

Ordinance No. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, REFINING THE CITY'S IMPLEMENTATION OF THE STATE ENVIRONMENTAL POLICY ACT, ESTABLISHING AN INFILL EXEMPTION ALLOWANCE FOR THE DOWNTOWN AREA, AMENDING CHAPTER 14.04 (ENVIRONMENTAL POLICY OF THE OLYMPIA MUNICIPAL CODE) PURSUANT TO THE STATE ENVIRONMENTAL POLICY ACT; ADDING NEW SECTIONS 18.12.130 AND 18.12.140 TO CHAPTER 18.12 (HISTORIC PRESERVATION) OF THE OLYMPIA MUNICIPAL CODE AND AMENDING SECTION 18.12.120 OF THE OLYMPIA MUNICIPAL CODE**

**WHEREAS**, the City of Olympia has adopted a Comprehensive Plan complying with the Washington Growth Management Act that includes Policy PL 17.1 to adopt a Downtown Plan; and

**WHEREAS**, to guide the growth and redevelopment of downtown Olympia, the City engaged in an extensive public process to plan for the downtown area resulting in the City Council's adoption of a Downtown Strategy (DTS) on April 25, 2017, which implements Policy PL 17.1 of the Olympia Comprehensive Plan (the Comprehensive Plan); and

**WHEREAS**, the DTS establishes the City's strategies to achieve the vision for Olympia's downtown that is established in the Comprehensive Plan; and

**WHEREAS**, the State Environmental Policy Act (SEPA) and implementing rules provide for the integration of environmental review with land use planning and project review by jurisdictions planning under the Growth Management Act (GMA) through an exemption for infill development pursuant to RCW 43.21C.229; and

**WHEREAS**, on January 24, 2014, the City's SEPA responsible official issued a Final Supplemental Environment Impact Statement (FSEIS) on the Olympia Comprehensive Plan; and

**WHEREAS**, as part of the DTS process, the City of Olympia Planning Commission and the City Council considered several options allowed by state law to rely on final SEPA analysis documents completed on a comprehensive plan when permitting development projects which the City finds to be consistent with that plan; and

**WHEREAS**, the DTS adopted by the City Council recommends adoption of an infill exemption allowance pursuant to RCW 43.21C.229, to encourage residential and mixed use development in Olympia's downtown that meets the Comprehensive Plan's vision, goals and policies as further refined in the DTS; and

**WHEREAS**, also as part of the DTS process, the City conducted a gap analysis of SEPA determinations for the previous 13 years on downtown development projects to determine impacts that were identified as not mitigated through existing development regulations; and

**WHEREAS**, the gap analysis revealed only three types of impacts – flood risk associated with potential future sea level rise, off-site traffic mitigation, and cultural resources impacts – that were not mitigated through existing development regulations; and

**WHEREAS**, the City has since adopted development regulations and ordinances that will help protect the environment for these three types of impacts, and previously adopted regulations that help protect the environment for other potential impacts; and

**WHEREAS**, the City has and will continue to implement the DTS for the Downtown area that will guide the allocation, form and quality of desired development, consistent with the DTS and the Olympia Comprehensive Plan; and

**WHEREAS**, Chapter 14.04 OMC needs to be amended to correct typographical errors, to reflect changes in state statutes and administrative codes, and to reflect changes in Title 18, Unified Development Code; and

**WHEREAS**, on September 29, 2017, the City provided the State of Washington Department of Commerce the required sixty (60) day notification under RCW 36.70A.106, the sixty (60) day notice period has lapsed; and

**WHEREAS**, the Olympia Planning Commission received a briefing on the proposed amendments on October 2, 2017, held a public hearing on October 16, 2017, and deliberated on November 6, 2017; and

**WHEREAS**, following the public hearing and deliberations, the Planning Commission recommended amendments to the Olympia Municipal Code establishing an infill exemption allowance for Olympia's downtown area; and

**WHEREAS**, the Olympia City Council held a public meeting on December 5, 2017, to consider this Ordinance, and considered all staff reports and information in the public record and testimony provided at the public hearing held by the Olympia Planning Commission related to the attached ordinance; and

**WHEREAS**, the City of Olympia is committed to the protection of our community's heritage; and

**WHEREAS**, State and Federal law provide for the protection of human remains, archaeology, and other cultural resources, whether known or unknown, prior to the course of development; and

**WHEREAS**, the thresholds incorporated in this Ordinance, together with adopted City development regulations and State and Federal laws, will adequately mitigate significant impacts from development consistent with the Olympia Comprehensive Plan and the DTS within the Downtown Infill Exemption Allowance Area; and

**WHEREAS**, this Ordinance meets the goals and requirements of the Growth Management Act; and

**WHEREAS**, Chapters 35A.63 and 36.70A RCW and Article 11, Section 11 of the Washington State Constitution authorize and permit the City to adopt this Ordinance; and

**WHEREAS**, this Ordinance is supported by the staff report and materials associated with this Ordinance, along with other documents on file with the City of Olympia; and

**WHEREAS**, this Ordinance is also supported by the professional judgment and experience of the City staff who have worked on this proposal; and

**WHEREAS**, City Staff are known to the City Council, and staff's curriculum vitae shall be part of the record in support of this Ordinance;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. Purpose. The City Council declares that the purpose of this Ordinance is to:**

A. Exempt residential, mixed use, and selected commercial infill development that is consistent with the Olympia Comprehensive Plan and its FSEIS, Olympia development regulations, and other applicable local, state and federal laws from additional SEPA review; and,

B. Establish criteria and procedures, consistent with state law, that will determine whether proposed exempt projects within the designated Downtown Infill Exemption Allowance Area qualify for exemption from SEPA review; and,

C. Protect important cultural resources during development activity and provide notice to the public, interested Tribes, and agencies of development activities that may affect cultural resources; and,

D. Apply the City's development regulations together with the infill exemption thresholds defined in this Ordinance to address the impacts of future development contemplated by this Ordinance.

**Section 2. Amendment of OMC Chapter 14.04. Olympia Municipal Code Chapter 14.04 is hereby amended to read as follows:**

Chapter 14.04  
ENVIRONMENTAL POLICY

14.04.000 Chapter Contents

Sections:

- 14.04.010 Authority.
- 14.04.020 Adoption by reference.
- 14.04.030 Definitions.
- ~~14.04.040 Additional considerations in time limits applicable to the SEPA process.~~
- 14.04.050 Additional timing considerations.
- 14.04.060 Use of exemptions.
- 14.04.065 Categorical Exemptions.
- 14.04.070 Lead agency determination and responsibilities.
- 14.04.080 Environmental checklist.
- 14.04.090 Mitigated determination of nonsignificance.
- 14.04.100 Environmental impact statement--Preparation.
- 14.04.110 Environmental impact statement--Additional elements.
- 14.04.120 Public notice.
- 14.04.130 Designation of official to perform consulted agency responsibilities for the city.
- 14.04.140 Designation of responsible official.
- 14.04.150 Substantive authority.
- 14.04.155 Hearing Examiner Authority
- 14.04.160 Appeals.
- 14.04.170 Environmentally sensitive areas.

- 14.04.180 Responsibility of agencies--SEPA public information.
- 14.04.190 Fees.
- 14.04.200 Notice--Statute of limitations.
- 14.04.210 Severability

**14.04.010 Authority**

The city adopts this Chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules, WAC 197-11-904.

**14.04.020 Adoption by reference**

The city adopts the following sections or subsections of Chapter 197-11 of the Washington Administrative Code, 1984 Edition, by reference:

- 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 Action 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 SEPA/GMA project review – Reliance on Existing Plans, Laws, and Regulations
- 197-11-164 Planned Actions – Definitions 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 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 Actions

<u>197-11-265</u>	<u>Early Scoping for MTCA Remedial Actions</u>
<u>197-11-268</u>	<u>MTCA Interim Actions</u>
197-11-300	Purpose of this Part
<u>197-11-305</u>	<u>Categorical Exemptions</u>
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
<u>197-11-355</u>	<u>Optional DNS Process</u>
197-11-360	Determination of Significance (DS)/Initiation of Scoping
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197-11-405	EIS Types
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197-11-425	Style and Size
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197-11-435	Cover Letter or Memo
197-11-440	EIS Contents
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197-11-443	EIS Contents When Prior Non-project EIS
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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
197-11-500	Purpose of this Part
197-11-502	Inviting Comment
197-11-504	Availability and Cost of Environmental Documents
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<u>197-11-510</u>	<u>Public Notice</u>
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
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197-11-610	Use of NEPA Documents
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197-11-625	Addenda--Procedures
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197-11-758	Lead Agency
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197-11-764	Major Action
197-11-766	Mitigated DNS
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<u>197-11-912</u>	Procedures of Consulted Agencies
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197-11-985 Notice of Assumption of Lead Agency Status

197-11-990 Notice of Action

#### 14.04.030 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:

- A. "Department" means any division, subdivision or organizational unit of the city established by ordinance, rule or order.
- B. "Early notice" means the city's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated DNS procedures).
- C. "Environmental assessment" means a detailed technical report on one or more elements of the environment as listed in the environmental checklist where that report is prepared by person(s) with expertise in that particular field. Environmental assessments may include, but are not limited to, geotechnical reports, hydrological reports and traffic studies.
- D. "Ordinance" means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.
- E. "SEPA rules" means WAC Chapter 197-11 adopted by the Department of Ecology.

#### ~~14.04.040 Additional considerations in time limits applicable to the SEPA process~~

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

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

~~1. The city should request such further information within twenty eight (28) calendar days of receiving an adequate application and environmental checklist.~~

~~2. The city should wait no longer than thirty (30) calendar days for a consulted agency to respond.~~

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

#### **14.04.050 Additional timing considerations**

In addition to timing requirements adopted by reference under OMC 18.04.020, and those set forth in OMC 18.72.170, the following provisions shall apply:

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

B. After being issued, the DNS, MDNS or EIS for the proposal shall accompany the city's staff recommendation to any appropriate advisory or decision-making body, or official. OMC 18.72.060 and the current edition of the International Uniform Building Code 197.4-105.3.2 notwithstanding, no complete project permit application shall expire during the period between issuance of a determination of significance and issuance of the final environmental impact statement so long as the statement is prepared within the time periods specified by this Chapter, Washington Administrative Code Chapter 197-11 and the State Environmental Policy Act. Instead, such application review periods shall be tolled during such period.

#### **14.04.060 Use of exemptions**

A. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The city shall not require completion of an environmental checklist for an exempt proposal.

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

#### **14.04.065 Categorical Exemptions**

Pursuant to WAC 197-11-800(1)(c) and in addition to the provisions of WAC 197-11-800(1)(b), the following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water:

- A. The construction or location of any residential structures of nine units or less;
- B. The construction of an office, school, commercial, recreational, service or storage building with 8,000 square feet or less of gross floor area, and with associated parking facilities designed for thirty automobiles or less;
- C. The construction of a parking lot designed for thirty automobiles or less;
- D. Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

E. Development within the Downtown Infill Exemption Allowance Area designated under RCW 43.21C.229 for construction of the following types of development within the boundary shown on the map below:

1. residential developments

2. non-retail commercial developments of 65,000 square feet or less; and

3. mixed use developments



For the purposes of this subsection:

1. "Infill" shall mean any development that meets Subsection A of this section.
2. "Retail" shall be construed liberally to include sales of products produced, assembled or otherwise created on-site or off-site.
3. "Mixed use" shall mean any development that includes two or more permitted or conditional uses on the same site, in one or more buildings.

F. To be considered for the Downtown Infill Exemption Allowance, the proposed development must:

1. not cause the area shown in the map above to exceed the density or intensity called for in the Comprehensive Plan, or be part of a series of proposals that would do so; and
2. be consistent with all requirements of the subject zoning district and all other applicable provisions of the Olympia Municipal Code and other local, state, and federal laws.

G. Developments that qualify for the Downtown Infill Exemption Allowance are still subject to Chapter 15.20 OMC, Transportation Concurrency.

H. The Director may condition development proposals that otherwise qualify for the Downtown Infill Exemption Allowance to:

1. incorporate site design measures that preserve the following landmark views identified in the Olympia Downtown Strategy on April 25, 2017:
  - a. West Bay Park to Mt Rainier
  - b. East Bay Overlook to the Capitol Dome
  - c. Deschutes Parkway to Mt Rainier
2. provide for public routes or trails to access the shoreline under the Shoreline Master Program or as provided in the Regional Trails Plan; parks, Arts and Recreation Master Plan, or Downtown Strategy.

#### **14.04.070 Lead agency determination and responsibilities**

A. When the city is not the lead agency for a proposal, all departments of the city shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No city department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead

agency, unless required under WAC 19711-600. In some cases, the city may conduct supplemental environmental review under WAC 197-11-600.

B. If the city or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within a fifteen-day (15) time period. Any such petition on behalf of the city may be initiated by the responsible official.

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

D. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is: which agencies require nonexempt licenses).

#### **14.04.080 Environmental checklist**

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

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

C. The city may complete all or a part of the environmental checklist for a private proposal with its own staff if either of the following exist:

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.

#### 14.04.090 Mitigated determination of nonsignificance

A. As provided in this section and in WAC 197-11-350 and WAC 197-11-355, the responsible official may issue a determination of nonsignificance (DNS) based on conditions attached to the proposal by the responsible official or on changes to, or clarification of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency;
2. Precede the city's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within 15 working days. The response shall:

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

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

E. When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the city shall base its threshold determination on the changed or clarified proposal:

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a determination of nonsignificance under WAC 197-11-340(2).
2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate.
3. The applicant's proposed mitigation measures (clarification, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater

runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-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. A mitigated DNS issued under WAC 197-11-340(2), requires a 14 day comment period and public notice. However, a mitigated DNS may be issued under WAC 197-11-340(1) if intended only to minimize adverse impacts and not to eliminate the requirements for an EIS.

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

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

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

#### **14.04.100 Environmental impact statement –Preparation**

A. Preparation of draft and final EIS and SEIS's is the responsibility of the planning department under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this Chapter and WAC Chapter 197-11.

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

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this Chapter or that is being requested from another agency. (This does not apply to information the city may request under another ordinance or statute).

D. A draft of any required environmental impact statement ~~shall~~ should be prepared and issued within 365 calendar days of issuance of the determination of significance. Draft environmental impact statements shall be



reviewed and a final environmental impact statement issued within those time periods prescribed by WAC 197-11-455 and WAC 197-11-460.

#### **14.04.110 Environmental impact statement –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 determination or perform any other function or purpose under this chapter:

- A. Economic impacts;
- B. Cultural factors;
- C. Social policy analysis;
- D. Impacts upon neighborhood character.

#### **14.04.120 Public notice**

A. Whenever the city issues a DNS under WAC 197-11-340(2) or WAC 197-11-355 or a DS under WAC 197-11-360(3), the city shall give public notice as follows:

1. If a public hearing has been scheduled on the subject action, notice of the threshold determination ~~shall~~ may be combined with notice of such hearing.
2. ~~If no public hearing is required for the proposed action, or if the public hearing notice will not be issued prior to expiration of the comment period for a DS or DNS, the city shall give notice of the DNS or DS by:~~
  - a. ~~Posting the specific site, if any, and providing notice to all record owners of property within 300 feet of such site;~~
  - b. ~~Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;~~
  - c. ~~Notifying the news media.~~ a threshold determination using the procedures in OMC 18.17.

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

B. Whenever the city issues a draft EIS under WAC 197-11-455(5) or a supplemental EIS under WAC 197-11-620, notice of the availability of those documents shall be given by (1) indicating the availability of the DEIS in any public notice required for a nonexempt license; and (2) the methods noted in subsection A of this section.

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

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

**14.04.130 Designation of official to perform consulted agency responsibilities for the city**

A. The planning director shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping, or reviewing a draft EIS.

B. This person shall be responsible for the city's compliance with WAC 197-11-550 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.

**14.04.140 Designation of responsible official**

A. For those proposals for which the city is the lead agency, the responsible official shall be the planning director or 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 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.

**14.04.150 Substantive authority**

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

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

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter;

2. Such conditions are in writing;

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

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

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

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

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS prepared pursuant to this chapter;
2. A finding is made that there are not reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact;
3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

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

1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources to the end that the state and its citizens may:
  - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
  - b. Assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;
  - c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
  - d. Preserve important historic, cultural and natural aspects of our national heritage;
  - e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
  - f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities;
  - g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.
3. ~~The city adopts by reference the policies in the following city codes, ordinances and plans:~~The following plans, policies regulations, and all amendments thereto, are designated as potential bases for the exercise of the City's substantive authority under SEPA:
  - a. ~~City of Olympia zoning ordinance~~RCW Chapter 43.21C, *State Environmental Policy*;
  - b. ~~The plan for Olympia (Comprehensive Plan)~~Comprehensive Plan;
  - c. ~~Uniform Building Code (as adopted by the city)~~Wastewater Management Plan;
  - d. ~~Shoreline master program for the Thurston region~~Water Resources Management Plan;
  - e. ~~Transportation system plan for the Thurston metropolitan area~~Water System Plan;
  - f. ~~Olympia platting subdivision ordinance~~Storm and Surface Water Plan;
  - g. Parks, Arts, and Recreation Master Plan;
  - h. Shoreline Master Program;
  - i. Regional Transportation Plan;
  - j. Olympia Municipal Code;
  - k. Engineering Design and Development Standards;
  - l. Capital Facility Plan;
  - m. Downtown Strategy;

E. The legislative appeals authorized by RCW 43.21C.060 are eliminated from this chapter.

#### **14.04.155 Hearing Examiner Authority**

In addition to the authority and power to modify mitigation measures pursuant to appeal, the Hearing Examiner is hereby authorized to modify such mitigating conditions or measures as appropriate when no administrative appeal opportunity was provided pursuant to OMC 14.04.160 or when deemed necessary by the Examiner to ensure consistency with any decision rendered by the Examiner on the underlying application or permit.

#### 14.04.160 Appeals

A. The following administrative appeal procedures are established under RCW 43.21C.075, ~~and~~ WAC 197-11-680, and RCW Chapter 36.70B:

1. Any agency or person who may be aggrieved by an action may appeal to the Hearing Examiner the environmental review officers' conditioning, lack of conditioning or denial of an action pursuant to WAC Chapter 197-11. ~~When such conditioning, lack of conditioning or denial of action is attached to a recommendation of the Director to the Hearing Examiner regarding a land use application, no appeal shall be necessary for consideration and revision of such conditions, lack of conditions, or denial by the Hearing Examiner.~~
2. The responsible official's initial decision to require preparation of an environmental impact statement, i.e., to issue a determination of significance, is subject to an interlocutory administrative appeal upon notice of such initial decision and only to such appeal. Notice of such decision shall be provided as set forth in OMC 18.78.020. Failure to appeal such determination within 14 calendar days of notice of such initial decision shall constitute a waiver of any claim of error.
3. All appeals shall be in writing, be signed by the appellant, be accompanied by the appropriate filing fee, and set forth the specific basis for such appeal, error alleged and relief requested. Any appeal must be filed within seven calendar days ~~of the SEPA determination being final~~after the comment period expires. Where there is an underlying governmental action requiring review by the Hearing Examiner, any appeal and the action shall be considered together. ~~Where there is an underlying permit decision to be made by city staff~~Except for threshold determinations issued under the optional DNS process, any appeal periods shall conclude simultaneously with an underlying permit decision.
4. For any appeal under this subsection, the city shall keep a record of the appeal proceeding which shall consist of the following:
  - a. Findings and conclusions;
  - b. Testimony under oath; and
  - c. A taped or written transcript of any hearing.
5. Any procedural determination by the city's responsible official shall be given substantial weight in any appeal proceeding.
6. See OMC 18.75.020.B for additional requirements.

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

#### **14.04.170 Environmentally sensitive areas**

A. If the city designates environmentally sensitive areas under the standards of WAC 197-11-908, it shall file maps designating such areas, together with the exemptions from the list in WAC 197-11-908 that are inapplicable in such areas, with the responsible official and the Department of Ecology, Headquarters Office, Olympia, Washington. The environmentally sensitive area designations shall have full force and effect of law as of the date of filing.

B. The city shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The city shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

C. Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

#### **14.04.180 Responsibilities of agencies--SEPA public information**

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

#### **14.04.190 Fees**

The city shall require and collect fees as established by ordinance of the City Council for its activities in accordance with the provisions of this chapter:

A. **Threshold Determination.** A fee shall be collected for every environmental checklist the city will review when it is lead agency. The time periods provided by this chapter for making a threshold determination shall not begin to run until the accompanying application is deemed complete and all fees are paid.

B. **Environmental Impact Statement (EIS).**

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 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. When the city is the lead agency for a proposal and the applicant is preparing an EIS, the city shall collect a fee to cover the cost of reviewing the EIS. The fees are set forth in the fee schedule as

adopted and hereafter amended by the city, and shall reflect the actual costs, including all staff time spent in the review. The city shall require the applicant to post a cash deposit for the amount of the estimated total cost of the review prior to initiation of review; however, this is not necessary until after the scoping process is completed.

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

4. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subdivisions 1, 2 or 3 of this subsection which remain after incurred costs are paid.

C. Supplemental Studies or Information. When the city requires supplemental information or studies, a reasonable fee may be charged and collected from the applicant to cover the costs incurred by the city in reviewing such information. The fee shall be set forth in the fee schedule as adopted and hereafter amended by the city.

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

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

F. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by RCW Chapter 42.7.

#### **14.04.200 Notice –Statute of limitations**

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

#### **14.04.210 Severability**

If any provision of this chapter or its application to any person is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

**Section 3. Amendment of OMC 18.12.000. Olympia Municipal Code Section 18.12.000 is hereby amended to read as follows:**

Chapter 18.12  
HISTORIC PRESERVATION

18.12.000 Chapter Contents

Sections:

- 18.12.020 General Purpose and Intent
- 18.12.040 Heritage Commission Creation and Size
- 18.12.045 Heritage Commission Composition
- 18.12.050 Heritage Commission Term of Appointment
- 18.12.055 Heritage Commission Powers and Duties
- 18.12.065 Heritage Commission Compensation
- 18.12.070 Heritage Commission Rules and Officers
- 18.12.075 Heritage Commission Staff
- 18.12.080 Heritage Register - Criteria to Designate Property
- 18.12.085 Heritage Register - Process to Designate Property to the Heritage Register or Historic District
- 18.12.090 Heritage Register - Alteration and Construction
- 18.12.100 Demolition of a Historic Building or a Contributing Historic District Property
- 18.12.110 Removal of Designation
- 18.12.120 ~~Archaeological Sites~~Cultural Resources
- 18.12.130 Tribal and Agency Consultation on Development Review
- 18.12.140 Cultural Resource Protection

**Section 4. Amendment of OMC 18.12.120. Olympia Municipal Code Section 18.12.120 is hereby amended to read as follows:**

**18.12.120 ~~Archaeological Sites~~Cultural Resources**

A. Whenever in the course of excavation or development, archaeological materials (e.g. bones, collections of shells, stone tools, beads, ceramics, old bottles, hearths, etc and old building foundations.) or human remains are observed during project activities, all work in the immediate vicinity shall stop. The City of Olympia Historic Preservation Officer (HPO), Washington State Department of Archaeology and Historic Preservation (DAHP), the Building Official, the Preservation Officer, any the affected tribe(s) and the county coroner (if applicable) all interested Tribes, City of Olympia Building Official, and, in the case of humans remains, Olympia Police Department and Thurston County Coroner, shall be contacted immediately by the property owner, site manager, or the City staff in order to help assess the situation and determine how to preserve the resource(s)for immediate response to evaluate the discovered materials.



~~B. Provided initial inspection indicates that the materials may be cultural resources or human remains, the City shall request DAHP and interest tribes to recommend an appropriate course of action prior to resumption of construction. The property owner shall arrange for an inspection of may be required to hire a qualified archaeologist to evaluate the site within seven (7) calendar days, by one or more archaeology professionals at the expense of the property owner. The Department of Archaeology and Historic Preservation (DAHP) maintains a list of archaeology professionals. The archaeology professionals ist shall make a recommendations as to site restoration, site protection or removal of artifacts on the site's eligibility for the National Register of Historic Places (NRHP) as per the National Historic Preservation Act. This recommendation will be reviewed by DAHP and interested Tribes for determination of eligibility for the NRHP. The DAHP, Building Official, property owner, affected tribes, and archaeologist will consult on the treatment of the archaeological resources.~~

~~C. If the archaeological inspection indicates the site is significant, or if the site has previously been recorded by the State Department of Archaeology and Historic Preservation, the Building Official and the Preservation Officer shall consult that agency for its recommendations site is determined eligible for the NRHP, the HPO or designee shall consult with DAHP and all interested tribes for recommendations on appropriate mitigation of effects before construction resumes. The Building Official may revoke or temporarily suspend the permit, or add mitigation conditions based on the site's archaeological importance. Or, the Building Official shall add mitigating conditions to the project approval in order to protect these sites or artifacts. For sites that are not determined significant but are of local interest, the Building Official may add appropriate mitigating conditions. In any case, €The discovery of archaeological materials requires that the property owner must comply with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48). Failure to comply with this requirement could constitute a Class C Felony. If federal funds or permits are involved in the project, notification to the appropriate federal agency and the Advisory Council shall occur in addition to the above-listed parties, per 36 CFR Sec. 800.12.~~

~~D. Where known previously recorded archeological sites, as identified by Department of Archaeology and Historic Preservation (DAHP), are proposed for development, the Review Authority Director shall consult DAHP and all interested tribes for their recommendations, and may deny or condition the permit where the archaeological value of the site outweighs the development value, if compensation is available or require recovery of the archaeological materials or other appropriate mitigation measures to avoid harm to or destruction of the archaeological site.~~

~~E. The City of Olympia, through an agreement with the DAHP and the appropriate tribes, will reference identified archaeological sites in reviewing land use actions.~~

**Section 5. Addition of OMC 18.12.130. A New Section 18.12.130 is hereby added to Olympia Municipal Code Chapter 18.12 to read as follows:**

**18.12.130 Tribal and Agency Consultation on Development Review**

A. Interested Tribes and the State Department of Archaeology and Historic Preservation (DAHP) shall be notified when an application for land use approval has been submitted to the City of Olympia as described in

OMC 18.78.020 Public Notification Procedures. Additional notice of consultation may be provided by the City Historic Preservation Officer.

B. Consistent with law, any recommendations and/or requests by Consulting Tribes and/or DAHP on cultural resource protection will be given substantial weight in decisions on land use approval and subsequent permit issuance.

**Section 6. Addition of OMC 18.12.140. A New Section 18.12.140 is hereby added to Olympia Municipal Code Chapter 18.12 to read as follows:**

**18.12.140 Cultural Resource Protection**

A. Cultural Resources shall be protected from damage during construction and all other development activities in accordance with OMC Sections 18.12.120 and 18.12.140B.

B. Additional Protections for Cultural Resources.

1. Building permit recipients for development projects that meet the following criteria shall be required to sign an Inadvertent Discovery Plan (IDP) provided by the City of Olympia Historic Preservation Officer:

a. All projects subject to State Environmental Policy Act (SEPA) thresholds; and

b. All projects located within the Downtown SEPA Exemption Area.

The signed IDP shall be held on site throughout the duration of any ground-disturbing activities related to the project.

2. The Director may require additional actions to protect known or predicted cultural resources as a result of requests submitted by Consulting Tribes and/or DAHP during consultation for the following:

a. Projects subject to State Environmental Policy Act (SEPA) thresholds;

b. Projects located within the Downtown SEPA Exemptions Area; and

c. Projects subject to other State and Federal laws which protect cultural and historic resources, including but not limited to Executive Order 05-05 and Section 106 of the National Historic Preservation Act.

**Section 7. Corrections.** The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 8. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 9. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 10. Effective Date.** This Ordinance shall take effect five (5) days after publication, as provided by law.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

*Darren Nienaber*  
\_\_\_\_\_  
DEPUTY CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**