



CITY OF STANWOOD COUNCIL AGENDA STAFF REPORT

ITEM NUMBER: 7a

DATE: November 21, 2016

SUBJECT: Land Use Review Process Proposed Changes – Ordinance 1419 – Second Reading and Final Adoption

CONTACT PERSON: Ryan C. Larsen, Community Development Director

ATTACHMENTS: A - Ordinance 1419 – Land Use Review Process
B - Planning Commission minutes from May 23, 2016
C - Community Development Committee minutes from June 9, 2016

ISSUE

The issue before the City Council is to review the Planning Commission recommendation and determine whether or not the City Council should allow for second reading and final adoption of Ordinance 1419.

RECOMMENDATION

1. Review and discuss the proposed Planning Commission recommendation as well as Ordinance 1419.
2. Allow for second reading and final adoption of Ordinance 1419 amending Title 15, Title 16 and Title 17 for the land use review process.

SUMMARY STATEMENT

City staff has been in the process of making several miscellaneous draft updates to the Land Use Code for the City of Stanwood over the last several months. These edits have been in front of both the Planning Commission and the Community Development Committee on more than one occasion. One of the major edits deals with the processing of land use applications.

Staff introduced the changes to both the Commission and Council Community Development Committee and received feedback on the proposed edits. Based on the Commission and Committee's comments, staff made changes to the proposals and have included the proposed recommendation in the attached ordinance. Staff has also worked with the City Attorney to make changes to Ordinance 1419.

Staff issued a SEPA threshold determination of non-significance on May 10, 2016 and sent the changes to the Department of Commerce for the required review period on May 5, 2016. The City asked for expedited review (10 business day review) for all of the edits. The SEPA threshold determination of non-significance also included a notice for the public hearing to be held on May 23, 2016.

Finally, the Planning Commission finalized recommendations on the proposed edits at the May 23, 2016 Planning Commission meeting (Public Hearing). The following schedule remains for the processing of Ordinance 1419:

- City Council 2nd reading and final adoption November 21, 2016

The Planning Commission, at their public hearing on May 23, 2016, made the following recommendation:

“I MOVE TO RECOMMEND CITY COUNCIL APPROVE THE PROPOSED EDITS TO THE LAND USE PROCESS AS DRAFTED BY STAFF IN ATTACHMENT A THROUGH ATTACHMENT F.”

The Community Development Committee made the following recommendation at their June 9, 2016 meeting:

“I MOVE TO SUPPORT THE PLANNING COMMISSION’S RECOMMENDATION TO CITY COUNCIL.”

DISCUSSION

The Stanwood Municipal Code currently does not provide description of the land use process for the various types of applications such as a Type I, Type II, Type III, Type IV, or Type V permit.

Staff created two new Chapters: Chapter 17.81A – Procedures and Chapter 17.81B – Type of Land Use Review. Chapter 17.81A – Procedures establishes procedures for processing project permit applications and for adopting and amending Comprehensive Plans and development regulations. These procedures are intended to promote land use decisions that further the goals and policies of the Comprehensive Plan. Chapter 17.81B – Type of Land Use Review describes the process and procedures for each type of land use application. It also discusses the appeal process.

With the creation of these two new chapters Chapter 17.80 – Administration needed to be edited to ensure consistency with the two new chapters. Several sections within this chapter were moved to either Chapter 17.81A or Chapter 17.81B.

Chapter 17.85 – Public Hearings was completely deleted and is incorporated within both Chapter 17.81A and Chapter 17.81B. Also, Chapter 17.87 – Hearing Examiner had to be amended to account for the two new chapters and the changes to Chapter 17.80.

Other sections required minor edits within Titles 15, 16 and 17 in order to ensure consistency between all of the code edits and recommended changes.

The City attorney finished suggesting minor edits to Ordinance 1419 on September 27, 2016. Staff has incorporated the attorney edits into the proposed ordinance.

FINANCIAL IMPACT

None.

COMMITTEE RECOMMENDATION

City staff met with the Community Development Committee on Thursday June 9, 2016 prior to the City Council meeting to discuss the proposed edits. The Community Development Committee supported the edits as proposed.

CITY COUNCIL OPTIONS

1. Allow for second reading and final adoption of Ordinance 1419 amending Title 15, Title 16 and Title 17 for the Land Use Review Process.
2. Do not support second reading and final adoption of Ordinance 1419 amending Title 15, Title 16 and Title 17 for the Land Use Review Process.
3. Do not support Ordinance 1419 amending Title 15, Title 16 and Title 17 for the Land Use Review Process and direct staff to address specific Council issues or concerns prior to Council reconsidering the ordinance.

RECOMMENDED ACTION

I MOVE TO APPROVE SECOND READING AND FINAL ADOPTION OF ORDINANCE 1419 AS SET FORTH IN ATTACHMENT "A" BY AMENDING TITLE 15, TITLE 16 AND TITLE 17 FOR THE LAND USE REVIEW PROCESS.

CITY OF STANWOOD
Stanwood, Washington

ORDINANCE 1419

AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON, AMENDING PORTIONS OF STANWOOD MUNICIPAL CODE TITLE 15 ENTITLED "FOREST PRACTICES", TITLE 16 ENTITLED "SUBDIVISIONS" AND TITLE 17 ENTITLED "ZONING" BY AMENDING SECTION 15.50.020 ENTITLED "WAIVER FOR ONE SINGLE-FAMILY RESIDENCE AND OUTBUILDINGS"; AMENDING SECTION 15.50.030 ENTITLED "WAIVER FOR ALL OTHER DEVELOPMENT PERMITS"; ADDING A NEW SECTION 16.15.160 ENTITLED "APPEAL"; ADDING A NEW SECTION 16.20.120 ENTITLED "APPEAL"; AMENDING SECTION 16.35.230 ENTITLED "APPEAL"; AMENDING SECTION 16.40.070 ENTITLED "ALTERATIONS, VACATIONS, AND APPEALS"; AMENDING CHAPTER 17.80 ENTITLED "ADMINISTRATION"; ADDING A NEW CHAPTER 17.81A ENTITLED "PROCEDURES"; ADDING A NEW CHAPTER 17.81B ENTITLED "TYPES OF LAND USE REVIEW"; REPEALING CHAPTER 17.85 ENTITLED "PUBLIC HEARINGS"; AMENDING CHAPTER 17.87 ENTITLED "HEARING EXAMINER"; AMENDING SECTION 17.114.120 ENTITLED "EXCEPTION – PUBLIC AGENCY AND UTILITY"; AMENDING SECTION 17.114.130 ENTITLED "EXCEPTION – REASONABLE USE"; AMENDING SECTION 17.150.083 ENTITLED "RESCISSION OF PERMITS"; AMENDING SECTION 17.155.030 ENTITLED "PROCEDURE FOR AMENDMENTS TO THE ZONING CODE"; ESTABLISHING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, under the State Growth Management Act (GMA), the City is authorized to adopt concurrent zoning code amendments to implement its Comprehensive Plan; and

WHEREAS, amendments to the zoning code are required to ensure consistency with the Comprehensive Plan; and

WHEREAS, the development regulation amendment procedures contained in this ordinance are consistent with the procedural guidelines for amendments to the development regulations of the City; and

WHEREAS, the City has permit types in which a land use process was not clearly communicated for each type of permit in the land use code; and

WHEREAS, this ordinance will now clearly establish a process for each permit type; and

WHEREAS, on March 28, 2016 and May 9, 2016 the Stanwood Planning Commission reviewed the amendments set forth in this Ordinance during the amendment process; and

WHEREAS, the City of Stanwood SEPA Responsible Official reviewed the amendments and issued a Determination of Non-significance (DNS) on May 9, 2016; and

WHEREAS, on May 23, 2016, following notice as required by law, a public hearing was held by the Planning Commission and all persons wishing to provide public input concerning the proposed amendments set forth in this Ordinance were heard; and

WHEREAS, public notice of the SEPA DNS and the above-referenced public hearing were provided as required by law; and

WHEREAS, the City Council Community Development Committee reviewed the Planning Commission's recommendation for the proposed edits to Title 15, Title 16 and Title 17 relating to the City's land use process at their June 9, 2016 regular meeting and provided direction on each of the proposed amendments; and

WHEREAS, the City Council reviewed the recommendation from the Planning Commission at their June 23, 2016 regular meeting; and

WHEREAS, pursuant to RCW 36.70A.106, the City has notified the Washington State Department of Commerce of the City's intent to adopt the proposed amendments to the zoning code and asked for expedited review of those amendments contain in this Ordinance; and

WHEREAS, the City Council has determined that it is in the best interests of the City to amend Title 15, Title 16 and Title 17, all related to zoning and development as contained in this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF STANWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. SMC Section 15.50.020 entitled "Waiver for one single-family residence and outbuildings" is hereby amended to read as follows:

15.50.020 Waiver for one single-family residence and outbuildings.

(1) The six-year moratorium may be waived for constructing a single-family residence or outbuildings, or both, on a legal lot and building site where such activity complies with all applicable city ordinances.

(2) Such waiver may be issued by the planning director where a finding can be made that granting the waiver meets the criteria noted in SMC 15.50.040. Before

acting on the request for waiver of the moratorium, the planning director or designee shall issue a notice of application (NOA) consistent with the procedures under ~~SMC 17.80.033(1)(c)~~ SMC 17.81B.225, including a 15-day comment period; provided further, where the initial critical areas review and site visit conclude that no critical areas have been affected, or do not exist, the planning director may waive the NOA requirement and issue the waiver. (Ord. 1091 § 1, 2000).

Section 2. SMC Section 15.50.030 entitled “Waiver for all other development permits” is hereby amended to read as follows:

15.50.030 Waiver for all other development permits.

(1) For all other development approvals, including but not limited to subdivisions, short plats, comprehensive plan amendments, rezones, special use permits, variances, and fill and grade permits (except where fill and grading is necessary to serve a single-family residence associated with a waiver request), the city shall require a public hearing before the hearing examiner consistent with the procedures contained in Chapter 17.87 SMC.

(2) The hearing examiner shall give notice of public hearing pursuant to SMC ~~17.85.010~~ 17.81B.340. In addition, the hearing examiner or designee shall cause to be mailed a notice of the public hearing to:

- (a) Appropriate state agencies including but not limited to Washington State Department of Ecology, Department of Natural Resources, Department of Fish and Wildlife;
- (b) Any local agencies with jurisdiction;
- (c) Appropriate tribal governments; and
- (d) Any other interested parties who have, in writing, commented on the application or requested notice of the public hearing.

(3) Based upon public comment received at the public hearing (if required) and the decision criteria of SMC 15.50.040, the planning director or the hearing examiner may authorize, conditionally authorize, or deny a waiver of the development moratorium. (Ord. 1091 §1, 2000).

Section 3. SMC Chapter 16.15 is hereby amended to add a new Section 16.15.160 entitled “Appeal” is hereby added to read as follows:

Sections:

- 16.15.010 Presubmittal conference.
- 16.15.020 Repealed.
- 16.15.030 Preliminary plat application submittal.
- 16.15.040 Time limit for action.
- 16.15.050 Consent to access.
- 16.15.060 Environmental checklist and determination.
- 16.15.070 Specific requirements.
- 16.15.080 Distribution.
- 16.15.090 Review criteria.

- 16.15.100 Planning commission review.
- 16.15.110 Hearing – Notice procedure.
- 16.15.120 Hearing – Public record.
- 16.15.130 Notification of action.
- 16.15.140 Duration of approval.
- 16.15.150 Amendments.
- 16.15.160 Appeal.

16.15.160 Appeal.

Any person aggrieved by the final decision of the hearing examiner may appeal the decision pursuant to 17.81A.265 and 17.81A.210(4).

Section 4. SMC Chapter 16.20 is hereby amended to add a new Section 16.20.120 entitled “Appeal” to read as follows:

Sections:

- 16.20.010 Final plat submittal.
- 16.20.020 Specific requirements.
- 16.20.030 Permanent control monuments.
- 16.20.040 Survey of subdivision and preparation of plat.
- 16.20.050 Drafting standards.
- 16.20.060 Approval.
- 16.20.065 Duration of approval.
- 16.20.070 Plats within flood zone.
- 16.20.070 Plats containing private streets.
- 16.20.090 Filing for record.
- 16.20.100 Filing by subdivider.
- 16.20.110 Dedication, acknowledgments, and certifications.
- 16.20.120 Appeal.

16.20.120 Appeal.

Any person aggrieved by the final decision of the city council may appeal the decision pursuant to 17.81A.265 and 17.81A.210(4).

Section 5. SMC Section 16.35.230 entitled “Appeal” is hereby amended to read as follows:

16.35.230 Appeal.

Any person aggrieved by the final decision of the public works director and the planning director may appeal the decision pursuant to ~~SMC 17.80.090~~ 17.81A.265 and 17.81A.210(4).

Section 6. SMC Section 16.40.070 entitled “Alterations, vacations, and appeals” is hereby amended to read as follows:

16.40.070 Alterations, vacations, and appeals.

(1) Alterations. Once a binding site plan is recorded, any deviations from the site plan shall require the filing of an amended binding site plan. The application

materials, procedures, review criteria, standards, etc., shall be the same as for the initial binding site plan.

(2) Vacation of a recorded binding site plan shall be approved by the planning director prior to recording.

(3) Appeals of binding site plans shall be allowed as provided in SMC ~~17.80.090~~ 17.81A.265 and ~~17.80.130~~ 17.81A.210(4). (Ord. 1110 § 2, 2002).

Section 7. SMC Chapter 17.80 entitled “Administration” is hereby amended to read as follows:

Chapter 17.80 ADMINISTRATION

Sections:

17.80.010 *Repealed.*

17.80.020 Reserved.

17.80.030 Site development permit purpose and applicability – Major and administrative permits, when required.

17.80.031 Site development permit terms and conditions.

17.80.032 When permit is not required.

17.80.033 Major site development permit review procedures.

17.80.034 Administrative site development permit review procedures.

17.80.035 Application for site development permits.

17.80.036 Criteria for approval of an application and issuance of a site development permit.

17.80.037 Permit modification.

~~17.80.040 Consolidated permit review process.~~

17.80.050 Administrative authority.

17.80.060 Exceptions.

17.80.070 Occupancy permit.

17.80.080 Grading permits.

~~17.80.090 Appeals of permit decisions.~~

17.80.100 Development agreements.

17.80.110 Variances.

17.80.115 Administrative interpretations.

17.80.120 Conditional use permits.

~~17.80.130 Table of land use procedures.~~

17.80.010 Planning commission.

Repealed by Ord. 1316. (Ord. 1249 §§ 5, 6, 2009; Ord. 1110 § 3, 2002; Ord. 963 §§ 1 – 9, 1996; Ord 447 §§ 4, 8, 9, 1975).

17.80.020 Reserved.

(Ord. 1253 § 2, 2009; Ord. 1084, 2000; Ord. 969, 1996; Ord. 929 Ch. 8(B), 1995).

17.80.030 Site development permit purpose and applicability – Major and administrative permits, when required.

(1) Purpose and Applicability.

(a) The purpose of this chapter shall be to provide a coordinated review of zoning and other development regulations and to ensure that proposed site development complies with the city’s comprehensive plan, zoning regulations, public works standards, and other applicable development regulations.

~~(b) On or after the effective date of this code, any person wishing to undertake a development, except as provided in SMC 17.80.032, shall obtain an administrative site development permit and a major site development permit if applicable, in addition to obtaining any other permit required by law, prior to performing or undertaking any such development project. When a major site development permit is required, the major site development permit shall be processed first, and the administrative site development permit shall be processed upon completion of the major development permit review process.~~

(2) Administrative site development permits shall be processed as a Type I application and shall be issued for all projects except as provided in SMC 17.80.032 by the community development director in accordance with SMC 17.80.034, only after all requirements of this title have been met.

(3) Major site development permits shall be processed as a Type II application and shall be issued for major projects as defined herein by the community development director in accordance with SMC 17.80.033, only after all requirements of this title have been met.

(4) A project shall be deemed to be a major project if it exceeds any of the following criteria:

Major Site Development Permit Threshold Table

Zoning District	Acreage OR	Nonresidential Floor Area	Dwelling OR Units
SR 12.4	N/A	N/A	N/A
SR 9.6	N/A	N/A	N/A
SR 7.0	N/A	N/A	N/A
SR 5.0	N/A	N/A	N/A
MR	1 Acre	12,000+ SF	40+
NB	1 Acre	12,000+ SF	N/A
MB-I	1 Acre	12,000+ SF	20+
MB-II	1 Acre	12,000+ SF	20+
GC	1 Acre	12,000+ SF	N/A

Major Site Development Permit Threshold Table

Zoning District	Acreege OR	Nonresidential Floor Area	Dwelling OR Units
LI	1 Acre	12,000+ SF	N/A
GI	1 Acre	12,000+ SF	N/A
TN	1 Acre	12,000+ SF	40+
NOTE: SF = Square Feet N/A = Not Applicable			

(5) Land use actions that cause the demolition without replacement of more than 10 units of affordable housing as defined by this code shall be subject to all major site development permit requirements.

(6) Activities that under other laws, codes and regulations of the state or the federal government require an environmental impact statement shall be deemed a major project for permit processing purposes. (Ord. 1398 § 20, 2015; Ord. 1345 § 2, 2013; Ord. 1253 § 3, 2009; Ord. 1110 § 3, 2002; Ord. 1037, 1998; Ord. 969, 1996; Ord. 929 Ch. 8(C)(1), 1995).

17.80.031 Site development permit terms and conditions.

(1) Any site development permit that is issued shall be subject to the terms and conditions imposed by the community development director to ensure that such development will be in accordance with the provisions of the Comprehensive Plan, this code and the Shoreline Master Program. The review of a proposed development may continue concurrently with a proposed Comprehensive Plan amendment if the timing of the development proposal corresponds with the Comprehensive Plan process and schedule.

(2) While reviewing ~~project site development~~ permit applications, the city shall combine the environmental review process, both procedural and substantive, with the procedure for review of project permits; and except for the determination of significance as provided in RCW 43.21C.075, the city shall provide for no more than one open record hearing and one closed record appeal per permit. If an open record pre-decision hearing is provided prior to the decision on a project permit, the process shall not allow a subsequent open record appeal hearing. ~~Please reference SMC 17.80.033, Major site development permit review procedures, and SMC 17.80.130, Table of land use procedures, for specific procedures.~~

(3) The city shall establish and maintain a permit review process that provides for the integrated and consolidated review and decision on two or more project permits relating to a proposed project action. This includes a combined application review and approval process covering all project permits requested by an applicant for all or part of a project action and a designated permit coordinator. If an applicant elects the consolidated process, the determination of completeness, the notice of application, and notice of final decision must include all project permits being reviewed through the consolidated permit

review process. Please reference SMC ~~17.80.040~~ 17.81A.220(7), Consolidated permit review process, for specific procedures.

(4) The city may require a pre-application conference or a public meeting by rule, ordinance, or resolution.

(5) The city shall monitor and enforce permit decisions and conditions.

(6) The city is not liable for damages due to the city's failure to make a decision within the time limits established in this chapter.

(7) Re-application. If an application for a site development permit is denied, the applicant may not submit another application for development of the same property sooner than 120 calendar days after the date of such denial.

(8) Permit Commencement and Expiration. ~~Any development approved by a site development permit shall be commenced within 24 months from the date such permit is issued. Site development permits shall expire in accordance with Section 17.81B.135 (Type I), 17.81B.245 (Type II), and 17.81B.360 if processed as a Type III permit. For site development permits, one a maximum of two 12-month extension may be granted for good cause by the approval body that approved the original permit Community Development Director. The approval body may, however, determine at its discretion that a public hearing may be required for such extension.~~

(9) The site development permit shall be considered commenced when a building permit is issued.

(10) Phased development authorized in one site development permit may be commenced with separate building permits, however each phase must be initiated within the required 24-month period. As long as the development of a phased project conforms to the approved phasing plan, the zoning regulations in effect at the time of the original approval shall continue to apply. However, all construction shall conform to the International Building Code and International Fire Code regulations in force at the time of building permit application.

(11) Any construction authorized by a building permit shall be commenced ~~within 180 days from the date the permit is issued~~ in accordance with SMC 14.04.020(1)(c). Failure to commence substantial development within such period shall cause the site development permit to lapse and render it null and void. ~~No extensions shall be granted.~~ For purposes of this section, a permit shall be considered issued on the date it is signed by the building official or community development director.

(12) Evidence of Ownership or Legal Interest. Upon filing an application, the applicant shall be required to show evidence in writing of his or her legal interest in and the right to perform development upon all property on which work would be performed if the application is approved, including submittal of all relevant legal documents. Where the applicant is not the owner of the property, the owner must co-sign the application before it will be accepted for filing. The applicant shall have the burden of demonstrating to the

satisfaction of the community development director the current validity of the legal interest upon which he or she bases any part of the application before such application can be deemed to be complete. The city may require the applicant for a project permit to designate a single person or entity to receive determinations and notices required by this code. The applicant for a project permit is deemed to be a participant in any comment period, open record hearing, or closed record appeal. (Ord. 1398 § 21, 2015; Ord. 1345 § 3, 2013; Ord. 1253 § 4, 2009; Ord. 1110 § 3, 2002; Ord. 969, 1996; Ord. 929 Ch. 8(C)(2), 1995. Formerly 17.80.040).

17.80.032 When permit is not required.

(1) Notwithstanding any provision in this code to the contrary, no site development permit shall be required pursuant to this code for the following types of development:

- (a) Accessory structures in a residential zone that do not require a building permit;
- (b) Right-of-way permits that do not require a grading permit;
- (c) Fences;
- (d) Signs;
- (e) Demolition of an existing structure; and
- (f) The repair, maintenance, or interior remodeling of an existing structure where such activities do not result in an addition, enlargement or expansion of the existing facility.

However, this does not preclude the requirement for a building permit for any exempted activities.

(2) Where immediate action by a person is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster or serious accident, or in other cases of emergency, the requirement of obtaining a site development permit prior to initiating such action under this section may be waived by the community development director. The applicant shall notify the community development director, in writing, of the type and location of the work, the length of time necessary to complete the work, and the name of the person or public agency conducting the work. This shall be done within 30 days following the disaster, accident, or other emergency. However, this shall not preclude the requirement for building permits for such activity. (Ord. 1253 § 5, 2009; Ord. 969, 1996; Ord. 929 Ch. 8(C)(3), 1995. Formerly 17.80.050).

17.80.033 Major site development permit review procedures.

(1) Permit Required. Any person wishing to undertake a major project as defined in this section shall obtain a major site development permit from the community development director, in addition to obtaining any other permit required by law from any public agency prior to performing or undertaking any development, in accordance with the

procedures of this section.

(2) A major site development permit shall be processed as a Type II permit as identified in Chapter 17.81B Part II – Type II Review – Administrative Decisions with Public Notice. However, if during the notice of application comment period the city receives five (5) comment letters of general concern or a request for a public hearing, the application shall be processed as a Type III permit.

~~(a) Prior to the submittal of any application for a major site development permit, the applicant shall attend a pre-application meeting scheduled by the community development director. The purpose of this meeting shall be to afford the applicant an opportunity to discuss the proposed development and receive guidance with regard to required submittals.~~

~~(b) Determination of Completeness. Upon submission of any application, the community development director will determine whether such application is complete in the form of a determination of completeness as required by RCW 36.70A.440. The city shall mail or provide in person a written determination that the application is complete or incomplete and what is necessary to make the application complete. The determination of completeness shall be submitted to the applicant in no event more than 28 days after receipt thereof. An application shall be deemed complete if the city does not provide a written determination of completeness to the applicant within 28 days after formal application submittal. If the application is incomplete, and the applicant submits to the city the additional information necessary to complete the application, the city shall notify the applicant within 14 days whether the application is complete or what additional information is necessary. A project permit application is complete when it meets the procedural submission requirements of the city 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 city 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 actions occur.~~

~~(c) Notice of Application:~~

~~(i) A notice of application shall be provided to the public and the departments and agencies with jurisdiction as provided under RCW 36.70B.110. If the city made a determination of significance under Chapter 43.21C RCW concurrently with the notice of application, the notice of application shall be combined with the determination of significance and scoping notice. A determination of significance and scoping notice may be issued prior to the notice of application.~~

~~(ii) Upon determination that an application for a major site development permit is complete, a notice of application shall be provided within 14~~

~~days after the determination of completeness. The following shall be included in the determination:~~

~~(A) The date of application, the date of the notice of completion;
(B) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070 or 36.70B.090;~~

~~(C) The identification of other permits not included in the application to the extent known by the city;~~

~~(D) The identification of existing environmental documents that evaluate the proposed project, and the location of where the application and any studies can be reviewed;~~

~~(E) A statement that the public comment for the city is 14 days, following the date of the notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. The city may accept public comments at any time prior to the closing of the record of an open predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;~~

~~(F) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and consistency;~~

~~(G) Any other information determined appropriate by the city community development director.~~

~~(iii) The notice of application shall be provided at least 15 days prior to issuance of a decision.~~

~~(iv) Methods of Notice of Application. Notice of application shall be given by the following methods:~~

~~(A) Publication in an official newspaper pursuant to SMC 1.08.010;~~

~~(B) Posting the site in a location visible from a city right-of-way;
and~~

~~(C) Sending the notice to all property owners within 300 feet of the site.~~

~~(v) A notice of application shall not be required for project permits that are categorically exempt under Chapter 43.21C RCW, unless a public comment period or an open record predecision hearing is required.~~

~~(vi) The city shall integrate the permit procedures in this section with environmental review under Chapter 43.21C RCW as follows:~~

~~(A) Except for the determination of significance, the city shall not issue its threshold determination, or issue a decision or recommendation on a project permit until the expiration of the~~

~~public comment period on the notice of application.~~

~~(B) If an open record predecision hearing is required and the city's threshold determination requires public notice under Chapter 43.21C RCW, the city shall issue its threshold determination at least 15 days prior to the open record predecision hearing.~~

~~(d) Upon determination by the community development director that an application for a major site development permit is complete, the director shall promptly transmit a copy thereof to all relevant city agencies. Such agencies shall review and submit their comments on the application to the community development director within 15 working days of the receipt thereof.~~

(e) (3) The community development director shall prepare a staff review notice, based on the information provided by the applicant and such additional investigation as is deemed necessary, apprising the planning commission of the general intent of the proposed development, including the type of project that is contemplated (i.e., residential, commercial, planned residential development, etc.), the location of the project, its size (i.e., number of dwelling units, height of structures, square feet of nonresidential space, etc.), and any other information deemed to be relevant. This review shall be completed and be available for review no later than five working days prior to the public meeting with the planning commission. The applicant may have the opportunity to provide comments to the commission. Following the planning review, they shall provide comments to staff on the proposed project.

~~(f) The community development director may request the applicant to provide such additional information as is necessary to meet the requirements in the performance standards set forth in this code to ensure that a complete review is performed.~~

~~(g) Whenever the review process on a proposed major development has stopped because of a request for additional information, the applicant shall have up to 180 calendar days to supply the information. If said information is not supplied within this time, the application for development of the project shall be deemed to be null and void. Any further consideration of such a project shall require a new submittal of an application for development.~~

~~(h) In rendering a decision on an application for a site development permit, the community development director shall take into account information gathered by the planning department. The community development director shall also consider the written reviews provided by all other designated governmental agencies and any parties of record. All of these written reviews shall be retained in the files of the office of the community development director on the particular project in question.~~

~~(i) The sole authority to approve final plats and adopt or amend platting~~

ordinances shall reside with the city council.

~~(j) Notice of Decision. It shall be the stated policy of the city of Stanwood that for a major site development permit application, a period of 120 days shall be allocated for the review and rendering of a decision. This time period shall begin when it has been determined that a full and complete application has been submitted and the determination of completeness has been issued to the applicant and shall end when a notice of decision has been issued. The city shall provide a notice of decision that also includes a statement of any threshold determination made under Chapter 43.21C RCW and the procedures for administrative appeal, if any. The notice of decision may be a copy of the report or decision on the project permit application. The notice shall be provided to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application.~~

~~(k) In determining the number of days that have lapsed in the 120-day permit review period, the following are excluded:~~

~~(i)(A) Any period during which the applicant has been requested by the city to correct plans, perform required studies, or provide additional required information. The time shall be calculated from the date the local government notifies the applicant of the need for additional information until the city determines that the additional information satisfies the request for information or 14 days after the date the information has been provided to the city.~~

~~If the city determines that the additional information submitted by the applicant under this subsection (1)(k)(i)(A) is insufficient, it shall notify the applicant of the deficiencies, and the procedures under this subsection (1)(k)(i)(A) shall apply as if a new request for studies had been made;~~

~~(B) Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 43.21C RCW, if the city by ordinance or resolution has established time periods for completion of an EIS, or if the city and the applicant agree, in writing, to a time period for completion of an EIS;~~

~~(C) Any period for administrative appeals of project permits if an open record appeal hearing or a closed record appeal, or both, are allowed. The city establishes the following time periods to consider and decide on such appeals. The time period shall not exceed (1) 90 days for an open record appeal hearing; and (2) 60 days for a closed record appeal. The parties to an appeal may agree to extend these time periods; and~~

~~(D) Any extension of time mutually agreed upon by the applicant and the city.~~

~~(ii) The time limits established by subsection (1)(k)(i) of this section do~~

not apply if a project permit application:

- (A) Requires an amendment to the comprehensive plan or a development regulation;
 - (B) Requires approval of a new fully contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.70A.200; or
 - (C) Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete under RCW 36.70B.070.
- (iii) If the city is unable to issue its final decision within the time limits provided in this code, it shall provide written notice of this fact to the applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.
- (iv) This section shall apply to project permit applications filed on or after June 1, 1996.

(l) The applicant may propose conditions on the use and development of the property to be rezoned that may mitigate otherwise unacceptable adverse effects of the proposed action. These conditions may be incorporated into a contract between the city and property owner as a necessary requirement of any rezoning consideration. Failure to fulfill the contract conditions shall void any rezoning action and the property shall revert to the previous zoning classification.

(m) A single report shall be submitted stating all the decisions made as of the date of the report on all project permits included in the consolidated permit process that do not require an open record predecision hearing and any recommendations on project permits that do not require an open record predecision hearing. The report shall state any mitigation required or proposed under the agency's authority under RCW 43.21C.060. The report may be the permit. If the threshold determination other than the determination of significance has been issued previously by the city, the report shall include or append this determination.

(n) If an application for a permit is denied, the applicant may submit another application for a permit no sooner than 120 calendar days after the date of such denial. However, such new application may not be submitted in the same form as the one that was denied. The burden to show that any new application is substantially different than the one that was denied shall lie with the applicant.

(o) Interpretation of this code shall take place at the pre-application meeting with staff. At the request of the project applicant, an interpretation of the code may be appealed to the city hearing examiner.

~~(2) The applicant has the burden of proof to demonstrate compliance with these requirements. Any application that does not comply with all of the requirements shall be denied. (Ord. 1398 § 22, 2015; Ord. 1345 § 4, 2013; Ord. 1253 § 6, 2009; Ord. 1110 § 3, 2002; Ord. 1084 § 3, 2000; Ord. 969, 1996; Ord. 929 Ch. 8(C)(4), 1995. Formerly 17.80.060).~~

17.80.034 Administrative site development permit review procedures.

(1) A permit application shall be considered administrative when the project does not meet the threshold set forth in the Major Site Development Permit Threshold Table in SMC 17.80.030. ~~Also reference SMC 17.80.130, Table of land use procedures.~~ Administrative site development permits shall be processed as a Type I permit identified in Chapter 17.81B Part I – Type I Review – Administrative Decision Without Notice.

~~(2) Prior to submittal, the applicant may be required to attend a pre-application meeting per SMC 17.80.130. Upon submittal of an application for an administrative site development permit, the community development director will determine whether such application is complete, and that the project complies with all applicable performance standards. If it is determined that such application is not complete, or does not comply with all applicable performance standards, the applicant shall be promptly notified, in no event more than 28 calendar days after receipt thereof, of the deficiencies in such application.~~

~~(3) If it is found, once the review process for a permit has begun, that additional information is needed to properly evaluate the application, the community development director shall request, in writing, whatever additional data or information is needed. The applicant shall have 90 days to supply the information. If the requested information is not supplied within this timeline, the application shall be deemed null and void.~~

~~(4) A period of 45 working days shall be allocated for the review and rendering of a decision for an administrative site development permit application. This time period shall begin when it has been determined that a full and complete application has been submitted, and shall not include periods during which the applicant is responding to the city's request(s) for revisions or additional information. This policy in no way shall be interpreted as a definitive time period. Rather, it should be viewed as a framework or working guideline for the applicant and the city. (Ord. 1253 § 7, 2009; Ord. 1110 § 3, 2002; Ord. 969, 1996; Ord. 929 Ch. 8(C)(5), 1995. Formerly 17.80.070).~~

17.80.035 Application for site development permits.

All applications for site development permits shall provide the information required on the relevant application checklist provided by the city, which may require at least the following information; provided, however, that the applicant may request a waiver of any of the following requirements. Unless the applicant can prove to the satisfaction of the community development director's office that a waiver is appropriate, he or she shall supply the following information:

(1) Eight copies of a site plan, to a scale of 100 feet to one inch, prepared by a registered engineer, architect, landscape architect, or land surveyor illustrating the

proposed development of the property and including, but not limited to, the following:

- (a) Topographical features showing present grades and any proposed grades if present grades are to be altered. Unless otherwise required by the community development director, contours at an interval not greater than five feet shall be shown;
- (b) Property boundary lines and dimensions including any platted lot lines within the property;
- (c) Location and dimensions of all existing and proposed buildings, including height in stories and feet and including total square feet of ground area coverage;
- (d) Location and dimensions of all existing and proposed driveways and entrances, minimum setback dimensions and, where relevant, relation of setback dimensions to the height of any side of any building or structure;
- (e) Location and dimensions of parking stalls, access aisles, and total area of lot coverage of all parking areas and driveways;
- (f) Location and dimension, including height clearance, of all off-street loading areas;
- (g) Location, designation and total area of all usable open space, including use of any paved areas as distinguished from grass, sodded, or other landscaped areas;
- (h) Location and height of fences, walls (including retaining walls), or screen planting, and the type or kind of building materials or planting proposed to be used;
- (i) Proposed surface stormwater drainage treatment;
- (j) Location of easements or other rights-of-way;
- (k) Location and designation of any open storage space; and
- (l) Location and designation of any documented historic sites.

(2) Eight copies of a location map, at a scale of 200 feet to one inch showing, at a minimum, the uses of all property within 200 feet of the subject property, including the following:

- (a) All streets, alleys or other public rights-of-way, public parks and places and all lots and lot lines, drainage ways, waterways, and easements;
- (b) All structures and the principal use of each structure, including the type of residential, commercial, or industrial use; and

(c) All off-street parking and loading areas as may be significant to the application in question.

(3) Any other information as may be required by the community development director to determine that the application is in compliance with this code shall be furnished, including but not limited to wetlands, aquifer or groundwater recharge zones, floodplains, elevations, profiles, perspectives, or any other material necessary for a complete understanding of the application.

(4) A statement in writing signed by the applicant stating that the information as shown on the plans, maps, and application is true and correct. Any failure to comply with the provisions of this section shall be good cause to deny the application and/or to revoke any permit which may have been issued for any building or use of land. (Ord. 1253 § 8, 2009; Ord. 1110 § 3, 2002; Ord. 969, 1996; Ord. 929 Ch. 8(C)(8), 1995. Formerly 17.80.100).

17.80.036 Criteria for approval of an application and issuance of a site development permit.

A site development permit shall be granted if the city finds, based on substantial evidence in the record, that the development complies with each of the following criteria:

(1) The development is consistent with the goals, policies, requirements and performance standards of this title, the street and utility standards (Chapter 14.14 SMC) the Comprehensive Plan and other applicable laws and regulations;

(2) The development project as proposed incorporates, to the maximum extent feasible, mitigation measures to substantially lessen or eliminate all adverse environmental impacts of the development;

(3) The development is connected to the city water, sewer, and stormwater systems. (Ord. 1356 § 21, 2013; Ord. 1253 § 9, 2009; Ord. 1164 § 4, 2004; Ord. 1084 § 3, 2000; Ord. 969, 1996; Ord. 929 Ch. 8(D), 1995. Formerly 17.80.120).

17.80.037 Permit modification for Site Development Plans.

(1) Minor Modifications to an Approved Site Development Plan. Minor modifications to a site development plan may be permitted by administrative decision. To be considered a minor modification, the amendment must not:

(a) Involve more than a 10 percent increase in area or scale of the development in the approved site development plan; or

(b) Have a significantly greater impact on the environment and facilities than the approved plan; or

(c) Change the boundaries of the originally approved plan.

(2) Major Adjustments to an Approved Site Development Plan. Major adjustments to an

approved site development plan require a new application pursuant to SMC 17.80.035. The review and approval shall rest with the approval body which approved the original site development plan. Major adjustments involve a substantial change in the basic site design plan, intensity, density, use, and other zoning code issues and generally involve more than a 10 percent change in area or scale. (Ord. 1253 § 10, 2009).

17.80.040 Consolidated permit review process.

~~(1) Consolidated permit review may provide different procedures for different categories of project permits, but if a project action requires project permits from more than one category, the applicant may request and the city shall provide for consolidated permit review with a single open record hearing and no more than one closed record appeal as provided in Section 407 of RCW 36.70A.440. The determination of which project permits are subject to one open record hearing and one closed record appeal shall be based on the Table of Land Use Procedures.~~

~~Examples of categories of project permits include but are not limited to:~~

~~(a) Proposals that are categorically exempt from SEPA, such as construction permits, that do not require environmental review or public notice;~~

~~(b) Permits that require environmental review but no open record pre-decision hearing; and~~

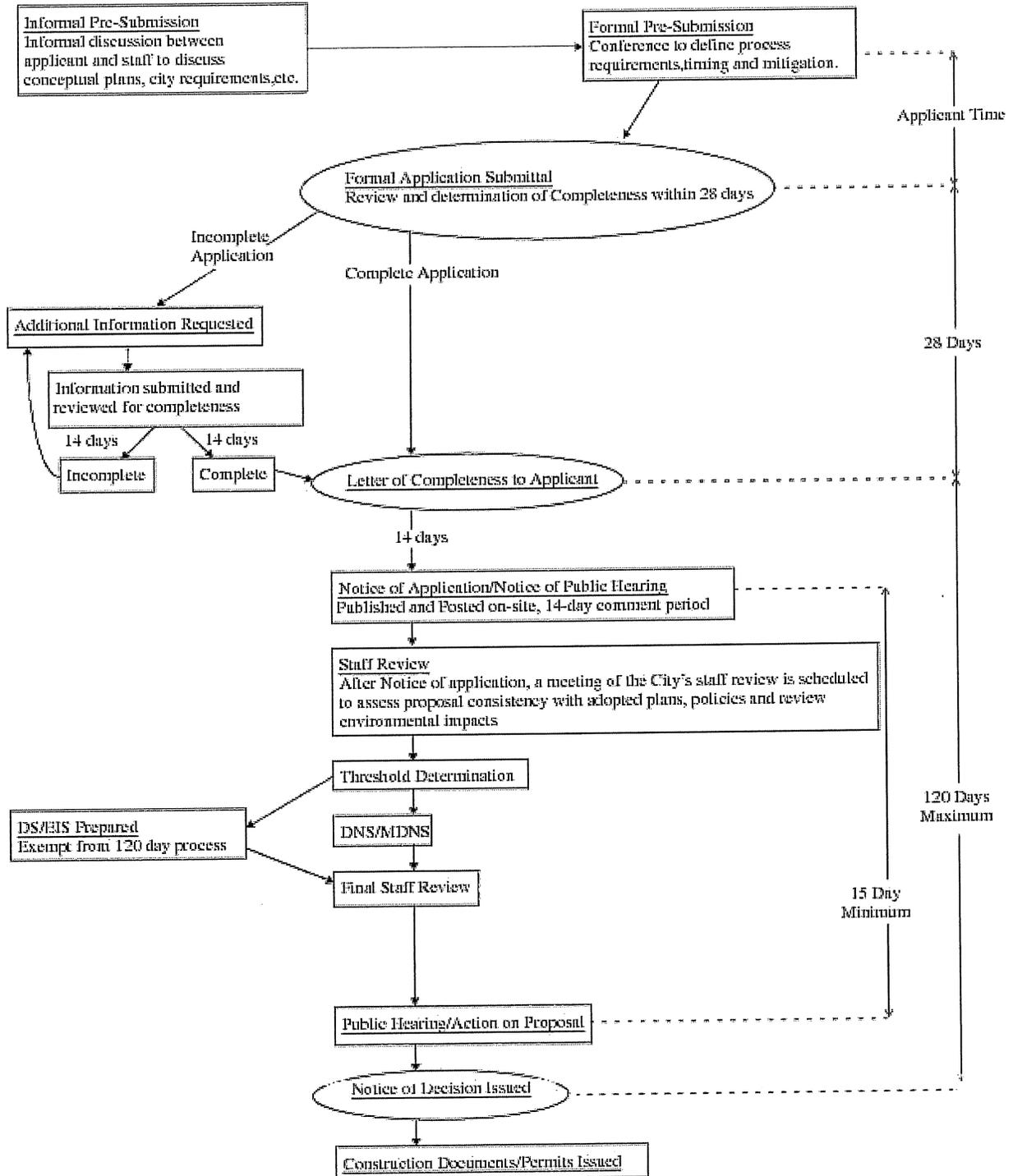
~~(c) Permits that require a threshold determination and an open record pre-decision hearing and may provide for a closed record appeal to a hearing body.~~

~~(2) For consolidated project review, the city's hearing examiner shall conduct the open record pre-decision hearing and shall make the decision; the city council shall conduct the closed record appeal. (Ord. 1253 § 11, 2009; Ord. 1110 § 3, 2002; Ord. 1084 § 3, 2000; Ord. 969, 1996; Ord. 929 Ch. 8(C)(7), 1995. Formerly 17.80.090).~~

(IMAGE BELOW IS TO BE DELETED AS WELL)

City of Stanwood

Consolidated Permit and Environmental Review Process Common Projects Requiring Open Record Hearing



17.80.050 Administrative authority.

(1) The community development director may, consistent with the intent of the Comprehensive Plan and zoning code and consistent with other applicable laws and regulations, issue written interpretations as he/she deems necessary to carry out the provisions of this code. Such interpretations shall include but are not limited to the following:

(a) Information to be required in the application, including, without limitation, proof of legal interest in the property, authority to sign the application, drawings, maps, data, and charts concerning land and uses and areas in the vicinity of the proposed development, and appropriate supplementary data reasonably required to describe and evaluate the proposed development and to determine whether the proposed development complies with statutory criteria under which it might be approved;

(b) Interpretation of development standards, zoning use provisions and procedural requirements;

(c) Standards, in addition to those set out in this code, for determining whether a project requires a major development permit; and

(d) Requirements for the conduct and continuance of public hearings and the methods of providing public notice on projects and permits.

(2) The community development director may administratively determine the format and contents of permits, application forms, application checklists, additional information needs, and notices above and beyond the minimums set forth in this code.

(3) Interpretations and determinations issued pursuant to this code may be appealed to the hearing examiner in accordance with SMC ~~17.80.090~~ 17.81A.210(4). (Ord. 1253 § 12, 2009; Ord. 1110 § 3, 2002; Ord. 1084 § 3, 2000; Ord. 969, 1996; Ord. 929 Ch. 8(C)(9), 1995. Formerly 17.80.110).

17.80.060 Exceptions.

The city elects to exclude the following project permits from the provisions of RCW 36.70B.070 and 36.70B.080:

(1) Landmark designations;

(2) Street vacations;

(3) Lot line adjustments;

(4) Short plats;

(5) Similar administrative approvals, which are categorically exempt from environmental

review or for which environmental review has been completed in connection with other project permits and which are not a “project permit” as defined in RCW 36.70B.020(4); and

(6) Other approvals relating to the use of public areas or facilities or other project permits, whether administrative or quasi-judicial, which present special circumstances that warrant a review process different from that provided in RCW 36.70B.070 and which are not a “project permit” as defined in RCW 36.70B.020(4). (Ord. 1253 § 13, 2009; Ord. 1110 § 3, 2002; Ord. 969, 1996; Ord. 929 Ch. 8(C)(6), 1995. Formerly 17.80.080).

17.80.070 Occupancy permit.

(1) No land area shall be occupied or used and no building hereafter erected or altered shall be occupied or used in whole or in part for any purpose whatsoever until an occupancy permit has been issued by the building official, stating that the premises, building, or other development complies with all provisions of this code; except that in the case of an alteration that does not require vacating the premises or where parts of the premises are finished and ready for occupancy before the completion of the alteration, or in the case of a new structure, before its completion, a conditional occupancy permit may be issued.

(2) No change or extension of use or no alteration shall be made in a nonconforming use without a building permit having first been issued by the building official that such change, extension or alteration is in conformity with the provisions of this code.

(3) Within 10 days from the date that an applicant requests that an occupancy permit be issued on his/her development project, the building official shall render a decision as to whether or not said occupancy permit is to be issued. If the decision is not to issue the occupancy permit, the building official shall so notify the applicant including the reasons for denial of the permit. If no occupancy permit has been issued within 10 working days of the written request thereof, and the building official has not informed the applicant of approval or denial, in writing, it shall be deemed that the building official approves the request and the applicant may legally occupy the premises. (Ord. 1253 § 14, 2009; Ord. 969, 1996; Ord. 929 Ch. 8(E), 1995. Formerly 17.80.130).

17.80.080 Grading permits.

(1) Purpose and Applicability. The purpose of this section shall be to regulate grading, excavating, filling, and the creation of impervious surface to safeguard life, property, and the environment. The provisions of this chapter apply to all grading activity.

(2) Exemptions.

(a) The following grading is exempt from the requirements of this chapter provided it occurs outside a critical area and is at least two feet from a property boundary line:

(i) Operation of a solid waste disposal site subject to a solid waste

permit pursuant to Chapter 70.95 RCW. The expansion, relocation, or closure of a solid waste disposal site is not exempt;

(ii) On-going commercial operations involving mining, quarrying, excavating, processing, or stockpiling of rock, sand, gravel, aggregate, or clay if such operations are authorized by a county conditional use permit or permitted elsewhere in this code. This exemption does not apply to reclamation activities; an operation which the director determines may destabilize or undermine any adjacent or contiguous property; or an operation which the director determines may result in adverse downstream drainage impacts.

(b) On-going commercial agricultural activities, as follows:

- (i) Tilling, soil preparation, and maintenance; and
- (ii) Fallow rotation, planting, and harvesting.

(c) Site investigative work necessary for land use application submittals such as surveys, soil borings and test pits, percolation tests, and other related activities, provided the land-disturbing activity is no greater than is necessary to accomplish the work.

(d) Excavation of a well for a single-family dwelling.

(e) Excavation or filling of cemetery graves.

(f) Grading or filling of less than 50 cubic yards, provided it occurs outside a critical area and buffer and is at least two feet from a property line.

(g) Utility and related underground drainage system construction and maintenance in city rights-of-way and outside of critical areas.

(h) Excavation performed during the construction of a building for which a valid building permit has been issued.

(i) Paving or the creation of less than 2,000 square feet of impervious surface, which requires no utilities.

(j) Emergency sandbagging, diking, ditching, or similar work immediately before, during, or after periods of extreme weather conditions, including flooding, when done to protect life or property.

(3) Other Laws. Approvals and permits granted under this chapter and any policies and procedures promulgated hereunder do not constitute waivers of the requirements of any other laws or regulations nor do they indicate compliance with any other laws or regulations. Compliance is still required with all applicable federal, state, and local laws and regulations.

(4) Accuracy of Plans.

(a) The city is not responsible for the accuracy of grading plans submitted for approval. The city expressly disclaims any responsibility for the design or implementation of a grading plan. The design and implementation of a suitable grading plan is the responsibility of the owner and applicant.

(b) The applicant or owner shall be responsible for the work to be performed in accordance with the approved plans and specifications and in conformance with the provisions of this code. Any person performing grading subject to a grading permit shall have a copy of a valid grading permit and plans on the work site at all times and shall also be responsible for compliance with the plans, specifications, and permit requirements.

(5) Applications. Grading permit applications shall meet the application checklist requirements provided by the planning department.

(6) SEPA. Grading applications for fills of 500 cubic yards or more or any fill located within a sensitive area or buffer shall require review under SEPA.

(7) Engineered Grading. The following require grading plans stamped and signed by a civil engineer:

(a) All grading in excess of 50 cubic yards. Such grading also requires submittal of a full drainage plan as specified in the application checklist provided by the community development department;

(b) All grading within rights-of-way, whether public or private. Such grading shall comply with city specifications;

(c) All grading plans for development activities that are subject to environmental review pursuant to SEPA;

(d) All paving in excess of 2,000 square feet; and

(e) All other grading that requires civil engineering.

(8) Geotechnical Reports.

(a) If the city determines that geologic, hydrologic, or soil conditions may present special grading or drainage conditions that may damage a public right-of-way or pose a substantial threat to public health, safety, or welfare, the city may require the applicant to submit a geotechnical engineering report that includes a soils engineering report and/or an engineering geology report pursuant to subsection (8)(b) and (8)(c) of this section. If a geotechnical engineering report is required, the applicant's geotechnical engineer or civil engineer shall inspect and approve the suitability of the prepared ground to receive fills and the stability of cut slopes with respect to soil, hydrologic, and geologic conditions. The geotechnical evaluation shall

also address the need for subdrains or other groundwater drainage devices. To verify safety, the city may require testing for required compaction, soil bearing capacity, stability of all finished slopes and the adequacy of structural fills as a condition of approval.

(b) Soils Engineering Report. The city may require a soils engineering report, which shall include data regarding the nature, distribution, and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, including structural fills, when necessary, and an opinion on adequacy for the intended use of sites to be developed by the proposed grading as affected by soils engineering factors, including the stability of slopes.

(c) Engineering Geology Report. The city may require an engineering geology report, which shall include an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and an opinion on the adequacy for the intended use of sites to be developed by the proposed grading, as affected by geologic factors.

(d) Liquefaction Report. The city may require a geotechnical investigation and report in accordance with IBC Sections 1802.2 and 1802.6, which address the potential for liquefaction.

(9) Permit Issuance. A grading permit shall be issued after all other necessary permits and plan approvals have been obtained or assured by other affected agencies (as allowed by state law), all fees have been paid, grading plans and specifications have been approved, and environmental review has been completed, if applicable.

(10) Filling of Wetlands. Filling of wetlands shall be subject to environmental review and the city's sensitive area regulations. Filling of wetlands may require permits from other federal and state agencies. It is the applicant's responsibility to obtain needed permits. All filling of wetlands within the city's floodplain is subject to the city's Shoreline Master Program.

(11) Permit Expiration.

(a) Grading permits shall expire 24 months from the date of issuance; provided, that the director may set an earlier expiration date for a permit, or issue a permit that is non-renewable, or both, if the director determines that soil, hydrologic, or geologic conditions on the project site necessitate that grading and drainage improvements and site stabilization be completed within less time.

(b) If a permit has expired, the applicant shall obtain a renewed permit before starting work authorized under the expired permit.

(c) A permit may be renewed once for up to 24 additional months except as

provided in subsection (15) of this section, and a request for renewal shall be made no later than 30 days after the date of expiration of the original permit.

(d) Requirements under this chapter that are not expressly temporary during the grading operations, including, but not limited to, requirements for erosion control, drainage, and slope management, do not terminate with the expiration of the grading permit.

(12) Inspections.

(a) Grading operations for which a permit is required shall be subject to inspection by the city. Professional inspection of grading operations shall be provided by the civil engineer, soils engineer, or the engineering geologist retained to provide such services for engineered grading and as required by the city, as follows:

(i) The civil engineer shall provide professional inspection, which shall consist of observation and review as to the establishment of line, grade, surface drainage and erosion control of the development area. If revised plans are required during the course of the work they shall be prepared by the civil engineer.

(ii) The soils engineer shall provide professional inspection, which shall include observation during grading and testing for required compaction. The soils engineer shall provide sufficient observation during the preparation of the natural ground and placement and compaction of the fill to verify that such work is being performed in accordance with the conditions of the approved plan and the appropriate requirements of this chapter. Revised recommendations relating to conditions differing from the approved soils engineering and engineering geology reports shall be submitted to the city.

(iii) The engineering geologist shall provide professional inspection, which shall include professional inspection of the bedrock excavation to determine if conditions encountered are in conformance with the approved report. Revised recommendations relating to conditions differing from the approved engineering geology report shall be submitted to the soils engineer.

(b) The applicant or owner shall be responsible for the work to be performed in accordance with the approved plans and specifications and in conformance with the provisions of this code, and shall engage consultants, if required, to provide professional inspections on a timely basis. In the event of changed conditions, the applicant or owner shall be responsible for informing the city of such change and shall provide revised plans for approval.

(c) The public works director or city engineer may inspect grading of

subdivisions to assure the future roadways, whether public or private, are graded in accordance with the approved plans and specifications and in conformance with provisions of the public works standards.

(d) The city shall inspect the project at the various stages of work requiring approval to determine that adequate control is being exercised by the professional consultants.

(e) If, in the course of fulfilling their respective duties under this chapter, the civil engineer, the soils engineer or the engineering geologist finds that the work is not being done in conformance with this chapter or the approved grading plans, the discrepancies shall be reported immediately in writing to the city.

(f) The city shall notify the applicant or owner of any discrepancies that would necessitate plan revisions or corrections by the professional consultants when notified in subsection (12)(e) of this section.

(g) The types of soils inspections and standards recognized as acceptable soils tests are:

- (i) ASTM D 1557, moisture-density relations of soils and soil aggregate mixtures;
- (ii) ASTM D 1556, in place density of soils by the sand-cone method; ASTM D 2167, the rubber-balloon method; or ASTM D 2937, the drive-cylinder method; and
- (iii) ASTM D 2922 and D 3017, in place moisture content and density of soils by nuclear methods.

(13) Transfer of Responsibility. If the civil engineer, the soils engineer, or the engineering geologist of record is changed during grading, the work shall be stopped until the replacement has agreed in writing to accept their responsibility within the area of technical competence for approval upon completion of the work in compliance with approved plans. It shall be the duty of the applicant or owner to notify the director or city in writing of such change prior to the recommencement of such grading.

(14) Completion of Work. Upon completion of the work, the civil engineer shall submit as-built drawings and a report to the city certifying that the completed project conforms to the conditions of the permit and the approved plans, and that all grading work, drainage facilities, erosion control measures, etc., have been completed in accordance with the issued permit. Minor deviations from the approved plans shall be listed in the report or noted on reproducible as-built drawings, which must be submitted with the report.

(15) Modifications to Permits.

(a) After issuance of a grading permit, the director may require modifications of grading plans, specifications, construction phasing and/or operations or

impose additional or more stringent standards and requirements, to the extent necessary to protect public health, safety and welfare. Such modifications, standards, or requirements may be necessary because of unusual circumstances or newly discovered site conditions including but not limited to soil type, topography, and weather conditions. Such modifications, standards and requirements may include but are not limited to scheduling, phasing or time restrictions.

(b) A phasing plan may be approved as part of a modified permit for incomplete portions of a grading proposal subject to the following requirements:

(i) In lieu of completing the required improvements the applicant shall provide a two-year bond or equivalent form of financial surety at 150 percent of the established cost of the improvements made pursuant to the grading permit when it is determined by the city engineer that the incomplete project requires additional erosion control, slope management and/or drainage improvements to protect adjacent and abutting property and/or critical areas on the site;

All phases of a plan shall be completed within 24 months of the approval of the modified permit except the director may set an earlier expiration date pursuant to subsection (11)(a) of this section.

(c) Standards. A phased grading plan shall provide:

A plan sheet delineating the phases and sequencing of proposed grading with proposed completion dates for each phase;
An explanation of why the phased plan is needed;
The percentage of remaining work to be completed as a separate phase and cost of each phase;
A revised plan sheet showing how each phase complies with the performance standards for the permit including describing the edge of the filled area and temporary erosion control;
Description of how site drainage will be controlled until the project is complete.

(16) Cuts or Excavations.

(a) Unless otherwise recommended in the approved soils engineering or engineering geology report, cuts shall conform to the provisions of this section. These provisions shall not apply to minor cuts which are less than four feet in height when such cuts do not pose a threat to adjoining property.

(b) The slope of cut surfaces shall be no steeper than is safe for the intended use and shall be no steeper than one unit vertical in two units horizontal (50 percent slope) unless the applicant furnishes a soils engineering report or an engineering geology report, or both, stating that the site has been investigated and giving an opinion that a cut at a steeper

slope will be stable and not create a hazard to public or private property.

(c) Slopes shall be stabilized after being cut. The soils engineering or an engineering geology report, or both, shall verify that the slopes shall not be subject to on-going erosion that would adversely impact public or private property.

(17) Fills or Embankments.

(a) General. Unless otherwise recommended in the approved soils engineering report, fills shall conform to the provisions of this section. These provisions shall not apply to minor fills not intended to support structures, and which are less than four feet in height when such fills do not pose a threat to adjoining property.

(b) Preparation of Ground. Fill slopes shall not be constructed on natural slopes steeper than one unit vertical in two units horizontal (50 percent slope).

(c) Fill Material.

(i) Detrimental amounts of organic material shall not be permitted in fills. Except as permitted by the city, no rock or similar irreducible material with a maximum dimension greater than 12 inches shall be buried or placed in fills.

(ii) Exception: The city may permit placement of larger rock when the soils engineer properly devises a method of placement, and continuously inspects its placement and approves the fill stability. The following conditions shall also apply:

(A) Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan;

(B) Rock sizes greater than 12 inches in maximum dimension shall be 10 feet or more below grade, measured vertically; and

(C) Rocks shall be placed so as to assure filling of all voids with well-graded soil.

(iii) Compaction. All fills intended to support structures or private roads shall be compacted to a minimum of 95 percent of maximum density. All fills within public or private rights-of-way shall be compacted in accordance with city specifications.

(iv) Slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than one unit vertical in two units horizontal (50 percent slope).

(18) Setbacks.

(a) Field Marking. Before performing any grading or clearing subject to a

grading permit pursuant to this chapter, the applicant shall mark, in the field, the limits of all proposed clearing and grading, sensitive and critical areas and their buffers, trees to be retained, and drainage courses.

(b) Cut and fill slopes shall be set back from site boundaries in accordance with this section. Setback dimensions shall be horizontal distances measured perpendicular to the site boundary.

(c) The top of cut slopes shall not be made nearer to a site boundary line than one-fifth of the vertical height of cut, but in no event nearer than two feet from the boundary line. The setback shall be increased as necessary for stability of any required subsurface drainage or surcharge.

(d) The toe of fill slope shall not be made nearer to the site boundary line than one-half the height of the slope, but in no event nearer than two feet from the boundary line.

(19) Drainage and Terracing.

(a) Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this section for cut or fill slopes steeper than one unit vertical in three units horizontal (33.3 percent slope).

(b) Terraces at least six feet in width shall be established at not more than 30-foot vertical intervals on all cut or fill slopes to control surface drainage and debris, except that where only one terrace is required, it shall be at mid-height. For cut or fill slopes greater than 60 feet and up to 120 feet in vertical height, one terrace at approximately mid-height shall be 12 feet in width. Terrace widths and spacing for cut and fill slopes greater than 120 feet in height shall be designed by the civil engineer and approved by the director or city. Suitable access shall be provided to permit proper cleaning and maintenance.

(c) Swales or ditches on terraces shall have a minimum gradient of one-half percent.

(d) Cut or fill slopes shall be provided with subsurface drainage as necessary for stability and proper conveyance of groundwater.

(e) All drainage facilities shall be designed to carry waters to the nearest practicable drainage way in a safe manner approved by the director or city. Outfalls or points of discharge shall be designed using best management practices and construction procedures which prevent or minimize erosion.

(f) Building pads shall have a drainage gradient of two percent toward approved drainage facilities, unless waived by the city. Exception: The gradient from the building pad may be one percent if all of the following

conditions exist throughout the permit area:

- (i) No proposed fills are greater than 10 feet in maximum depth;
- (ii) No proposed finish cut or fill slope faces have a vertical height in excess of 10 feet; and
- (iii) No existing slope faces steeper than one unit vertical in 10 units horizontal (10 percent slope) have a vertical height in excess of 10 feet.

(g) Paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes toward the cut and has a drainage path greater than 40 feet measured horizontally. Interceptor drains, if required, shall be paved with a minimum of three inches of concrete or gunite and reinforced. They shall have a minimum depth of 12 inches and a minimum paved width of 30 inches measured horizontally across the drain. The slope of drain shall be approved by the city.

(20) Erosion Control.

(a) The faces of cut and fill slopes shall be prepared and maintained to control against erosion. This control may consist of effective planting, hydroseeding, or mulching. The protection for the slopes shall be installed as soon as practicable, and prior to calling for final approval. Where cut slopes are not subject to erosion due to the erosion-resistant character of the materials, such protection may be omitted.

(b) Where necessary to provide safety to adjoining properties, check dams, cribbing, riprap, silt fences or other devices and methods shall be employed.

(c) Erosion control shall conform to the city's adopted stormwater manual. (Ord. 1338 §§ 2, 3, 2013; Ord. 1253 § 15, 2009; Ord. 1164 § 4, 2004. Formerly 17.80.135).

~~17.80.090 Appeals of permit decisions.~~

~~Any appeal as provided by SMC 17.80.130, combined with the appeal of any environmental determinations, shall be filed within 14 days*. The appeal period shall run from the publication date of the notice of decision or other notice that the decision has been made. The city shall extend the appeal period for an additional seven days, when the city allows public comment on a determination of nonsignificance issued as part of the appealable Type I project permit decision.~~

~~(1) Procedure on Appeals.~~

~~(a) Appeals shall be in writing on a form provided by the city.~~

~~(b) Appeals shall be delivered to the city clerk by 5:00 p.m. of the last day of the appeal period.~~

~~(c) Appeals may be sent by mail if the appeal is postmarked by 5:00 p.m. of~~

the last day of the appeal period.

~~(d) The city, after having been duly notified that an appeal has been filed, shall give public notice of a public hearing, as required by Chapter 1.08 SMC. Such public notice shall be in the same form and shall have the same filing date requirements as prescribed in Chapter 17.85 SMC.~~

~~(e) The city shall also serve persons notice of such hearing who own property within 300 feet of the subject property, the applicant for the development permit, the aggrieved person (if different than the applicant), any person who has requested in writing to be notified of such public hearing date, and the community development director.~~

~~(2) Party of Record. Only a party of record as defined by Chapter 17.20 SMC shall have standing to bring an appeal forward per SMC 17.80.130.~~

~~(3) Effect of Filing on Appeal. The filing of a notice of appeal shall stay any proceedings in furtherance of the action appealed, unless the community development director certifies in writing to the hearing body and the applicant that a stay poses an imminent peril to life or property, in which case the stay shall not stay further proceedings. The hearing body may review such certification and grant or deny a stay of the proceedings.~~

~~(4) Public Hearing. When provided by SMC 17.80.130, a public hearing on an appeal shall be held within 30 working days after the appeal is filed with the city clerk pursuant to subsection (1) of this section, and an action shall be taken by the hearing body within 15 working days after the conclusion of such public hearing. The hearing body may reverse, affirm or modify the decision, determination or interpretation appealed and in so modifying shall be deemed to have all of the powers of the community development director or hearing examiner, from whichever the appeal is taken, including the power to impose reasonable conditions to be complied with by the applicant. The city shall notify the applicant for the permit, the person or persons who filed the appeal, and any parties of record of its decision by certified mail. Such notice shall be mailed by first class mail, postage pre paid, within five working days of the hearing body's action.~~

~~(5) Closed Record Appeals. Any appeal of a decision which required a pre decision public hearing shall be heard by closed record appeal, as provided in SMC 17.80.130. No additional public hearing shall be held.~~

~~(6) Superior Court. City land use decisions may be appealed to superior court, as provided by SMC 17.80.130. The petition must be served on all parties involved within 21 days of the issuance of the city land use decision. (Ord. 1316 § 4, 2012; Ord. 1253 § 16, 2009; Ord. 1110 § 3, 2002; Ord. 1084 § 3, 2000; Ord. 969, 1996; Ord. 929 Ch. 8(G), 1995. Formerly 17.80.140).~~

~~*Code reviser's note: Ord. 1316, Section 4, contains an incorrect change in the number of days. The number of days now reads as the council intended during adoption.~~

17.80.100 Development agreements.

(1) The city may enter into a development agreement with a person having ownership or control of property within the city's jurisdiction. The city may enter into a development agreement for property outside its boundaries as part of a proposed annexation or service agreement.

(2) A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the property for the duration specified in the agreement.

(3) A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. The city and project applicants may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities.

(4) The city shall only approve a development agreement by ordinance or resolution after a public hearing.

(5) A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety. (Ord. 1253 § 17, 2009; Ord. 969, 1996; Ord. 929 Ch. 8(H), 1995. Formerly 17.80.150).

17.80.110 Variances.

(1) As provided by SMC ~~17.80.130~~ 17.81A.210(4), variances may be granted from the strict application of any land dimension, density, or height requirements of this title when, by reason of exceptional narrowness, shallowness, shape, or substandard size of specific parcels of property, or by reason of exceptional topographic conditions or other extraordinary situations or conditions of specific parcels of property. Strict application of this code or amendment thereto must be found to result in a practical difficulty or unnecessary hardship upon the owner of said property, provided:

(a) That such variance can be granted without substantial impairment of the intent, purpose, and integrity of this title and of the Comprehensive Plan of Stanwood; and

(b) That this variance shall not permit a use of land not authorized within the zoning district, increase in the volume of a building or structure, or increase the density of development beyond that permitted, as established by this code; and

(c) That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zoning district in which subject property is situated; and

(d) That the reasons set forth in the application justify the granting of the

variance, and that the variance is the minimum variance that will make possible the reasonable use of the land; and

(e) That there must be a finding that all of the following conditions exist:

- (i) That, if the owner or lessor complied with the provisions of this code, he or she would not be able to make reasonable use of his or her property;
- (ii) That the difficulties or hardships are peculiar to the property in question in contrast with those of other properties in the same district;
- (iii) That the hardship was not the result of the applicant's own action (applicant's own action shall not include the purchase of the property); and
- (iv) That the hardship is not merely financial or pecuniary.

(2) The fact that property may be utilized more profitably will not be an element of consideration.

(3) Application for a variance shall be made by petition of the subdivider or other permit applicant stating fully the necessity of the variance and the specific requirement for which the variance is requested.

(4) If a variance is in conjunction with a preliminary plat or other major permit application requiring a public hearing, it shall be so stated in the public notice of hearing, and a single hearing shall be held.

(5) Public notice of a hearing on a variance shall be given pursuant to ~~SMC 17.85.010 17.81A.260~~. If no hearing is required, notice of application for variances shall be given pursuant to ~~SMC 17.80.033(1)(c)(iv)~~ 17.81A.225. No decision shall be made until a 14-day comment period has passed. (Ord. 1253 § 18, 2009; Ord. 1110 § 3, 2002; Ord. 1084 § 3, 2000. Formerly 17.80.155).

17.80.115 Administrative interpretations.

(1) This section establishes the procedure and criteria that the city will use in deciding upon a written request to interpret the provisions of this title. The interpretation of the provisions of a development agreement or concomitant agreement will be treated as an interpretation of the zoning code.

(2) Applicability. This section applies to each written request to interpret the provisions of the zoning code.

(3) Purpose. An interpretation of the provisions of the zoning code clarifies conflicting or ambiguous wording or the scope or intent of the provisions of the zoning code. A request for a zoning code interpretation must relate to a specific site, land use district, use or application within the city of Stanwood. An interpretation of the provisions of the zoning code may not be used as, or considered to be, an amendment to the zoning code.

(4) Applicable Procedure.

(a) The community development director (director) shall interpret the provisions of the zoning code in conformance with this section.

(b) A zoning code interpretation requested by a person other than the project proponent or property owner must be requested prior to the date of expiration of any applicable administrative appeal period for a land use decision on the application to which the request relates. Any zoning code interpretation requested after the applicable administrative appeal period shall not affect an issued permit or decision.

(c) The director shall determine how to process the zoning code interpretation request. The request may be:

- (i) Processed pursuant to SMC 17.80.130 ~~17.81A.210(4)~~, Table of Land Use Procedures, Type I; or
- (ii) Consolidated with the process for the review of the application; provided, that an appeal of a zoning code interpretation consolidated with the process associated with the review of the application shall be consolidated with the appeal of the decision on the underlying application.

(5) Submittal Requirements. Any person requesting an interpretation of the zoning code shall submit a written request on a form provided by the city specifying each provision of the zoning code for which an interpretation is requested, why an interpretation of each provision is necessary, and any reasons or material in support of a proposed interpretation.

(6) Factors for Consideration. In making an interpretation of the provisions of the zoning code, the director shall consider the following factors:

- (a) The applicable provisions of the zoning code, including their purpose, intent, and context;
- (b) The impact of the interpretation on other provisions of the municipal code;
- (c) The implications of the interpretation for development within the city as a whole;
- (d) The applicable provisions of the comprehensive plan and other relevant codes and policies; and
- (e) Any applicable state statutes and court decisions.

(7) Effect of Interpretation. An interpretation of the zoning code issued under this section shall have the same effect as any provision of the zoning code.

(8) Time Limitation. An interpretation of the zoning code remains in effect until rescinded in writing by the director.

(9) Fee. The fee for administrative interpretations shall be as listed in Chapter 3.30 SMC, Fee Schedule. (Ord. 1264 § 1, 2010).

17.80.120 Conditional use permits.

(1) Purpose. The purpose of conditional and administrative conditional use permits is to allow certain uses in districts where they are normally prohibited by this title, when the proposed uses are deemed consistent with other existing and potential uses within the general area of the proposed use. Except as provided in this section, a conditional use permit may not reduce the requirements of the zone in which the use is to be located.

(2) Who May Apply. A property owner, or his duly authorized agent, may file an application for a conditional or administrative conditional use permit, when the proposed use or development requires any such permit as set forth in the zone districts.

(3) City Authority. The hearing examiner shall have the authority to permit conditional uses as a Type III permit following an open record public hearing pursuant to SMC 17.80.130. The community development director shall have the authority to permit administrative conditional uses as a Type II permit following a notice of application and comment period subject to SMC ~~17.80.130~~ 17.81A.210(4).

(4) Applicant's Responsibility. The application shall set forth fully the grounds and the facts justifying the granting of the conditional or administrative conditional use permit.

(5) Fees. Fees for a conditional or administrative conditional use permit shall be as listed in Chapter 3.30 SMC, Fee Schedule.

(6) Decision Criteria. The reviewing official shall consider the following factors, among all other relevant information:

(a) Comprehensive Plan. The proposed use shall be compatible with the general purpose, goals, objectives and standards of the Comprehensive Plan, the zoning regulations and any other plan, program, map or ordinance of the city of Stanwood.

(b) Community Need. There shall be a community need for the proposed use at the proposed location. In the determination of community need the reviewing official shall consider the following factors, among all other relevant information:

(i) The proposed location shall not result in either the detrimental overconcentration of a particular use within the city or within the immediate area of the proposed use;

(ii) That the proposed location is suited for the proposed use.

(c) Effect on Adjacent Properties. The proposed use at the proposed location shall not result in substantial or undue adverse effects on adjacent property. The following factors shall be considered:

- (i) Compatibility. The proposed use shall be compatible with the scale and character of the neighborhood.
- (ii) Traffic. Traffic and circulation patterns of vehicles and pedestrians relating to the proposed use and surrounding area shall be reviewed for potential effects on, and to ensure safe movement in, the surrounding area.
- (iii) Noise and Glare. Potential noise, light and glare impacts shall be evaluated based on the location of the proposed use on the lot and the location of on-site parking areas, outdoor recreational areas and refuse storage areas.
- (iv) Landscaping. The hearing examiner may require additional landscaping to buffer adjacent properties from potentially adverse effects of the proposed use.
- (v) Public Improvements. The proposed use and location shall be adequately served by and not impose an undue burden on any public improvements, facilities, utilities and services. Approval of a conditional use permit may be conditioned upon the provision and/or guarantee by the applicant of necessary public improvements, facilities, utilities and/or services.

(7) Additional conditions for bed and breakfast uses in single-family residential zones are set forth in SMC 17.100.060.

(8) Additional conditions for school uses in single-family residential zones are set forth in SMC 17.100.070.

(9) Additional conditions for wireless communications facilities are set forth in Chapter 17.154 SMC.

(10) Additional conditions for ball parks, athletic fields, parks, playgrounds, community centers, houses of worship and meeting halls in residential zones are set forth in SMC 17.100.050.

(11) Additional conditions for medical marijuana collective gardens are set forth in SMC 17.100.045. (Ord. 1344 § 5, 2013; Ord. 1294 § 29, 2011; Ord. 1264 § 4, 2010; Ord. 1253 § 19, 2009).

~~17.80.130 Table of land use procedures.~~

~~The following table sets forth the appropriate public comment period; pre-decision meeting; city department, body, or officer responsible for decisions; the type of appeal that is allowed; and the agency, body, board, or court to whom an appeal is served.~~

TYPE OF APPLICATION	PUBLIC COMMENT/ NOTICE PERIOD	PRE-APPLICATION MEETING	OPEN RECORD HEARING	DECISION	OPEN RECORD APPEAL	CLOSED RECORD APPEAL	NON-CITY OR JUDICIAL APPEAL
Type I:							
Administrative site development permit, Grading permit, Sign permit	No	No	No	CDD	HE	No	Yes
Home occupation permit	No	No	No	CDD	HE	No	Yes
Accessory dwelling unit	No	No	No	CDD	HE	No	Yes
Parcel combination	No	No	No	CDD	HE	No	Yes
Manufactured housing infill	No	No	No	CDD	HE	No	Yes
Boundary line adjustment	No	No	No	CDD	HE	No	Yes
Administrative interpretation	No	No	No	CDD	HE	No	Yes
Encroachment permit	No	No	No	CDD/CE	HE	No	Yes
Administrative decision, modification, adjustment to standards	No	No	No	CE	HE	No	Yes
Type II:							
Variance (including flood hazard variance)*	14-day NOA or NOH	No	No	CDD*	HE	No	Yes
Sensitive area reasonable use allowance*	15-day NOA or NOH	No	No	CDD*	HE	No	Yes
Short plat, binding site plan	15-day NOA	CDD and CE	No	CDD	HE	No	Yes
Major site development permit	15-day NOA	CDD	No	CDD	HE	No	Yes
Shoreline substantial development permit	30-day NOA 15-day NOH	No	No	CDD	HE	No	Yes
Waiver of forest practices moratorium for single family residence	15-day NOA	No	No	CDD	No	No	No

TYPE OF APPLICATION	PUBLIC COMMENT/ NOTICE PERIOD	PRE-APPLICATION MEETING	PUBLIC MEETING/ RECOMMENDATION	OPEN RECORD HEARING	DECISION	OPEN RECORD APPEAL	CLOSED RECORD APPEAL	NON-CITY OR JUDICIAL APPEAL
SEPA determination	14 days (post determination)	No	No	No	CDD	HE	No	Yes
Concurrency evaluation	None	None	None	None	CE	HE	No	No
Right-to-farm registration	14-day posted notice of application	None	None	None	CDD	HE	No	No
Type III:								
Conditional use permit	15-day NOA 10-day NOH	No	No	HE	HE	No	No	Yes
Preliminary plat	15-day NOA 10-day NOH	CDD; CE	PC	HE	HE	No	No	Yes
PRD	15-day NOA 10-day NOH	CDD	PC	HE	HE	No	No	Yes
Shoreline CUP	30-day NOA plus 15-day NOH	No	No	HE	HE	No	No	Yes
Shoreline variance	30-day NOA plus 15-day NOH	No	No	HE	HE	No	No	Yes
Waiver of forest practices moratorium for non-single-family residence	15-day NOH	No	No	HE	HE	No	No	No
Type IV:								
Final plat	No	No	No	No	CC	No	No	Yes
Development agreement	10-day NOH	No	No	HE	HE recommendation CC decision	No	No	Yes
Right-of-way vacation	10-day NOH	CE	No	CC	CC Committee recommendation CC decision	No	No	Yes
Zoning map amendment	10-day NOH	CDD	No	PC	CC	No	No	Yes

TYPE OF APPLICATION	PUBLIC COMMENT/NOTICE PERIOD	PRE-APPLICATION MEETING	OPEN RECORD HEARING	DECISION	OPEN RECORD APPEAL	CLOSED RECORD APPEAL	NON-CITY OR JUDICIAL APPEAL
Type V:							
Comprehensive plan amendment	NOA 10-day NOH	None	PC++	PC recommendation** CC decision**	No	No	Yes
Development regulations amendments	10-day NOH	None	PC++	PC recommendation** CC decision**	No	No	Yes
SMC Title 14 amendment (street and utility standards)	10-day NOH	None	CC	CC	No	No	Yes
Annexation	15-day NOA 10-day NOH	CDD, CE	CC/SCBRB	CC/SCBRB	No	No	Yes

CC City Council

CE City Engineer

PC Planning Commission

HE Hearing Examiner CDD Community Development Director

SCBRB Snohomish County Boundary Review Board

NOH Notice of Hearing (per SMC 17.85.010) NOA Notice of Application (per SMC 17.80.033)

* The community development director shall have the option of referring the application to the hearing examiner for a public hearing and decision. In this case, an appeal of the hearing examiner's decision shall be heard in a closed record appeal as a judicial appeal.

** Either the planning commission or the city council may opt to hold one or more workshops or joint workshops on an application.

++ The city council may opt to hold the required public hearing(s).

(Ord. 1398 § 23, 2015; Ord. 1356 § 22 (Att. 1), 2013; Ord. 1345 § 5, 2013; Ord. 1316 § 5 (Att. 1), 2012; Ord. 1271 § 2, 2010; Ord. 1253 § 20, 2009; Ord. 1032 § 4, 2002; Ord. 1110 § 3, 2002; Ord. 1092 § 3, 2000; Ord. 1091 § 3, 2000; Ord. 1084 § 3, 2000; Ord. 969, 1996; Ord. 929 Ch. 8(H), 1995. Formerly 17.80.160).

Section 8. A new Chapter SMC Chapter 17.81A entitled "Procedures" is hereby added to Title 17 to read as follows:

**Chapter 17.81A
PROCEDURES**

Sections:

Part I. General Provisions

- 17.81A.010 Purpose and Applicability
- 17.81A.020 Delegation of Authority
- 17.81A.030 Planning Agency Identified
- 17.81A.040 Compliance with Title 17 Required
- 17.81A.050 Effect of Decisions
- 17.81A.060 Official File
- 17.81A.070 Acknowledgement of Owner

Part II. General Review Procedures

- 17.81A.110 Purpose
- 17.81A.120 Environmental Review
- 17.81A.130 Construction Plan Review
- 17.81A.140 Building and Construction Permit Review
- 17.81A.150 Phasing Development
- 17.81A.160 Post-Annexation Processing of Building and Related Permits and Land Use Applications
- 17.81A.170 Public Works Standards
- 17.81A.180 Security Mechanisms

Part III. Administrative Review Procedures

- 17.81A.205 Purpose
- 17.81A.210 Types of Review
- 17.81A.215 Land Use Permits Required
- 17.81A.220 Application Procedures
- 17.81A.225 Noticing Requirements
- 17.81A.230 Time Frames for Review
- 17.81A.240 Vacation of Approved Permits and Variances
- 17.81A.245 Expiration of Inactive Applications
- 17.81A.250 Expiration of Approvals and Approved Permits
- 17.81A.255 Revocation of Approved Permits
- 17.81A.260 Public Meetings and Public Hearings
- 17.81A.265 Appeals

Part IV. Duties, Authorities and Qualifications of Permit-Issuing and Review Bodies

- 17.81A.310 Purpose
- 17.81A.320 Planning Director

- 17.81A.325 Public Works Director
- 17.81A.330 Building Official
- 17.81A.350 Hearing Examiner
- 17.81A.360 Planning Commission
- 17.81A.370 City Council

Part I. General Provisions

17.81A.010 Purpose and Applicability.

The purpose of this chapter is to establish procedures for processing project permit applications and for adopting and amending Comprehensive Plans and development regulations. These procedures are intended to promote land use decisions that further the goals and policies of the Comprehensive Plan.

17.81A.020 Delegation of Authority.

Wherever this title refers to any of the following agents or any other agents of authority in the City, such agent may delegate the agent's authority in the implementation of this title to another competent agent acting in the agent's behalf.

17.81A.030 Planning Agency Identified.

The Planning Agency (Chapter 35A.63 RCW) for the City shall be composed of the following:

- (1) The Director of Community Development;
- (2) The Building Official;
- (3) The Director of Public Works;
- (4) The Hearing Examiner;
- (5) The Planning Commission; and
- (6) The City Council.

17.81A.040 Compliance with Title 17 Required.

(1) All land uses, activities, construction, clearing, grading, filling, development, and structural modifications or alterations shall comply with this title and with all permits and approvals granted for the use, activity, construction, clearing, grading, filling, development, intensification, or structural modifications or alterations. Except as required by state law, no permit or approval shall be issued for any parcel of land developed or divided in violation of this title.

(2) All divisions of land shall comply with this title. Any portion of a lot or lots that was used to calculate compliance with this title, standards, or regulations shall not be subsequently subdivided or segregated from such lot or lots or sold or transferred

separately from such lot or lots.

(3) Violations and Penalties.

(a) Any person violating any provisions of this title shall be subject to Title 13, Enforcement Code, and Chapter 17.160, Enforcement and Penalties.

(b) Any building, structure, development, activity, land use, or division of land, not in conformance with this title and not a legal nonconformance or exempted by a policy governing existing nonconforming structures or uses, is declared to be unlawful, substandard, and a public nuisance, and is subject to the enforcement and abatement provisions in Title 13, Enforcement Code, and Chapter 14.28, Enforcement and Penalties.

17.81A.050 Effect of Decisions.

(1) No Occupancy or Use of Property Until Requirements Fulfilled. Issuance of a land use permit authorizes the recipient to commence construction activity, subject to obtaining appropriate building permits, designed to support the approved land use. Actual commencement of the approved land use may not occur until all requirements of the permit have been satisfied.

(2) Transfer of Permit and Permit Applications on Successors and Assigns. Active land use permits and pending land use permit applications, including subdivisions, run with the land and therefore are transferable to new owners.

(3) Reapplication Following Denial of Permit. Whenever a land use permit or a variance is denied, such action may not be reconsidered for a period of one year from the date of denial unless the applicant clearly demonstrates that:

(a) The zoning classification or relevant development standards have changed;

(b) New information is available that could not with reasonable diligence have been presented at a previous hearing; or

(c) The project is modified in such a manner so as to correct the defects on which the original denial was based.

17.81A.060 Official File.

(1) The Director of Community Development shall compile an official file on each application filed containing the following:

(a) The application materials submitted by the applicant.

(b) Any staff reports prepared.

(c) All written testimony received on the matter.

- (d) The electronic recording and minutes of any public hearing on the matter.
- (e) The decision of the permit-granting authority on the permit.
- (f) Any other information relevant to the matter.
- (g) Certification of publication, and a copy of the mailed notification and the date of mailing.

(2) The official file is a public record. It is available for inspection and copying in the Community Development Department during regular business hours, though availability may be temporarily restricted during or prior to public hearings while staff is preparing for the hearing.

(3) Official files shall be kept pursuant to State retention requirements.

17.81A.070 Acknowledgement of Owner.

(1) All applications shall be signed by the property owner or an authorized representative and shall include an accurate description of the property to be subject to the requested permit.

(2) A developer shall operate under the property owner's authority.

(3) The developer and/or property owner is either an individual or a duly formed and qualified corporation, partnership or other legal entity.

(4) The person signing all applications or other legal documents is authorized by the legal entity and/or property owner to do so.

Part II. General Review Procedures

17.81A.110 Purpose.

The purpose of Part II is to provide general procedures for the review of development applications. Detailed administrative review procedures for applications and land use actions classified as Types I through Type V are outlined in Chapter 17.81B.

17.81A.120 Environmental Review.

Environmental review is conducted pursuant to Chapter 17.149, State Environmental Policy Act (SEPA).

17.81A.130 Construction Plan Review.

(1) Construction plan review is located in Section 16.30.010.

17.81A.140 Building and Construction Permit Review.

Procedures and requirements for administering and enforcing building and construction

codes are set forth in Title 14.

17.81A.150 Phasing Development.

(1) Projects may be completed in phases, provided the phasing meets the requirements of this section.

(2) The developer shall submit site plans that clearly show the various phases or stages of the proposed development and the requirements of this title that will be satisfied with respect to each phase or stage.

(3) Each phase must stand on its own in terms of meeting the requirements of the permit and this title. For example, improvements necessary to support Phase 1 cannot be deferred to be constructed at Phase 2.

(4) The circulation pattern at the end of each phase must result in a configuration that does not create traffic hazards and that adequately supports the level of traffic anticipated to be generated.

17.81A.160 Post-Annexation Processing of Building and Related Permits and Land Use Applications.

(1) The purpose of this section is to clearly state the process for processing of permits in newly annexed areas consistent with any adopted interlocal agreements.

(2) The City will honor subdivisions, short plats, and other projects that have already vested under Snohomish County development standards pursuant to this section.

(3) The County will continue the building permit review and project inspections of vested active projects and active land use permits pursuant to any adopted annexation interlocal agreement.

(4) After the effective date of an annexation, all new land use and building applications, not previously vested, shall conform to City regulations, and all plan reviews and inspections will be conducted by the City.

(5) Transfer by Request of an Applicant. An applicant may request a transfer of a pending building permit application from the County to the City by submitting a written request to the City. The City will recognize any intermediate approvals that are effective prior to transfer of the permit application.

(6) Permit Renewal or Extension. After the effective date of annexation, any request to renew a building permit or to renew or extend a land use permit issued by the County in the annexation area shall be made to and administered by the City and subject to the provisions of Section 17.81A.250.

(7) Applicant-Requested Change to County Vested Project or County Approved Land Use Permit. Once permit processing has been transferred to the City pursuant to

subsections (3) and (4) of this section, or a permit has been approved by the County pursuant to an adopted annexation interlocal agreement, an applicant may request a change to a permit from the City in compliance with the requirements within the applicable code section. Administrative modifications will be pursuant to County code; all other modifications will be pursuant to City code.

(8) Expiration of County Vested Permits. The vested status of permits in an annexation area which vested in the County before the effective date of the annexation shall expire pursuant to the County code. If the County code does not specifically address expiration, then Section 17.81A.250 shall govern expiration of vested status.

17.81A.170 Public Works Standards.

(1) The Public Works Standards are located in Section 16.30.020.

17.81A.180 Security Mechanisms.

(1) Security Mechanisms are located in Section 16.30.030.

Part III. Administrative Review Procedures

17.81A.205 Purpose.

It is the intent of Part III to provide the administrative review procedures for applications and land use actions classified as Types I through V.

17.81A.210 Types of Review.

(1) The purpose of this section is to provide an overview of the six levels of land use review. Land use and development decisions are classified into six processes based on who makes the decision, the amount of discretion exercised by the decision maker, the level of impact associated with the decision, the amount and type of input sought, and the type of appeal opportunity.

(2) Classification of Permits and Decisions.

(a) Type I Review - Administrative Decisions without Notice. A Type I process is an administrative review and decision by the appropriate department or division. Applications reviewed under the Type I process are minor administrative decisions and are exempt from certain administrative procedures, such as complete application review, noticing, and decision time frames. Appeals of Type I decisions are made to the Hearing Examiner, except shoreline permit appeals are made to the Shoreline Hearings Board. The permits and actions reviewed and decided as Type I are listed in the table in subsection (4) of this section.

(b) Type II Review - Administrative Decisions with Notice. A Type II process is an administrative review and decision with recommendation from staff, City departments or others and requiring public notice at the application and/or decision stages of the review. Appeals of Type II decisions are made to the Hearing Examiner, except shoreline permit appeals are made to the Shoreline Hearings

Board. The permits and actions reviewed and decided as Type II are listed in the table in subsection (4) of this section.

(c) Type III Review - Quasi-Judicial Decisions - Hearing Examiner. This Type III process is a quasi-judicial review and decision by the Hearing Examiner. The Hearing Examiner makes a decision based on a staff report. A public meeting may be held prior to the Hearing Examiner hearing with the Planning Commission. The Hearing Examiner considers public testimony received at an open record public hearing. Public notification is provided at the application, public hearing, and decision stages of application review. Appeals of Hearing Examiner decisions are made to Snohomish County Superior Court, except shoreline permit appeals are made to the Shoreline Hearings Board. The permits and actions reviewed and decided as Type III are listed in the table in subsection (4) of this section.

(d) Type IV Review - Quasi-Judicial Decisions - City Council. A Type IV process is a quasi-judicial review and decision by the City Council. Public notification is provided at the application, public hearing (if any), and decision stages of application review. There is no opportunity for an administrative appeal. Appeals of City Council decisions are made to Snohomish County Superior Court. The permits and actions reviewed and decided as Type IV are listed in the table in subsection (4) of this section.

(e) Type V Review - Legislative Decisions - City Council with Planning Commission Recommendation. A Type V review is for legislative and/or nonproject decisions by the City Council under its authority to establish policies and regulations regarding future private and public development and management of public lands. The Planning Commission makes a recommendation to the City Council. The Planning Commission will conduct a public hearing to obtain public testimony on the proposed legislation. The City Council may elect to conduct an additional public hearing. The actions reviewed and decided as Type V are listed in the table in subsection (4) of this section.

(3) Permits and Actions Not Listed. If a permit or land use action is not listed in Table 17.81A-I, the Planning Director shall make the determination as to the appropriate review procedure.

(4) Permit-Issuing Authority and Appeal Authority. The permit-issuing authority and appeal authority for permit applications and legislative actions are established in Table 17.81A-I. A detailed explanation for each review procedure is in Chapter 17.81B under each subsection for each review type.

Table 17.81A-I: Classification of Permits and Decisions

Type of Application	Public Comment/ Notice Period	Pre-application Meeting	Public Meeting/ Recommendation	Open Record Hearing	Decision	Open Record Appeal	Closed Record Appeal	Non-City or Judicial Appeal
Type I:								
Administrative site development permit, Grading permit, Sign permit	No	No	No	No	CDD	HE	No	Yes
Home occupation permit	No	No	No	No	CDD	HE	No	Yes
Accessory dwelling unit	No	No	No	No	CDD	HE	No	Yes
Parcel combination	No	No	No	No	CDD	HE	No	Yes
Manufactured housing infill	No	No	No	No	CDD	HE	No	Yes
Boundary line adjustment	No	No	No	No	CDD	HE	No	Yes
Administrative interpretation	No	No	No	No	CDD	HE	No	Yes
Encroachment permit	No	No	No	No	CDD/CE	HE	No	Yes
Floodplain Development Permit	No	No	No	No	CDD	HE	No	Yes
Administrative decision, modification, adjustment to standards	No	No	No	No	CE	HE	No	Yes
Type II:								
Variance (including flood hazard variance)*	14-day NOA or NOH	No	No	No	CDD*	HE	No	Yes
Administrative Conditional Use	15-day NOA	No	No	No	CDD	HE	No	Yes
Sensitive area reasonable use allowance*	15-day NOA or NOH	No	No	No	CDD*	HE	No	Yes
Short plat	15-day NOA	CDD and CE	No	No	CDD and PWD	HE	No	Yes
Binding Site Plan	10-day NOA	CDD and CE	No	No	CDD	HE	No	Yes

Major site development permit	15-day NOA	CDD	Yes	No	CDD	HE	No	Yes
Shoreline substantial development permit	30-day NOA 15-day NOH	No	No	No	CDD	HE	No	Yes
Waiver of forest practices moratorium for single-family residence	15-day NOA	No	No	No	CDD	No	No	No
SEPA determination	14 days (post determination)	No	No	No	CDD	HE	No	Yes
Concurrency evaluation	None	No	No	No	CE	HE	No	No
Right-to-farm registration	14-day posted notice of application	No	No	No	CDD	HE	No	No
Type III:								
Conditional use permit	15-day NOA 10-day NOH	No	No	HE	HE	No	No	Yes
Preliminary plat	15-day NOA 10-day NOH	CDD; CE	PC	HE	HE	No	No	Yes
PRD	15-day NOA 10-day NOH	CDD	PC	HE	HE	No	No	Yes
Shoreline CUP	30-day NOA plus 15-day NOH	No	No	HE	HE	No	No	Yes
Shoreline variance	30-day NOA plus 15-day NOH	No	No	HE	HE	No	No	Yes
Waiver of forest practices moratorium for	15-day NOH	No	No	HE	HE	No	No	No

non-single-family residence								
Major site development permit with Public Comments	15-day NOA 10-day NOH	CDD; CE	PC	HE	HE	No	No	Yes
Type IV:								
Development agreement	10-day NOH	No	No	HE	HE recommendation CC decision	No	No	Yes
Type V:								
Comprehensive plan amendment	NOA 10-day NOH	None	Yes	PC++	PC recommendation** CC decision**	No	No	Yes
Development regulations amendments	10-day NOH	None	No	PC++	PC recommendation** CC decision**	No	No	Yes
Annexation	15-day NOA 10-day NOH	CDD, CE	No	CC/SCBRB	CC/SCBRB	No	No	Yes
Final plat	No	No	No	No	CC	No	No	Yes
Right-of-way vacation	10-day NOH	CE	No	CC	CC Committee recommendation CC decision	No	No	Yes
Zoning map amendment	10-day NOH	CDD	No	PC	CC	No	No	Yes

CC City Council

CE City Engineer

PC Planning Commission

HE Hearing Examiner

CDD Community Development Director

SCBRB Snohomish County Boundary Review Board

NOH Notice of Hearing (per SMC 17.81A.260)

NOA Notice of Application (per SMC 17.81B.225)

PWD Public Works Director

* The community development director shall have the option of referring the application to the hearing examiner for a public hearing and decision. In this case, an appeal of the hearing examiner's decision shall be heard in a closed record appeal as a judicial appeal.

** Either the planning commission or the city council may opt to hold one or more workshops or joint workshops on an application.

++ The city council may opt to hold the required public hearing(s).

(5) Associated Land Use Determinations. Associated land use determinations are decisions that need to be made as part of another land use action or permit review, as set forth in Table 17.81A-II. Each type of determination has a separate review process determined by the Community Development Director or Public Works Director.

Table 17.81A-II: Associated Land Use Determinations

Associated Land Use Determinations
• Public Works Standards Street Deviations
• Miscellaneous Administrative Determinations (e.g., application requirements, waiver allowed by code in parking or landscaping, etc.)
• Underground Utility Deviations

17.81A.215 Land Use Permits Required.

(1) Prior to building construction or alteration, substantial change of use, land clearing, or grading, the property owner is required to obtain applicable permits.

(2) Whenever a proposed project requires more than one land use permit, the permits will be processed simultaneously using the consolidated permit process specified in Section 17.81A.220(7).

17.81A.220 Application Procedures.

(1) This section describes the requirements for making application for review, including pre-application conferences, submittal requirements, and fees.

(2) Applications for development permits and other land use actions shall be made to the Department of Planning and Community Development, except Type I applications shall be made to the department which has the decision making authority (see Section 17.81A.210(4)).

(3) The property owner or any agent of the owner with authorized proof of agency may apply for a permit or approval under the type of process specified. Consent to the application must be made by the owners or lessees of property or persons who have contracted to purchase property. Signatures by agents of these parties may be accepted, if a letter from the party with ownership interest is submitted which authorizes the agent to sign the application in their name.

(4) Pre-Application Conferences.

(a) To achieve efficient and effective application of the requirements of this title, a pre-application conference between the applicant and the City staff is required for projects identified in Table 17.81A-I.

(b) Pre-application conferences are highly recommended for applications requiring Type II, III, IV or V reviews which are not identified as requiring on under Table 17.81A-I. Pre-application conferences are optional for applications requiring Type I reviews.

(c) Prior to submitting an application, the applicant may arrange a conference with Community Development staff to review the proposed action, to become familiar with City policies, plans and development requirements and to coordinate all necessary permits and procedures. Pre-application procedures and submittal requirements shall be determined by the Director and available in the Department of Community Development.

(d) Since it is impossible for the conference to be an exhaustive review of all potential issues, the discussions at the conference shall not bind or prohibit the City's future application or enforcement of all applicable law.

(e) To request a pre-application conference, an applicant shall submit a set of preliminary plans to the City. The amount and quality of the information submitted is up to the applicant; however, better information provided initially is more likely to result in better feedback and discussion with staff. At a minimum, the plans should include a basic layout of the proposal, including circulation, lot patterns and building locations, location of critical areas, and other site constraints.

(5) Submittal Requirements.

(a) Consistent with this Code, the Director shall specify submittal requirements, including type, detail, and number of copies, for an application to be complete. Submittal requirements for each permit application shall be available in the Department of Community Development. At a minimum the following shall be submitted with new applications:

- (i) General application form;
- (ii) Environmental checklist (if not exempt);
- (iii) Applicable signatures, stamps or certifications;
- (iv) All required items stated in the applicable development handouts.

(b) The Director may waive in writing specific submittal requirements determined to be unnecessary for review of an application. Alternatively, the Director may require additional material, such as maps, studies, or models, when the Director determines such material is needed to adequately assess the proposed project and submits the request in writing to the applicant.

(6) Determination of Complete Application.

(a) The presumption established by this title is that all of the information set forth in

the specified submittal checklists is necessary to satisfy the requirements of this section. However, each development is unique, and therefore the Director may request additional information, if necessary, or may waive certain items if it is determined they are not necessary to ensure that the project complies with City requirements.

(b) The Planning Director shall make a determination of completeness pursuant to Section 17.81A.230(3).

(7) Consolidated Permit Process.

(a) When applying concurrently for a development that involves two or more related applications, individual permit numbers shall be assigned and separate permit fees shall be paid, but the applications may be reviewed and processed collectively at the applicant's request. A consolidated report setting forth the recommendation and decision shall be issued.

(b) Applications processed in accordance with subsection (7)(a) of this section, which have the same highest numbered procedure but are assigned different hearing bodies, shall be heard collectively by the highest decision maker(s). The City Council is the highest, followed by the Hearing Examiner and the Planning Commission.

(c) No hearing or deliberation upon an application for a conditional use permit, subdivision, variance, residential development, site development plan review, administrative conditional use permit, shoreline permit, or similar quasi-judicial or administrative action, which is inconsistent with the existing Zoning Map, shall be scheduled for the same meeting at which the required Zoning Map amendment will be considered by the appropriate hearing body. This section is intended to be a procedural requirement applicable to such actions as noted in RCW 58.17.070.

(8) Application and Inspection Fees. Fees are set forth in a separate fees resolution adopted by the City Council.

17.81A.225 Noticing Requirements.

(1) Mailed Notices.

(a) Mailings shall include a mailed notice to owners of real property within 300 feet of the project site, including the project name and number and the following information. Mailings may provide a website address where detailed information is available for viewing. Mailings shall include the following information or Internet addresses to the following information:

- (i) The date of application and the date of the notice of application;
- (ii) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested

under RCW 36.70B.070;

(iii) The identification of other permits not included in the application, to the extent known by the City;

(iv) The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;

(v) A statement of the limits of the public comment period;

(vi) A statement of the right of any person to comment on the application, receive notice of and participate in any hearings, request a hearing, if applicable, request a copy of the decision once made, and any appeal rights;

(vii) The date, time, place and type of meeting or hearing, if applicable and if it is scheduled at the date of notice of the application;

(viii) A statement of the preliminary determination of consistency, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation;

(ix) A map depicting the boundaries of the project site and, when applicable, a site map showing the proposal or website address where maps can be viewed;

(x) A statement announcing the City's goal of complying with the intent of the Americans with Disabilities Act, announcing accessibility, offer of assistance to persons with special needs, and availability of TDD services;

(xi) Any other information determined appropriate by the City, such as the City's threshold determination, if complete at the time of issuance of the notice of application.

(b) Mailings will be sent to adjacent jurisdictions if the proposed development is within one-quarter mile of the jurisdiction's boundary; the State Department of Transportation if the proposed development is adjacent to a state highway; and to all other agencies with jurisdiction.

(c) Mailings shall also include the mailed or emailed notice of application including at least the information required in subsection (1)(a) of this section to each person who has requested such notice.

(d) No proceeding of any procedure established in this chapter shall be found to be invalid for failure to provide mailed notice as required in this section as long as the other methods of notice have met their respective requirements and there was a good faith attempt to comply with the mailed notice requirements.

(e) The records of the Snohomish County assessor's office or title company shall be used for determining the property owner of record. Addresses for a mailed notice required by this code shall be obtained from the Snohomish County real property tax records.

(f) All public notices shall be deemed to have been provided or received on the

date the notice is deposited in the mail or personally delivered, whichever occurs first.

(2) Posted Notices.

(a) On-Site Posting. At least one public notice board shall be posted on the site on each public right-of-way fronting on the site. The sign shall be erected in a manner that is accessible and easy to read by the general public. The Director shall establish standards for size, color, layout, design, wording and placement of the notice boards, which generally shall consist of the items listed in subsection (1)(a) of this section. The Department of Community Development will prepare signs for on-site posting and post the site. A signed affidavit of on-site posting with a photo of each on-site notice is required.

(b) Public Posting. A public notice shall also be posted on the official notice board at City Hall, Library, and the Post Office.

(3) Published Notice. When required, the applicable department director shall publish a notice at least once in a newspaper of general circulation in the City. At a minimum the notice shall contain the following information (specific state or federal laws may require certain items contained on a public notice):

- (a) The name of the applicant;
- (b) Date of application;
- (c) The date of the letter of completeness;
- (d) The location of the project;
- (e) A project description;
- (f) The requested approvals, actions, and/or required studies;
- (g) A public comment period not less than 14 nor more than 30 days. The length of the comment period will be based on complexity of the project, as determined by the director;
- (h) Identification of existing environmental documents;
- (i) A city staff contact and phone number;
- (j) The date, time, and place of a public hearing if one has been scheduled;

(4) Responsibility for Notice. The Director is responsible for providing published legal notices, mailed notices, and posted notices. The applicant is responsible for complying

with on-site posted notice requirements.

17.81A.230 Time Frames for Review.

(1) Purpose. RCW 36.70B.070 and 36.70B.080 require time frames be established to ensure applications are reviewed in a timely and predictable manner. This subsection establishes the time frames and procedures for a determination of completeness and final decision for Type II, III, or IV reviews. No time frames are established by these statutes for Type I or Type V reviews.

(2) Computing Time. Unless otherwise specified, all time frames are indicated as calendar days, not working days. For the purposes of computing time, the day the determination or decision is rendered shall not be included. The last day of the time period shall be included; provided, that if it is a Saturday, Sunday, a day designated by RCW 1.16.050 or by the City's ordinances as a legal holiday, then it also is excluded and the time period concludes at the end of the next business day.

(3) Complete Application Review Time Frame. The following procedures shall be applied to new applications requiring Type II, III, or IV reviews. Applications requiring Type I or Type V review are excluded from this requirement.

(a) Within 28 days after receiving an application, the Director shall mail, email, fax, or otherwise provide to the applicant a written determination that the application is complete, or that the application is incomplete, and what is necessary to make the application complete. The applicant has 90 days to submit the necessary information to the City.

(b) If the Director does not provide a written determination within the 28 days, the application shall be deemed complete at the end of the twenty-eighth day.

(c) If additional information is needed to make the application complete, the Director shall notify the applicant whether the application is complete or what additional information is necessary within 14 days after an applicant has submitted the information identified by the Director as being needed.

(d) An application is complete for purposes of this section when it meets the submittal requirements established by the Director 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 Director from requesting additional information or studies either at the time of the Notice of Completeness or subsequently, if new information is required to complete review of the application or substantial changes in the permit application are proposed.

(e) To the extent known by the City, other agencies with jurisdiction over the project permit application shall be identified in the City's determination of completeness required by subsection (3)(a) of this section.

(4) Application Review and Decision Time Frame.

(a) Decisions on Type II, III, or IV applications shall not exceed 120 days, unless the Planning Director makes written findings that a specified amount of additional time is needed for processing of a specific complete project application. Applications for developments that are complex or that have extensive or difficult issues may take additional time. The applicant and the City may agree in writing to extend the time period.

(b) Preliminary Plats. Pursuant to RCW 58.17.140, preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within 90 days from the date of filing thereof unless the applicant consents to an extension of such time period or the 90-day limitation is extended to include up to 21 days as specified under RCW 58.17.095(3). The 90-day period shall not include the time spent preparing and circulating an environmental impact statement by the local governmental agency.

(c) Final Plats and Short Plats. Pursuant to RCW 58.17.140, final plats and short plats shall be approved, disapproved, or returned to the applicant within 30 days from the date of filing thereof, unless the applicant consents to an extension of such time period.

(d) Appeals. The time period for consideration and decision on appeals shall not exceed 90 days for an open record appeal hearing and 60 days for a closed record appeal. The parties may agree in writing to extend these time periods. Any extension of time mutually agreed upon by the applicant and the City shall be in writing.

(e) Exemptions. The time limits established in this title do not apply if a project permit application:

- (i) Requires an amendment to the Comprehensive Plan or a development regulation;
- (ii) Requires approval of the siting of an essential public facility as provided in RCW 36.70A.200;
- (iii) Is reviewed as Type I or V permit;
- (iv) Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete.

(5) Calculating Decision Time Frame. In determining the number of days that have elapsed after the City has notified the applicant that the application is complete for purposes of calculating the time for issuance of the notice of final decision, the following periods shall be excluded:

(a) Any period during which the applicant has been requested by the City to correct plans, perform required studies, or provide additional required information. If the City determines that the information submitted by the applicant is insufficient, it shall notify the applicant of the deficiencies. The period shall be calculated from the date the City notifies the applicant of the need for additional information until the earlier of the date the local government determines whether the additional information satisfies the request for information or 14 days after the date the information has been provided to the City;

(b) Any period during which an environmental impact statement is being prepared following a determination of significance (DS) pursuant to Chapter 43.21C RCW, or if the City and the applicant in writing shall agree to a time period for completion of an environmental impact statement;

(c) Any period for administrative appeals of project permits, if an open record appeal hearing or a closed record appeal, or both, are allowed; or

(d) Any extension of time mutually agreed upon by the applicant and the City.

(6) Possible Extension of Time for Final Decision. If the City is unable to issue a final decision within the time limits provided herein, the applicant shall be provided written notice of this fact. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.

17.18A.240 Vacation of Approved Permits and Variances.

(1) Requests to vacate a permit or variance shall be made in writing to the Department Community Development.

(2) The Planning Director may vacate the permit or variance if the following conditions are present:

(a) The use authorized by the permit or variance does not exist and is not actively being pursued; or

(b) The use has been terminated and no violation of the terms and the conditions of the variance or permit exists.

(3) Vacation of any permit or variance shall be documented by the filing of a notice of land use permit or variance vacation with the County Auditor on a form provided by the Department of Planning and Community Development.

17.81A.245 Expiration of Inactive Applications.

(1) An application shall expire 180 days after the last date that additional information is requested, if the applicant has failed to provide the information, except that:

(a) The Director may grant one 90-day extension if the following criteria are met:

- (i) A written request for extension is submitted at least 30 days prior to the expiration date;
- (ii) The applicant demonstrates that circumstances beyond the control of the applicant prevent timely submittal of the requested information; and
- (iii) The applicant provides a reasonable schedule for submittal of the requested information.

(b) The Department may set an expiration date of less than 180 days, when the permit application is the result of a code enforcement action. Permit application expiration does not affect permits under code enforcement action.

(c) No application shall expire, when under review by the Department following submittal of a complete application or timely resubmittal of an application when all required information has been provided.

(d) The Department may extend an expiration date for an application with no written request from an applicant, when additional time for City processing or scheduling of appointments is required, when the Department needs information or responses from other agencies, or under other similar circumstances.

(2) A permit application approved for issuance, but not paid for and issued, shall expire 90 days after the date it is approved for issuance.

17.81A.250 Expiration of Approvals and Approved Permits.

(1) Land use approvals/permits other than subdivisions or shoreline permits shall expire automatically within one year after the issuance of such permits, if:

(a) The use authorized by such permits has not commenced, in circumstances where no substantial construction, excavation or demolition is necessary before commencement of such use; or

(b) Less than 10 percent of the total cost of all construction, excavation or demolition of the approved development has been completed.

(2) Land use permits other than subdivisions shall also expire automatically if construction, grading or excavation is commenced but such work is discontinued for a period of one year.

(3) For land use permits other than preliminary short subdivisions, subdivisions and sign permits:

(a) The Director may grant one six-month extension to a permit upon showing proper justification, if:

(i) The extension is requested at least 30 calendar days before the permit

expires;

- (ii) The permittee has proceeded with due diligence and in good faith; and
- (iii) The zoning designation of the property has not changed.

(b) Proper justification consists of one or more of the following conditions:

- (i) Economic hardship;
- (ii) Change of ownership;
- (iii) Unanticipated construction and/or site design problems;
- (iv) Other circumstances beyond the control of the applicant and determined acceptable by the appropriate department director.

(4) Preliminary short subdivision approvals shall expire automatically if, within five years after the issuance of such approvals:

(a) The final plat or short plat has not been submitted to the City for approval; or

(b) An extension has not been granted. The Director may approve a single one-year original extension to the approval, if:

- (i) The request was delivered in writing to the Department of Community Development at least 30 calendar days prior to the approval's expiration and meets one of the proper justifications listed in subsection (3)(b) of this section;
- (ii) The permittee has proceeded with due diligence and in good faith to complete the plat; and
- (iii) Conditions have not changed so substantially as to warrant a new application.

(5) Subdivision approvals shall expire in accordance with 16.15.140.

(6) Construction Plan Approvals.

(a) Construction plans for projects reviewed under the development code shall be approved for a period of 60 months from the date the City signs the plans or until expiration of the preliminary plat, preliminary short plat, binding site plan, conditional use permit, or site development plan approval whichever is shorter. If the construction plan is not connected to another permit, it shall expire in one year with one six-month extension allowed.

(b) The City may grant an extension of up to 12 months if substantial progress has been made by the applicant to complete construction of the approved project. Extensions shall be considered on a case-by-case basis by the Public Works Director or designee and will require a letter to be submitted to the City requesting the extension at least 30 calendar days prior to the approval's expiration. Said letter shall demonstrate that the project has made substantial construction progress, the reason for the extension request, and an estimated timeline for

completion of construction.

(c) When the approval period or any extension thereof expires, the City's approval of the construction plans shall be deemed automatically withdrawn. In order to receive further consideration by the City after such expiration and automatic withdrawal, construction plans must be re-submitted and must comply with the current code requirements.

(7) Once the time period and any extensions have expired, approval/permit shall terminate and the application is void and deemed withdrawn.

17.81A.255 Revocation of Approved Permits.

(1) The hearing entity may revoke an approved permit through the same approval and/or hearing procedures for the original approval.

(2) An approved permit may be revoked only upon finding that:

(a) The use for which the approval was granted has been abandoned for a period of at least one year;

(b) Approval of the permit was obtained by misrepresentation of material fact; or

(c) The permit is being exercised contrary to the terms of approval.

17.81A.260 Public Meetings and Public Hearings.

(1) This section sets forth procedures for public meetings and hearings in addition to processes set forth in each of the review types in Chapter 17.81B.

(2) Public Meetings. The purpose of a public meeting is to provide the public with the opportunity to learn about a project and/or the City, a board or panel, or decision maker to ask questions for a better understanding of a project. Meetings are not as formal as a hearing, do not require public testimony, and are not required to be taped. Public meetings may be required for Type II, III, IV or V reviews.

(3) Public Hearings. The purpose of having hearings is to provide decision makers with an opportunity to obtain additional information and to provide the public with an opportunity to introduce that information and to make their views known. Public hearings are required for Type III, IV, and V reviews. When this title or State law requires a hearing, the following shall apply:

(a) A verbatim record shall be kept;

(b) Those present shall be given the opportunity to testify;

(c) The hearing authority shall be allowed to ask questions of those testifying;

(d) The hearing shall be conducted to ensure fairness to all parties;

(e) The hearing authority may subpoena witnesses; and

(f) A hearing may be kept open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six months or more elapses between meeting dates.

(4) Notices of public meetings or hearings shall include the following information:

(a) The date, time, and place of the hearing.

(b) Location of the site.

(c) A brief description of the request, and any proposed modifications or variances.

(d) Applicant's name.

(e) Project name and file number and a statement of its availability for inspection by the public.

(f) A statement of the right of any person to submit written testimony to the appropriate permit-issuing authority and to appear at the public hearing to give testimony orally.

(g) A statement that only persons who submit written or oral testimony to the permit-issuing authority may appeal the decision.

(h) A statement announcing the City's goal of complying with the intent of the Americans with Disabilities Act, announcing accessibility, offer of assistance to persons with special needs, and availability of TDD services.

(5) Burden of Proof/Testimony.

(a) The burden of presenting evidence to the permit-issuing entity sufficient to lead it to conclude that the application should be approved, conditioned, or denied shall be upon the party advancing the position.

(b) All persons in attendance that wish to testify shall be sworn in.

(c) All findings and conclusions necessary to the issuance of a decision shall be based upon reliable evidence.

(6) Joint Public Meetings or Hearings.

(a) Approval Authority's Decision to Combine Joint Hearing. At the applicant's

request, the approval authority may combine any public hearing on a project permit application with any hearing that may be held by another local, State, regional, Federal, or other agency, on the proposed action, as long as:

- (i) The hearing is held within the City limits; and
- (ii) The requirements of subsection (6)(c) of this section are met. [RCW 36.70B.110(7)]

(b) Applicant's Request for a Joint Meeting or Hearing. The applicant may request that the public hearing on a permit application be combined as long as the joint hearing can be held within the time periods set forth in this title. In the alternative, the applicant may agree to a particular schedule if that additional time is needed in order to complete the hearings. [RCW 36.70B.110(7)]

(c) Prerequisites to Joint Public Meeting or Hearing. A joint public hearing may be held with another local, State, regional, Federal or other agency and the City, as long as:

- (i) The other agency is not expressly prohibited by statute from doing so; [RCW 36.70B.110(8)]
- (ii) Sufficient notice of the meeting or hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule;
- (iii) The agency has received the necessary information about the proposed project from the applicant in enough time to hold its meeting or hearing at the same time as the local government hearing; and
- (iv) The meeting or hearing is held within the geographic boundary of the local government.

(7) Record.

(a) Tape recordings shall be made of all hearings required by this title, and such recordings shall be kept for at least two years. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made. The written decision of a Hearing Examiner shall meet the requirement for minutes of the Hearing Examiner public hearing.

(b) Whenever practicable, all documentary evidence presented at a hearing, as well as all other types of physical evidence, shall be made a part of the record of the proceedings and shall be kept by the City for at least two years.

17.81A.265 Appeals.

(1) This section sets forth procedures for appeals, in addition to any specific procedures set forth in each of the review types in Chapter 17.81B.

(2) Processing of Appeals. Appeals of decisions on project permit decisions shall be processed according to the procedures outlined in each of the review types in Chapter

17.81B. The decision maker on the appeal may reverse or affirm or modify the decision, if it is found the original decision was based on faulty facts or incorrect application of the law. Any modifications to the decision shall be limited to those necessary to ensure the decision criteria of this title are met.

(3) Effect of Appeal. Decisions on Type I, Type II, Type III, and Type IV permits are assumed valid unless overturned by an appeal decision. An appeal stays all actions by the Director seeking enforcement of or compliance with the order or decision appealed from, unless the Director finds that a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed except by order of the Hearing Examiner or a court.

(4) Exhaustion of Administrative Remedies. No action to obtain judicial review may be commenced unless all rights of administrative appeal provided by this title or State law have been exhausted. The cost of transcription of all records ordered certified by the court for such review shall be borne by the appellant. A copy of each transcript prepared by an appellant shall be submitted to the City for confirmation of its accuracy.

(5) Consolidated Appeals. All appeals of project permit application decisions, other than an appeal of determination of significance (DS), shall be considered together in a consolidated appeal. [RCW 43.21C.075, 36.70B.060(6)]

Part IV. Duties, Authorities and Qualifications of Permit-Issuing and Review Bodies

17.81A.310 Purpose.

The purpose of this part is to define the authorities, roles and responsibilities for the positions or entities responsible for administering this title.

17.81A.320 Planning Director.

(1) The Planning Director enforces the municipal code unless otherwise specified. As specified in this title, the Planning Director shall be the City's Community Development Director or designated representative.

(2) Authority and Duties. The Planning Director or designee shall have the authority to enter and inspect buildings and land during reasonable hours with permission of the occupant or owner or by court order, to issue abatement orders and citations and to cause the termination and abatement of violations of this title unless otherwise specified. The duties of the Planning Director shall include, but not be limited to, the following: enforce and administer this title unless otherwise specified; investigate complaints and initiate appropriate action; render decisions or make recommendations as specified in this title; and keep adequate records of land use applications enforcement actions, and appeals. The Planning Director may also review administrative modifications items previously approved by the Planning Commission, and/or City Council.

(3) Appeals. Appeals of final decisions of the Planning Director made in the course of interpretation or administration of this title shall be governed by Section 17.81A.265, Appeals. Code enforcement actions pursuant to Section 17.81A.040, Compliance with Title 17 Required, are not “final decisions” for the purpose of this section, except as otherwise provided in this title.

17.81A.325 Public Works Director.

The Public Works Director is the administrative head of the Public Works Department. As provided in various sections, the Public Works Director is responsible for planning, administration, enforcement, and decision making as it pertains to public improvements as specified in this title, including the approval of plans for public improvements and approval of public improvements for acceptance by the City, or to delegate such authority to the Public Works staff or Community Development Director. In delegating authority, the Public Works Director or his or her representative reserves the right of final decision.

17.81A.330 Building Official.

The office of the Building Official is established to administer and enforce the building and construction codes. The rules, regulations and procedures under which the Building Official shall operate are established in Title 14.

17.81A.350 Hearing Examiner.

(1) The purpose of establishing a Hearing Examiner is to separate the application of land use regulations from policy making; to provide a level of expertise to conduct administrative and quasi-judicial hearings arising from the application of this title and the rules and procedures developed under it; to better protect and promote the interests of the community; and to expand the principles of fairness and due process in public hearings.

(2) Authority and Duties. The Hearing Examiner’s authority and duties are provided in Chapter 17.87.

17.81A.360 Planning Commission.

(1) A Planning Commission is created by Chapter 2.12 to involve residents of the City in advising the City Council on matters of community development.

(2) Authority and Duties. The Planning Commission’s authority and duties are provided in Chapter 2.12 and this section. The Planning Commission shall serve as an advisory body to the City Council in the following respects:

(a) The Planning Commission may make recommendations to the City Council based on its findings and conclusions and on those of its committees. It shall prepare the elements of the Comprehensive Plan or this title for adoption or modification; advise the Council regarding comprehensive land use and development policy or special area concerns; and investigate and make recommendations on matters suggested by the Council, the Mayor, Stanwood

citizens, or upon its own initiative.

(b) The Planning Commission shall monitor the growth and development of the City and the areas surrounding the City and shall continually reevaluate and recommend revisions to the elements of the Comprehensive Plan or Land Use Code.

(c) The Planning Commission shall forward to the Council a periodic report on the status of this title. The Planning Commission shall monitor the hearings of the Hearing Examiner in order to stay abreast of development activities and the concerns of the public.

(c) Public Hearings. The Planning Commission shall conduct its public hearings under this title in accordance with Section 17.81A.260, Public Hearings. The Planning Commission may hold additional hearings and meetings as it sees fit to conduct its business.

(d) Quorum. A quorum shall be considered a majority of the currently constituted membership.

17.81A.370 City Council.

(1) The City Council makes decisions on changes to the text of this title and to the Official Zoning Map pursuant to Chapter 17.155.

(2) Authority and Duties. The City Council's authority and duties are provided in Chapter 1.02 and Chapter 2.44.

(3) Public Hearings. The City Council shall conduct its public hearings under this title in accordance with Section 17.81A.260.

(4) Public Hearings and Appeals. The City Council may hold additional hearings and meetings as it sees fit to conduct its business.

Section 9. SMC Chapter 17.81B entitled "Types of land use review" is hereby added to read as follows:

Chapter 17.81B TYPES OF LAND USE REVIEW

Part I. Type I Review - Administrative Decisions without Public Notice

17.81B.105 Purpose

17.81B.110 Overview of Type I Review

17.81B.115 Type I Review Permit-Issuing Authority and Appeal Body

17.81B.120 Application Submittal

17.81B.125 Public Notification

17.81B.130 Administrative Decision

- 17.81B.135 Expiration of Approval
- 17.81B.140 Appeal of Type I Decision
- 17.81B.145 Commencement of Activity
- 17.81B.150 Modification or Addition to an Approved Project or Decision

Part II. Type II Review - Administrative Decisions with Public Notice

- 17.81B.205 Purpose
- 17.81B.210 Overview of Type II Review
- 17.81B.215 Type II Review Permit-Issuing Authority and Appeal Body
- 17.81B.220 Application Submittal
- 17.81B.225 Notice of Application
- 17.81B.230 Minimum Comment Period
- 17.81B.235 Administrative Decision
- 17.81B.240 Notice of Decision
- 17.81B.245 Expiration of Approval
- 17.81B.250 Appeal of Type II Decision
- 17.81B.255 Commencement of Activity
- 17.81B.260 Modification or Addition to an Approved Project or Decision

Part III. Type III Review - Quasi-Judicial, Hearing Examiner Decisions

- 17.81B.305 Purpose
- 17.81B.310 Overview of Type III Review
- 17.81B.315 Notice of Application
- 17.81B.320 Minimum Comment Period
- 17.81B.325 Public Meetings
- 17.81B.330 Environmental Review
- 17.81B.335 Staff Recommendation
- 17.81B.340 Notice of Public Hearing
- 17.81B.345 Hearing Examiner Public Hearing
- 17.81B.350 Hearing Examiner Decision
- 17.81B.355 Notice of Final Decision
- 17.81B.360 Expiration of Approval
- 17.81B.365 Appeal of Type III Decision
- 17.81B.370 Commencement of Activity
- 17.81B.375 Modification or Addition to an Approved Project or Decision

Part IV. Type IV Review – Development Agreements, City Council Decisions

- 17.81B.505 Purpose
- 17.81B.510 Overview of Type IV Review
- 17.81B.515 Notice of Application
- 17.81B.520 Minimum Comment Period
- 17.81B.525 Public Meetings
- 17.81B.530 Environmental Review
- 17.81B.535 Staff Recommendation
- 17.81B.540 Notice of City Council Public Hearing
- 17.81B.545 City Council Decision

- 17.81B.550 Notice of Final Decision
- 17.81B.555 Expiration of Approval
- 17.81B.560 Appeal of Type IV Decision
- 17.81B.565 Commencement of Activity
- 17.81B.570 Modification or Addition to an Approved Project or Decision

Part V. Type V Review - Legislative, City Council Decisions with Planning Commission Recommendation

- 17.81B.605 Purpose
- 17.81B.610 Overview of Type V Review
- 17.81B.615 Amendments in General
- 17.81B.620 Initiation of Amendments
- 17.81B.625 Planning Commission Review
- 17.81B.630 Notice of Public Hearing
- 17.81B.635 Notice of Planning Commission Public Hearing
- 17.81B.640 Planning Commission Public Hearing
- 17.81B.645 Planning Commission Recommendation
- 17.81B.650 Notice of City Council Public Hearing
- 17.81B.655 City Council Action
- 17.81B.660 Appeal of Type V Decision

Part VI. Appeals

- 17.81B.710 Appeal of Type I and II Administrative Decisions
- 17.81B.720 Appeal of Type III Hearing Examiner Decisions
- 17.81B.740 Appeal of Type IV Development Agreements, City Council Decisions
- 17.81B.750 Appeal of Type V Legislative, City Council Decisions with Planning Commission Recommendation

Part I. Type I Review - Administrative Decisions without Public Notice

17.81B.105 Purpose.

A Type I review is an administrative review and decision by the appropriate department with no public notice requirements. These are applications which are categorically exempt from review under the State Environmental Policy Act (SEPA) or permits for which environmental review has been completed in connection with another application. Appeals of Type I decisions are made to the Hearing Examiner, except shoreline exemption appeals are made to the State Shoreline Hearings Board. Type I reviews are exempt from the procedures of Section 17.81A.230, Time Frames for Review. The purpose of this part is to provide the necessary steps for permit approvals requiring Type I review.

17.81B.110 Overview of Type I Review.

This section contains the procedures the City will use in processing Type I applications. The process begins with a complete application, followed by decision by the appropriate department. The administrative approval body is the department director. Appeals of the

Director's decision on a Type I appeal are made to the Hearing Examiner, except shoreline exemption appeals are made to the State Shoreline Hearings Board. An appeal of the Hearing Examiner's appeal decision is made to the Snohomish County Superior Court.

17.81B.115 Type I Review Permit-Issuing Authority and Appeal Body.

Decisions on Type I applications are made by the appropriate department director or designee. The permit-issuing authority and designated appeal body for each application reviewed as a Type I are indicated in Table 17.81A-I.

17.81B.120 Application Submittal.

Application forms and submittal requirements for each of the Type I permits shall be prepared and maintained by the department responsible for issuing the decision on the application. Applications shall be submitted to the appropriate department.

17.81B.125 Public Notification.

Public notice is not required for Type I decisions.

17.81B.130 Administrative Decision.

A written record of the Type I decision shall be prepared in each case. The record may be in the form of a staff report, letter, the permit itself, or other written document and shall indicate whether the application has been approved, approved with conditions, or denied. The department decision shall be based on the applicable Land Use Code or other adopted uniform code and shall include any conditions to ensure consistency with the development regulations. The applicant shall be notified of the final decision. All other decisions are final upon expiration of any applicable appeal period or if appealed, on the date of the appeal body's final decision on the application.

17.81B.135 Expiration of Approval.

Approval of the Type I application shall expire one year from the date approval was final unless significant action proposed in the application has been physically commenced and remains in progress pursuant to Section 17.81A.250.

17.81B.140 Appeal of Type I Decision.

An appeal of a Type I decision is made pursuant to Section 17.81B.710.

17.81B.145 Commencement of Activity.

An appeal stays all actions by the Director seeking enforcement of or compliance with the order or decision appealed from, unless the Director finds that a stay would, in his or her opinion, cause imminent peril to life or property, in which case, proceedings shall not be stayed except by order of the Hearing Examiner or a court.

17.81B.150 Modification or Addition to an Approved Project or Decision.

Modifications or additions to approved projects or decisions shall be processed in accordance with the applicable code section.

Part II. Type II Review - Administrative Decisions with Public Notice

17.81B.205 Purpose.

A Type II review is an administrative review and decision by the appropriate department. These are applications which are typically categorically exempt from review under the State Environmental Policy Act (SEPA), a separate SEPA review, or permits for which environmental review has been completed in connection with another application. Public notification is provided at the application and decision stages of application review. Appeals of Type II decisions are made to the Hearing Examiner, except shoreline permit appeals are made to the State Shoreline Hearings Board. Type II reviews are exempt from the procedures of Section 17.81A.230, Time Frames for Review. The purpose of this part is to provide the necessary steps for permit approvals requiring Type II review.

17.81B.210 Overview of Type II Review.

This section contains the procedures the City will use in processing Type II applications. The process begins with a complete application, followed by decision by the appropriate department. The administrative approval body is the department director. Appeals of the Director's decision on a Type II appeal are made to the Hearing Examiner, except shoreline permit appeals are made to the State Shoreline Hearings Board. An appeal of the Hearing Examiner's appeal decision is made to the Snohomish County Superior Court.

17.81B.215 Type II Review Permit-Issuing Authority and Appeal Body.

Decisions on Type II applications are made by the appropriate department director or designee. Appeals of Type II decisions are made to the appropriate appeal body. The permit-issuing authority and designated appeal body for each application reviewed as a Type II are indicated in Table 17.81A-I.

17.81B.220 Application Submittal.

Application forms and submittal requirements for each of the Type II permits shall be prepared and maintained by the department responsible for issuing the decision on the application. Applications shall be submitted to the appropriate department.

17.81B.225 Notice of Application.

(1) Notice of application for Type II permits shall be provided within 14 days of the determination of completeness pursuant to Section 17.81A.230, Time Frames for Review. Notice shall be provided as indicated in subsection (2) of this section.

(2) Notice of Application Requirements of Type II Review.

Type II Action or Permit	Mail	Post	Publish
All Type II Actions and Permits	X	X	X

(3) Mailed Notices. Mailings shall be completed pursuant to Section 17.81A.225 with the following additional requirements for shoreline substantial development permits: a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after issuance of the decision, may submit the comments or requests for decisions to the City within 30 days of the last date the notice is to be published pursuant to this section.

(4) Posted Notices. Posted notices shall be completed pursuant to Section 17.81A.225.

(a) On-Site Posting. At least one public notice board shall be posted on the site on each public right-of-way fronting on the site.

(b) Public Posting. A public notice shall also be posted on the notice board at City Hall, Library, and Post Office.

(5) Published Notice. If required, published notice shall be completed pursuant to Section 17.81A.225.

17.81B.230 Minimum Comment Period.

(1) The notice of application shall provide a minimum comment period of 14 days, except for shoreline permits pursuant to subsection (5) of this section. All comments received on the notice of application must be received in the Community Development Department by 4:00 p.m. on the last day of the comment period. Comments may be mailed, emailed, personally delivered or sent by facsimile. The Planning Director's decision on a Type II application shall not be issued prior to the expiration of the minimum comment period.

(2) Comments should be submitted to the Department of Community Development as early in the review of an application as possible and should be as specific as possible.

(3) If early SEPA review is requested, as described in Section 17.149.030(4)(b), the Director may combine the notice of application and DNS comment periods. When a final DNS is issued, there is no additional comment period.

(4) The Planning Director may accept and respond to public comments at any time prior to making the Type II decision.

(5) Shoreline Substantial Development Permits. The minimum comment period on the notice of application for a shoreline substantial development permit shall be 30 days.

17.81B.235 Administrative Decision.

A written record of the Type II decision shall be prepared in each case. The record may be in the form of a staff report, letter, the permit itself, or other written document and shall indicate whether the application has been approved, approved with conditions, or denied. The department decision shall be based on the applicable Land Use Code or

other adopted uniform code and shall include any conditions to ensure consistency with the development regulations. The applicant shall be notified of the final decision. All other decisions are final upon expiration of any applicable appeal or if appealed, on the date of the appeal body's final decision on the application.

17.81B.240 Notice of Decision.

Within five days of a decision, the Planning Director shall mail or email notice of the decision and the SEPA determination, if any, to all parties of record, which shall include the applicant and each person who submitted comments during the public comment period or at any time prior to issuance of the decision. The notice of decision shall include a statement of any threshold determination made under SEPA (Chapter 43.21C RCW) and the procedures for administrative appeal, if any. For those project permits subject to SEPA, the notice of decision on the issued permit shall contain the requirements set forth in Section 17.81A.120

- (1) The applicant.
- (2) The Department of Ecology.
- (3) Any person who has submitted written comments on the application.
- (4) Any person who has written to the Director requesting notification.

17.81B.245 Expiration of Approval.

Approval of the Type II application shall expire two years from the date approval was final, except for shoreline substantial development permits expire two years from final approval, unless significant action proposed in the application has been physically commenced and remains in progress pursuant to Section 17.81A.250.

17.81B.250 Appeal of Type II Decision.

An appeal of a Type II decision is made pursuant to Section 17.81B.710.

17.81B.255 Commencement of Activity.

An appeal stays all actions by the Director seeking enforcement of or compliance with the order or decision appealed from, unless the Director finds that a stay would, in his or her opinion, cause imminent peril to life or property, in which case, proceedings shall not be stayed except by order of the Hearing Examiner or a court.

17.81B.260 Modification or Addition to an Approved Project or Decision.

Modifications or additions to approved projects or decisions shall be processed in accordance with the applicable code section.

Part III. Type III Review - Quasi-Judicial, Hearing Examiner Decisions

17.81B.305 Purpose.

A Type III process is a quasi-judicial review and decision made by the Hearing

Examiner. The Hearing Examiner makes a decision based on a recommendation from staff and, if required, the Planning Commission will review and provide comments. The Hearing Examiner considers public testimony received at an open record public hearing. Public notification is provided at the application, public hearing and decision stages of application review. The administrative appeal body is the Superior Court, except shoreline permits are appealed to the State Shoreline Hearings Board. The purpose of this part is to provide the necessary steps for permit approvals requiring Type III review.

17.81B.310 Overview of Type III Review.

(1) This section contains the procedures the City will use in processing Type III applications. This process begins with a complete application, followed by notice to the public of the application and a public comment period, during which time an informational meeting may be held. The permit-issuing authority and designated appeal body for each application reviewed as a Type III are indicated in Table 17.81A-I.

(2) If required by the State Environmental Policy Act, a threshold determination will be issued by the SEPA Responsible Official. The threshold determination shall be issued prior to the issuance of staff’s recommendation on the application.

(3) After notice to the Planning Commission, if applicable, a public hearing will be held before the city Hearing Examiner.

(4) The decision of the Hearing Examiner on a Type III application is appealable to the Superior Court, except shoreline permit appeals are made to the State Shoreline Hearings Board. The Hearing Examiner action deciding the appeal and approving, approving with modifications, or denying a project is the final City decision on a Type III application. A final appeal may be made to the Snohomish County Superior Court.

17.81B.315 Notice of Application.

(1) Notice of application for Type III permits shall be provided within 14 days of the determination of completeness pursuant to Section 17.81A.230, Time Frames for Review. Notice shall be provided as indicated in subsection (2) of this section. If any open record pre-decision hearing is required for the requested project permit(s), the notice of application shall be provided at least 15 days prior to the open record hearing.

(2) Notice of Application Requirements of Type III Permits.

Type III Action or Permit	Mail	Post	Publish
All Type III Actions and Permits	X	X	X

(3) Mailed Notices. Mailings shall be completed pursuant to Section 17.81A.225 with the additional requirements stated below:

(a) Additional Notification Requirements for Preliminary Plats.

- (i) Notice of the filing of a preliminary plat adjacent to or within one mile of the municipal boundaries of a City or town, or which contemplates the use of any City or town utilities, shall be given to the appropriate City or town authorities.
- (ii) Notice of the filing of a preliminary plat of a proposed subdivision located in a City or town and adjoining the municipal boundaries thereof shall be given to the appropriate County officials.
- (iii) Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a State highway or within two miles of the boundary of a State or municipal airport shall be given to the Secretary of Transportation.

(b) Additional Notification Requirements for Shoreline Permits. A statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning the application as expeditiously as possible after issuance of the decision, may submit the comments or requests for decisions to the City within 30 days of the last date the notice is to be published pursuant to this section.

(4) Posted Notices. Posted notices shall be completed pursuant to Section 17.16A.225 with the additional requirements stated in subsection (4)(c) of this section:

- (a) On-Site Posting. At least one public notice board shall be posted on the site on each public right-of-way fronting on the site.
- (b) Public Posting. A public notice shall also be posted on the notice board at City Hall, Library, and Post Office.
- (c) The following Type III applications are major land use actions: conditional uses, preliminary plats, and shoreline permits.

(5) Published Notice. If required, published notice shall be completed pursuant to Section 17.81A.225.

17.81B.320 Minimum Comment Period.

(1) The notice of application shall provide a minimum comment period of 14 days with the exception for shoreline permits pursuant to subsection (e) of this section. All comments received on the notice of application must be received in the Department of Planning and Community Development by 4:00 p.m. on the last day of the comment period. Comments may be mailed, emailed, personally delivered, or sent by facsimile. Staff recommendation on a Type III application shall not be issued prior to the expiration of the minimum comment period.

(2) Comments should be submitted to staff as early in the review of an application as possible and should be as specific as possible.

(3) If the early SEPA review is requested, as described in Section 17.149.030(4)(b), the notice of application and DNS comment periods shall be combined. When a final DNS is issued, there is no additional comment period.

(4) Staff may accept and respond to public comments at any time prior to the closing of the public hearing record.

(5) Shoreline Permits. The minimum comment period on the notice of application for a shoreline conditional use permit or shoreline variance shall be 30 days.

17.81B.325 Public Meetings.

A public meeting may be required for Type III applications before the Planning Commission. Staff may require the applicant to participate in the meeting to inform citizens about the proposal. If a public meeting is planned, it shall be held as early in the review process as possible for Type III applications. Notice of the public meeting shall be provided in the same manner as required for the notice of application. The public meeting notice will be combined with the notice of application whenever possible.

17.81B.330 Environmental Review.

Environmental review includes a threshold determination pursuant to Chapter 17.149, State Environmental Policy Act (SEPA). Early SEPA review may be issued with the notice of application pursuant to Section 17.149.030(4)(b).

17.81B.335 Staff Recommendation.

A written report from staff making a recommendation to the Hearing Examiner for approval, approval with conditions, or with modifications, or for denial shall be prepared. The staff recommendation shall be based on the applicable decision criteria and may include any conditions necessary to ensure consistency with City development regulations.

17.81B.340 Notice of Public Hearing.

(1) Public notice of the date of the Hearing Examiner public hearing for the application shall be published in a newspaper of general circulation. The public notice shall also include a notice of availability of the staff recommendation. If a determination of significance was issued by the SEPA responsible official, the notice of staff recommendation shall state whether an EIS or supplemental EIS was prepared or whether existing environmental documents were adopted. The public hearing shall be scheduled no sooner than 10 days following the date of publication of the notice.

(2) The Director shall mail notice of the public hearing and the availability of the recommendation to each owner of real property within 300 feet of the project site.

(3) The Director shall mail or email notice of the availability of the recommendation and the date of the public hearing to each person who submitted oral or written comments during the public comment period or at any time prior to the publication of the notice of recommendation.

(4) The Director shall post the notice of the date of the public hearing and the availability of the recommendation on site and at City Hall, Library, and Post Office. The Director shall establish standards for size, color, layout, design, wording and placement of the notice boards.

(5) All public hearings on residential developments shall be held in the evening.

17.81B.345 Hearing Examiner Public Hearing.

(1) Any person may participate in the Hearing Examiner public hearing by submitting written comments to staff prior to the hearing or by submitting written comments or making oral comments at the hearing. Also, any party may be represented by agent or attorney.

(2) The Department shall transmit to the Hearing Examiner a copy of the department file on the application including all written comments received prior to the hearing and information reviewed by or relied upon by staff. The file shall also include information to verify that the requirements for notice to the public (notice of application and notice of SEPA threshold determination) have been met.

(3) The Department shall create a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording of each hearing.

17.81B.350 Hearing Examiner Decision.

(1) The Hearing Examiner shall approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of this Code. The applicant carries the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner shall deny the application.

(2) If the Hearing Examiner requires a modification which results in a different proposal not reasonably foreseeable from the description of the proposal contained in the public notice provided pursuant to Section 17.81B.340, the Hearing Examiner shall conduct a new hearing on the modified proposal.

(3) The Hearing Examiner may include conditions to ensure a proposal conforms to the relevant decision criteria.

(4) The Hearing Examiner shall within 15 calendar days following the close of the record distribute a written report supporting the decision. The report shall contain the following:

(a) The decision of the Hearing Examiner;

(b) Any conditions included as part of the decision;

(c) Findings of fact upon which the decision, including any conditions, was based and the conclusions derived from those facts; and

(d) A statement explaining the process to appeal the decision of the Hearing Examiner to the superior court.

(5) Reconsideration Period. Any person who presented or commented at the hearing may file a written request with the Hearing Examiner for reconsideration within 10 business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure or fact. Comments shall be requested from affected parties of record and reviewing City departments on the petition for reconsideration. Comments shall be received within 14 days. The Hearing Examiner shall act within 14 days after the filing of the request for reconsideration by denying the request, issuing a revised decision, or calling for an additional public hearing.

(a) The grounds for reconsideration shall be limited to the following:

- (i) The Hearing Examiner exceeded his or her jurisdiction;
- (ii) The Hearing Examiner failed to follow the applicable procedure in reaching his or her decision;
- (iii) The Hearing Examiner committed an error of law or misinterpreted the applicable city regulation, ordinance or other state law or regulation;
- (iv) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record; and/or
- (v) Newly discovered evidence alleged to be material to the Hearing Examiner's decision which could not reasonably have been produced prior to the Hearing Examiner's decision.

(b) Requests for reconsideration may use the additional grounds that changes to the application proposed by the applicant are in response to deficiencies identified in the decision.

17.81B.355 Notice of Final Decision.

Within five days of the conclusion of the appeal period or the resolution of a filed appeal, the Planning Director shall mail or email the notice of final decision and any changes to the SEPA threshold determination, if any, to all parties of record, which shall include the applicant and each person who participated in the public hearing or who submitted comments during the public comment period at any time prior to issuance of the decision. For shoreline permits, the Director shall notify the following persons in writing of its final approval or disapproval of a shoreline conditional use permit or shoreline variance:

(1) The applicant.

(2) The Department of Ecology.

(3) Any person who has submitted written comments on the application.

(4) Any person who has written to the Hearing Examiner requesting notification.

17.81B.360 Expiration of Approval.

Except as otherwise provided herein, approval of the Type III application shall expire two years from the date approval was final unless significant action proposed in the application has been physically commenced and remains in progress pursuant to Section 17.81A.250. Preliminary plats shall terminate pursuant to Section 16.15.140. Shoreline conditional use permits and shoreline variance permits expire two years from final approval.

17.81B.365 Appeal of Type III Decision.

An appeal of a Type III decision is made pursuant to Section 17.81B.720.

17.81B.370 Commencement of Activity.

An appeal stays all actions by the Planning Director seeking enforcement of or compliance with the order or decision appealed from, unless the Planning Director finds that a stay would, in his or her opinion, cause imminent peril to life or property, in which case, proceedings shall not be stayed except by order of the Hearing Examiner or a court.

17.81B.375 Modification or Addition to an Approved Project or Decision.

Modifications or additions to approved projects or decisions shall be processed in accordance with applicable code section.

Part IV. Type IV Review – Development Agreements, City Council Decisions

17.81B.505 Purpose.

A Type IV process is a review and decision made by the City Council on the Hearing Examiner making a recommendation to the City Council. Depending on the application, staff may conduct a public meeting to obtain public input. The City Council may hold a public hearing on the application prior to making a decision. Public notification is provided at the application, public hearing, and decision stages of application review. There is no opportunity for an administrative appeal. Appeals of City Council decisions are made to Snohomish County superior court. The purpose of this part is to provide the necessary steps for permit approvals requiring Type IV review

17.81B.510 Overview of Type IV Review.

This section contains the procedures the City will use in processing Type IV applications. The process is similar to Type III, except that staff makes a recommendation to the City Council instead of the Hearing Examiner. The permit-issuing authority and designated appeal body for each application reviewed as a Type IV are indicated in Table 17.81A-I.

17.81B.515 Notice of Application.

(1) Notice of application for Type IV permits shall be provided within 14 days of the determination of completeness pursuant to Section 17.81A.230, Time Frames for Review. Notice shall be provided as indicated in subsection (2) of this section. If any open record pre-decision hearing is required for the requested project permit(s), the notice of application shall be provided at least 15 days prior to the open record hearing.

(2) Notice of Application Requirements of Type IV Permits.

Type IV Action or Permit	Mail	Post	Publish
All Type IV Actions and Permits	X	X	X

(3) Mailed Notices. Mailings shall be completed pursuant to Section 17.81A.225.

(4) Posted Notices. Posted notices shall be completed pursuant to Section 17.81A.225 with the additional requirements stated in subsection (4)(c) of this section:

(a) On-site Posting. At least one public notice board shall be posted on the site on each public right-of-way fronting on the site.

(b) Public Posting. A public notice shall also be posted on the notice board at City Hall, Library, Post Office.

(c) For annexations, a minimum of three public notice boards shall be posted in public locations such as public right-of-way within the territory proposed for annexation. One of those three signs shall meet the requirements in subsection (4)(d) of this section.

(d) Additional Requirements - Right-of-Way Vacation. A written notice giving 20 days' notice of the pendency of the petition for vacation shall be posted in conspicuous place on the street or alley sought to be vacated.

(5) Published Notice. If required, published notice shall be completed pursuant to Section 17.81A.225.

17.81B.520 Minimum Comment Period.

(1) The notice of application shall provide a minimum comment period of 14 days. All comments received on the notice of application must be received in the Department of Community Development by 4:00 p.m. on the last day of the comment period. Comments may be mailed, emailed, personally delivered or sent by facsimile. Staff recommendation on a Type IV application shall not be issued prior to the expiration of the minimum comment period.

(2) Comments should be submitted to staff as early in the review of an application as possible and should be as specific as possible.

(3) If the early SEPA review is requested, as described in Section 17.149.030(4)(b), the notice of application and DNS comment periods shall be combined. When a final DNS is issued, there is no additional comment period.

(4) Staff may accept and respond to public comments at any time prior to the closing of the public hearing record.

17.81B.525 Public Meetings.

A public meeting is required for all Type IV applications pursuant to Section 17.81A.260. Staff may require the applicant to participate in the meeting to inform citizens about the proposal. If a public meeting is planned, it shall be held as early in the review process as possible for Type IV applications. Notice of the public meeting shall be provided in the same manner as required for notice of the application. The public meeting notice will be combined with the notice of application whenever possible. Council action for a final plat is a public meeting rather than a public hearing.

17.81B.530 Environmental Review.

Environmental review includes a threshold determination pursuant to Chapter 17.149, State Environmental Policy Act (SEPA) Procedures and Policies. Early SEPA review may be issued with the notice of application pursuant to Section 17.149.030(4)(b).

17.81B.535 Staff Recommendation.

A written report from staff making a recommendation to the City Council for approval, approval with conditions, or with modifications, or for denial shall be prepared. Staff recommendation shall be based on the applicable decision criteria and may include any conditions necessary to ensure consistency with City development regulations.

17.81B.540 Notice of City Council Public Hearing.

(1) Public notice of the date of the City Council public hearing, or for final plats a public meeting, at which the City Council will consider the application shall be published in a newspaper of general circulation. The public hearing shall be scheduled no sooner than 10 days following the date of publication of the notice. If a determination of significance was issued by the SEPA responsible official, the notice of staff recommendation shall state whether an EIS or supplemental EIS was prepared or whether existing environmental documents were adopted. The notice of the City Council meeting shall also include the notice of the availability of the staff recommendation.

(2) The Director shall mail or email notice of the City Council public hearing or public meeting, the SEPA determination, and the notice of the availability of staff recommendation to all parties of record.

17.81B.545 City Council Decision.

(1) Within five days of a decision, the Planning Director shall transmit to the City Council a copy of the department file on the application including all written comments received prior to the City Council meeting and information reviewed by or relied upon by staff.

The file shall also include information to verify that the requirements for notice to the public (notice of application, notice of public hearing, and notice of SEPA determination) have been met.

(2) Any person may participate in the City Council public hearing, or public meeting for final plats, on staff recommendation by submitting written comments to the Department of Community Development prior to the hearing or by submitting written comments or making oral comments at the hearing.

(3) The City Council shall, at the open record public hearing or public meeting, consider and take final action on each Type IV application. The final action may take place in the same meeting as the public hearing or public meeting, if any.

(4) The City Council shall either:

- (a) Approve the application;
- (b) Approve the application with modifications;
- (c) Remand the application to staff for an additional review limited to specific issues identified by the Council; or
- (d) Deny the application.

(5) Decision.

(a) Conditions. The City Council may, based on the record, include conditions in any decision approving or approving with modifications an application, in order to ensure conformance with the approval criteria specified in the code or process under which the application was made.

(b) Findings of Fact. The City Council shall include findings of fact and conclusions derived from those facts which support the decision of the Council, including any conditions, in the decision approving or approving with modifications the application. The City Council may by reference adopt some or all of the findings and conclusions recommended by staff.

17.81B.550 Notice of Final Decision.

The Director shall mail or email a notice of final decision and the final SEPA determination, if any, to all parties of record, which shall include the applicant and each person who participated in the public hearing or who submitted comments during the public comment period at any time prior to issuance of the decision.

17.81B.555 Expiration of Approval.

Approval of the Type IV application, except for right-of-way vacations, shall expire five years from the date approval was final unless significant action proposed in the

application has been physically commenced and remains in progress pursuant to Section 17.81A.250. Right-of-way vacations shall expire one year from the date approved, if compensation has not been provided to the City or other conditions have not been met as required in the vacation decision or ordinance.

17.81B.560 Appeal of Type IV Decision.

An appeal of a Type IV decision is made pursuant to Section 17.81B.740.

17.81B.565 Commencement of Activity.

An appeal stays all actions by the Director seeking enforcement of or compliance with the order or decision appealed from, unless the Director finds that a stay would, in his or her opinion, cause imminent peril to life or property, in which case, proceedings shall not be stayed except by order of the Hearing Examiner or a court.

17.81B.570 Modification or Addition to an Approved Project or Decision.

Modifications or additions to approved projects or decisions shall be processed in accordance with applicable code section.

Part V. Type V Review - Legislative, City Council Decisions with Planning Commission Recommendation

17.81B.605 Purpose.

A Type V review is for legislative land use decisions made by the City Council under its authority to establish policies and regulations regarding future private and public development and management of public lands. The process generally includes a hearing and recommendation by the Planning Commission and a hearing and action by the City Council. Review under the State Environmental Policy Act (SEPA) may be required. Type V reviews are exempt from the procedures of Section 17.81A.230, Time Frames for Review.

17.81B.610 Overview of Type V Review.

This section contains the procedures the City will use in processing Type V applications. Type V processes may be initiated by City Council, Planning Commission, City Administration, or any other person. The Planning Commission will typically hold a public hearing and send a recommendation to City Council. City Council may hold a public hearing before taking action. The permit-issuing authority and designated appeal body for each application reviewed as a Type V are indicated in Table 17.81A- I.

17.81B.615 Amendments in General.

(1) Amendments to the Comprehensive Plan, this title or the zoning map shall be made in accordance with the provisions of Part V of this chapter.

(2) The term “major map amendment” shall refer to an amendment that addresses the zoning classification of five or more tracts of land in separate ownership or any parcel of land (regardless of the number of lots or owners) in excess of 50 acres. All other amendments to the zoning map shall be referred to as “minor map amendments”.

17.81B.620 Initiation of Amendments.

Type V applications may be initiated in accordance with section 17.155.020 and/or section 17.157.030.

17.81B.625 Planning Commission Review.

(1) Type V proposals will usually be introduced to the Planning Commission, which may schedule study sessions as needed to consider the proposal. Prior to making a recommendation, the Planning Commission shall schedule a public hearing. After the public hearing, and after any further study sessions as may be needed, the Planning Commission shall transmit its recommendation to the City Council through the applicable department director and the City Clerk.

(2) The Planning Commission may recommend that the City Council adopt or adopt with modifications a proposal, if it complies with the applicable decision criteria. In all other cases, the Planning Commission shall recommend denial of the proposal.

(3) If the Planning Commission recommends a modification which results in a proposal not reasonably foreseeable from the notice provided pursuant to Section 17.181B.630, the Planning Commission shall conduct a new public hearing on the proposal as modified. The Planning Commission shall consider the public comments at the hearing in making its final recommendation.

(4) A vote to recommend adoption of the proposal or adoption with modification must be by a majority vote of the Planning Commission members present and voting.

17.81B.630 Notice of Public Hearing.

(1) When the Planning Commission or City Council has scheduled a public hearing on a Type V proposal, notice of the public hearing shall be provided 10 days prior to the scheduled hearing date in the manner set forth in subsection (b) of this section.

(2) Notice of Public Hearing.

Type V Action or Permit	Mail	Post	Publish
Comprehensive Plan Amendment - Map & Text	X	X	X
Development Agreements			X
Land Use Code Amendments			X
Rezone - Area-Wide Zoning Map Amendment		X	X

(3) Mailed Notices. Mailings shall be completed pursuant to Section 17.81A.225 with the additional specifications:

(a) For minor map amendments, notices shall be mailed to the record owners for tax purposes of all properties whose zoning classification is proposed to be changed, as well as the owners of all properties which are within 300 feet of the property proposed.

(b) For major map amendments, notice over and above that specified in this section may be provided at the discretion of the Department of Community Development, as deemed necessary to ensure ample opportunity for citizens and property owners to become aware of the upcoming hearing.

(c) Notice of the public hearing, containing the same information set forth in subsection (3) of this section, shall be mailed to each owner of real property within 300 feet of any boundary of the subject property.

(4) Posted Notices.

(a) All posted notices shall be completed pursuant to Section 17.81A.225.

(b) For minor map amendments, at least one public notice board shall be posted on the site on public right-of-way within the property proposed to be rezoned.

(c) For major map amendments, a minimum of three public notice boards shall be posted on public right-of-way.

(5) Published Notice. When required, the applicable department director shall publish a notice at least once in a newspaper of general circulation in the City. The notice shall contain the following information:

(a) The name of the applicant, and if applicable, the project name;

(b) If the application involves specific property, the street address of the subject property, a description in nonlegal terms sufficient to identify its location, and a vicinity map indicating the subject property or website address where maps can be viewed;

(c) A brief description of the action or approval requested;

(d) The date, time, and place of the public hearing;

(e) Summarize the nature and character of the proposed change;

(f) If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment;

(g) State that the full text of the amendment can be obtained from the Department of Community Development;

(h) State that substantial changes in the proposed amendment may be made following the public hearing; and

(i) A statement of the right of any person to participate in the public hearing.

(6) Alternative Means of Notification. In the case of the following actions initiated by the City, which affect large areas of the City, the Director may elect to use alternative means of public notification in addition to the newspaper publication required by RCW 35A.63.070 or the mail and posting provisions above, provided such notification is likely to achieve equal or greater actual public notification:

(a) Adoption or amendment of a neighborhood or other area-wide community plan; or

(b) Area-wide zoning map amendments.

17.81B.635 Notice of Planning Commission Public Hearing.

Public notice of the date of the Planning Commission public hearing at which the Planning Commission will consider the application shall be published in a newspaper of general circulation. The public hearing shall be scheduled no sooner than 10 days following the date of publication of the notice. If a determination of significance was issued by the SEPA responsible official, the notice of staff recommendation shall state whether an EIS or supplemental EIS was prepared or whether existing environmental documents were adopted.

17.81B.640 Planning Commission Public Hearing.

(1) Any person may participate in the public hearing by submitting written comment to the applicable department director prior to the hearing or by submitting written or making oral comments to the Planning Commission at the hearing. All written comments received by the applicable department director shall be transmitted to the Planning Commission no later than the date of the public hearing.

(2) The Director shall transmit to the Planning Commission a copy of the department file on the application including all written comments received prior to the hearing and information reviewed by or relied upon by staff. The file shall also include information to verify that the requirements for notice to the public (notice of application, as required; notice of SEPA determination) have been met.

(3) The Planning Commission shall record and compile written minutes of each hearing.

17.81B.645 Planning Commission Recommendation.

(1) The Planning Commission shall provide a written recommendation to the City Council on the proposal. The recommendation shall contain the following:

- (a) The recommendation of the Planning Commission;
- (b) Any conditions included as part of the recommendation; and
- (c) Findings of fact upon which the recommendation, including any conditions, was based and the conclusions derived from those facts.

(2) If the Planning Commission makes a recommendation that requires a modification which results in a proposal not reasonably foreseeable from the description of the proposal contained in the public notice provided pursuant to Section 17.81A.630, the Planning Commission shall conduct a new hearing on the modified proposal.

17.81B.650 Notice of City Council Public Hearing.

(1) Public notice of the date of the City Council public hearing at which the City Council will consider the application shall be published in a newspaper of general circulation. If a hearing is required before the City Council the hearing shall be scheduled no sooner than 10 days following the date of publication of the notice. The notice of the City Council public hearing shall also include the notice of the availability of the Planning Commission's recommendation.

(2) The Director shall mail or email notice of the public hearing, the SEPA threshold determination, and the availability of the recommendation to all parties of record, which shall include the applicant and each person who submitted comments during the public comment period or at any time prior to the publication of the notice of the public hearing.

17.81B.655 City Council Action.

(1) Provided the requirements of the Growth Management Act for ensuring adequate public involvement are met, the Council need not await the recommendations of the Planning Commission before taking action on a proposed amendment, nor is the Council bound by any recommendations of the Planning Commission.

(2) The Planning Director shall transmit to the City Council a copy of the department file on the application, including all written comments received prior to the City Council hearing. The file shall also include information to verify that the requirements for notice to the public (notice of application, notice of SEPA threshold determination, and notice of public hearing) have been met.

(3) The City Council may consider at a public meeting each recommendation transmitted by the Planning Commission. The Council may take one of the following actions:

- (a) Adopt an ordinance or resolution adopting the recommendation, or adopt the recommendation with modifications;
- (b) Adopt a motion denying the proposal; or

(c) Refer the proposal back to the Planning Commission for further proceedings, in which case the City Council shall specify the time within which the Planning Commission shall report back to the City Council with a recommendation.

(4) If the City Council makes a modification which results in a proposal not reasonably foreseeable from the notice provided pursuant to Section 17.81A.630, the City Council shall conduct a new public hearing on the proposal as modified, prior to taking final action.

17.81B.660 Appeal of Type V Decision.

An appeal of a Type V decision is made pursuant to Section 17.81B.750.

Part VI. Appeals

17.81B.710 Appeal of Type I and II Administrative Decisions.

If a Type I or II decision has an administrative appeal available as set forth in Section 17.81B.115 or 17.81B.215, except for shoreline permits, the following procedures shall be followed:

(1) Appellant. The project applicant or any person who submitted written comments prior to the date the decision was issued may appeal the decision.

(2) Form of Appeal. A person appealing a Type I or II decision must submit a completed appeal form which sets forth:

(a) Facts demonstrating that the person is adversely affected by the decision;

(b) A concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria;

(c) The specific relief requested; and

(d) Any other information reasonably necessary to make a decision on the appeal.

(3) Time to Appeal. The written appeal and the appeal fee, if any, must be received by the Department of Community Development no later than 4:00 p.m. on the fourteenth day following the date of the notice of decision.

(4) Notice of Appeal. If a Type I or II decision is appealed, a hearing before the designated appeal body (as established in the table in Section 17.81B.115 or 17.81B.215 shall be set and notice of the hearing shall be mailed or emailed to the appellant, the applicant, and all parties of record by the applicable department director. Notice shall be mailed or emailed no less than 10 days prior to the appeal hearing, except that if the Type I or II decision has been consolidated with a recommendation on a Type III or IV application, any appeal of the Type I decision shall be consolidated with

the Type III or IV public hearing. No separate notice of a Type I or II appeal needs to be provided if the public hearing has already been scheduled for the Type III or IV component of an application.

(5) Hearing Examiner.

(a) Public Hearing. The Hearing Examiner shall conduct an open record hearing on a Type I or II appeal. The appellant, the applicant, and the City shall be designated parties to the appeal. Each party may participate in the appeal hearing by presenting testimony or calling witnesses to present testimony. Interested persons, groups, associations, or other entities who have not appealed may participate only if called by one of the parties to present information or to present testimony on a consolidated Type III or IV application; provided, that the Examiner may allow nonparties to present relevant testimony if allowed under the Examiner rules of procedure.

(b) Decision on Appeal.

- (i) Within 14 days after the close of the record for the Type I or II appeal, the Hearing Examiner shall issue a written decision to grant, grant with modifications, or deny the appeal. The Hearing Examiner may grant the appeal or grant the appeal with modification if:
 - (A) The appellant has carried the burden of proof; and
 - (B) The Examiner finds that the Type I or II decision is not supported by a preponderance of the evidence.
- (ii) The Hearing Examiner shall accord substantial weight to the decision of the applicable department director.
- (iii) Reconsideration Period. Any person who participated in the hearing may file a written request with the Hearing Examiner for reconsideration within 10 business days of the date of the Hearing Examiner’s decision. The request shall explicitly set forth alleged errors of procedure or fact. The Hearing Examiner shall act within 14 days after the filing of the request for an appeal by denying the request, issuing a revised decision, or calling for an additional public hearing.

(6) Appeal of Hearing Examiner Decision on Appeal. A Hearing Examiner decision on a Type I or II appeal may be appealed to the Snohomish County Superior Court by filing a land use petition which meets the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in State law and within the 21-day time period as set forth in RCW 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled.

(7) Time Period to Complete Appeal Process. In all cases, except where the parties to an appeal have agreed to an extended time period, the administrative appeal process generally shall be completed within 90 days from the date the original administrative appeal period closed. The administrative appeal process shall be deemed complete on

the date of issuance of the Hearing Examiner's decision or the City Council's decision on the appeal.

(8) Shoreline Permit Appeals. An appeal of a shoreline exemption or shoreline substantial development permit shall be to the State Shoreline Hearings Board and shall be filed within 21 days of the receipt of the City's decision by the Department of Ecology, as set forth in RCW 90.58.180.

17.81B.720 Appeal of Type III Hearing Examiner Decisions.

(1) Except for shoreline conditional use or shoreline variance, which is appealed to the Shoreline Hearings Board as per subsection (2) of this section, a Type III decision of the Hearing Examiner may be appealed to Snohomish County Superior Court by filing a land use petition which meets the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties, as set forth in State law and within the 21-day time period as set forth in RCW 36.70C.040. The appeal period shall commence upon the Hearing Examiner's final decision and not upon expiration of the reconsideration period.

(2) Shoreline Permit Appeals. An appeal of a shoreline conditional use permit or shoreline variance shall be to the State Shoreline Hearings Board and shall be filed within 21 days of the receipt of the City's decision by the Department of Ecology, as set forth in RCW 90.58.180.

17.81B.740 Appeal of Type IV, Development Agreement, City Council Decisions.

The decision of the City Council on a Type IV application is the final decision of the City and may be appealed to Snohomish County Superior Court by filing a land use petition which meets the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in State law and within the 21-day time period as set forth in RCW 36.70C.040. The appeal period shall commence upon the City Council's final decision and not upon expiration of the reconsideration period.

17.81B.750 Appeal of Type V Legislative, City Council Decisions with Planning Commission Recommendation.

The action of the City Council on a Type V proposal may be appealed together with any SEPA threshold determination by filing a petition with the Growth Management Hearings Board pursuant to the requirements set forth in RCW 36.70A.290. The petition must be filed within the 60-day time period set forth in RCW 36.70A.290(2). The appeal period shall commence upon the City Council's final decision and its publication and not upon expiration of the reconsideration period. Judicial appeal where applicable is to Snohomish County Superior Court.

Section 10. SMC Chapter 17.85 entitled "Public hearings" is hereby repealed:

**Chapter 17.85
PUBLIC HEARINGS**

Sections:

- ~~17.85.010 General regulations on public hearings.~~
- ~~17.85.020 Transcription of testimony.~~
- ~~17.85.030 Appearance of parties.~~

~~17.85.010 General regulations on public hearings.~~

~~All hearings shall be public. Public notice of any hearing as required by this section to be conducted by the city council, planning commission, or hearing examiner shall be given as follows:~~

~~(1) A notice setting forth the general purpose of any such hearing and the time and place thereof shall be published in a newspaper pursuant to SMC 1.08.010 not less than 10 days before such hearing.~~

~~(2) The owner(s) of any/all lot(s) within the area to be changed as well as those within 300 feet of such area shall be notified by first class mail of the general purpose of any such hearing and the time and place thereof at least 10 days prior to the date of such hearing. If the applicant owns adjoining land, the distance of notification shall be measured from the outside of the applicant's ownership. The applicant shall submit with the application mailing labels with names and addresses for such property owners which shall be as shown on the latest records of the assessor. Failure of any individual to receive the notice shall not invalidate the hearing.~~

~~(3) A notice setting forth the general purpose of any such hearing and the time and place thereof shall be posted on the property in question in at least one conspicuous place and visible from each right-of-way abutting the property, and the notice shall also be posted at City Hall at least 10 days prior to the hearing.~~

~~(4) All hearing notices shall include a description of the location of the proposal. The description may be in the form of either a vicinity location map or a written description other than a legal description. The legal description is not required.~~

~~(5) If an open record pre-decision hearing is required for a proposal, the notice of application must be submitted to the public and the threshold determination shall be made at least 15 days prior to the open record hearing. Please reference SMC 17.80.033(1)(c)(iv) regarding specific requirements for notice of application.~~

~~(6) All public hearings on residential developments shall be held in the evenings.~~

~~(7) The city may combine any hearing on a project permit with a hearing that may be held by another local, state, regional, federal or other agency; provided, that the hearing is held within the city limits of Stanwood. Hearings shall be combined if requested by the applicant, as long as the joint hearing can be held within the time periods specified in Chapter 17.80 SMC or the applicant agrees to the schedule in the event that additional time is needed to combine the hearings. In cooperation with other jurisdictions, the city may issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, and take such action necessary to hold joint hearings consistent with each of the participating jurisdictions' respective statutory obligations.~~

~~(8) The city shall cooperate to the fullest extent possible with other local and regional agencies or jurisdictions that are participating in the joint hearing process (stipulated in subsection (7) of this section) as long as:~~

- ~~(a) The city is not expressly prohibited by statute from doing so;~~
- ~~(b) Sufficient notice of the hearing has been given to meet the city's public notice requirements as established in this code;~~
- ~~(c) The city has received the necessary information about the proposed project from the applicant to hold its hearing at the same time as other agencies. (Ord. 1316 § 6, 2012; Ord. 1110 § 3, 2002; Ord. 1084 § 3, 2000; Ord. 969, 1996; Ord. 951 §§ 1, 2, 1996; Ord. 929 Ch. 9(A), 1995).~~

~~17.85.020 Transcription of testimony.~~

~~At any public hearing before the city council, planning commission, or hearing examiner, all testimony and objections thereto and thereon shall be taken down by a clerk employed by the city and/or recorded by a recording machine set up for that purpose. If a written transcript of a recorded hearing is required, the city shall have a transcript prepared, the cost of which shall be borne by the requesting party. (Ord. 1316 § 7, 2012; Ord. 1084 § 3, 2000; Ord. 969, 1996; Ord. 929 Ch. 9(B), 1995).~~

~~17.85.030 Appearance of parties.~~

~~At any public hearing before the city council, planning commission, or hearing examiner, any party may appear in person or be represented by agent or attorney. (Ord. 1084 § 3, 2000; Ord. 969, 1996; Ord. 929 Ch. 9(C), 1995).~~

Section 11. SMC Chapter 17.87 entitled "Hearing examiner" is hereby amended to read as follows:

**Chapter 17.87
HEARING EXAMINER**

Sections:

- 17.87.010 Purpose.
- 17.87.020 Creation.
- 17.87.030 Appointment.
- 17.87.040 Qualifications.
- 17.87.050 Removal.
- 17.87.060 Freedom from improper influence.
- 17.87.070 Conflict of interest and appearance of fairness.
- 17.87.080 Rules.
- 17.87.090 Duties.
- 17.87.100 Public hearings.
- 17.87.110 Powers.
- 17.87.120 Report of department.
- 17.87.130 Decision.
- 17.87.140 Notice of decision.

17.87.150 Appeals.

17.87.010 Purpose.

The purpose of this chapter is to establish a quasi-judicial hearing system that will ensure procedural due process and appearance of fairness in public hearings and will provide an efficient and effective hearing process for quasi-judicial matters. (Ord. 1084 § 3, 2000).

17.87.020 Creation.

The office of the hearing examiner is hereby created. The hearing examiner shall perform the duties and functions specified in this chapter, together with such other quasi-judicial duties and functions as may be delegated by the mayor and the city council. Unless the context requires otherwise, the term "hearing examiner" shall include any hearing examiner pro tem who may be appointed. (Ord. 1084 § 3, 2000).

17.87.030 Appointment.

The hearing examiner shall be appointed by the mayor, subject to a majority vote by the city council. The terms of the hearing examiner's employment shall be specified by a professional service contract. The mayor may also appoint a hearing examiner pro tem, who shall serve in the event of absence or disqualification of the hearing examiner. (Ord. 1084 § 3, 2000).

17.87.040 Qualifications.

The hearing examiner shall be appointed solely with regard to his or her qualifications to perform the duties of the office, and will have such training and experience as will qualify the hearing examiner to conduct administrative and quasi-judicial hearings on regulatory enactments and to discharge such other functions conferred upon the hearing examiner by the mayor or city council. The hearing examiner shall hold no other elected or appointed office in the city government. (Ord. 1084 § 3, 2000).

17.87.050 Removal.

The hearing examiner may be removed from office for cause by the mayor, subject to a majority vote of the city council. However, such removal shall not affect the ability of the hearing examiner to complete any cases already provided a public hearing. (Ord. 1084 § 3, 2000).

17.87.060 Freedom from improper influence.

No person, including city officials, elected or appointed, shall attempt to influence a hearing examiner, interfere in any matter pending before the examiner, or engage in any ex parte communications with the hearing examiner, except at a public hearing duly called for the purpose of hearing testimony. This section shall not prohibit the city attorney from rendering legal service to the hearing examiner upon request. (Ord. 1084 § 3, 2000).

17.87.070 Conflict of interest and appearance of fairness.

(1) The hearing examiner shall not conduct or participate in any hearing or decision in which the examiner has a direct or indirect personal, financial, or familial interest that may influence the hearing examiner or interfere with the decision-making process. Any actual or potential conflict of interest shall be disclosed to the parties and the city immediately upon discovery. The hearing shall then be conducted by a hearing examiner pro tem.

(2) The appearance of fairness doctrine, as specified in Chapter 42.36 RCW, shall apply to all proceedings conducted by the examiner, and may result in the examiner's disqualification when necessary. (Ord. 1084 § 3, 2000).

17.87.080 Rules.

The hearing examiner shall have the power to prescribe rules and regulations for the scheduling and conduct of hearings and other procedural matters related to the duties of the office. (Ord. 1084 § 3, 2000).

17.87.090 Duties.

The hearing examiner is vested with the duty and authority to:

(1) Hold public hearings and render decisions as prescribed by SMC ~~17.80.130, Table of land use procedures~~ 17.81A-I, Classification of Permits and Decisions.

(2) Hear challenges to code interpretations made by the planning director. In these cases, the decision of the hearing examiner shall be final.

(3) Hear cases and appeals related to code enforcement or police activities.

(4) Perform other regulatory, enforcement, or quasi-judicial functions as conferred upon the hearing examiner by the mayor or the city council or as required by ordinance. (Ord. 1110 § 3, 2002; Ord. 1084 § 3, 2000).

17.87.100 Public hearings.

Where public hearings are required by state statute or city code, the examiner shall hold at least one such hearing prior to rendering a decision on any matter. All testimony at any such hearing shall be given under oath. (Ord. 1084 § 3, 2000).

17.87.110 Powers.

The examiner shall have the authority to:

(1) Receive and examine available information;

(2) Conduct public hearings and prepare a record thereof;

(3) Administer oaths and affirmations;

(4) Examine witnesses;

(5) Regulate the course of the hearing;

(6) Make and enter decisions;

(7) Hold, at the hearing examiner's discretion, conferences for the settlement of simplification of issues;

(8) Dispose of procedural requests or similar matters; and

(9) Take any other action authorized by or necessary to carry out this chapter. (Ord. 1084 § 3, 2000).

17.87.120 Report of department.

(1) The planning director shall be responsible for the preparation of a report to the hearing examiner that summarizes the factors involved and the department's findings and recommendations. Comments, reports, and recommendations from other departments, advisory boards and commissions, and agencies shall be coordinated and assembled among departments and agencies in preparation of the report.

(2) At least seven calendar days prior to the scheduled hearing, the report shall be filed with the hearing examiner and made available for public inspection at City Hall. A copy shall be mailed to the applicant. (Ord. 1110 § 3, 2002; Ord. 1084 § 3, 2000).

17.87.130 Decision.

~~Within 15 calendar days after the conclusion of a hearing, unless a longer period is agreed to by the applicant in writing or on record at the hearing, the hearing examiner shall render a written decision, which shall include at a minimum:~~

~~(1) Findings of fact based upon the record and conclusions therefrom which support the decision;~~

~~(2) Whether the application is approved, approved with conditions or modifications, remanded to the applicant for modification, or denied;~~

~~(3) A statement indicating the procedure and time limits for appeal. (Ord. 1084 § 3, 2000).~~

Hearing examiner shall issue the decision in accordance with SMC 17.81B.350(4).

17.87.140 Notice of decision.

~~Within five calendar days following the rendering of a written decision, copies thereof shall be mailed to the applicant and other parties of record in the case. (Ord. 1084 § 3, 2000).~~

Notice of final decision shall be processed in accordance with SMC 17.81B.355.

17.87.150 Appeals.

Appeals of hearing examiner decisions shall be allowed, pursuant to SMC ~~17.80.090 and 17.80.130~~ 17.81B.720 or other applicable law. (Ord. 1084 § 3, 2000).

Section 12. SMC Section 17.114.120 entitled "Exception – Public agency and utility" is hereby amended to read as follows:

17.114.120 Exception – Public agency and utility.

(1) If the application of this chapter or Chapters 17.115 through 17.135 SMC would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(2) Exception Request and Review Process. An application for a public agency and utility exception shall be made to the city planning department and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The planning director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with the public agency and utility exception review criteria in subsection (4) of this section.

(3) Hearing Examiner Review. The hearing examiner shall review the application and planning director's recommendation, and conduct a public hearing pursuant to the provisions of Chapter ~~17.85~~ SMC 17.81B SMC for Type III Review - Quasi-Judicial, Hearing Examiner Decisions. Within the jurisdiction of the Shoreline Management Act the application shall be processed as a shoreline conditional use subject to Ecology concurrence. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (4) of this section.

(4) Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions are as follows:

- (a) There is no other practical alternative to the proposed development with less impact on the critical areas;
- (b) The application of this chapter or Chapters 17.115 through 17.135 SMC would unreasonably restrict the ability to provide utility services to the public;
- (c) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- (d) The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
- (e) The proposal is consistent with other applicable regulations and standards.

(5) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 1373 § 20, 2014; Ord. 1164 § 4, 2004).

Section 13. SMC Section 17.114.130 entitled "Exception – Reasonable use" is hereby amended to read as follows:

17.114.130 Exception – Reasonable use.

(1) If the application of this chapter or Chapters 17.115 through 17.135 SMC would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section.

(2) Exception Request and Review Process. An application for a reasonable use exception shall be made to the city and shall include a critical area identification

form; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents). The planning director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with the reasonable use exception criteria in subsection (4) of this section.

(3) **Hearing Examiner Review.** The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of Chapter ~~17.85 SMC~~ 17.81B SMC for Type III Review - Quasi-Judicial, Hearing Examiner Decisions. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in subsection (4) of this section.

(4) **Reasonable Use Review Criteria.** One or more of the following criteria for review and approval of reasonable use exceptions may apply:

- (a) The application of this chapter or Chapters 17.115 through 17.135 SMC would deny all reasonable economic use of the property;
- (b) No other reasonable economic use of the property has less impact on the critical area;
- (c) The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
- (d) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of the ordinance codified in this chapter, or its predecessor;
- (e) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- (f) The proposal will result in no net loss of critical area functions and values consistent with the best available science; or
- (g) The proposal is consistent with other applicable regulations and standards.

(5) **Burden of Proof.** The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

(6) This section shall not be applied within the jurisdiction of the Shoreline Management Act (Chapter 90.58 RCW). (Ord. 1373 § 21, 2014; Ord. 1164 § 4, 2004).

Section 14. SMC Section 17.150.083 entitled "Rescission of permits" is hereby amended to read as follows:

17.150.083 Rescission of permits.

- (1) Any shoreline permit issued under the terms of this Master Program may be rescinded or suspended upon a finding that a permittee has not complied with conditions of the permit.
- (2) Such rescission and/or modification of an issued permit shall be initiated by serving written notice of noncompliance on the permittee, which shall be sent by

registered or certified mail, return receipt requested, to the address listed on the application or to such other address as the applicant or permittee may have advised the city; or such notice may be served on the applicant or permittee in person or his agent in the same manner as service of summons as provided by law.

(3) Before any such permit can be rescinded, a public hearing shall be held by the hearing examiner. Notice of the public hearing shall be made in accordance with Chapter ~~17.85~~ 17.81B.340 SMC. The decision of the hearing examiner shall be the final decision of the city on all rescinded applications. A written decision shall be transmitted to the Department of Ecology, the Attorney General's office, the applicant, and such other departments or boards of the city as are affected thereby and the legislative body of the city.

(4) The Department of Ecology may petition the shoreline hearings board for a rescission of the permit if Ecology is of the opinion that the noncompliance continues to exist 30 days after the date of the notice, and the local government has taken no action to rescind the permit, as provided by RCW 90.58.140(8). (Ord. 1373 § 46, 2014).

Section 15. SMC Section 17.155.030 entitled "Procedure for amendments to the zoning code" is hereby amended to read as follows:

17.155.030 Procedure for amendments to the zoning code.

(1) Proposed amendments to this title, including changes in the zoning district maps or boundaries, shall be referred to the planning commission for review and public hearing except that the city council may at its discretion assume the planning commission's authority to conduct the review and public hearing in the following instances:

- (a) When zoning text amendments involve corrections, or minor updates that do not require further study and review; or
- (b) When zoning text amendments implement a clear policy direction already determined by the city council and the need for additional study and recommendation is not indicated.

(2) Upon submission of a complete application for an amendment to this title, as provided in SMC 17.155.080, the city shall schedule a public hearing, which shall be not less than 10 and not more than 60 days from the date the city provides notice that the application is complete. At the meeting, interested parties and citizens shall have the opportunity to be heard, ~~under the requirements contained in Chapter 17.85 SMC.~~

(3) For a zoning map amendment, the commission shall receive in writing statements from the relevant city of Stanwood departments to inform them as to the availability and capacity of all required infrastructure, including roadway, water, wastewater, stormwater, and electrical power systems to accommodate the level of development that could occur if the zoning map amendment were to be granted. If statements are not available prior to the public hearing, those departments shall have an opportunity to make oral statements at said hearing. If no statement, written or oral, is given by any department or government agency, it shall be assumed that they concur with the requested amendment.



STANWOOD PLANNING COMMISSION MINUTES

May 23, 2016

Call to Order

Chair Utgard called the meeting to order at 6:32PM with the following Commissioners present: Jeff Laycock, Mark Ramaley, Randy Heagle, Dianne White and Robert Sandoz. Commissioner Judy Williams was excused. Staff present; Community Development Director Ryan Larsen, Planning Commission Clerk Devin Tokizawa. Known public in attendance: Ed and Katie Farrey, Matt McRay.

No Public Requests or Comments

Minutes

The minutes of the May 9, 2016 meeting were approved as presented.

New Business

Kristina Gallant with Affordable Housing Authority gave a power point presentation on housing in the area and reviewed a brief assessment of housing in the greater Stanwood area.

The Planning Commission discussed the following:

- Housing needs in Stanwood
- Stanwood needs more rentals available for lower income people and families
- Stanwood has a higher population of seniors
- May find sources don't recognize cities waiving fees – are not contributing funding.
- Federal funding possibilities – grant monies

Public Hearing

Chair Utgard opened the public hearing.

Misc. Edits to Title 16 and Title 17

Director Ryan Larsen explained that there are four separate staff reports and explained the process of tonight's public hearing and how the members in the audience may give public comment.

Mr. Larsen reviewed the miscellaneous edit to Title 16 and Title 17 and stated that the Commission reviewed these previously. Mr. Larsen stated that other staff reviewed these and asked the Commission if they had any questions. There was no discussion by the Planning Commission.

Wireless Communication

Next, Mr. Larsen reviewed the wireless communication code edits which were written by the City Attorney. The City can ask that the structure be modified by requiring it be colored a darker green which allows it to blend into the environment however, we cannot delay the process. There was no discussion by the Planning Commission.

Marijuana Regulations

Mr. Larsen stated that the Commission has been working on this for quite some time and we are required by law to have an ordinance in place by the end of June and in effect. The recommendation will go to City Council at their June 9 meeting and the ordinance will go to Council two weeks later for first, second and final reading and immediate adoption. We are presenting two ordinances to the Commission and two ordinances to City Council. One ordinance will allow for retail marijuana facilities and the other will not.

Mr. Larsen went over the proposed revisions to the code including new sections to the code which include marijuana retailers may not locate within 1,000 feet within schools, secondary schools, playgrounds, recreational centers, childcares centers, public parks, public transit and 1,000 feet from arcade facilities according to state law. Marijuana retailers may not locate within 2,500 feet of another retail marijuana facility. Customer parking must be on a public street and not come from an alley. Vehicle access must be from a public street as well. Retailers must be fully contained in a retail structure. In addition the following stipulations from the previous code are included: 24 hour video surveillance, hours of operation 9am – 9pm, marijuana retailers shall not be allowed on any parcel contiguous to a residential use. Design standards may also be required including landscaping, fencing, window screening, etc. Additional restrictions / limitations include: no more than two retail marijuana shops in the City of Stanwood in which prior to June 1, 2019 the City will review this limitation again, measurement distance of 2,500 feet is a straight line as the crow flies, business license is required, enforcement and penalties will be enforced.

Mr. Larsen stated that medical marijuana/collective gardens use will be eliminated from the use table. Retail marijuana as a use will be added to the permitted use table in the same zones as previously allowed for medical marijuana.

The other section of the code beginning in section 5.135 for the rest is in the reverse where marijuana use is eliminated. If B is passed then marijuana retail would not be allowed in Stanwood.

Commissioners discussed the following:

- if a house is being used as a residence, but is located in a zone which allows commercial or residential use, a retail marijuana business would still not be allowed on a parcel contiguous to that structure because it is being used as a residence
- mixed use project would not qualify
- contiguous is adjacent to and perhaps not broken up by/separated by a street
- very few locations are viable in Stanwood given the buffers

- reason for the administrative conditional use process – need to review the plans and make sure they are complying
- public notice – Type I permit which requires no notification.

Public Comment:

Katie Farrey, 27313 Pioneer Hwy, Stanwood. Supports medical marijuana in the City. Commented on the improvements to the current medical marijuana business and the politeness of the staff there.

Commissioner White added that, after speaking to the Chief of Police, he agreed that there have been no problems with that business.

Matthew Carter, 27122 80th Ave, Stanwood. Supports medical marijuana in the City. Is employed by the current medical marijuana dispensary. Commented that it is a beneficial and utilized service in the community. Many citizens use their services. The location is safe due to its proximity to the police station.

Matt McKay, 4010 Astrea Place, Anacortes. Owns and operates his own business in this field. Supports the current medical marijuana use and dispensary in the City of Stanwood. Commented that he believes the Stanwood dispensary is one of the safest and most secure in the state of Washington. Spoke as to the business side of the industry and revenue benefits to the City. Spoke to a Snohomish County Sheriff Deputy recently who had nothing but positive things to say about the existing dispensary in Stanwood.

Norm G., 27233 102nd Ave NW, Stanwood. Supports the current medical marijuana use and dispensary in the City of Stanwood. Is a medical patient. Supports medical marijuana use and the current dispensary in the city. Concern with retail marijuana is that it will drive up the price of marijuana for those who use it for medical use and drive some individuals to use the black market in order to purchase marijuana. Additionally, concerned about security and banking for recreational or medical marijuana businesses.

Ed Farrey, 27313 Pioneer Hwy, Stanwood. Supports medical marijuana in the City.

Chair Utgard asked the Commission if they had any additional comments or questions.

Commissioner White reiterated her support for medical and retail marijuana as an allowed use in the City and gave background information as a pharmacist, the medical value of marijuana use and the benefit of purchasing it through professional businesses.

Commissioner Heagle added his support for the use in Stanwood.

Commissioner Sandoz commented that he does not support what he believes to be obstruction of business. This is a legal business and we need to provide it. Mr. Sandoz added that due to the State Legislature, one can no longer operate solely as a medical marijuana business.

Commissioner Laycock asked for clarification on this use being allowed in proximity to public transit such as Amtrak. Mr. Larsen answered that would not qualify.

ATTACHMENT B

Chair Utgard closed the public hearing.

Motion. Motion by Commissioner Heagle second by Commissioner Sandoz to recommend City Council approve the proposed miscellaneous code edits to Title 15, Title 16 and Title 17 as identified in Attachment A otherwise shown as Option 1 in the Staff Report. Motion carried unanimously.

Motion. Motion by Commissioner White second by Commissioner Sandoz to recommend City Council approve the proposed edits to the land use process as drafted by staff in Attachment A through Attachment F. Motion carried unanimously.

Motion. Motion by Commissioner Laycock second by Commissioner Ramaley to recommend City Council approve the proposed edits to the wireless communications ordinance as drafted by the City attorney in Attachment A and B. Motion carried unanimously.

Motion. Motion by Commissioner Sandoz second by Commissioner Laycock to recommend City Council approve the proposed edits for the allowance of marijuana retail sales within the City of Stanwood as drafted by City staff in Attachment A and B. Motion carried unanimously.

Staff reminded the public in attendance that the City Council will meet at the School Administration Building on June 9, 2016 at 7pm to discuss marijuana regulations.

Chair Utgard recognized Commissioner Robert Sandoz for his service on the Commission from 2014 to 2016 and Commissioner Jeff Laycock for his service from 2012 to 2016.

No Old Business

Miscellaneous Business & Upcoming Items

- Land Use Acronym informational handout
- Sign Code edits by City Attorney – will be coming to the Commission in July
- Traditional Neighborhood Zone (TN) – challenges for this type of development, most of the developable parcels in the City are zoned TN, the TN zone was an attempt to bring back the old fashioned downtown with services near residences, benefits of the renovated Cedarhome Market in the Cedarhome neighborhood

Adjourn

The meeting adjourned at 8:15PM.

Devin Tokizawa, City of Stanwood

City Council COMMUNITY DEVELOPMENT COMMITTEE

June 9, 2016 Meeting

The Community Development Committee met on June 9, 2016 with councilmembers Rob Johnson, Dottie Gorsuch, and Larry Sather; as well as Ryan C. Larsen Community Development Director.

Community Development Director Ryan Larsen reviewed and discussed the following items with the Committee.

1. Tarte Annexation

City staff gave a brief overview of the Tarte Annexation to the Committee. The property is located located at the northeast corner of Jensen Road and 68th Avenue NW (Cederhome Road). The proposed annexation would only consist of a single parcel (owned by the Tarte's) and is within an area recently brought into the City's UGA.

The applicant (Tom and Karie Tarte) submitted a completed 60% to the City of Stanwood on March 3, 2016. Upon receipt of the petition City staff sent the petition to the Snohomish County Auditor's office for signature and valuation verification. Snohomish County certified the petition on March 10, 2016. The City Council held a public hearing on the proposed annexation at their April 14, 2016 meeting and approved Resolution 2016-07 supporting the annexation for review by the Boundary Review Board (BRB).

Staff then prepared a submittal package for the BRB and submitted the application on April 29, 2016. As part of that submittal package staff requested the BRB to waive jurisdiction since the annexation being proposed is less than 10 acres in size and less than \$2 million in assessed evaluation. The BRB granted the waiver for jurisdictional review and sent the letter of acknowledgement on June 1, 2016 (received June 6, 2016).

The final step in the annexation process will be for the City Council to pass the attached ordinance accepting the annexation area into the City limits. The Council still has the option to not support the annexation if so desired.

The Committee made a motion to support the Mayor signing Ordinance 1422 accepting the Tarte Annexation area into the City of Stanwood.

2. Miscellaneous Edits to Title 16 and Title 17

City staff reviewed the proposed miscellaneous edits with the Committee as well as addition staff comments on a couple of the proposed edits. The Committee reviewed Section 16.15.140 relating to the duration of preliminary plats. The Committee suggested amending this section to include only one extension of two years rather than how it is currently drafted by allowing multiple one year extension by the Council. The Committee also provided comments on the new section 17.151.115 relating to the deferral of impact fees. The City is required by state law to put in place rules which will allow a developer to defer impact fees. The Committee suggested adding language to subsection (3) which would allow the city to stop giving inspection at the end of the 18 month period until all impact fees are paid. They also suggested under subsection (5) to include language that notified the residences of the property in addition to the legal owner. This will ensure if the property is being rented, that renters would be fully aware of what is happening.

The Committee moved to support the Planning Commission's recommendation to City Council with the couple of minor edits suggested.

3. New Land Use Procedure Process

City staff gave an overview of the proposed land use process edits and Planning Commission recommendation to the Committee. The Stanwood Municipal Code currently does not provide description of the land use process for the various types of applications such as a Type I, Type II, Type III, Type IV, or Type V permit.

Staff created two new Chapters, Chapter 17.81A – Procedures and Chapter 17.81B – Type of Land Use Review. Chapter 17.81A – Procedures establishes procedures for processing project permit applications and for adopting and amending Comprehensive Plans and development regulations. These procedures are intended to promote land use decisions that further the goals and policies of the Comprehensive Plan. Chapter 17.81B Type of Land Use Review describes the process and procedures for each type of land use application. It also discusses the appeal process.

With the creation of these two new chapters, Chapter 17.80 Administration needed to be edited to ensure consistency with the two new chapters. Several sections within this chapter were moved to the either Chapter 17.81A or Chapter 17.81B.

Chapter 17.85 Public Hearings was completely deleted and is incorporated within both Chapter 17.81A and Chapter 17.81B. Also, Chapter 17.87 Hearing Examiner had to be amended to account for the two new chapters and the changes to Chapter 17.80. Other section minor edits needed to occur within Titles 15, 16, and 17 in order to ensure consistency between all of the code edits and recommended changes.

The Committee moved to support the Planning Commission's recommendation to City Council.

4. Wireless Communications

City staff gave an overview of the proposed wireless communication edits and Planning Commission recommendation to the Committee. In an effort to facilitate a rapid deployment of new facilities, the

federal government has adopted rules to preclude local jurisdictions from prohibiting new WCFs or protracting the application review processes. According to 47 U.S. Code § 332(c)(7), a local jurisdiction may not “unreasonably discriminate among providers of functionally equivalent services” or “prohibit or have the effect of prohibiting the provision of personal wireless services”. Local governments may not regulate wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent the facilities comply with the FCC’s regulations. Local governments must also act on requests to place, construct or modify a WCF “within a reasonable period of time”. This reasonable period has been interpreted by the FCC as 90 days for a colocation on an existing WCF support structure, and 150 days to decide an application for a new WCF.

Congress also included provisions in the Middle Class Tax Relief and Job Creation Act of 2012 stating that local governments “may not deny and shall approve” modifications to existing cell towers that do not substantially alter the physical dimensions of the tower or base station. The FCC determined that 60 days is a reasonable period of time for this review, as the reviewing agency would have no choice but to approve such an “eligible facility”. Failure to issue an approval within this period means the application is “deemed granted”.

Except by mutual agreement of the applicant and local government, the only action that may pause or “toll” the prescribed review timeframe, typically referred to as the “shot clock”, is a determination that the application is not complete and additional information is required for review. Any request for additional information may only occur within the first 30 days after the date on which the application was initially filed. Current regulations do not refer to the shot clock timeframes, nor do they distinguish between eligible facilities, i.e., non-substantial colocation, removal, or replacement of equipment, and other, more substantial changes to an existing WCF. Proposed Chapter 14.242 SMC incorporates the shot clock timeframes—60-day, 90-day, and 150-day—as separate permit types for purposes of processing applications.

City staff had our attorney draft these new rules since it was rather complicated. The attorney created two ordinances.

Ordinance 1 deals with existing Chapter 17.154 SMC does not contain reference to the shot clock rules, which are required for compliance with the 2009 Declaratory Ruling and the clarification of those rules in the 2014 Report and Order, which will be adopted by adding new sections to Chapter 17.154 SMC. Also, other minor technical amendments have been made to Chapter 17.154 to explicitly require permits for the construction of a wireless communications facility and designating the Community Director as the responsible official.

Ordinance two deals with creating a new Chapter 17.156 – Eligible Facility Modifications has been created to establish regulations for co-location, removal and replacement of wireless transmission facilities to conform to federal law and regulations, as well as establishing an application submittal and approval process.

The Committee moved to support the Planning Commission’s recommendation to City Council.

5. Marijuana Retail Rules

City staff gave an overview of the proposed new marijuana regulations and the Planning Commissions recommendation. City staff had drafted two sets of rules for the Planning Commission to consider. City staff met with City Council on March 10, 2016 to receive further direction on how to proceed with the new rules for recreational marijuana. City Council suggested moving forward with rules that did not allow for recreational marijuana sales within the City of Stanwood. Staff has drafted those rules base on that input. Also, staff reviewed Council direction with the Planning Commission at their April 11 meeting. The Commission still supported the idea of allowing for marijuana retail sales in the City. So, staff drafted a second set of rules that allow for the retail sale of marijuana in the City base on Planning Commission direction. Per 17.155 Amendment procedures to Title 17, the Commission has the authority to initiate amendments to the code. Staff followed the Commissions guidance. The Commission at its public hearing on May 23 recommend in a 6-0-0 vote to City Council to allow for the retail sales of recreations marijuana.

Option 1 – For Marijuana Retail Sale edits – Changes to 17.100 Non-residential performance standards to delete section 17.100.045 Conditions for permitting medical marijuana collective gardens and edits to Section 17.30.010 Permitted land uses and established classification of fees to not allow for the sales of retail marijuana / processing / production / and manufacturing. This option would not allow for the retail sales of marijuana.

Option 2 – For Marijuana Retail Sale edits – Changes to 17.100 Non-residential performance standards to section 17.100.045 Conditions for permitting medical marijuana collective gardens to allow for Marijuana Retail Sales and edits to Section 17.30.010 Permitted land uses and established classification of fees to allow for the sales of retail marijuana. Marijuana / processing / production / and manufacturing are still not allowed under these edits. This option would allow for the retail sales of marijuana.

The Committee in a 2 to 1 vote supported the Planning Commissions recommendation to allow for retail sale of recreational marijuana.

Larry Sather, Chair