hearing on the planning commission's recommendation. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-12-5: COMPREHENSIVE PLAN:

This section is intended to provide the method for adopting amendments to the text and official map of the city's comprehensive plan. Comprehensive plan amendments may include, but are not limited to, policy changes; land use designation changes; level of service standard changes; addition of new analyses; addition of new elements; or other changes that are mandated by state law or determined to be in the interest of the city. Chapter 13 of this title describes the adopted comprehensive plan.

A. Initiation Of Amendment: An amendment to the comprehensive plan may be initiated by:

1. The city council requesting the planning commission to set the matter for hearing and recommendations.

2. The planning commission.

3. One or more property owners of land within the jurisdictional boundaries of the city or city residents by petition to the city.

4. Citizen advisory committees or organizations through a petition to the city.

B. Docketing Process: The comprehensive plan shall be amended no more frequently than annually, except that subarea plans may be adopted as amendments at any time and emergency comprehensive plan amendments may occur after appropriate public participation whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearing board or with the court. Amendment proposals shall be processed as follows:

1. The city shall ~~advertise~~ provide notice of the comprehensive plan amendment docketing process, inviting the public to propose amendments during a 60-day docketing period. Notice shall be provided via posting and publication; annual docketing notice shall be posted at City Hall and notification shall be published once in a local newspaper for general circulation, and on the City's website. ~~Docketing proposals shall be in the form of a letter stating the proposed changes.~~ The notice shall specify the deadline for submitting proposals and shall state that the city council shall decide which proposed amendments will be carried forward during the current cycle. Docketing proposals shall be in the form of a letter and shall include:

   a. Property owners' and agents' names, addresses, and other contact information;

   b. Parcel identification number and address of the parcel or parcels that are the subject of a requested comprehensive plan amendment;

   ~~a.~~c. Description of the requested amendment and reason for the change.

2. At the close of the 60-day proposal period, the submittals shall be reviewed by staff and sent to the city council. This list will include proposals submitted by city departments, boards and commissions, and private parties.

3. The city council shall adopt a resolution directing the administrator to proceed with the selected amendments for the current cycle. Proposed amendments that are eliminated from further consideration may be resubmitted in the next cycle.

C. Fees: The fee for an application for comprehensive plan amendment is a~~A~~s ~~may be~~ established by resolution of the city council in the current adopted fee schedule. Payment of the application fee shall be made by an applicant before the city processes the requested application.

Commented [SL32]: This feels like an incomplete statement. Who should pay the fee? is a fee a condition of having a complete application for non-city applicants?

Commented [KG33R32]: Text added to this language to add clarity

D. Staff Report: The administrator or his or her designee shall prepare a written report on each amendment pending before the planning commission. The report shall be transmitted to the planning commission and to the applicant before the public hearing. Each report shall contain:

1. Any factual findings pertaining to the amendment.

2. Any comments from city departments or other agencies with jurisdiction.

3. The environmental assessment, SEPA determination and/or final environmental impact statement.

4. The staff's recommendation.

E. Public Hearing By Planning Commission: The planning commission shall hold a public hearing prior to the recommendation for adoption or amendment of any comprehensive plan amendment to the city council. See chapter 9 of this title for hearing procedures and rules.

F. Adoption By City Council: City Council shall consider the Planning Commission's recommendation and the project record for all requested amendments to the comprehensive plan at a public hearing. The City Council may adopt, adopt with conditions, or deny a requested amendment to the comprehensive plan. If adopted or conditionally adopted, the requested amendment shall be adopted by the city council by ordinance after a public hearing on the planning commission's recommendation~~Amendments to the comprehensive plan shall be adopted by the city council by ordinance after a public hearing on the planning commission's recommendation~~.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2019-1055, 11-25-2019; Ord. 2024-1136, 12-11-2024)

Commented [SL34]: what if the planning commission doesn't recommend approval?

Commented [KG35R34]: Cocnur. Bringing down the edits I made to the last chapter adding more context on the options available to the council and their interaction with PC's recommendation.

CHAPTER 13
COMPREHENSIVE PLAN

SECTION:

15-13-1: Comprehensive Plan Adopted

15-13-1: COMPREHENSIVE PLAN ADOPTED:

A. Official Document: The Orting comprehensive plan as amended in its entirety, including but not limited to ~~land use designation maps~~all appendices, figures, tables, maps, is approved ~~in its entirety~~ as the official land use classification and development guidance document for the city.

B. Copy Available For Inspection: The adopted Orting comprehensive plan as amended, shall be avaliable on the city's website, and filed with the city clerk and shall be available for public inspection upon its effective date.

C. Filed With State: The city clerk shall transmit a copy of the comprehensive plan as adopted to the state department of commerce within ten (10) days of the effective date of its adoption, and to such other offices and agencies as may be required by law.

D. Compliance With Plan, Revisions: The planning commission shall be responsible for recommending amendments to the city development regulations to be consistent with the Orting comprehensive plan.

E. City Planning Boundary: The planning area designated in the ~~1996~~ 2024 Orting comprehensive plan as approved shall serve as the city's planning boundary until such time as it is amended by the city council. (Ord. 958, 7-9-2014; amd. Ord. 2024-1136, 12-11-2024)

Commented [SL36]: what if we amend this in 2025?

Commented [KG37R36]: I think we're ok here since the sentence ends with "until such time as it is amended." let me know if you read that differently.

CHAPTER 14
ENVIRONMENTAL REVIEW 1

SECTION:

Notes

1 1. WAC 173-806 et seq.

15-14-1: AUTHORITY:

The city adopts this chapter under the state environmental policy act (SEPA), Revised Code of Washington 43.21C.120, and the SEPA rules, WAC 197-11-904. This chapter contains the city's SEPA procedures and policies. The SEPA rules, WAC chapter 197-11,

must be used in conjunction with this chapter. In addition, Chapter 43.21C RCW should be consulted for complete information regarding SEPA.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-2: GENERAL REQUIREMENTS:

15-14-2-1: PURPOSE OF SECTION 15-14-2 AND ADOPTION BY REFERENCE:

The purpose of this section 15-14-2 is to establish a clearly understood and effective set of policies and procedures for implementing the state environmental policy act as set forth in Revised Code of Washington 43.21C. The sections of the SEPA rules hereinafter set forth by number are adopted by reference as if fully set forth. Copies of the statute and the rules (WAC chapter 197-11) shall be kept available for public inspection at city hall. This section 15-14-2 contains the basic requirements that apply to the SEPA process. The city adopts the following sections of chapter 197-11 WAC as now existing or hereinafter amended by reference:

197-11-030	Policy.
197-11-040	Definitions.
197-11-050	Lead agency.
197-11-055	Timing of the SEPA process.
197-11-060	Content of environmental review.
197-11-070	Limitations on actions during SEPA process.
197-11-080	Incomplete or unavailable information.
197-11-090	Supporting documents.
197-11-100	Information required of applicants.
197-11-158	GMA project review-Reliance on exiting plans, laws and regulations.
197-11-164	Planned actions-Definition and criteria.
197-11-	Ordinances or resolutions designating planned actions-procedures for

168	adoption.
197-11-172	Planned actions-project review.
197-11-210	SEPA/GMA integration.
197-11-220	SEPA/GMA definitions.
197-11-228	Overall SEPA/GMA integration procedures.
197-11-230	Timing of an integrated GMA/SEPA process.
197-11-232	SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
197-11-235	SEPA/GMA integration Documents.
197-11-238	SEPA/GMA integration Monitoring.
197-11-250	SEPA/Model Toxics Control Act integration.
197-11-253	SEPA lead agency for MTCA actions.
197-11-256	Preliminary evaluation.
197-11-259	Determination of nonsignificance for MTCA remedial action.
197-11-262	Determination of significance and EIS for MTCA remedial action.
197-11-265	Early scoping for MTCA remedial action.
197-11-268	MTCA interim actions.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-2-2: SEPA POLICIES:

The city designates the following general policies as the basis for the city's exercise of authority pursuant to this chapter:

A. The city shall use all practicable means, consistent with other essential considerations of state policy, as is set forth in WAC 463-47-110(b).~~to improve and coordinate plans, functions, programs and resources~~.

B. The city recognizes that each person has a fundamental and inalienable right to a healthful environment, and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

C. The city incorporates by reference all policies in the cited city codes, ordinances, resolutions and plans, and all amendments to them in effect ~~prior to the date~~at the time of of a technically complete application of any building permit or preliminary plat, or prior to issuance of a DNS or DEIS for any other action. These documents include, but are not limited to, the following: Orting comprehensive plan and incorporated elements, development code, critical area regulations, shoreline master program, uniform building code, uniform fire code, uniform plumbing code, uniform mechanical code, uniform code for abatement of dangerous buildings, floodplain management code, six (6) year transportation improvement program, storm water comprehensive plan, water and sewer utility plans and regulations, park and recreation plan, Washington state ventilation and indoor air quality code, Washington state energy code, uniform housing code.

D. Through the project review process:

1. If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies under this chapter will not be necessary on those impacts;

2. If the applicable regulations require measures that adequately address such environmental impacts, additional measures would likewise not be required under this chapter; and

3. If the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, this chapter provides the authority and procedures for additional review. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-2-3: ADDITIONAL DEFINITIONS:

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

CLOSED RECORD APPROVAL HEARING: An administrative hearing to approve or deny a project permit that is on the record to the city council following an open record predecision hearing (as defined by WAC 197-11-775 and this section 15-14-2) before the planning commission or hearing examiner.

EARLY NOTICE: The city's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal ~~(mitigated determination of nonsignificance (DNS) procedures)~~.

Commented [KG38]: This language is pulled from this WAC but is too abbreviated of a version to capture all of its language, and kind of reads senselessly because of it. Referencing the WAC to capture all relevant language.

Commented [KG39]: Right, KD? The policies we're incorporating are those in effect when complete application is made, consistent with vesting laws, right?

Commented [KG40]: Ask KD to re-write

Formatted: Highlight

OPEN RECORD HEARING: An open record hearing (as defined by WAC 197-11-775) which is held before the planning commission or hearing examiner prior to the closed record approval hearing before the city council.

ORDINANCE: The ordinance, resolution or other procedure used by the city to adopt regulatory requirements.

SEPA RULES: Chapter 197-11 WAC adopted by the department of ecology.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-2-4: DESIGNATION OF RESPONSIBLE OFFICIAL:

A. For those proposals for which the city is the lead agency, the responsible official shall be the administrator or his/her authorized designee.

B. For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that were adopted by reference in section 15-14-2-1.

C. The city shall retain all documents required by the SEPA rules (chapter 197-11 WAC) and make them available in accordance with chapter 42.56 Revised Code of Washington.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-2-5: LEAD AGENCY DETERMINATION AND RESPONSIBILITIES:

A. The city shall be the lead agency for any nonexempt action under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940, unless the lead agency has been previously determined or the city is aware that another agency is in the process of determining the lead agency.

B. When the city is the lead agency for a proposal, the administrator shall determine the responsible official designee who shall supervise compliance with the threshold determination requirements, and if an environmental impact statement (EIS) is necessary, shall supervise preparation of the EIS.

C. When the city is not the lead agency for a proposal, all departments of the city shall use and consider, as appropriate, either the determination of nonsignificance (DNS) or the final EIS of the lead agency in making decisions on the proposal. No city department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the city may conduct supplemental environmental review under WAC 197-11-600.

Commented [KG41]: Ask KD to re-write

Formatted: Highlight

Commented [KG42]: KD, we wouldn't include resolution in this definition, right?

Commented [KG43R42]: Response from City Attorney: *If you remove it, you will need to check entire Title to see if we need to substitute "resolution" or "ordinance or resolution" in any places where only "ordinance" is now written. Codes can define words in new ways. I would actually leave this as it was written.*

It is admittedly odd to define "ordinance" to include resolutions as they are clearly not the same. But defining it that way allows the word "ordinance" to do double-duty in the code to mean ordinances, resolutions or other procedure." There are instances where a regulatory requirement could be adopted by either ordinance or a resolution, so having the term "ordinance" do double-duty rather than always writing "ordinance or resolution or other procedure" works.

D. If the city receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen (15) days of receipt of the determination, or the city must petition the department of ecology for a lead agency determination under WAC 197-11-946 within the fifteen (15) day time period.

E. When the city is lead agency for a model toxic control act (MTCA) remedial action, the department of ecology shall be provided an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6), the city shall decide jointly with ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-2-6: ADDITIONAL TIMING CONSIDERATIONS:

A. For nonexempt proposals, the DNS or final EIS for the proposal shall accompany the city's staff recommendation to the appropriate advisory body, if any.

B. If the city's only action on a proposal is a decision on a ~~building permit or other license~~permit application that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of the detailed plans and specifications. Sufficient information shall be required from the applicant to enable the responsible official to adequately fulfill his responsibility under SEPA and this chapter consistent with the provisions of WAC 197-11-100 and 197-11-335, which sections are adopted by reference in this chapter. (Ord. 778, 10-30-2003, eff. 11-11-2003)

Commented [KG44]: Needs cleanup - building permits are exempt from SEPA and would not be a part of this consideration.

15-14-3: CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS:

15-14-3-1: PURPOSE OF SECTION 15-14-3 AND ADOPTION BY REFERENCE:

This section 15-14-3 contains the rules for deciding whether a proposal has a probable significant, adverse environmental impact requiring an environmental impact statement (EIS) to be prepared. This section 15-14-3 also contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections of chapter 197-11 WAC by reference, as supplemented in this section 15-14-3, noting increased flexible threshold for categorical exemptions set forth in WAC 197-11-800 are adopted as set forth in OMC 15-4-3-2:

197-11-300 Purpose of this part.

197-11-305 Categorical exemptions.
197-11-310 Threshold determination required.
197-11-315 Environmental checklist.
197-11-330 Threshold determination process.
197-11-335 Additional information.
197-11-340 Determination of nonsignificance (DNS).
197-11-350 Mitigated DNS.
197-11-355 Optional DNS process.
197-11-360 Determination of significance (DS) initiation of scoping.
197-11-390 Effect of threshold determination.
197-11-800 Categorical exemptions.
197-11-880 Emergencies.
197-11-890 Petitioning DOE to change exemptions.

(Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-3-2: FLEXIBLE THRESHOLDS FOR CATEGORICAL EXEMPTIONS:

A. The city establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(c) based on local conditions:

1. For single-family residential dwelling units in WAC 197-11-800(1)(b)(i): Up to nine (9) single-family residential dwelling units, cumulative.

2. For agricultural structures in WAC 197-11-800(1)(b)(iii): Up to ten thousand (10,000) square feet, cumulative.

3. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iv~~ii~~): Up to twelve thousand (12,000) square feet and up to forty (40) parking spaces, cumulative.

~~4. For parking lots in WAC 197-11-800(1)(b)(iv): Up to forty (40) parking spaces, cumulative.~~Repealed.

5. For landfills and excavations in WAC 197-11-800(1)(b)(v): Up to five hundred (500) cumulative cubic yards.

B. Whenever the city establishes new exempt levels under this section, it shall send them to the department of ecology, headquarters office, Olympia, WA 98504, under WAC 197-11-800(1)(c).

Commented [KG45]: Does the city have an interest in expanding exemptions for multifamily? State law right now exempts 4 multifamily units from SEPA - the city could adopt flexible exemptions up to 200 multifamily units.

Commented [KG46]: Adding specificity. This subsection of the WAC is specific to SFRs, not all residential unit types.

Commented [KG47]: Correcting this scrivener's error - subsection ii discusses multifamily exemptions, not ag.

Commented [KG48]: Correcting this scrivener's error - subsection iii discusses ag, not offices/commercial/schools.

Commented [KG49]: This is already stated in item 3 above.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-3-3: EMERGENCIES:

Actions which must be undertaken immediately, or within a time frame too short to allow full compliance with this chapter, to avoid an immediate threat to public health and safety, to prevent an immediate danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt from the procedural requirements of this chapter (WAC 197-11-800). The responsible official shall determine on a case by case basis emergency actions which satisfy the general requirements of this section 15-14-3.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-3-4: USE OF EXEMPTIONS:

A. Each department within the city that receives an application for a ~~license~~permit, or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the ~~license~~ action requested in the permit application and/or the proposal is exempt. The department's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The City shall not require completion of an environmental checklist for an exempt proposal. In addition, the city is not required to document that a proposal is categorically exempt. The city may note on an application that a proposal is categorically exempt or place such a determination in the agency's files.

B. In determining whether or not a proposal is exempt, the responsible official shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the city shall determine the lead agency even if the license application that triggers the city's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The city shall not give authorization for:

a. Any nonexempt action;

b. Any action that would have an adverse environmental impact; or

c. Any action that would limit the choice of reasonable alternatives as the term is defined in WAC 197-11-786 and as the term applies;

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

3. The city may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-3-5: ENVIRONMENTAL CHECKLIST:

A. A completed environmental checklist in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license certificate, or other approval not specifically exempted in this chapter; except, a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency and, if the city is the lead agency, for determining the responsible official and for making the threshold determination.

B. For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

C. The city may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, at the applicant's costs under the current fee schedule, if either of the following occurs:

1. The city has technical information on a question or questions that is unavailable to the private applicant; or

2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

D. For projects submitted as planned actions under WAC 197-11-164, the city shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the department of ecology to allow at least a thirty (30) day review prior to use.

E. During the review of the environmental checklist, the City may make such changes or additions to the environmental checklist as are necessary to make it an accurate statement. Alternatively, the City may return the checklist to the applicant for revisions and/or additional information.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-3-6: MITIGATED DNS:

Commented [SL50]: Left off here

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions or mitigation measures attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a determination of significance (DS) is likely under WAC 197-11-3650. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

2. Precede the city's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within fifteen (15) calendar days unless otherwise agreed to. The response shall:

1. Be written; and

2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the city to consider a DS; and

3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

E. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen (15) days of receiving the changed or clarified proposal:

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a DNS under WAC 197-11-340(2);

2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate;

3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot stormwater retention pond at Y location" are adequate; and

4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

F. Any mitigated DNS issued under WAC 197-11-340(2) shall require a fourteen (14) day comment period and public notice, or WAC 197-11-355, which may require no additional comment period beyond the comment period on the notice of application.

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city.

H. If the City's tentative decision on the permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the City should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

I. The city's written response under subsection C of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications of changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-3-7: OPTIONAL DNS PROCESS:

A. If the responsible official has a reasonable basis for determining that significant adverse environmental impacts are unlikely, or that mitigation measures have been identified that will reduce impacts to a nonsignificant level, the responsible official may elect to use the single integrated comment period set forth in this section. If this process is used, a second comment period will typically not be required when the DNS is issued.

B. If the optional process set forth in this section is used, the responsible official shall~~:~~

~~1. State on the first page of the notice of application that it expects to issue a DNS for the proposal, and that:~~

~~a. The optional DNS process is being used;~~

~~b. This may be the only opportunity to comment on the environmental impacts of the proposal;~~

~~c. The proposal may include mitigation measures under applicable codes, and the project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared; and~~

~~d. A copy of the subsequent threshold determination for the specific proposal may be obtained upon request (in addition, the city may maintain a general mailing list for threshold determination distribution);~~

~~2. List in the notice of application the conditions being considered to mitigate environmental impacts, if a mitigated DNS is expected;~~

~~3. Comply with the requirements for a notice of application and public notice in Orting Municipal Code chapter 15-7; and~~

~~4. Send the notice of application and environmental checklist to:~~

~~a. Agencies with jurisdiction, the Department of Ecology, affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal; and~~

~~b. Anyone requesting a copy of the environmental checklist for the specific proposal (in addition, the city may maintain a general mailing list for checklist distribution).~~

~~C. If the responsible official indicates on the notice of application that a DNS is likely, an agency with jurisdiction may assume lead agency status during the comment period on the notice of application in accordance with WAC 197-11-948.~~

~~D. The responsible official shall consider timely comments on the notice of application and either:~~

~~1. Issue a DNS or mitigated DNS with no comment period using the procedures in subsection E of this section;~~

~~2. Issue a DNS or mitigated DNS with a comment period using the procedures in subsection E of this section, if the responsible official determines a comment period is necessary;~~

~~3. Issue a DS; or~~

~~4. Require additional information or studies prior to making a threshold determination.~~

~~E. If a DNS or mitigated DNS is issued under subsection (D)(1) or (D)(2) of this section, the responsible official shall send a copy of the DNS or mitigated DNS to the Department of Ecology, agencies with jurisdiction, those who commented, and anyone requesting a copy. A copy of the environmental checklist need not be recirculated~~ adhere to all requirements set forth in WAC 197-11-355, which is hereby adopted by reference.

Commented [KG51]: All of the language here is directly out of this WAC. Referencing the WAC to improve code readability.

(Ord. 2024-1126, 4-10-2024)

15-14-4: ENVIRONMENTAL IMPACT STATEMENT (EIS):

15-14-4-1: PURPOSE OF SECTION 15-14-4 AND ADOPTION BY REFERENCE:

This section 15-14-4 contains the rules for preparing environmental impact statements. The city adopts the following sections of chapter 197-11 WAC by reference as supplemented by this section 15-14-4:

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

(Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-4-2: PREPARATION OF EIS:

A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and chapter 197-11 WAC.

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

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply

information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the city may request under another ordinance or statute.)

D. Fees shall be paid in accordance with section 15-14-9-3.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-4-3: ADDITIONAL ELEMENTS:

The following additional elements are not part of the environment for the purpose of EIS content, ~~but~~ and should be weighed and considered only when analyzing alternatives and making final decisions.~~do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter:~~

A. Economy;

B. Cost benefit analysis;

C. Social policy analysis. (Ord. 778, 10-30-2003, eff. 11-11-2003)

Commented [KG52]: KD - please weigh in. These read averse to WAC 197-11-448(3) to me. Your thoughts?

Commented [KG53R52]: Response and in-text edits from City Attorney:
WAC 197-11-448(3) says economy, cost benefit analysis, and social policy are not required to be part of the content of an EIS. The present 15-14-4-3 is adding a requirement not in the WACs. I see no reason for the City to do that.

I recommend deleting 15-14-4-3 completely. If you decide to keep it, see my edits.

15-14-5: COMMENTING:

15-14-5-1: PURPOSE:

This section 15-14-5 contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings.

15-14-5-2: ADOPTION BY REFERENCE:

The city adopts the following sections of WAC 197-11 by reference:

197-11-500 Purpose of this part.
197-11-502 Inviting comment.
197-11-504 Availability and cost of environmental documents.
197-11-508 SEPA register.
197-11-510 Public notice.
197-11-535 Public hearings and meetings.
197-11-545 Effect of no comment.
197-11-550 Specificity of comments.
197-11-560 FEIS response to comments.

197-11-570 Consulted agency costs to assist lead agency.

(Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-5-3: PUBLIC NOTICE:

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

B. Whenever the city issues a DNS under WAC 197-11-340(2), a mitigated DNS under WAC 197-11-350, or a DS under WAC 197-11-360, the city shall give public notice as follows:

1. If an environmental document and/or threshold determination is issued concurrently with the notice of application using the options DNS process, the public notice requirements for the notice of application in Revised Code of Washington 36.70B.110(4) will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).

2. If no public notice is otherwise required for the permit or approval, the city shall give notice of the DNS or DS by:

a. Posting the property, and posting in the city hall; and

b. Publishing notice in the city's newspaper of record.

3. Whenever the city issues a DS under WAC 197-11-360(3), the city shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

4. Any notice must be sent to the Department of Ecology for inclusion on the department's SEPA register website.

5. If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.

~~C. If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in Revised Code of Washington 36.70B.110(4) as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1)(b).~~ Repealed.

Commented [KG54]: This is already stated above in B.1 of this section.

D. Whenever the city issues a ~~D~~draft EIS (DEIS) under WAC 197-11-455 or a supplemental ~~S~~EIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. Indicating the availability of the DEIS in any public notice required for a nonexempt license; and

2. Posting the property, for site specific proposals; or posting in city hall, for ~~nonsite~~ site unspecific proposals; and

3. Publishing notice in the city's newspaper of record.

E. Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).

F. The city may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense. In the event that the city completes all public notice requirements for the applicant's proposal, the cost of all public noticing shall be borne by the applicant.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-5-4: OFFICIAL TO PERFORM CONSULTED AGENCY RESPONSIBILITIES:

A. The responsible official shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The responsible official shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-6: USING EXISTING ENVIRONMENTAL DOCUMENTS:

15-14-6-1: PURPOSE:

This section 15-14-6 contains rules for using and supplementing existing environmental documents prepared under SEPA or national environmental policy act (NEPA) for the city's own environmental compliance. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-6-2: ADOPTION BY REFERENCE:

The city adopts the following sections of WAC 197-11 by reference:

197-11-164	Planned actions--Definition and criteria.

197-11-168	Ordinances or resolutions designating planned actions--Procedures for adoption.
197-11-172	Planned actions--Project review.
197-11-600	When to use existing environmental documents.
197-11-610	Use of NEPA documents.
197-11-620	Supplemental environmental impact statement--Procedures.
197-11-625	Addenda--Procedures.
197-11-630	Adoption--Procedures.
197-11-635	Incorporation by reference--Procedures.
197-11-640	Combining documents.

(Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-7: SEPA AND AGENCY DECISIONS:

15-14-7-1: PURPOSE:

This section 15-14-7 contains rules and policies for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This section 15-14-7 also contains procedures for appealing SEPA determinations to agencies or the courts. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-7-2: ADOPTION BY REFERENCE:

The city adopts the following sections of WAC 197-11 by reference:

197-11-650 Purpose of this part.

197-11-655 Implementation.
197-11-660 Substantive authority and mitigation.
197-11-680 Appeals.
197-11-721 Closed record appeal.
197-11-722 Consolidated appeal.

(Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-7-3: SUBSTANTIVE AUTHORITY:

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city of Orting.

B. The city may attach conditions to a permit or approval for a proposal so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared with regard to the license or permit and pursuant to this chapter; and

2. Such conditions are in writing; and

3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

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

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

3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

D. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

1. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

2. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

3. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

4. Preserve important historic, cultural, and natural aspects of our national heritage;

5. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

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

7. Enhance the quality of a renewable resource and approach the maximum attainable recycling of depletable resources.

E. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

F. The city designates and adopts by reference all policies in the cited city codes, ordinances, resolutions and plans, and all amendments to them in effect prior to the date of a technically complete application of any building permit or preliminary plat, or prior to issuance of a DNS or DEIS for any other action.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-7-4: NOTICE; STATUTE OF LIMITATIONS:

A. The city, applicant for, or proponent of an action may publish a notice of action pursuant to Revised Code of Washington 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published pursuant to Revised Code of Washington 43.21C.080. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-7-5: SEPA APPEALS:

A. Purpose: It is the purpose of this chapter to combine environmental considerations with public decisions, and for this reason, any appeal brought under this chapter shall be linked to a specific governmental action. Appeals under this chapter are not intended to create a cause of action unrelated to a specific governmental action.

B. Procedures: The appellate procedures provided for by Revised Code of Washington 43.21C.060, which provides for an appeal to a local legislative body of any decision by a nonelected official conditioning or denying a proposal under authority of SEPA, are formally eliminated. The administrative appeal procedures provided by this section 15-14-7 shall be construed consistently with Revised Code of Washington 43.21.075, chapter 36.70B, and WAC 197-11-680(3).

C. Limited Actions: Appeals under the provisions of this section 15-4-7 shall be limited solely to those actions and/or determinations listed below. No administrative appeals shall be allowed for other actions and/or determinations taken or made pursuant to this chapter (such as lead agency determination, scoping, draft EIS adequacy, etc.).

1. "Procedural appeals" which shall consist of an appeal of the responsible official's compliance with the provisions of SEPA, the SEPA rules, and this chapter with respect to the following:

a. Determination of nonsignificance;

b. Determination of significance;

c. Adoption or issuance of a final environmental impact statement.

2. "Substantive appeals" which shall consist of an appeal of an action or omission with respect to the conditioning or denying of a proposal under the substantive authority set forth in section 15-14-7-3 of this chapter.

D. Consolidation: Except as provided in subsection E of this section, an appeal under this section shall consolidate any SEPA appeal with a hearing or appeal on the underlying governmental action in a single simultaneous hearing before the hearing examiner or body. The hearing or appeal shall be one at which the hearing examiner or body will consider either the agency's decision or a recommendation on the proposed underlying governmental action. If no hearing or appeal on the underlying governmental action is otherwise provided, then no SEPA appeal is allowed under this section, except as allowed under subsection E of this section.

E. Exceptions To Consolidation: The following appeals of SEPA procedural or substantive determinations need not be consolidated with a hearing or appeal on the underlying governmental action:

1. An appeal of a determination of significance;

2. An appeal of a procedural determination made by the city when the city is a project proponent, or is funding a project, and chooses to conduct its review under this chapter, including any appeals of its procedural determinations, prior to submitting an application for a project permit;

3. An appeal of a procedural determination made by the city on a nonproject action.

F. Written Notice: All procedural and substantive SEPA appeals provided under this section shall be initiated by filing a written notice of SEPA administrative appeal with the

Commented [KG55]: Who is the hearing body on an administrative appeal to SEPA? Is it Scott? (looking for KD to weigh in here)

Commented [KG56]: KD, do we want to reference this RCW when the other RCW/WAC listed here in pointedly relevant to SEPA appeals?

responsible official, accompanied with the applicable appeal fee. No additional appellate fee shall be charged in conjunction with a hearing on the underlying permit or approval.

1. The notice of appeal required by this section shall include, at a minimum:

a. The name and address of the party or agency filing the appeal;

b. An identification of the specific proposal and specific SEPA actions, omissions, conditions or determinations for which appeal is sought;

c. A statement of the particular grounds or reasons for the appeal.

2. The responsible official shall arrange to conduct the SEPA appeal in conjunction with a hearing or appeal on the underlying permit or approval, where required to consolidate the SEPA appeal with a hearing on the underlying governmental action. Where consolidation is not required, the responsible official shall schedule the hearing to be conducted within ninety (90) days of the date of filing the notice of appeal, and payment of fee.

G. SEPA Procedural Appeals: SEPA procedural appeals shall be initiated and conducted in the manner set forth below:

1. An appeal to the issuance of a determination of nonsignificance (DNS), mitigated determination of nonsignificance (MDNS), may be filed by any agency or aggrieved person as follows:

a. For proposals which may be approved by an administrative official without public hearing, an appeal shall be filed within ten (10) calendar days following the last day of the comment period. Such SEPA appeal shall be heard in conjunction with the appeal of the underlying permit or approval, where such appeal is allowed. Provided that, if no administrative appeal of the underlying permit or approval is otherwise provided for, and consolidation is not required by subsection D of this section, an appeal of the DNS/FEIS shall be heard and decided in an open record hearing by the hearings examiner. The decision of the hearing examiner on the SEPA procedural appeal shall be final and not subject to further administrative appeal.

b. For proposals which may only be approved by open record hearing or open record predecision hearing (recommendation) before the hearing examiner ~~or planning commission~~, an appeal shall be filed within ten (10) calendar days following the last day of the comment period, or where no comment period is required, then within ten (10) days following the date of issuance or adoption of the DNS/FEIS, and shall be heard and decided in open record hearing by the hearing examiner or planning commission in conjunction with the decision or recommendation on the underlying proposal. The decision of the hearing examiner or planning commission on the SEPA procedural appeal shall be final and not subject to further administrative appeal.

2. An appeal to a determination of significance (DS) may be filed by the applicant within ten (10) days of the issuance of the DS/scoping notice. The appeal shall be heard in

Commented [KG57]: KD, is this the right appeals body?

Commented [KG58R57]: Response from City Attorney: *It is atypical to have SEPA appeals heard by the planning commission. I'm not sure why both the hearing examiner and planning commission are listed here, and what specific type of appeals the code assigns to one vs the other (that would take additional research). Regardless, I recommend not to have the planning commission hearing SEPA appeals. I would delete "planning commission". I am unsure, however, what other code sections would have to be amended to effectuate such a change.*

open record hearing and decided by a hearing examiner, whose decision shall be final and not subject to further administrative appeal.

3. An appeal must be filed within ten (10) days of issuance of the final environmental impact statement (FEIS).

4. The SEPA procedural determination of the responsible official shall be entitled to substantial weight, and the appellant shall bear the burden to establish a violation of SEPA, the SEPA rules, or the provisions of this chapter.

5. A SEPA procedural determination shall be deemed to be conclusively in compliance with SEPA, the SEPA rules, and the provisions of this chapter, unless a SEPA procedural appeal is filed in accordance with this section 15-14-7.

H. SEPA Substantive Appeals: SEPA substantive appeals shall be initiated and conducted in the manner set forth below:

1. For proposals subject to final administrative action, approval, or recommendation by a nonelected administrative official or tribunal for which no administrative appeal is otherwise provided, and for which consolidation is not required by subsection D of this section, any agency or aggrieved person may file a substantive SEPA appeal within ten (10) days of the issuance of the administrative decision approving, conditioning, or denying the proposal on the basis of substantive SEPA authority. Such substantive SEPA appeal shall be heard and decided by the hearing examiner in an open record hearing, unless the proposal is a project permit which has been subject to a previous open record hearing, in which case the SEPA appeal hearing shall be a closed record hearing. The substantive SEPA appeal shall be heard in conjunction with any procedural SEPA appeal. The decision of the hearing examiner on the SEPA substantive appeal shall be final and not be subject to further administrative appeal.

2. For all proposals subject to final administrative action, approval, or recommendation, by a nonelected administrative official, for which an administrative appeal or further approval hearing is otherwise provided or required, any agency or aggrieved person may file a substantive SEPA appeal within ten (10) days of the issuance of the administrative decision approving, conditioning, or denying the proposal on the basis of substantive SEPA authority. Provided that, if the proposal is a project permit, a substantive SEPA appeal shall be filed within ten (10) days after issuance of the notice of decision. Any substantive SEPA appeal shall be conducted in the same manner and with the same process as otherwise provided for the appeal or approval hearing of the underlying administrative action.

3. The SEPA substantive determination to condition or deny a proposal shall be deemed to be conclusively in compliance with SEPA, the SEPA rules, and the provisions of this chapter, unless a SEPA substantive appeal is filed in accordance with this section 15-14-7.

I. How To Appeal: The appeal must be in the form of a written notice of appeal, and must contain a brief and concise statement of the matter being appealed, the specific

components or aspects that are being appealed, the appellant's basic rationale or contentions on appeal, and a statement demonstrating standing to appeal. The appeal may also contain whatever supplemental information the appellant wishes to include. The appeal shall also contain the following:

1. The name and mailing address of the appellant and the name and address of his/her representative, if any;

2. The appellant's legal residence or principal place of business;

3. A copy of the decision which is appealed;

4. The grounds upon which the appellant relies;

5. A concise statement of the factual and legal reasons for the appeal;

6. The specific nature and intent of the relief sought;

7. A statement that the appellant has read the appeal and believes the contents to be true, followed by his/her signature and the signature of his/her representative, if any. If the appealing party is unavailable to sign the appeal, it may be signed by his/her representative.

J. Fees: The person filing the appeal shall include with the letter of appeal the fee as established by ~~ordinance~~ resolution.

K. Procedures For Appeal Hearing:

1. Notice Of The Appeal Hearing.

a. Content: The responsible official shall prepare a notice of the appeal containing the following:

(1) The file number and a brief written description of the matter being appealed.

(2) A statement of the scope of the appeal including a summary of the specific factual findings and conclusions disputed in the letter of appeal.

(3) The time and place of the public hearing on the appeal.

(4) A statement of who may participate in the appeal.

(5) A statement of how to participate in the appeal.

b. Distribution: At least fifteen (15) calendar days before the hearing on the appeal, the responsible official shall send a copy of this notice to each person who received a copy of the threshold determination and any person who submitted written comments on, or an appeal of, the threshold determination.

c. Notice Of Appeal: The notice of appeal may be combined with the hearing notice for the underlying project permit, if applicable.

L. Participation In The Appeal: Only those persons with legal standing are entitled to appeal the threshold determination and may participate in the appeal. Participation includes the following:

1. By submitting written testimony to the responsible official the time line established.

2. By appearing in person, or through a representative, at the hearing and submitting oral or written testimony directly to the hearing body. The hearing body may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

M. Staff Report On The Appeal:

1. Content: The responsible official shall prepare a staff report containing the following:

a. The SEPA threshold determination.

b. All written comments submitted to the responsible official.

c. The letter of appeal.

d. All written comments on the appeal received by the responsible official from persons entitled to participate in the appeal and within the scope of the appeal.

e. An analysis of the specific factual findings and conclusions disputed in the letter of appeal.

2. Combining Of Reports: This report may be combined with the staff report on the underlying project permit, if applicable.

3. Distribution: Distribution will take place at least seven (7) calendar days before the hearing, the responsible official shall distribute copies of the staff report as follows:

a. A copy will be sent to the hearing body hearing the appeal as specified.

b. A copy will be sent to the applicant.

c. A copy will be sent to the person who filed the appeal.

N. Continuation Of The Hearing: The hearing body may continue the hearing if, for any reason, it is unable to hear all of the public comments on the appeal or if it determines that it needs more information within the scope of the appeal. If, during the hearing, the hearing body announces the time and place of the next hearing on the matter, no further notice of that hearing need be given, beyond that required by the open public meeting act.

O. Decision On The Appeal:

1. General: The hearing body shall consider all information and material within the scope of the appeal submitted by persons entitled to participate in the appeal. The hearing body shall either affirm or change the findings and conclusions of the responsible official that were appealed. Based on the hearing body's findings and conclusions, it shall either:

a. Affirm the decision being appealed; or

b. Reverse the decision being appealed; or

c. Modify the decision being appealed.

2. Issuance Of Written Decision: Within ten (10) working days after the public hearing, the hearing body shall issue a written decision on the appeal. Within four (4) calendar days after the decision is issued, the hearing body shall distribute the decision as follows:

a. A copy will be mailed to the applicant.

b. A copy will be mailed to the person who filed the appeal.

c. A copy will be mailed to all other persons of record or agencies who participated in the appeal.

P. Additional Appeal Procedures:

1. The matters to be considered and decided upon in the appeal are limited to the matters raised in the notice of appeal.

2. The decision of the responsible official shall be accorded substantial weight.

3. All testimony will be taken under oath.

4. The decision of the hearing body hearing the appeal shall be the final decision on any appeal of a threshold determination including a mitigated determination of nonsignificance.

Q. Dismissal Of Appeal: The hearing examiner may summarily dismiss an appeal without hearing when such an appeal is determined by the hearing examiner to be without merit on its face, frivolous, or brought merely to secure a delay, or that the appellant lacks legal standing to appeal.

R. Effect Of Appeal: The filing of an appeal of a threshold determination or adequacy of a final environmental impact statement (FEIS) shall stay the effect of such determination or adequacy of the FEIS and no major action in regard to a proposal may be taken during the pendency of an appeal and until the appeal is finally disposed of by the hearing examiner or other hearing body. A decision to reverse the determination of the responsible official and uphold the appeal shall further stay any decision, proceedings, or actions in regard to approval.

S. Withdrawal Of Appeal: An appeal may be withdrawn, only by the appellant, by written request filed with the responsible official who shall inform the hearing examiner or other hearing body of the withdrawal request. If the withdrawal is requested before the response of the responsible official, or before serving notice of the appeal, such request shall be permitted and the appeal shall be dismissed without prejudice by the hearing examiner or other hearing body, and the filing fee shall be refunded.

T. Standard Of Review: The hearing examiner or other hearing body may affirm the decision of the responsible official or the adequacy of the environmental impact statement, or remand the case for further information; or the hearing examiner or other hearing body may reverse the decision if the administrative findings, inferences, conclusions, or decisions are:

1. In violation of constitutional provisions as applied; or

2. The decision is outside the statutory authority or jurisdiction of the city; or

3. The responsible official has engaged in unlawful procedure or decision making process, or has failed to follow a prescribed procedure; or

4. In regard to challenges to the appropriateness of the issuance of a DNS clearly erroneous in view of the public policy of the act (SEPA); or

5. In regard to challenges to the adequacy of an EIS shown to be inadequate employing the "rule of reason".

U. Evidence; Burden Of Proof: In each particular proceeding, the appellant shall have the burden of proof, and the determination of the responsible official shall be presumed prima facie correct and shall be afforded substantial weight. Appeals shall be limited to the records of the responsible official.

V. Judicial Appeal:

1. Any available administrative appeal provided under this section must be utilized by an agency or aggrieved person prior to initiating judicial review of any SEPA action, omission, or determination made or taken under this chapter.

2. A judicial appeal of any SEPA action, omission, or determination made or taken under this chapter must be filed within the time limitations established by any statute or ordinance for appeal of the underlying governmental action.

3. The city shall give official notice of the date and place for commencing a judicial appeal, in accordance with WAC 197-11-680(5), where there is a statute or ordinance establishing a time limit for commencing judicial appeal. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-8: DEFINITIONS:

15-14-8-1: PURPOSE:

This section 15-14-8 contains uniform usage and definitions of terms under SEPA. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-8-2: ADOPTION BY REFERENCE:

The city adopts the following sections of chapter 197-11 of the Washington administrative code by reference:

197-11-700 Definitions.
197-11-702 Act.
197-11-704 Action.
197-11-706 Addendum.
197-11-708 Adoption.
197-11-710 Affected tribe.
197-11-712 Affecting.
197-11-714 Agency.
197-11-716 Applicant.
197-11-718 Built environment.
197-11-720 Categorical exemption.
197-11-721 Closed record appeal.
197-11-722 Consolidated appeal.
197-11-724 Consulted agency.
197-11-726 Cost-benefit analysis.
197-11-728 County/city.
197-11-730 Decision maker.
197-11-732 Department.
197-11-734 Determination of nonsignificance (DNS).
197-11-736 Determination of significance (DS).
197-11-738 EIS.
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.

197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 NEPA.
197-11-774 Nonproject.
197-11-775 Open record hearing.
197-11-776 Phased review.
197-11-778 Preparation.
197-11-780 Private project.
197-11-782 Probable.
197-11-784 Proposal.
197-11-786 Reasonable alternative.
197-11-788 Responsible Official.
197-11-790 SEPA.
197-11-792 Scope.
197-11-793 Scoping.
197-11-794 Significant.
197-11-796 State agency.
197-11-797 Threshold determination.
197-11-799 Underlying governmental action.

(Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-9: AGENCY COMPLIANCE:

15-14-9-1: PURPOSE:

This section 15-14-9 contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-9-2: ADOPTION BY REFERENCE:

The city adopts the following sections of WAC 197-11 by reference:

197-11-900	Purpose of this part.
197-11-902	Agency SEPA policies.
197-11-904	Agency SEPA procedures.
197-11-906	Content and consistency of agency procedures.
197-11-908	Critical Areas.
197-11-910	Designation of responsible official.
197-11-912	Procedures of consulted agencies.
197-11-916	Application to ongoing actions.
197-11-920	Agencies with environmental expertise.
197-11-922	Lead agency rules.
197-11-924	Determining the lead agency.
197-11-926	Lead agency for governmental proposals.
197-11-928	Lead agency for public and private proposals.
197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a County/c~~C~~ity.
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a County/city, and one or more state agencies.
197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-938	Lead agencies for specific proposals.
197-11-940	Transfer of lead agency status to a state agency.
197-11-	Agreements on lead agency status.

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197-11-944 Agreements on division of lead agency duties.

197-11-946 DOE resolution of lead agency disputes.

197-11-948 Assumption of lead agency status.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-9-3: FEES:

Commented [KG59]: NEED TO ADD SEPA APPEAL TO 2026 FEE SCHEDULE

For the purpose of reimbursing the city for necessary costs and expenses relating to its compliance with the SEPA rules and this chapter, the following schedule of fees is established (in addition to the fees in the city's master fee schedule):

A. Threshold Determination: For every environmental checklist the city will review when it is lead agency, the city shall collect a fee as required by the city fee schedule from the proponent of the proposal prior to undertaking the threshold determination. In addition, for a threshold determination which requires information in addition to that contained in or accompanying the environmental checklist, the city shall collect a fee from the proponent in an amount equal to the actual costs and expenses incurred by the city in conducting any studies or investigations necessary to provide such information. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fees required by this subsection.

B. Environmental Impact Statement:

1. For all projects requiring an EIS for which the city is the lead agency and for which the responsible official determines that the EIS shall be prepared by the employees of the city, or that the city will contract directly with a consultant or consultants for the preparation of an EIS, the city shall collect from the proponent a fee in an amount equal to the actual costs and expenses incurred by the city in preparing the EIS. Such fee shall also apply when the city determines that the applicant may prepare the EIS, and the responsible official determines that substantial revisions or reassessing of impacts must be performed by employees of the city or city consultants to ensure compliance with the provisions of the SEPA guidelines and this chapter.

2. If the responsible official determines that an EIS is required, and that the EIS shall be prepared by employees of the city or by a consultant or consultants retained by the city, or that the applicant-prepared EIS shall be substantially rewritten by employees of the city, the applicant shall be advised by the responsible official of the estimated costs and

expenses of preparing or rewriting the EIS prior to actual preparation or rewriting, and the applicant shall post a bond or otherwise insure payment of such costs and expenses. A consultant or consultants may be recommended by the applicant. The final decision to hire a consultant or consultants shall be made by the city council.

3. All fees owed to the city under this section shall be paid in full by the applicant prior to final action by the city on the project. Any fee owed to the city under this subsection B shall be paid by the applicant prior to the initiation of actual preparation of an EIS (if required) or actual rewriting of an applicant-prepared EIS by the city or its consultant(s). For all EISs involving multiple applicants, the cost of preparation shall be divided among the applicants according to the nature, amount, and type of work to be performed. The city shall ask the EIS consultant to estimate the costs related to the portion of the EIS associated with each application. The city shall make the final decision on the costs to be billed to each applicant, regardless of whether the EIS is prepared by a consultant or the city. If an applicant disputes the amount of the fee, the fee may be paid under protest and without prejudice to the applicant's right to file a claim and bring an action to recover the fee.

4. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under this subsection B which remain after incurred costs are paid.

C. Cost Of Notice: The city ~~may~~ shall collect from the applicant the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

D. Performance Fee: The city shall not collect a fee for performing its duties as a consulted agency.

E. Copies: The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by chapter 42.~~17~~ 56 Revised Code of Washington.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2024-1126, 4-10-2024)

15-14-10: FORMS:

15-14-10-1: PURPOSE:

The purpose of this section 15-14-10 is to provide for uniform submittal of information on standardized forms and applications. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-10-2: ADOPTION BY REFERENCE:

The city adopts the following forms and sections of the Washington administrative code by reference:

Commented [SL60]: can this be the Mayor or their designee?

Commented [KG61R60]: Response from City Attorney: *It depends on what level of authority is held by the mayor to approve contracts and up to what amount. It could be made by the mayor but maybe not under all circumstances. A full EIS on a big project can be expensive. It's probably safer to leave this language as is with the decision made by Council.*

Commented [KG62]: I believe this should be referencing the public records act. 42.17A governs Campaign Disclosure and Contribution.

Commented [KG63R62]: Response from City Attorney: *I agree. RCW 42.17 doesn't make sense here, and RCW 42.56 does make sense.*

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

(Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-11: SEVERABILITY:

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected. (Ord. 778, 10-30-2003, eff. 11-11-2003)

CHAPTER 15
DEVELOPMENT AGREEMENTS

SECTION:

15-15-1: Authority And General Provisions

15-15-2: General Provisions

15-15-3: Enforceability; Vesting

15-15-4: Approval Procedure

15-15-5: Form Of Agreement, Council Approval, Recording

15-15-1: AUTHORITY AND GENERAL PROVISIONS:

In addition to the provisions of title 9, chapter 4 of this code the following provisions may be used to set forth binding agreements between the city and project proponents to bind them to specific project requirements:

A. The city may consider, and enter into, a development agreement related to a project permit application with a person having ownership or control of real property within the city limits. The city may consider a development agreement for real property outside of the city limits but within the urban growth area (UGA) as part of a proposed annexation or a service agreement. Notably, the city has no UGA as of the date of this ordinance adoption.

Commented [SL64]: My understanding is that most municipalities are moving away from Development Agreements, why is that and should we be considering moving away from them as well?

Commented [KG65R64]: I wouldn't shy away from DAs for a few reasons. 1) they're totally voluntary for the city to enter into. We're not obligated to agree to unappetizing terms, so we're not taking any risk beyond what we're comfortable agreeing to. 2) they're a means to attract big development, and that may be in the city's interest someday. 3) it's super unlikely that Orting would be involved in one. DAs are a mechanism BIG developers use because of their vesting rights - plats and building permits already have vesting rights, so that's not the kind of development that'd use this tool. We're talking subarea plan level development, or large multi-use commercial/industrial development that otherwise doesn't get to enjoy vested rights. We'd likely need to annex land to have enough vacant land to be of interest to that kind of developer. BUT, if we did annex that kind of land, maybe the City would have interest in attracting a big developer to add a commercial/industrial center...would be nice to have this as an option.

The only reason a city wouldn't want development agreements in their code is if they worry there's risk or a cost to the public in allowing development to vest to code for the duration of the agreement (sometimes 20 years). We could discuss your thoughts on this front more and approach Council with its perspective on this risk tolerance, and then set a max number of years we'd allow a DA to be valid for. Right now our max is 5 years, which I think is too low personally. But maybe 20 years is too many. Should chat more. Sorry I authored a book here.

Commented [KG66R64]: Response from City Attorney: *I can't make the policy choice for you but I still review many development agreements. I am reviewing one right now. They are commonly used by some of our city clients. It makes sense to have a code provision addressing them because developer might come along and ask for a DA, and if so, you will be glad to have the code authority and framework for them.*

Commented [KG67]: The city does not have any UGA, but I recommend keeping this language so we don't lose this ability in the event we ever gained UGA.

B. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with the applicable policies and goals of the Orting comprehensive plan and applicable development regulations. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-15-2: GENERAL PROVISIONS:

A. As applicable, the development agreement shall specify the following:

1. Project components which define and detail the permitted uses, residential densities, nonresidential densities and intensities or building sizes;

2. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

3. Mitigation measures, development conditions and other requirements of chapter 43.21C ~~Revised Code of Washington~~RCW;

4. Design standards such as architectural treatment, maximum heights, setbacks, landscaping, drainage, water quality requirements, LID BMPs, and other development features;

5. Provisions for affordable housing, if applicable;

6. Parks and common open space dedication and/or preservation;

7. Phasing;

8. A build out or vesting period for applicable standards; and

9. Any other appropriate development requirement or procedure which is based upon a city policy, rule, regulation or standard.

B. As provided in ~~Revised Code of Washington~~RCW 36.70B.170, the development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

(Ord. 778, 10-30-2003, eff. 11-11-2003; amd. Ord. 2019-1057, 1-8-2020)

15-15-3: ENFORCEABILITY; VESTING:

Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build out period specified in the agreement. The agreement may not be subject to an amendment to a

zoning ordinance or development standard or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. The permit approval issued by the city after the execution of the agreement must be consistent with the development agreement. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-15-4: APPROVAL PROCEDURE:

A development agreement is a type 5 project permit application and shall be processed in accordance with the procedures established in this title. A decision on a development agreement shall be ~~approved~~ issued by resolution or ordinance of the city council after a public hearing, ~~based~~ and after having considered ~~on~~ the planning commission's recommendation and the application record. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-15-5: FORM OF AGREEMENT, COUNCIL APPROVAL, RECORDING:

A. Form: All development agreements shall be in a form provided by the city attorney's office. The city attorney shall approve all development agreements for form prior to consideration by the planning commission.

B. Term: Development agreements may be approved for a maximum period of five (5) years.

C. Recording: A development agreement shall be recorded against the real property records of the Pierce County assessor's office. During the term of the development agreement, the agreement is binding on the parties and their successors, including any area that is annexed to the city. (Ord. 778, 10-30-2003, eff. 11-11-2003)

Commented [KG68]: We should not obligate ourselves to any permit decision.

Commented [KG69]: KD - there's no law limiting DAs to only a 5-year validity period, right? I think this is a local limitation we're imposing on ourselves, I've read multi-decade DAs before. If we're not limited to 5 years by state law, I'd recommend extending this to 20 years. Point of DA: offer assurance to a developer that their extensive capitol is investing in assured regulations that cannot change (no surprises inflating development cost).

Commented [KG70R69]: Response from City Attorney: *You are correct that there is no state law limiting DAs to five years. I have seen 20-year DAs, but I've also seen lots of problems with 20-year DAs and lawsuits come out of them. A lot changes in 20 years. My two cents are that perhaps doubling this to 10 years is enough, but the length of time you choose that is a policy decision not a legal one.*