CHAPTER ONE

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ZONING AND RELATED ISSUES

1.1 Conditional Use Permits

Certain specified land uses, because of special considerations and conditions, are permitted only after a public hearing and consideration and decision by the Tumwater Hearings Examiner.

The decision of the Examiner may be appealed to the City Council. A land use is designated a Conditional Use because of special requirements due to the nature of the land use, infrequent occurrence, detrimental impacts on surrounding properties, or possible safety hazards. Conditional uses are identified in each zoning designation in the Zoning Code.

For further information on Conditional Use Permits, please refer to TMC 18.56.

1.2 Rezones

A change in zoning a site specific designation, or rezone, can be requested by the owner of a piece(s) of property. For example, a property could be rezoned from a residential use to commercial use if the application met the criteria for a rezone.

Rezone decisions are made by the Tumwater Hearings Examiner after holding a public hearing and weighing the request against the rezone criteria. The decision of the Hearings Examiner may be appealed to the City Council.

For more information on rezones, please refer to TMC 18.60.

1.3 Zoning Text Amendments

Changes in the text (wording) of the Zoning Code can be initiated only by the Planning Commission or City Council. Anyone is welcome however to request the Planning Commission or City Council to begin the zoning text amendment process.

For further information on zoning text amendments, please refer to the Tumwater Zoning Code.

1.4 Planned Unit Developments

A planned unit development can be initiated by a property owner(s) in any zoning designation in the City with the exception of the Residential/Sensitive Resource Zone. Planned unit development approvals allow a property owner to gain design flexibility and possible relaxation of the zoning requirements if the overall project results in a more efficient and desirable use of land. As an example, up to 25% more of the site can be utilized for buildings than would otherwise be allowed. Any zoning requirement except allowed uses can be made more flexible using this process.

The City of Tumwater Hearing Examiner may approve, disapprove, or modify the proposal after conducting a public hearing on a planned unit development. The decision of the examiner is appealable to the City Council.

For more information regarding planned unit developments, please refer to Tumwater Municipal Code (TMC) 18.36.

1.5 Variance

A variance from certain requirements of the zoning code may be granted if satisfying the code requirements causes an undue hardship to the property owner because of site constraints unique to the property. If granted a variance is essentially a relaxation of the normal zoning code requirements.

Zoning Code requirements eligible for variance procedures include: structure or fence height, yard setbacks, parking requirements, and other such mechanical problems.

A variance may only be granted or denied by the Tumwater Hearings Examiner after a public hearing is held. The Examiner will use criteria included in the Zoning Code in making his decision. The decision of the Hearings Examiner may be appealed to the City Council.

For further information regarding variance procedures, please refer to TMC 18.58.

1.6 Comprehensive Plan Amendments

An amendment to the Comprehensive Land Use Plan may be initiated by the property owner(s). As required by the Growth Management Act, Comprehensive Plan amendments can be considered by the Planning Commission and City Council no more than once per year.

For further information regarding Comprehensive Land Use Plan amendment procedures, please refer to TMC 18.60.065.

1.7 Development/Site Plan Review

The purpose of the development/site plan review process for the City is to provide clear and concise information to applicants regarding their development proposals. This is accomplished by meeting with applicants and outlining for them the required steps and timing and giving them a complete list of all the laws and policies which affect or potentially affect their project. Availability of and requirements for utility service, zoning issues, building/fire code issues and any other relevant issues are discussed. Guidance on the required environmental review process is also a function of review.

All proposed private and public development proposals, except individual single-family homes and duplexes, on existing lots of record are required to go through the City's site plan review process. Examples of these projects are land divisions, new facilities or additions to existing commercial, industrial, institutional or multi-family structures, utility extensions or other infrastructure improvements.

All proposals are considered by the City's Development Review Committee, which is comprised of staff members from the Development Services Department. These staff members include management level representatives from the Development Engineering Section, the Building Safety Section, and the Planning Section, among others, so that a reliable and comprehensive review can be provided.

The Committee meets on a weekly basis and is generally able to meet with applicants to discuss projects within one week of a project's submittal.

Projects coming before the Committee are generally considered at three separate levels. Those levels are as follows:

Feasibility: This level of review is offered to provide very preliminary discussions with applicants on their early project ideas and concepts, prior to them investing significantly on the design of the project. This level also gives staff an opportunity to provide appropriate guidance and direction.

Preliminary: This level of review is a required step for all projects. Submittal requirements include a site plan with pertinent information on adjacent roadways, utilities and related items. For convenience, a detailed checklist is provided to the

applicant, in order to insure that submittals for preliminary review are complete. Following the session with staff, a letter clearly listing all known requirements for the project is sent to the applicants. Specific requirements to complete environmental review are also itemized at this point.

Formal: Following completion of preliminary site plan review and environmental review, a project is submitted for formal review, for which there is an application fee. A complete application, which has included all items required on the submittal checklist, is reviewed by the Committee and a formal letter is issued. This letter provides the guide for completion of design and submittal for construction permits.

Typically if preliminary project review proceeds expeditiously, the project will not be subject to changed regulations between preliminary review and application submittal. If new regulations intervene before a fully completed application is processed, it will be the developer's responsibility to modify the proposal to conform with the new regulations.

1.8 Administrative Appeals

Any administrative decision made by City of Tumwater staff in interpreting the Zoning Code may be appealed to the Hearing Examiner. The Examiner will hold a public hearing and determine the merits of the appeal.

For more information on administrative appeals, please refer to TMC 18.62.

1.9 Building Moving Permit

Before moving a building, a permit must first be granted by the City. Such items as safety, transportation routes, and compatibility with the new area will be weighed before issuance of a permit. The compatibility of the structure with its new surroundings will be determined by the Planning Commission. A moving permit is also required when a structure is moved out of or through the City. In either of those cases, permits are issued administratively.

For more information on the moving of buildings, please refer to TMC 15.32.

1.10 Certificate of Appropriateness

Any construction, alteration, renovation, or restoration of any building located in the Historic Commercial zone district cannot be undertaken without issuance of a Certificate of Appropriateness.

The City Council will consider such items as placement, general design, exterior color, and materials of construction in order to determine if the proposal is consistent with the historical area.

For more information on Certificates of Appropriateness, please refer to TMC 18.26.

1.11 Architectural Design Criteria

As part of the discretionary review process (variance, conditional use permit etc.), any developments in the Commercial Development Zone District must meet certain building and landscaping design criteria. Review criteria includes color, scale, relationship to surroundings, suitable plant materials, and retaining existing trees, etc.

For more information on architectural design criteria, please refer to page ED-32 in the Economic Development Plan.

1.12 Shoreline Substantial Development Permit

The State Shoreline Management Act (90.58 RCW, 173-14 WAC) requires new development, costing more than $2500, along specified water bodies to obtain a Shoreline Substantial Development Permit prior to the beginning of construction. In Tumwater, development within 200 feet of the following water bodies and/or within their 100-year flood plains are subject to shoreline management control: Deschutes River, Capitol Lake, Black Lake Drainage Ditch, Percival Creek, and Trosper Lake. The City of Tumwater administers the "Shoreline Master Program for the Thurston Region" on these water bodies. In addition, special area management plans exist for the Black Lake Drainage Ditch and Percival Creek (the Percival Creek Corridor Plan) and, also, the DesChutes River and Capitol Lake (the Deschutes River Special Area Management Plan for the Tumwater Valley).

There are exempt activities within the jurisdiction of the Shoreline Master Program which do not require shoreline permits. These exempt activities are summarized as follows:

- Any development which does not exceed $2500 in total cost or fair market value, whichever is higher.

- Normal maintenance or repair of existing structures or developments.
- Protective bulkheads for single family residences.
- Emergency construction necessary to protect property from damage by the elements.
- Construction related to farming, irrigation, and ranching activities.
- Construction or modification of navigational aids such as channel markers.
- Construction of single family residences less than 35 feet high.
- Construction of a dock, less than $2500 in cost or fair market value, for a single family residence.
- Operation, maintenance, or construction of canals, waterways, reservoirs and similar facilities.
- Operation and maintenance of any system of dikes, ditches, drains constructed prior to 1975.

For a complete listing and full description of developments exempt from shoreline permits, please read 173-14-040 WAC.

1.13 Conservation Plan

The Tumwater Conservation Plan, adopted August 20th, 1991 in response to the State Growth Management Act requirements, has a number of elements which affect development in Tumwater. The relevant portions of the Conservation Plan impacting property development are briefly summarized below:

A. WETLANDS PROTECTION

As part of the building permit application, development applicants will need to work with the City in determining if wetlands are on the site.

The presence of wetlands on the site for development would require having a wetland biologist mark the wetland boundary. Wetland buffers ranging from 25-300 feet from the wetland boundary would be required in order to protect the wetland.

Under certain circumstances, if absolutely necessary, adverse impacts to the wetland and/or wetland buffer are possible with appropriate mitigation measures. Mitigation measures include restoring a previously degraded wetland, enhancing an existing wetland, or creating a new wetland to offset the amount of wetland degraded by development.

For more information on wetlands protection, please refer to TMC 16.28.

B. AQUIFER PROTECTION

In order to protect the underground aquifer which is the only source of drinking water for Tumwater, certain land use restrictions have been put in place as follows:

1. New stormwater retention facilities required as part of new development will generally be required to cleanse the stormwater of chemical and biological pollutants.

2. New above ground storage tanks must be designed so that pollutants cannot enter the groundwater, and must have an impervious containment area around or underneath the tank capable of holding the entire contents of the storage tank.

3. All new below ground storage tanks must be equipped with double walls, or a single wall with liners. Contaminant release detection methods must also be used.

4. The most hazardous land uses in regards to aquifer protection, such as petroleum refineries, chemical manufacturing, wood products preserving etc. will be prohibited unless the development applicant can prove that through the use of improved technology the facility can be designed so that no greater threat to the aquifer is posed by this type of land use over a non-restricted land use.

For more information on Aquifer Protection, please refer to TMC 16.24 and 18.39.

C. GEOLOGICALLY HAZARDOUS AREAS

All building permit applications must include site information so that the City can determine appropriate building methods to insure safety. The Development Services Department will inform development applicants of the information necessary early in the process.

Generally, sites with slopes steeper than 15%, hillsides that have soils that do not drain well, and springs or groundwater seepage areas will be required to locate 50 feet from such areas, or be designed to mitigate for safety considerations.

Sites with soils that tend to liquify and become unstable during earthquakes will need to design foundations and buildings also to insure safety.

For further information on building on geologically hazardous areas, refer to TMC 16.20.

D. FISH AND WILDLIFE PROTECTION

Certain development sites may have additional constraints because federally listed endangered, threatened, or sensitive species are known to frequent the site. Such areas include, but are not limited to, naturally occurring ponds less than twenty acres in size, lakes, rivers, and streams planted with game fish, the Deschutes River, Percival Creek, Black Lake Drainage Ditch, Barnes Lake, Trosper Lake, and Fishpond Creek.

If a protected habitat is determined to be present on a site, the development applicant will be required to submit a habitat protection plan to enable city staff to protect the habitat and permit reasonable development of the site through the use of buffer areas.

In addition, certain limited land uses are allowed in habitat areas and associated buffers.

Please refer to TMC 16.32 for more information on this subject.

1.14 Protection of Trees and Vegetation

The City regulates the cutting and clearing of trees and vegetation in selected areas of the City through the Protection of Trees and Vegetation Ordinance, Chapter 16.08, of the Tumwater Municipal Code (TMC).

Any and all tree and vegetation removal which does not qualify as an exempt activity requires that a Tree Cutting Permit be issued prior to any removal occurring. Exempt activities include, but are not limited to:

- The removal of not more than 12 trees or 4 large trees in a calendar year. This exemption does not apply to historic trees, or trees located in a greenbelt or in wetlands.

- Land clearing associated with the safe operation of air traffic at the Olympia airport.

- Land clearing in emergency situations involving immediate danger to life or property.

- Land clearing associated with routine maintenance by utility companies.

- Land clearing associated with installation and maintenance of projects in the public right-of-way performed by public agencies.

- Land clearing within ten feet from the perimeter of the building line, driveway, or septic tank installation for single family residences and duplexes.

- Removal of dead or diseased trees.

- Removal of trees which act as visual obstructions at intersections.

- Clearing associated with tree farming operations.

- Removal of ground cover for purposes of maintenance, landscaping, gardening.

For the complete listing and description of exempt activities, please refer to TMC 16.08.080 Exemptions.

Land clearing activities which require a permit to be issued will need to submit plans as outlined in TMC 16.08.050. The permit will be reviewed and issued within 30 calendar days. If the requirements of the Protection of Trees and Vegetation Ordinance are too strict and are wished to be varied from, alternative plans may be submitted by the applicant as outlined in TMC 16.08.090.

In cases where either more than 5000 board feet of marketable timber are being removed, or if the site is two (2) acres or greater is size, a Forest Practices Permit must be applied for by the applicant and granted by the Washington State Department of Natural Resources prior to the issuance of the City permit.

1.15 Annexation

Property owners have the option to request annexation to Tumwater in order to place their property under the regulatory structure of Tumwater rather than Thurston County if their property is adjacent to existing city limits.

Property owners typically wish to annex in order to gain municipal services such as water and sewer. In many cases such services are necessary in order to permit more dense developments. Tumwater will not extend utilities to property that could successfully be annexed unless the annexation is complete. Property that is not adjacent to current city boundaries may receive utility service if a Waiver of Protest is signed stating that the property owner will not contest any future annexations of the property. This waiver should be displayed on the face of the plat and deed. The property will also be subject to a surcharge on utility service until such time the property is annexed. This shall also be displayed on the face of the plat and on the deed.

Tumwater has signed an Urban Growth Management Agreement with Thurston County. Under the terms of the agreement, Tumwater can only annex property that is within the urban growth boundary. The only option available for annexing property outside the boundary is to move the line through a joint planning process with Thurston County.

There are several methods used for annexing property. The petition method is almost always used, especially for the annexation of individual land parcels in order to obtain municipal services. The process is mandated by state law and is as follows:

1. The applicant meets with City officials to discuss the possible annexation, and completes a Notice of Intent form. This notice must be signed by the owners of at least 10% of the assessed valuation of the property in order to be valid.

2. After validation of the signatures, the City Council holds a public meeting and decides to accept or deny the Notice of Intent.

3. After the City Council accepts the petition, it is referred to the Planning Commission for pre-annexation planning and zoning. The Planning Commission holds a public hearing and recommends a planning area and zoning designation to the City Council.

4. The City Council holds the first of two public hearings to review the Planning Commission recommendation on planning area and zoning designation.

5. If approved, the City Council directs the applicant to submit the petition for annexation signed by the owners of not less than 75% of the assessed valuation of the area to be annexed.

6. After signature validation of the second petition, the annexation proposal is sent to the Thurston County Boundary Review Board for consideration. The Board has 45 days in which to make a decision.

7. After approval by the Boundary Review Board, the City Council holds its second public hearing. If approved, the City Council passes the Ordinance zoning the property and a resolution making an amendment to the Comprehensive Land Use Plan. Five days after publishing of the ordinance and resolution, the annexation is complete.

For more information on annexation, contact the Tumwater Policy & Planning Department.

1.16 Environmental Policy

The City of Tumwater administers its Environmental Protection Policy through Tumwater Municipal Code (TMC) 16.04 This policy implements the requirements of the Washington State Environmental Policy Act (SEPA) and City of Tumwater requirements. New developments which are determined to be non exempt must complete a "SEPA Checklist" early on in the permit process. This checklist is completed by the applicant and is used by the Environmental Review Officer (ERO) in determining if the proposed development has the potential for causing probable adverse impacts on the environment. At the end of a fifteen day period after the checklist has been submitted, the ERO must issue one of three determinations:

1) A Determination of Non-Significance (DNS)
2) A Determination of Mitigated Non-Significance (MDNS)
3) A Determination of Significance (DS)

If the project has been determined to be significant (DS), then the project applicant must prepare an Environmental Impact Statement (EIS) under supervision of the City. The EIS can conclude that the development can be approved with mitigations to reduce adverse impacts, or deny the project if adverse impacts cannot be mitigated. If a project has been determined not to be significant, the applicant can immediately proceed to formal site plan approval and issuance of permits.

Exempt activities which do not require review under SEPA include:

- Residential structures of four (4) dwelling units or less;
- Storage building of less than 10,000 square feet;
- Commercial or office building of less than 4,000 square feet with associated parking for twenty or fewer vehicles;
- A landfill or excavation of 100 cubic yards or less.

For a complete list and detailed description of SEPA exempt activities, please reference 197-11-800 WAC.

For a detailed review of the process for submitting a SEPA checklist, subsequent determination, and EIS review process, please refer to Parts Three and Four of 197-11 WAC and TMC 16.04.080 through 16.04.120.

1.17 Vesting

The City has detailed criteria to determine when a development proposal and/or portions of a development proposal are is vested. For more details on vesting, please refer to TMC 15.44.

1.18 Determination of Application Completeness/Notice to Applicants

Once an applicant files a development permit application, (see below what applications are included), the Development Services Department will notify the applicant in writing as soon as the decision is made, but in all cases within twenty-eight days as to whether the application is complete or incomplete. Included within the written determination identifying the application as incomplete will be a statement identifying the deficiencies and what is necessary to make the application complete. Once the applicant supplements the earlier submittal with additional information, the Department of Development Services will as soon as the decision is made, but in all cases within fourteen days thereafter, once again provide the applicant with another written determination of completeness or, if incomplete, with information about what additional information is necessary to make the application complete.

If the City fails to provide this written determination within the time-lines described above, the application shall be deemed complete. The point in time at which a fully complete development permit application creates vested rights shall be when the fully complete application was received and not the date the notice of completeness is issued.

The City will also notify the applicant as a part of the written

notification of completeness what other agencies of local, state or federal governments that may have jurisdiction over some aspect of the application.

It should be noted that the determination of completeness does not preclude the City from requesting additional information or studies of the applicant after the determination is issued if new information is required or if substantial changes in the proposed action occurs.

This process shall apply to:

(1) Applications for building permits;
(2) Subdivisions (short plats, long plats);
(3) PUD's;
(4) Binding site plans;
(5) Conditional use permits;
(6) Grading permits;
(7) Variances;
(8) Tree cutting permits;
(9) Wetland permits;
(10) Boundary line adjustment/lot consolidation;
(11) Certificate of appropriateness;
(12) Home occupation;
(13) Shoreline permits.