



## COMMUNITY DEVELOPMENT DEPARTMENT

*Bill Preston, P.E., Director*

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*Planning Division*

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### NOTICE OF APPLICATION, ENVIRONMENTAL REVIEW, & PUBLIC HEARING

**DATE:** August 1, 2024  
**TO:** SEPA Reviewing Agencies, Applicant, and Adjoining Property Owners  
**FROM:** Bill Preston, Community Development Director  
**APPLICANT:** City of Yakima Planning Division (129 N. 2nd St., Yakima, WA 98901)  
**FILE NUMBER:** TXT#002-24, SEPA#009-24  
**LOCATION:** Citywide  
**TAX PARCEL NUMBER(S):** N/A  
**DATE OF APPLICATION:** May 31, 2024

**PROJECT DESCRIPTION** The City of Yakima Planning Division is proposing non-project minor amendments to Titles 14, 15, and 16 of the Yakima Municipal Code to revise City Council's role in the appeal process for projects undergoing land use review.

**NOTICE OF ENVIRONMENTAL REVIEW** This is to notify all the public and private agencies with jurisdiction and environmental expertise that the City of Yakima Planning Division has been established as the lead agency, pursuant to the Washington State Environmental Policy Act (SEPA) for the above stated project. **The City of Yakima is issuing a Preliminary Determination of Non- Significance (DNS) on this project.** WAC 197-11-340 is being used. The following conditions have been identified that may be used to mitigate the adverse environmental impacts of the proposal: No impacts identified.

**Required Permits:** The following local, state, and federal permits/approvals may or will be needed for this project: None

**Required Studies:** N/A

**Existing Environmental Documents:** Comprehensive Plan 2040 – Final Supplemental Environmental Impact Statement (June 13, 2017)

**Preliminary determination of the development regulations that will be used for project mitigation and consistency:** Future projects will require compliance with the International Building Code, City of Yakima Urban Area Zoning Ordinance, City of Yakima Comprehensive Plan and City of Yakima Title 12 Development Standards.

**REQUEST FOR WRITTEN COMMENT AND NOTICE OF PUBLIC HEARING** The public is encouraged to review and comment on the proposed application. Written comments may be submitted prior to or at the public hearing. The public hearing before the City of Yakima Planning Commission has been scheduled for Wednesday, **September 11, 2024**, beginning at **3:00 p.m.** in the Council Chambers – 129 N 2<sup>nd</sup> St, Yakima WA, 98901. Any person desiring to express their views on this matter is invited to attend the public hearing or to submit their written comments to: City of Yakima, Planning Division, 129 N 2nd St., Yakima, WA 98901. **A separate public notice will be provided for the public hearing before the Yakima City Council.** You can mail your comments to:

**Bill Preston, Community Development Director**  
**City of Yakima, Department of Community Development**  
**129 N. 2nd St.; Yakima, WA 98901**

**NOTICE OF RECOMMENDATION** Following the public hearing, the Planning Commission will issue its recommendation within ten (10) business days. When available, a copy of the recommendation will be mailed to parties of record and entities who were provided this notice once it is rendered.

The file containing the complete application is available for public review at the City of Yakima Planning Division, City Hall – 2nd Floor, 129 North 2nd Street, Yakima, Washington. If you have questions regarding this proposal, please call Trevor Martin, AICP, Planning Manager, at (509) 575-6042, or e-mail to [trevor.martin@yakimawa.gov](mailto:trevor.martin@yakimawa.gov).



## DEPARTAMENTO DE DESARROLLO COMUNITARIO

*Bill Preston, P.E., Director*

*Trevor Martin, AICP, Gerente*

*Division de Planificación*

*129 Norte Calle 2ª, 2º Piso, Yakima, WA 98901*

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### AVISO DE APLICACIÓN, REVISIÓN AMBIENTAL, Y AUDIENCIA PÚBLICA

El Departamento de Desarrollo Comunitario de la Ciudad de Yakima ha recibido una aplicación por parte de un propietario/solicitante y este es un aviso sobre esa solicitud. Información sobre la ubicación de la propiedad en cuestión y la solicitud es la siguiente:

<b>FECHA OTORGADA:</b>	1 de agosto, 2024
<b>PARA:</b>	Agencias de Revisión Ambiental, Solicitante y Propietarios Adyacentes
<b>DE:</b>	Bill Preston, Director de Desarrollo Comunitario
<b>SOLICITANTE:</b>	Ciudad de Yakima División de Planificación (129 N. 2nd St., Yakima, WA 98901)
<b>No. DE ARCHIVO:</b>	TXT#002-24, SEPA#009-24
<b>UBICACIÓN:</b>	Cubre toda la ciudad
<b>No. DE PARCELA(S):</b>	N/A
<b>FECHA DE APLICACIÓN:</b>	31 de mayo, 2024

**DESCRIPCIÓN DEL PROYECTO:** La División de Planificación de la Ciudad de Yakima está proponiendo enmiendas menores no relacionadas con proyectos a los Títulos 14, 15 y 16 del Código Municipal de Yakima para revisar el papel del Consejo Municipal en el proceso de apelación de proyectos sometidos a revisión de uso de suelo.

**AVISO DE REVISIÓN AMBIENTAL:** Esto es para notificar a las agencias públicas y privadas con jurisdicción y conocimiento ambiental que la Ciudad de Yakima, División de Planificación, se establece como la agencia principal, de acuerdo con la Ley Estatal de Política Ambiental de Washington (SEPA) para el proyecto mencionado anteriormente. **La Ciudad de Yakima está emitiendo una Determinación Preliminar de No-Significancia (DNS) para este proyecto.** La ley bajo WAC §197-11-340 se está utilizando. Se han identificado las siguientes condiciones que pueden utilizarse para mitigar los impactos ambientales adversos de la propuesta: no se identificaron impactos.

**Permisos Requeridos:** Los siguientes permisos/aprobaciones locales, estatales, y federales pueden o serán necesarios para este proyecto: ninguno

**Estudios Requeridos:** ninguno

**Documentos Ambientales Existentes:** Plan Integral 2040 – Declaración Final de Impacto Ambiental Suplementario (13 de junio, 2017)

**Determinación preliminar de las regulaciones de desarrollo que se utilizarán para la mitigación y la consistencia del proyecto:** Los proyectos futuros requerirán el cumplimiento del Código Internacional de Construcción, La Ordenanza de Zonificación del Área Urbana de la Ciudad de Yakima, el Plan Integral de la Ciudad de Yakima y los Estándares de Desarrollo del Título 12 de la Ciudad de Yakima.

**SOLICITUD DE COMENTARIOS ESCRITOS Y AVISO DE AUDIENCIA PÚBLICA:** Se anima al público a revisar la solicitud y comentar sobre la propuesta. Los comentarios escritos pueden presentarse antes de o en la audiencia pública. La audiencia pública frente a la Comisión de Planificación de la Ciudad de Yakima ha sido programada para el miércoles **11 de septiembre, 2024** comenzando a las **3:00 p.m.** en el Ayuntamiento de la Ciudad de Yakima ubicado en el 129 N 2nd Street, Yakima, WA. Se le invita a cualquier persona que desee expresar sus opiniones sobre este proyecto a asistir a la audiencia pública o a presentar comentarios por escrito. **Se proporcionará un aviso público por separado para la audiencia pública ante el Concejo Municipal de Yakima.** Por favor de enviar sus comentarios sobre esta propuesta a:

Bill Preston, Community Development Director  
City of Yakima, Department of Community Development  
129 N. 2nd St., Yakima, WA 98901

**AVISO DE LA RECOMENDACIÓN:** Después de la audiencia pública, la Comisión de Planificación de Yakima emitirá su recomendación dentro de diez (10) días hábiles. Cuando la recomendación sea emitida, una copia será enviada a las personas que mandaron comentarios o que recibieron este aviso.

El archivo que contiene la aplicación completa está disponible para inspección pública en la Oficina de Planificación de la Ciudad de Yakima en el 129 al Norte la Calle 2da, Yakima, WA y en línea en: <https://www.yakimawa.gov/services/planning/text-amendments/>

Si tiene cualquier pregunta sobre esta propuesta, puede contactar a la Oficina de Planificación al (509) 575-6183 o por correo electrónico al: [ask.planning@yakimawa.gov](mailto:ask.planning@yakimawa.gov)

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# ENVIRONMENTAL CHECKLIST

STATE ENVIRONMENTAL POLICY ACT (SEPA)

(AS TAKEN FROM WAC 197-11-960)

YAKIMA MUNICIPAL CODE CHAPTER 6.88

CITY OF YAKIMA  
PLANNING DIV.

## PURPOSE OF CHECKLIST

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

## INSTRUCTIONS FOR APPLICANTS

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help you describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

## USE OF CHECKLIST FOR NONPROJECT PROPOSALS

For non-project proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D). Please completely answer all questions that apply and note that the words "project", "applicant", and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B – Environmental Elements – that do not contribute meaningfully to the analysis of the proposal.

## A. BACKGROUND INFORMATION (To be completed by the applicant.)

### 1. Name Of Proposed Project (If Applicable):

City of Yakima Title 14, 15, and 16 Amendments

### 2. Applicant's Name & Phone:

City of Yakima Planning Division, (509) 575-6111

### 3. Applicant's Address:

129 N. 2nd St., Yakima, WA 98901

### 4. Contact Person & Phone:

Trevor Martin, Planning Manager, (509) 575-6042

### 5. Agency Requesting Checklist: City of Yakima

### 6. Proposed Timing Or Schedule (Including Phasing, If Applicable):

None at this time

### 7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain:

None at this time.

### 8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal:

None known. Per WAC 197-11-315 (1)(e), as a non-project proposal, section B of the Environmental Checklist will not be filled out.



**A. BACKGROUND INFORMATION (To be completed by the applicant.)**

- 9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain:**

None pending

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COMMUNITY DEVELOPMENT

- 10. List any government approvals or permits that will be needed for your proposal, if known:**

SEPA determination, City of Yakima Planning Commission recommendation, and City Council approval.

- 11. Give a brief, but complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.):**

The City of Yakima Planning Division is proposing non-project minor amendments to the following sections: 14.15.060, 14.20.270, 14.20.290, 14.35.130, 15.02.020, 15.13.070, 15.20.040, 15.20.060, 15.13.070, 15.15.070, 15.21.080, 15.27.423, 15.29.100, 15.29.110, 16.08.025, 16.08.030, and 16.08.040. The purpose of these amendments is to modify the authority of City Council from the appeal process of projects regulated by Titles 14, 15, and 16. Decisions of the Hearing Examiner and of administrative decisions first appealed to the Hearing Examiner would be appealed or further appealed, respectively, directly to Superior Court in accordance with the Land Use Petition Act (LUPA), rather than first going through City Council.

- 12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist:**

City Limits

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PLANNING DIV.**B. ENVIRONMENTAL ELEMENTS (To be completed by the applicant)****TRANSPORTATION**

7. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe:

N/A

8. Proposed measures to reduce or control transportation impacts, if any:

N/A

**PUBLIC SERVICES**

1. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe:

N/A

2. Proposed measures to reduce or control direct impacts on public services, if any.

N/A

**UTILITIES**

1. Check (✓) utilities currently available at the site:

☐ electricity ☐ natural gas ☐ water ☐ refuse service ☐ telephone

☐ sanitary sewer ☐ septic system ☐ other \_\_\_\_\_

2. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

N/A

**C. SIGNATURE (To be completed by the applicant.)**

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

 for City of Yakima

05/31/2024

Property Owner or Agent Signature

Date Submitted

Trevor Martin

Planning Manager, City of Yakima Planning Division

Name of Signee

Position and Agency/Organization

**PLEASE COMPLETE SECTION "D" ON THE NEXT PAGES  
IF THERE IS NO PROJECT RELATED TO THIS ENVIRONMENTAL REVIEW**

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**D. SUPPLEMENTAL SECTION FOR NONPROJECT ACTIONS ONLY (to be completed by the applicant)**CITY OF YAKIMA  
PLANNING DIV.

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment. When answering these questions, be aware of the extent the proposal, or the types of activities that would likely result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

**1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?**

The proposed changes will not affect how land uses discharge to water, emissions to the air, storage, or release of toxic or hazardous substances, or the production of noise.

**Proposed measures to avoid or reduce such increases are:**

None proposed. Any future measures to avoid such increases will be dealt with at the project level.

**2. How would the proposal be likely to affect plants, animals, fish, or marine life?**

The proposed changes will not affect plants, animals, fish, or marine life, as they are regulatory in nature.

**Proposed measures to protect or conserve plants, animals, fish, or marine life are:**

None proposed. Any future measures to avoid such increases will be dealt with at the project level.

**3. How would the proposal be likely to deplete energy or natural resources?**

The proposed changes do not involve regulations dealing with energy or natural resources.

**Proposed measures to protect or conserve energy and natural resources are:**

None proposed. Any future measures to avoid such increases will be dealt with at the project level.

**4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?**

The proposed changes will not change or affect any environmentally sensitive areas or regulations.

**Proposed measures to protect such resources or to avoid or reduce impacts are:**

None proposed. Any future measures to avoid such increases will be dealt with at the project level.

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PLANNING DIV.**D. SUPPLEMENTAL SECTION FOR NONPROJECT ACTIONS ONLY (to be completed by the applicant)**

- 5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?**

No change to shoreline uses are proposed. Depending on future proposals, the level of review will be dependent on the type of use and zoning district.

**Proposed measures to avoid or reduce shoreline and land use impacts are:**

None proposed. Any future measures to avoid such increases will be dealt with at the project level.

- 6. How would the proposal be likely to increase demands on transportation or public services and utilities?**

Increases to traffic as a result of increased residential and/or project density will be examined at the project level.

**Proposed measures to reduce or respond to such demand(s) are:**

None proposed. Any future measures to avoid such increases will be dealt with at the project level.

- 7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.**

The proposed changes will not conflict with any local, state, or federal laws, or requirements for the protection of the environment.



**City of Yakima Planning Commission**  
**Text Amendments—Appeals**

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Under the Yakima Municipal Code (YMC), appellants can appeal a Hearing Examiner decision or further appeal an administrative decision subsequently decided by the Hearing Examiner directly to the City Council. Staff has been directed to review YMC Titles 14, 15, and 16 to revise City Council's role during the appeal process, removing Council from the appeal process and instead having the appellant file directly with Superior Court. The reason for implementing this change primarily pertains to legal expertise and analysis of existing precedent when it comes to land use decisions. City Council generally has a full agenda during their regular meetings, and often does not have the time to analyze a land use determination. Yakima County Superior Court is already familiar with the process and has guidelines in place established by the Land Use Petition Act (LUPA) to process any appeal that comes before the Court.

### **14.15.060 Findings and conclusions.**

The administrator shall not approve a preliminary short plat and short subdivision unless written findings are made that the criteria for approval from YMC 14.15.020 along with all applicable laws and regulations have been met. A preliminary short plat may be appealed under the provisions of YMC Chapter 14.50. A final short plat cannot be recorded during the appeal period.

### **14.20.270 Plat vacation—Criteria for approval.**

A. Approval. The hearing examiner shall render the final decision on proposed plat vacations. The hearing examiner's decision may be appealed using the procedures under Chapter 14.50 to the city council. See YMC Chapter 14.50 for appeal procedures.

B. Criteria for Approval. The proposed plat vacation may be approved or denied after a written determination is made whether the public use and interest will be served by the proposed vacation of the subdivision. If any portion of the land contained in the subdivision was dedicated to the public for public use or benefit, such land, if not already deeded to the city, shall be deeded to the city unless the hearing examiner finds that the public use would not be served by retaining the public interest in such land.

C. Vacation of Streets or Other Public Rights-of-Way. When the vacation application specifically proposes vacation of a city street or other public right-of-way, the city's street vacation procedures shall be utilized. When the application is for the vacation of a plat together with any street or other public right-of-way, the procedure for vacation in this section shall be used, but no street or other public right-of-way may be vacated contrary to the provisions of RCW Chapter 35.79 or the city's street vacation ordinance.

D. Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement holder, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement.

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## **14.20.290 Plat alteration—Criteria for approval.**

A. Approval. The hearing examiner shall render the final decision on proposed plat alterations. The hearing examiner's decision may be appealed [using the procedures under Chapter 14.50.eto the city council. See YMC Chapter 14.50 for appeal procedures.](#)

B. Criteria for Approval. The plat alteration may be approved or denied after a written determination is made whether the public use will be served by the alteration of the subdivision. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

C. Revised Plat. After approval of the alteration, the final amended plat will be prepared in accordance with the hearing examiner's decision and submitted to the hearing examiner or administrator for signature, after which, it shall be filed with the county auditor to become the lawful plat of record.

## **14.35.130 Appeals.**

Any decision of the administrator may be appealed following the procedures set forth in Chapter [14.50](#).

## **15.02.020 Definitions.**

["Development Permit approval" means written authorization for development or modification of development as defined in this title. When a building or other construction permit is required, the building or construction permit shall serve as the other development permit. If no building or construction permit is required, the zoning decision shall serve as the development permit.](#)

["Development Permit denial" means written refusal for development or modification of development.](#)

["Zoning decision" means a document issued by the Planning Division, hearing Examiner, or City Council, which serves as the City's final determination of approval or denial of development or modification of development.](#)

## **15.20.040 Hearing examiner—Duties and powers.**

A. Office. The office of the hearing examiner, herein referred to as hearing examiner, is hereby recognized. The hearing examiner shall perform the duties and functions established by this or any other title. Unless the context requires otherwise, the term "hearing examiner" as used herein shall include deputy examiners and examiners pro tem.

B. Authorities and Duties. The examiner shall receive and examine available information, conduct public hearings and keep a record thereof, and enter decisions as provided for herein.

C. Effect of Decisions.

1. The decision of the hearing examiner on the following matters shall be final unless such decision is appealed ~~to the legislative body~~ pursuant to YMC ~~15.16.060~~16.08.025:

a. Type (3) review decisions;

b. Variance requests;

c. ~~Home occupations~~Interpretation requests;

d. Unclassified home occupation decisions;

d.e.Revocation proceedings under YMC Chapter 15.24;

e.f. Nonconforming uses;

f.g. Appeals of decision by the building official or administrative official; and

g.h. Any other authorized decision not expressly listed in subsection (C)(2) of this section.

2. The decision of the hearing examiner on rezone applications shall constitute a recommendation to the legislative body; provided, that rezone applications initiated by the city to implement a newly adopted or amended comprehensive plan, or which are of broad general applicability, shall be heard by the city of Yakima planning commission.

## **15.20.060 Legislative body.**

The legislative body shall have the following authority and duties:

~~Decide appeals from the hearing examiner as specified in YMC Chapter 15.16;~~

1. Amend this title through the procedures outlined in YMC Chapter [15.23](#);
2. Amend the Yakima urban area comprehensive plan; and
3. Perform any other act or duty authorized by law.

### **15.13.070 Appeals.**

Any decision by the administrative official to deny issuance of a permit for a Class (1) use may be appealed to the hearing examiner under the provisions of YMC [16.08.030](#). [An approval with a condition of approval is not considered a denial for purposes of this Section.](#)

### **15.15.070 Appeals.**

Decisions by the hearing examiner under Type (3) review may be appealed ~~to the legislative body~~ in accordance with YMC Chapter [16.08](#).

### **15.21.080 Appeals.**

~~The h~~Hearing examiner's decision may be appealed ~~to the legislative body~~ in accordance with YMC Chapter [16.08](#).

### **15.27.423 Appeals.**

The decision to grant, grant with conditions, or deny a flood hazard permit shall be final and conclusive unless the applicant appeals the decision pursuant to ~~the procedure established for appeals in Part Three of this chapter~~ YMC Chapter [16.08](#).

### **15.29.100 Wireless conditional use permit criteria.**

A. Uses Requiring Wireless Conditional Use Permit. Any wireless facility listed in Table 29-1 as a wireless conditional use permit (wireless CUP) requires submittal of a wireless CUP application as described in YMC [15.29.050](#). Wireless CUPs require a public hearing before the hearing examiner and final approval by the hearing examiner.

B. Criteria for Granting Wireless Conditional Use Permit. Before any conditional use may be granted, the hearing examiner must find that:



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1. The proposed use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed use or in the district in which the subject property is located;
2. The proposed use shall meet or exceed the performance standards that are required in the zoning district the proposed use will occupy;
3. The proposed development shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design;
4. The proposed use shall be in keeping with the goals and policies of the comprehensive land use policy plan; and
5. All reasonable and practicable measures have been taken to minimize the possible adverse impacts which the proposed use may have on the area in which it is located.

C. Authority to Impose Conditions. The hearing examiner may impose any conditions necessary to address identified impacts associated with the proposed wireless facility and ensure that the facility is compatible with surrounding development. The hearing examiner may:

1. Increase requirements in the standards, criteria or policies established by this title;
2. Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides or traffic;
3. Require structural features or equipment essential to serve the same purpose set forth above;
4. Impose conditions similar to those set forth in subsections (C)(2) and (3) of this section as deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters; provided, the hearing examiner may not, in connection with action on a conditional use permit, reduce the requirements specified by this title as pertaining to any use or otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;
5. Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses within the general area in which the use is proposed to be located; and

6. Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need.

D. Conditional Use Permits—Effect of Hearing Examiner Decision. The decision of the hearing examiner on a conditional use permit shall be final and conclusive with right of appeal to the city council Yakima County Superior Court in accordance with YMC 16.08.0430.

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### 15.29.110 Wireless height variance.

A. Applicability. A wireless height variance is required for any major modification to an existing tower, antenna, or base station or construction of a new tower, antenna, or base station that requires a height in excess of height limits defined in YMC 15.29.070(A)(2).

B. Variance from Other Standards. A major modification to an existing tower, antenna, or base station or construction of a new tower, antenna, or base station that requires variance from design criteria in YMC 15.29.070 other than height shall follow the standard variance procedures in Chapter 15.21 YMC (including review criteria).

C. Criteria for Granting Wireless Height Variance. The hearing examiner shall have the authority to grant a variance from the maximum height allowed for a tower, antenna or base station when, in his/her opinion, the conditions as set forth herein have been found to exist. A wireless height variance is subject to:

1. Compliance with standard wireless permit standards of YMC 15.29.120(D);
2. Standard variance procedures in Chapter 15.21 YMC (not including review criteria); and
3. All of the following criteria must be met:
  - a. The additional height is necessary to provide adequate service and no other alternative is available;
  - b. A significant portion of the tower and related facilities are screened by existing evergreen trees or existing structures;
  - c. Strict application of current height limits would deprive a tower or antenna operator from achieving the minimum height required to meet the proven wireless need;

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- d. The structure for which the variance is requested is in harmony with the general purpose and intent of this chapter;
- e. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity;
- f. Any visual impacts will be mitigated to the greatest extent possible using camouflage, stealth or screening as defined by this chapter;
- g. The location of the tower and antenna has been chosen so as to minimize the visibility of the facility from residentially zoned land and to minimize the obstruction of scenic views from public properties; and
- h. The variance is the minimum necessary to grant relief to the applicant.

D. Decision. Based upon the information provided by the applicant, the results of the visual impact analysis, and findings of compliance or noncompliance with the criteria set forth herein, the examiner may:

1. Approve an application for a variance, which may include additional requirements above those specified in this title or require modification of the proposal to comply with specified requirements or local conditions; or
2. Deny a variance if the proposal does not meet or cannot be conditioned or modified to meet subsection C of this section.

E. Burden of Proof. The applicant has the burden of proving that the proposed wireless height variance meets all of the necessary criteria.

F. Wireless Height Variance—Effect of Hearing Examiner Decision. The decision of the hearing examiner on a wireless height variance shall be final and conclusive with right of appeal to the Yakima County Superior Court in accordance with YMC 16.08.040..

## **16.08.025 Appeal of the hearing examiner's decision.**

A. Appeals. The decision of the hearing examiner shall be final and conclusive unless appealed to the legislative body by a person aggrievedYakima Superior Court under YMC 16.08.040, a party of record, or by any agency of the city affected by the hearing examiner's decision in the following manner:

- 1.—The appealing party must file a complete written notice of appeal with the division upon forms prescribed by the department and accompanied by the appeal fee within fourteen days from the date of mailing of the hearing examiner's final decision.

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2.—The notice of appeal shall specify the claimed error(s) and issue(s) that the legislative body is asked to consider on appeal and shall specifically state all grounds for such appeal. Issues or grounds of appeal that are not so identified need not be considered by the legislative body.

3.—The notice of appeal shall include a sworn statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

4.—The city council shall hear appeals of all decisions of the hearing examiner during a public meeting or a limited hearing for receipt of oral legal argument, unless precluded by law.

B.—Appeal Procedures—Notice of Appeal.

1.—Notice of Filed Appeal. The planning division shall notify the parties of record and appellant that an appeal has been filed and that copies of the notice of appeal and any written argument or memorandum of authorities accompanying the notice of appeal may be obtained from the division.

2.—Content of Notice of Filed Appeal. The notice to parties of record and appellant shall contain the following statements:

All parties named in the appeal of the hearing examiner's decision wishing to respond to the appeal may submit a written argument or memorandum to the legislative body within thirty days from the date that the notice is mailed; and any written argument or memorandum shall not include the presentation of new evidence and shall be based only upon the facts presented to the examiner.

C.—Submittal of Written Argument or Memorandum.

1.—The named parties to the hearing examiner's decision may file with the division a written argument or memorandum of authority within thirty days of the date of mailing of the notice of a filed appeal.

2.—Rebuttal to Written Argument and Memorandum. Upon completion of the thirty-day submittal period for submission of any written argument and memorandum, the parties named in the appeal of the hearing examiner's decision, at their expense, may obtain copies of any such submissions, and shall be provided a fifteen-day rebuttal period which starts on the thirty-first day from the date of mailing of the notice of the filed appeal.

3.—Extension of Time for Written Argument and Memoranda.

a.—No written argument or memorandum of authorities may be thereafter submitted except by the legislative body's approval of a written request for an extension for cause. Requests for extension must be made no later than the last date the memoranda would otherwise be due.

b.—The legislative body may grant further extensions on a finding by the legislative body of the existence of extenuating circumstances which warrant such extension(s).



c.—Upon granting an extension, a notice of extension shall be given to all parties of record, and the notice shall include the statement that:

Written arguments and memoranda shall not include the presentation of any new evidence and shall be based only on the facts presented to the examiner.

D.—Transfer of Record to Legislative Body. When a timely appeal has been filed and the deadline for receipt of written memoranda and arguments and all extensions have passed, the division shall deliver to the legislative body a copy of the examiner's decision, the evidence presented to the examiner, a recording of the hearing before the examiner, and any written argument or memorandum of authority which the division has received.

E.—An appeal shall be dismissed by the city council if:

- 1.—It is filed by a person without standing to appeal;
- 2.—The city council does not have jurisdiction to hear the appeal;
- 3.—It is not timely filed;
- 4.—The appeal fees are not timely paid; and/or
- 5.—It is not filed in accordance with the procedures set forth in these rules.

All motions to dismiss a defective appeal shall be filed within fifteen calendar days from the filing date of the appeal. (Ord. 2018-047 § 1 (Exh. C) (part), 2018).

## **16.08.030 Closed record appeal subject to review by the city council.**

A.—Setting the Hearing Date and Notice of the Appeal.

1.—Hearing Date. When the record and the examiner's decisions have been transmitted to the legislative body, the clerk of the legislative body shall schedule a date for a closed record appeal by the legislative body at which time the legislative body shall consider the appeal. The date of the appeal should not be later than twenty days following the date the legislative body receives the information from the division, unless a different date is agreed upon by the city and the parties to the appeal.

2.—Public Notice. The clerk of the legislative body shall mail written notice to the appellant, all parties named in the appeal of the hearing examiner's decision, all parties of record and the examiner to apprise them of the meeting date before the legislative body.

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B.—Hearing Must Be Open to the Public. The city council shall hear appeals of all decisions by the hearing examiner during a public meeting or a limited hearing for receipt of oral legal argument.

C.—A complete appeal application must be submitted prior to the scheduling of the council meeting or limited hearing.

D.—The closed record appeal shall be on the record before the city council, and no new evidence shall be presented. The city council may, however, choose to do a site visit as part of its review. The record shall include all materials received in evidence at any previous stage of the review, audio/visual tapes of the prior hearing(s), the final order being appealed, and argument by the parties at the examiner's hearing.

E.—The appellants and any respondents to the appeal shall have the opportunity to present oral and written argument. Oral argument shall be confined to the prior established hearing examiner record and to any alleged errors in the decision. Participation in the closed record hearing is limited to the city, including all staff, the applicant for the proposal subject to appeal, and those persons or entities which have timely and properly filed complete written appeal statements (either as appellants or respondents).

F.—Following the closed record appeal hearing, the city council may affirm the decision of the examiner, remand the matter back to the hearing examiner with appropriate directions, or may reverse or modify the hearing examiner decision. If the council determines there is no error in the examiner's decision, it may adopt the findings of the examiner and accept the decision of the hearing examiner. If the city council renders a decision different from the decision of the examiner, the city council shall adopt amended findings and conclusions accordingly. (Ord. 2018-047 § 1 (Exh. C) (part), 2018: Ord. 98-66 § 1 (part), 1998).

## **16.08.040 Judicial appeals Appeal to Superior Court.**

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