(e) The proposed change is to an ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390. (Ord. 010-09 § 4 (Exh. A); Ord. 005-08 § 1; Ord. 046-07 § 2 (Exh. A)).

Chapter 16.06
ADMINISTRATION OF LAND USE REGULATIONS

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16.06.010 Purpose.

The purpose of this chapter is to describe permitting processes procedures that are concise and will comply with the requirements of the Regulatory Reform Act. (Ord. 010-09 § 4 (Exh. A); Ord. 046-07 § 2 (Exh. A)).

16.06.020 Decision making authority.

The authority of the city staff, hearing examiner, planning commission and city council relating to the land use regulatory code is set forth in POMC 16.01.021. (Ord. 010-09 § 4 (Exh. A); Ord. 046-07 § 2 (Exh. A)).

16.06.030 Applicability.

This chapter serves to implement the Port Orchard land use regulatory code, shoreline master plan regulations, critical area ordinance regulations, engineering standards and the site development regulations. The regulations identified in this chapter apply to all land use applications except those excluded in POMC 16.06.035(4). The provisions in this chapter shall control, unless a specific code section dealing with a specific type of permit, sets forth other time limits, and/or procedures for
the applicable permit. (Ord. 010-09 § 4 (Exh. A); Ord. 046-07 § 2 (Exh. A)).

16.06.035 Review process and process
exemptions.

(1) Administrative Review. Administrative
review is used when processing applications for
administrative permits including, but not limited
to, administrative zoning variances, administrative
conditional use permits, minor amendments, home
occupation permits, home occupation permits, sign
permits, building and construction permits, site
development permits, right-of-way permits, lot
consolidation, boundary line adjustments, code
interpretations, short plats, short plat alterations,
short plat amendments, administrative critical
areas variance and temporary uses. Administrative
review shall be subject to the application require-
ments time periods, consolidated permit process-
ing and the notice of decision provisions of this
chapter. If an administrative decision is appealed,
the open record hearings, notice of public hearings,
joint public hearings, and the closed record appeal
provisions of this title shall apply. In case of short
plat reviews the provisions of the subdivision code
and Chapter 58.17 RCW shall also apply.

(2) Hearing Examiner Review. Unless other-
wise stated, hearing examiner review shall be sub-
ject to application requirements, complete
application, time periods, consistency with de-
velopment regulations and SEPA, permit conditions,
consolidated permit processing, open record hear-
ings, notice of public hearings, joint public hear-
ings, notice of decision, and the closed record
appeal provisions of this chapter.

(3) City Council Review. Where the city coun-
cil is exercising its authority as a quasi-judicial
decision making body (e.g., conditional use per-
mits in the downtown overlay district, appeals of a
hearing examiner decision), its review shall be sub-
ject to the applicable provisions of this chapter
relating to the particular decision making authority
being exercised, including the application require-
ments, complete application, time periods, consis-
tency with development regulations and SEPA,
permit conditions, consolidated permit processing,
open record hearings, notice of public hearings,
joint public hearings, notice of decision, and the
closed record appeal provisions of this chapter.

(4) Exemptions. The following are exempt
from the provisions of this chapter unless other-
wise specified:

(a) Legislative decisions, including zoning
code text and area-wide zoning district amend-
ments, adoption of development regulations and
amendments, area-wide rezones to implement new
city policies, adoption of comprehensive plan and
plan amendments, and annexations;

(b) Final plat approval pursuant to RCW
58.17.170;

(c) Landmark designations;

(d) Street vacations;

(e) Street use permits; and

(f) Boundary line adjustments, lot aggrega-
tions, right-of-way permits, building permits, site
development permits, sign permits, and other con-
struction permits or similar administrative appro-
vals which are categorically exempt from
environmental review under the State Environ-
mental Policy Act (SEPA) or for which environ-
mental review has been completed in connection
with other project permits, are exempt from the fol-
lowing procedures:

(i) Determination of completeness;

(ii) Notice of application;

(iii) Optional consolidated project per-
mit processing;

(iv) Joint public hearings;

(v) Staff reports;

(vi) Notice of decision; and

(vii) Time limitations. (Ord. 010-09 § 4
(Exh. A); Ord. 046-07 § 2 (Exh. A)).

16.06.040 Preapplication requirements.

(1) Preapplication Meeting. The preappli-
cation meeting is between department staff and a potential
applicant for permit to discuss the application sub-
mittal requirements and pertinent fees. A preappli-
cation meeting is required prior to submittal of an
application requiring a hearing before the hearing
examiner or the city council.

(2) Technical Review Conference. The tech-
nical review conference is a process designed to
define those items of department review which, if
not specifically addressed, might result in delays or
technical difficulties during the permit processing.
A technical review conference may be requested
by the city when the complexity of a proposal
requires additional information or input from the
applicant or city staff. Representatives from vari-
ous departments and an applicant for a project permit will discuss specific detailed requests for the proposed project and the city’s regulatory process. A technical review conference may be scheduled at the request of the applicant.

(3) Community Meeting. Following the pre-application meeting and before submitting an application, where required by the land use regulatory code or upon the applicant’s request, the applicant shall conduct a community meeting on a weekday evening to solicit input and suggestions from the community. A member of the planning staff shall attend to provide regulatory and municipal code information. Notice of the community meeting shall be made by the applicant by sending a written notice, addressed through the United States mail, to all property owners of record within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the subject property. Notice of the community meetings shall be given at least 14 days prior to the meeting. Additional notice shall be given in accordance with POMC 16.06.060(3). (Ord. 010-09 § 4 (Exh. A); Ord. 046-07 § 2 (Exh. A)).

16.06.050 Complete applications.

(1) Form and Content. The mayor and city council are authorized to establish administrative regulations setting forth the information that must be provided, and the form in which it must be provided, in order for an application to be deemed complete.

(2) Checklist for Complete Application. Applications shall be considered complete when the department determines that the application materials contain the following:

(a) The correct number of completed department master and supplemental application forms signed by the applicant;

(b) The correct number of documents, plans, or maps identified on the department application form;

(c) A completed State Environmental Policy Act (SEPA) checklist, if required; and

(d) Payment of all applicable fees.

(3) Time Limitations.

(a) Within 28 days after receiving a project permit application, the department shall provide a written determination to the applicant, stating either:

(i) The application is complete; or

(ii) The application is incomplete and what information is necessary to make the application complete.

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

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

(d) When the project permit application is complete, the department shall accept it and note the date of acceptance.

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

(4) Waiver of Requirements. The director may waive specific submittal requirements that are determined to be unnecessary for review of an application.

(5) Incomplete Applications. Failure of an applicant to submit information identified as required in the notice of incomplete application within 120 days of the department’s mailing date shall constitute grounds for deeming the application null and void. If all additional information identified in the notice of incomplete application has not been received by the department within 120 days from the application submittal date, then the application shall be deemed null and void unless the applicant has been granted a time period extension. Time period extensions may be granted by the director when applicants can demonstrate that unusual circumstances, beyond their control, have prevented them from being able to provide the additional information within the 120-day time period.
(6) Initiation of Review Process. The department shall not start the review process of any application until the application is deemed complete.

(7) Modifications. Modifications to an application which has been deemed complete by the department will be treated as follows:

(a) Modifications proposed by the department to a pending application shall not be considered a new application; and

(b) Modifications proposed by the applicant to a pending application which would result in a substantial increase in a project’s impacts, as determined by the department, may be deemed a new application. The new application shall conform to the requirements of this section which are in effect at the time the new application is submitted.

(8) Filing Fees. The schedule of fees for development permits is established in a separate city resolution.

(9) Additional Application Requirements. In the interest of public health, safety or welfare, or to meet the requirements of the State Environmental Policy Act or other state requirements, the department may request additional application information such as, but not limited to, geotechnical studies, hydrological studies, noise studies, air quality studies, visual analysis studies to address critical areas requirements, and transportation impact analysis. (Ord. 010-09 § 4 (Exh. A); Ord. 046-07 § 2 (Exh. A)).

16.06.060 Notice of application.

(1) Notice of Application. Once an application has been deemed complete, the department shall provide public notice for the project. The department shall send a written notice, addressed through the United States mail to all property owners of record within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the subject property. Such notice shall be mailed not more than 14 working days from the determination of a complete application. Parties receiving notice shall be given at least 14 days, from the mailing date, to provide any comments to the department.

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

(a) The name and address of the applicant and/or agent;

(b) The subject property location;

(c) A description of the proposed project and a list of the project permits included in the application, and, if applicable, a list of studies requested under RCW 36.70B.070 or 36.70B.090;

(d) A list of existing environmental documents that evaluate the proposed project and a location where such documents can be reviewed;

(e) A preliminary determination, if available, of the applicable development regulations that will be used for project mitigation and of consistency with land use plans, policies and regulations;

(f) The date of application, the date of the notice of completion of the application and the date of the notice of the application;

(g) The written determination shall, to the extent known by the city, identify the local, state, and/or federal government agencies that may have jurisdiction over some aspects of the application;

(h) A list of other permits not included in the application, to the extent known by the city;

(i) The time periods for submitting comments. Comments shall be due not less than 14 days nor more than 30 days following the date of notice of application, include a statement of the rights of any person to comment on the applications, receive notice of, and participate in any hearings and request a copy of the decision once made. All public comment on the notice of application must be received by the department by 4:00 p.m. on the last day of the comment period. If the project requires a public hearing, comments may be submitted up until or at the public hearing;

(j) The date, time and place of the public hearing if applicable, as scheduled at the date of notice. Notice of an open record hearing shall be given at least 10 days prior to the hearing;

(k) A right to appeal statement, if applicable; and

(l) A department contact and telephone number.

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

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

(a) Comments may be submitted within 20 days of the last date of the published notice. Each
person responding to such notice shall receive a
decision;

(b) Notice of a hearing on shoreline use reg-
ulation permits shall include a statement that any
person may submit oral or written comments on an
application at the hearing; and

(c) The public may obtain a copy of the
decision within two days following issuance
(RCW 90.58.140), and the notice must state the
manner in which the public may obtain a copy of
the decision.

(5) Determination of Significance. If a determi-
nation of significance has been made prior to
the notice of application, the notice of application shall
be combined with the determination of sig-
ificance and scoping notice. The determination of
significance and scoping notice may be issued
prior to the notice of application.

(6) Determinations and Decisions. Except for a
determination of significance, the city shall not
issue a threshold determination nor issue a decision
or recommendation on a project permit until the
expiration of the public comment period on the
notice of application. (Ord. 010-09 § 4 (Exh. A);
Ord. 046-07 § 2 (Exh. A)).

16.06.065 Notice of decision.
The city shall provide a notice of decision that
includes a statement of any SEPA threshold deter-
nmination and the procedures for administrative
appeal. The notice of decision may be a copy of the
report or the decision on the project permit
application. The notice shall be provided to the applicant
and any person who, prior to rendering the deci-
sion, requested notice of the decision or submitted
substantive comments on the application. (Ord.
010-09 § 4 (Exh. A); Ord. 046-07 § 2 (Exh. A)).

16.06.070 Time periods – Notice of decision.

(1) The city shall issue a notice of decision on a
project permit within 120 days after the department
notifies the applicant that the application is deemed
complete. The following time periods shall be
excluded from the 120-day time period require-
ment:

(a) Any period during which the applicant
has been requested by the department to correct
plans, perform required studies, or provide addi-
tional required information, and a period of up to
14 days after the submittal of such to determine if
the information satisfies the request;

(b) Any period during which an environ-
mental impact statement (EIS) is being prepared in
accordance with state law following a determina-
tion of significance pursuant to Chapter 43.21C
RCW;

(c) Any period for administrative appeals;
and

(d) Any extension of time mutually agreed
upon in writing between the applicant and the
department.

(2) The 120-day time period established above
shall not apply in the following situations:

(a) If the permit requires an amendment to
the comprehensive plan or a development regu-
lation; or

(b) If the permit requires approval of the sit-
ing of an essential public facility; or

(c) If there are substantial revisions to the
project proposal at the applicant’s request, in
which case the time period shall start from the date
at which the revised project application is deter-
mined to be complete; or

(d) If the application is for a subdivision,
then the timelines set forth in Chapter 58.17 RCW
shall apply.

(3) The applicant shall designate a single per-
son or entity to receive determinations and notices
required by this title.

(4) If the city is unable to issue its final decision
within the time limits provided for, the city shall
provide written notice to the applicant stating the
reasons why the time limits have not been met,
including an estimate of the date for issuance of the
notice of final decision. (Ord. 010-09 § 4 (Exh. A);
Ord. 046-07 § 2 (Exh. A)).

16.06.071 Time periods – Notice of hearings,
appeals and informational meetings.
The city shall provide notice to all affected per-
sons, and aggrieved persons in case of an appeal,
and publish the notice as required by law, at least
10 days before any hearing required on a land use
application, an appeal from any decision on a land
use application, or a public informational meeting
on an application or proposed application. (Ord.
010-09 § 4 (Exh. A); Ord. 046-07 § 2 (Exh. A)).

16.06.072 Time periods – Filing appeals.

(1) Administrative Decisions. An aggrieved
person may appeal any final decision of an admin-
istrative official to the hearing examiner with the
required fees. The appeal must be in writing on forms available at the city and shall be filed with the city clerk within 14 days of the date of the action being appealed. If an open record hearing was not held as part of the administrative approval, then the examiner shall conduct an open record hearing. Otherwise the appeal to the examiner shall be a closed record appeal.

(2) Examiner Decisions. An aggrieved person may appeal a hearing examiner decision to the city council, if the examiner’s decision is not a “final action.” The appeal must be in writing on forms available at the city and shall be filed with the city clerk within 14 days of the date of the decision being appealed. In the case of appeals from administrative decisions, all decisions under the Shorelines Management Act, and any other decision of the hearing examiner that is designated in the POMC as a final action, the appeal is to the Kitsap County superior court if it is subject to the Land Use Petition Act (Chapter 36.70C RCW), the shorelines hearings board if it is a Shorelines Management Act decision, or the appropriate Growth Hearings Board if it is an action that is subject to the Growth Management Act (Chapter 36.70A RCW).

(3) City Council Decisions. City council decisions that are considered “final action” must be appealed to either the Kitsap County superior court if it is a city council action subject to the Land Use Petition Act (Chapter 36.70C RCW) or to the appropriate Growth Hearings Board if it is a council action that is subject to the Growth Management Act (Chapter 36.70A RCW). Any appellant is encouraged to review state law in order to determine the method and manner of perfecting an appeal of a city council action. The appeal must be filed in the time limits specified by state law. (Ord. 010-09 § 4 (Exh. A); Ord. 046-07 § 2 (Exh. A)).

16.06.090 Consistency with development regulations and SEPA/consolidated permit review.

(1) During any project permit application review, the city shall determine whether the items in this subsection are defined in the development regulations applicable to the proposed project. In the absence of development regulations, the city shall determine whether the items listed in this subsection are defined in the city’s adopted comprehensive plan. This determination of consistency shall include the following:

(a) The type of land use permitted at the site, including uses that may be allowed under special circumstances, if the criteria for the approval have been satisfied;

(b) The level of development, such as density of residential development, or maximum impervious surface areas; and

(c) Character of the development and development standards.

(2) The city shall also review the project permit application under the requirements of the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, the SEPA rules, Chapter 197-11 WAC and the city environmental regulations, Chapter 14.04 POMC, and shall:

(a) Determine whether the applicable regulations require studies that adequately analyze the entire project permit application’s specific probable adverse environmental impacts;

(b) Determine if the applicable regulations require measures that adequately address such environmental impacts;

(c) Determine whether additional studies are required and/or whether the project permit application should be conditioned with additional mitigation measures.

(3) In its review of the project permit application, the city may determine that the requirements for environmental analysis, protection, and mitigation measures in the applicable development regulations, comprehensive plan, and/or other applicable local, state, or federal laws provide adequate analysis of, and mitigation for, specific adverse environmental impacts of the application.

(4) A comprehensive plan, development regulation or other applicable local, state, or federal law provides adequate analysis of, and mitigation for, the specific adverse environmental impact of an application when:

(a) The impacts have been avoided or otherwise mitigated; or

(b) The city has designated or accepted certain levels of service, land use designations, development standards, or other land use planning required or allowed by Chapter 36.70A RCW.

(5) If the city bases or conditions its approval of the project permit application on compliance with the requirements or mitigation described in subsection (4)(b) of this section, the city shall not impose
(6) In its decision whether the specific adverse environmental impact has been addressed by an existing rule or laws of another agency with jurisdiction and with environmental expertise with regard to a specific environmental impact, the city shall consult orally or in writing with that agency and may expressly defer to that agency. In making a deferral, the city shall base or condition its project approval on compliance with these other existing rules or laws.

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

(8) The city shall also review the application under the city’s critical areas ordinance (POMC Title 18).

(9) During project review, the city shall not re-examine alternatives to, or hear appeals on, the items identified in subsection (1) of this section, except for issues of code interpretation. Project review shall be used to identify specific project design and conditions relating to the character of the development, such as details or site plans, curb cuts, drainage swales, the payment of impact fees, or other measures to mitigate a proposal’s probable adverse environmental impacts. (Ord. 010-09 § 4 (Exh. A); Ord. 046-07 § 2 (Exh. A)).

16.06.100 Permit conditions.

(1) Time Limitations. Within a period of one year following the approval of a conditional use permit or preliminary development plan by the examiner, the applicant shall file with the planning department a final development plan. Unless extended, if no final development plan is filed within the time limits specified, the approval shall be void.

(2) Extensions. The expiration time period for filing final development plans may be extended for up to one year if, prior to the expiration of the permit approval, the applicant can demonstrate to the director or examiner, as appropriate, that there have been unusual circumstances beyond his/her control to cause delay in the project.

(3) Compliance with Conditions. Compliance with conditions established in a preliminary approval and final approved development plans is required. Any departure from the conditions of approval or approved plans constitutes a violation of this title and shall be subject to enforcement actions and penalties. (Ord. 010-09 § 4 (Exh. A); Ord. 046-07 § 2 (Exh. A)).