

## Ordinance No. 688

### Exhibit C

# Title 22 Administration of Development Regulations Amendments

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## Chapter 22.05 Permit Processing

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### 22.05.010 Purpose.

The purpose of this title is to ~~provide procedural guidance and rules for permit processing add an administrative chapter to the University Place Municipal Code to comply in accordance~~ with the requirements of the Regulatory Reform Act. ~~This title serves to implement University Place development regulations include zoning, subdivision, shoreline master program, critical areas, public works, and other municipal code provisions that regulate the use and development of land.~~

### 22.05.020 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

A. "Closed record appeal" means an administrative appeal on the record to the Pierce County Superior Court, following an open record hearing on a project permit application when the appeal is on the record with no new evidence allowed to be submitted.

B. "Open record hearing" means a hearing, conducted by the Hearings Examiner, ~~which~~~~that~~ creates the City's record through testimony and submission of evidence and information, under the procedures prescribed herein. An open record hearing may be held prior to the City's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit.

C. "Project permit" or "project permit application" means any land use or environmental permit or license required from the City for a project action, including but not limited to ~~administrative design reviews, administrative use permits,~~ building permits, subdivisions, binding site plans, ~~planned unit developments,~~ conditional uses, shoreline substantial development permits,

~~shoreline variances, variances, site plan review,~~ permits or approvals required by UPMC Title 17, Critical Areas, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

~~D. “Public meeting” or “community meeting” means an informal meeting, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the City’s decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or neighborhood meeting, or a scoping meeting on a draft environmental impact statement. Under RCW 36.70B.020(5), a public meeting is not an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government’s project permit application file.~~

**22.05.030 Classification of project permits.**

A. For the purpose of project permit processing, all project permit applications shall be classified as shown in Table A, as one of the following: Type I, Type II or Type III.

<b><u>Table A</u></b> <b><u>PROJECT PERMIT APPLICATION TYPES</u></b>		
<b><u>TYPE I</u></b>	<b><u>TYPE II</u></b>	<b><u>TYPE III</u></b>
<u>Administrative Design Review</u>	<u>Short Plat</u>	<u>Appeal of Administrative and SEPA Decision</u>
<u>Administrative Nonconforming Use</u>	<u>Final Plat</u>	<u>Conditional Use Permit</u>
<u>Administrative Use Permit</u>	<u>Plat Alteration</u>	<u>Preliminary Plat</u>
<u>Administrative Variance</u>	<u>Plat Amendment</u>	<u>Nonconforming Use (non-administrative)</u>
<u>Sign Permit</u>	<u>Large Lot Subdivision</u>	<u>Major Amendment</u>
<u>Building/Construction Permit</u>	<u>Binding Site Plan</u>	<u>Variance (non-administrative)</u>
<u>Minor Amendment</u>	-	<u>Shoreline Substantial Development Permit</u>
<u>ROW Permit</u>	-	<u>Shoreline Conditional Use</u>
<u>Lot Combination</u>	-	<u>Shoreline Nonconforming Use</u>
<u>Boundary Line Adjustment</u>	-	<u>Shoreline Variance</u>
<u>Code Interpretation</u>	-	<u>Critical Areas Permit</u>
<u>Site Development Permit</u>	-	<u>Development Agreement Associated with Project Permit Application</u>

B. Determination by Director. The Planning and Development Services Director or designee shall determine the proper classification for each project permit application. If there is a question as to the appropriate classification, the Director shall resolve the question in favor of the higher classification type.

**22.05.030 Applicability.**

~~This title serves to implement the University Place zoning code, subdivision code, shoreline use regulations, critical areas regulations, public works standards and the site development~~

regulations. The regulations identified in this title apply to project permits falling into three categories or types. The three types of permit projects have differing provisions applicable to each type as follows:

~~A. Type I Permits.~~

~~1. Administrative Review. Administrative review is used when processing applications for administrative permits including, but not limited to, administrative variance, administrative nonconforming, minor amendments, home occupation permits, sign permits, building and construction permits, site development permits, right of way permits, lot combinations, boundary line adjustments, and code interpretations.~~

~~2. Review Process. Unless otherwise stated, administrative review shall be subject to the application requirements, complete application, notice of application, time periods, consolidated permit processing and the notice of decision provisions of this title. If an administrative decision is appealed, the open record hearings, notice of public hearings, joint public hearings, and the closed record appeal provisions of this title shall apply.~~

~~B. Type II Permits.~~

~~1. Administrative Plat Review. Administrative plat review is used when processing applications for short plats, plat alterations and short plat amendments, large lot subdivisions, and binding site plans.~~

~~2. Review Process. Unless otherwise stated, administrative plat review shall be subject to the application requirements, complete application, notice of application, consolidated permit processing and the notice of decision provisions of this title. Timing of the project permit review shall be in accordance with the University Place subdivision code and Chapter 58.17 RCW. Binding site plans shall be processed utilizing the same time limits as short plats. If applicable, the open record hearings, notice of public hearings, joint public hearings, and the closed record appeal provisions of this title shall apply.~~

~~C. Type III Permits.~~

~~1. Hearings Examiner Review. Hearings Examiner review is used when processing applications for project permits, including but not limited to decisions rendered in accordance with Chapter 43.21C RCW, conditional use, preliminary subdivision, nonconforming use, planned development district, major amendments, variances, shoreline substantial development, shoreline conditional use, shoreline nonconforming use, shoreline variance, critical area permits and private road variances. An appeal of an administrative decision is also subject to Hearings Examiner review.~~

~~2. Review Process. Unless otherwise stated, Hearings Examiner review shall be subject to application requirements, complete application, time periods, consistency with development regulations and SEPA, permit conditions, consolidated permit processing, open record hearings, notice of public hearings, joint public hearings, notice of decision, and the closed record appeal provisions of this title.~~

~~A matrix of the types of project permit applications is set forth below as Exhibit "A." A matrix generally summarizing the procedures applicable to different types of project permit applications is set forth below as Exhibit "B."~~

**Exhibit “A”**

**PROJECT PERMIT APPLICATION TYPES**

<b>TYPE I</b>	<b>TYPE II</b>	<b>TYPE III</b>
Variance (administrative)	Short Plats	Appeal of Administrative and SEPA Decisions
Nonconforming Use (administrative)	Final Plats	Conditional Use Permits
Minor Amendments	Plat Alterations	Preliminary Subdivision
Home Occupation Permits	Plat Amendments	Nonconforming Use (nonadministrative)
Sign Permits	Large Lot Subdivisions	Planned Development District
Building/Construction Permits	Binding Site Plans	Major Amendments
Site Development Permits	-	Variances (nonadministrative)
ROW Permits	-	Shoreline Substantial Development Permit
Lot Combinations	-	Shoreline Conditional Use
Boundary Line Adjustment	-	Shoreline Nonconforming Use
Code Interpretations	-	Shoreline Variance
-	-	Critical Area Permits
-	-	Private Road Variances
-	-	

**22.05.035 Procedures.**

Procedures applicable to each type of project permit application are summarized in Table B. Code provisions offering more detailed explanations of processing requirements are referenced in the table. Exemptions from the listed processes are provided in UPMC 22.05.100.

<b>Table B Exhibit “B”</b>			
<b>PROJECT PERMIT APPLICATION PROCESSES</b>			
	<b>TYPE I</b>	<b>TYPE II</b>	<b>TYPE III</b>
Initial Permit Decision Made By: <del>Hearings Examiner or Administration</del>	Administration	Administration	Hearings Examiner
Determination of Completeness	<del>May Be Required Within 28 Days of Receiving Application Generally Not Required – Most Permits Exempt Under UPMC 22.05.100</del>	<del>Required Within 28 Days of Receiving Application Generally Not Required – Most Permits Exempt Under UPMC 22.05.100</del>	Required Within 28 Days of Receiving Application
Consolidated Permit Process	<del>See UPMC 22.05.090X</del>	<del>See UPMC 22.05.090X</del>	<del>See UPMC 22.05.090X</del>

Consistency with Development Regulations and SEPA	<del>See UPMC 22.05.090</del> X	<del>See UPMC 22.05.090</del> X	<del>See UPMC 22.05.090</del> X
Applicability	Appeals of Administrative Decisions to Hearings Examiner	Appeals of Administrative Decisions to Hearings Examiner	Appeals of Administrative Decisions to Hearings Examiner
Applicability	Appeals of Hearings Examiner Decision	Appeals of Hearings Examiner Decision	Appeals of Hearings Examiner Decision
Application Requirements	X	X	X
Notice of Application	<del>Not Generally Not Required – Most Permits Exempt Under UPMC 22.05.100 in Most Cases</del>	<del>Mailed Notice Generally not Required – Most Permits Exempt Under UPMC 22.05.100 14 Days After Determination of Completeness</del>	Required – See UPMC 22.05.060 Mailed Notice Required 14 Days After Determination of Completeness
Notice of Decision	<del>X Generally Not Required – Most Permits Exempt Under UPMC 22.05.100</del>	<del>X Generally Not Required – Most Permits Exempt Under UPMC 22.05.100</del>	Required – See UPMC 22.05.080 Not Applicable
Permit Conditions	X	X	X
Open Record Hearing (Hearings Examiner) (He) Notice of Public Hearing	<del>Not Required Public Notice Required 14 Days Prior to Open Record Hearing</del>	<del>May be Required Public Notice Required 14 Days Prior to Open Record Hearing</del>	Public Notice Required – See Chapter 22.10 14 Days Prior to Open Record Hearing UPMC
Notice of Public Hearing	<del>See UPMC 22.10.040</del>	<del>See UPMC 22.10.040</del>	<del>See UPMC 22.10.040</del>
Time Periods	<del>Not Generally Not Applicable Required -- Most Permits Exempt Under UPMC 22.05.100 in Most Cases</del>	Short Plats, Final Plats, and Binding Site Plans Must Be Processed Within 30 Days of Filing Thereof, RCW 58.17.140. Otherwise, Time Period for Processing is 120 Days	Preliminary Plat of Any Proposed Subdivision or Dedication Must Be Processed Within 90 Days of Filing, RCW 58.17.140. Otherwise, Time Period for Processing is 120 Days
Judicial Review Chapter 36.70C RCW	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>

NOTE: Use of this matrix is for general summary purposes only. Any user of this matrix should refer to UPMC Title 22, Administration of Development Regulations, for full explanations, as well as for exceptions to any of the above summarized information.

D. Exemptions. The following are exempt from the provisions of this title unless otherwise specified:

1. Legislative decisions, including zoning code text and area wide zoning district amendments, adoption of development regulations and amendments, area wide rezones to implement new City policies, adoption of comprehensive plan and plan amendments, and annexations;
2. Final plat approval pursuant to RCW 58.17.170;
3. Landmark designations;
4. Street vacations;
5. Street use permits; and

~~6. Pursuant to RCW 36.70B.140(2), administrative appeals, boundary line adjustments, lot combinations, right of way permits, plats, building permits, site development permits, sign permits, and other construction permits or similar administrative approvals which are categorically exempt from environmental review under the State Environmental Policy Act (SEPA) or permits/approvals for which environmental review has been completed in connection with other project permits, except short plats, are excluded from the following procedures:~~

- ~~a. Determination of completeness;~~
- ~~b. Notice of application;~~
- ~~c. Optional consolidated project permit processing;~~
- ~~d. Joint public hearings;~~
- ~~e. Staff reports;~~
- ~~f. Notice of decision; and~~
- ~~g. Time limitations.~~

#### **22.05.040 Preapplication Optionsrequirements.**

A. Technical Review Conference. The technical review conference is an optional process designed to define those items of Department review which, if not addressed at the conceptual plan stage, might result in substantial technical difficulties during the permit processing. Representatives from various departments and an applicant for a project permit will discuss the conceptual plan for the proposed project and the City's regulatory process. A technical review conference may be scheduled at the request of the applicant.

B. Preapplication Meeting. ~~The~~ preapplication meeting may be held within between Department staff and a potential applicant for a Type I, Type II or Type III permit to discuss the application submittal requirements and pertinent fees. A preapplication meeting is recommended required prior to submittal of an application for most types of a Type III permits.

~~C. Community Meeting. For Type III permits, following the preapplication meeting and before submitting an application, the applicant shall conduct a community meeting on a weekday evening to solicit input and suggestions from the community. A member of the planning staff shall attend. Notice of the community meeting shall be made by the applicant by sending a written notice, addressed through the United States mail, to the City's designated neighborhood advisory committee chairpersons and all property owners of record within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the subject property. Notice of the community meetings shall be given at least 14 days prior to the meeting. Additional notice shall be given in accordance with UPMC 22.05.060(C). Community meetings are not required for variances or, when waived by the Director, for Type III permits which do not abut or have an impact on residential properties.~~

#### **22.05.050 Complete applications.**

A. Form and Content. The Department shall prescribe the form and content for complete applications made pursuant to this title.

B. Checklist for Complete Application. Applications shall be considered complete when the Department determines that the application materials contain or demonstrate the following:

1. The correct number of completed Department master and supplemental application forms signed by the applicant;

2. The correct number of documents, plans or maps identified on the department submittal standards form which are appropriate for the proposed project;

3. A completed State Environmental Policy Act (SEPA) checklist, if required; ~~and~~

4. Payment of all applicable fees; and

5. The proposed project is generally consistent with the City's development regulations and comprehensive plan in consideration of:

a. The type of land use;

b. The level of development, such as units per acre or other measures of density;

c. Infrastructure, including public facilities and services needed to serve the development; and

d. The characteristics of the development, such as development standards and guidelines.

#### C. Time Limitations.

1. Within 28 days after receiving a project permit application, the Department shall provide a written determination to the applicant, stating either:

a. The application is complete; or

b. The application is incomplete and what information is necessary to make the application complete.

2. Within 14 days after an applicant has submitted the requested additional information, the Department shall notify the applicant whether the information submitted adequately responds to the notice of incomplete application, thereby making the application complete, or what additional information is still necessary.

3. An application shall be deemed complete if the Department does not, within 28 days, provide a written determination to the applicant that the application is incomplete.

4. When the project permit is complete, the Department shall accept it and note the date of acceptance.

5. An application is complete for purposes of this section when it meets the procedural submission requirements of the Department and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the Department from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

D. Initiation of Review Process. The Department shall not start the review process of any application until the application is deemed complete.

E. Incomplete Applications. Failure of an applicant to submit information identified as required in the notice of incomplete application, within 60 days of the Department's mailing date, shall constitute grounds for deeming the application null and void. If all additional information identified in the notice of incomplete application has not been received by the Department within 120 days from the application submittal date, then the application shall be deemed null and void unless the applicant has been granted a time period extension. Time period extensions may be

granted by the Director when applicants can demonstrate that unusual circumstances, beyond their control, have prevented them from being able to provide the additional information within the 120-day time period.

F. Waiver of Requirements. The Director may waive specific submittal requirements that are determined to be unnecessary for review of an application.

G. Modifications. Proposed modifications to an application which has been deemed complete by the Department will be treated as follows:

1. Modifications proposed by the Department to a pending application shall not be considered a new application; and
2. Modifications proposed by the applicant to a pending application which would result in a substantial increase in a project's impacts, as determined by the Department, may be deemed a new application. The new application shall conform to the requirements of this section which are in effect at the time the new application is submitted.

H. Filing Fees. The schedule of fees for development permits is established in a separate City resolution.

I. Additional Application Requirements. In the interest of public health, safety or welfare, or to meet the requirements of the State Environmental Policy Act or other State requirements, the Department may request additional application information such as, but not limited to, geotechnical studies, hydrologic studies, noise studies, air quality studies, visual analysis and transportation impact studies.

#### **22.05.060 Notice of application.**

A. Notice of Application.

1. Once an application has been deemed complete, the Department shall provide public notice for the project. The Department shall send a written notice, addressed through the United States mail, to City designated neighborhood advisory committee chairpersons and all property owners of record within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the subject property. Notices for home occupation applications will be sent to only those property owners abutting the property lines of the subject property for single-family and duplex dwellings, and to apartment managers and/or owners for multifamily dwellings. Such notice shall be mailed not more than 14 working days from the determination of a complete application. Parties receiving notice shall be given at least 14 days, from the mailing date, to provide any comments to the Department.

2. Within the Chambers Creek Properties Overlay (CCPO) the County will assume responsibility for mailing the required notices for SEPA and other permits. The City will transmit electronically to the County the notice to be printed and distributed by US post and/or e-mail. The public notice will be provided to the City; designated neighborhood advisory committee chairpersons; and all property owners of record within a radius of 1,000 feet, but not less than two parcels deep, around the exterior boundaries of the CCPO. A copy of the mailing/distribution list, along with an affidavit of mailing, will be provided to the City for official record.

B. Content of Notice of Application. At a minimum, public notice documents shall contain the following information:



1. The name and address of the applicant and/or agent;
2. The subject property location;
3. A description of the proposed project and a list of the project permits included in the application, and, if applicable, a list of studies requested under RCW [36.70B.070](#) or [36.70B.090](#);
4. A list of existing environmental documents that evaluate the proposed project and a location where such documents can be reviewed;
5. A preliminary determination, if available, of the applicable development regulations that will be used for project mitigation and of consistency with land use plans, policies and regulations;
6. The date of application, the date of the notice of completion of the application and the date of the notice of the application;
7. The written determination shall, to the extent known by the City, identify the local, State, and/or Federal government agencies that may have jurisdiction over some aspects of the application;
8. A list of other permits not included in the application, to the extent known by the City;
9. The time periods for submitting comments. Comments shall be due not less than 14 days nor more than 30 days following the date of notice of application, include a statement of the rights of any person to comment on the applications, receive notice of, participate in any hearings and request a copy of the decision once made. All public comment on the notice of application must be received by the Department by 5:00 p.m. on the last day of the comment period;
10. The date, time and place of the public hearing if applicable, as scheduled at the date of notice. Notice of an open record hearing shall be given at least 14 days prior to the hearing;
11. A right to appeal statement; and
12. A Department contact and telephone number.

C. Public Notice Provisions. Once an application has been deemed complete, the applicant shall provide posted public notice on the subject property in accordance with specifications provided by the Department.

D. Shoreline Use Regulations Notice. The following exceptions apply to notice of shoreline use regulations permits:

1. Comments may be submitted within 20 days of the last date of the published notice. Each person responding to such notice shall receive a decision;
2. Notice of a hearing on shoreline use regulation permits shall include a statement that any person may submit oral or written comments on an application at the hearing; and
3. The public may obtain a copy of the decision within two days following issuance (RCW [90.58.140](#)), and the notice must state the manner in which the public may obtain a copy of the decision.

E. Determination of Significance. If a determination of significance has been made prior to the notice of application, the notice of application shall be combined with the determination of

significance and scoping notice. The determination of significance and scoping notice may be issued prior to the notice of application.

F. Determinations and Decisions. Except for a determination of significance, the City shall not issue a threshold determination, nor issue a decision or recommendation on a project permit until the expiration of the public comment period on the notice of application.

#### **22.05.070 Time periods.**

A. The Director or Examiner shall issue a notice of decision on a project permit within 120 days after the Department notifies the applicant that the application is deemed complete. The following time periods shall be excluded from the 120-day time period requirement:

1. Any period during which the applicant has been requested by the Department to correct plans, perform required studies, or provide additional required information, and a period of up to 14 days after the submittal of such to determine if the information satisfies the request;
2. Any period during which an environmental impact statement (EIS) is being prepared in accordance with State law following a determination of significance pursuant to Chapter [43.21C](#) RCW;
3. Any period during which, at the applicant's request, a proposal undergoes the optional Planning Commission design review process pursuant to UPMC [19.50.050](#).
4. Any period for administrative appeals; and
5. Any extension of time mutually agreed upon in writing between the applicant and the Department.

B. The 120-day time period established above shall not apply in the following situations:

1. If the permit requires an amendment to the Comprehensive Plan or a development regulation; or
2. If the permit requires approval of the siting of an essential public facility; or
3. If there are substantial revisions to the project proposal at the applicant's request, in which case the time period shall start from the date at which the revised project application is determined to be complete; or
4. If the application is for a subdivision, then the timelines set in Chapter [58.17](#) RCW shall apply.

C. The applicant shall designate a single person or entity to receive determinations and notices required by this title.

D. If the City is unable to issue its final decision within the time limits provided for, the City shall provide written notice to the applicant stating the reasons why the time limits have not been met, including an estimate of the date for issuance of the notice of final decision.

#### **22.05.080 Notice of decision.**

The City shall provide a notice of decision that includes a statement of any threshold determination and the procedures for administrative appeal. The notice of decision may be a copy of the report or the decision on the project permit application. The notice shall be provided

to the applicant and any person who, prior to rendering the decision, requested notice of the decision or submitted substantive comments on the application.

**22.05.090 Consistency with development regulations and SEPA/consolidated permit review.**

A. During any project permit application review, the City shall determine whether the items in this subsection are defined in the development regulations applicable to the proposed project. In the absence of development regulations, the City shall determine whether the items listed in this subsection are defined in the City's adopted Comprehensive Plan. This determination of consistency shall include the following:

1. The type of land use permitted at the site, including uses that may be allowed under special circumstances, if the criteria for the approval have been satisfied;
2. The level of development, such as density of residential development, floor area ratios, or maximum floor areas; and
3. Character of the development and development standards.

B. The City shall also review the project permit application under the requirements of the State Environmental Policy Act (SEPA), Chapter [43.21C](#) RCW, the SEPA rules, Chapter [197-11](#) WAC and the City environmental regulations, Chapter [17.40](#) UPMC, and shall:

1. Determine whether the applicable regulations require studies that adequately analyze all of the project permit application's specific probable adverse environmental impacts;
2. Determine if the applicable regulations require measures that adequately address such environmental impacts;
3. Determine whether additional studies are required and/or whether the project permit application should be conditioned with additional mitigation measures; and
4. Provide prompt and coordinated review by governmental agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan and development regulations level.

C. In its review of the project permit application, the City may determine that the requirements for environmental analysis, protection, and mitigation measures in the applicable development regulations, Comprehensive Plan, and or other applicable local, State, or Federal laws provide adequate analysis of, and mitigation for, specific adverse environmental impacts of the application.

D. A comprehensive plan, development regulation or other applicable local, State, or Federal law provides adequate analysis of, and mitigation for, the specific adverse environmental impact of an application when:

1. The impacts have been avoided or otherwise mitigated; or
2. The City has designated or accepted certain levels of service, land use designations, development standards, or other land use planning required or allowed by Chapter [36.70A](#) RCW.

E. If the City bases or conditions its approval of the project permit application on compliance with the requirements or mitigation described in subsection (B) of this section, the City shall not impose additional mitigation under SEPA during project review.

F. In its decision whether the specific adverse environmental impact has been addressed by an existing rule or laws of another agency with jurisdiction and with environmental expertise with regard to a specific environmental impact, the City shall consult orally or in writing with that agency and may expressly defer to that agency. In making a deferral, the City shall base or condition its project approval on compliance with these other existing rules or laws.

G. Nothing in this section limits the authority of the City in its review or mitigation of a project to adopt or otherwise rely on environmental analysis and requirements under other laws as provided by Chapter [43.21C](#) RCW.

H. The City shall also review the application under Chapter [17.40](#) UPMC.

I. During project review, the City shall not re-examine alternatives to, or hear appeals on, the items identified in subsection (A) of this section, except for issues of code interpretation. Project review shall be used to identify specific project design and conditions relating to the character of the development, such as details or site plans, curb cuts, drainage swells, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts.

J. Within the Chambers Creek properties overlay (CCPO) the County and City will act as joint co-lead agencies for determining SEPA compliance and mitigation for projects covered by the master site plan. When the majority of the project (i.e., largest land area) is located within the City, then the City shall be the nominal lead agency for SEPA. As nominal lead agency, the City will be responsible for coordinating SEPA review with the other parties and any other appropriate agency or entity for the issuance of threshold determinations and conducting subsequent environmental review. The City will also be responsible for ensuring compliance with environmental review notification procedures.

### **22.05.100 Exemptions from project permit application processing.**

A. Whenever a permit or approval in this code has been designated as a Type I, Type II or Type III permit, the procedures in this title shall be followed in project permit processing. The following permits or approvals are, however, specifically excluded from the procedures set forth in this title:

1. Landmark designations;

2. Street vacations;

3. Street use permits;

4. Legislative decisions, including zoning code text and area wide zoning district amendments, adoption of development regulations and amendments, area wide rezones to implement new City policies, adoption of comprehensive plan and plan amendments, development agreements associated with legislative decisions, and annexations; and

5. Final plat approval pursuant to RCW 58.17.170.

B. Pursuant to RCW 36.70B.140(2), Type I and Type II project permits that are categorically exempt from environmental review under the State Environmental Policy Act (SEPA) or for which environmental review has been completed in connection with other project permits, except short plats, are exempt from the following procedures:

1. Determination of completeness;

2. Notice of application;

3. Optional consolidated project permit review processing;

4. Joint public hearings;

5. Single staff report stating all the decisions and recommendations made as of the date of the report that do not require an open record hearing;

6. Notice of decision; and

7. Time periods.

#### **22.05.100 Permit conditions.**

~~A. Time Limitations. Within a period of two years following the approval of a special use permit or preliminary development plan by the Examiner, the applicant shall file with the Community Development Department a final development plan. Unless extended, if no final development plan is filed within the time limits specified, the approval shall be void.~~

~~B. Extensions. The expiration time period for filing final development plans may be extended in the following situations:~~

~~1. If the applicant can demonstrate to the Director or Examiner, as appropriate, that there have been unusual circumstances beyond his/her control to cause delay in the project, the time period may be extended by one year.~~

~~C. Compliance with Conditions. Compliance with conditions established in a preliminary approval and final approved development plans is required. Any departure from the conditions of approval or approved plans constitutes a violation of this title and shall be subject to enforcement actions and penalties.~~

#### **22.05.120 Appeals of administrative decisions.**

A. Time Limit. Appeals may be taken to the examiner by any aggrieved person or by any officer, department, board or commission of the City affected by a decision of an administrative official in the administration of enforcement of this code. Such appeals shall be filed in writing on forms available at the City in duplicate with the Community Planning and Development Services Department within 14 days of the date of the action being appealed. Appeals must be accompanied by a fee set by a separate fee resolution.

#### **Chapter 22.25 Amendments**

Sections:

22.25.010 Purpose.

22.25.020 Development regulation and zoning map amendments.

22.25.030 Legislative amendments.

22.25.040 Quasi-judicial rezones.

### **22.25.010 Purpose.**

This title and the official zoning map may be amended whenever required by public necessity, convenience or welfare. The purpose of this chapter is to establish authority and procedure for such amendments.

### **22.25.020 Development regulation and zoning map amendments.**

A. Amendments. This chapter provides the method for amending the text and tables of the City's development regulations and the zoning map. Development regulations include zoning, subdivision, shoreline master program, critical areas, buildings and construction, public works, and other municipal code provisions that regulate the use and development of land.

Amendments to development regulation text and tables are legislative amendments. In addition, changes to the zoning map that are Citywide, area-wide, or have area-wide significance are legislative amendments. All other site-specific map amendments (or "rezones") are quasi-judicial amendments. Legislative and quasi-judicial amendments shall be processed as provided in this chapter. Quasi-judicial rezones shall be consistent with the land use designations in the City's Comprehensive Plan.

B. Rezones Versus Redesignations. A rezone shall mean the change of a zone classification on the City's zoning map and is subject to the provisions of this chapter. A redesignation is a change of a Comprehensive Plan land use designation and is subject to the provisions contained in UPMC Title 16. When a proposal requires both a redesignation and a rezone, the following shall apply:

1. A redesignation and a legislative rezone may be conducted in phases or concurrently, provided final action is first taken on the redesignation.

2. A redesignation and a quasi-judicial rezone may be conducted in phases, or they may be conducted concurrently provided final action is first taken on the redesignation and further provided the applicant submits a written waiver of the deadline for issuance of a final decision of the rezone, which is 120 days from the city making a determination that a project permit application is complete.

C. Any interested person, including applicants, citizens, City Council, Planning Commission, Hearings Examiners, City staff, or staff of other agencies, may request amendments to development regulations or zoning map.

D. Application Required. For the purpose of advising and informing an applicant of the procedural requirements and to ensure that an application is in satisfactory form, the department may encourage applicant attendance at a preapplication conference.

1. The department shall provide the application forms and submittal requirements for amendments.

2. No amendment shall be processed until the Director determines that the information necessary to review and decide upon the amendment is complete.

3. An application fee may be required, adopted by separate resolution.

### **22.25.030 Legislative amendments.**

A. Amendments. Amendments to development regulation text and tables and rezones of area-wide significance are legislative actions and shall be considered by the City Council following review and recommendation by the Planning Commission.

B. Requests Docket. Requested legislative amendments shall be docketed and considered by the Planning Commission and City Council at least on a biannual basis, consistent with the provisions of Chapter 36.70A RCW.

C. Staff Report. The Director shall prepare a written report on each legislative amendment pending before the Planning Commission. The report shall be provided to the Planning Commission and any parties of record before the public hearing. Each report shall contain:

1. Any proposed factual findings of the City department proposing the amendment;
2. Any comments from City departments, agencies, districts and other interested parties;
3. The environmental assessment or copy of any environmental determination or final environmental impact statement; and
4. The department's recommendations on the amendment.

D. Public Hearing Required by Planning Commission. The Planning Commission shall give notice and hold at least one public hearing prior to a recommendation for adoption or amendment of any amendment. Alternatively, the Planning Commission may hold a joint public hearing with the City Council.

E. Recommendation by Planning Commission. Each determination recommending a legislative amendment shall be supported by written findings and conclusions showing the following:

1. That the proposed amendment is consistent with the goals, objectives and policies of the Comprehensive Plan;
2. That the proposed amendment is in the best interest of the citizens and property owners of the City;
3. That the proposed amendment enhances the public health, safety, comfort, convenience, or general welfare;
4. For rezone requests, that the proposed amendment to the zoning map is consistent with the scope and purpose of UPMC Title 19, and the description and purpose of the zone classification applied for;
5. For rezone requests, that there are sufficient changed conditions since the previous zoning became effective to warrant the proposed amendment to the zoning map;
6. For rezone requests, that the proposed amendment to the zoning map will not be materially detrimental to uses in the vicinity in which the subject property is located.

F. Adoption by the City Council. Following receipt of the Planning Commission's recommendation, the City Council may hold additional public hearings at its discretion.

G. Should the City Council agree to an amendment to the development regulations and/or zoning map, such amendments shall be adopted by ordinance.

## 22.25.040 Quasi-judicial rezones.

A. A quasi-judicial rezone application shall require a specific development proposal for the subject property with sufficient detail to enable the City to evaluate the applicant's proposal for conformance with the applicable criteria and to adequately condition the rezone request to protect the public interest if appropriate. In addition, the Director may require the applicant to participate in a meeting to inform citizens about the proposal.

B. An application for a quasi-judicial rezone shall be processed in accordance with UPMC Title 22, Administration of Development Regulations, except that the decision of the Hearings Examiner shall not be final, but shall be a recommendation to the City Council.

C. Public Hearing. The Hearings Examiner shall hold an open record public hearing on each application. Any person may participate in the hearing by submitting written comments or making oral comments at the hearing.

### D. Decision Criteria.

1. The Hearings Examiner shall recommend approval or approval with conditions or modifications if the applicant has demonstrated that the proposal complies with the decision criteria set forth in this section.

2. The applicant carries the burden of proof and must demonstrate that the criteria are met by a preponderance of the evidence.

3. If the criteria are not met, the Hearings Examiner shall recommend denial of the application.

4. Criteria. All criteria must be met in order for an application to be approved. The applicant must demonstrate the following:

a. The proposed rezone is in the best interest of the residents of the City;

b. The proposed rezone is appropriate because either:

i. Conditions in the immediate vicinity of the subject property have so significantly changed since the property was given its present zoning that, under those changed conditions, a rezone is within the public interest; or

ii. The rezone will correct a zone classification or zone boundary that was inappropriate when established;

c. The proposed rezone is consistent with the Comprehensive Plan;

d. The proposed rezone is consistent with all applicable provisions of UPMC Title 19, including any specific design criteria;

e. The proposed rezone will promote, rather than detract from, the public health, safety, and welfare;

f. The site plan of the proposed project is designed to minimize all significant adverse impacts on other properties;

g. The site plan is designed to minimize impacts upon the public facilities, services and utilities;

h. The proposal is compatible with the uses and zoning of surrounding properties;



i. If applicable, that there is a means of developing, preserving, and maintaining open space; and

j. That all conditions necessary to lessen any impacts of the proposed use can be monitored and enforced.

E. Recommendation by the Hearings Examiner. After considering all of the information submitted on the matter, the Hearings Examiner shall issue a written recommendation to the City Council setting forth the Examiner's findings, conclusions and recommendation. The recommendation shall include the following:

1. A statement of facts presented to the Hearings Examiner that supports his or her recommendation, including facts supporting any conditions and restrictions that are recommended.

2. A statement of the Hearings Examiner's conclusions based on those facts.

3. A statement of the criteria used by the Hearings Examiner in making the recommendation.

4. Any conditions, restrictions, and modifications that the Examiner determines are reasonably necessary to eliminate or minimize any undesirable effects of granting the requested rezone.

F. Distribution of Written Recommendation. The Director shall distribute copies of the recommendation of the Hearings Examiner to the applicant, each person who submitted written or oral testimony at the public hearing, and the City Council. The Director shall include a draft resolution or ordinance that embodies the Hearings Examiner's recommendation with the copy of the recommendation sent to each City Council member.

G. City Council Action.

1. Time for Consideration. The City Council shall consider and take final action on the application at a public meeting and issue a decision within 120 days of the City making a determination that the application is complete. This time period may be extended upon written agreement of the Director and the applicant pursuant to RCW 36.70B.080(3). 2. Closed Record Hearing. The City Council review and consideration of the rezone application shall be conducted as a closed record hearing and shall be limited to the record of the hearing before the Hearings Examiner, the Hearings Examiner's written recommendation, and comments received during the closed record hearing. No new evidence or information may be presented at the closed record hearing.

3. Argument. Persons entitled to participate in the closed record hearing are limited to parties of record in the open record hearing. Arguments made at the hearing must be limited to the information contained in the record developed by the Hearings Examiner and must specify the specific findings or conclusions disputed, if any, and the relief requested from the City Council.

4. Burden of Proof. The applicant carries the burden of proof and must demonstrate to the City Council that the decision criteria are met by a preponderance of the evidence. If the criteria are not met, the City Council shall deny the application.

5. City Council Decision. The City Council shall review the Hearings Examiner's recommendation for compliance with the review criteria set forth in this chapter. After consideration the City Council may remand the application to the Hearings Examiner to reopen the hearing for additional evidence and supplementary findings and conclusions, or further

actions as directed. If not remanded or after remand, the City Council shall, by ordinance approved by a majority of the total membership, take one of the following actions:

a. Approve the application;

b. Approve the application with modifications or conditions; or

c. Deny the application.

6. Conditions and Restrictions. The City Council shall include in an ordinance granting the rezone any conditions and restrictions it determines are necessary to meet the decision criteria or to eliminate or minimize any undesirable effects of granting a rezone. Any conditions, modifications and restrictions that are imposed shall become part of the decision.

7. Findings of Fact and Conclusions. The City Council may adopt by reference some or all of the findings and conclusions of the Hearings Examiner. The City Council shall include in the ordinance:

a. A statement of the facts that support the decision, including the facts that support any new conditions, restrictions, or modifications that are imposed;

b. A development agreement between the applicant and the City as a condition of the rezone, if warranted. Such agreement may impose development conditions designed to mitigate potential impacts of the rezone and the development;

c. The City Council's conclusions based on its finding of facts.

8. Effect. The decision of the City Council on an application is the final decision of the City.

H. Minor Modifications. Subsequent to the adoption of the ordinance, the applicant may apply for a minor modification to a site plan approved as part of that ordinance. The Director shall review applications for a minor modification. The Director may approve a minor modification only if the Director finds that:

1. The change will not result in reducing the landscaped area, buffer areas, or the amount of open space on the project by more than five percent;

2. The change will not result in increasing the residential density;

3. The change will not result in increasing gross floor area of the project by more than five percent;

4. The change will not result in any structure, or vehicular circulation or parking area being moved more than 10 feet in any direction and will not reduce any required yard;

5. The change will not result in any increase in height of any structure;

6. The change will not result in a change in the location of any access point to the project;

7. The change will not increase any adverse impacts or undesirable effects of the project and that the change in no way significantly alters the project; and

8. The change will not modify the intent of any condition.

I. Major Modifications. If the applicant seeks a modification to the approved site plan that does not meet the requirements of a minor modification, the applicant may propose a major

modification by submitting an application for a quasi-judicial project-related rezone. The City will process such application in the same manner as an application for a new quasi-judicial project-related rezone.

J. Expiration. Unless otherwise addressed in a development agreement pursuant to Chapter 22.30 UPMC:

1. The applicant must begin construction, or submit to the City a complete building permit application for the development activity, use of land, or other actions approved under this chapter, within two years after the final City decision on the matter is issued. Failure to do so shall render the City approval of the applicant's proposal void, and the zoning of the subject property shall revert to its original zoning; provided, however, the City Council, upon a showing of good cause, may extend the time limits contained herein.

2. The applicant must substantially complete construction of the development activity, or use of land, or other actions approved under this section and complete all applicable conditions of approval within five years after the final City decision on the matter is issued. Failure to do so shall render the City approval void.

3. If litigation is initiated, the time limits of this section shall be automatically extended by the length of time between the commencement and final termination of that litigation. If the development activity, use of land, or other action approved under this chapter includes phased construction, the time limits of this subsection may also be extended at the discretion of the Director.

K. Time Extension. Unless otherwise addressed in a development agreement pursuant to Chapter 22.30 UPMC, at least 30 days prior to the lapse of approval for a project-related rezone, the applicant may submit an application in the form of a letter with supporting documentation to the department requesting a one-time extension of the time limits set forth in subsection (J) of this section of up to one year. The request must demonstrate:

1. The applicant is making substantial progress on the development activity, use of land, or other actions approved under this chapter; and

2. That circumstances beyond the applicant's control prevent compliance with the time limits.

L. Judicial Review. The action of the City in granting or denying an application under this chapter may be reviewed pursuant to UPMC Title 22.

## **Chapter 22.30** **DEVELOPMENT AGREEMENTS**

Sections:

22.30.010 Authority.

22.30.020 General provisions of development agreements.

22.30.030 Enforceability.

22.30.040 Approved procedure for development agreements.

22.30.050 No deadline for final decision, form of agreement, term, recordation.

22.30.060 Judicial appeal.

22.30.070 No retroactive effect.

### **22.30.010 Authority.**

The City may enter into a development agreement with a person having ownership or control of real property within the City limits. The City may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement.

### **22.30.020 General provisions of development agreements.**

A. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with the applicable policies and goals of the comprehensive plan and all applicable development standards adopted by the City pursuant to State law. For the purposes of this section, "development standards" includes, but is not limited to:

1. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
2. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
3. Mitigation measures, development conditions and other requirements of State law;
4. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping and other development features;
5. Provisions for affordable housing, if applicable;
6. Parks and common open space preservation;
7. Review procedures and standards for implementing decisions;
8. Phasing, if applicable;
9. A build-out or vesting period for applicable standards; and
10. Any other appropriate development requirement or procedure.

B. The execution of a development agreement is a proper exercise of city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

### **22.30.030 Enforceability.**

Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement. The agreement may not be subject to an amendment to a zoning ordinance or development standard or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. The permit approval issued by the City after the execution of the agreement must be consistent with the development agreement.

### **22.30.040 Processing procedure for development agreements.**

A. Legislative Actions. A development agreement associated with a legislative action such as a comprehensive plan amendment or area-wide rezone shall be processed in accordance with the procedures established in Chapter 16.10 UPMC.

B. Project Permits. A development agreement associated with a project permit application shall be processed in accordance with the procedures established in Chapters 22.05 and 22.10 UPMC.

1. If the final decision on the underlying project permit application is made by the Hearings Examiner, then the Hearings Examiner shall consider both the project permit application and the proposed development agreement together during the public hearing. The Hearings Examiner shall make a recommendation to the Council on the development agreement and the Examiner's decision on the underlying project permit application shall be held in abeyance until the City Council considers the proposed development agreement in a public hearing. If the City Council approves the development agreement, the Council shall, by resolution or ordinance, authorize the Mayor to execute the development agreement on behalf of the City. At this point, the Hearings Examiner may then issue the final decision on the underlying project permit application. Nothing in this section obligates the Hearings Examiner to forward a recommendation to the City Council for further consideration if the Hearings Examiner denies the underlying project permit application.

2. If the final decision on the underlying project permit application is made by the City administrative staff, then City staff shall consider both the project permit application and the proposed development agreement together. City staff shall make a recommendation to the Council on the development agreement, and the City staff's decision on the underlying project permit application shall be held in abeyance until the City Council considers the proposed development agreement in a public hearing. If the City Council approves the development agreement, the Council shall, by resolution or ordinance, authorize the Mayor to execute the development agreement on behalf of the City. At this point, City staff may then issue the final decision on the underlying project permit application. Nothing in this section obligates City staff to forward a recommendation to the City Council for further consideration if City staff denies the underlying project permit application.

3. If a final decision on an underlying project permit application has been previously made by the Hearings Examiner or City administrative staff and the application was approved, City staff shall make a recommendation to the Council on the development agreement. A public hearing shall be held on the development agreement and if approved, the Council shall authorize the Mayor, in a resolution or ordinance, to execute the development agreement on behalf of the City.

### **22.30.050 No deadline for final decision, form of agreement, term, recordation.**

A. Development agreements are not "project permit applications" as defined in State law. Therefore, there is no deadline for processing a development agreement. If an applicant requests that the City execute a development agreement as part of its approval of a project permit application, the applicant must first sign a written waiver of the deadline for issuance of a final decision of the project permit application.

B. Form. No development agreement shall be presented to the decision-making body unless in a form approved by the City Attorney. Every development agreement shall be signed by the property owner and all other parties with a substantial beneficial interest in the property that is the subject of the development agreement, prior to any public hearing held for the purpose of authorizing execution of the development agreement.

C. Term.

1. Unless a longer term is specified in the development agreement, such agreements shall have a maximum term of five years.

2. In determining the appropriate term for a development agreement, the City Council should consider the type, size and location of the development and phasing if proposed.

3. Extensions. Unless extensions are provided for in the development agreement one-time extension for up to five years may be requested if authorized in the development agreement. If extensions are authorized in a development agreement, an applicant must request the extension at least 60 days prior to expiration. All extension requests shall be reviewed by the City Council after a public hearing on the request, unless another process is expressly provided for in the development agreement.

D. Recordation. A development agreement shall be recorded against the real property records of the Pierce County Assessor's Office. During the term of the development agreement, the agreement is binding on the parties and their successors, including any area that is annexed to the City.

**22.30.060 Judicial appeal.**

If the development agreement relates to a project permit application, the provisions of State law shall apply to the appeal of the decision on the development agreement.

**22.30.070 No retroactive effect.**

This chapter does not affect the validity of any development agreement, contract rezone, concomitant agreement, annexation agreement, or other agreement in existence prior to its effective date, or adopted under separate authority, which includes some or all of the development standards provided in section 22.30.020 of this chapter.