

Topic: Natural Resource Protection & Conservation; Aquifer Protection; Wildlife & Fish Habitat; Wetlands & Watercourse Protection; Right-to-Farm
Resource Type: Regulations
State: Washington
Jurisdiction Type: Municipal
Municipality: City of Tumwater
Year (adopted, written, etc.): 1984-2002
Community Type – applicable to: Urban; Suburban
Title: City of Tumwater Local Natural Resource Protection Ordinance (Comprehensive)
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Abstract

This comprehensive environmental ordinance, portions of which have been added over the past twenty years, addresses a breadth of environmental concerns. These include protection standards for; trees and vegetation, aquifers, wetlands, fish and wildlife, as well as provisions for the right-to-farm, right-to-mine, and commute trip reduction. This ordinance is particularly unique in that it does not appear to be in response to a state level statute, as are many other local ordinances in Washington State.

Resource

Title 16 ENVIRONMENT

Chapters:

16.04 ENVIRONMENTAL POLICY

16.08 PROTECTION OF TREES AND VEGETATION

16.12 RIGHT-TO-FARM

16.16 RIGHT-TO-MINE

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16.26 WELLHEAD PROTECTION

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Chapter 16.04 ENVIRONMENTAL POLICY

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16.04.010 Authority.

The city adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules, WAC 197-11-904. (1007, Added, 9/18/1984)

16.04.020 Adoption by reference.

The city adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

WAC 197-11-040 Definitions

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926 Lead Agency for Governmental Proposals
928 Lead Agency for Public and Private Proposals
930 Lead Agency for Private Projects with One Agency with Jurisdiction
932 Lead Agency for Private Projects Requiring Licenses From More than One Agency, when One of the Agencies is a County/City
934 Lead Agency for Private Projects Requiring Licenses From a Local Agency, not a County/City, and One or More State Agencies
936 Lead Agency for Private Projects Requiring Licenses From More than One State Agency
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940 Transfer of Lead Agency Status to a State Agency
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970 Determination of Nonsignificance (DNS)
980 Determination of Significance and Scoping Notice (DS)
985 Notice of Assumption of Lead Agency Status
990 Notice of Action
(1007, Added, 9/18/1984; 096-008, Amended, 11/5/1996)

16.04.030 Additional definitions.

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

- A. "Aggrieved person" means any citizen of the City of Tumwater, any other person owing property within three hundred feet (300') of the proposal, or any public agency adversely affected by the proposal.
- B. "City" means the City of Tumwater, Washington.
- C. "Department" means the Development Services Department.
- D. "Director" means the Development Services Department Director or his/her designee.

E. "Early notice" means the city's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated DNS procedures).

F. "Ordinance" means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.

G. "Responsible Official" means the Development Services Director or his/her designee.

H. "SEPA rules" means WAC Chapter 197-11 adopted by the Department of Ecology. (1007, Added, 9/18/1984; 096-008, Amended, 11/5/1996)

16.04.040 Time limits applicable to the SEPA process.

The following time limits expressed in calendar days shall apply when the city processes license and project permit applications for all private projects and those governmental proposals submitted to the city by other agencies:

A. Categorical Exemptions. The city shall identify whether an action is categorically exempt within seven calendar days of receiving a completed application.

B. Threshold Determination.

1. When the responsible official requires additional information from the applicant or consultation with other agencies with jurisdiction:

a. The city should request such further information as soon as possible, but in any event within twenty-eight calendar days of receiving an adequate application and environmental checklist;

b. The consulted agency shall have a maximum of thirty (30) calendar days from the date of mailing of the notice to respond;

2. When a notice of application is required or provided regarding the subject action, a final determination of nonsignificance shall not be issued prior to expiration of the public comment period.

3. When the city must initiate further studies, including field investigations, to obtain the information to make the threshold determination, the city should complete the studies within thirty calendar days of receiving an adequate application and a completed checklist.

4. The city shall complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impact(s) described in the application, within fifteen calendar days of receiving an adequate application and completed checklist.

C. Draft EIS. After applicant submits or resubmits a preliminary draft EIS to the responsible official, the responsible official shall either distribute the approved draft EIS for review or request the applicant to resubmit the preliminary draft with additional information or substance.

D. Final EIS. Distribution of a final EIS shall be done within sixty days of the last day set by the responsible official for review of the draft EIS, unless the proposal is unusually large in scope, the environmental impact associated with the proposal is unusually complex, or extensive modifications are required to respond to public comments.

(1007, Added, 9/18/1984; 1237, Amended, 8/21/1990; 096-008, Amended, 11/5/1996)

16.04.050 Additional timing considerations.

After being issued, the DNS, MDNS or EIS for the proposal shall accompany the city's staff recommendation to any appropriate advisory or decision-making body or official.

(1007, Added, 9/18/1984; 096-004, Amended, 4/16/1996)

16.04.060 Use of exemptions.

A. 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.

B. In determining whether or not a proposal is exempt, the department 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 department shall determine the lead agency, even if the license application that triggers the department'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 alternatives.

2. A department 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.

3. A department 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.

(1007, Added, 9/18/1984)

16.04.070 Lead agency determination and responsibilities.

A. The department within the city receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940, unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining the lead agency.

B. When the city is the lead agency for a proposal, the department receiving the application shall determine the responsible official who shall supervise compliance with the threshold determination requirements, and if an 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 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.

D. If the city or any of its departments receives a lead agency determination made by another agency that appears consistent with the criteria of WAC 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 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-day time period. Any such petition on behalf of the city may be initiated by the responsible official.

E. Departments of the city are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided, that the responsible official and any department that will incur responsibilities as the result of such agreement must approve the agreement.

F. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is, which agencies require nonexempt licenses).
(1007, Added, 9/18/1984)

16.04.080 Environmental checklist.

A. A completed environmental checklist (or a copy), 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 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.
(1007, Added, 9/18/1984)

16.04.090 Mitigated DNS.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a determination of nonsignificance (DNS) based on conditions 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 DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency;
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 working days. The response shall:

1. Be written;
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 are leading the city to consider a DS;
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 environmental checklist, the city shall base its threshold determination on 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 determination of nonsignificance 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 stormwater runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200 square foot stormwater retention pond at Y location" are adequate provided sufficient preliminary design data has been included to indicate the proposed mitigation will mitigate the environmental impacts.

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. A mitigated DNS is issued under WAC 197-11-340(2), requiring a fifteen-day comment period and public notice.

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 a 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 B of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination.

(1007, Added, 9/18/1984; 096-004, Amended, 4/16/1996)

16.04.100 Preparation of EIS--Additional considerations.

A. Preparation of draft and final EISs and SEISs is the responsibility of the development services department under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and WAC Chapter 197-11.

B. The draft and final EISs or SEISs shall be prepared by city staff, the applicant, or by a consultant selected by the city or the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official 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 draft and final EIS's 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.)

(1007, 9/18/1984; 096-004, Amended, 4/16/1996)

16.04.110 Additional elements to be covered in EIS.

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determination or perform any other function or purpose under this chapter:

A. Economy;

B. Community policy analysis.

(1007, Added, 9/18/1984)

16.04.120 Public notice.

A. Whenever the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the city shall give public notice as follows:

1. If a public hearing has been scheduled on the subject action, notice of the threshold determination shall be combined with notice of such hearing.

2. If no public hearing is required for the proposed action, or if the public hearing notice will not be issued prior to expiration of the comment period for a DS or DNS, the city shall give notice of the DNS or DS by:

a. Posting the specific site, if any, and providing notice to all record owners of property within 300 feet of such site; The Director may extend notification beyond 300 feet in cases where the area notified does not provide adequate notice to neighbors affected by the pending action;

b. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

c. Publication in a newspaper of general circulation in the city.

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.

B. Whenever the city issues a draft EIS under WAC 197-11-455(5) or a supplemental 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) the methods noted in subsection A of this section.

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

D. The city may require an applicant to complete the public notice requirements for the applicant's proposal at the applicant's expense.

(1007, Added, 9/18/1984; 096-004, Amended, 4/16/1996)

16.04.130 Designation of 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, or reviewing a draft EIS.

B. This person shall be responsible for the city's compliance with WAC 197-11550 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.
(1007, Added, 4/16/1984)

16.04.140 Lead agency--Designation of responsible official.

A. For those proposals for which the city is the lead agency, the responsible official shall be the Tumwater Development Services Department Director.
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 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 WAC 173-806-020.
(1007, Added, 9/18/1984; 096-004, Amended, 4/16/1996)

16.04.150 Substantive authority.

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

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 pursuant to this chapter;

2. Such conditions are in writing;

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

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

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 final EIS or final supplemental EIS prepared pursuant to this chapter;

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

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 designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:

1. 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:

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

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

- c. Attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other desirable and unintended consequences;
- d. Preserve important historic, cultural, and natural aspects of our national heritage;
- e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities;
- g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

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

3. The city adopts by reference the policies in the following city codes, ordinances, resolutions, plans:

- a. Comprehensive Plan;
- b. Six-year street program;
- c. Thurston Regional Transportation Plan;
- d. Zoning ordinance;
- e. Uniform Building Code and related construction codes;
- f. Comprehensive Water Plan;
- g. Land Division (Title 17 of Tumwater Municipal Code);
- h. Stormwater Comprehensive Plan;
- i. Percival Creek Comprehensive Drainage Basin Plan;
- j. Comprehensive Sewer Plan;
- k. Tree protection ordinance;
- l. Tumwater School District Capital Facilities Plan;
- m. Aquifer Protection Standards Ordinance;
- n. Geologically Hazardous Areas Ordinance;
- o. Fish and Wildlife Habitat Protection Ordinance;
- p. Wetlands Protection Standards Ordinance;
- q. Tumwater Development Guide;
- r. Tumwater Wellhead Protection Ordinance.

(097-028, Amended, 04/21/1998; 095-002, Amended, 04/18/1995; 1278, Amended, 08/20/1991; 1281, Amended, 08/20/1991; 1282, Amended, 08/20/1991; 1283, Amended, 08/20/1991; 1223, Amended, 06/05/1990; 1190, Amended, 05/16/1987; 1007, Added, 09/18/1984)

16.04.160 Appeals.

A. The following administrative appeal procedures are established under RCW 43.21C.075 and WAC 197-11-680:

1. Any agency or person may appeal to the Hearing Examiner, pursuant to TMC 2.58, the conditioning, lack of conditioning or denial of an action pursuant to WAC Chapter 197-11. When such conditioning, lack of conditioning or denial of action is attached to a recommendation of the Director or the Development Review Committee to the Hearing Examiner regarding a land use application, no appeal shall be necessary for consideration and revision of such conditions, lack of conditioning, or denial by the Hearing Examiner.

2. The responsible official's initial decision to require or not require preparation of an environmental impact statement, i.e., to issue a determination of significance or nonsignificance, is subject to an intermediary administrative appeal upon notice of such initial decision. Failure to appeal such determination within fourteen (14) calendar days of notice of such initial decision shall constitute a waiver of any claim of error.

3. All appeals shall be in writing, be signed by the appellant, be accompanied by the appropriate filing fee, and set forth the specific basis for such appeal, error alleged and relief requested. Any appeal must be filed within six (6) calendar days of the SEPA determination being final. Where there is an underlying governmental action requiring review by the hearing examiner, any appeal and the action shall be considered together. Where there is an underlying permit decision to be made by city staff, any appeal periods shall conclude simultaneously.

4. For any appeal under this subsection, the city shall keep a record of the appeal proceedings which shall consist of the following:

- a. Findings and conclusions;
- b. Testimony under oath; and
- c. A taped or written transcript of any hearing.

5. Any procedural determination by the city's responsible official shall be given substantial weight in any appeal proceeding.

B. The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.

(1007, Added, 9/18/1984; 1259, Amended, 11/6/1990; 1147, Amended, 12/15/1987; 096-004, Amended, 4/16/1996)

16.04.170 Critical areas.

The City of Tumwater Conservation Plan identifies and sets forth policy to protect critical areas. Critical areas include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Critical areas regulations are contained in Title 16 of the Tumwater Municipal Code. Environmental review of actions within these areas shall be in accordance with WAC 197-11-908.

(099-001, Amended, 04/20/1999; 1007, Added, 09/18/1984)

16.04.180 Responsibility of agencies--SEPA public information.

The city shall retain all documents required by the SEPA rules (WAC Chapter 197-11) and make them available in accordance with RCW Chapter 42.17.

(1007, Added, 9/18/1984)

16.04.190 Fees.

The city shall require the following fees for its activities in accordance with the provisions of this chapter:

A. Threshold Determination. For every environmental checklist the city will review when it is lead agency, the city shall collect a fee as established by resolution of the city council from the proponent of the proposal prior to undertaking the threshold determination. The

time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee.

B. Environmental Impact Statement.

1. The fee for submittal of a draft EIS for approval and distribution by the responsible official shall be as established by resolution of the city council. Distribution of the DEIS submitted by the applicant shall not occur until payment of this fee is made.

2. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover costs incurred by the city in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

3. The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses directly to the applicant. Such consultants shall be selected by mutual agreement of the city and applicant after a call for proposals. The city may require the applicant to post bond or otherwise ensure payment of such costs.

4. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subdivisions 1 and 2 of this subsection which remain after incurred costs are paid.

C. The city may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

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

E. 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 RCW Chapter 42.17.

(1147, Amended, 12/15/1987; 1007, Added, 9/18/1984)

16.04.200 Notice--Statute of limitations.

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

B. The city shall publish a notice for any city project pursuant to RCW 43.21C.080.

C. The form of the notice shall be substantially in the form provided in WAC 197-11-990.

The notice shall be published by the city, applicant or proponent pursuant to RCW 43.21C.080.

(1007, Added, 9/18/1984)

Chapter 16.08

PROTECTION OF TREES AND VEGETATION

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16.08.035 City Tree Protection Professional.

16.08.038 Class IV Forest Practice Applications.

16.08.040 Tree Account.

16.08.050 Permit required-Applications-Requirements-Processing-Conditions of issuance.

16.08.060 Performance bond may be required.

16.08.070 Standards.

16.08.075 Heritage Trees Designated.

16.08.080 Exemptions.

16.08.090 Alternative plans.

16.08.100 Appeal procedure.

16.08.110 Violation-Criminal Penalties

16.08.120 Violation-Civil Penalties/Presumption/Other Remedies

16.08.010 Short title.

This chapter shall be known and may be cited as the "Tree and Vegetation Protection Ordinance" of the city.

(1190, Added, 5/16/1989; 094-029, Amended, 9/20/1994; 02002-012, Amended, 07/16/2002)

16.08.020 Purposes.

The regulations are adopted for the following purposes:

A. To promote public health, safety and general welfare of the citizens of Tumwater without preventing the reasonable development and maintenance of land;

B. To preserve and enhance the city's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and ground cover, and by encouraging development that incorporates existing trees and ground cover into site development practices;

C. To retain trees and vegetation for their positive environmental effects including, but not limited to the protection of wildlife habitat;

D. To promote identification and protection of trees that have historical significance; are unusual due to their size, species, or age; are unusual for their aesthetic quality; or have other values or characteristics that make them worthy of protection;

E. To prevent erosion and reducing the risk of landslides;

F. To protect environmentally sensitive areas;

G. To minimize surface water runoff and diversion. To reduce siltation and other pollution entering city storm sewer systems, other utility improvements, and the city's rivers, streams, and lakes;

H. To retain trees and ground cover to assist in abatement of noise, to provide wind breaks, and for improvement of air quality;

I. To promote building and site planning practices that are consistent with the city's natural topographical, soil, and vegetation features and to reduce landscaping costs for new development by utilizing existing trees and ground cover to help fulfill landscaping requirements;

J. To ensure prompt development, restoration and replanting, and effective erosion control of property after land clearing;

K. To promote conservation of energy;

L. To educate the public regarding urban forestry;

M. To implement objectives of the State Environmental Policy Act and Growth Management Act; and

N. To implement and further the city's Comprehensive Plan and other related ordinances. (1190, Added, 05/16/1989; 094-029, Amended, 09/29/1994; 097-029, Amended, 03/17/1998; 02000-012, Amended, 08/01/2000; 02002-012, Amended, 07/16/2002)

16.08.030 Definitions.

A. "City" means the City of Tumwater, Washington.

B. "Code Administrator" means the Director of the Development Services Department or the Director's designated representative.

C. "Drip line" of a tree means an imaginary line on the ground created by the vertical projections of the foliage at its circumference.

D. "Environmentally sensitive area" means any lands with the following characteristics:

1. Steep slopes— those averaging fifteen percent or greater, or a maximum of forty percent or greater as defined in TMC 16.20;
2. Lakes, ponds, stream corridors, and creeks as defined in TMC 16.32;
3. Identified habitats with which endangered, threatened, or sensitive species have a primary association as defined in TMC 16.32;
4. Wetlands as defined in TMC 16.28.

E. "Grading" means excavation, filling, or any combination thereof. Excavation and grading is governed by the Uniform Building Code (UBC).

F. "Greenbelt" means certain designated areas of a project or development that are intended to remain in a natural condition, and/or private permanent open space, or serve as a buffer between properties or developments.

G. "Greenbelt zone" means any area so designated on the official zoning map of the city and subject to the provisions of TMC 18.30.

H. "Ground cover" means vegetation that is naturally terrestrial excluding noxious or poisonous plants and shall include trees that are less than six inches in diameter measured at four and one half feet above ground level.

I. "Hazardous tree" means any tree that, due to its health or structural defect, presents a risk to people or property.

J. "Heritage tree(s)" means tree(s) designated by the city and their owners as historical, specimen, rare, or a significant grove of trees.

K. "Historic tree" means any tree designated as an historic object in accordance with the provisions of TMC 2.62.

L. "Land clearing" or "clearing" means any activity which removes or substantially alters by topping or other methods the vegetative ground cover and/or trees.

M. "Parcel" means a tract or plot of land of any size which may or may not be subdivided or improved.

N. "Root protection zone or RPZ." Unless determined otherwise by a tree protection professional, the root protection zone for trees means an area contained inside an imaginary circle on the ground having a radius of one foot for every inch of tree diameter, measured from four and one half feet above ground level, but in no event shall the root protection zone be less than a six-foot radius.

O. "Tree" means any living woody plant characterized by one or more main stems or trunks and many branches, and having a diameter of six inches or more measured four and one half feet above ground level.

P. "Tree Protection Professional" is a certified professional with academic and field experience that makes him or her a recognized expert in urban tree preservation and management. The Tree Protection Professional shall be either a member of the International Society of Arboriculture or the Society of American Foresters or the Association of Consulting Foresters, and shall have specific experience with urban tree management in the Pacific Northwest. Additionally, the Tree Protection Professional shall have the necessary training and experience to use and apply the International Society of Arboriculture's Guide for Plant Appraisal and to successfully provide the necessary expertise relating to management of trees specified in this chapter.

(1190, Added, 05/16/1989; 1311, Amended, 04/07/1992; 094-029, Amended, 09/20/1994; 097-029, Amended, 03/17/1998; 02002-012, Amended, 07/16/2002)

16.08.035 City Tree Protection Professional.

In the city's interest of achieving professional assistance in the city's tree protection efforts and achieving consistency in tree protection decisions; the city shall contract with a "City Tree Protection Professional" that qualifies as a Tree Protection Professional under the definition of this chapter. The Tree Protection Professional shall be responsible for providing the information and services required of a Tree Protection Professional described herein.

Individual applicants will be responsible for payment of costs of the Tree Protection Professional for projects necessitating work to be performed by the Tree Protection Professional with the exception that the Code Administrator may waive payment by the applicant for minor work of the Tree Protection Professional in determining an exempt project; provided however, that the city shall be responsible for billing and collecting costs charged to the applicant and transferring payment to the Tree Protection Professional unless the city has opted for some other mechanism of providing for the costs, such as inclusion of costs in application fees.

(097-029, Added, 03/17/1998; 02002-012, Amended, 07/16/2002)

16.08.038 Class IV Forest Practice Applications

Pursuant to RCW 76.09.240, requiring local jurisdictions to set standards for and to process Class IV Forest Practice Applications, such permits shall be processed as a land clearing permit, and shall meet the requirements of this chapter.

(02002-012, Added, 07/16/2002)

16.08.040 Tree Account.

There is hereby established within the city a "tree account" for the purposes of acquiring, maintaining and preserving wooded areas, and for planting and maintaining trees within the city.

A. Collections and Deposits. All fines collected for violations of this chapter shall be deposited into the tree account. All donations and mitigation fees collected related to the preservation of trees or the enhancement of wooded buffer areas shall also be deposited into the tree account.

B. Maintenance of Account. The tree account shall be maintained by the finance director as a separate, interest-bearing account.

C. Use of funds. Funds in the tree account shall be used only upon appropriation by the city council. Funds may be withdrawn from the tree account with the approval of the Code Administrator, and may be used for any purpose consistent with the intent of this Chapter. Funds used to plant trees may be used only on city-owned property, or on property upon which the city has been granted an easement for the purpose of establishing or maintaining trees or other vegetation.

(O94-029, Added, 9/20/1994; O2002-012, Amended, 07/16/2002)

16.08.050 Permit required-Applications-Requirements-Processing-Conditions of issuance.

A. No person, corporation, or other legal entity not exempt under Section 16.08.080 shall engage in land clearing in the city without having received a land clearing permit.

B. An application for a land clearing permit shall be submitted on a form provided by the city. Accompanying such form shall be six copies of the site plan which shall include the following information:

1. General vicinity map;
2. Date, north arrow and scale;
3. Property boundaries, the extent and location of proposed clearing, and major physical features of the property (streams, ravines, etc.);
4. General location, type, size, and condition of existing trees and ground cover, and specific identification and location of individual "heritage" or "historic" trees with some form of delineation as to which stands, grouping, or individual trees and ground cover are to be removed and which are to be retained;
5. A timeline for implementation and monitoring of the tree protection plan;
6. A plan indicating how the site will be revegetated and landscaped;
7. A proposed time schedule for land clearing, land restoration, revegetation, landscaping, implementation of erosion controls, and any construction of improvements;
8. Information indicating the method to be followed in erosion control and restoration of land during and immediately following land clearing;
9. A note indicating that the city will have the right of entry upon the subject property for the purpose of performing inspections consistent with the provisions of this Chapter; and
10. The approved tree protection plan map will be included in contractor's packet of approved plans used for construction on the project.
11. Other information as deemed appropriate to this chapter and necessary by the Code Administrator.

C. In addition to the requirements noted in paragraph B above, on timbered property greater in size than one acre or commercial property with more than fifteen trees, or other sites the city deems it necessary because of special circumstances or complexity, the Code Administrator may require review of the site and proposed plan and submittal of a report by the City's Tree Protection Professional for compliance with the requirements of this chapter.

Further provided that the Code Administrator may modify the above submittal requirements of paragraphs B and C on individual applications where information is not needed or is unavailable.

D. Each application shall be submitted with a fee established by resolution of the city council, to help defray the cost of handling the application, no part of which fee is refundable.

E. The Code Administrator shall notify the applicant whether the application is complete within ten (10) calendar days of receipt of the application. If incomplete, the Code Administrator shall indicate in the notice the information required to make the application complete. The Code Administrator shall approve, approve with conditions or deny the permit within thirty calendar days of receipt of the complete application, or within thirty calendar days of completion of any environmental review, whichever is later. For applications such as site development proposals where there is more than a land clearing permit pending, the Code Administrator shall, whenever feasible, coordinate reviews, notices and hearings, and act upon the land clearing permit concurrently with other pending permits.

F. Any permit granted under this chapter shall expire eighteen months from the date of issuance, unless said permit is associated with another development permit. If it is associated with another development permit, the restrictions and deadlines of that approval will apply. Upon a written request, a permit not associated with another development permit may be extended by the Code Administrator for one six-month period. Approved plans shall not be amended without being resubmitted to the city. Minor changes consistent with the original permit intent will not require a new permit fee or full application standards to be followed. The permit may be suspended or revoked by the city because of incorrect information supplied or any violation of the provisions of this chapter.

G. Once issued, the permit shall be posted by the applicant on the site, in a manner so that the permit is visible to the general public.
(1190, Added, 05/16/1989; 094-029, Amended, 09/20/1994; 097-029, Amended, 03/17/1998; 02002-012, Amended, 07/16/2002)

16.08.060 Performance bond may be required.

A. The Code Administrator may require bonds and bond agreements in such form and amounts as may be deemed necessary to assure that the work shall be completed in accordance with the permit. Bonds, if required, shall be furnished by the applicant or property owner. A bond agreement shall provide assurance that the applicant has sufficient right, title and interest in the property to grant the city all rights set forth in the agreement.

B. In lieu of a bond, the applicant may file assigned funds or an instrument of credit with the city in an amount equal to that which would be required in a bond.

C. The amount of bonds or other assurance instrument shall not exceed the estimated cost of the total restoration, revegetation or landscaping work planned, as determined by the Code Administrator.

D. The duration of any bond or other required surety shall be not less than three (3) years from the date that said restoration, revegetation or landscaping has been accepted by the Code Administrator.
(1190, Added, 5/16/1989; 094-029, Amended, 9/20/1994; 02002-012, Amended, 07/16/2002)

16.08.070 Standards.

All land clearing not exempt under §TMC 16.08.080 shall conform to the approved plan and the following standards and provisions unless alternate procedures that are equal to or

superior in achieving the purposes of this chapter are authorized in writing by the Code Administrator.

A. No land clearing and/or ground surface level changes shall occur in a Green Belt zone as delineated on the official zoning map except as required for uses permitted in that zone. In addition, such land clearing and/or ground surface changes shall be subject to all other applicable standards and regulations;

B. Land clearing in designated greenbelt or buffer areas of approved and recorded subdivisions or approved projects which would substantially alter the character or purpose of said greenbelt or buffer areas is prohibited, except in cases involving land clearing plans approved by the Code Administrator for removal of invasive or noxious plant species and replanting with native plant and tree species;

C. Erosion control measures shall be provided by the applicant's professional engineer, in conformance with The Drainage Design Erosion Control Manual for the Thurston Region, Washington. The erosion control measures shall be reviewed and subject to approval by the Code Administrator. The requirement for a professional engineer may be waived by the Code Administrator on a case-by-case basis;

D. Land clearing shall be accomplished in a manner that will not create or contribute to landslides, accelerated soil creep, settlement and subsidence on the subject property and/or adjoining properties;

E. When land clearing occurs that does not include development, the proposal shall contain provisions for the preservation of natural land and water features, vegetation, drainage, retention of native ground cover, and other indigenous features of the site;

F. Land clearing shall be accomplished in a manner that will not create or contribute to flooding, erosion, or increased turbidity, siltation, or other form of pollution in a watercourse;

G. Land clearing in wetlands, and fish and wildlife habitat areas shall be in accordance with the provisions of TMC 16.28 - Wetlands protection, and TMC 16.32 - Fish and Wildlife Habitat Protection. No ground cover or trees that are within a minimum of twenty-five feet of the annual high water mark of creeks, streams, lakes, and other shoreline areas or within twenty-five feet of the top of the bank of same shall be removed, nor shall any mechanical equipment operate in such areas;

H. During the months of November, December, and January, no land clearing shall be performed in areas with average slopes of fifteen percent or greater, or any slopes of forty percent or greater;

I. During the months of November, December, and January, no land clearing shall be performed in areas with fine-grained soils and a slope greater than five percent. For the purposes of this section, fine grained soils shall include any soil associations which are classified in Hydrologic Soil groups C or D, as mapped in the Thurston County Soil Survey, or as determined by a qualified soil scientist;

J. Land clearing shall be undertaken in such a manner as to preserve and enhance the city's aesthetic character. The site shall be revegetated and landscaped as soon as practicable, in accordance with the approved revegetation plan. Where the construction schedule does not provide for revegetation of the site prior to October 15 of any year, all disturbed areas shall be hydro seeded or otherwise revegetated on an interim basis. The revegetation plan shall include plantings along public streets and adjoining property boundaries, especially between areas of differing intensities of development. For land

clearing permits that are part of a specific development proposal, land use development shall be initiated or a vegetative screen or buffer established within six months of the date of initiation of land clearing activities;

K. Land clearing shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time, consistent with the construction schedule. Provisions shall be made for interim erosion control measures;

L. Land clearing activities shall be limited to the hours of 7:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 8:00 p.m. on Saturdays in accordance with TMC 8.08;

M. Open burning of land clearing debris is prohibited. Slash shall be properly disposed of off site or chipped and applied to the site within six months of the completion of the land clearing. Chipped material deposited on the site shall be spread out or other means used to prevent fire hazard;

N. Any trees to be retained shall be flagged or otherwise marked to make it clear which tree or groups of trees are to be retained;

O. Any trees or groups of trees to be retained shall have temporary fencing installed around the root protection zone. Temporary fencing must be adequate to protect the root protection zone of trees designated for retention. On construction sites where circumstances warrant, the Code Administrator may require more substantial tree protection fencing, as necessary, to protect intrusion of construction activity into the root protection areas. Machinery and storage of construction materials shall be kept outside of the root protection zone of trees designated for retention. The Code Administrator may require fencing beyond the root protection zone if, in the Code Administrator's determination, such additional protection is needed to protect the tree from damage. Trees designated for retention shall not be damaged by scoring, ground surface level changes, compaction of soil, attaching objects to trees, altering drainage or any other activities that may cause damage of roots, trunks, or surrounding ground cover;

P. Any trees designated for retention shall be field verified by the Code Administrator before land clearing begins;

Q. Not more than thirty percent of the trees on any parcel of land shall be removed within any five-year period, unless the clearing is accomplished as part of an approved development plan. Such clearing shall be done in such a way as to leave healthy dominant and co-dominant trees well distributed throughout the site (taking into account the interdependency of the trees) unless, according to the determination of the Code Administrator, this requirement would conflict with other standards of this section. For every tree removed not less than one replacement tree shall be planted. Replacement trees shall consist of seedlings of the same or similar species to those trees removed, which shall be at least two years old. The time schedule for the planting of replacement trees shall be specified in the approved plan. In determining which trees are to be retained, the following criteria shall be used to the greatest extent possible:

1. Trees which are unusual due to their size, age or rarity;
2. Trees in environmentally sensitive areas;
3. Trees that would act as a buffer to separate incompatible, land uses upon further development of the land;
4. Trees that shelter other trees from strong winds that could otherwise cause them to blow down; and

5. Trees with significant habitat value as identified by a qualified wildlife biologist or by the Code Administrator.

R. When land clearing is performed in conjunction with a specific development proposal not less than twenty percent of the trees, or not less than twelve trees per acre (whichever is greater), shall be retained. This standard may be waived or modified if, in the opinion of the Code Administrator, strict compliance would make reasonable use of the property impracticable. Where the standard is waived or modified, the applicant shall plant not less than three trees for each tree cleared in excess of the standard. These replacement trees shall be at least two inches in diameter measured at a height of six inches above the root collar. Replacement trees shall be planted on the same parcel as the proposed development, unless the code administrator approves of an alternate location. In lieu of this planting of replacement trees, the applicant may contribute a cash payment to the city's tree account in an amount equal to one hundred twenty-five (125%) percent of the replacement cost. In determining which trees shall be given the highest priority for retention, the following criteria shall be used:

1. 1. Heritage or historic trees;
2. 2. Trees which are unusual due to their size, age or rarity;
3. Trees in environmentally sensitive areas;
4. Trees that act as a buffer to separate incompatible land uses;
5. Trees which shelter other trees from strong winds that could otherwise cause them to blow down;
6. Trees within greenbelts or buffers;
7. Trees with significant habitat value as identified by a qualified wildlife biologist or by the Code Administrator; and
8. Trees which are part of a continuous canopy or which are mutually dependent, as identified by a qualified forester or the Code Administrator.

S. In addition to the provisions of this Chapter, the cutting or clearing of historic trees requires the issuance of a Certificate of Appropriateness in accordance with TMC 2.62. (O94-029, Added, 09/20/1994; O97-029, Amended, 03/17/1998; O2002-012, Amended, 07/16/2002)

16.08.075 Heritage Trees Designated.

A. Trees can be nominated for designation by citizens, the Tumwater Tree Board, or city staff.

1. Application for heritage tree designation must be submitted to the Development Services Department. The application must include a short description of the trees, including address or location, and landowner's name and phone number. The application must be signed by both the landowner and nominator.

2. The Tree Board reviews the application and makes a recommendation to the City Council.

3. All Heritage Trees will be added to city tree inventory and public works maps.

B. Trees that are designated as Heritage Trees shall be classified as follows:

1. Historical – A tree which by virtue of its age, its association with or contribution to a historical structure or district, or its association with a noted citizen or historical event.

2. Specimen – Age, size, health, and quality factors combine to qualify the tree as unique among the species in Tumwater and Washington State.

3. Rare – One or very few of a kind, or is unusual in some form of growth or species.
4. Significant Grove – Outstanding rows or groups of trees that impact the city's landscape.

C. The city will provide an evaluation and recommendation for tree health and care and will provide up to one inspection annually upon request of the landowner. The city may, at its discretion, provide a plaque listing the owner's name and/or tree species/location.

D. Heritage Tree removal

1. A tree removal permit is required for removal of any Heritage Tree(s).
2. The Tree Protection Professional shall evaluate any Heritage Trees prior to a decision on the removal permit. Recommendations for care, other than removal, will be considered.
3. Dead or hazardous trees are exempt from a tree removal permit after verification by the Tree Protection Professional.

E. Heritage Tree declassification

Any Heritage Tree may, at any time, be removed from Heritage Tree status at the request of the landowner after providing two weeks written notice to the Development Services Department. Unless an agreement can be reached to preserve the tree, the tree will be removed from the Heritage Tree inventory list and the plaque, if any, will be removed. (O2000-012, Added, 07/18/2000; O2002-012, Amended, 07/16/2002)

16.08.080 Exemptions.

The following shall be exempt from the provisions of this chapter; provided however, the Code Administrator may require reasonable documentation verifying circumstances associated with any proposal to remove trees under any of the following exemptions:

A. Land clearing in emergency situations involving immediate danger to life or property. For every tree cleared under this exemption, not less than one replacement tree shall be planted. Except for the number of trees, replacement trees shall conform to the standard for replacement trees described in TMC §16.08.070R;

B. Land clearing associated with routine maintenance by utility companies such as the power company and telephone company. Utility companies shall notify the Development Services Department at least two weeks prior to the start of work and shall follow appropriate vegetation management practices;

C. Land clearing performed within any public right-of-way or any public easement, when such work is performed by a public agency and the work relates to the installation of utilities and transportation facilities (such as streets, sidewalks and bike paths). To the greatest extent possible, all such work shall conform to the standards set forth in this Chapter;

D. Land clearing within ten feet (when required for construction) of the perimeter of the single family or duplex dwellings and associated driveways or septic systems, must be indicated on the plot plan submitted to the building official with an application for a building permit. This exemption does not apply to land clearing located within environmentally sensitive areas, or to areas subject to the provisions of the shoreline master program;

E. Clearing of dead, diseased, or hazardous trees, after verification by the Code Administrator. For every tree cleared under this exemption, not less than one replacement tree shall be planted. Except for the number of trees, replacement trees shall conform to the standard for replacement trees described in TMC §16.08.070R;

F. Clearing of trees that act as obstructions at intersections in accordance with the municipal code;

G. The removal of not more than six trees from any parcel of land in calendar years. This exemption does not apply to heritage or historic trees, or to trees located in a green belt or greenbelt zone, or in wetlands or their buffers. A letter of “waiver” for the exempt removals must be obtained from the Development Services Department prior to tree removal.

H. Land clearing associated with tree farming operations specifically preempted by Chapter 76.09 RCW, Washington Forest Practices Act, provided that a harvesting and reforestation plan is submitted to the Code Administrator prior to any land clearing;

I. Clearing of noxious ground cover for the purposes of utility maintenance, landscaping, or gardening. This exemption applies solely to ground cover, for protected trees clearing must conform to item G above;

J. Clearing of trees that obstruct or impede the operation of air traffic at the Olympia Airport;

K. Clearing of more than six trees every three consecutive calendar years on developed properties, when such clearing is necessary to allow for the proper functioning of a solar-powered energy system. Such clearing may be done only after verification of the need to clear the trees, issuance of a waiver letter, and the issuance of a building permit for such a system by the Code Administrator.

(O2002-012, Amended, 07/16/2002; 097-029, Amended, 03/17/1998; 094-029, Amended, 09/20/1994; 1311, Amended, 04/07/1992; 1190, Added, 05/16/1989)

16.08.090 Alternative plans.

In limited instances it may be necessary to vary from the strict application of the requirements of this chapter. The city may authorize alternative clearing plans that recognize unusual site characteristics that make development overly difficult. The applicant may propose land clearing in a manner that achieves the policies of this chapter. Such alternative plan shall require approval by the city council.

(1190, Added, 5/16/1989; 02002-012, Amended, 07/16/2002)

16.08.100 Appeal procedure.

Any person aggrieved by a decision or an action of the Code Administrator in the enforcement or implementation of this chapter may, within thirty calendar days of such decision or action, file a written appeal to the Hearings Examiner. Any decision of the hearing examiner may be appealed to the city council.

(1190, Added, 5/16/1989; 1259, Amended, 11/6/1990; 094-029, Amended, 9/20/1994; 02002-012, Amended, 07/16/2002)

16.08.110 Violation-Criminal Penalties

A. Any person who violates the provisions of this chapter or fails to comply with any of the requirements shall be guilty of a misdemeanor and subject to the penalties set forth in TMC 1.12.010. In keeping with the City’s concern regarding protection of the environment, the court should consider the imposition of minimum fines of no less than one thousand dollars per occurrence. Each day such violation continues shall be considered a separate, distinct offense. In cases involving land clearing in violation of this chapter, the clearing of any area up to the first acre shall be considered one offense, and the clearing of each

additional acre and of any additional fractional portion that does not equal one more acre shall each be considered a separate and distinct offense.

B. Any person who commits, participates in, assists or maintains such violation may be found guilty of a separate offense and suffer the penalties as set forth in subsection A of this section.

C. In addition to the penalties set forth in subsections A and B of this section, any violation of the provisions of this chapter is declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in superior court or other court of competent jurisdiction.

D. Upon determination that a violation of the provisions of this chapter has occurred, the building official shall withhold issuance of building permits for the affected property until corrective action is taken by the responsible party. However, if mitigating circumstances exist and reasonable commitments for corrective action are made, the building official may issue building permits. Such corrective action may include:

1. Restoration and replanting of surface vegetation with plant material similar in character and extent as existed prior to the unauthorized clearing;
2. Implementation of drainage and erosion control measures;
3. Replanting of trees equal in value to those lost through unauthorized clearing.

The value of the trees removed shall be determined by the city's Tree Protection Professional using landscape tree appraisal methodology published in the current edition of the International Society of Arboriculture's Guide for Plant Appraisal.

(1190, Added, 05/16/1989; 1311, Amended, 04/07/1992; 094-029, Amended, 09/20/1994; 097-029, Amended, 03/17/1998; 02002-012, Amended, 07/16/2002)

16.08.120 Violation-Civil Penalties/ Presumption/Other Remedies

A. As a supplement or alternative to the remedies set forth in §16.08.110 above, the Code Administrator shall have the authority to seek civil penalties for violation of the provisions of this chapter.

Any person, corporation, partnership or other entity being the owner of real property or holder of timber rights upon such property who violates the provision of this chapter or fails to comply with any of its requirements shall upon a proper showing be deemed to have committed a Class I civil infraction as defined by TMC 1.12.020A(1). Civil liability shall also attach to others who violate the provisions of this chapter, whether or not such violation occurs at the direction of the owners or holder of timber rights.

As provided by law, the Tumwater Municipal Court is hereby vested with jurisdiction to hear civil infraction cases under this chapter. Said cases shall be heard by the court without jury and upon a finding that the infraction has been committed by a preponderance of the evidence.

The Code Administrator shall have the authority to charge as a separate violation each such tree removed or destroyed.

B. **Presumption.** For purposes of administration and prosecution of alleged violations of this chapter, there is hereby created a rebuttable presumption that the person whose name appears on tax records of the Thurston County Assessor, with respect to the real property in question, has responsibility for insuring that violations of provisions of this chapter do not occur on the property in question.

C. In addition to the penalties set forth in this chapter, any violation of the provisions of this chapter is declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in superior court or other court of competent jurisdiction.

D. Upon determination that a violation of the provisions of this chapter has occurred, the building official shall withhold issuance of building permits for their affected property until corrective action is taken by the responsible party. However, if mitigating circumstances exist and reasonable commitments for corrective action are made, the building official may issue building permits. Such corrective action may include:

1. Restoration of surface vegetation with plant material similar in character and extent as existed prior to the unauthorized clearing;

2. Implementation of drainage and erosion control measures;

3. Replanting of trees equal in value to those lost through unauthorized clearing. The value of the trees removed shall be determined by the city's Tree Protection Professional using landscape tree appraisal methodology published in the current edition of the International Society of Arboriculture's Guide for Plant Appraisal.

(094-029, Added, 09/20/1994; 097-029, Amended, 03/17/1998; 02002-012, Amended, 07/16/2002)

Chapter 16.12 RIGHT-TO-FARM

Sections:

16.12.010 Short title.

16.12.020 Intent.

16.12.030 Definition.

16.12.040 Limitation on Nuisance Claims.

16.12.050 Nuisance criteria.

16.12.060 Appeal Procedure.

16.12.070 Severability.

16.12.010 Short title.

This chapter shall be known and may be cited as the "Right-to-Farm Ordinance" of the City of Tumwater.

(1276, Added, 8/20/1991)

16.12.020 Intent.

It is the declared policy of the City of Tumwater to conserve and protect the development and improvement of its prime and unique farmland soils being used now or in the future for agricultural purposes within the appropriate zone district(s). When non-agricultural land uses locate near agricultural uses, those agricultural operations can be subject to nuisance suits. As a result, agricultural operations can be forced to cease operations. Future reinvestment into agricultural operations can also be discouraged by the presence of unfriendly or non-compatible neighbors. It is the intent of the City to limit the circumstances under which properly zoned and/or legally established agricultural operations may be deemed a nuisance and claims made against them.

(1276, Added, 8/20/1991)

16.12.030 Definition.

For the purpose of this code, "agricultural operation" includes any facility for the production for commercial purposes of crops, livestock, poultry, livestock products or poultry products.

(1276, Added, 8/20/1991)

16.12.040 Limitation on Nuisance Claims.

No properly zoned or legally established non-conforming agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof; provided that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

Any and all ordinances of the City now in effect or hereafter adopted that would make the operation of any properly zoned or legally established nonconforming agricultural operation or its appurtenances a nuisance in the circumstances set forth in this code are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances. In a determination that a nuisance exists, the abatement procedures in Chapter 8.04 of this Code will be followed.

(1276, Added, 8/20/1991)

16.12.050 Nuisance criteria.

When a determination is made on whether an agricultural operation is a nuisance and is being run in a negligent or improper manner, as a minimum the following criteria shall be considered:

- A. Endangerment of the public's safety or health;
- B. The unlawful interference with, obstruction of, or rendering dangerous for passage of a lake, river, stream, canal or basin, public park, street, alley or highway;
- C. The presence of diseased animals running at large;
- D. Carcasses of animals not buried or destroyed within twenty-four hours after death;
- E. Accumulations of manure or rubbish except as a compost pile so covered or concealed as not to affect the health or safety of the nearby population; and
- F. The pollution of any public well or cistern, stream, lake, canal or body of water.

(1276, Added, 8/20/1991)

16.12.060 Appeal Procedure.

The determination that an agricultural operation is being run in a negligent or improper manner shall be made by the City's Director of Community and Economic Development with that decision appealable to the City Hearing Examiner and, subsequently, the City Council as per Chapter 2.58 of this Code. Appeal fees are to be established by City Council resolution.

(1276, Added, 8/20/1991)

16.12.070 Severability.

If any section, paragraph, subsection, clause, or phrase of this chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this chapter.

(1276, Added, 8/20/1991)

Chapter 16.16

RIGHT-TO-MINE

Sections:

16.16.010 Short Title.

16.16.020 Intent.

16.16.030 Definitions.

16.16.040 Limitation on Nuisance Claims.

16.16.050 Nuisance criteria.

16.16.060 Appeal Procedure.

16.16.070 Notice of proximity.

16.16.080 Cessation of Operations.

16.16.090 Operations consistent.

16.16.100 Severability.

16.16.010 Short Title.

This chapter shall be known and may be cited as the "Right-to-Mine" Ordinance of the City of Tumwater.

(1277, Added, 8/20/1991)

16.16.020 Intent.

It is the declared policy of the City of Tumwater to conserve and protect its valuable mineral resource lands and operations established to extract those minerals. When other land uses locate near extraction uses, those extraction uses can be subject to nuisance suits. As a result, mineral resource extraction facilities can be forced to cease operations. Future reinvestment into mineral resources operations can also be discouraged by the presence of unfriendly or non-compatible neighbors. It is the intent of the City to limit the circumstances under which mineral resource extraction operations may be deemed a nuisance and claims made against them.

(1277, Added, 8/20/1991)

16.16.030 Definitions.

For the purpose of this code, "mineral resource extraction" refers to operations which mine the following substances:

Construction Materials: Sand, gravel, or crushed rock that normally receive minimal processing (commonly washing and grading): Minimum Value \$5,000,000 (Inflation adjusted to 1990 dollars.)

Industrial and Chemical Mineral Materials: Non-metallic mineral materials that normally receive extensive processing such as heat or chemical treatment or fine sizing. Examples include limestone, marble, specialty sands, clays, peat, coal, borates, gypsum, talc, feldspar, building and dimension stone, rock varieties produced into granules, rock floor, mineral

wool and similar commodities: Minimum Value \$1,000,000 (Inflation adjusted to 1990 dollars.)

Metallic and Rare Minerals: These are metallic elements, minerals and gemstones that possess special properties valuable to science and industry. Examples include ores, deposits, or crystals of: precious metals (such as gold), iron and ferro-alloy metals (such as tungsten), base metals, mercury, uranium, rare earths, minor metals (such as rubidium), gemstones: Minimum Value \$500,000 (Inflation adjusted to 1990 dollars.)

Non-Fluid Mineral Fuels: These are non-hydrothermal mineral fuels occurring in sedimentary rocks such as: coal, coal bed methane, lignite, peat, organic shale, tar sand, uranium and thorium: Minimum Value \$1,000,000 (Inflation adjusted to 1990 dollars.)

Unique or Rare Occurrences of rocks, minerals or fossils that are of outstanding scientific significance: No Minimum Value.

(1277, Added, 8/20/1991)

16.16.040 Limitation on Nuisance Claims.

No mineral resource extraction operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such operation or its appurtenances.

Any and all ordinances of the City now in effect or hereafter adopted that would make the operation of any such mineral resource extraction operation or its appurtenances a nuisance in the circumstances set forth in this code are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such mineral resource extraction operation or any of its appurtenances. In a determination that a nuisance exists, the abatement procedures in Chapter 8.04 will be followed.

(1277, Added, 8/20/1991)

16.16.050 Nuisance criteria.

When a determination is made on whether a mineral resource extraction operation is a nuisance and is being run in a negligent or improper manner, as a minimum the following criteria shall be considered:

- A. Endangerment of the public's safety or health;
- B. The unlawful interference with, obstruction of, or rendering dangerous for passage of a lake, river, stream, canal or basin, public park, street, alley or highway;
- C. The pollution of any public well or cistern, stream, lake, canal or body of water; and
- D. Dense smoke, noxious fumes, soot or cinders, in unreasonable and dangerous quantities.

(1277, Added, 8/20/1991)

16.16.060 Appeal Procedure.

The determination that a mineral resource extraction operation is being run in a negligent or improper manner shall be made by the City's Director of Community and Economic Development with that decision appealable to the City Hearings Examiner and,

subsequently, the City Council as per Chapter 2.58 of this Code. Appeal fees are to be established by City Council resolution.
(1277, Added, 8/20/1991)

16.16.070 Notice of proximity.

All plats, short plats, development permits, and building permits issued for development activities on, or within three hundred feet of, lands designated as mineral resource extraction facilities, shall contain a notice that the subject property is within or near a mineral resource extraction facility on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.

(1277, Added, 8/20/1991)

16.16.080 Cessation of Operations.

Upon the cessation of mining operations, reclamation of the site will proceed in accordance with all applicable federal, state and local regulations.

(1277, Added, 8/20/1991)

16.16.090 Operations consistent.

Mining facilities will operate in a manner consistent with all applicable federal, state and local regulations.

(1277, Added, 8/20/1991)

16.16.100 Severability.

If any section, paragraph, subsection, clause, or phrase of this chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this chapter.

(1277, Added, 8/20/1991)

Chapter 16.20

GEOLOGICALLY HAZARDOUS AREAS

Sections:

16.20.010 Short Title.

16.20.020 Intent.

16.20.030 Definitions.

16.20.040 Approval Required.

16.20.050 Geologically-Hazardous Areas Development Requirements.

16.20.060 Appeals.

16.20.070 Violation - Penalty.

16.20.080 Severability.

16.20.010 Short Title.

This chapter shall be known and may be cited as the "Geologically Hazardous Areas Ordinance" of the City of Tumwater.

(1282, Added, 8/20/1991)

16.20.020 Intent.

It is the declared policy of the City of Tumwater to encourage land uses that are compatible with underlying geological conditions through the use of appropriate engineering, design and construction practices. It is also recognized that at times even the best of efforts to properly design and apply technology will not adequately reduce the risks of geological hazards. In these instances, areas of extreme geological instability are to be avoided as sites for development and placement of structures.

(1282, Added, 8/20/1991)

16.20.030 Definitions.

A. "Slope" means an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

B. "Site" means any lot, tract, parcel, large lot holding, either owned or leased, and any contiguous combination thereof, intended to be developed.

C. "Landslide Area" means those areas susceptible due to combinations of bedrock, soil, slope gradient, slope aspect, hydrology, and other identified factors.

(1282, Added, 8/20/1991)

16.20.040 Approval Required.

No person, corporation, or other legal entity shall engage in construction on a site which has a high probability of experiencing soil liquefaction during earthquakes; an average slope of 15% or greater; or a maximum slope of 40% or greater (pre-construction) without having received approval by the City through application of this ordinance and applicable construction permit(s).

(1282, Added, 8/20/1991)

16.20.050 Geologically-Hazardous Areas Development Requirements.

A. All building permit applications, for new structures, applied for within the City, shall be submitted with site information on the following characteristics:

1. Maximum and average slopes on the site: pre-construction;
2. Identification of known groundwater seepage areas;
3. Soils present with identified propensity for liquefaction during earthquakes;
4. Any known landslide activity; and
5. Identification of stream incision points and streamside erosion points.

B. Development sites for new structures identified with high probability of experiencing soil liquefaction during earthquakes shall have all new structures designed in accordance with the requirements of Chapter 23, Section 2312 of the 1988 Uniform Building Code, as written now or hereafter amended.

C. Development sites for new structures shall be designed in accordance with the requirements of Chapter 23, Section 2312, and Chapter 29, Section 2907(d) of the 1988 Uniform Building Code as written now or hereafter amended when the following conditions exist:

1. Slopes steeper than 15%;
2. Hillsides intersecting geologic contacts of a relatively permeable sediment overlying a relatively impermeable sediment or bedrock;
3. Springs or groundwater seepage;

4. Slopes of 40% or steeper with a vertical relief of ten or more feet except areas composed of consolidated rock.

D. Development sites for new structures identified as potentially experiencing landslide activity shall have all new structures designed in accordance with the requirements of Appendix, Chapter 29, Section 2907 (d) and Appendix, Chapter 70 of the 1988 Uniform Building Code as written now or hereafter amended.

E. Development sites for new structures identified with ground water seepage areas and average slopes of 15% or greater or maximum slopes of 40% or greater shall have all structures located a minimum of 50 feet away from such seepage areas or such structures will be required to have on-site drainage systems installed to be designed to mitigate such site constraints. Such building design is to meet the specifications of the Building Official and be prepared by an engineer, licensed by the State.

F. Development sites for new structures identified with intermittent or perennial streamside incision or erosion areas shall have all structures located a minimum of 50 feet away from such areas. Structures will have on-site drainage installed to conduct water away from streamside incision or erosion areas as much as practicable. Such a drainage system is to meet the specifications of the Building Official and be prepared and designed by an engineer, licensed by the State.

(1282, Added, 8/20/1991)

16.20.060 Appeals.

If, in the opinion of the Building Official, geologically-hazardous areas, as described in Section 16.20.050, represent a severe risk which cannot be successfully ameliorated by structural design, the affected site or portion thereof may be declared unbuildable. Appeals of the Building Official are as provided for in Section 204 of the Uniform Building Code as adopted or hereafter amended.

(1282, Added, 8/20/1991)

16.20.070 Violation - Penalty.

A. Violation of the provisions of this chapter or failure to comply with any of the requirements shall constitute a misdemeanor and shall be punishable by a fine of not more than three hundred dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment. Each day such violation continues shall be considered a separate, distinct offense.

B. Any person who commits, participates in, assists or maintains such violation may be found guilty of a separate offense and suffer the penalties as set forth in subsection A of this section.

C. In addition to the penalties set forth in subsections A and B of this section, any violation of the provisions of this chapter is declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in Superior Court or other court of competent jurisdiction.

D. Upon determination by the Building Official that a violation of the provisions of this chapter has occurred, the Building Official shall withhold issuance of building permits and/or certificates of occupancy for the affected property until corrective action is taken by the responsible party. However, if mitigating circumstances exist and reasonable

commitments for corrective action are made, the Building Official may issue building permits and/or certificates of occupancy.
(1282, Added, 8/20/1991)

16.20.080 Severability.

If any section, paragraph, subsection, clause or phrase of this chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the chapter.
(1282, Added, 8/20/1991)

Chapter 16.24

AQUIFER PROTECTION STANDARDS

Sections:

16.24.010 Short Title.

16.24.020 Intent.

16.24.030 Definitions.

16.24.040 Approval Required.

16.24.050 Aquifer Protection Standards.

16.24.060 Violation - Penalty.

16.24.070 Severability.

16.24.010 Short Title.

This chapter shall be known and may be cited as the "Aquifer Protection Standards Ordinance" of the City of Tumwater.
(1281, Added, 08/20/1991)

16.24.020 Intent.

It is the declared policy of the City of Tumwater to conserve and protect the underground waters and aquifers over which the City rests. Any development which occurs within the City will be designed to eliminate chemical and biological contaminants from entering underground waters and aquifers which are now, or in the future, likely to be used as a potable drinking water source.
(1281, Added, 08/20/1991)

16.24.030 Definitions.

- A. "Aquifer" means a saturated geologic formation which will yield a sufficient quantity of water to serve as a private or public water supply.
- B. "Contaminants" means hazardous substance(s) which, if released in sufficient quantity, would impair a component of the environment as a useful resource.
- C. "Facility" means all structures, contiguous land, appurtenances, and other improvements on or in the land.
- D. "Groundwater" means all water found beneath the ground surface, including the slowly-moving sub-surface water present in aquifers and vadose zones.
- E. "Hazardous Substance(s)" means any material, either singularly or in combination, which may pose a present or potential hazard to human health or to the quality of the drinking water supply (now or in the future) in the aquifer system underlying the City of

Tumwater when improperly used, stored, transported, or disposed of or otherwise mismanaged, including those materials identified as a hazardous waste in 40 CFR 261, as amended, or defined as a hazardous substance in 40 CFR 302, as amended, WAC 173-360-120, as amended. Hazardous substances shall include petroleum products and by-products, including crude oil or any fraction thereof such as gasoline, diesel, and waste oil which is liquid at standard conditions of temperature and pressure (60° Fahrenheit, 14.7 pounds per square inch absolute).

F. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of hazardous substance(s) from a facility or activity into or onto soil, air, water, groundwater, or other materials.

G. "Release Detection" means a method or methods of determining whether a release or discharge of a hazardous substance has occurred from a regulated facility into the environment.

(1281, Added, 08/20/1991)

16.24.040 Approval Required.

No person, corporation, or other legal entity shall engage in the construction of regulated facility/facilities contained in this ordinance without having received approval by the City through the environmental review process and/or applicable discretionary permit(s) and construction permit(s).

(1281, Added, 08/20/1991)

16.24.050 Aquifer Protection Standards.

The following aquifer protection techniques will be applied on a city-wide basis for development construction, provided that such development may also be subject to the requirements of Chapter 16.26:

A. Stormwater Retention Facilities - New stormwater retention facilities shall be designed and constructed in accordance with the requirements of the Drainage Design and Erosion Control Manual for the Thurston Region.

B. Facilities with Underground Tanks/Underground Storage Vaults - All new underground storage facilities used or to be used for the underground storage of hazardous materials shall be designed and constructed so as to:

1. Prevent releases due to corrosion or structural failure for the operational life of the tank or vault;
2. Be cathodically protected against corrosion, constructed of non-corrosive material, steel clad with a non-corrosive material, or designed in a manner to prevent the release or threatened release of any stored substance;
3. Use material in the construction or lining of the tank which is compatible with the substance to be stored;
4. Provide for release detection method(s); and
5. Have double walls or single walls with liners.

C. Facilities with Aboveground Tanks/New Aboveground Tanks -

1. No new aboveground storage facility or part thereof shall be fabricated, constructed, installed, used, or maintained in any manner which may allow the release of a hazardous material to the ground, groundwaters, or surface waters;

2. No new aboveground tank or part thereof shall be fabricated, constructed, installed, used, or maintained without having constructed around and under it an impervious containment area enclosing or underlying the tank or part thereof. Impervious containment will be equal to the volume of the tank to avoid an overflow of the containment area.

D. Modification of Performance Standards - Projects which are located outside of the Aquifer Protection Zone District (TMC Title 18) may be granted reductions in the above-specified performance standards by the submittal and approval of an aquifer protection plan. This plan will outline how the project proposal will effectively protect the aquifer from releases of contaminants. The Aquifer Protection Plan will be made a part of the environmental review as outlined in the City's Environmental Policy Code (TMC Title 16.04), if applicable, and be a condition of approval for any discretionary permits or construction permits.

(097-028, Amended, 04/21/1998; 097-008, Amended, 11/05/1996; 1281, Added, 08/20/1991)

16.24.060 Violation - Penalty.

A. Violation of the provisions of this chapter or failure to comply with any of the requirements shall constitute a misdemeanor and shall be punishable by a fine of not more than three hundred dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment. Each day such violation continues shall be considered a separate, distinct offense.

B. Any person who commits, participates in, assists or maintains such violation may be found guilty of a separate offense and suffer the penalties as set forth in subsection A of this section.

C. In addition to the penalties set forth in subsections A and B of this section, any violation of the provisions of this chapter is declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in Superior Court or other court of competent jurisdiction.

D. Upon determination that a violation of the provisions of this chapter has occurred, the Building Official shall withhold issuance of building permits and/or certificates of occupancy for the affected property until corrective action is taken by the responsible party. However, if mitigating circumstances exist and reasonable commitments for corrective action are made, the Building Official may issue building permits and/or the certificates of occupancy.

(1281, Added, 08/20/1991)

16.24.070 Severability.

If any section, paragraph, subsection, clause or phrase of this chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the chapter.

(1281, Added, 08/20/1991)

Chapter 16.26

WELLHEAD PROTECTION

Sections:

16.26.010 Purpose.

16.26.020 Definitions.

16.26.030 Methodology used.

16.26.040 Municipal well protection standards for new and expanding uses.

16.26.050 New and expanding uses involving hazardous materials requiring utilization of all known, available and reasonable technologies.

16.26.055 Municipal well protection standards for existing uses.

16.26.060 Protection standards - When applicable.

16.26.070 Amendment to wellhead protection map.

16.26.080 Appeals.

16.26.090 Violation - Penalty.

16.26.010 Purpose.

The purpose of this chapter is to meet the requirements of Section 1428 of the 1986 Amendments to the Federal Safe Drinking Water Act, as adopted and implemented by Chapters 43.20.050, 70.119A.060, and 70.119A.080 of the Revised Code of Washington and Chapter 246- 290 of the Washington Administrative Code, which require the City to develop and implement a wellhead protection program to identify risks of contamination potentially impacting city wells, and to reduce or eliminate those risks.
(O97-028, Added, 04/21/1998)

16.26.020 Definitions.

- A. "AKART" is an acronym for "all known, available, and reasonable methods of prevention, control and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or treatment discharge of pollutants. AKART may include, but not be limited to, pollution prevention plan development and implementation, engineering solutions, and practices deemed necessary to prevent release. In determining whether a technology is considered AKART, consideration is given to its technical and economical feasibility. The concept of AKART applies to both point and non-point sources of pollution. The term "best management practices" typically applied to non-point source pollution controls is considered a subset of the AKART requirement.
- B. "Animal unit" is defined as 1,000 pounds of live weight of any given livestock species or any combination of livestock species. Animal equivalents are calculated for each livestock and poultry sector according to estimated rates of manure production for each species. For additional information, refer to the U.S. Department of Agriculture Natural Resource Conservation Service Animal Waste Field Handbook.
- C. "Aquifer" means a geologic formation, group of formations or part of a formation capable of yielding a significant amount of groundwater to wells or springs.
- D. "Capture zone" means an area in which groundwater is calculated to travel to a pumping well. Capture zones are usually defined according to the time that it takes for water within a particular zone to travel to a well. Calculated capture zones usually only approximate actual capture zones as a result of assumptions required to conduct the calculation.
- E. "Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in groundwater in the northern Thurston County groundwater management area (GWMA), or that occurs at concentrations greater than those naturally occurring in the vicinity of the facility.

F. "Development" means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operations.

G. "Facility" means something that is built or installed to perform some particular function and includes structures, containment areas and storage areas associated with the facility.

I. "Groundwater" means all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water.

J. "Hazardous material" means anything defined as a hazardous substance in Section 173-340-200 of the Washington Administrative Code or as a hazardous material under the Uniform Fire Code as adopted by Tumwater Municipal Code Chapter 15.16.

K. "MPCs" means reasonable Methods of Prevention and Control. Examples of MPCs include, but are not limited to, pollution prevention plan development and implementation, routine maintenance, secondary containment, and measures to eliminate contaminant pathways to the source water.

L. "Pollution prevention plan" means a site-specific plan that addresses the avoidance of unplanned chemical release in the air, water, or land. It is based on deliberate waste management planning, site design, and operational practices.

M. "Release" means any intentional or unintentional entry of any hazardous material into the environment.

N. "Well or wellhead" means and includes any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of an excavation is for the location, diversion, artificial recharge, or withdrawal of ground water.

O. "Wellhead protection area (WHPA)" means the surface or subsurface area surrounding a municipal water well or wellfield through which contaminants are reasonably likely to move toward and reach such water well or wellfield within six months, one year, five years and ten years. WHPAs are areas that are defined for the purpose of water resource management. WHPAs generally include areas identified as capture zones and may include additional areas to account for uncertainties in the delineation of the capture zones. (O2000-004, Amended, 07/18/2000; O99-001, Amended, 04/20/1999; O97-028, Added, 04/21/1998)

16.26.030 Methodology used.

A computer software program called QuickFlow™ was used in delineating wellhead protection areas (WHPAs), depicted on the documents available for inspection in the City's Development Services Department, for drinking water supply wells of the City of Tumwater (City of Tumwater Wellhead Protection Plan, 1997; letter report to the City of Tumwater, February 3, 1998). Groundwater level data from the United States Geological Survey (1994), water levels of lakes and streams, as well as aquifer data contained in technical reports were used to calibrate the model.

One-, five- and ten-year capture zones were modeled and delineated using the City's 1992 annual production plus 5% to account for growth, which is approximately equivalent to 1997 annual consumption. Average annualized pumping rates of wells were pro-rated according to actual well capacity in 1994. Modeling delineated four discrete ten-year capture zones: the Palermo Well Field; the Port Wells; the Bush Middle School Wells; and the Trails End Well.

Six-month capture zones were also delineated, using the same approach described above, but with different pumping rates. Projected annual demand for the year 2010 (City of Tumwater, Comprehensive Water System Plan) was used, and the loss of one of the major well fields was assumed. Pumping rates for remaining wells were calculated based on peak six-month production rates. Pumping rates of wells were pro-rated according to their 1997 capacity.

Water level data were collected between September, 1995 and March, 1996 to verify groundwater flow directions. The modeled capture zones for the Port of Olympia (Port) and Bush Middle School Wells were consistent with the new water level data. However, the modeled capture zones delineated for the Trails End and Palermo Wells required adjustment to be consistent with the new data. The modeled capture zones of the Trails End and Palermo Wells were rotated around the pumping centers and adjusted to orient them with groundwater flow directions indicated by the new data.

The capture zones were delineated using data that have some uncertainty and/or seasonal variability, and therefore they only approximate the actual capture zones. To account for potential differences between actual and modeled capture zones, wellhead protection areas larger than the modeled capture zones are described in documents available for inspection in the City's Development Services Department to provide an acceptable margin of protection. These safety margins were delineated by rotating the ten-year capture zones ten degrees in each direction. The points of rotation for the respective ten-year capture zones were selected as: the center of the Palermo Well Field; Well 11 for the Port Wells; the center of the Bush Middle School Wells; and the Trails End Well. The rotation did not include rotating the six month capture zones because the protective assumptions of those zones precluded the need for expansion to account for modeling uncertainty.

The resulting ten-year wellhead protection areas were divided into one-, five-, and ten-year zones by lines that are tangential to the most up-gradient reach of the respective capture zones, and perpendicular to the edge of the 10-year WHPA. The six month WHPA is defined by the boundaries of the six month modeled capture zone.

(O97-028, Added, 04/21/1998)

16.26.040 Municipal well protection standards for new and expanding uses.

New development, and expansion or enlargement of existing facilities or uses, of the type described below are prohibited within the designated wellhead protection areas as described in documents available for inspection in the City's Development Services Department, (which includes an overview map, a section map and a document identifying survey points on the wellhead protection area boundaries). Provided however: 1)

Expansion or enlargement of any facilities associated with the below described land uses which in no way increases the risk of groundwater contamination shall not be prohibited by this section. (Example: Development or expansion of retail food service in conjunction with an existing gas station or construction or expansion of an office facility used in conjunction with an existing automobile wrecking yard); 2) Development that is required by other federal, state or local government regulations to protect groundwater shall not be prohibited by this section; and 3) Properly permitted and operating on-site septic systems shall not be prohibited.

Where the land uses prohibited in this section are listed as permitted, accessory or conditional uses in Title 18 - Zoning TMC, this section shall control and the uses shall be prohibited.

An existing use or proposed use is deemed to be within the applicable wellhead protection area if any portion of the facility (whether existing or proposed) touches or extends into the applicable wellhead protection area. The mere encroachment of the wellhead protection area on a land tract upon which such facility is located or proposed to be located shall not prohibit otherwise authorized development on the portion of the tract outside the wellhead protection area.

A. The following uses are prohibited within the designated six (6) month and one (1) year wellhead protection areas, as described in documents available for inspection in the City's Development Services Department:

1. Land spreading disposal facilities (as defined by WAC 173-304 - disposal above agronomic rates);
2. Agricultural operations including stockyards and feedlots involving the raising or keeping of farm animals;
3. Gas stations, petroleum products refinement, reprocessing, and storage (except underground storage of heating oil or agricultural fueling in quantities less than 1,100 gallons for consumptive use on the parcel where stored), and liquid petroleum products pipelines (SIC Codes 517, 554, 598 and 461);
4. Automobile wrecking yards;
5. Wood waste landfills (as defined by WAC 173-304-100); and
6. Dry cleaners, excluding drop-off only facilities (SIC Code 721).

B. The following uses are prohibited within the designated six month, and one (1), five (5) and ten (10) year wellhead protection areas as depicted on the wellhead protection map available for inspection in the City's Development Services Department:

1. Landfills (municipal sanitary solid waste and hazardous waste);
2. Hazardous waste transfer, storage and disposal facilities;
3. Wood and wood products preserving (SIC Code 2491); and
4. Chemical manufacturing (SIC Code 28).

(O2000-014, Amended, 07/18/2000; O97-028, Added, 04/21/1998)

16.26.050 New and expanding uses involving hazardous materials requiring utilization of all known, available and reasonable technologies.

For new development, and expansion or enlargement of existing facilities or uses, of the type described in subsections A-C below which are within the designated six month, and one (1), five (5) and ten (10) year wellhead protection areas, (other than those described in TMC 16.26.040 above), and which use, store, handle or dispose of hazardous materials above the minimum quantities listed below at any time, the applicant shall submit documentation which demonstrates that all known available and reasonable technologies (AKART) will be used to prevent impact to the groundwater. The Development Services Director shall review this documentation to determine whether the proposal shall be approved, denied, or approved with conditions, to insure adequate protection of groundwater. In the case of expansion or enlargement of existing facilities, the requirement to demonstrate that AKART will be used applies only to the expanded or enlarged portion of the facility, and does not apply to the previously existing facility.

An existing use or proposed use is deemed to be within the applicable wellhead protection area if any portion of the facility (whether existing or proposed) touches or extends into the applicable wellhead protection area. The mere encroachment of the wellhead protection area on a land tract upon which such facility is located or proposed to be located shall not prohibit otherwise authorized development on the portion of the tract outside the wellhead protection area.

A. Types of chemical substances regulated in Table 8001.15-a,b,c,d of the Uniform Fire Code, and as subsequently amended. Minimum cumulative quantity: 160 pounds (or the equivalent of 20 gallons).

B. Facilities or uses using cleaning substances for janitorial use or retail sale in the same packaging and concentrations as products packaged for use by the general public. Chlorinated solvents and non-chlorinated solvents which are derived from petroleum or coal tar will not be considered a cleaning substance under this subsection, but rather a chemical substance under subsection A above. Minimum cumulative quantity: 800 pounds (or the equivalent of 100 gallons), not to exceed 55 gallons for any single package.

C. Businesses that use, store, handle or dispose of chemicals listed in WAC 173-303-9903 as "P" chemicals. Minimum quantity: none. Each application that includes a "P" chemical will be reviewed by the Development Services Director to determine if the applicant shall be required to submit documentation which demonstrates that AKART will be used to prevent impact to the groundwater.

(O2000-014, Amended, 07/18/2000; 097-028, Added, 04/21/1998)

16.26.055 Municipal well protection standards for existing uses.

The following shall apply to existing uses located within the designated wellhead protection areas as described in documents available for inspection in the City's Development Services Department, (which includes an overview map, a section map and a document identifying survey points on the wellhead protection area boundaries).

A. For any existing use identified by the pollution source inventory in an area within an approved wellhead protection plan, within the one (1), five (5), and ten (10) year time of travel zones which uses, stores, handles or disposes of hazardous materials above the minimum quantity thresholds listed in Section 16.26.050.A-C, the owner, upon request of the City's Wellhead Protection Program Manager, shall submit a pollution prevention plan that will ensure adequate protection of the source water supply. The program manager, in consultation with the water purveyor in which the use is located, shall review this plan to determine whether the plan shall be approved, or approved with conditions to ensure adequate protection of the source water supply.

Notwithstanding the minimum thresholds listed in Section 16.26.050.A-C, the City's Wellhead Protection Program Manager, at his/her discretion, for good cause and with reasonable expectation of risk to ground water, may require pollution prevention plans and MPCs (Methods of Prevention and Control) on any use proposed within the one (1), five (5), and ten (10) year time of travel zones.

B. For any existing agricultural use located within the designated one (1), five (5), and ten (10) year time of travel zones, the owner, upon the request of the City's Wellhead Protection Program Manager, at his/her discretion, for good cause and with reasonable expectation of risk to ground water, and with consultation with the Thurston Conservation District, shall develop and implement a farm conservation plan in conformance with the

U.S. Natural Resources Conservation Service Field Office Technical Guide and obtain approval of the Thurston Conservation District Board of Supervisors. For purposes of this section, only those activities in an approved farm plan related to ground water protection must be implemented. However, nothing in this section relieves an agricultural operation from meeting the requirements of other jurisdictions.
(O2000-014, Added, 07/18/2000)

16.26.060 Protection standards - When applicable.

The wellhead protection areas established for any municipal well shall only regulate development pursuant to TMC 16.26.040 and 16.26.050 after water production has been implemented. In addition thereto, at such time as any municipal well is abandoned for groundwater production, the otherwise applicable regulation shall no longer regulate development.
(O97-028, Added, 04/21/1998)

16.26.070 Amendment to wellhead protection map.

It is anticipated that subsequent to the effective date of this ordinance, new municipal wells will be installed, existing wells may be redeveloped, or new information may become available that may result in the need to amend the wellhead protection map from time to time.

A. When a determination has been made to proceed with the establishment of a new municipal water supply production well or to increase the pumping capacity of an existing production well, the Public Works Director shall notify the Planning and Facilities Director of the need to amend the city's wellhead protection area map to take into account the establishment of a new well or wells, or the redevelopment of an existing well or wells.

B. When sufficient new information is made available through citizens' or other jurisdictions' studies, or from other sources, to warrant a reevaluation of the wellhead protection area map, and at periodic intervals, but not less frequently than required by law, then the Public Works Director shall notify the Planning and Facilities Director of the need for possible amendments to the wellhead protection area map.

C. Prior to the adoption of such amendments, notice of a public hearing regarding such proposed amendments shall be given by publication and by mail to the property owner(s) of record within the proposed new wellhead protection areas.

D. In the event the wellhead protection area extends into the jurisdiction of Thurston County or Olympia, said affected jurisdiction shall be notified and requested to amend their wellhead protection regulations as appropriate prior to the adoption of such amendments, including timely notification to affected property owners.

(O2000-014, Amended, 07/18/2000; O97-028, Added, 04/21/1998)

16.26.080 Appeals.

Any person believed to be aggrieved by the application of the provisions of this chapter may appeal the matter to the Tumwater Hearing Examiner. Such appeals are governed by TMC 2.58. Appeals challenging wellhead protection area determinations in conjunction with the establishment of wellhead protection areas must be supported by technical evidence provided through competent and credible expert testimony using the methodology set forth in TMC 16.26.030 or an equivalent methodology deemed equally

protective by the Hearing Examiner. The Hearing Examiner shall give substantial weight to the technical reports and information used by the City in establishing the particular wellhead protection area alleged to be improper.

(O97-028, Added, 04/21/1998)

16.26.090 Violation - Penalty.

A. Violation of the provisions of this chapter or failure to comply with any of its requirements shall constitute a misdemeanor and shall be punishable by a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment. Each day such violation continues shall be considered a separate, distinct offense.

B. Any person who commits, participates in, assists or maintains such violation may be found guilty of a separate offense and suffer the penalties as set forth in subsection A of this section.

C. In addition to the penalties set forth in subsections A and B of this section, any violation of the provisions of this chapter is declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in Superior Court or other court of competent jurisdiction.

(O97-028, Added, 04/21/1998)

Chapter 16.28

WETLAND PROTECTION STANDARDS

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16.28.010 Short Title.

This chapter shall be known and may be cited as the "Wetland Protection Standards Ordinance" of the City of Tumwater.

(1278, Added, 8/20/1991)

16.28.020 Intent.

It is the declared policy of the City of Tumwater to require site planning to avoid or minimize damage to wetlands wherever possible; to require that activities not dependent upon a wetland location be located at upland sites; and to achieve no net loss of wetlands by requiring restoration or enhancement of degraded wetlands or creation of new wetlands to offset losses that are unavoidable.

(1278, Added, 8/20/1991)

16.28.030 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. "Applicant" means a person who files an application for any permit subject to this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.

B. "Best management practices" means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and

2. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands.

C. "Compensation project" means actions necessary to replace project-induced wetland and/or wetland buffer losses, including land acquisition, planning, engineering, construction, monitoring and contingency actions.

D. "Compensatory mitigation" means replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:

1. "Restoration" - Actions performed to reestablish wetland functional characteristics and processes which have been lost by alterations, activities, or catastrophic events within an area which no longer meets the definition of a wetland.

2. "Creation" - Actions performed to intentionally establish a wetland at a site where it did not formerly exist.

3. "Enhancement" - Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.
- E. "Buildable area" means an area outside of wetlands and wetland buffers.
- F. "Department" means the Washington State Department of Ecology.
- G. "Emergent wetland" means a regulated wetland with at least 30 percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.
- H. "Essential habitat" means habitat necessary for the survival of federally listed threatened, endangered and sensitive species and state listed priority species.
- I. "Exotic" means any species of plants or animals that are foreign to the planning area.
- J. "Existing and ongoing agriculture" includes those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years.
- K. "Extraordinary hardship" means strict application of this chapter and/or programs adopted to implement this chapter by the City when these actions would prevent all reasonable economic use of the parcel.
- L. "Forested wetland" means a regulated wetland with at least 20 percent of the surface area covered by woody vegetation greater than 20 feet in height.
- M. "Functions," "beneficial functions," or "functions and values" means the beneficial roles served by wetlands including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.
- N. "High intensity land use" includes land uses which are associated with moderate or high levels of human disturbance or substantial wetland habitat impacts including, but not limited to, residential uses of five or more dwelling units per acre (calculated according to the density calculation provisions of the applicable zoning district in Title 18 TMC), active recreation, and commercial and industrial land uses.
- O. "Hydric soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper stratum. The presence of hydric soil shall be determined following the methods described in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1987) or a Washington State manual for the delineation of wetlands that is adopted in accordance with applicable state law.
- P. "Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1987) or a Washington State manual for the delineation of wetlands that is adopted in accordance with applicable state law.
- Q. "In-kind compensation" means to replace wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement within the same wetlands rating category.
- R. "Isolated wetlands" means those regulated wetlands which:

1. are outside of and not contiguous to any 100 year floodplain of a lake, river, or stream;
and

2. have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

S. "Low intensity land use" includes land uses which are associated with low levels of human disturbance or low wetland habitat impacts, including, but not limited to, residential uses of less than five dwelling units per acre (calculated according to the density calculation provisions of the applicable zoning district in Title 18 TMC), passive recreation, open space, or agricultural or forest management land uses.

T. "Mitigation" includes avoiding, minimizing or compensating for adverse wetland impacts. Mitigation, in the following order of preference is defined as:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;

6. Monitoring the impact and the compensation project and taking appropriate corrective measures. Mitigation for individual actions may include a combination of the above measures.

U. "Native vegetation" means plant species which are indigenous to the area in question.

V. "Offsite compensation" means to replace wetlands away from the site on which a wetland has been impacted by a regulated activity.

W. "Onsite compensation" means to replace wetlands at or adjacent to the site on which a wetland has been impacted by a regulated activity.

X. "Out-of-kind compensation" means to replace wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity. It does not refer to replacement out of the wetland rating category.

Y. "Practicable alternative" means an alternative that is available and capable of being carried out after taking into consideration costs, existing technology, and logistics in light of overall project purposes, and having less impacts to regulated wetlands. It may include an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

Z. "Priority habitats" are a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration.

AA. "Priority species" are those species that are of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state-listed endangered, threatened and sensitive species.

BB. "Regulated wetlands," means ponds twenty acres or less, including their submerged aquatic beds, and those lands defined as wetlands under the Federal Clean Water Act, 33 U.S.C. Section 1251 et seq., and rules promulgated pursuant thereto and shall be those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Regulated wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands created as mitigation and wetland modified for approved land use activities shall be considered as regulated wetlands. All category I wetlands shall be considered regulated wetlands. Regulated wetlands do not include category II and III wetlands less than 2,500 square feet in area and category IV wetlands less than 10,000 square feet in area. Regulated wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. The applicant shall bear the burden of proving that the site was not previously a wetland. For identifying and delineating a regulated wetland, the City shall consider the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1987) or a Washington State manual for the delineation of wetlands that is adopted in accordance with applicable state law.

CC. "Regulated activities" means any of the following activities which are directly undertaken or originate in a regulated wetland or its buffer:

1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
2. The dumping, discharging, or filling with any material;
3. The draining, flooding, or disturbing of the water level or water table;
4. The driving of pilings;
5. The placing of obstructions;
6. The construction, reconstruction, demolition, or expansion of any structure;
7. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland, provided that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules; or
8. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.

DD. "Repair or maintenance" means an activity that restores the character, scope, size and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter additional regulated wetlands are not included in this definition.

EE. "Scrub-shrub wetland" means a regulated wetland with at least 30 percent of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.

FF. "Serviceable" means presently useable.

GG. "Unavoidable and necessary impacts" are impacts to regulated wetlands that remain after a person proposing to alter regulated wetlands has demonstrated that no practicable alternative exists for the proposed project.

HH. "Water-dependent" means requiring the use of surface water that would be essential to fulfill the purpose of the proposed project.

II. "Wetlands," for the purposes of inventory, incentives, and nonregulatory programs, means those lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this definition, wetlands must have one or more of the following attributes:

1. At least periodically, the land supports predominately hydrophytes;
2. The substrate is predominately undrained hydric soil; and
3. The substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

JJ. "Wetland buffers" or "wetland buffer zones" is an area that surrounds and mitigates the adverse impacts to the functions and values of a regulated wetland.

KK. "Wetland classes," "classes of wetlands" or "wetland types" means descriptive classes of the wetland taxonomic classification system of the United States Fish and Wildlife Service (Cowardin, et al 1978).

LL. "Wetland permit" means any permit issued, conditioned or denied specifically to implement this chapter.

MM. "Wetland edge" means the boundary of a wetland as delineated based on the definitions contained in this chapter.

(1278, Added, 8/20/1991; 096-008, Amended, 11/5/1996)

16.28.040 Abrogation and Greater Restrictions.

It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

(1278, Added, 8/20/1991)

16.28.050 Interpretation.

The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

(1278, Added, 8/20/1991)

16.28.060 Applicability.

A. When any provision of any other chapter of the City of Tumwater conflicts with this chapter, that which provides more protection of wetlands and wetland buffers shall apply unless specifically provided otherwise in this chapter.

B. The City is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter. The City of Tumwater shall not grant any approval or permission to conduct a regulated activity in a wetland or wetland buffer prior to fulfilling the requirements of this chapter. Such permits and approvals include but are not limited to the following:

Building permit; conditional use permit; franchise right-of-way construction permit; binding site plan; grading; land clearing permit; planned unit development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; shoreline environmental redesignation; variance; zoning code

amendment; rezone; land division; or any subsequently adopted permit or required approval not expressly exempted by this chapter.
(1278, Added, 8/20/1991)

16.28.070 Maps and Inventory.

This chapter shall apply to all lots or parcels on which wetlands and/or wetland buffers are located within the City of Tumwater. The approximate location and extent of wetlands is displayed on the Thurston County Wetlands Inventory. The Thurston County Wetlands Inventory is to be used as a guide to the general location or extent of wetlands. Wetlands not shown on the Thurston County Wetlands Inventory are presumed to exist in the City of Tumwater and are protected under all the provisions of this chapter. In the event that any of the wetland designations shown on the maps conflict with the criteria set forth in this chapter the criteria shall control.

(1278, Added, 8/20/1991; 096-008, Amended, 11/5/1996)

16.28.080 Determination of Regulatory Wetland Boundary.

A. The exact location of the wetland boundary shall be determined by the applicant through the performance of a field investigation applying the wetland definition provided in Section 16.28.030 of this chapter. Qualified professional and technical scientists shall perform wetland delineations using the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1987) or a Washington State manual for the delineation of wetlands that is adopted in accordance with applicable state law. The applicant is required under Section 16.28.140(C) of this chapter to show the location of the wetland boundary on a scaled drawing as a part of the permit application.

B. The City, when requested by the applicant, may waive the delineation of boundary requirement for the applicant and, in lieu of delineation by the applicant, perform the delineation. The City shall consult with qualified professional scientists and technical experts or other experts as needed to perform the delineation. The applicant may be required to reimburse the City for costs incurred for this service including administration costs.

C. Where the City performs a wetland delineation at the request of the applicant, such delineation shall be considered a final determination.

D. Where the applicant has provided a delineation of the wetland boundary, the City shall verify the accuracy of, and may render adjustments to, the boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the City shall, at the applicant's expense, obtain expert services to render a final delineation.

(1278, Added, 8/20/1991; 096-008, Amended, 11/5/1996)

16.28.090 Wetlands rating system.

The following Washington State rating system is hereby adopted as the rating system for the City of Tumwater. Wetlands buffer widths, replacement ratios and avoidance criteria shall be based on these rating systems.

A. Washington State Four-tier Wetlands Rating System

1. Category I Criteria

a. Documented habitat for endangered or threatened fish or animal species or for potentially extirpated plant species recognized by state or federal agencies; or

b. High quality native wetland communities, including documented Natural Heritage wetland sites and sites which qualify as a quality Natural Heritage wetland; or

c. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps; or

2. Category II Criteria

a. Regulated wetlands that do not contain features outlined in category I; but do contain one or more of the following:

(1) Documented habitats for sensitive plant, or fish species recognized by federal or state agencies; or

(2) Rare wetland communities listed in subsection 1.c which are not high quality; or

(3) Wetland types with significant functions which may not be adequately replicated through creation or restoration; or

(4) Documented priority habitat and species as listed by the state.

b. Regulated wetlands with significant habitat value based on diversity and size.

c. Regulated wetlands contiguous with salmonid fish-bearing waters, including streams where flow is intermittent; or

d. Regulated wetlands with significant use by fish and wildlife.

3. Category III Criteria

a. Regulated wetlands that do not contain features outlined in category I, II or IV.

4. Category IV Criteria

a. Regulated wetlands which do not contain the features outlined in category I or II wetlands, and which meet the following criteria:

b. Isolated wetlands that are less than or equal to one acre in size, and have only one wetland class, and have only one dominant plant species (monotypic vegetation); or

c. Isolated wetlands that are less than or equal to two acres in size, and have only one wetland class and a predominance of exotic species.

B. Wetland rating categories shall be applied as the regulated wetland exists on the date of adoption of the rating system by the City; as the regulated wetland may naturally change in accordance with permitted activities. Wetland rating categories shall not be altered to recognize illegal modifications.

C. Procedures for applying the wetland rating system. Reserved.

(1278, Added, 8/20/1991)

16.28.100 Regulated Activities.

A permit shall be obtained from the City prior to undertaking the following activities in a regulated wetland or its buffer unless authorized by Section 16.28.110 below:

A. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;

B. The dumping, discharging, or filling with any material;

C. The draining, flooding, or disturbing of the water level or water table;

D. The driving of pilings;

E. The placing of obstructions;

F. The construction, reconstruction, demolition, or expansion of any structure;

G. The destruction or alteration of wetlands vegetation through clearing, harvesting, or intentional burning, that would alter the character of a regulated wetland, provided that

these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules; or

H. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands water sources, including quantity, or the introduction of pollutants.

(1278, Added, 8/20/1991)

16.28.110 Exempt activities.

The following uses which require no specific permit, shall be allowed within a wetland or wetland buffer to the extent that they are not prohibited by any other chapter or law and provided they are conducted using best management practices, except where such activities result in the conversion of a regulated wetland or wetland buffer to a use to which it was not previously subjected and provided further that forest practices and conversions shall be governed by Chapter 76.09 RCW and its rules:

A. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;

B. Outdoor recreational activities, including fishing, birdwatching, hiking, boating, horseback riding, swimming, canoeing, and bicycling;

C. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the wetland by changing existing topography, water conditions or water sources;

D. Existing and ongoing agricultural activities including farming, horticulture, aquaculture, irrigation, ranching or grazing of animals. Activities on areas lying fallow as part of a conventional rotational cycle are part of an ongoing operation. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations.

E. The maintenance of drainage ditches;

F. Education, scientific research, and use of nature trails;

G. Navigation aids and boundary markers;

H. Boat mooring buoys;

I. Minimal soil disturbance for site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, wetland impacts shall be minimized and disturbed areas shall be immediately restored; and

J. The following uses which require no specific permit under this ordinance, can occur within wetlands and/or wetland buffers provided that wetland impacts are minimized and that disturbed areas are immediately restored, or where no feasible alternative location exists.

1. Normal maintenance, repair, or operation of existing serviceable structures, utilities, facilities, or improved areas. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road; and

2. Minor modification of existing serviceable structures, utilities, facilities, or improved areas within a buffer zone where modification does not adversely impact wetland functions.

3. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less when required by a local governmental agency with concurrent approval by the City of Tumwater.

4. Relocation of natural gas, cable communications, gas, and telephone facilities, lines, pipes, mains, equipment or appurtenances when required by a local governmental agency with approval of the new location by the City of Tumwater.

5. Installation or construction in improved road rights-of-way, and replacement, operation or alteration of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less.

6. Installation or construction in improved road rights-of-way, and replacement, operation, repair or alteration of all natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment or appurtenances.

(1278, Added, 8/20/1991)

16.28.120 Permit Requirements, Compliance.

Except as specifically provided in Section 16.28.110, no regulated activity shall occur or be permitted to occur within a regulated wetland or wetland buffer without a written permit from the City of Tumwater. Any alteration approved by such written permit shall comply fully with the requirements and purposes of this chapter, other applicable regulations, and any terms or conditions of said permit. All activities that are not exempt or permitted shall be prohibited.

(1278, Added, 8/20/1991)

16.28.130 Wetland Permits, Extensions

A. Application for a Wetland Permit to conduct any regulated activity not specifically authorized by Section 16.28.110 within a wetland or wetland buffer shall be made to the City on forms furnished by that office. Permits shall normally be valid for a period of three years from the date of issue and shall expire at the end of that time unless a longer or shorter period is specified by the City upon issuance of the permit.

B. An extension of an original permit may be granted upon written request to the City by the original permit holder or the successor in title. Prior to the granting of an extension, the City shall require updated studies and/or additional hearings if, in its judgment, the original intent of the permit is altered or enlarged by the renewal, if the circumstances relevant to the review and issuance of the original permit have changed substantially, or if the applicant failed to abide by the terms of the original permit.

(1278, Added, 8/20/1991)

16.28.140 Permit Applications, Requirements.

A. Request for Determination of Applicability. Any person seeking to determine whether a proposed activity or an area is subject to this chapter may request in writing a determination from the City. Such a request for determination shall contain plans, data, and other information as may be specified by the City.

B. Pre-permit Consultations. Any person intending to apply for a Wetland Permit is strongly encouraged, but not required, to meet with the City during the earliest possible stages of project planning in order to discuss wetland impact avoidance and minimization, and compensation before large commitments have been made to a particular project design.

C. Information Requirements. Unless the City waives one or more of the following information requirements, applications for a Wetland Permit under this chapter shall include:

1. A description and maps overlaid on an aerial photograph at a scale no smaller than 1 inch=400 feet showing the entire parcel of land owned by the applicant and the exact boundary pursuant to Section 16.28.080 of the wetland on the parcel;

2. A description of the vegetative cover of the wetland and adjacent area including dominant species;

3. A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than 1 inch=400 feet showing the location, dimensions of all existing and proposed structures, roads, sewage treatment facilities, and installations within the wetland and its buffer on the subject parcel;

4. The exact sites and specifications for all regulated activities;

5. Existing ground contours of the site within the wetland and its buffer at contour intervals of no greater than two feet;

6. Plan view and typical cross-sectional views of that portion of the wetland located on the site and its buffer drawn to scale;

7. Specific means to mitigate any potential adverse environmental impacts of the applicant's proposal. The City may require additional information, including, but not limited to, an assessment of wetland functional characteristics, including a discussion of the methodology used; documentation of the ecological, aesthetic, economic, or other values of the wetland; a study of flood erosion, or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to verify compliance with the provisions of this chapter or to evaluate the proposed use in terms of the purposes of this chapter. The City shall maintain and make available to the public, all information applicable in their possession to any wetland and its buffer located within the City.

D. Filing Fees. At the time of an application or request for letter of delineation, the applicant shall pay a filing fee as provided for by resolution.

E. Notification.

1. Upon receipt of the completed permit application, the City shall notify the individuals and agencies, including federal and state agencies, having jurisdiction over or an interest in the matter to provide such individuals and agencies an opportunity to comment. This will include Department of Ecology's Wetlands section on all Class I wetland permits.

2. The City shall establish a mailing list of all interested persons and agencies who wish to be notified of such applications.

F. Notice on Title

1. The owner of any property which includes a field verified wetland or wetland buffer pursuant to Section 16.28.080 on which a development proposal is submitted shall file for record with the Thurston County Auditor a notice approved by the City in a form substantially as set forth in #G, below. Such notice shall provide notice in the public record of the presence of a wetland or wetland buffer, the application of this chapter to the

property, and that limitations on actions in or affecting such wetlands and their buffers may exist.

2. The applicant shall submit proof that the notice has been filed for record before the City of Tumwater shall approve any development proposal for such site.

G. Form of Notice:

WETLAND AND/OR WETLAND BUFFER NOTICE

Legal Description:

Parcel No.:

Present Owner:

NOTICE: This property contains wetlands or their buffers as defined by City of Tumwater Ordinance. The property was the subject of a development proposal for (type of permit) application # filed on (date). Restrictions on use or alteration of the wetlands or their buffers may exist due to natural conditions of the property and resulting regulations. Review of such application has provided information on the location of wetlands or wetland buffers and restrictions on their use through setback areas. A copy of the plan showing such setback areas is attached hereto.

Signature of Owner

STATE OF WASHINGTON)

) ss.

COUNTY OF THURSTON)

On this day personally appeared before me to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this day of , 1991.

Notary Public in and for the State of Washington.

Residing at .

My commission expires .

(1278, Added, 8/20/1991)

16.28.150 Permit processing.

A. Consolidation. The City shall, to the extent practicable and feasible, consolidate the processing of wetlands related aspects of other City of Tumwater regulatory programs which affect activities in wetlands, such as subdividing, clearing and grading, floodplain, and environmentally sensitive chapter, etc., with the Wetland Permit process established herein so as to provide a timely and coordinated permit process.

B. Completeness of Application. After receipt of the permit application, the City shall notify the applicant as to the completeness of the application in accordance with the procedures outlined in Chapter 14.02 TMC. An application shall not be deemed complete until and unless all information necessary to evaluate the proposed activity, its impacts, and its compliance with the provisions of the chapter have been provided to the satisfaction of the City. Such determination of completeness shall not be construed as approval or denial of the permit application.

(1278, Added, 8/20/1991; 096-008, Amended, 11/5/1996)

16.28.160 Standards for Permit Decisions.

A. A permit shall only be granted if the permit, as conditioned, is consistent with the provisions of this chapter. Additionally, permits shall only be granted if:

1. A proposed action avoids adverse impacts to regulated wetlands or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;

2. The proposed activity results in no net loss of wetland functions and/or values; or

3. Denial of a permit would cause an extraordinary hardship on the applicant.

B. Wetland permits shall not be effective and no activity thereunder shall be allowed during the time provided to file a permit appeal.

(1278, Added, 8/20/1991)

16.28.170 Wetland buffers.

A. Standard Buffer Zone Widths

Wetland buffer zones shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland. All buffers shall be measured from the wetland boundary as surveyed in the field pursuant to the requirements of Section 16.28.080. The width of the wetland buffer zone shall be determined according to wetland category and the proposed land use.

1. Category I

High Intensity Land Use 300 feet

Low Intensity Land Use 200 feet

2. Category II

High Intensity Land Use 200 feet

Low Intensity Land Use 100 feet

3. Category III

High Intensity Land Use 100 feet

Low Intensity Land Use 50 feet

4. Category IV

High Intensity Land Use 50 feet

Low Intensity Land Use 25 feet

B. Increased Wetland Buffers Zone Width

The City shall require increased standard buffer zone widths on a case-by-case basis when a larger buffer is necessary to protect wetlands functions and values based on local conditions. The increase may be for the entire buffer zone or only that portion of the buffer zone necessary to address the local conditions. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the regulated wetland. Such determination shall be attached as a permit condition and shall demonstrate that:

1. A larger buffer is necessary to maintain viable populations of existing species; or

2. The wetland is used by species, listed by the federal or state government as endangered, threatened, or sensitive; as documented priority species or habitats; or essential or outstanding potential habitat for those species; or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or

3. A substantial part of the standard buffer zone width is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or

4. A substantial part of the standard buffer zone width is characterized by minimal vegetative cover or slopes greater than 15 percent.

C. Standard Wetland Buffer Width Averaging. Standard wetland buffer zones may be modified by averaging buffer widths. Wetland buffer width averaging shall be allowed only where the applicant demonstrates all of the following:

1. That averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property;

2. That the wetland contains variations in sensitivity due to existing physical characteristics;

3. That low intensity land uses would be located adjacent to areas where buffer width is reduced, and that such low intensity land uses are guaranteed in perpetuity by covenant, deed restriction, easement, or other legally binding mechanism;

4. That width averaging will not adversely impact the wetland functional values; and

5. That the total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging. In no instance shall the buffer width be reduced by more than 50% of the standard buffer or be less than 25 feet.

D. Except as otherwise specified, wetland buffer zones shall be retained in their natural condition. Where buffer disturbance has occurred during construction, revegetation with native vegetation may be required.

E. Permitted Uses in a Wetland Buffer Zone. Regulated activities shall not be allowed in a buffer zone except for the following:

1. Activities having minimal adverse impacts on buffers and no adverse impacts on regulated wetlands. These may include low intensity, passive recreational activities such as pervious trails, nonpermanent wildlife watching blinds, short term scientific or educational activities, and sports fishing or hunting.

2. With respect to category I, II, III and IV wetlands, surface level or below ground stormwater management facilities, using best management practices, provided all of the following findings of fact exist:

a. That special conditions exist which are peculiar to the land, such as size, shape, topography, or location, which are not applicable to other lands in the city and which provide no reasonable alternative on-site location, and that literal interpretation of the provisions of this title would deprive the property owners of rights commonly enjoyed by other properties similarly situated under the terms of this title;

b. That the special conditions and circumstances are not the result of actions of the applicant;

c. That permitting such facilities to locate within the wetland buffer zone will not confer a special privilege to the property that is denied other lands in the city;

d. That permitting such facilities to locate within the wetland buffer zone will not be materially detrimental to the public health and welfare or injurious to property, improvements or fish or wildlife in the vicinity of the subject property;

e. That the minimum amount of the wetland buffer zone will be utilized for such facilities in order to make possible the reasonable use of the land;

f. That the facility will be located, to the maximum extent practical, within that portion of the wetland buffer with the least amount of slope and farthest from the wetland edge; and

g. That the facility be designed, to the maximum extent practical, to minimize any increase in slope draining into the wetland and that the facility be constructed as expeditiously as possible during the time of year with the least potential to impact the wetland.

3. With respect to category III and IV wetlands, development having no feasible alternative location.

(1278, Added, 8/20/1991; 096-008, Amended, 11/5/1996)

16.28.180 Avoiding Wetland Impacts.

A. Regulated activities shall not be authorized in a regulated wetland except where it can be demonstrated that the impact is both unavoidable and necessary or that all reasonable economic uses are denied.

B. With respect to category I wetlands, an applicant must demonstrate that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.

C. With respect to category II and III wetlands, the following provisions shall apply:

1. For water-dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practicable alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences;

2. Where nonwater-dependent activities are proposed, it shall be presumed that adverse impacts are avoidable. This presumption may be rebutted upon a demonstration that:

a. The basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on a regulated wetland;

b. A reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on a regulated wetland or its buffer will not accomplish the basic purpose of the project; and

c. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.

D. With respect to category IV wetlands, unavoidable and necessary impacts can be demonstrated where the proposed activity is the only reasonable alternative which will accomplish the applicant's objectives.

E. Reasonable Use. If an applicant for a development proposal demonstrates to the satisfaction of the City that application of these standards would deny all reasonable economic use of the property, development as conditioned shall be allowed if the applicant also demonstrates all of the following to the satisfaction of the City.

1. That the proposed project is water-dependent or requires access to the wetland as a central element of its basic function, or is not water-dependent but has no practicable alternative pursuant to this Section;

2. That no reasonable use with less impact on the wetland and its buffer is possible (e.g., agriculture, aquaculture, transfer or sale of development rights or credits, sale of open space easements, etc.);

3. That there is no feasible on-site alternative to the proposed activities, including reduction in density, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to wetlands and wetland buffers;

4. That the proposed activities will result in minimum feasible alteration or impairment to the wetland's functional characteristics and its existing contours, vegetation, fish and wildlife resources, and hydrological conditions;

5. That disturbance of wetlands has been minimized by locating any necessary alteration in wetland buffers to the extent possible;

6. That the proposed activities will not jeopardize the continued existence of species listed by the federal or state government as endangered, threatened, rare, sensitive, or documented priority species or priority habitats.

7. That the proposed activities will not cause significant degradation of groundwater or surface-water quality;

8. That the proposed activities comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;

9. That any and all alterations to wetlands and wetland buffers will be mitigated as provided in Section 16.28.220.

10. That there will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and

11. That the inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this chapter.

F. If the City determines that alteration of a wetland and/or wetland buffer is necessary and unavoidable, the City shall set forth in writing in the file it maintains regarding a permit application its findings with respect to each of the items listed in this subsection.

1. With respect to category IV wetlands, unavoidable and necessary impacts can be demonstrated where the proposed activity is the only reasonable alternative which will accomplish the applicant's objectives.

(1278, Added, 8/20/1991)

16.28.190 Minimizing Wetlands Impacts.

A. After it has been determined by the City pursuant to Section 16.28.180 that losses of wetland are necessary and unavoidable or that all reasonable economic use has been denied, the applicant shall take deliberate measures to minimize wetland impacts.

B. Minimizing impacts to wetlands shall include but is not limited to:

1. Limiting the degree or magnitude of the regulated activity;
2. Limiting the implementation of the regulated activity;
3. Using appropriate and best available technology;
4. Taking affirmative steps to avoid or reduce impacts;

5. Sensitive site design and siting of facilities and construction staging areas away from regulated wetlands and their buffers;
 6. Involving resource agencies early in site planning; and
 7. Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures, scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, resting, nesting, or spawning activities.
- (1278, Added, 8/20/1991)

16.28.200 Wetland and Wetland Buffer Areas, Residential Density.

For the purpose of calculating residential densities for sites containing regulated wetlands and/or wetland buffer areas, the densities established in the underlying zoning district shall apply.

(1278, Added, 8/20/1991; 096-008, Amended, 11/5/1996)

16.28.210 Acting on the application.

A. Land Division Conditions for Wetland Permits

1. Sensitive Area Tracts/Easements. As a condition of any permit issued pursuant to this section, the permit holder shall be required to create a separate sensitive area tract(s)/easement(s) containing the areas determined to be wetland and/or wetland buffer in field investigations performed pursuant to Section 16.28.080. Sensitive area tracts/easements are legally created tracts/easements containing wetlands and their buffers that shall remain undeveloped as long as wetland functions and values are present. Loss of wetland functions due to human impacts will result in sensitive area tracts/easements being maintained.

a. Protection of Sensitive Area Tracts/Easements. The City shall require, as a condition of any permit issued pursuant to this section, that the sensitive area tract or tracts created pursuant to this Section be protected by one of the following methods:

(1) The permit holder shall convey an irrevocable offer to dedicate to the City of Tumwater or other public or non-profit entity specified by the City an easement for the protection of native vegetation within a wetland and/or its buffer; or

(2) The permit holder shall establish and record a permanent and irrevocable deed restriction on the property title of all lots containing a sensitive area tract or tracts created as a condition of this permit. Such deed restriction(s) shall prohibit, as long as wetland function exists, the development, alteration, or disturbance of vegetation within the sensitive area except for purposes of habitat enhancement as part of an enhancement project which has received prior written approval from City of Tumwater, and any other agency with jurisdiction over such activity.

2. The deed restriction shall also contain the following language:

a. "Before, beginning, and during the course of any grading, building construction, or other development activity on a lot or development site subject to this deed restriction, the common boundary between the area subject to the deed restriction and the area of development activity must be fenced or otherwise marked to the satisfaction of City of Tumwater."

b. Regardless of the legal method of protection chosen by the City, responsibility for maintaining tracts shall be held by a property owner's association, adjacent lot owners, the permit applicant or designee, or other appropriate entity as approved by the City.

c. The following note shall appear on the face of all plats, short plats, PUD's, or other approved site plans containing separate sensitive area tracts/ easements, and shall be recorded on the title of record for all affected lots:

NOTE: All lots adjoining separate sensitive areas identified as Native Vegetation Protection Easements or protected by deed restriction are responsible for maintenance and protection. Maintenance includes insuring that no alterations occur within the separate tract and that all vegetation remains undisturbed unless the express written authorization of the City of Tumwater has been received.

The common boundary between a separate sensitive area tract/easement and the adjacent land must be permanently identified. This identification shall include permanent wood or metal signs on treated or metal posts.

Sign locations and size specifications shall be approved by the City. The City shall require permanent fencing of the sensitive area when there is a substantial likelihood of the presence of domestic grazing animals within the development proposal. The City shall also require as a permit condition that such fencing be provided if, subsequent to approval of the development proposal, domestic grazing animals are in fact introduced.

3. Additional Conditions.

a. The location of the outer extent of the wetland buffer and the areas to be disturbed pursuant to an approved permit shall be marked in the field, and such field marking shall be approved by the City prior to the commencement of permitted activities. Such field markings shall be maintained throughout the duration of the permit.

b. The City may attach such additional conditions to the granting of a wetland permit as deemed necessary to assure the preservation and protection of affected wetlands and to assure compliance with the purposes and requirements of this chapter.

B. Bonding

1. Performance Bonds. The City may require the applicant of a development proposal to post a cash performance bond or other security acceptable to the City in an amount and with surety and conditions sufficient to fulfill the requirements of this Section. In addition, the City may secure compliance with other conditions and limitations set forth in the permit. The amount and the conditions of the bond shall be consistent with the purposes of this chapter. In the event of a breach of any condition of any such bond, the City may institute an action in a court of competent jurisdiction upon such bond and prosecute the same to judgment and execution. The City shall release the bond upon determining that:

a. All activities, including any required compensatory mitigation, have been completed in compliance with the terms and conditions of the permit and the requirements of this chapter;

b. Upon the posting by the applicant of a maintenance bond.

Until such written release of the bond, the principal or surety cannot be terminated or canceled.

2. Maintenance Bonds. The City may require the holder of a wetland permit issued pursuant to this chapter to post a cash performance bond or other security acceptable to the City in an amount and with surety and conditions sufficient to guarantee that structures, improvements, and mitigation required by the permit or by this chapter perform satisfactorily for a minimum of two (2) years after they have been completed. The City shall release the maintenance bond upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements,

and/or compensatory mitigation have been satisfactorily met for the required period. For compensation projects, the performance standards shall be those contained in the mitigation plan developed and approved during the permit review process to Section 16.28.220. The maintenance bond applicable to a compensation project shall not be released until the City determines that performance standards established for evaluating the effect and success of the project have been met.

C. Other Laws and Regulations. No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval.

D. Suspension, Revocation. In addition to other penalties provided for elsewhere, the City may suspend or revoke a permit if it finds that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the permit, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the approved application.

(1278, Added, 8/20/1991)

Section 16.28.220 Compensating for Wetlands Impacts.

A. As a condition of any permit allowing alteration of wetland and/or wetland buffers, or as an enforcement action pursuant to Section 16.28.280, the City shall require that the applicant demonstrate that wetland impact avoidance is not possible and engage in the restoration, creation or enhancement of wetlands and their buffers in order to offset the impacts resulting from the applicant's or violator's actions. The applicant shall develop a plan that provides for land acquisition, construction, maintenance and monitoring of replacement wetlands that recreate as nearly as possible the original wetlands in terms of acreage, function, geographic location and setting, and that are larger than the original wetlands. The overall goal of any compensatory project shall be no net loss of wetlands function and acreage and to strive for a net resource gain in wetlands over present conditions with the exception of enforcement actions. Compensation shall be completed prior to wetland destruction, where possible.

B. Compensatory mitigation shall follow an approved mitigation plan pursuant to Section 16.28.230 and shall meet the following minimum performance standards:

1. Given the uncertainties in scientific knowledge and the need for expertise and monitoring, wetland compensatory projects may be permitted only when the City finds that the compensation project is associated with an activity or development otherwise permitted and that the restored, created, or enhanced wetland will be as viable as the wetland it replaces. Additionally, applicants shall:

a. Demonstrate the capability for monitoring the site and to make corrections during a five year period if the project fails to meet projected goals; and

b. Protect and manage or provide for the protection and management of the compensation area to avoid further development or degradation and to provide for long-term viability of the compensation area.

C. Wetlands Restoration and Creation

1. Any person who alters regulated wetlands shall restore or create equivalent areas or greater areas of wetlands than those altered in order to compensate for wetland losses;

2. Where feasible, restored or created wetlands shall be a higher category than the altered wetland;

3. Compensation areas shall be determined according to function, acreage, type, location, time factors, ability to be self sustaining and projected success. Wetland functions and values shall be calculated using the best professional judgment of a qualified wetland ecologist using the best available techniques. Multiple compensation projects may be proposed for one project in order to best achieve the goal of no net loss;

D. Surface Area Replacement Ratio. The following ratios apply to creation or restoration which is in-kind, on-site, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from illegal alterations. The first number specifies the area of wetlands requiring replacement and the second specifies the area of wetlands altered:

Category I: 6:1

Category II or III: Forested 3:1; Scrub-shrub 2:1; Emergent 1.5:1

Category IV: 1.25:1

1. Increased Replacement Ratio. The City may increase the ratios under the following circumstances:

- a. Uncertainty as to the probable success of the proposed restoration or creation;
- b. Significant period of time between destruction and replication of wetland functions;
- c. Projected losses in functional value; or
- d. Offsite compensation.

2. Decreased Replacement Ratio. The City may decrease these ratios under the following circumstances:

a. Findings or special studies coordinated with agencies with expertise which demonstrate that no net loss of wetland function or value is attained under the decreased ratio.

3. In all cases, a minimum acreage replacement ratio of 1:1 shall be required.

E. Wetlands Enhancement

1. Any applicant proposing to alter wetlands may propose to enhance existing significantly degraded wetlands in order to compensate for wetland losses. Applicants proposing to enhance wetlands shall identify how enhancement conforms to the overall goals and requirements of this chapter.

2. A wetlands enhancement compensation project shall be determined pursuant to this section, provided that enhancement for one function and value will not degrade another function or value and that acreage replacement ratios shall be doubled to recognize existing functional values and, provided further, that category I wetlands shall not be enhanced.

F. Wetland Type

1. In-kind compensation shall be provided except where the applicant can demonstrate that:

- a. The wetland system is already significantly degraded and out-of-kind replacement will result in a wetland with greater functional value;
- b. Scientific problems such as exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation impossible.
- c. Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types);

d. Where out-of-kind replacement is accepted, greater acreage replacement ratios may be required to compensate for lost functional values.

G. Location

1. On-site compensation shall be provided except where the applicant can demonstrate that:

a. The hydrology and ecosystem of the original wetland and those who benefit from the hydrology and ecosystem will not be substantially damaged by the on-site loss; and

b. On-site compensation is not scientifically feasible due to problems with hydrology, soils, waves, or other factors; or

c. Compensation is not practical due to potentially adverse impact from surrounding land uses; or

d. Existing functional values at the site of the proposed restoration are significantly greater than lost wetland functional values; or

e. That established regional goals for flood storage, flood conveyance, habitat or other wetland functions have been established and strongly justify location of compensatory measures at another site.

2. Off-site compensation shall occur within the same watershed as the wetland loss occurred, provided that category IV wetlands may be replaced outside of the watershed when there is no reasonable alternative.

3. In selecting compensation sites, applicants shall pursue siting in the following order of preference:

a. Upland sites which were formerly wetlands;

b. Idled upland sites generally having bare ground or vegetative cover consisting primarily of exotic introduced species, weeds or emergent vegetation;

c. Other disturbed upland.

H. Timing. Where feasible, compensatory projects shall be completed prior to activities that will disturb wetlands, and immediately after activities that will temporarily disturb wetlands. In all other cases, except for category I wetlands, compensatory projects should be completed prior to use or occupancy of the activity or development which was conditioned upon such compensation. Construction of compensation projects shall be timed to reduce impacts to existing wildlife and flora.

I. Cooperative Restoration, Creation or Enhancement Projects

1. The City may encourage, facilitate, and approve cooperative projects wherein a single applicant or other organization with demonstrated capability may undertake a compensation project with funding from other applicants under the following circumstances:

a. Restoration, creation or enhancement at a particular site may be scientifically difficult or impossible; or

b. Creation of one or several larger wetlands may be preferable to many small wetlands.

2. Persons proposing cooperative compensation projects shall:

a. Submit a joint permit application;

b. Demonstrate compliance with all standards;

c. Demonstrate the organizational and fiscal capability to act cooperatively; and

d. Demonstrate that long term management can and will be provided.

(1278, Added, 8/20/1991)

16.28.230 Mitigation plans.

All wetland restoration, creation and/or enhancement projects required pursuant to this chapter either as a permit condition or as the result of an enforcement action shall follow a mitigation plan prepared by qualified wetland professionals approved by the City. The applicant or violator shall receive written approval of the mitigation plan by the City prior to commencement of any wetland restoration, creation or enhancement activity. Unless the City, in consultation with qualified wetland professionals, determines that based on the size and nature of the development proposal, the nature of the impacted wetland, and the degree of cumulative impacts on the wetland from other development proposals, that the scope and specific requirements of the mitigation plan may be reduced from what is listed below. The mitigation plan shall contain at least the following components:

A. Baseline Information. A written assessment and accompanying maps of the:

1. Impacted wetland including, at a minimum, wetland delineation; existing wetland acreage; vegetative, faunal and hydrologic characteristics; soil and substrate conditions; topographic elevations; and

2. Compensation site, if different from the impacted wetland site, including at a minimum: Existing acreage; vegetative faunal and hydrologic conditions; relationship within watershed and to existing waterbodies; soil and substrate conditions, topographic elevations; existing and proposed adjacent site conditions; buffers; and ownership.

B. Environmental Goals and Objectives. A written report shall be provided identifying goals and objectives describing:

1. The purposes of the compensation measures including a description of site selection criteria, identification of compensation goals; identification of target evaluation species and resource functions, dates for beginning and completion, and a complete description of the structure and functional relationships sought in the new wetland. The goals and objectives shall be related to the functions and values of the original wetland or if out-of-kind, the type of wetland to be emulated; and

2. A review of the available literature and/or experience to date in restoring or creating the type of wetland proposed shall be provided. An analysis of the likelihood of success of the compensation project at duplicating the original wetland shall be provided based on the experiences of comparable projects, if any. An analysis of the likelihood or persistence of the created or restored wetland shall be provided based on such factors as surface and ground water supply and flow patterns, dynamics of the wetland ecosystem; sediment or pollutant influx and/or erosion, periodic flooding and drought, etc., presence of invasive flora or fauna, potential human or animal disturbance, and previous comparable projects, if any.

C. Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the project and for beginning remedial action or contingency measures. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

D. Detailed Construction Plans. Written specifications and descriptions of compensation techniques shall be provided including the proposed construction sequence, grading and excavation details, erosion and sediment control features needed for wetland construction and long-term survival, a planting plan specifying plant species, quantities, locations, size, spacing, and density; source of plant materials, propagules, or seeds; water and nutrient

requirements for planting; where appropriate, measures to protect plants from predation; specification of substrate stockpiling techniques and planting instructions; descriptions of water control structures and water-level maintenance practices needed to achieve the necessary hydrocycle/hydroperiod characteristics; etc. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome. The plan shall provide for elevations which are appropriate for the desired habitat type(s) and which provide sufficient tidal prism and circulation data.

E. Monitoring Program. A program outlining the approach for monitoring construction of the compensation project and for assessing a completed project shall be provided.

Monitoring may include, but is not limited to:

1. Establishing vegetation plots to track changes in plant species composition and density over time;
2. Using photo stations to evaluate vegetation community response;
3. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (PH, nutrients, heavy metals);
4. Measuring base flow rates and storm water runoff to model and evaluate water quality predictions, if appropriate;
5. Measuring sedimentation rates, if applicable; and
6. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity.

A protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the compensation project. A monitoring report shall be submitted annually, at a minimum, documenting milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years.

F. Contingency Plan. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.

G. Permit Conditions. Any compensation project prepared pursuant to this section and approved by the City shall become part of the application for the permit.

H. Performance Bonds and Demonstration of Competence. A demonstration of financial resources, administrative, supervisory, and technical competence and scientific expertise of sufficient standing to successfully execute the compensation project shall be provided. A compensation project manager shall be named and the qualifications of each team member involved in preparing the mitigation plan and implementing and supervising the project shall be provided, including educational background and areas of expertise, training and experience with comparable projects. In addition, bonds ensuring the fulfillment of the compensation project, monitoring program, and any contingency measure shall be posted pursuant to Section 16.28.210 in the amount of one hundred twenty (120) percent of the expected cost of compensation.

I. Regulatory authorities are encouraged to consult with and solicit comments of any Federal, State, regional, or local agency, including tribes, having special expertise with respect to any environmental impact prior to approving a mitigation proposal which

includes wetlands compensation. The compensation project proponents should provide sufficient information on plan design and implementation in order for such agencies to comment on the overall adequacy of the mitigation proposal.

J. Compensatory mitigation is not required for regulated activities as follows:

1. For which a permit has been obtained for activities that occur only in the buffer or expanded buffer and which have no adverse impacts to regulated wetlands; or
2. Allowed activities pursuant to Section 16.28.110 provided such activities utilize best management practices to protect the functions and values of regulated wetlands.

(1278, Added, 8/20/1991)

16.28.240 Appeals.

Any administrative decision made in the administration of this chapter is appealable to the City Hearing Examiner and subsequently to the City Council as per provisions of the Tumwater Municipal Code 2.58.090(4) and 2.58.150. Appeal fees are to established by City Council resolution.

(1278, Added, 8/20/1991)

16.28.250 Modification of Wetland Permits.

A Wetland Permit holder may request and the City may approve modification of a previously issued Wetland Permit.

(1278, Added, 8/20/1991)

16.28.260 Resubmittal of Denied Permit Applications.

A Wetland Permit application which has been denied may be modified and resubmitted.

(1278, Added, 8/20/1991)

16.28.270 Temporary Emergency Permit.

A. Notwithstanding the provisions of this chapter or any other laws to the contrary, the City may issue a temporary emergency wetlands permit if:

1. The City determines that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and
2. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this act and other applicable laws.

B. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for non-emergency activities under this act and shall:

1. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days; and
2. Require, within this 90 day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

C. The emergency permit may be terminated at any time without process upon a determination by the City that the action was not or is no longer necessary to protect human health or the environment.

(1278, Added, 8/20/1991)

16.28.280 Enforcement.

The City shall have authority to enforce this chapter, any rule or regulation adopted, and any permit or order issued pursuant to this chapter, against any violation or threatened violation thereof. The City is authorized to issue violation notices and administrative orders, levy fines, and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this chapter, or any rule or regulation adopted, or any permit, permit condition, or order issued pursuant to this chapter, shall be a separate offense, and, in the case of a continuing violations, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees, and expenses in connection with enforcement actions may be recovered as damages against the violator.

A. Enforcement actions shall include:

1. Civil Penalties, Administrative Orders and actions for Damages and Restoration.

a. The City may bring appropriate actions at law or equity, including actions for injunctive relief, to ensure that no uses are made of a regulated wetland or its buffers which are inconsistent with this chapter or an applicable wetlands protection program.

b. The City may serve upon a person a cease and desist order if an activity being undertaken on regulated wetlands or its buffer is in violation of this chapter. Whenever any person violates this chapter or any permit issued to implement this chapter, the City may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

(1) Content of order. The order shall set forth and contain:

(a) A description of the specific nature, extent, and time of violation and the damage or potential damage;

(b) A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty may be issued with the order;

(c) Effective date. The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed; and

(d) Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

B. Any person who undertakes any activity within a regulated wetland or its buffer without first obtaining a permit required by this chapter, except as allowed in Section 16.28.110, or any person who violates one or more conditions of any permit required by this chapter or of any order issued pursuant to Subsection (A)(1)(b) of this Section shall incur a penalty allowed per violation. In the case of a continuing violation, each permit violation and each day of activity without a required permit shall be a separate and distinct violation. The penalty shall constitute a misdemeanor and shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than ninety (90) days, or both such fine and imprisonment.

C. Aiding or abetting. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the penalty.

D. Notice of penalty. Civil penalties imposed under this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to

the person incurring the same from the department and/or the City or from both jointly. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

E. Application for remission or mitigation. Any person incurring a civil penalty may apply in writing within thirty (30) days of receipt of the penalty to the City for remission or mitigation of such penalty. Upon receipt of the application, the City may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.

F. Orders and civil penalties issued pursuant to this subsection may be appealed as provided for by in Section 16.28.240.

G. Criminal penalties may be imposed on any person who wilfully or negligently violates this chapter or who knowingly makes a false statement, representation, or certification in any application, record or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this chapter or pursuant to a Wetland Permit.

(1278, Added, 8/20/1991)

16.28.290 Existing Legal Non-Conforming Structures, Uses, and Activities.

A regulated structure, use or activity that legally existed or was approved prior to the passage of this chapter but which is not in conformity with the provisions of this chapter may be continued subject to the following:

A. No such structure, use or activity shall be expanded, changed, enlarged or altered in any way that increases the extent of its non-conformity without a permit issued pursuant to the provisions of this chapter;

B. Except for cases of discontinuance as part of normal agricultural practices, if a non-conforming activity is discontinued for 12 consecutive months, any resumption of the activity shall conform to this chapter;

C. If a non-conforming structure, use or activity is destroyed by human activities or an act of God, it shall not be resumed except in conformity with the provisions of this chapter;

D. Structures, uses or activities or adjunct thereof that are or become nuisances shall not be entitled to continue as non-conforming activities.

(1278, Added, 8/20/1991)

16.28.300 Judicial review.

A. Any decision or order issued by the City pursuant to this chapter, including decisions concerning denial, approval, or conditional approval of a Wetland Permit, may be judicially reviewed in the Superior Court, provided that:

1. Available administrative remedies, including appeals available pursuant to Section 16.28.240, have been exhausted; and

2. Such review is commenced by the filing with the court of a legal action within thirty (30) working days after service of such order or issuance of notice of such decision, as the case may be.

B. Based on these proceedings and the decision of the court, the City may, within the time specified by the court, elect to:

1. Institute negotiated purchase or condemnation proceedings to acquire an easement or fee interest in the applicant's land;
2. Approve the permit application with lesser restrictions or conditions; or
3. Other appropriate actions ordered by the court that fall within the jurisdiction of the City.

(1278, Added, 8/20/1991)

16.28.310 Amendments.

These regulations and the National Wetland Inventory or subsequent Thurston County Wetlands Inventory may from time to time be amended in accordance with the procedures and requirements in the general statutes and as new information concerning wetland location, soils, hydrology, flooding, or wetland plants and wildlife become available.

(1278, Added, 8/20/1991)

16.28.320 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgement shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are declared to be severable.

(1278, Added, 8/20/1991)

16.28.330 Non-Regulatory Incentive Program. Reserved

(1278, Added, 8/20/1991)

Chapter 16.32

FISH AND WILDLIFE HABITAT PROTECTION

Sections:

16.32.010 Short Title.

16.32.020 Purpose.

16.32.030 Definitions.

16.32.040 Approval required.

16.32.050 Habitats Defined and Protected.

16.32.060 Habitat Areas - Buffers.

16.32.070 Habitat Areas - Allowed Uses and Activities.

16.32.080 Habitat Areas - Residential Densities.

16.32.090 Habitat Areas - Protection Plan.

16.32.100 Violation - Penalty.

16.32.110 Severability.

16.32.010 Short Title.

This chapter shall be known and may be cited as the "Fish and Wildlife Habitat Protection Ordinance" of the City of Tumwater.

(1283, Added, 8/20/1991)

16.32.020 Purpose.

It is the policy of the City of Tumwater that the preservation of fish and wildlife habitat is critical to the protection of suitable environments for animal species and in providing a natural beauty and healthy quality of life for Tumwater and its citizens. The conservation of habitat means active land management for maintaining species within their preferred habitats and accustomed geographic distribution. In this way, isolated sub-populations are not created which are more susceptible to predation, dislocation and inadequate food supplies. Habitat protection does not require that all individuals of all species are protected, but does demand that land use planning be sensitive to the priority of saving and protecting animal-rich environments.

(1283, Added, 8/20/1991)

16.32.030 Definitions.

A. "Areas with which endangered, threatened and sensitive species have a primary association" are defined as seasonal ranges and habitats with which federal and state-listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

B. "Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish and wildlife habitat" are defined as naturally occurring ponds not including ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

C. "Waters of the state" are defined in Title 222, WAC, the Forest Practice Rules and Regulations; further defined as the classification system established in WAC 222.16.030 as exists now or hereafter amended.

D. "Lakes, ponds, streams, and rivers planted with game fish" are defined to include game fish planted in these water bodies under the auspices of a federal, state, local, or tribal program or which supports priority fish species as identified by the Department of Wildlife.

E. "Buffer" is defined as an area of land used or created for the purpose of insulating or separating a structure or land use from a fish and/or wildlife habitat area in such a manner as to reduce or mitigate any adverse impacts of the developed area.

F. "Residential density" means the permissible number of dwelling units that may be developed on a specific amount of land area measured in number of dwelling units per acre.

G. "Allowed uses and activities" means any authorized land use or activity allowed alone or in conjunction with another use.

H. "Site" means any lot, tract, parcel, large lot holding, either owned or leased, intended to be developed.

(1283, Added, 8/20/1991)

16.32.040 Approval required.

No person, corporation, or other legal entity shall engage in construction on a site which supports a protected fish and wildlife habitat area as defined by this ordinance without

having received approval for proper protection or mitigation by the City through the environmental review process and/or applicable discretionary permit(s) and construction permit(s).

(1283, Added, 8/20/1991)

16.32.050 Habitats Defined and Protected.

The following habitats are defined and protected:

A. The following fish and wildlife habitat areas are to be protected within the City of Tumwater:

1. Areas with which endangered, threatened, and sensitive species have a primary association;
2. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish and wildlife habitats;
3. Lakes, ponds, streams, and rivers planted with game fish; and
4. Waters of the state, to include the Deschutes River, Percival Creek, Black Lake drainage ditch, Barnes Lake, Trospen Lake, Fishpond Creek, and their associated wetlands.

B. Habitats and species as identified by the Washington State Department of Wildlife's "Priority Habitats and Species Project Documents", including future revisions thereof, for the Tumwater area.

(1283, Added, 8/20/1991)

16.32.060 Habitat Areas - Buffers.

To retain and protect adequate urban wildlife habitats, buffers will be established on a case-by-case basis to be defined by a habitat protection plan.

(1283, Added, 8/20/1991)

16.32.070 Habitat Areas - Allowed Uses and Activities.

Uses within protected habitat areas are limited to low intensity land uses designed not to adversely affect the habitat. These uses will be:

- Agriculture
- Boat ramps
- Docks and floats
- Wildlife blinds
- Scientific research
- Beach access
- Emergency - Temporary Permits
- Enhancement
- Existing structures remodeled (including enlargement) or replaced
- Fences
- Fill with mitigation
- Forest practice permits
- Outdoor recreation activities
- Open space area
- Parks
- Public structures
- Stormwater facilities

- Trails and related facilities
- Utility lines
- Wildlife nesting structures

(1283, Added, 8/20/1991)

16.32.080 Habitat Areas - Residential Densities.

For the purpose of calculating residential densities for sites containing protected wildlife habitat areas, the provisions of the underlying zoning district shall apply.

(1283, Added, 8/20/1991; 096-008, Amended, 11/5/1996)

16.32.090 Habitat Areas - Protection Plan.

When a protected habitat is located on a site to be developed, a Habitat Protection Plan will be submitted by the permit applicant. The Habitat Protection Plan shall contain the following information as a minimum and will be subsequently used as part of the Environmental Review process and is a condition of approval for Discretionary Permit(s) and/or construction permits:

A report which contains:

A. A description of the nature, density and intensity of the proposed development in sufficient detail to allow analysis of such land use change upon the protected fish or wildlife habitat.

B. The applicant's analysis of the effect of the proposed development, activity or land use change upon the fish and/or wildlife species.

C. A plan by the applicant which shall explain how he will mitigate any adverse impacts to protected fish or wildlife habitats created by the proposed development.

A map(s) prepared at an easily readable scale, showing:

A. The location of the proposed development site.

B. The relationship of the development to the adjacent habitat area.

C. The nature and density of the proposed development or land use change.

D. Proposed building locations and arrangements.

E. A legend which includes:

1. A complete and accurate legal description as prescribed by the development application form. The description shall include the total acreage of the parcel;

2. Title, scale and north arrows; and

3. Date, including revision dates if applicable.

F. Existing structures and landscape features including the name and location of all water courses, ponds and other bodies of water.

Possible mitigation measures shall include, but are not limited to:

A. Establishment of buffer zones;

B. Buffer zone enhancement by planting indigenous plant species;

C. Preservation of critically important plants and trees;

D. Limitation of access to habitat area; and

E. Seasonal restriction of construction activities.

(1283, Added, 8/20/1991)

16.32.100 Violation - Penalty.

A. Violation of the provisions of this chapter or failure to comply with any of the requirements shall constitute a misdemeanor and shall be punishable by a fine of not more than three hundred dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment. Each day such violation continues shall be considered a separate, distinct offense.

B. Any person who commits, participates in, assists or maintains such violation may be found guilty of a separate offense and suffer the penalties as set forth in subsection A of this section.

C. In addition to the penalties set forth in subsections A and B of this section, any violation of the provisions of this chapter is declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in Superior Court or other court of competent jurisdiction.

D. Upon determination that a violation of the provisions of this chapter has occurred, the Building Official shall withhold issuance of building permits and/or certificates of occupancy for the affected property until corrective action is taken by the responsible party. However, if mitigating circumstances exist and reasonable commitments for corrective action are made, the Building Official may issue building permits or certificates of occupancy.

(1283, Added, 8/20/1991)

16.32.110 Severability.

If any section, paragraph, subsection, clause or phrase of this chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the chapter.

(1283, Added, 8/20/1991)

Chapter 16.34

COMMUTE TRIP REDUCTION PLAN

Sections:

16.34.010 Short Title.

16.34.020 Purpose.

16.34.030 Definitions.

16.34.040 CTR Plan Administration.

16.34.050 Commute Trip Reduction Goals.

16.34.060 Applicability.

16.34.070 Affected Employer Requirements.

16.34.080 Schedule for Submittals and Reviews.

16.34.090 Credit for Transportation Demand Management Efforts.

16.34.100 Compliance and Enforcement.

16.34.110 Exemptions and Goal Modifications.

16.34.120 Appeals Process.

16.34.130 Severability.

16.34.010 Short Title.

This Chapter shall be known as the "Commute Trip Reduction Plan Ordinance" of the City of Tumwater.

(1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999)

16.34.020 Purpose.

The purpose of this Chapter is to establish CTR program requirements for affected employers within the City of Tumwater. These requirements will promote alternative commute modes and reduce the Vehicle Miles Traveled (VMT) per employee and the proportion of single occupant vehicle (SOV) trips, decreasing traffic congestion, automobile-related air pollution and energy use within the City of Tumwater.

(1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999)

16.34.030 Definitions.

For the purpose of this Chapter, the following definitions shall apply in its interpretation and enforcement:

A. "Affected Employee"- a full time employee who begins his/her regular work day at a single worksite between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays for at least twelve continuous months. Seasonal agricultural employees, including seasonal employees of processors of agricultural products, and employees required to work rotating shifts are excluded from the count of affected employees.

B. "Affected Employer"- a public or private employer that employs one hundred or more affected employees at a single work site who are scheduled to begin their regular work day between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays for at least twelve continuous months. Construction work sites, when the expected duration of the construction is less than two years, are excluded from this definition.

C. "Alternative Commute Mode" - any means of commute transportation other than that in which the single occupant motor vehicle is the dominant mode, including telecommuting and compressed work weeks if they result in reducing commute trips.

D. "Alternative Work Schedules" - programs such as compressed work weeks that eliminate work trips for affected employees.

E. "Base Year" - the period on which goals for vehicle miles traveled (VMT) per employee and the proportion of single occupant vehicle (SOV) trips shall be based.

F. "Carpool" - a motor vehicle occupied by two to six people traveling together for their commute trip that results in the reduction of a minimum of one motor vehicle commute trip.

G. "Commute Trips" - trips made from a worker's home to a worksite for a regularly scheduled work day beginning between 6:00 a.m. to 9:00 a.m. (inclusive) on weekdays.

H. "CTR Coordinator" - the person or entity designated by the City of Tumwater to provide CTR administration under this ordinance.

I. "CTR Guidelines" - the official guidelines to the CTR Law (RCW 70.94.527) developed by the Washington State CTR Task Force.

J. "CTR Plan" - the commute trip reduction plan for Thurston County that describes how affected employers are to achieve reductions in the commute trip vehicle miles traveled (VMT) and the proportion of single occupant vehicle (SOV) commute trips per employee within the Cities of Lacey, Olympia, Tumwater, Yelm and unincorporated Thurston County.

K. "CTR Program" - an affected employer's strategies to reduce SOV use and VMT per affected employee.

L. "CTR Zone" - an area within Thurston County characterized by similar employment density, population density, level of transit service, parking availability, access to high

occupancy vehicle facilities, and other factors that are determined to affect the level of SOV commuting.

M. "Commute Mode" - the means of transportation used by employees, such as single occupant motor vehicle, ride-share vehicle (carpool/vanpool), transit, ferry, bicycle, and walking.

N. "Compliance" - fully implementing all provisions in an accepted CTR program or meeting or exceeding the VMT and SOV goals of this CTR Plan and CTR Ordinance.

O. "Computer Matching Service" - a system that assists in matching commuters for the purpose of commuting together.

P. "Compressed Work Week" - an alternative work schedule, in accordance with employer policy, that regularly allows a full-time employee to eliminate at least one work day every two weeks by working longer hours during the remaining days, resulting in fewer commute trips by the employee. This definition is primarily intended to include weekly and bi-weekly arrangements, the most typical being four 10-hour days or 80 hours in nine days, but may also include other arrangements. Compressed work weeks are understood to be an on-going arrangement.

Q. "Custom Bus/Buspool/Subscription Bus" - a commuter bus service arranged specifically to transport employees to work, generally bus service with limited origins and destinations, guaranteed seats and advance fare purchase.

R. "Day(s)" - calendar day(s).

S. "Dominant Commute Mode" - the mode of travel used for the greatest distance of a commute trip.

T. "Employee" - anyone who receives financial or other remuneration in exchange for work provided to an employer, including owners or partners of the employer.

U. "Employee Transportation Coordinator" or "ETC" - a designated person who is typically an employee of the affected employer and who is accessible to a worksite's employees in order to carry out the CTR requirements of the CTR Law and this Ordinance. The ETC also acts as the affected employer's liaison with local jurisdictions or the agency that administers and implements the CTR Ordinance.

V. "Employer" - sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, whether public, non-profit or private, that employs workers.

W. "Exemption" - a waiver from CTR program requirements granted to an affected employer by The CTR Coordinator based on unique conditions that apply to the employer or employment site.

X. "Flex Time" - an employer policy allowing individual employee some flexibility in choosing the time, but not the number, of their working hours to facilitate the use of alternative commute modes.

Y. "Full Time Employee" - a person other than an independent contractor, scheduled to be employed on a continuous basis for 52 weeks for an average of 35 hours per week.

Z. "Good Faith Effort" - an affected employer has met the minimum requirements identified in RCW 70.94.531 and this Ordinance, and is working collaboratively with the CTR Coordinator to continue its existing CTR program or is developing and implementing program modifications likely to result in improvements to its CTR program over an agreed-upon length of time.

AA "Implementation" - the active pursuit by an employer of the CTR goals of RCW 70.94.521-551 and of this Plan and accompanying Ordinance as evidenced by the appointment of a transportation coordinator, distribution of information to employees regarding alternatives to SOV commuting, and the commencement of other measures according to their CTR program and schedule.

BB. "Notice" - written communication delivered via the United States Postal Service with receipt deemed accepted three days following the day on which the notice was deposited with the Postal Service unless the third day falls on a weekend or legal holiday in which case the notice is deemed accepted the day after the weekend or legal holiday.

CC. "Peak Commute Period" - the hours between 6:00 a.m. to 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.

DD. "Peak Commute Period Trip" - any employee trip that delivers the employee to begin his/her regular workday between 6:00 a.m. and 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.

EE. "Proportion of Single Occupant Vehicle Trips" or "SOV Rate" - the number of commute trips over a set period made by affected employees in SOVs divided by the number of affected employees working during this period.

FF. "Single Occupant Vehicle" or "SOV" - a motor vehicle occupied by one employee for commute purposes, including a motorcycle.

GG. "Single Occupant Vehicle (SOV) Trips" - trips made by affected employees in SOVs.

HH. "Single Worksite" - a building or group of buildings on physically contiguous parcels of land or on parcels of land separated solely by private or public roadways or rights-of-way occupied by one or more affected employers.

II. "Telecommuting" - the use of telephones, computers, or other similar technology to permit an employee to work from home, eliminating a commute trip, or to work from a work site closer to home, reducing the distance traveled in a commute trip by at least half.

JJ. "Transit" - a multiple occupant vehicle operated on a for hire, shared ride basis, including bus, ferry, shared ride taxi, shuttle bus, or vanpool. A transit trip counts as zero (0) vehicle trips.

KK. "Transportation Demand Management" or "TDM" - a broad range of strategies that are primarily intended to reduce and reshape demand on the transportation system.

LL. "Transportation System Management" or "TSM" - the use of low capital improvements to increase the efficiency of road transportation and transit services.

MM. "Transportation Management Organization" or "TMO" - a group of employers or an association representing a group of employers in a defined geographical area organized for the purpose of cooperatively carrying out the requirements of the CTR Law and this Ordinance.

NN. "Vanpool" - a vehicle occupied by seven to fifteen people traveling together for their commute trip that results in the elimination of at least one motor vehicle trip. A vanpool trip counts as zero (0) vehicle trips.

OO. "Vehicle Miles Traveled (VMT) per Employee" - the sum of the individual vehicle commute trip lengths in miles made by affected employees over a set period of time divided by the number of affected employees working during that period.

PP. "Week" - a seven day calendar period, starting on Monday and continuing through Sunday.

QQ. "Weekday" - any day of the week except Saturday or Sunday.

RR. "Writing/Written/In Writing" - original signed and dated documents. Facsimile (fax) transmissions are a temporary notice of action that must be followed by the original signed and dated document via mail or delivery.

(1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999; 02002-003, Amended, 02/05/2002)

16.34.040 CTR Plan Administration.

A. CTR Coordinator. In order to ensure consistency and flexibility, Thurston County and the Cities of Lacey, Tumwater, and Yelm (hereinafter referred to as "the local jurisdictions") have determined that it is within the best interest of the public to enter into a contract with the CTR Coordinator. The CTR Coordinator is hereby designated as the lead coordinator responsible for implementing and administering the CTR Plan and CTR Ordinance.

B. Administrative Procedures. The CTR Coordinator is hereby authorized to develop and adopt, in consultation with the local jurisdictions, such administrative procedures as necessary to implement the provisions of this Ordinance.

(1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999; 02002-003, Amended, 02/05/2002)

16.34.050 Commute Trip Reduction Goals.

A. Commute Trip Reduction Goals. The CTR goals for affected employers in the City of Tumwater are consistent with the CTR Law and the CTR Guidelines.

All affected employers shall be required to develop and implement CTR programs designed to reduce VMT per affected employee and SOV use per affected employee. The goals for miles traveled per employee shall not be less than a fifteen (15) percent reduction from the worksite base year value or the base year value for the commute trip reduction zone in which their worksite is located by January 1, 1995, twenty (20) percent reduction by January 1, 1997, twenty-five (25) percent reduction by January 1, 1999, and a thirty-five (35) percent reduction by January 1, 2005.

B. Base Year Values

	CTR Zone 1	CTR Zone 2
VMT/employee	11.5 mi	11.5 mi
SOV rate/employee	78%	84%

C. Commute Trip Reduction Zones. CTR zones are consistent with the CTR Law and the CTR Task Force guidelines. Thurston County is divided into two CTR zones.

(1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999; 02002-003, Amended, 02/05/2002)

16.34.060 Applicability.

The requirements of this Ordinance shall apply to any affected employer at a single worksite within the City of Tumwater.

A. Notification.

1. In addition to the City of Tumwater's established public notification for adoption of an ordinance, a notice of availability of a summary of this Ordinance and a notice of the requirements for affected employers to comply with the Ordinance shall be published at least once in Thurston County's official newspaper not more than 30 days after passage of this Ordinance.

2. Affected employers located in the City of Tumwater are to receive written notification that they are subject to this Ordinance. Such notice shall be addressed to the company's chief executive officer, senior official, or CTR manager at the worksite. Such notification shall be at least 180 days prior to the due date for submittal of their CTR program.

3. Affected employers that, for whatever reason, do not receive notice within 30 days of passage of the Ordinance and are either notified by or identify themselves to the CTR Coordinator within 180 days of the passage of the Ordinance will be granted an extension to assure up to 180 days within which to develop and submit a CTR program.

B. New Affected Employers

1. Employers that meet the definition of an affected employer in this Ordinance must identify themselves to the CTR Coordinator within 180 days of either moving into the boundaries of City of Tumwater, or growing in employment at a worksite to 100 or more affected employees.

2. Newly affected employers shall be given 180 days from the official notification by the CTR Coordinator to develop and submit a CTR program.

3. From the time newly affected employers begin their program, they shall have two years to meet the first CTR goal of a 15 percent reduction in proportion of single occupant vehicle trips or vehicle miles traveled per person; four years to meet the second goal of a 20 percent reduction; six years to meet the third goal of a 25 percent reduction; and twelve years to meet the fourth goal of a 35 percent reduction.

C. Change in Status as an Affected Employer. Any of the following changes in an affected employer's status will change the employer's CTR program requirements:

1. If an employer initially designated as an affected employer no longer employs 100 or more affected employees and expects not to employ 100 or more employees for the next 12 months, that employer is no longer considered an affected employer. It is the responsibility of the employer to notify the CTR Coordinator that it is no longer an affected employer.

2. If the same employer returns to the level of 100 or more affected employees within the same 12 month period, that employer will be considered an affected employer for the entire 12 month period, and will be subject to the same program requirements as other affected employers.

3. If the same employer returns to the level of 100 or more affected employees 12 months or more after the change in status to an unaffected employer, that employer shall be considered a newly affected employer and will be subject to the same requirements as other newly affected employers.

(1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999; 02002-003, Amended, 02/05/2002)

16.34.070 Affected Employer Requirements.

A. Affected Employer CTR Program. The requirements of this Ordinance shall apply to any affected employer at a single worksite within the City of Tumwater. An affected employer is required to make a good faith effort, as defined in RCW 70.94.534(2) and this Ordinance, to develop and implement a CTR program that will encourage his/her employees to reduce VMT per employee and SOV commute trips. The CTR program shall include the mandatory elements described below that are required to achieve the CTR goals of the CTR Plan and this Ordinance. The affected employer shall submit a description of its program and provide an annual progress report on its program and progress toward meeting the CTR goals to the CTR Coordinator in the time prescribed by this Ordinance.

B. Program Description.

1. The CTR program description presents the strategies to be undertaken by an affected employer to achieve the commute trip reduction goals for each goal year. Affected employers are encouraged to consider innovative strategies and combine program elements in a manner that will best suit their location, site characteristics, business type, and employees' commuting needs. Affected employers are further encouraged to cooperate with each other and to form or use transportation management organizations in developing and implementing CTR programs.

2. At a minimum, the affected employer's description must include:

- a) general description of the employment site location, transportation characteristics, and surrounding services, including unique conditions experienced by the affected employer or its employees;
- b) number of employees affected by the CTR program;
- c) documentation of compliance with the mandatory CTR program elements;
- d) description of the additional elements included in the CTR program; and
- e) schedule of implementation, assignment of responsibilities, and commitment to provide appropriate resources.

C. Mandatory Program Elements. Each affected employer's CTR program shall include the following mandatory program elements:

1. Employee Transportation Coordinator. The affected employer shall designate an employee transportation coordinator (ETC) to administer the CTR program. The coordinator's name, location and telephone number must be prominently displayed at each of the affected employer's affected work sites. The objective is to have an effective transportation coordinator presence at each worksite, an affected employer with multiple worksites in the City of Tumwater is not required to have an ETC at each worksite. The ETC is responsible for administering and implementing the CTR program. The ETC is the primary CTR program contact person for the employees as well as between the employer and the CTR Coordinator. ETCs are required to attend the ETC Basic Training course provided by the CTR Coordinator within one year of appointment to the position of ETC.

2. Information Distribution. Information about alternatives to driving to work alone shall be provided to employees at least once a year. Each affected employer's program description and subsequent annual progress reports must indicate the information distributed and the method of distribution.

3. Annual Progress Report. The CTR program must include an annual review of employees' commuting habits and of progress and good faith efforts toward meeting the CTR goals. Affected employers shall file an annual progress report with the CTR Coordinator, updating the initial Program Description. The affected employer's reporting date will be

established by The CTR Coordinator in consultation with the affected employer, after a review of the initial Program Description. The CTR Coordinator will distribute a standardized annual report form developed by the Washington State Department of Transportation to all affected employers. The annual progress report shall describe each of the CTR measures undertaken in the past year, the results of any commuter surveys, and the number of employees participating in the program. Within the report, the affected employer shall evaluate the effectiveness of the CTR program, and if necessary, propose modifications to achieve the CTR goals. An affected employer may include other information as deemed appropriate.

4. Employee Survey. Employee survey or approved alternative information (as defined by the CTR Task Force Guidelines) must be provided in the Annual Progress Reports submitted in the second, fourth, sixth, eighth, tenth, and twelfth years after implementation begins. The affected employer should contact the CTR Coordinator for the format of the report.

5. Record Keeping. Affected employers are required to maintain certain information which documents the CTR program and progress towards meeting the CTR goals. The CTR Coordinator will assist affected employers in identifying the essential information to be maintained. These records shall be maintained for a minimum period of 24 months.

6. Additional Program Elements. In addition to the specific program elements described above, the affected employer's CTR program shall include additional elements as needed to meet CTR goals. Elements may include, but are not limited to, one or more of the following:

- a) Provision of preferential parking or reduced parking charges, or both, for high-occupancy vehicles;
- b) Instituting or increasing parking charges for SOVs;
- c) Provision of commuter ride matching services to facilitate employee ride sharing for commute trips;
- d) Provision of subsidies for transit fares;
- e) Provision of vans for vanpools;
- f) Provision of subsidies for carpools or vanpools;
- g) Permitting the use of the employer's vehicles for carpooling or vanpooling;
- h) Permitting flexible work schedules to facilitate employees' use of transit, carpools, or vanpools;
- i) Cooperation with transportation providers to provide additional regular or express service to the worksite;
- j) Construction of special loading and unloading facilities for transit, carpool, and vanpool users;
- k) Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;
- l) Provision of a program of parking incentives such as a rebate for employees who do not use the parking facilities;
- m) Establishment of a program to permit employees to work part-or full-time at home or at an alternative worksite closer to their homes;
- n) Establishment of a program of alternative work schedules, such as a compressed work week which reduces commuting; and

o) Implementation of other measures designed to facilitate the use of high-occupancy vehicles, such as on-site day care facilities and emergency taxi services. (1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999; 02002-003, Amended, 02/05/2002)

16.34.080 Schedule for Submittals and Reviews.

A. CTR Program Description Submittal and Implementation. Not more than 180 days after the effective date of this Ordinance, or within 180 days after an employer becomes an affected employer, the affected employer shall develop a CTR program and submit a description of the program to the CTR Coordinator. Unless an extension is granted, the employer shall implement the program not more than 180 days after the program description was first submitted. Implementations of approved program modifications shall occur within 30 days of the final administrative decision, or 180 days after submission of the program description or annual report, whichever is greater.

B. Affected Employer Annual Reporting Date. Upon receipt of an affected employer's initial CTR program description, the CTR Coordinator shall establish, in consultation with the employer, the annual reporting date. The annual reporting date is the date that the employer's annual progress report is due.

C. Document Review. The CTR Coordinator shall provide the affected employer with written notification if a CTR program is deemed unacceptable. The notification must give cause for any rejection. If the affected employer receives no written notification of extension of the review period of its CTR program or comment on the CTR program or annual report within 90 days of submission, the affected employer's program or annual report is deemed accepted. The CTR Coordinator may extend the review period up to 90 days. The implementation date for the affected employer's CTR program will be extended an equivalent number of days.

D. Modification of CTR Program Elements. Any affected employer may submit a request to the CTR Coordinator for modification of CTR program elements, other than the mandatory elements specified in this Ordinance, including record keeping requirements. Such request may be granted if one of the following conditions exist:

E. The affected employer can demonstrate it would be unable to comply with the CTR program elements for reasons beyond the control of the employer; or

1. The affected employer can demonstrate that compliance with the program elements would constitute an undue hardship. This may include evidence from employee surveys administered at the worksite: first, in the base year, showing that the affected employer's own base year values of VMP per employee and SOV rates were higher than the CTR zone average; and/or secondly, in the goal measurement year(s), showing that the affected employer has achieved reductions from its own base values that are comparable to the reduction goals established for the affected employer's CTR zone.

(1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999; 02002-003, Amended, 02/05/2002)

16.34.090 Credit for Transportation Demand Management Efforts.

A. Leadership Certificate. As public recognition for their efforts, affected employers with VMT per employee and proportion of SOV trips lower than the zone average will receive a Commute Trip Reduction Certificate of Leadership from the CTR Coordinator.

B. Credit for Programs Implemented Prior to the Base Year. Affected employers with successful TDM programs implemented prior to the base year may be eligible to apply for program exemption credit, which exempts them from most program requirements. Affected employers wishing to receive credit for the results of existing TDM efforts may do so by applying to the CTR Coordinator within 90 days of the adoption of this Ordinance. Application shall include data from a survey of employees or equivalent to establish the applicant's VMT per employee and proportion of SOV trips. The survey or equivalent data shall conform to all applicable standards established in the CTR Task Force Guidelines. The affected employer shall be considered to have met the first measurement goals if their VMT per employee and proportion of SOV trips are equivalent to a 12 percent or greater reduction from the final base year CTR zone values. This three percentage point credit applies only to the first measurement goals.

C. Program Exemption Credit. Affected employers may apply for program exemption credit for the results of past or current TDM efforts by applying to the CTR Coordinator within 90 days of adoption of the applicable CTR Ordinance, or as part of any annual report. Application shall include results from a survey of employees, or equivalent information that establishes the applicant's VMT per employee and proportion of SOV trips. The survey or equivalent information shall conform to all applicable standards established in the CTR Task Force Guidelines. Affected employers that apply for credit and whose VMT per employee and proportion of SOV trips are equal to or less than goals for one or more future goal years, and commit in writing to continue their current level of effort, shall be exempt from the requirements of the Ordinance except for the requirements to report performance in the measurement years. If any of these reports indicate the affected employer does not satisfy the next applicable goal(s), the affected employer shall immediately become subject to all requirements of the CTR Ordinance.

(1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999; 02002-003, Amended, 02/05/2002)

16.34.100 Compliance and Enforcement.

For purposes of this section, compliance shall mean fully implementing in good faith all provisions in an approved CTR program.

A. Program Review Criteria. The CTR Coordinator shall apply the following criteria in 1995 or after for achieving goals for VMT per employee and proportion of SOV trips in determining whether to require modifications of an affected employer's CTR program:

1. If an affected employer meets either or both goals, the employer shall be deemed to have satisfied the objectives of the CTR Plan and this Ordinance, and will not be required to modify its CTR program.

2. If an affected employer makes a good faith effort, as defined in RCW 70.94.534(2) and this Ordinance, but has not met or is not likely to meet the applicable SOV or VMT goal, the CTR Coordinator shall work collaboratively with the affected employer to make modifications to its CTR program. After agreeing on modifications, the affected employer shall submit a revised CTR program description including the requested modifications or equivalent measures, within 30 days of receiving written notice to revise its program. The CTR Coordinator shall review the revisions and notify the affected employer of acceptance or rejection of the revised program. If a revised program is not accepted, the CTR Coordinator will send written notice to that effect to the affected employer within 30 days

and, if necessary, require the affected employer to attend a conference with program review staff for the purpose of reaching a consensus on the required program. A final decision of the required program will be issued in writing by the CTR Coordinator within 10 working days of the conference. The affected employer shall have 30 days to resubmit a revised program in accordance with the outcome of the conference. Failure to resubmit a revised program within 30 days shall be deemed a violation of this Ordinance.

B. Violations. Any of the following constitute violations:

1. An affected employer's failure to develop a complete CTR program and/or to submit a complete CTR Program Description by the applicable deadlines as specified in this Ordinance. This includes:

a. Affected employers notified or that have identified themselves to the CTR Coordinator within 180 days of the effective date of this Ordinance and that do not submit a CTR Program Description within 180 days from the notification or self-identification; or

b. Affected employers not identified or self-identified within 180 days of the effective date of this Ordinance and that do not submit or implement a CTR program within 180 days of the effective date of this Ordinance.

c. Employers who become affected employers and fail to identify themselves within 180 days of this change in status.

2. An affected employer's failure to implement an approved CTR program, unless the program elements that are carried out can be shown through quantifiable evidence to meet or exceed VMT and SOV goals as specified in the CTR Plan and this Ordinance.

3. Failure to make a good faith effort, as defined in RCW 70.94.534 and this Ordinance; or

4. Failure to revise a CTR program as defined in RCW 70.94.534(4) and this Ordinance.

C. Penalties. No affected employer with an approved CTR program, which has made good faith effort, may be held liable for failure to reach the applicable SOV or VMT goal. Any affected employer violating any provision of this section shall be guilty of a civil infraction and subject to the imposition of civil penalties pursuant to RCW 7.80.

1. Whenever the CTR Coordinator makes a determination that an affected employer is in violation of this Ordinance, the CTR Coordinator shall prepare a report outlining said violation and forward it to the city attorney for preparation of a civil infraction in accordance with RCW Chapter 7.80 as adopted or hereinafter amended.

2. Each infraction shall constitute a separate violation.

3. Each day that an affected employer is in violation shall constitute a separate violation.

4. Penalties will begin to accrue 15 days following the notice of civil infraction. In the event that an affected employer appeals the imposition of penalties, the penalties will not accrue during the appeals process. Should the appeal be decided in favor of the appellant, all of the monetary penalties will be dismissed.

5. An affected employer shall not be liable for civil penalties if failure to implement an element of a CTR program was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the affected employer and pursued in good faith. Unionized affected employers shall be presumed to act in good faith compliance if they:

a) Propose to a recognized union any provision of the affected employer's CTR program that is subject to bargaining as defined by the National Labor Relations Act; and

b) Advise the union of the existence of the statute and the mandates of the CTR program approved by the CTR Coordinator and advise the union that the proposal being made is necessary to compliance with state law (RCW 70.94.531).

D. Schedule of Penalties. The violation of any provision of this Ordinance is designated as a Class 2 Civil Infraction pursuant to RCW Chapter 7.80. Additional assessments may be imposed in accordance with RCW 3.62.090 and other applicable statutory requirements. (1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999; 02002-003, Amended, 02/05/2002)

16.34.110 Exemptions and Goal Modifications.

A. Worksite Exemptions. An affected employer may request the CTR Coordinator to grant an exemption from all CTR program requirements or penalties for a particular worksite. The affected employer must demonstrate that it would experience undue hardship in complying with the requirements of the Ordinance as a result of the characteristics of its business, its work force, or its location(s). An exemption may be granted if and only if the affected employer demonstrates that it faces extraordinary circumstances, such as bankruptcy, and is unable to implement any measures that could reduce the proportion of SOV trips and VMT per employee. Exemptions may be granted by the CTR Coordinator at any time based on written notice provided by the affected employer. The notice should clearly explain the conditions for which the affected employer is seeking an exemption from the requirements of the CTR program. The CTR Coordinator shall review annually all affected employers receiving exemptions, and shall determine whether the exemption will be in effect during the following program year.

B. Employee Exemptions. Specific employees or groups of employees who are required to drive alone to work as a condition of employment may be exempted from a worksite's CTR program. Exemptions may also be granted for employees who work variable shifts throughout the year and who do not rotate as a group to identical shifts. The CTR Coordinator will use the criteria identified in the CTR Task Force Guidelines to assess the validity of employee exemption requests. The CTR Coordinator shall review annually all employee exemption requests, and shall determine whether the exemption will be in effect during the following program year.

C. Modification of CTR Program Goals.

1. An affected employer may request that the CTR Coordinator modify its CTR program goals. Such requests shall be filed in writing at least 60 days prior to the date the worksite is required to submit its program description or annual report. The goal modification request must clearly explain why the worksite is unable to achieve the applicable goal. The worksite must also demonstrate that it has implemented all of the elements contained in its approved CTR program.

2. The CTR Coordinator will review and grant or deny requests for goal modifications in accordance with procedures and criteria identified in the CTR Task Force Guidelines. An affected employer may not request a modification of the applicable goals until one year after the CTR Coordinator's approval of its initial program description or annual report.

(1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999; 02002-003, Amended, 02/05/2002)

16.34.120 Appeals Process.

A. CTR Appeals Board. The CTR Coordinator is hereby authorized to develop procedures implementing an appeals process and establish a CTR Appeals Board to review such appeals. Such a board should be composed of both representatives of appropriate local jurisdictions and selected affected employers.

B. Appeals Process. Any affected employer may appeal administrative decisions regarding exemptions, goal modifications, program element modifications, and violations to a CTR Appeals Board. In the event of a violation, the affected employer shall be notified of the intent to impose penalties and the manner in which penalties may be appealed.

The appeal should be addressed to the CTR Coordinator which will refer the matter to the CTR Appeals Board.

The decision of the CTR Appeals Board is final. An affected employer may, within 30 days of the notice of final decision, appeal the CTR Appeals Board's decision to the Thurston County Superior Court.

(1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999; 02002-003, Amended, 02/05/2002)

16.34.130 Severability.

If any section, subsection, paragraph, sentence, clause, phrase, or other portion of this Ordinance or its application to any person is, for any reason, declared unconstitutional, illegal, or invalid in whole or in part by any court or agency of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(1368, Added, 2/16/1993; 099-018, Amended, 09/21/1999)