

Committee Members

Councilmember Chris Moore
Councilmember Melodi Koenig
City Administrator Scott Larson
Finance Director Gretchen Russo
City Clerk Kim Agfalvi
Executive Asst. Danielle Charchenko
Public Works Director Marshall Maurer
Public Works Superintendent Ryan McBee
Capital Projects Manager John Bielka
PW Admin Asst. Laura Hinds
Building Official Tim Lincoln
Records Organizer & Permit Tech Alison Williams
Engineer JC Hungerford

City of Orting Public Works Committee
AGENDA



Wednesday, March 6, 2024 – 2:30 p.m.
ORTING CITY HALL, COUNCIL CHAMBERS, 104 BRIDGE ST S

ZOOM LINK

<https://us06web.zoom.us/j/89239018185?pwd=bMq8aobyRQhIxImNAkbErnd3zLMIsV.1>
Meeting ID: 892 3901 8185. Passcode: 012353.

- Call Meeting to Order, Roll Call
- Approval of Minutes
- Public Comment & Presentations

DEPARTMENT REPORTS

Est. Time Action

<p>1. ADMINISTRATION – MillieAnne VanDevender, Planner for Scott Larson 1.1 SEPA Code Amendments to OMC 15-14 and Addition to OMC 10-16-5</p>	Min 10	
<p>2. ENGINEERING UPDATES – JC Hungerford PE, Parametrix 2.1 Kansas Street SW <ul style="list-style-type: none"> ○ Reconstruction ○ ROW 2.2 Whitehawk Blvd bypass 2.3 WSDOT Fish Passage 2.4 Water System Plan 2.5 CIPP Project</p>	Min 15	
<p>3. PROJECT MANAGEMENT UPDATES – John Bielka 3.1 WRRF Design – Wilson Eng. looking to deliver 30% design in April 2024 with final design in April 2025</p>	Min 5	

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4. PUBLIC WORKS – Marshall Maurer 4.1 Side Sewer Policy & Procedure 4.2 TBD Policy Project Updates: <ul style="list-style-type: none">• 2023 Sidewalk Repair & Replacement Update• Water Meter Upgrades• PFAS Testing	Min 15	
5. FINANCE – Gretchen Russo 5.1	Min	
6. BUILDING – Tim Lincoln 6.1 Building Code Amendment-Review 6.2 Monthly Building Activity	Min	
7. COUNCIL – CM Moore & CM Koenig 7.1	Min	

REQUEST FOR NEW BUSINESS

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ROUND TABLE

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MEETING SUMMARY

ADJOURN



**City Of Orting
Council Agenda Summary Sheet**

	Agenda Bill #	Recommending Committee	Study Session Dates	Regular Meeting Dates
Subject: Code Amendments to OMC 15-14 (SEPA) and Addition of OMC 10-16-5 (Inadvertent Discovery)	AB24-XX	Public Works		
		03.06.2024	03.20.2024	03.27.2024
	Department:	Planning		
	Date Submitted:	02.29.2024		
Cost of Item:	<u>\$NA</u>			
Amount Budgeted:	<u>\$NA</u>			
Unexpended Balance:	<u>\$NA</u>			
Bars #:				
Timeline:				
Submitted By:	MillieAnne VanDevender (Planner)			
Fiscal Note: None				
Attachments: Staff Report and Exhibits, Ordinance				
<p>SUMMARY STATEMENT:</p> <p>Orting Municipal Code (OMC) Chapter 15-14, titled “Environmental Review” sets forth the City’s policies and practices regarding local administration of the State Environmental Protection Act (SEPA). The Chapter was last updated in 2003 via Ordinance 778 and since then, there have been numerous changes to state law and to the practice of reviewing proposals for environmental impacts. As these changes occur, local codes become outdated, and it is necessary to update the codes.</p> <p>Staff proposes several changes to OMC Chapter 15-14 including updates to the categorical exemptions for minor new construction, updating the review process to include the Optional Determination of Nonsignificance (ODNS), and minor text changes throughout to clarify the regulations and ensure adherence to existing and updated state laws.</p> <p>Staff also proposes the addition of OMC 10-16-5: Inadvertent Discovery of Human Skeletal Remains, to provide adequate protections for cultural and historic resources when exemption levels are raised.</p> <p>The Planning Commission held a public hearing on the matter on February 5, 2024, and unanimously recommended approval of both proposed ordinances with minor edits and as modified to leave the exemption level for grading/filling as-is.</p> <p>The City attorneys reviewed the proposed ordinances and made suggestions for minor revisions to clarify the language. Staff made changes as suggested.</p> <p>See draft ordinances and Planning Commission staff report for specifics.</p>				



Planning Commission Staff Report

Project Name:	Code Amendments to OMC 15-14 (SEPA) and Addition of OMC 10-16-5 (Inadvertent Discovery)
Date of Staff Report:	January 29, 2024
Date of Meeting:	February 5, 2024
Staff Recommendation:	Recommend Approval to City Council
City Staff Contact:	MillieAnne VanDevender, AICP Contract City Planner
60-Day Notice:	Distributed to tribes, other agencies, the public, and the Department of Commerce on November 29, 2023.
Public Notice:	Notice of a public hearing was published in the Tacoma News Tribune and posted online on January 26, 2024, per OMC 15-7-3.
SEPA Determination:	SEPA review of the adoption of SEPA Agency procedures is exempted under WAC 197-11-800(19)(c).
Exhibits:	<ol style="list-style-type: none">1. Draft Ordinance and proposed changes to OMC 10-162. Draft Ordinance and proposed changes to OMC 15-143. Notice of 60-Day comment period for Ecology, Commerce, and relevant agencies/contacts4. WSDOT Comments

Introduction

Orting Municipal Code (OMC) Chapter 15-14, titled "Environmental Review" sets forth the city's policies and practices regarding local administration of the State Environmental Protection Act (SEPA). The Chapter was last updated in 2003 via Ordinance 778 and since then, there have been numerous changes to state law and to the practice of reviewing proposals for environmental impacts. As these changes occur, local codes become outdated, and it is necessary to update the codes.

Staff proposes several changes to OMC Chapter 15-14 including updates to the categorical exemptions for minor new construction, updating the review process to include the Optional Determination of Nonsignificance (ODNS), and minor text changes throughout to clarify the regulations and ensure adherence to existing and updated state laws.

Staff also proposes the addition of OMC 10-16-5: Inadvertent Discovery of Human Skeletal Remains, to provide adequate protections for cultural and historic resources when exemption levels are raised.

Relevant Legislative Changes by the State

In 2012 the State Legislature:

- Increased the flexible thresholds that local governments may adopt to exempt minor new construction projects from SEPA review.
- Revised the process that local governments follow in adopting flexible SEPA exemption thresholds for minor new construction.
- Revised and clarified language related to the "residential," "parking lot," and "landfill and excavation" categories of minor new construction.
- Added flexibility for all lead agencies to improve the efficiency of the environmental checklist. This includes allowing for electronic submittal of the environmental checklist, including electronic signature.

In 2014 the State Legislature:

- Expanded use of National Environmental Policy Act (NEPA) documentation by lead agencies.
- Adopted increased flexible thresholds for minor new construction, more specific requirements regarding cultural resources and an increase in notice to 60 days.
 - A city or county fully planning under the GMA will have to document, when adopting flexible thresholds under WAC 197-11-800(1)(c), its consideration of historic and cultural resources.
- Expanded minor new construction exemptions for installation or removal of tanks (*impervious underground or above-ground tanks, having a total capacity of 10,000 gallons or less except on agricultural and industrial lands which may have a total capacity of up to 60,000 gallons*) and solar energy projects.
- Updated the exemption for land use decisions to provide that most land use decisions will be exempt for otherwise exempt projects, with some limited exceptions.
- Provided a new exemption for text amendments of ordinances or codes that do not change environmental standards.
- Updated utility exemption for water pipe size to align with industry standards.
- Updated the environmental checklist.
- The categorical exemption for the siting of wireless service facilities in WAC 197-11-800(25) is clarified and made more specific.

In 2019 the State Legislature:

- Passed House Bill (HB) 1923. HB 1923 is a voluntary and incentive-based proposal to promote urban density and infill. The bill was written to encourage cities planning under GMA to increase residential building capacity and housing affordability. Among other items, the bill encouraged cities to adopt increases in categorical exemptions pursuant to the infill development provisions of SEPA for single-family and multifamily development.

In 2023 the State Legislature:

- Passed House Bill (HB) 1110. HB 1110 encourages the development of missing middle housing and establishes a categorical SEPA exemption for regulations that remove parking requirements for new middle housing development projects.

Background

Staff proposes several updates to OMC Chapter 15-14 that incorporate the changes to state laws listed in the section above, including a proposal to increase categorical exemption thresholds. The State established which proposed actions (projects) are categorically exempt from threshold determination and EIS requirements (WAC 197-11-800), as well as minimum and maximum exemption levels. The law allows for certain projects to be “categorically” exempt from environmental review under SEPA, such as the following simplified sampling (WAC 197-11-800 contains the whole detailed list):

- Short Plats and Boundary Line Adjustments
- Enforcement and inspections
- Business Licenses
- Adoption of Noise Ordinances
- Certain utility installations
- Temporary traffic controls and detours
- Issuance of agricultural leases covering <160 contiguous acres
- Repair of structurally deficient bridges (with limitations)
- Actions of the state legislature
- Granting Franchises

One important “Categorical Exemption” category is the exemption allowed for *minor new construction*. The minor new construction “thresholds” are flexible in that the state sets the default threshold levels, but the state also allows local governments to increase the thresholds based on local conditions, when following a specific process to do so. *(There are, however, **exceptions** to these **exemptions** – the exemptions generally **don’t** apply when a project is wholly or partly on lands covered by water, when a license to discharge water is required, when a license involving air emissions is involved, and when there is a land use decision not exempt under WAC 197-11-800(6).)*

Process for Raising Exemption Levels

Washington State law allows each community the opportunity to raise the SEPA environmental review exemption levels, through a specific process outlined in WAC 197-11-800(1)(c). In general, all development proposals, whether they are exempt from SEPA environmental review or not, are subject to the requirements for environmental analysis, protection, and mitigation for impacts to the elements of the environment listed in WAC 197-11-444. The listed elements include many aspects of the environment such as water, land, air quality, light and glare, the use of emergency services, and many others. The traditional process of SEPA environmental review of the adoption of SEPA Agency procedures is exempted under WAC 197-11-800(19)(c) and a SEPA checklist is not required. However, the following process must be met in order to raise exemption levels.

- (i) Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted. The requirements may be addressed in specific adopted development regulations, and applicable state and federal regulations. The city, town, or county must document the result of its outreach with the department of transportation on impacts to state-owned transportation facilities, including consideration of whether mitigation is necessary for impacts to state-owned transportation facilities.
- (ii) Description in the findings or other appropriate section of the adopting ordinance or resolution of the locally established notice and comment opportunities for the public,

affected tribes, and agencies regarding permitting of development projects included in these increased exemption levels.

- (iii) Before adopting the ordinance or resolution containing the proposed new exemption levels, the agency shall provide a minimum of 60-day notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment.
- (iv) The city, town, or county must document how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised. The requirements for notice and opportunity to comment for the public, affected tribes, and agencies in (c)(i) and (ii) of this subsection and the requirements for protection and mitigation in (c)(i) of this subsection must be specifically documented. The local ordinance or resolution shall include, but not be limited to, the following:
 - a. Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments.
 - b. Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44, 27.53, 68.50, and 68.60 RCW.
 - c. Local development regulations that include at minimum a pre-project cultural resource review where warranted, and Standard Inadvertent Discovery Language (SIDL) for all projects.

Staff reviewed the existing development regulations and applicable state and federal regulations to ensure that all the requirements for the process have been fulfilled. This analysis was documented in a table that was included in the required Notice of the 60-day comment period for Ecology, Commerce, and relevant agencies/contacts included as Exhibit 3 (WAC 197-11-800(1)(c)(iii)). The analysis revealed that the existing regulations mostly ensure that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted. However, Orting's existing codes lack specific development regulations that provide adequate protections for cultural and historic resources when exemption levels are raised. In order to resolve this issue, staff prepared an additional ordinance to add a section to Chapter 10-16 Grading/Filling of Land (Title 10, Building and Construction) that will add language, as recommended by the State Department of Archaeology and Historic Preservation, related to inadvertent discovery of human skeletal remains. The draft Ordinance is provided as Exhibit 1.

Staff distributed a packet of information on the proposed changes to tribes, other agencies, the public, and the Department of Commerce on November 29, 2023, and the public comment period closed on January 29, 2024. The City received comments from the Washington Department of Transportation (WSDOT) which are included as Exhibit 4. Per the comments, Staff revised the table containing the SEPA elements analysis (Attachment A of Exhibit 2) to include the Puget Sound Regional Council (PSRC) "Adopted Level of Service Standards for Regionally Significant State Highways" and the WSDOT Design Manual Chapter 1130.09(2) "WSDOT Threshold Criteria". Staff also included the suggested language in the draft ordinance pertaining to proposed changes to OMC 15.14.

The draft Ordinances, as provided with this memo as Exhibits 1 and 2, show the suggested findings for the adoption of the ordinances thus fulfilling WAC 197-11-800(1)(c)(ii).

Proposed Changes to OMC 15-14-3-2

Categorical Exemptions

OMC Chapter 15-14-3-2 establishes the City's SEPA exemption levels for minor new construction under WAC 197-11-800(1)(c) based on local conditions. Staff proposes changes to increase the categorical exemption levels for minor new construction projects. If categorical exemption thresholds are too low, unnecessary time and expense can be added to the development for smaller projects. Also, there is an increased need for attainable housing in general and increased encouragement from the state to update local regulations that may prevent housing from being more attainable in the community. These factors provide the basis for this proposal to update the SEPA code chapter. The following suggested categorical exemption threshold changes and reasoning for each proposed exemption level are described below:

- Staff suggests revisions to OMC 15-14-3-2(A)(1) to allow for up to nine residential dwelling units, instead of the current threshold of four residential dwelling units.
 - Reason for revision: OMC 12-2-20 allows nine lots through the short plat process and short plats typically qualify for a categorical exemption per WAC 197-11-800(6)(d). However, the current SEPA exemption threshold of four residential units causes many short plats to go through the SEPA environmental review process when five to nine lots are proposed. Raising the categorical exemption level would ensure that short plats qualify for categorical exemptions as provided in WAC 197-11-800(6)(d) and preliminary plats (more than nine lots) would be required to go through the SEPA process. Additionally, this would allow for a potential increase in housing development and may provide opportunities for attainable housing while still ensuring necessary and required environmental reviews and protections are in place.
- Staff proposes revisions to OMC 15-14-3-2(A)(3) to allow for an office, school, commercial, recreational, service or storage building up to 12,000 square feet and 40 parking spaces, instead of the current threshold of 4,000 square feet and 20 parking spaces.
 - Reason for revision: This revision would allow the City to be consistent with the threshold requirements Pierce County utilizes while staying well under the maximums allowed by the State. Additionally, there are numerous existing requirements for commercial structures, such as Architectural Design Review and regulations for parking lots that require specific lighting and landscaping requirements, which ensure that these types of developments are adequately regulated.
- Staff suggests revising OMC 15-4-3-2(A)(4) to allow for parking lots up to 40 parking spaces, instead of the current threshold of 20 parking spaces.
 - Reason for revision: There are existing requirements for parking lots such as those specific to stormwater, lighting, and landscaping, which ensure that parking is adequately regulated.
- Staff proposes a revision to OMC 15-4-3-2(A)(5) to allow for fills and/or excavations up to 1,000 cumulative cubic yards, instead of the current threshold of 500 cubic yards.
 - Reason for revision: There are various existing regulations that pertain to stormwater and ensure that developments impacting stormwater are adequately regulated.

Proposed Addition to OMC 15-14-3

Staff proposes OMC 15-14-3-7 as an addition to OMC 15-14-3, to clarify that the SEPA Official may utilize the Optional Determination of Nonsignificance (ODNS) Process. WAC 197-11-355 contains the rules for the ODNS process and is currently listed in OMC 15-14-3 as adopted by reference; the addition of OMC 15-14-3-7 will provide supplemental information and clarify that the City may elect to use the process. Type II permits require a notice of application with a fourteen-day comment period. Near the middle or end of the project review, the SEPA environmental review determination is issued with a second fourteen-day public and agency comment period. This second comment period may result in comments that require the applicant to make significant project changes that would have an impact on their schedule and costs. The ODNS process combines the notice of application and SEPA environmental review application into a single integrated comment period, creating a consolidated and faster process for certain projects without compromising the opportunities for comments. The ODNS process is the preferred process by the Department of Ecology.

Proposed Addition to OMC 15-14-4-2

The updates include a proposal to add OMC 15-4-4-2(D) to OMC 15-4-4-2, which would add a Fees section. The proposed fees would be charged in addition to the City's Master Fee Schedule for specific situations. This addition would make the applicant responsible for fees, helping the City to recover costs of complying with SEPA rules when the responsibilities of the City go above and beyond those covered in the City's Master Fee Schedule.

Additional Proposed Changes to OMC 15-14

Minor text changes are proposed throughout the entire chapter for clarity, including the addition of a definition for "Early Notice" in OMC 15-4-2-3, updating code citations, and including further details on the Public Notice process set forth in OMC 15-14-5-3. Additionally, staff proposes an addition to OMC 15-14-3-4, Use of Exemptions, in order to establish and clarify the process for determining if a project is exempt. The proposal includes an addition to OMC 15-14-3-5, which would allow for the City to make changes or additions to a submitted environmental checklist to ensure accuracy and to update the checklist in a timely manner. The addition also allows for an alternative in which the City can return the checklist to the applicant to make the revisions.

Addition of OMC 10-16-5: Inadvertent Discovery of Human Skeletal Remains

Staff proposes the addition of a section to Chapter 10-16 Grading/Filling of Land (Title 10, Building and Construction) to add language, as recommended by the State Department of Architecture and Historic Preservation, related to inadvertent discovery of human skeletal remains.

Findings and Review

The draft Ordinances, as provided with this staff report under Exhibits 1 and 2, show the suggested findings for the adoption of the ordinances. Exhibit 3 documents environmental elements included under SEPA and details the current codes (local, state, etc.) and adopted plans that protect such elements, or provide for mitigation from impacts.

Recommendation

Staff recommends the Planning Commission forward to the City Council a recommendation of approval of the draft ordinances and the code amendments as proposed.

Public Hearing

A public hearing will be held by Planning Commission on February 5, 2024.

Appeal

Recommendations of the Planning Commission may be appealed, by applicants or parties of record from the Planning Commission hearing to the City Council per OMC 15-10-2.

CITY OF ORTING

WASHINGTON

ORDINANCE NO. 2024-X

AN ORDINANCE OF THE CITY OF ORTING, WASHINGTON, RELATING TO THE INADVERTENT DISCOVERY OF HUMAN SKELETAL REMAINS AND ADOPTING AMENDMENTS TO ORTING MUNICIPAL CODE CHAPTER 10-16.

WHEREAS, the City of Orting, Washington, has Carbon River and Puyallup River shorelines and was originally inhabited by native populations, such as the Yakama Nation, Puyallup Tribe of Indians, and the Sauk-Suiattle Indian Tribe; and

WHEREAS, RCW 68.50.645, RCW 27.44.055, and RCW 68.60.055 set forth protocols for the response required when human remains are found; and

WHEREAS, it is in the public interest to adopt language pertaining to the inadvertent discovery of human skeletal remains by Ordinance, and codify the language in the Orting Municipal Code; and

WHEREAS, the Planning Commission held a public hearing and considered the Ordinance on February 5, 2024; and

WHEREAS, a 60-day comment period notice for the proposed amendments was provided to the Washington State Department of Ecology, the Department of Commerce, affected tribes, agencies with expertise, and the public, pursuant to WAC 197-11-800 (1)(c)(iii) and the comment period closed on January 29, 2024, with one set of comments received pertaining to aspects of the proposal unrelated to OMC 10-16; and

WHEREAS, on March X, 2024, the City Council held a public hearing on the proposed code amendment; and

WHEREAS, the City Council has determined that the proposed code amendment is consistent with the goals and policies of the City's comprehensive plan;

NOW THEREFORE, the City Council of the City of Orting, Washington, do ordain as follows:

Section 1. Adoption: Orting Municipal Code Chapter 10-16 is hereby amended to add a new section OMC 10-16-5 addressing the inadvertent discovery of human skeletal remains as shown on Attachment A.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Transmittal to State. Pursuant to RCW 36.70A.106, a complete and accurate copy of this ordinance shall be transmitted to the Department of Commerce within ten (10) days of adoption.

Section 5. Effective Date. This ordinance shall take effect and be in force five (5) days after its approval, passage and publication as required by law.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE XX DAY OF _____, 2024.

CITY OF ORTING

Joshua Penner, Mayor

ATTEST/AUTHENTICATED:

Kim Agfalvi, City Clerk

Approved as to form:

Charlotte A. Archer
Inslee Best
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date:

Attachment A

TITLE 10 BUILDING AND CONSTRUCTION CHAPTER 16 GRADING/FILLING OF LAND

SECTION:

- 10-16-1: Permit Required
- 10-16-2: Application For Permit
- 10-16-3: Approval By Building Inspector
- 10-16-4: Fill Material

10-16-1: PERMIT REQUIRED:

No person shall fill any land within the City without first obtaining a permit from the Building Inspector. (1973 Code § 14.46.010)

10-16-2: APPLICATION FOR PERMIT:

The person requesting a permit shall file a written application therefor with the Building Inspector. Such application shall include the following items:

- A. The name and address of the applicant.
- B. The name and address of the owner of the property where the fill material is to be deposited.
- C. The exact location of the proposed fill, giving the street address or legal description of the property involved.
- D. No fill shall be placed which exceeds a three to one (3:1) slope from the property line, unless it is first approved by the City Council.
- E. No fill shall be placed above the street level, unless it is first approved by the City Council.
- F. A detailed plot plan of the entire area to be filled showing:
 - 1. The dimensions of the property.
 - 2. The dimension and location of all existing and proposed and temporary and permanent stormwater BMPs as required based on Title 9, Chapter 5 of this code.
 - 3. The existing elevations and final finished grades of the fill area.
 - 4. The disposition of all water from the fill area assuming that the fill will be eventually improved with parking and buildings and permanent mitigation measures required by the City.
 - 5. The adequacy of the receiving existing permanent stormwater BMPs to receive this flow allowing a reasonable assumption of eventual development of adjoining areas.
 - 6. Adequate on-site retention of water for all sites being developed will be designed for contiguous property under one ownership. If the total site is not to be developed immediately, the design shall include the plans for the fully developed contiguous ownership as best the owner can ascertain at the time of the application. Calculations shall be submitted by the developer and checked by the City Engineer. Actual construction may be phased with development, and temporary facilities may be required in the interim, all as approved by the City Engineer. All calculations will be based on the requirements of Title 9, Chapter 5 of this code.

The definition of sites being developed shall be when any of the following approvals are required:

- Management Act).
- a. Fill permit.
 - b. Substantial development permit required under RCW Chapter 90.58 (Shoreline Management Act).
 - c. Subdivision approval.
 - d. Short plat approval.
 - e. Large lot approval.
 - f. Rezones.
 - g. Conditional use permits.
 - h. Building permits.
 - i. Planned unit development.

Any parcel smaller than twenty thousand (20,000) square feet shall be exempt from the above requirement, unless it is determined by the City Engineer to be in a critical area or to create a critical situation.

7. A Stormwater Site Plan prepared in accordance with Title 9 and including the calculations required by section 10-16-2.F.6 of this code.

8. The City Engineer will have the discretion to determine the amount of studies downstream from the proposed development relative to their capacities to handle the released water from the improvement. These studies shall be used to determine what improvements are to be constructed by the developer.

9. The proposed stormwater management shall be documented in the Stormwater Site Plan and Construction Stormwater Pollution Prevention Plan prepared in accordance with Title 9, Chapter 5 of this code.

G. The location of any buildings or other structures or improvements or permanent stormwater BMPs.

H. The type of fill material to be used.
(1973 Code § 14.46.020; amd. Ord. 2019-1057, 1-8-2020)

10-16-3: APPROVAL BY BUILDING INSPECTOR:

No permit shall be issued unless the application has been approved by the Building Inspector. (1973 Code § 14.46.040)

10-16-4: FILL MATERIAL:

The fill material will be of a quality which will permit the construction of buildings thereupon. No fill will be approved which contains a substantial amount of decomposable materials. No filling shall be permitted which interferes with any drainage or existing permanent stormwater BMPs unless mitigation is documented in the Stormwater Site Plan approved by the City. No hydraulic fill shall be permitted unless it is first approved by the City Council.

(1973 Code § 14.46.030; amd. Ord. 2019-1057, 1-8-2020)

10-16-5: INADVERTENT DISCOVERY OF HUMAN SKELETAL REMAINS:

If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic

Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

CITY OF ORTING
WASHINGTON

ORDINANCE NO. 2024-X

**AN ORDINANCE OF THE CITY OF ORTING, WASHINGTON,
RELATING TO THE STATE ENVIRONMENTAL POLICY ACT
(SEPA) AND ADOPTING AMENDMENTS TO ORTING
MUNICIPAL CODE CHAPTER 15.14 PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN IMMEDIATE
EFFECTIVE DATE**

WHEREAS, the City of Orting, Washington is fully planning under the state Growth Management Act (GMA); and

WHEREAS, The Washington State Environmental Policy Act (SEPA) was adopted in 1971, which provides a way to identify and mitigate possible environmental impacts that may result from approval of proposals; and

WHEREAS, the City of Orting last amended Orting Municipal Code Chapter 15.14, “Environmental Review” via Ordinance 778 in 2003 and now finds that it is in the public interest to update the code; and

WHEREAS, the State Legislature has adopted changes to WAC 197-11 and chapter 43.21C RCW, including amendments to the SEPA rules set forth in WAC 197-11-800 including provisions allowing local governments to adopt increases to the thresholds for categorically exempt actions; and

WHEREAS, the State Legislature passed HB 1923 in the 2019 regular session and E2SHB 1110 in the 2023 legislative session, which encourage cities planning under the GMA to increase housing affordability and encourages cities to adopt increases in categorical exemptions pursuant to the infill development provisions of SEPA for single-family and multifamily development; and

WHEREAS, applicable federal, state regulations, and city development regulations provide adequate protections for cultural and historic resources for exempted development in accordance with WAC 197-11-800 (1)(c)(iv); and

WHEREAS, OMC Title 11 contains the city’s critical areas regulations, which addresses impacts to critical areas for exempted development; and

WHEREAS, access to state highways is regulated through a process that is separate from SEPA as described the Washington State Department of Transportation Design Manual, Division 5; and

WHEREAS, OMC 15-4-1 contains permit processing procedures and OMC 15-7 contains public noticing procedures which addresses public comment opportunities for exempted development; and

WHEREAS, the table shown in **Attachment A** documents those environmental elements included under SEPA, and details the current codes (local, state, etc.) and adopted plans that protect such elements, or provide for mitigation from impacts; and

WHEREAS, the Planning Commission held a public hearing and considered the Ordinance on February 5, 2024; and

WHEREAS, a 60-day comment period notice for the proposed amendments was provided to the Washington State Department of Ecology, the Department of Commerce, affected tribes, agencies with expertise, and the public, pursuant to WAC 197-11-800 (1)(c)(iii) and the comment period closed on January 29, 2024 with one set of comments received; and

WHEREAS, on **March X, 2024**, the City Council held a public hearing on the proposed code amendments; and

WHEREAS, the City Council has determined that the proposed code amendments are consistent with the goals and policies of the City's comprehensive plan;

NOW, THEREFORE, the City Council of the City of Orting, Washington, do ordain as follows:

Section 1. Adoption: Orting Municipal Code Chapter 15-14 is hereby amended as set forth in **Attachment B**, attached hereto.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Transmittal to State. Pursuant to RCW 36.70A.106, a complete and accurate copy of this ordinance shall be transmitted to the Department of Commerce within ten (10) days of adoption.

Section 5. Effective Date. This ordinance shall take effect and be in force five (5) days after its approval, passage and publication as required by law.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE XX DAY OF Month, 2024.

CITY OF ORTING

Joshua Penner, Mayor

ATTEST/AUTHENTICATED:

Kim Agfalvi, City Clerk

Approved as to form:

Charlotte A. Archer
Inslee Best
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date:

Attachment A

SEPA ENVIRONMENTAL ELEMENTS	CURRENT LOCAL AND STATE CODES PROTECTING ENVIRONMENTAL ELEMENTS OR PROVIDING IMPACT MITIGATION
Earth	<ul style="list-style-type: none"> • OMC 10-1: Adoption of the International Building Code as published by the International Code Council Inc., and as amended by the state of Washington • OMC Title 11, Critical Areas and Shoreline Management • OMC Title 13, Development Regulations • OMC Title 12, Subdivisions • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • Washington State Department of Ecology administers the Construction Stormwater General Permit
Air	<ul style="list-style-type: none"> • United States Environmental Protection Agency (EPA) • Washington State Department of Ecology, Chapter 173-400 WAC – General Regulations for Air Pollution Sources • Puget Sound Clean Air Agency • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • OMC 12-5-3: Criteria for Approval (of Preliminary Plats) – “Public health, safety and general welfare” • OMC 5-1-3: Public Nuisances Declared • OMC 7-9: Parking Restricted Upon Designated Residential Streets • OMC 10-4-1: Adoption of the Washington State Residential Energy Code and OMC 10-4-3: Adoption of the Washington State Nonresidential Energy Code • OMC Title 13, Development Regulations • OMC 5-2-7, Outdoor Dumping and Burning
Water	<ul style="list-style-type: none"> • Washington State Department of Ecology administers the Construction Stormwater General Permit • Washington State Department of Ecology administers the National Pollution Discharge Elimination System (“NPDES”) permit for Phase II communities in Western Washington which permit is intended to implement the Clean Water Act • State Hydraulic Project Approvals: WAC 173-201A – Water Quality Standards for Surface Waters of the State of Washington; WAC 173-200 – Water Quality Standards for Ground Waters of the State of Washington • OMC Title 9, Water and Sewers • OMC Title 11, Critical Areas and Shoreline Management • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • OMC 10-1, Adoption of the Washington State Building Code • Adopted level of service standards, City of Orting Comprehensive Plan
Energy and natural resources	<ul style="list-style-type: none"> • OMC 10-4-1: Adoption of the Washington State Residential Energy Code and OMC 10-4-3: Adoption of the Washington State Nonresidential Energy Code
Plants and	<ul style="list-style-type: none"> • OMC Title 11, Critical Areas and Shoreline Management

SEPA ENVIRONMENTAL ELEMENTS	CURRENT LOCAL AND STATE CODES PROTECTING ENVIRONMENTAL ELEMENTS OR PROVIDING IMPACT MITIGATION
Animals	<ul style="list-style-type: none"> • OMC 13-5-2: Landscaping and Screening • OMC Title 5, Public Health and Safety
Environmental Health	<ul style="list-style-type: none"> • Federal, state, and regional regulations, as well as local Fire and Building Codes are the primary means of mitigating risks associated with hazardous and toxic materials • OMC 5-6: Hazardous Waste Management Plan • OMC 5-8: Noise Control • OMC Title 11, Critical Areas and Shoreline Management • OMC Title 13, Development Regulations • OMC Title 12, Subdivisions • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • OMC 13-5-2: Landscaping and Screening • Washington State Model Toxic Control Act
Land and Shoreline Use	<ul style="list-style-type: none"> • OMC Title 13, Development Regulations • OMC Title 11, Critical Areas and Shoreline Management • OMC Title 12, Subdivisions • OMC Title 14, Flood Control
Housing	<ul style="list-style-type: none"> • Federal, state, and regional regulations, as well as local Fire and Building Codes are the primary means of mitigating risks related to housing • OMC Title 13, Development Regulations • OMC Title 10, Building and Construction
Aesthetics	<ul style="list-style-type: none"> • OMC 13-6-7: Architectural Design Review • OMC Title 10, Building and Construction • OMC Title 13, Development Regulations • OMC 13-5-2, Landscaping and Screening • OMC Title 12, Subdivisions • OMC 12-4-3: Criteria for Approval (of Short Subdivisions)
Light and Glare	<ul style="list-style-type: none"> • OMC Title 10, Building and Construction • OMC 13-7: Sign Regulations • OMC 13-6-7: Architectural Design Review • OMC Title 12, Subdivisions
Recreation	<ul style="list-style-type: none"> • OMC 15-6: Impact Fees • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • OMC Title 11, Critical Areas and Shoreline Management • Parks, Trails, and Open Space Plan • Adopted level of service standards, City of Orting Comprehensive Plan
Historic and Cultural Preservation	<ul style="list-style-type: none"> • Federal and state regulations addressing the protection of cultural and archeological resources include RCW 27.34, 27.53 & 27.44; and WAC 25.48 • OMC Title 11, Critical Areas and Shoreline Management - City of Orting Shoreline Master Program Policy 5.3 Archeological and Historic Resources requires all shoreline permits to contain provisions for stopping work and notifying authorities if any archeological phenomena is uncovered

SEPA ENVIRONMENTAL ELEMENTS	CURRENT LOCAL AND STATE CODES PROTECTING ENVIRONMENTAL ELEMENTS OR PROVIDING IMPACT MITIGATION
	<ul style="list-style-type: none"> • Proposed addition of OMC 10-16-5: Inadvertent Discovery of Human Skeletal Remains
Transportation	<ul style="list-style-type: none"> • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • OMC 15-6A-5: Imposition of transportation impact fees • City of Orting Development Standards • Adopted level of service standards, City of Orting Comprehensive Plan • The Orting 2040 Transportation Plan • Puget Sound Regional Council (PSRC) “Adopted Level of Service Standards for Regionally Significant State Highways” • WSDOT Design Manual Chapter 1130.09(2) “WSDOT Threshold Criteria”
Public Services and Utilities	<ul style="list-style-type: none"> • OMC 5-2: Garbage and Refuse • OMC 8-8: Telecommunication Master Use Permits • OMC Title 9, Water and Sewers • OMC Title 12, Subdivisions • OMC 15-6: Impact Fees • OMC 15-8: Concurrency and Adequacy • City Franchise Agreements and Contracts • Adopted level of service standards, City of Orting Comprehensive Plan • Orting School District Capital Facilities Plan • Americans with Disabilities Act • Puget Sound Regional Council (PSRC) “Adopted Level of Service Standards for Regionally Significant State Highways” • WSDOT Design Manual Chapter 1130.09(2) “WSDOT Threshold Criteria”

Attachment B

TITLE 15 DEVELOPMENT CODE ADMINISTRATION

CHAPTER 14 ENVIRONMENTAL REVIEW¹

Notes

1 WAC 173-806 et seq.

15-14-1: AUTHORITY:

The city adopts this chapter under the state environmental policy act (SEPA), Revised Code of Washington 43.21C.120, and the SEPA rules, WAC 197-11-904. This chapter contains the city's SEPA procedures and policies. The SEPA rules, WAC chapter 197-11, must be used in conjunction with this chapter. [In addition, Chapter 43.21C RCW should be consulted for complete information regarding SEPA.](#) (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-2: GENERAL REQUIREMENTS:

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

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

197-11-030	Policy.
197-11-040	Definitions.
197-11-050	Lead agency.
197-11-055	Timing of the SEPA process.
197-11-060	Content of environmental review.
197-11-070	Limitations on actions during SEPA process.
197-11-080	Incomplete or unavailable information.
197-11-090	Supporting documents.
197-11-100	Information required of applicants.
197-11-158	GMA project review-Reliance on exiting plans, laws and regulations.
197-11-164	Planned actions-Definition and criteria.
197-11-168	Ordinances or resolutions designating planned actions-procedures for adoption.
197-11-172	Planned actions-project review.
197-11-210	SEPA/GMA integration.

- 197-11-220 SEPA/GMA definitions.
- 197-11-228 Overall SEPA/GMA integration procedures.
- 197-11-230 Timing of an integrated GMA/SEPA process.
- 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- 197-11-235 [SEPA/GMA integration](#) Documents.
- 197-11-238 [SEPA/GMA integration](#) Monitoring.
- 197-11-250 SEPA/Model Toxics Control Act integration.
- 197-11-253 SEPA lead agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance for MTCA remedial action.
- 197-11-262 Determination of significance and EIS for MTCA remedial action.
- 197-11-265 Early scoping for MTCA remedial action.
- 197-11-268 MTCA interim actions.
(Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-2-2: SEPA POLICIES:

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

- A. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources.
- B. The city recognizes that each person has a fundamental and inalienable right to a healthful environment, and that each person has a responsibility to contribute to the preservation and enhancement of the environment.
- C. The city incorporates by reference all policies in the cited city codes, ordinances, resolutions and plans, and all amendments to them in effect prior to the date of a technically complete application of any building permit or preliminary plat, or prior to issuance of a DNS or DEIS for any other action. These documents include, but are not limited to, the following: Orting comprehensive plan and incorporated elements, development code, critical area regulations, shoreline master program, uniform building code, uniform fire code, uniform plumbing code, uniform mechanical code, uniform code for abatement of dangerous buildings, floodplain management code, six (6) year transportation improvement program, storm water comprehensive plan, water and sewer utility plans and regulations, park and recreation plan, Washington state ventilation and indoor air quality code, Washington state energy code, uniform housing code.
- D. Through the project review process:
 - 1. If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies under this chapter will not be necessary on those impacts;
 - 2. If the applicable regulations require measures that adequately address such environmental impacts, additional measures would likewise not be required under this chapter; and
 - 3. If the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, this chapter provides the authority and procedures for additional review. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-2-3: ADDITIONAL DEFINITIONS:

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

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

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

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

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

SEPA RULES: Chapter 197-11 WAC adopted by the department of ecology. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

B. For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that were adopted by reference in ~~WAC 173-806-020~~Section 15-14-2-1.

C. The city shall retain all documents required by the SEPA rules (chapter 197-11 WAC) and make them available in accordance with chapter ~~42-17~~42.56 Revised Code of Washington. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

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

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

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

E. When the city is lead agency for a model toxic control act (MTCA) remedial action, the department of ecology shall be provided an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6), the city shall decide jointly with ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

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

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

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

This section 15-14-3 contains the rules for deciding whether a proposal has a probable significant, adverse environmental impact requiring an environmental impact statement (EIS) to be prepared. This section 15-14-3 also contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections of chapter 197-11 WAC by reference, as supplemented in this section 15-14-3:

197-11-300	Purpose of this part.
197-11-305	Categorical exemptions.
197-11-310	Threshold determination required.
197-11-315	Environmental checklist.
197-11-330	Threshold determination process.
197-11-335	Additional information.
197-11-340	Determination of nonsignificance (DNS).
197-11-350	Mitigated DNS.
197-11-355	Optional DNS process.
197-11-360	Determination of significance (DS) initiation of scoping.
197-11-390	Effect of threshold determination.
197-11-800	Categorical exemptions.
197-11-880	Emergencies.
197-11-890	Petitioning DOE to change exemptions.

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

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

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

1. For residential dwelling units in WAC 197-11-800(1)(b)(i): Up to ~~four (4)~~nine (9) dwelling units, cumulative.

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

3. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): Up to ~~four thousand (4,000)~~twelve thousand (12,000) square feet and up to ~~twenty (20)~~forty (40) parking spaces, cumulative.

4. For parking lots in WAC 197-11-800(1)(b)(iv): Up to ~~twenty (20)~~forty (40) parking spaces, cumulative.

5. For landfills and excavations in ~~WAC 197-11-800(1)(c)(v)~~WAC 197-11-800(1)(b)(v): Up to ~~five hundred (500)~~one thousand (1,000) cumulative cubic yards.

B. Whenever the city establishes new exempt levels under this section, it shall send them to the department of ecology, headquarters office, Olympia, WA 98504, under WAC 197-11-800(1)(c). (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-3-3: EMERGENCIES:

Actions which must be undertaken immediately, or within a time frame too short to allow full compliance with this chapter, to avoid an immediate threat to public health and safety, to prevent an immediate danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt from the procedural requirements of this chapter (WAC 197-11-800). The responsible official shall determine on a case by case basis emergency actions which satisfy the general requirements of this section 15-14-3. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

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

BC. 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. The city may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and
3. The city may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant ~~when the expenditures would serve no purpose if nonexempt action(s) were not approved~~ when there is some doubt that the entire proposal (i.e., subdivision) may not be approved. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-3-5: 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 determining the responsible official and for making the threshold determination.

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

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

1. The city has technical information on a question or questions that is unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

D. For projects submitted as planned actions under WAC 197-11-164, the city shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the department of ecology to allow at least a thirty (30) day review prior to use. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

15-14-3-6: MITIGATED DNS:

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a 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; and
2. Precede the city's actual threshold determination for the proposal.

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

1. Be written; and
2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the city to consider a DS; and
3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

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

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

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a DNS under WAC 197-11-340(2);
2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate;
3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot stormwater retention pond at Y location" are adequate;
4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

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

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

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

~~H.~~ The city's written response under subsection BC of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications of changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

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

1. State on the first page of the notice of application that it expects to issue a DNS for the proposal, and that:
 - a. The optional DNS process is being used;
 - b. This may be the only opportunity to comment on the environmental impacts of the proposal;
 - c. The proposal may include mitigation measures under applicable codes, and the project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared; and
 - d. A copy of the subsequent threshold determination for the specific proposal may be obtained upon request (in addition, the city may maintain a general mailing list for threshold determination distribution);
2. List in the notice of application the conditions being considered to mitigate environmental impacts, if a mitigated DNS is expected;
3. Comply with the requirements for a notice of application and public notice in Benton City Municipal Code chapter 2.70; and
4. Send the notice of application and environmental checklist to:
 - a. Agencies with jurisdiction, the Department of Ecology, affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal; and
 - b. Anyone requesting a copy of the environmental checklist for the specific proposal (in addition, the city may maintain a general mailing list for checklist distribution).
- C. If the responsible official indicates on the notice of application that a DNS is likely, an agency with jurisdiction may assume lead agency status during the comment period on the notice of application in accordance with WAC 197-11-948.
- D. The responsible official shall consider timely comments on the notice of application and either:
 1. Issue a DNS or mitigated DNS with no comment period using the procedures in subsection E of this section;
 2. Issue a DNS or mitigated DNS with a comment period using the procedures in subsection E of this section, if the responsible official determines a comment period is necessary;
 3. Issue a DS; or
 4. Require additional information or studies prior to making a threshold determination.
- E. If a DNS or mitigated DNS is issued under subsection (D)(1) or (D)(2) of this section, the responsible official shall send a copy of the DNS or mitigated DNS to the Department of Ecology, agencies with jurisdiction, those who commented, and anyone requesting a copy. A copy of the environmental checklist need not be recirculated.

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

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

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

- | | |
|------------|-----------------------|
| 197-11-400 | Purpose of EIS. |
| 197-11-402 | General requirements. |

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

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

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

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

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

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the city may request under another ordinance or statute.) (Ord. 778, 10-30-2003, eff. 11-11-2003)

D. Fees.

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

a. For a threshold determination which requires information in addition to that contained in or accompanying the environmental checklist, a fee in an amount equal to the actual costs and expenses incurred by the city in conducting any studies or investigations necessary to provide such information;

b. For all private projects requiring an EIS for which the city is the lead agency and for which the responsible official determines that the EIS shall be prepared by the employees of the city, or that the city will contract directly with a consultant or consultants for the preparation of an EIS, a fee in an amount equal to the actual costs and expenses incurred by the city in preparing the EIS. Such fee shall also apply when the city determines that the applicant may prepare the EIS, and the

responsible official determines that substantial revisions or reassessing of impacts must be performed by employees of the city to ensure compliance with the provisions of the SEPA guidelines and this chapter.

2. If the responsible official determines that an EIS is required, and that the EIS shall be prepared by employees of the city or by a consultant or consultants retained by the city, or that the applicant-prepared EIS shall be substantially rewritten by employees of the city, the private applicant shall be advised by the responsible official of the estimated costs and expenses of preparing or rewriting the EIS prior to actual preparation or rewriting, and the private applicant shall post a bond or otherwise insure payment of such costs and expenses. A consultant or consultants may be recommended by the applicant. The final decision to hire a consultant or consultants shall be made by the city council.

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

15-14-4-3: ADDITIONAL ELEMENTS:

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

- A. Economy;
- B. Cost benefit analysis;
- C. Social policy analysis. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-5: COMMENTING:

15-14-5-1: PURPOSE:

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

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

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

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

- 197-11-550 Specificity of comments.
- 197-11-560 FEIS response to comments.
- 197-11-570 Consulted agency costs to assist lead agency.

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

15-14-5-3: PUBLIC NOTICE:

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

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

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

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

- a. Posting the property, and posting in the city hall; and
- b. Publishing notice in the city's newspaper of record.

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

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

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

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

D. Whenever the city issues a DEIS under WAC 197-11-455 or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

- 1. Indicating the availability of the DEIS in any public notice required for a nonexempt license; and
- 2. Posting the property, for site specific proposals; or posting in city hall, for nonsite specific proposals; and
- 3. Publishing notice in the city's newspaper of record.

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

F. The city may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

B. The responsible official shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will

ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-6: USING EXISTING ENVIRONMENTAL DOCUMENTS:

15-14-6-1: PURPOSE:

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

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

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

- 197-11-164 Planned actions--Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions--Procedures for adoption.
- 197-11-172 Planned actions--Project review.
- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement--Procedures.
- 197-11-625 Addenda--Procedures.
- 197-11-630 Adoption--Procedures.
- 197-11-635 Incorporation by reference--Procedures.
- 197-11-640 Combining documents.

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

15-14-7: SEPA AND AGENCY DECISIONS:

15-14-7-1: PURPOSE:

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

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

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

- 197-11-650 Purpose of this part.
- 197-11-655 Implementation.
- 197-11-660 Substantive authority and mitigation.
- 197-11-680 Appeals.
- 197-11-721 Closed record appeal.
- 197-11-722 Consolidated appeal.

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

15-14-7-3: SUBSTANTIVE AUTHORITY:

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

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

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

2. Such conditions are in writing; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. The city designates and adopts by reference all policies in the cited city codes, ordinances, resolutions and plans, and all amendments to them in effect prior to the date of a technically complete application of any building permit or preliminary plat, or prior to issuance of a DNS or DEIS for any other action. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

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

15-14-7-5: SEPA APPEALS:

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

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

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

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

- a. Determination of nonsignificance;
- b. Determination of significance;
- c. Adoption or issuance of a final environmental impact statement.

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

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

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

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

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

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

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

- a. The name and address of the party or agency filing the appeal;
- b. An identification of the specific proposal and specific SEPA actions, omissions, conditions or determinations for which appeal is sought;
- c. A statement of the particular grounds or reasons for the appeal.

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

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

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

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

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

2. An appeal to a determination of significance (DS) may be filed by the applicant within ten (10) days of the issuance of the DS/scoping notice. The appeal shall be heard in open record hearing and decided by a hearing examiner, whose decision shall be final and not subject to further administrative appeal.

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

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

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

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

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

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

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

I. How To Appeal: The appeal must be in the form of a written notice of appeal, and must contain a brief and concise statement of the matter being appealed, the specific components or aspects that are being appealed, the appellant's basic rationale or contentions on appeal, and a statement demonstrating standing to appeal. The appeal may also contain whatever supplemental information the appellant wishes to include. The appeal shall also contain the following:

1. The name and mailing address of the appellant and the name and address of his/her representative, if any;
2. The appellant's legal residence or principal place of business;
3. A copy of the decision which is appealed;
4. The grounds upon which the appellant relies;
5. A concise statement of the factual and legal reasons for the appeal;
6. The specific nature and intent of the relief sought;
7. A statement that the appellant has read the appeal and believes the contents to be true, followed by his/her signature and the signature of his/her representative, if any. If the appealing party is unavailable to sign the appeal, it may be signed by his/her representative.

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

K. Procedures For Appeal Hearing:

1. Notice Of The Appeal Hearing.
 - a. Content: The responsible official shall prepare a notice of the appeal containing the following:
 - (1) The file number and a brief written description of the matter being appealed.

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

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

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

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

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

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

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

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

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

M. Staff Report On The Appeal:

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

a. The SEPA threshold determination.

b. All written comments submitted to the responsible official.

c. The letter of appeal.

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

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

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

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

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

b. A copy will be sent to the applicant.

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

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

O. Decision On The Appeal:

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

a. Affirm the decision being appealed; or

- b. Reverse the decision being appealed; or
- c. Modify the decision being appealed.

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

- a. A copy will be mailed to the applicant.
- b. A copy will be mailed to the person who filed the appeal.
- c. A copy will be mailed to all other persons of record or agencies who

participated in the appeal.

P. Additional Appeal Procedures:

- 1. The matters to be considered and decided upon in the appeal are limited to the matters raised in the notice of appeal.
- 2. The decision of the responsible official shall be accorded substantial weight.
- 3. All testimony will be taken under oath.
- 4. The decision of the hearing body hearing the appeal shall be the final decision on any appeal of a threshold determination including a mitigated determination of nonsignificance.

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

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

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

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

- 1. In violation of constitutional provisions as applied; or
- 2. The decision is outside the statutory authority or jurisdiction of the city; or
- 3. The responsible official has engaged in unlawful procedure or decision making process, or has failed to follow a prescribed procedure; or
- 4. In regard to challenges to the appropriateness of the issuance of a DNS clearly erroneous in view of the public policy of the act (SEPA); or
- 5. In regard to challenges to the adequacy of an EIS shown to be inadequate employing the "rule of reason".

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

V. Judicial Appeal:

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

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

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

15-14-8: DEFINITIONS:

15-14-8-1: PURPOSE:

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

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

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

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

197-11-758	Lead agency.
197-11-760	License.
197-11-762	Local agency.
197-11-764	Major action.
197-11-766	Mitigated DNS.
197-11-768	Mitigation.
197-11-770	Natural environment.
197-11-772	NEPA.
197-11-774	Nonproject.
197-11-775	Open record hearing
197-11-776	Phased review.
197-11-778	Preparation.
197-11-780	Private project.
197-11-782	Probable.
197-11-784	Proposal.
197-11-786	Reasonable alternative.
197-11-788	Responsible Official.
197-11-790	SEPA.
197-11-792	Scope.
197-11-793	Scoping.
197-11-794	Significant.
197-11-796	State agency.
197-11-797	Threshold determination.
197-11-799	Underlying governmental action.

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

15-14-9: AGENCY COMPLIANCE:

15-14-9-1: PURPOSE:

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

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

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

197-11-900	Purpose of this part.
197-11-902	Agency SEPA policies.
197-11-908	Critical Areas
197-11-916	Application to ongoing actions.
197-11-920	Agencies with environmental expertise.
197-11-922	Lead agency rules.
197-11-924	Determining the lead agency.
197-11-926	Lead agency for governmental proposals.
197-11-928	Lead agency for public and private proposals.

197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a City.
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a City, and one or more state agencies.
197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-938	Lead agencies for specific proposals.
197-11-940	Transfer of lead agency status to a state agency.
197-11-942	Agreements on lead agency status.
197-11-944	Agreements on division of lead agency duties.
197-11-946	DOE resolution of lead agency disputes.
197-11-948	Assumption of lead agency status.

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

15-14-9-3: FEES:

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

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

2. 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. The city may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected by mutual agreement of the city and applicant after a call for proposals.

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

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

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

E. **Copies:** The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by chapter 42.17 Revised Code of Washington. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-10: FORMS:

15-14-10-1: PURPOSE:

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

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

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

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

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

15-14-11: SEVERABILITY:

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



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

TO: Potentially Affected Tribes
SEPA Environmental Review Distribution List

DATE: November 29, 2023

FROM: MillieAnne VanDevender, AICP
Josh Kubitza, AICP
Wayne Carlson, FAICP
Contract City Planners

PROJECT TYPE: Municipal code

SUBJECT: Code Amendments to OMC 15-14 and Addition of OMC 10-16-5

INTRODUCTION AND BACKGROUND

The purpose of this memo is to provide information and an opportunity to comment on suggested modifications to Chapter 14 of Title 15 in the Orting Municipal Code, titled “Environmental Review” and the proposed addition of OMC 10-16-5, titled “Inadvertent Discovery of Human Skeletal Remains”. We have prepared a package of materials, including two proposed ordinances, for your consideration.

Orting Municipal Code Chapter 15-14 sets forth the city’s policies and practices regarding local administration of the State Environmental Protection Act (SEPA). OMC Chapter 15-14 was last updated 20 years ago (in 2003 via Ordinance 778) and there have been numerous changes to state law since that time.

CATEGORICAL EXEMPTIONS

The law allows for certain projects to be “categorically” exempt from environmental review under SEPA, such as the following which we list as a simplified sampling (WAC 197-11-800 contains the whole detailed list):

- Boundary Line Adjustments
- Enforcement and inspections
- Business Licenses
- Adoption of Noise Ordinances
- Certain utility installations
- Temporary traffic controls and detours
- Issuance of agricultural leases covering <160 contiguous acres
- Repair of structurally deficient bridges (with limitations)
- Actions of the state legislature
- Granting Franchises

One important “Categorical Exemption” category is the exemption allowed for *minor new construction*. The minor new construction “thresholds” are flexible in that the state sets the default threshold levels, but the state also allows local governments to increase the thresholds based on local conditions, when following a specific process to do so. *(There are, however, **exceptions to these exemptions** – the exemptions generally **don’t** apply when a project is wholly or partly on lands covered by water, when a license to discharge water is required, when a license involving air emissions is involved, and when there is a land use decision not exempt under WAC 197-11-800(6).)*

In 2012 the State increased the flexible thresholds that local governments may adopt to exempt minor new construction projects from SEPA review and revised the process that local governments follow in adopting flexible SEPA minor new construction exemption thresholds, which was further amended in 2014.

Currently, the City’s exempt levels match the minimum State levels under WAC 197-11-800(1)(b), except Orting has a higher threshold for filling land and excavations.

The following table outlines the different project types addressed in WAC 197-11-800(1)(c), and documents the current threshold that applies presently, the limit for the maximum threshold allowed, and the proposed threshold for the City of Orting:

Project type	Current Threshold	Maximum threshold allowed	Proposed threshold
Residential	For residential dwelling units in WAC 197-11-800(1)(b)(i): Up to four (4) dwelling units, cumulative.	30 units	9 units (<i>this number chosen because Orting allows 9 units for short plats</i>)
Agricultural Structures	For agricultural structures in WAC 197-11-800(1)(b)(ii): Up to ten thousand (10,000) square feet, cumulative.	40,000 square feet	10,000 square feet – No increase proposed.
Office, school, commercial, recreational, service, storage building, parking facilities	4,000 square feet and up to 20 parking spaces. This exemption includes parking lots for 20 or fewer automobiles not associated with a structure.	30,000 square feet and 90 parking spaces	12,000 square feet and 40 parking spaces
Parking lots	Up to 20 parking spaces, cumulative.	90 parking spaces	40 parking spaces
Fill or excavation (Please note that this exemption applies to standalone grading projects only; this does not include land disturbing activity that occurs as part of any other project type)	Any fill or excavation of 500 cubic yards throughout the total lifetime of the fill or excavation and any excavation.	1,000 cubic yards	1,000 cubic yards

As an additional measure to safeguard the option for environmental review, the city can also preclude certain categorical exemptions that don't apply in one or more critical areas as established in the city's Critical Areas code (Title 11) in accordance with WAC 197-11-908. No such measures are proposed.

When raising the optional threshold levels, jurisdictions **must document how the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted.** The requirements may be addressed in specific adopted development regulations, and applicable state and federal regulations. WAC 197-11-800(1)(c) discusses this process of documenting and the minimum requirements. Attachment 1 documents environmental elements included under SEPA and details the current codes (local, state, etc.) and adopted plans that protect such elements, or provide for mitigation from impacts.

The draft Ordinance, as provided with this memo as Attachment 2, shows the suggested findings for the adoption of this ordinance.

We have also prepared an additional ordinance to add a section to Chapter 10-16 Grading/Filling of Land (Title 10, Building and Construction) to add language, as recommended by the State Department of Architecture and Historic Preservation, related to inadvertent discovery of human skeletal remains. The draft Ordinance is provided with this memo as Attachment 3.

We welcome comments and suggestion on how this package can be improved before referral to the Planning Commission and City Council for action.

Cc: Scott Larson, City Administrator



**Washington State
Department of Transportation**

Olympic Region
7407 31st Ave NE, Lacey
P.O. Box 47440
Olympia, WA 98504-7440
360-357-2600 / Fax 360-357-2601
TTY: 1-800-833-6388
www.wsdot.wa.gov

January 19, 2024

Ms. Millie Anne VanDevender
City of Orting
Department of Planning & Zoning
104 Bridge St S.
Orting, WA 98360
Sent via email to: Planner@cityoforting.org

Dear Ms. VanDevender:

The Washington State Department of Transportation (WSDOT) Olympic Region appreciates the opportunity to review and comment on proposed changes to Orting Municipal Code (OMC) Chapter 15-14. WSDOT is engaging with local jurisdictions as they implement recently passed categorical exemption and middle housing streamlining provisions. WSDOT's focus is assuring that potential impacts to the state transportation system are assessed and mitigated and that coordination requirements are met.

After carefully considering the November 29, 2023 staff memorandum, WSDOT requests that Orting consider the following feedback:

- WSDOT requests that the following resource documents be added to the “Transportation” and “Public Services and Utilities” sections of Attachment 1 in the 11/29/23 memo and Attachment A in the Ordinance:
 - Puget Sound Regional Council (PSRC) “Adopted Level of Service Standards for Regionally Significant State Highways”
 - WSDOT Design Manual Chapter 1130.09(2) “WSDOT Threshold Criteria”
- WSDOT notes that the proposed exemption thresholds apply to City and applicant SEPA obligations but does not affect other obligations that may arise for proposed projects that access or otherwise directly impact a State Highway. WSDOT requests that the following statement be added to the Ordinance recitals to clarify these obligations: “WHEREAS, access to state highways is regulated through a process that is separate from SEPA as described the Washington State Department of Transportation Design Manual, Division 5; and”

Ms. VanDevender

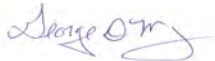
January 19, 2024

Page 2

Both requests clarify that state highway level of service standards and threshold criteria are relevant to protecting environmental elements and impact mitigation. The requests also recognize that SEPA exemptions do not restrict WSDOT's access management and permitting authority under RCW 47.50, WAC 468-51, and WAC, and WAC 468-52.

Thank you again for the opportunity to review proposed changes to OMC 15-14. Please reach out if you would like to discuss any of these comments further. We look forward to continuing our productive partnership.

Sincerely,

A handwritten signature in blue ink that reads "George Mazur". The signature is written in a cursive style with a large, stylized "G" and "M".

George Mazur, P.E.

Multimodal Planning Manager

SEPA Code Amendments

Updates to OMC 15-14 (SEPA) and
Addition of OMC 10-16-5 (Inadvertent Discovery)

ORTING PLANNING COMMISSION PUBLIC HEARING

MARCH 6, 2024



Background

- State Environmental Protection Act (SEPA) is found in Orting Municipal Code (OMC) Chapter 15-14, titled “Environmental Review”
- In general, all development proposals, whether they are exempt from SEPA environmental review or not, are subject to the requirements for environmental analysis, protection, and mitigation for impacts to the elements of the environment listed in WAC 197-11-444.
- Some applicants have raised concerns about the City’s SEPA environmental review categorical exemption thresholds and there is sentiment that the current thresholds are too low, which can unnecessarily add time and expense to the development process for smaller projects.
- **OMC 15-14 was last updated in 2003.**



Changes to State Laws since 2003

Numerous changes to state law have occurred since 2003, and to the practice of reviewing proposals for environmental impacts.

Examples include the following:

- ❖ Adopted increased flexible thresholds for minor new construction
- ❖ More specific requirements regarding cultural resources
- ❖ An increase in notice of proposed changes to 60 days
- ❖ HB 1923 passed to promote increases in residential building capacity and housing affordability by encouraging cities to adopt increases in categorical exemptions for residential infill projects.
- ❖ HB 1110 encourages the development of missing middle housing and establishes a categorical SEPA exemption for regulations that remove parking requirements for new middle housing development projects.

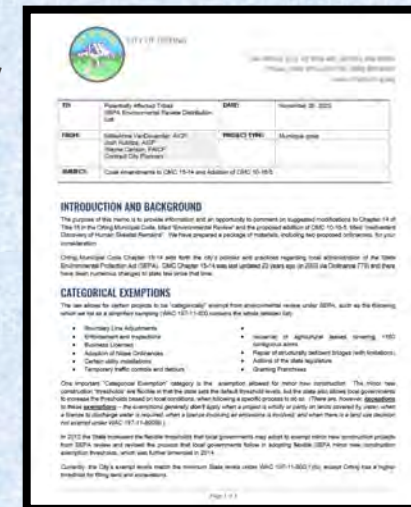


Process

Staff followed the specific process outlined in WAC 197-11-800(1)(c).

- Provided documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted.
- Provided a statement in the proposed adopting ordinance documenting the code sections that provide rules for public notice of projects made exempt by this revision.
- Provided a 60-day notice and comment period to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment.
- Proposed adding section to Chapter 10-16 Grading/Filling of Land (Title 10, Building and Construction) that will add language, as recommended by the State Department of Archaeology and Historic Preservation, related to inadvertent discovery of human skeletal remains.

SEPA ENVIRONMENTAL ELEMENTS	CURRENT LOCAL AND STATE CODES PROTECTING ENVIRONMENTAL ELEMENTS OR PROVIDING IMPACT MITIGATION
Earth	<ul style="list-style-type: none"> • OMC 10-1: Adoption of the International Building Code as published by the International Code Council Inc., and as amended by the state of Washington • OMC Title 11, Critical Areas and Shoreline Management • OMC Title 13, Development Regulations • OMC Title 12, Subdivisions • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • Washington State Department of Ecology administers the Construction Stormwater General Permit



Proposed Changes: Categorical Exemptions

Project type	Current Threshold	Maximum threshold allowed	Proposed threshold	Notes
Residential	For residential dwelling units in WAC 197-11-800(1)(b)(i): Up to four (4) dwelling units, cumulative.	30 units	9 units	<ul style="list-style-type: none"> • <i>Orting allows 9 units for short plats.</i> • <i>State Law requires that review of Short plats must be complete within 30 days.</i> • <i>Notice of application is required for short plats of 5 or more lots.</i>
Agricultural Structures	For agricultural structures in WAC 197-11-800(1)(b)(ii): Up to ten thousand (10,000) square feet, cumulative.	40,000 square feet	10,000 square feet – No increase proposed.	
Office, school, commercial, recreational, service, storage building, parking facilities	4,000 square feet and up to 20 parking spaces. This exemption includes parking lots for 20 or fewer automobiles not associated with a structure.	30,000 square feet and 90 parking spaces	12,000 square feet and 40 parking spaces	<ul style="list-style-type: none"> • <i>Increasing the threshold may encourage more small business enterprises.</i> • <i>Architectural Design Review is required in the MUTC zone.</i>
Parking lots	Up to 20 parking spaces, cumulative.	90 parking spaces	40 parking spaces	
Fill or excavation (Please note that this exemption applies to standalone grading projects only; this does not include land disturbing activity that occurs as part of any other project type)	Any fill or excavation of 500 cubic yards throughout the total lifetime of the fill or excavation and any excavation.	1,000 cubic yards	500 cubic yards– No increase proposed.	<ul style="list-style-type: none"> • <u>Planning Commission recommends retaining the current threshold.</u>



Proposed Changes: ODNS

- ODNS: Optional Determination of Nonsignificance
- Combines comment periods but does not eliminate option to hold a second comment period
- Provides an opportunity for early commenting
- WAC 197-11-355 contains the rules for the ODNS process and is currently listed in OMC 15-14-3 as adopted by reference
- The addition of OMC 15-14-3-7 provides supplemental information and clarifies that the City may choose to use the process (for non-legislative proposals)
- The ODNS process is the preferred process by the Department of Ecology.



Proposed Changes: Fees

- Pertains to specific projects that require an Environmental Impact Statement (EIS)
- Allows the City to be reimbursed for necessary costs and expenses relating to its compliance with SEPA in connection with private projects
- In addition to fees on the City's master fee schedule and the City is required to convey this to the applicant
- Pertains to very specific situations that require the City to provide studies, investigations, or prepare or significantly revise the EIS
- Edited per suggestions from the attorney. OMC 15-14-4-2 references OMC 15-14-9-3 where all fee requirements have been consolidated.



Proposed Changes: Minor Text Changes

- Added a definition of “Early Notice”
- Updated code citations
- Included further details on the Public Notice process set forth in OMC 15-14-5-3
- Addition to OMC 15-14-3-5, which would allow for the City to make changes or additions to a submitted environmental checklist to ensure accuracy and to update the checklist in a timely manner. The addition also allows for an alternative in which the City can return the checklist to the applicant to make the revisions.



Proposed Changes: OMC 10-16

Staff proposes the addition of a section to **Chapter 10-16 Grading/Filling of Land (Title 10, Building and Construction)** to add language, as recommended by the State Department of Archeology and Historic Preservation, related to inadvertent discovery of human skeletal remains.



Public Comments

- Staff distributed a packet of information on the proposed changes to tribes, other agencies, the public, and the Department of Commerce on November 29, 2023, and the public comment period closed on January 29, 2024.
- The City received comments from the Washington Department of Transportation (WSDOT).
- Per the comments, Staff made the following revisions:
 - ❖ Added the Puget Sound Regional Council (PSRC) “Adopted Level of Service Standards for Regionally Significant State Highways” to the table containing the SEPA elements analysis
 - ❖ Also added the WSDOT Design Manual Chapter 1130.09(2) “WSDOT Threshold Criteria” to the analysis
 - ❖ Included the suggested language in the draft ordinance pertaining to proposed changes to OMC 15.14.



What's next?

- Planning Commission held a public hearing February 5, 2024. No members of the public attended or provided comments prior to the meeting.
- The Planning Commission unanimously recommended approval of both proposed ordinances with minor edits, and as modified to leave the exemption level for grading/filling as-is.
- City Council will hold another public hearing and decide on the adoption of proposed changes (OMC 15-12-4:F).



Questions?

STAFF CONTACTS:

MillieAnne VanDevender, AICP - Contract Planner planner@cityoforting.org

Scott Larson - City Administrator slarson@cityoforting.org



CITY OF ORTING

WASHINGTON

ORDINANCE NO. 2024-X

AN ORDINANCE OF THE CITY OF ORTING, WASHINGTON, RELATING TO THE INADVERTENT DISCOVERY OF HUMAN SKELETAL REMAINS; ADOPTING AMENDMENTS TO ORTING MUNICIPAL CODE CHAPTER 10-16; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Orting, Washington, has Carbon River and Puyallup River shorelines and was originally inhabited by native populations, such as the Yakama Nation, Puyallup Tribe of Indians, and the Sauk-Suiattle Indian Tribe; and

WHEREAS, RCW 68.50.645, RCW 27.44.055, and RCW 68.60.055 set forth protocols for the response required when human remains are found; and

WHEREAS, it is in the public interest to adopt language pertaining to the inadvertent discovery of human skeletal remains by Ordinance, and codify the language in the Orting Municipal Code; and

WHEREAS, the Planning Commission held a public hearing and considered this Ordinance on February 5, 2024; and

WHEREAS, a 60-day comment period notice for the proposed amendment in this Ordinance was provided to the Washington State Department of Ecology, the Department of Commerce, affected tribes, agencies with expertise, and the public, pursuant to WAC 197-11-800 (1)(c)(iii), and the comment period closed on January 29, 2024, with one set of comments received pertaining to aspects of the proposal unrelated to OMC 10-16; and

WHEREAS, on March X, 2024, the City Council held a public hearing on the proposed code amendment in this Ordinance; and

WHEREAS, the City Council has determined that the proposed code amendment in this Ordinance is consistent with the goals and policies of the City's comprehensive plan, and will serve the public health, safety, and general welfare;

NOW THEREFORE, the City Council of the City of Orting, Washington, do ordain as follows:

Section 1. Amendment: Orting Municipal Code Chapter 10-16 is hereby amended to add a new section OMC 10-16-5 addressing the inadvertent discovery of human skeletal remains as shown on Attachment A to this Ordinance.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this Ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Transmittal to State. Pursuant to RCW 36.70A.106, a complete and accurate copy of this Ordinance shall be transmitted to the Department of Commerce within ten (10) days of adoption.

Section 5. Effective Date. This Ordinance shall take effect and be in force five (5) days after its approval, passage and publication as required by law.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE XX DAY OF _____, 2024.

CITY OF ORTING

Joshua Penner, Mayor

ATTEST/AUTHENTICATED:

Kim Agfalvi, City Clerk

Approved as to form:

Charlotte A. Archer
Inslee Best
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date:

Attachment A

TITLE 10 BUILDING AND CONSTRUCTION CHAPTER 16 GRADING/FILLING OF LAND

SECTION:

- 10-16-1: Permit Required
- 10-16-2: Application For Permit
- 10-16-3: Approval By Building Inspector
- 10-16-4: Fill Material

10-16-1: PERMIT REQUIRED:

No person shall fill any land within the City without first obtaining a permit from the Building Inspector. (1973 Code § 14.46.010)

10-16-2: APPLICATION FOR PERMIT:

The person requesting a permit shall file a written application therefor with the Building Inspector. Such application shall include the following items:

- A. The name and address of the applicant.
- B. The name and address of the owner of the property where the fill material is to be deposited.
- C. The exact location of the proposed fill, giving the street address or legal description of the property involved.
- D. No fill shall be placed which exceeds a three to one (3:1) slope from the property line, unless it is first approved by the City Council.
- E. No fill shall be placed above the street level, unless it is first approved by the City Council.
- F. A detailed plot plan of the entire area to be filled showing:
 - 1. The dimensions of the property.
 - 2. The dimension and location of all existing and proposed and temporary and permanent stormwater BMPs as required based on Title 9, Chapter 5 of this code.
 - 3. The existing elevations and final finished grades of the fill area.
 - 4. The disposition of all water from the fill area assuming that the fill will be eventually improved with parking and buildings and permanent mitigation measures required by the City.
 - 5. The adequacy of the receiving existing permanent stormwater BMPs to receive this flow allowing a reasonable assumption of eventual development of adjoining areas.
 - 6. Adequate on-site retention of water for all sites being developed will be designed for contiguous property under one ownership. If the total site is not to be developed immediately, the design shall include the plans for the fully developed contiguous ownership as best the owner can ascertain at the time of the application. Calculations shall be submitted by the developer and checked by the City Engineer. Actual construction may be phased with development, and temporary facilities may be required in the interim, all as approved by the City Engineer. All calculations will be based on the requirements of Title 9, Chapter 5 of this code.

The definition of sites being developed shall be when any of the following approvals are required:

- Management Act).
- a. Fill permit.
 - b. Substantial development permit required under RCW Chapter 90.58 (Shoreline Management Act).
 - c. Subdivision approval.
 - d. Short plat approval.
 - e. Large lot approval.
 - f. Rezones.
 - g. Conditional use permits.
 - h. Building permits.
 - i. Planned unit development.

Any parcel smaller than twenty thousand (20,000) square feet shall be exempt from the above requirement, unless it is determined by the City Engineer to be in a critical area or to create a critical situation.

7. A Stormwater Site Plan prepared in accordance with Title 9 and including the calculations required by section 10-16-2.F.6 of this code.

8. The City Engineer will have the discretion to determine the amount of studies downstream from the proposed development relative to their capacities to handle the released water from the improvement. These studies shall be used to determine what improvements are to be constructed by the developer.

9. The proposed stormwater management shall be documented in the Stormwater Site Plan and Construction Stormwater Pollution Prevention Plan prepared in accordance with Title 9, Chapter 5 of this code.

G. The location of any buildings or other structures or improvements or permanent stormwater BMPs.

H. The type of fill material to be used.
(1973 Code § 14.46.020; amd. Ord. 2019-1057, 1-8-2020)

10-16-3: APPROVAL BY BUILDING INSPECTOR:

No permit shall be issued unless the application has been approved by the Building Inspector. (1973 Code § 14.46.040)

10-16-4: FILL MATERIAL:

The fill material will be of a quality which will permit the construction of buildings thereupon. No fill will be approved which contains a substantial amount of decomposable materials. No filling shall be permitted which interferes with any drainage or existing permanent stormwater BMPs unless mitigation is documented in the Stormwater Site Plan approved by the City. No hydraulic fill shall be permitted unless it is first approved by the City Council.

(1973 Code § 14.46.030; amd. Ord. 2019-1057, 1-8-2020)

10-16-5: INADVERTENT DISCOVERY OF HUMAN SKELETAL REMAINS:

If during the course of construction ground disturbing activities encounter or reveal human skeletal remains, then all activity shall cease that may cause further disturbance to those remains. The area of the find shall be secured and protected from further disturbance until the State provides notice to proceed. The discovery of human skeletal remains shall be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains shall not be touched, moved, or further disturbed. The county medical examiner/coroner shall assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they shall report that finding to the Department of Archaeology and Historic

Preservation (DAHP) who shall then take jurisdiction over the remains. The DAHP shall notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist shall make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP shall handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

CITY OF ORTING

WASHINGTON

ORDINANCE NO. 2024-X

AN ORDINANCE OF THE CITY OF ORTING, WASHINGTON, RELATING TO THE STATE ENVIRONMENTAL POLICY ACT (SEPA); ADOPTING AMENDMENTS TO ORTING MUNICIPAL CODE CHAPTER 15.14; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Orting, Washington is fully planning under the state Growth Management Act (GMA); and

WHEREAS, the Washington State Environmental Policy Act (SEPA), chapter 43.21C RCW, was adopted in 1971, and provides a way to identify and mitigate possible adverse environmental impacts that may result from approval of proposals; and

WHEREAS, the City of Orting last amended Orting Municipal Code (OMC) Chapter 15.14, “Environmental Review” via Ordinance 778 in 2003 and now finds that it is in the public interest to update the code; and

WHEREAS, the State Legislature and the Department of Ecology have adopted changes to chapter 43.21C RCW and to WAC 197-11, the implementing regulations, including amendments to the SEPA rules set forth in WAC 197-11-800 including provisions allowing local governments to adopt increases to the thresholds for categorically exempt actions; and

WHEREAS, the State Legislature passed HB 1923 in the 2019 regular legislative session and E2SHB 1110 in the 2023 legislative session, which encourage cities planning under the GMA to increase housing affordability and encourages cities to adopt increases in categorical exemptions pursuant to the infill development provisions of SEPA for single-family and multifamily development; and

WHEREAS, applicable federal and state regulations, and city development regulations provide adequate protections for cultural and historic resources for exempted development in accordance with WAC 197-11-800 (1)(c)(iv); and

WHEREAS, OMC Title 11 contains the city’s critical areas regulations, which addresses impacts to critical areas for exempted development; and

WHEREAS, access to state highways is regulated through a process that is separate from SEPA as described the Washington State Department of Transportation Design Manual, Division 5; and

WHEREAS, OMC 15-4-1 contains permit processing procedures and OMC 15-7 contains public noticing procedures which addresses public comment opportunities for exempted development; and

WHEREAS, the table shown in **Attachment A** to this Ordinance documents those environmental elements included under SEPA, and details the current codes (local, state, etc.) and adopted plans that protect such elements or provide for mitigation of adverse environmental impacts; and

WHEREAS, the Planning Commission held a public hearing and considered this Ordinance on February 5, 2024; and

WHEREAS, a 60-day comment period notice for the proposed amendments in this Ordinance was provided to the Washington State Department of Ecology, the Department of Commerce, affected tribes, agencies with expertise, and the public, pursuant to WAC 197-11-800 (1)(c)(iii) and the comment period closed on January 29, 2024 with one set of comments received; and

WHEREAS, on **March X, 2024**, the City Council held a public hearing on the proposed code amendments in this Ordinance; and

WHEREAS, the City Council has determined that the proposed code amendments in this Ordinance are consistent with the goals and policies of the City's comprehensive plan, and will serve the public health, safety and general welfare;

NOW, THEREFORE, the City Council of the City of Orting, Washington, do ordain as follows:

Section 1. Amendment: Orting Municipal Code Chapter 15-14 is hereby amended as set forth in **Attachment B**, attached hereto.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this Ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or

otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Transmittal to State. Pursuant to RCW 36.70A.106, a complete and accurate copy of this Ordinance shall be transmitted to the Department of Commerce within ten (10) days of adoption.

Section 5. Effective Date. This Ordinance shall take effect and be in force five (5) days after its approval, passage and publication as required by law.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE XX DAY OF Month, 2024.

CITY OF ORTING

Joshua Penner, Mayor

ATTEST/AUTHENTICATED:

Kim Agfalvi, City Clerk

Approved as to form:

Charlotte A. Archer
Inslee Best
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date:

Attachment A

SEPA ENVIRONMENTAL ELEMENTS	CURRENT LOCAL AND STATE CODES PROTECTING ENVIRONMENTAL ELEMENTS OR PROVIDING IMPACT MITIGATION
Earth	<ul style="list-style-type: none"> • OMC 10-1: Adoption of the International Building Code as published by the International Code Council Inc., and as amended by the state of Washington • OMC Title 11, Critical Areas and Shoreline Management • OMC Title 13, Development Regulations • OMC Title 12, Subdivisions • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • Washington State Department of Ecology administers the Construction Stormwater General Permit
Air	<ul style="list-style-type: none"> • United States Environmental Protection Agency (EPA) • Washington State Department of Ecology, Chapter 173-400 WAC – General Regulations for Air Pollution Sources • Puget Sound Clean Air Agency • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • OMC 12-5-3: Criteria for Approval (of Preliminary Plats) – “Public health, safety and general welfare” • OMC 5-1-3: Public Nuisances Declared • OMC 7-9: Parking Restricted Upon Designated Residential Streets • OMC 10-4-1: Adoption of the Washington State Residential Energy Code and OMC 10-4-3: Adoption of the Washington State Nonresidential Energy Code • OMC Title 13, Development Regulations • OMC 5-2-7, Outdoor Dumping and Burning
Water	<ul style="list-style-type: none"> • Washington State Department of Ecology administers the Construction Stormwater General Permit • Washington State Department of Ecology administers the National Pollution Discharge Elimination System (“NPDES”) permit for Phase II communities in Western Washington which permit is intended to implement the Clean Water Act • State Hydraulic Project Approvals: WAC 173-201A – Water Quality Standards for Surface Waters of the State of Washington; WAC 173-200 – Water Quality Standards for Ground Waters of the State of Washington • OMC Title 9, Water and Sewers • OMC Title 11, Critical Areas and Shoreline Management • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • OMC 10-1, Adoption of the Washington State Building Code • Adopted level of service standards, City of Orting Comprehensive Plan
Energy and natural resources	<ul style="list-style-type: none"> • OMC 10-4-1: Adoption of the Washington State Residential Energy Code and OMC 10-4-3: Adoption of the Washington State Nonresidential Energy Code
Plants and	<ul style="list-style-type: none"> • OMC Title 11, Critical Areas and Shoreline Management

SEPA ENVIRONMENTAL ELEMENTS	CURRENT LOCAL AND STATE CODES PROTECTING ENVIRONMENTAL ELEMENTS OR PROVIDING IMPACT MITIGATION
Animals	<ul style="list-style-type: none"> • OMC 13-5-2: Landscaping and Screening • OMC Title 5, Public Health and Safety
Environmental Health	<ul style="list-style-type: none"> • Federal, state, and regional regulations, as well as local Fire and Building Codes are the primary means of mitigating risks associated with hazardous and toxic materials • OMC 5-6: Hazardous Waste Management Plan • OMC 5-8: Noise Control • OMC Title 11, Critical Areas and Shoreline Management • OMC Title 13, Development Regulations • OMC Title 12, Subdivisions • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • OMC 13-5-2: Landscaping and Screening • Washington State Model Toxic Control Act
Land and Shoreline Use	<ul style="list-style-type: none"> • OMC Title 13, Development Regulations • OMC Title 11, Critical Areas and Shoreline Management • OMC Title 12, Subdivisions • OMC Title 14, Flood Control
Housing	<ul style="list-style-type: none"> • Federal, state, and regional regulations, as well as local Fire and Building Codes are the primary means of mitigating risks related to housing • OMC Title 13, Development Regulations • OMC Title 10, Building and Construction
Aesthetics	<ul style="list-style-type: none"> • OMC 13-6-7: Architectural Design Review • OMC Title 10, Building and Construction • OMC Title 13, Development Regulations • OMC 13-5-2, Landscaping and Screening • OMC Title 12, Subdivisions • OMC 12-4-3: Criteria for Approval (of Short Subdivisions)
Light and Glare	<ul style="list-style-type: none"> • OMC Title 10, Building and Construction • OMC 13-7: Sign Regulations • OMC 13-6-7: Architectural Design Review • OMC Title 12, Subdivisions
Recreation	<ul style="list-style-type: none"> • OMC 15-6: Impact Fees • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • OMC Title 11, Critical Areas and Shoreline Management • Parks, Trails, and Open Space Plan • Adopted level of service standards, City of Orting Comprehensive Plan
Historic and Cultural Preservation	<ul style="list-style-type: none"> • Federal and state regulations addressing the protection of cultural and archeological resources include RCW 27.34, 27.53 & 27.44; and WAC 25.48 • OMC Title 11, Critical Areas and Shoreline Management - City of Orting Shoreline Master Program Policy 5.3 Archaeological and Historic Resources requires all shoreline permits to contain provisions for stopping work and notifying authorities if any archaeological phenomena is uncovered

SEPA ENVIRONMENTAL ELEMENTS	CURRENT LOCAL AND STATE CODES PROTECTING ENVIRONMENTAL ELEMENTS OR PROVIDING IMPACT MITIGATION
	<ul style="list-style-type: none"> • Proposed addition of OMC 10-16-5: Inadvertent Discovery of Human Skeletal Remains
Transportation	<ul style="list-style-type: none"> • OMC 12-4-3: Criteria for Approval (of Short Subdivisions) • OMC 15-6A-5: Imposition of transportation impact fees • City of Orting Development Standards • Adopted level of service standards, City of Orting Comprehensive Plan • The Orting 2040 Transportation Plan • Puget Sound Regional Council (PSRC) “Adopted Level of Service Standards for Regionally Significant State Highways” • WSDOT Design Manual Chapter 1130.09(2) “WSDOT Threshold Criteria”
Public Services and Utilities	<ul style="list-style-type: none"> • OMC 5-2: Garbage and Refuse • OMC 8-8: Telecommunication Master Use Permits • OMC Title 9, Water and Sewers • OMC Title 12, Subdivisions • OMC 15-6: Impact Fees • OMC 15-8: Concurrency and Adequacy • City Franchise Agreements and Contracts • Adopted level of service standards, City of Orting Comprehensive Plan • Orting School District Capital Facilities Plan • Americans with Disabilities Act • Puget Sound Regional Council (PSRC) “Adopted Level of Service Standards for Regionally Significant State Highways” • WSDOT Design Manual Chapter 1130.09(2) “WSDOT Threshold Criteria”

Attachment B

TITLE 15 DEVELOPMENT CODE ADMINISTRATION

CHAPTER 14 ENVIRONMENTAL REVIEW¹

Notes

1 WAC 173-806 et seq.

15-14-1: AUTHORITY:

The city adopts this chapter under the state environmental policy act (SEPA), Revised Code of Washington 43.21C.120, and the SEPA rules, WAC 197-11-904. This chapter contains the city's SEPA procedures and policies. The SEPA rules, WAC chapter 197-11, must be used in conjunction with this chapter. [In addition, Chapter 43.21C RCW should be consulted for complete information regarding SEPA.](#) (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-2: GENERAL REQUIREMENTS:

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

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

197-11-030	Policy.
197-11-040	Definitions.
197-11-050	Lead agency.
197-11-055	Timing of the SEPA process.
197-11-060	Content of environmental review.
197-11-070	Limitations on actions during SEPA process.
197-11-080	Incomplete or unavailable information.
197-11-090	Supporting documents.
197-11-100	Information required of applicants.
197-11-158	GMA project review-Reliance on exiting plans, laws and regulations.
197-11-164	Planned actions-Definition and criteria.
197-11-168	Ordinances or resolutions designating planned actions-procedures for adoption.
197-11-172	Planned actions-project review.
197-11-210	SEPA/GMA integration.

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

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

15-14-2-2: SEPA POLICIES:

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

- A. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources.
- B. The city recognizes that each person has a fundamental and inalienable right to a healthful environment, and that each person has a responsibility to contribute to the preservation and enhancement of the environment.
- C. The city incorporates by reference all policies in the cited city codes, ordinances, resolutions and plans, and all amendments to them in effect prior to the date of a technically complete application of any building permit or preliminary plat, or prior to issuance of a DNS or DEIS for any other action. These documents include, but are not limited to, the following: Orting comprehensive plan and incorporated elements, development code, critical area regulations, shoreline master program, uniform building code, uniform fire code, uniform plumbing code, uniform mechanical code, uniform code for abatement of dangerous buildings, floodplain management code, six (6) year transportation improvement program, storm water comprehensive plan, water and sewer utility plans and regulations, park and recreation plan, Washington state ventilation and indoor air quality code, Washington state energy code, uniform housing code.
- D. Through the project review process:
 1. If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies under this chapter will not be necessary on those impacts;
 2. If the applicable regulations require measures that adequately address such environmental impacts, additional measures would likewise not be required under this chapter; and
 3. If the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, this chapter provides the authority and procedures for additional review. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-2-3: ADDITIONAL DEFINITIONS:

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

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

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

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

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

SEPA RULES: Chapter 197-11 WAC adopted by the department of ecology. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

B. For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that were adopted by reference in ~~WAC 173-806-020~~ Section 15-14-2-1.

C. The city shall retain all documents required by the SEPA rules (chapter 197-11 WAC) and make them available in accordance with chapter ~~42.174~~ 42.56 Revised Code of Washington. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

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

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

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

E. When the city is lead agency for a model toxic control act (MTCA) remedial action, the department of ecology shall be provided an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6), the city shall decide jointly with ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

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

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

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

This section 15-14-3 contains the rules for deciding whether a proposal has a probable significant, adverse environmental impact requiring an environmental impact statement (EIS) to be prepared. This section 15-14-3 also contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections of chapter 197-11 WAC by reference, as supplemented in this section 15-14-3:

197-11-300	Purpose of this part.
197-11-305	Categorical exemptions.
197-11-310	Threshold determination required.
197-11-315	Environmental checklist.
197-11-330	Threshold determination process.
197-11-335	Additional information.
197-11-340	Determination of nonsignificance (DNS).
197-11-350	Mitigated DNS.
197-11-355	Optional DNS process.
197-11-360	Determination of significance (DS) initiation of scoping.
197-11-390	Effect of threshold determination.
197-11-800	Categorical exemptions.
197-11-880	Emergencies.
197-11-890	Petitioning DOE to change exemptions.

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

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

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

1. For residential dwelling units in WAC 197-11-800(1)(b)(i): Up to ~~four (4)~~nine (9) dwelling units, cumulative.

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

3. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): Up to ~~four thousand (4,000)~~twelve thousand (12,000) square feet and up to ~~twenty (20)~~forty (40) parking spaces, cumulative.

4. For parking lots in WAC 197-11-800(1)(b)(iv): Up to ~~twenty (20)~~forty (40) parking spaces, cumulative.

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

B. Whenever the city establishes new exempt levels under this section, it shall send them to the department of ecology, headquarters office, Olympia, WA 98504, under WAC 197-11-800(1)(c). (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-3-3: EMERGENCIES:

Actions which must be undertaken immediately, or within a time frame too short to allow full compliance with this chapter, to avoid an immediate threat to public health and safety, to prevent an immediate danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt from the procedural requirements of this chapter (WAC 197-11-800). The responsible official shall determine on a case by case basis emergency actions which satisfy the general requirements of this section 15-14-3. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

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

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

3. The city may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-3-5: 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 determining the responsible official and for making the threshold determination.

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

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

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

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

D. For projects submitted as planned actions under WAC 197-11-164, the city shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the department of ecology to allow at least a thirty (30) day review prior to use. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

15-14-3-6: MITIGATED DNS:

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a 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; and

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

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

1. Be written; and
2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the city to consider a DS; and
3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

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

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

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a DNS under WAC 197-11-340(2);
2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate;
3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot stormwater retention pond at Y location" are adequate; and
4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

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

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

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

~~H.~~ The city's written response under subsection BC of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications of changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

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

1. State on the first page of the notice of application that it expects to issue a DNS for the proposal, and that:
 - a. The optional DNS process is being used;
 - b. This may be the only opportunity to comment on the environmental impacts of the proposal;
 - c. The proposal may include mitigation measures under applicable codes, and the project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared; and
 - d. A copy of the subsequent threshold determination for the specific proposal may be obtained upon request (in addition, the city may maintain a general mailing list for threshold determination distribution);
2. List in the notice of application the conditions being considered to mitigate environmental impacts, if a mitigated DNS is expected;
3. Comply with the requirements for a notice of application and public notice in Orting Municipal Code chapter 15-7; and
4. Send the notice of application and environmental checklist to:
 - a. Agencies with jurisdiction, the Department of Ecology, affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal; and
 - b. Anyone requesting a copy of the environmental checklist for the specific proposal (in addition, the city may maintain a general mailing list for checklist distribution).
- C. If the responsible official indicates on the notice of application that a DNS is likely, an agency with jurisdiction may assume lead agency status during the comment period on the notice of application in accordance with WAC 197-11-948.
- D. The responsible official shall consider timely comments on the notice of application and either:
 1. Issue a DNS or mitigated DNS with no comment period using the procedures in subsection E of this section;
 2. Issue a DNS or mitigated DNS with a comment period using the procedures in subsection E of this section, if the responsible official determines a comment period is necessary;
 3. Issue a DS; or
 4. Require additional information or studies prior to making a threshold determination.
- E. If a DNS or mitigated DNS is issued under subsection (D)(1) or (D)(2) of this section, the responsible official shall send a copy of the DNS or mitigated DNS to the Department of Ecology, agencies with jurisdiction, those who commented, and anyone requesting a copy. A copy of the environmental checklist need not be recirculated.

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

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

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

- | | |
|------------|-----------------------|
| 197-11-400 | Purpose of EIS. |
| 197-11-402 | General requirements. |

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

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

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

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

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

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the city may request under another ordinance or statute.) (Ord. 778, 10-30-2003, eff. 11-11-2003)

D. [Fees shall be paid in accordance with Section 15-14-9-3.](#)

15-14-4-3: ADDITIONAL ELEMENTS:

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

- A. Economy;
- B. Cost benefit analysis;
- C. Social policy analysis. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-5: COMMENTING:

15-14-5-1: PURPOSE:

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

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

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

197-11-500	Purpose of this part.
197-11-502	Inviting comment.
197-11-504	Availability and cost of environmental documents.
197-11-508	SEPA register.
197-11-510	Public notice.
197-11-535	Public hearings and meetings.
197-11-545	Effect of no comment.
197-11-550	Specificity of comments.
197-11-560	FEIS response to comments.
197-11-570	Consulted agency costs to assist lead agency.

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

15-14-5-3: PUBLIC NOTICE:

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

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

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

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

- a. Posting the property, and posting in the city hall; and
- b. Publishing notice in the city's newspaper of record.

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

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

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

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

D. Whenever the city issues a DEIS under WAC 197-11-455 or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

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

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

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

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

F. The city may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

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

15-14-6: USING EXISTING ENVIRONMENTAL DOCUMENTS:

15-14-6-1: PURPOSE:

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

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

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

- 197-11-164 Planned actions--Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions--Procedures for adoption.
- 197-11-172 Planned actions--Project review.
- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement--Procedures.
- 197-11-625 Addenda--Procedures.
- 197-11-630 Adoption--Procedures.
- 197-11-635 Incorporation by reference--Procedures.
- 197-11-640 Combining documents.

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

15-14-7: SEPA AND AGENCY DECISIONS:

15-14-7-1: PURPOSE:

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

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

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

197-11-650	Purpose of this part.
197-11-655	Implementation.
197-11-660	Substantive authority and mitigation.
197-11-680	Appeals.
197-11-721	Closed record appeal.
197-11-722	Consolidated appeal.

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

15-14-7-3: SUBSTANTIVE AUTHORITY:

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

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

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

2. Such conditions are in writing; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. The city designates and adopts by reference all policies in the cited city codes, ordinances, resolutions and plans, and all amendments to them in effect prior to the date of a technically complete application of any building permit or preliminary plat, or prior to issuance of a DNS or DEIS for any other action. (Ord. 778, 10-30-2003, eff. 11-11-2003)

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

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

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

15-14-7-5: SEPA APPEALS:

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

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

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

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

- a. Determination of nonsignificance;
- b. Determination of significance;
- c. Adoption or issuance of a final environmental impact statement.

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

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

underlying governmental action is otherwise provided, then no SEPA appeal is allowed under this section, except as allowed under subsection E of this section.

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

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

F. Written Notice: All procedural and substantive SEPA appeals provided under this section shall be initiated by filing a written notice of SEPA administrative appeal with the responsible official, accompanied with the applicable appeal fee. No additional appellate fee shall be charged in conjunction with a hearing on the underlying permit or approval.

1. The notice of appeal required by this section shall include, at a minimum:
 - a. The name and address of the party or agency filing the appeal;
 - b. An identification of the specific proposal and specific SEPA actions, omissions, conditions or determinations for which appeal is sought;
 - c. A statement of the particular grounds or reasons for the appeal.
2. The responsible official shall arrange to conduct the SEPA appeal in conjunction with a hearing or appeal on the underlying permit or approval, where required to consolidate the SEPA appeal with a hearing on the underlying governmental action. Where consolidation is not required, the responsible official shall schedule the hearing to be conducted within ninety (90) days of the date of filing the notice of appeal, and payment of fee.

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

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

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

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

2. An appeal to a determination of significance (DS) may be filed by the applicant within ten (10) days of the issuance of the DS/scoping notice. The appeal shall be heard in open record hearing and decided by a hearing examiner, whose decision shall be final and not subject to further administrative appeal.

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

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

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

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

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

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

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

I. How To Appeal: The appeal must be in the form of a written notice of appeal, and must contain a brief and concise statement of the matter being appealed, the specific components or aspects that are being appealed, the appellant's basic rationale or contentions on appeal, and a statement demonstrating standing to appeal. The appeal may also contain whatever supplemental information the appellant wishes to include. The appeal shall also contain the following:

1. The name and mailing address of the appellant and the name and address of his/her representative, if any;
2. The appellant's legal residence or principal place of business;
3. A copy of the decision which is appealed;
4. The grounds upon which the appellant relies;

5. A concise statement of the factual and legal reasons for the appeal;
6. The specific nature and intent of the relief sought;
7. A statement that the appellant has read the appeal and believes the contents to be true, followed by his/her signature and the signature of his/her representative, if any. If the appealing party is unavailable to sign the appeal, it may be signed by his/her representative.

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

K. Procedures For Appeal Hearing:

1. Notice Of The Appeal Hearing.

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

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

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

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

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

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

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

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

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

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

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

M. Staff Report On The Appeal:

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

a. The SEPA threshold determination.

b. All written comments submitted to the responsible official.

c. The letter of appeal.

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

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

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

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

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

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

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

O. Decision On The Appeal:

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

- a. Affirm the decision being appealed; or
- b. Reverse the decision being appealed; or
- c. Modify the decision being appealed.

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

- a. A copy will be mailed to the applicant.
- b. A copy will be mailed to the person who filed the appeal.
- c. A copy will be mailed to all other persons of record or agencies who

participated in the appeal.

P. Additional Appeal Procedures:

- 1. The matters to be considered and decided upon in the appeal are limited to the matters raised in the notice of appeal.
- 2. The decision of the responsible official shall be accorded substantial weight.
- 3. All testimony will be taken under oath.
- 4. The decision of the hearing body hearing the appeal shall be the final decision on any appeal of a threshold determination including a mitigated determination of nonsignificance.

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

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

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

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

1. In violation of constitutional provisions as applied; or
2. The decision is outside the statutory authority or jurisdiction of the city; or
3. The responsible official has engaged in unlawful procedure or decision making process, or has failed to follow a prescribed procedure; or
4. In regard to challenges to the appropriateness of the issuance of a DNS clearly erroneous in view of the public policy of the act (SEPA); or
5. In regard to challenges to the adequacy of an EIS shown to be inadequate employing the "rule of reason".

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

V. Judicial Appeal:

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

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

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

15-14-8: DEFINITIONS:

15-14-8-1: PURPOSE:

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

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

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

- | | |
|------------|------------------------|
| 197-11-700 | Definitions. |
| 197-11-702 | Act. |
| 197-11-704 | Action. |
| 197-11-706 | Addendum. |
| 197-11-708 | Adoption. |
| 197-11-710 | Affected tribe. |
| 197-11-712 | Affecting. |
| 197-11-714 | Agency. |
| 197-11-716 | Applicant. |
| 197-11-718 | Built environment. |
| 197-11-720 | Categorical exemption. |
| 197-11-724 | Consulted agency. |
| 197-11-726 | Cost-benefit analysis. |
| 197-11-728 | City. |

197-11-730	Decision maker.
197-11-732	Department.
197-11-734	Determination of nonsignificance (DNS).
197-11-736	Determination of significance (DS).
197-11-738	EIS.
197-11-740	Environment.
197-11-742	Environmental checklist.
197-11-744	Environmental document.
197-11-746	Environmental review.
197-11-750	Expanded scoping.
197-11-752	Impacts.
197-11-754	Incorporation by reference.
197-11-756	Lands covered by water.
197-11-758	Lead agency.
197-11-760	License.
197-11-762	Local agency.
197-11-764	Major action.
197-11-766	Mitigated DNS.
197-11-768	Mitigation.
197-11-770	Natural environment.
197-11-772	NEPA.
197-11-774	Nonproject.
197-11-775	Open record hearing
197-11-776	Phased review.
197-11-778	Preparation.
197-11-780	Private project.
197-11-782	Probable.
197-11-784	Proposal.
197-11-786	Reasonable alternative.
197-11-788	Responsible Official.
197-11-790	SEPA.
197-11-792	Scope.
197-11-793	Scoping.
197-11-794	Significant.
197-11-796	State agency.
197-11-797	Threshold determination.
197-11-799	Underlying governmental action.

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

15-14-9: AGENCY COMPLIANCE:

15-14-9-1: PURPOSE:

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

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

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

197-11-900	Purpose of this part.
197-11-902	Agency SEPA policies.
<u>197-11-908</u>	<u>Critical Areas</u>
197-11-916	Application to ongoing actions.
197-11-920	Agencies with environmental expertise.
197-11-922	Lead agency rules.
197-11-924	Determining the lead agency.
197-11-926	Lead agency for governmental proposals.
197-11-928	Lead agency for public and private proposals.
197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a City.
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a City, and one or more state agencies.
197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-938	Lead agencies for specific proposals.
197-11-940	Transfer of lead agency status to a state agency.
197-11-942	Agreements on lead agency status.
197-11-944	Agreements on division of lead agency duties.
197-11-946	DOE resolution of lead agency disputes.
197-11-948	Assumption of lead agency status.

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

15-14-9-3: FEES:

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

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

B. Environmental Impact Statement:

~~1. 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 as required by the city fee schedule 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.~~

~~2. 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. The city may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected by mutual agreement of the city and applicant after a call for proposals.~~

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

2. If the responsible official determines that an EIS is required, and that the EIS shall be prepared by employees of the city or by a consultant or consultants retained by the city, or that the applicant-prepared EIS shall be substantially rewritten by employees of the city, the applicant shall be advised by the responsible official of the estimated costs and expenses of preparing or rewriting the EIS prior to actual preparation or rewriting, and the applicant shall post a bond or otherwise insure payment of such costs and expenses. A consultant or consultants may be recommended by the applicant. The final decision to hire a consultant or consultants shall be made by the city council.

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

~~34.~~ If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under this subsection B which remain after incurred costs are paid.

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

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

E. Copies: The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by chapter 42.17 Revised Code of Washington. (Ord. 778, 10-30-2003, eff. 11-11-2003)

15-14-10: FORMS:

15-14-10-1: PURPOSE:

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

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

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

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

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

15-14-11: SEVERABILITY:

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

Sidewalk Repair Update

2023 City Wide Inspections

These numbers represent properties that did not take the initiative to repair on their own or thru phone conversations, we learned there were several property owners who were happy to have the city complete the repairs.

18 Replacement Locations

- 15 PRIVATE PROPERTIES BILLED
 - 5 PRIVATE PROPERTIES PAID IN FULL
 - 1 PRIVATE PROPERTY MAKING PAYMENTS
- 2 CITY PROPERTIES
- 1 HIDDEN LAKES HOA, BILLED & PAID IN FULL

94 Grinding Locations

- 31 LOCATIONS FOR HIDDEN LAKES HOA, BILLED & PAID IN FULL
- 56 PRIVATE PROPERTIES PAID IN FULL
- 7 NOT PAID

All property owners above received 3 notices prior to City going out for bid to reduce risk.

2024 Inspections YTD

Rivers Edge & Carbon River Landing

- 28 REPLACEMENT LOCATIONS – 1st notices mailed 02/12/2024
- 47 GRINDING LOCATIONS – 1st notices mailed 01/23/2024
2nd notices mailed 02/23/2024

Village Green – Inspections started 02/01/2024



**City of Orting
Council Agenda Summary Sheet**

	Agenda Bill #	Recommending Committee	Study Session Dates	Regular Meeting Dates
Subject: Building Code Update - Ordinance	AB23-XX	Public Works		
		02/07/2024		
	Department:	Building		
	Date Submitted:	02/07/2024		
Cost of Item:	N/A			
Amount Budgeted:	N/A			
Unexpended Balance:	N/A			
Bars #:	N/A			
Timeline:	TBD			
Submitted By:	Tim Lincoln/John Bielka			
Fiscal Note: None				
Attachments: Ord. 2023-XX				
SUMMARY STATEMENT:				
<p>The Washington State Legislator updated the State Building Code Act to adopt the 2021 versions of the State Building Code which is anticipated to be effective this October. The city adopts the State Building Code by reference in Title 10, Chapter 1 of the Orting Municipal Code (OMC), and needs to adopt new language to reference the updated state code. The updates include reference to the 2021 International Building Code, International Residential Code, International Mechanical Code, International Fire Code, Uniform Plumbing Code, International Energy Conservation Code – Commercial, International Energy Conservation Code – Residential, International Property Maintenance Code. The city has certain minimum climatic and geographic design criteria which are listed explicitly in the code, and the most recent version amends the wind speed gust criteria from 85 mph to 110 mph.</p> <p>The city also previously adopted certain fire zone maps under OMC 10-2-3(B) which are no longer applicable, and the ordinance repeals this section of the code.</p>				
RECOMMENDED ACTION: Deliberation but hold on final passage until the State adopts final versions of codes.				
FUTURE MOTION: To adopt Ordinance No. 2023-XX, an Ordinance of the City of Orting, Washington, amending Title 10 Chapter 1, State Building Code, of the Orting Municipal Code to conform with updates to the State Building Code under Chapter 19.27 of the Revised Code of Washington and the Revised Washington State Building Code Act; adopting the current state codes; providing for severability and corrections; and establishing an effective date.				

ORDINANCE NO. 0xx-24

AN ORDINANCE OF THE CITY OF ORTING, WASHINGTON, AMENDING SECTION 10-1-3A, STATE BUILDING CODE, OF THE ORTING MUNICIPAL CODE TO CONFORM WITH UPDATES TO THE STATE BUILDING CODE UNDER CHAPTER 19.27 OF THE REVISED CODE OF WASHINGTON AND THE REVISED WASHINGTON STATE BUILDING CODE ACT; ADOPTING THE CURRENT STATE BUILDING CODES; PROVIDING FOR SEVERABILITY AND CORRECTIONS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Washington State Building Code Council (Code Council) periodically recommends and adopts uniform codes of statewide applicability, collectively referred to as the State Building Code; and

WHEREAS, the Washington state legislature has updated Chapter 19.27 of the Revised Code of Washington (RCW), the Washington State Building Code Act, to adopt the 2021 versions of the State Building Code, effective March 15, 2024; and

WHEREAS, the City of Orting (the “City”) has adopted by reference the State Building Codes as required by state law, to locally enforce said rules for the health, safety, and welfare of the public; and

WHEREAS, Chapter 10-1, State Building Code, of the Orting Municipal Code (OMC) will not conform to the State Building Code and RCW 19.27 after March 15, 2024, without amendment; and

WHEREAS, the City Council wishes to update sections in Chapter 10-1 of the OMC so that the OMC is consistent with the State Building Code and RCW 19.27, as updated effective March 15, 2024; and

WHEREAS, the SEPA Responsible Official for the City determined that the adoption of this ordinance is categorically exempt from environmental review as a procedural action under WAC 197-11-800(20); now, therefore

THE CITY COUNCIL OF THE CITY OF ORTING, WASHINGTON, DOES ORDAIN AS FOLLOWS:

SECTION 1. Amendment of OMC 10-1-3A, State Building Code. Orting Municipal Code Section 10-1-3A is hereby amended to read as follows:

A. State Building Code: For purposes of this title, the state building code shall consist of the following national model codes and the following standards, as such model codes and standards are adopted and amended from time to time by the Washington State Building Code Council pursuant to chapters 19.27 and 70.92 of the Revised Code of Washington and title 51 of the Washington administrative code:

(1) The 2021 Edition of the International Building Code, as published by the International Code Council (ICC), including Appendix E, as adopted and amended by the Washington State Building Code Council (WSBCC) in WAC [51-50-003](#), is hereby adopted by reference. Additionally, Appendix B of the 2021 International Building Code is adopted by reference by the City of Orting;

(2) The 2021 Edition of the International Residential Code as published by the ICC and as adopted and amended by the WSBCC in WAC [51-51-003](#). Additionally, Appendix M of the International Residential Code is adopted by reference by the city of Orting;

(3) The 2021 Edition of the International Mechanical Code, as published by the ICC, as adopted and amended by the WSBCC in WAC [51-52-003](#), is hereby adopted by reference by the city of Orting;

(4) The 2021 Edition of the International Fire Code, as published by the ICC as adopted by the WSBCC in Chapter [51-54A](#) WAC, is hereby adopted by reference. Additionally, Appendix B of the International Fire Code is adopted by reference by the city of Orting, and portions of Appendix D are adopted as shown in OMC [20.200.016](#);

(5) The 2021 Edition of the Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials and as adopted and amended by the WSBCC in WAC [51-56-003](#), is hereby adopted by reference;

(6) The 2021 Edition of the International Energy Conservation Code, Commercial, as adopted and amended by the Washington State Building Code Council in Chapter [51-11C](#) WAC;

(7) The 2021 Edition of the International Energy Conservation Code, Residential, as adopted and amended by the Washington State Building Code Council in Chapter [51-11R](#) WAC;

(8) The 2021 edition of the International Property Maintenance Code, as published by the ICC;

(9) The 2021 Edition of the Wildland-Urban Interface Code, as adopted and amended by the Washington State Building Code Council in Chapter 51-55 WAC

(10) The 2021 Edition of the International Existing Building Code, as adopted and amended by the Washington State Building Code Council.

(11) and, The 2021 Edition of the International Swimming Pool and Spa Code as published by ICC.

All amendments to the state building code adopted by the Washington state building council from time to time are hereby, upon the effective date of such amendments, incorporated in this chapter as though fully set forth herein. In the event that any provisions of the state building code are renumbered or re-lettered, any reference in this chapter to such provision shall refer to the provision as renumbered or re-lettered.

SECTION 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION 3. Corrections. Upon approval of the city attorney, the city clerk and the codifiers of this ordinance are authorized to make necessary technical corrections to this ordinance, including, without limitation, the correction of clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or section/subsection numbering.

SECTION 4. Effective Date. This ordinance shall be in full force five days after posting and publication as required by law, provided the City code amendments stated in Section 1 of this ordinance shall be effective on March 15, 2024. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety.

PASSED by the City Council of the City of Orting, Washington at its regular meeting on the 28th of February 2024, and approved by the Mayor and attested by the Clerk in authentication of such passage this date here.

Joshua Penner, Mayor

ATTEST:

Kim Agfalvi, City Clerk

APPROVED AS TO FORM ONLY:

Charlotte A. Archer, City Attorney

