



# CITY OF SNOHOMISH

*Founded 1859, Incorporated 1890*

116 UNION AVENUE □ SNOHOMISH, WASHINGTON 98290 □ TEL (360) 568-3115 FAX (360) 568-1375

## NOTICE OF REGULAR MEETING

### SNOHOMISH CITY COUNCIL

in the  
George Gilbertson Boardroom  
1601 Avenue D

**TUESDAY**  
**February 16, 2016**  
**7:00 p.m.**

### AGENDA

*Estimated  
time*

- 7:00 1. **CALL TO ORDER**
  - a. Pledge of Allegiance
  - b. Roll Call
- 2. **APPROVE AGENDA** contents and order
- 3. **APPROVE MINUTES** of the meeting of February 2, 2016 *(P.1)*
- 7:05 4. **CITIZEN COMMENTS** on items not on the Agenda *(and/or to request time to speak on any Action or Discussion items on this agenda)*
- 5. **PUBLIC HEARINGS**
- 7:15 a. Title 14 Amendments *(P.23)*
  - 1) Staff presentation
  - 2) Council's questions of staff
  - 3) Citizens' comments
  - 4) Close citizens' comments
  - 5) Council deliberation and action – **ADOPT** Ordinance 2296
- 7:30 b. Wireless Communication Regulations *(P.41)*
  - 1) Staff presentation
  - 2) Council's questions of staff
  - 3) Citizens' comments
  - 4) Close citizens' comments
  - 5) Council deliberation and action – **ADOPT** Ordinance 2301

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- 7:45 c. Amendments to Chapter 14.10 SMC (P.79)
- 1) Staff presentation
  - 2) Council's questions of staff
  - 3) Citizens' comments
  - 4) Close citizens' comments
  - 5) Council deliberation and action – **ADOPT** Ordinance 2300
- 8:00 6. **DISCUSSION ITEM** – Medical and Recreational Marijuana (P.87)
- 8:30 7. **CONSENT ITEM - AUTHORIZE** payment of claim warrants #58160 through #58235 in the amount of \$388,925.31 issued since the last regular meeting (P.93)
- 8:35 8. **OTHER BUSINESS/INFORMATION ITEMS**
- 8:45 9. **COUNCILMEMBER COMMENTS/LIAISON REPORTS**
- 8:55 10. **MANAGER'S COMMENTS**
- 9:00 11. **MAYOR'S COMMENTS**
- 9:10 12. **ADJOURN**

**NEXT MEETING:** Tuesday, March 1, 2016, workshop at 6 p.m., regular meeting at 7 p.m., in the George Gilbertson Boardroom, Snohomish School District Resource Center, 1601 Avenue D.

*The City Council Chambers are ADA accessible. Specialized accommodations will be provided with 5 days advanced notice. Contact the City Clerk's Office at 360-568-3115.*

*This organization is an Equal Opportunity Provider.*

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**Snohomish City Council Meeting Minutes  
February 2, 2016**

1. **CALL TO ORDER:** Mayor Guzak called the Snohomish City Council meeting to order at 7:00 p.m., Tuesday, February 2, 2016, in the Snohomish School District Resource Service Center, George Gilbertson Boardroom, 1601 Avenue D, Snohomish, Washington.

<b><u>COUNCILMEMBERS PRESENT</u></b>	<b><u>STAFF PRESENT</u></b>
Derrick Burke	Larry Bauman, City Manager
Karen Guzak, Mayor	Grant Weed, City Attorney
Tom Hamilton	Jennifer Olson, Finance Director
Dean Randall	Owen Dennison, Planning Director
Lynn Schilaty	Steve Schuller, Public Works Director
Zach Wilde	Pat Adams, City Clerk
<b><u>COUNCILMEMBERS ABSENT</u></b>	
Michael Rohrscheib	

**MOTION** by Hamilton, second by Randall to excuse Councilmember Rohrscheib. The motion passed unanimously (6-0).

There were seventeen citizens in attendance.

2. **APPROVE AGENDA** contents and order:

**MOTION** by Burke, second by Hamilton to approve the agenda as presented. The motion passed unanimously (6-0).

3. **APPROVE MINUTES** of the meetings of January 19, 2016:

- a. Workshop
- b. Regular Meeting

**MOTION** by Schilaty, second by Randall to approve the minutes of the January 19, 2016 workshop and regular meeting. The motion passed unanimously (6-0).

4. **CITIZEN COMMENTS** on items not on the Agenda (*and/or to request time to speak on any Action or Discussion items on this agenda*)

**Bill Racer, 14434 44<sup>th</sup> Street NE, Lake Stevens**, is representing the Board of the Snohomish Affordable Housing Group (SAHG) and requested the Council set a future public hearing regarding the construction of another senior housing facility similar to the one previously built by the SAHG. Mr. Racer proposed a twenty-one unit senior housing facility in the Hal Moe Pool area. This would be senior housing only. He stated he is aware the Council has an advisory committee currently working on a proposed use for this site and understands it may take many months to obtain the Committee's recommendations. Mr. Racer discussed the need for affordable housing for seniors. He provided the Council with information he received from the Housing Authority of Snohomish County. Mr. Racer summarized that Washington State's over age 65 population has doubled since 1980 and is expected to double again by 2040. The City of Snohomish's population aged 55 to 69 has increased 78% in the census years between 2000 and 2010. He indicated this is a 2010 total of 1,359 people for an

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increase of 597 over that decade. As a whole, 15% of adults 65 years and older have incomes below 150% of the federal poverty level. For one and two family households, this equates to less than 50% of the area median income. Based on 2010 population statistics, the population of seniors in Snohomish County with less than 50% of the area's median income was 114 households. He noted that should rise to 204 by 2020. Total population of households in the City with incomes below 50% area median income is 1,518. Mr. Racer stated the City currently has only 357 units of subsidized housing, which includes 103 units provided by the Snohomish Affordable Housing Group, and that supply only covers less than 24% of the need. Market rate rents in the county have gone up 24% over the past four years, incentives have decreased 48% and the vacancy levels are only at 4.3%. He said the SAHG has examined the Hal Moe Pool site and believes it presents a great opportunity to build additional affordable housing for seniors at a minimal cost to the City.

Mayor Guzak thanked Mr. Racer for his input and stated her appreciation for the Snohomish Affordable Housing Group's work in providing housing units within this community.

**Dan Smoots, 1911 Lake Avenue**, is representing the Snohomish Affordable Housing Group (SAHG) and distributed a sketch of the proposed affordable housing units to be constructed to all Councilmembers. Mr. Smoots stated the group spent a fair amount of time thinking about the proposal and developed a sketch that was originally provided by the City, which showed the Boys and Girls Club and the old Hal Moe pool building. Mr. Smoots explained that he has superimposed on the pool site, a sketch of a proposed building that would be exactly the footprint of what was previously built with the City's help next door to the Senior Center. He stated this provides an idea of what the group is thinking about and what he believes makes the most sense for that site. He explained the area which is not already covered by the Boys and Girls Club is the area they would ask for consideration, which is less than 25% of that property. He stated he is aware the Hal Moe Pool Advisory Committee and the public will have many thoughts on the uses they will want for the property, and the SAHG would like to be considered for their 25% worth. Mr. Smoots further indicated that the building will most likely have to come down for cost reasons. He is aware that the City had a preliminary demolition bid at one point of approximately \$150,000. Mr. Smoots proposed that the SAHG would demolish the building, take the pool out, put in structural material and make that whole site ready for construction in return for the SAHG portion of the small 25% corner.

**Ray Cook, 7802 Riverview Road**, is representing the Snohomish Affordable Housing Group (SAHG) and distributed a photograph to the City Council. He stated the photograph depicts a SAHG low income senior housing project. He noted it is not a typical low income housing building, and is pretty much the same footprint of what the SAHG is proposing to build. Mr. Cook explained they rent out one bedroom units for \$420 per month. Two bedroom units are \$445 per month. Currently, they have approximately fifty applications on a waiting list for the senior housing project. These seniors would love to get into a unit, but the Affordable Housing Group can't handle the volume. Mr. Cook said when you consider the average retired senior's Social Security check in the United States is \$1,250, along with the high cost of medical care and housing, that money doesn't go very far. He noted the group is here to offer their support and finances to build another housing project before housing becomes a crisis in our community. The housing crisis is a big issue and will continue to become a greater issue as time goes on.

Councilmember Hamilton questioned Mr. Cook concerning the senior housing waiting list.

Mr. Cook replied the waiting list for senior housing is approximately fifty applications and

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the applicants call every day waiting for a unit only to be told that nothing is available.

Mayor Guzak advised the City has recently established the Hal Moe Pool Advisory Committee and they are open to public comments. She suggested it would be beneficial for the Snohomish Affordable Housing Group to work with the committee. Mayor Guzak thanked the group for the information they presented to the Council. She is aware of the enormous need for housing and appreciates all the great work this group has done for the City.

**Kevin Bruce, 522 South Lake Roesiger Road**, requested the City Council reconsider the legal retail and medical sale of marijuana in the City limits. Mr. Bruce explained he is the Grow Master at Dynamic Harvest, a 502 producer processor. He stated the moratorium only serves to push people away from buying marijuana in the City to go and purchase it somewhere else, and then return home to the City with it. He indicated marijuana buyers are acquiring legal marijuana just outside the City limits, with no revenue for the City and that the City of Snohomish could institute a B&O Tax, such as that with pull tabs and liquor sales. He stated he personally does not want to drive to Everett to spend his money, and he's not alone. He has shopped in the City of Snohomish for the past last twenty years. If allowed, he intends to open a retail store in Snohomish.

Mayor Guzak replied that the topic of retail and medical marijuana sales will be on the City Council agenda for discussion at its next meeting in two weeks. She anticipates quite a bit of public input concerning the topic and invited him to return at that time. She appreciated his comments.

**Eric Reyes 2224 Rockefeller Avenue, Everett**, manages a recreational marijuana store in Kirkland called Mary Jane. According to 502data.com, during the past six months, his store has made \$520,000. Of that amount, he paid a 37% excise tax to the State of Washington and a 9.5% tax to the City of Kirkland. He stated that is almost \$50,000 over a six month period his business made to the City of Kirkland. He indicated those tax monies are used to fund road projects, city services, schools, etc. He stated the remainder is used to keep his lights on, pay his employees, and reinvest into the quality of his product. Mr. Reyes said running a marijuana store is just like running any other store. He has to sweep and mop the floor, complete inventory counts, and restock the shelves. He stated there are many laws that go into running a marijuana store, including security, storage, advertising, quarantine, and sale limits. These are issues staff need to be knowledgeable of, as well as the legal ramifications between both State and City laws that bud tenders need to follow. If you bring a recreational marijuana store to Snohomish, it can only bring in revenue people are spending outside the City, such as Everett. He stated as long as businesses have the right staff in place, it can be successful.

**Morgan Davis, 206 Avenue I**, requested being allowed to offer public comment during Action Items 5d and 6 immediately following Council questions. Mr. Davis also wished to comment on lifting the City's ban on legal cannabis scheduled for a public council meeting on February 16, 2016, and then asked Councilmember Schilaty if she received an e-mail from local businessman Mike Bickford on January 29, 2016, entitled, Snohomish Marijuana Alert. Mr. Davis asked that it be shown in the record that Councilmember Schilaty did not reply to his question. He said it is his belief that Mr. Bickford resides outside the City limits, and therefore is not a registered City voter. He quoted the last paragraph in Mr. Bickford's email to Councilmember Schilaty, which stated, "I believe this battle will be won or lost based upon the number of individuals who voice their opinions. We must create enough evidence to dispel the myth that the majority of voters want pot shops in our town. If good

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men and women would get the word out and stand together, there is no way the pro pot agenda will prevail.” He believes that all councilmembers now have the results of the certified election on the I-502 measure. It was 55% to 45% in favor of legal cannabis, with eight out of ten City precincts in favor of that at the November election. It was a free and fair secret ballot election. The total City vote was 2,238 versus 1,929, a ten point wipe out. Mr. Davis stated he is aware that the Mayor, Councilmember Schilaty and Randall ignored the will of the City voters by banning implementation of I-502 in the City in 2014, but would like the Mayor and Councilmembers to admit for the record I-502 results are not a myth. If the Council believes the electorate has now changed their minds on legal cannabis, then he recommends instead of being completely influenced by an unsubstantiated petition or by the number of vocal speakers, let the City voters decide in a free and fair, certified secret ballot election this November. He stated the City could call it an advisory election or a referendum from the council, and if the City also includes the fireworks ban on the ballot, it would cost nothing to the taxpayers. That is the American way, real democracy in a secret ballot, where it is one person, one vote. He explained, the laborer or nearly homeless war veteran that requires medical cannabis for PTSD has the same influence with his one vote as a well connected, well to do businessman or car salesman - who are the so called good people. He stated the mayor is not democratic if she only listens to the rich and powerful. That’s not America. Let the real registered City voters decide.

Mayor Guzak granted Mr. Davis’ request to offer public comment during action items 5d and 6.

Mayor Guzak agreed that in the last election, relative to marijuana, there were more voters in favor of marijuana than were not. There are 5,600 registered voters in this City, and not all of them voted. She does hold that as an important piece of information, but she is also willing to go to the will of the people that are here. Further, Mayor Guzak stated she does not kowtow to the rich and powerful in this City and serves all the citizens. She resented Mr. Davis’ comments and found them personally offensive.

**Mike Bickford, 3100 Bickford Avenue**, wanted to thank the Council for the opportunity to address them, and deeply cares for this community, as evidenced by his involvement with both the youth and people in need within the community. He stated he knows there are a lot of people who point to I-502, and the will of the people did speak. He believes the Council is aware we are not here to address I-502. That is not the issue. He stated the issues are the incremental decision related to this and what is the will of the people. He explained if you look at 502, the main issue which was resolved was an answer to the question of whether we want to incarcerate people for using marijuana. That was resolved with I-502. The second fundamental issue was a question of getting control over how marijuana is sold. The black market was flourishing and there were concerns related to that. I-502 also accomplished that for the most part. There are still some unresolved issues with that and it isn’t 100% solved, but that was the intent, and that’s what the voters voted for. Another issue I-502 addressed was establishing that each city and municipality could decide for themselves what they wanted to do. Mr. Bickford stated that was likely important to some voters and is implemented. He stated we are here to discuss the incremental decision. He doesn’t believe you can point to I-502 and say incrementally that all the voters that voted for I-502 necessarily thought this was an additional step. He doesn’t believe you can draw that conclusion at all. When looking at logical arguments that one doesn’t hold water. He stated what the City is after implementation are answers to what the incremental benefits and costs are. One of the incremental benefits the City could point to are sales tax, but a lot of people don’t know the City doesn’t get all the sales tax, a lot of it goes to the State. According to his calculations, and he can stand to be corrected if need be, but he believes a marijuana store

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would have to sell a \$1,000,000 worth a marijuana to raise \$23,000 for the City. That's a lot of marijuana sold for a very little benefit. He thinks the City should also consider the unintended consequences. The City cannot fully control who buys the marijuana. The City can try to, and hope those individuals don't redistribute it to individuals who are not the intended users. He believes it's also an inevitable consequence. He understands that a lot of people are well intended, but that will occur. Mr. Bickford again thanked the Council for their consideration.

**Jeff Judy, 8833 173<sup>rd</sup> Avenue SE**, spoke as a dad raising seven kids in this community. He stated he thinks of this town as an outdoor town. He believes a lot of people spend a tremendous amount of time on our City streets, walking areas, and our parks and there is great value there. As a dad, he enjoys going about this community and not encountering the smell of marijuana, and not having the concern about the kind of constituents that may be coming from other communities into our community to purchase marijuana. He recognizes that there is temptation to look at the potential revenue marijuana sales may generate. However, at the end of day, he would like the City to consider the revenue earned may not be worth the negative impact on our family based community. He noted the City will not overturn what the State has done and marijuana is a legal product, but is also very accessible just up the street in Clearview and there is really no reason to make this step and bring it locally into our community.

**Gordon Cole, 1910 Bickford Avenue**, stated he hadn't planned to speak on the marijuana issue, but because people were speaking on the issue tonight, and he will not be in attendance at the next meeting, he would speak now. He said he is not in favor of bringing marijuana sales into the City and most of the reasons have already been mentioned. However, he wanted Council to be aware if the topic is raised again for discussion, it's a very divisive issue and it will be an issue for our community. He recommended that the City wait on the final ruling from the Court of Appeals hearing on the City of Fife case. To the best of his knowledge, they have not issued their final ruling yet, and depending on how that goes it may make this issue moot.

Mayor Guzak asked for a brief summary on the court case.

Mr. Cole replied the case concerns whether or not the City of Fife has the right to restrict retail marijuana sales. That is the issue being challenged. The proponent of it was turned down at the Superior Court level and appealed to the State Supreme Court. It was sent on to the Court of Appeals, and they had their hearing on January 22. Mr. Cole has not been able to determine what the answer was. He noted that certainly this court case could have a big impact on whatever the final decision is. He believes it is appropriate to wait until the ruling is issued and then decide where the battle lines are drawn later. Mr. Cole thinks Mr. Davis' suggestion of a vote is a good idea and would remove it from Council consideration.

Mr. Cole further mentioned that the Hal Moe Pool Advisory Committee is meeting and he believes it would be advantageous to the City and the committee, if the City Council would apprise them if they support the concept of allowing some senior housing on that site because if the Council doesn't want it, they should tell the committee so they can plan for that. If the Council thinks it's a reasonably good idea, then the committee will have the opportunity to consider the option.

Mayor Guzak replied that she would consider the suggestion under new business and thanked Mr. Cole for his comments. She then asked City Attorney Weed to speak on the Fife case.

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Mr. Weed replied thus far the courts in the State of Washington have fairly consistently held that local jurisdictions, like cities and counties, do have the authority to either ban or more heavily regulate retail sales of marijuana. The Fife case is pending. He is not sure when they issue their written opinion, but thus far the Courts in the State of Washington have pretty consistently held that local jurisdictions do have the right to decide whether or not they want to regulate or even ban sales of marijuana in their cities.

#### **5. ACTION ITEMS:**

##### **a. AUTHORIZE City Manager to Execute the Questica Budget Software Agreement**

Jennifer Olson stated the purpose of this agenda item is for the Council's consideration and authorization to execute the Questica budget software agreement. During the 2016 budget discussion, staff addressed the need for budget software that would enhance the budget preparation process and replace the current budget tools. An investment into Questica Operating and Capital Budget Software is intended to support our ongoing efforts for financial transparency and as a first step in developing a database, or a source for potential future data portals. This would be part of the City's open government initiative. It would also develop budgets that are stored in a database, which would provide staff with better access to historical information without having to piece it together from spreadsheets from past budgets. This would significantly reduce the need for manually created individual spreadsheets and Word documents. It is staff's expectation that the budget software would generate the six year capital improvement plan within a database where the project planning and project management comes from one common environment. Essentially, capital projects span across multiple years and viewing the project as a whole, during all stages of the project, will assist to improve the City's financial transparency under our Open Government initiative. The budget software would enhance our ability to prepare cash flow analyses and "what if" scenarios, and to compare those scenarios when we are going through the budget development process. It will provide a framework for the potential new two year biennial budget cycle and allow for future expansion with a complimentary module for performance measurement. Ms. Olson explained this will also allow tracking progress on annual goals that the Council sets, and then push that information out to the public. The cost of the software is approximately \$65,000, which includes the software license, implementation services, and the first year maintenance fee which is credited. The costs are allocated within the Internal Service Fund 502 and then it is allocated to the direct and indirect cost centers based on the budget size. The software implementation would begin immediately and it would be used for the upcoming 2017 budget development cycle.

Councilmember Randall inquired whether the \$65,000 software package fee is a one-time fee or if there will be additional fees in the future.

Ms. Olson responded, the \$65,000 is a one-time fee, which includes the software license and implementation cost. The only on-going cost will be the annual maintenance fee of approximately \$4,000.

Councilmember Randall confirmed the \$4,000 annual maintenance fee.

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Ms. Olson responded that is correct.

Councilmember Randall asked Ms. Olson to explain how the portal will work and how citizens will access it.

Ms. Olson replied that data portals are open government sites. It is essentially a method to push out public information through data portals. The portals are interactive. So instead of viewing the budget in a PDF format and scrolling through multiple pages, the portal will push the information out in a way that is easy for the user to understand. The user can retrieve specific information in a data portal. For example, if a citizen is interested in only law enforcement cost centers or a capital project, they can view the information in a way that is customized and easy to understand, rather than having to look at a static PDF. This will help address the open government initiative, as the City prepares new ways to communicate with citizens.

Councilmember Schilaty asked if the portals are available at an added cost or if they are included in the \$65,000 package.

Ms. Olson stated the data portals are at an additional cost. She explained whether it's the budget database or the financial database, the portals require a source of information to push out that data, so it would be an entirely separate initiative. This is the first step in developing good sources and good systems to provide information to the public.

Councilmember Schilaty asked if the portals would be provided by the company, or if they could be from any other provider and linked up with this information.

Ms. Olson replied they could be from any provider. There are some vendors such as Socrata that are starting to develop data portal applications and the City is speaking with those vendors to obtain a demonstration. There are a number of cities and governmental agencies that are starting to implement these new applications.

Councilmember Wilde asked if there were any local, smaller agencies using this software. He noted the smallest community using this software has a population of 73,000.

Ms. Olson replied they do have smaller sized clients and it is intended for any sized governmental agency to use. The University of Washington is using it. There are communities of all sizes around the United States using this software application.

Mayor Guzak confirmed that Ms. Olson requested this software after reviewing several other software programs and based on her need for managing the budget. It is the Mayor's understanding from some of the testimonies she read from their clients that it saves a lot of staff time.

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Mayor Guzak questioned if this software program will actually make Ms. Olson's work more efficient. For instance, rather than spending three months preparing a budget, staff can do it in a matter of days.

Ms. Olson replied she expects to receive a lot of benefit from this software application. She currently spends a significant amount of time working in individual spreadsheets and Word documents. She creates charts and graphs and then manually pieces together the budget. What this will do is to put the budget into one common environment. The management team will use this as a way to prepare their departmental or cost center budget, and then it will follow the review and the approval process. Staff will submit their budgets via this database software application and then follow along with the Council's process for developing a budget. The City Manager has control for creating budget versions and scenarios, and essentially putting the budget together within this application. She stated it will save a tremendous amount of her time in preparing the budget for Council.

Mayor Guzak commented that Ms. Olson has made her job look really easy, as her budgets and charts are very well designed and the best she has seen since she has been on the Council. She understands that Ms. Olson has spent a great deal of time on these documents and the software could really help facilitate the budget process.

**MOTION** by Burke, second by Hamilton to authorize the City Manager to execute the Questica Budget Software Agreement. The motion passed unanimously (6-0).

b. **AUTHORIZE** City Manager to Execute Paymentus Corp Merchant Services Agreement

Ms. Olson stated the purpose of this agenda item is for Council's consideration to authorize the execution of the Paymentus Merchant Services Agreement. Currently, the City uses Paymentus Merchant Services for accepting credit cards for the City's utility payments only. City customers are required to pay a \$6.95 convenience fee which is paid directly to Paymentus. There is no cost to the City to use a credit card as a form of payment. During the 2016 budget development discussions, staff addressed the need to expand our service and to allow credit cards as a form of payment for all services. These other services include park rentals, business licenses, permits and other general fees. Paymentus has offered a contractual extension to the contract to allow acceptance of credit cards as a form of payment for all of these different types of fees, including utility payments. The reduced merchant fee for utility billing payments is included in the contract extension. What makes this attractive is with the lower merchant fees, the City can absorb the cost of eliminating the convenience fee to utility billing customers. Staff believes this would be well received by customers and will help improve the number of on time payments, reduce the amount of past due receivables, and reduce the number of water shut offs due to lack of payment. The other benefit is that the City would be able to accept credit cards as a form of payment for all of those non- utility fees. The City has numerous requests from citizens to expand our payment offerings. For those fees, Paymentus has proposed a convenience fee to the customer of \$2.95 or 2.95% of the transaction cost, whichever is greater. Along with expanding the credit card as a form of payment for services, Paymentus is also offering an expanded customer portal where customers would set up their on line payment accounts. This feature will allow the customer to pay their account on line, set up recurring payments, and use many different forms of payments. Customers would also have access to a new feature enabling them to retrieve their utility bill on line and review three cycles of billing information after setting

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up their one line accounts. These expanded services would allow citizens to facilitate their City business from the comfort of their home, on their time. There would be no need to come to City Hall to make their payments in person, or to mail a check. Staff views this as an additional customer service enhancement and will also reduce printing costs and staff time. The budget has been allocated from the four utility funds to absorb the cost of the fees. This feature is something customers ask for routinely, and staff is very excited to be able to offer this to all of its customers. The City plans to promote these new features through all means of City communication.

Mayor Guzak acknowledged more and more people are paying bills directly on line and by credit card, and she thinks this is a good service to offer City citizens.

Councilmember Hamilton asked if the City is going to reduce the fee that the customer is paying now, and also offer a broader range of services. He wanted to know what the monthly cost to the City for this service would be.

Ms. Olson responded that is correct. The hosting fee for the on line bills would be split among the utility funds.

Mayor Guzak stated she knows it is very common for merchants to pay for the convenience they provide their customers by accepting credit card purchases. However, the City will divide the fee through several of its budget lines, which works very well.

Ms. Olson explained the plan is to have the utility payments merchant service costs absorbed by the four utility funds. The other fees and services the City charges would require the customer pay the convenience fee of \$2.95 or 2.95%.

**MOTION** by Burke, second by Guzak to authorize the City Manager to execute an amendment to the 2010 Master Agreement with Paymentus Corporation Merchant Services, extending the contract for two years and allowing expanded merchant services with online payments and utility account portal. The motion passed unanimously (6-0).

- c. **AUTHORIZE** City Manager to Execute an Interlocal Agreement with Fire District #4 for Building Use

Ms. Olson stated the purpose of this agenda item is for the Council's consideration and authorization of the interlocal agreement for building use with Fire District #4. As part of the City's emergency management initiative, staff received a grant in 2015 from the Snohomish County Department of Emergency Management for the purchase of computer equipment, which cost approximately \$7,900 in grant sources. The equipment is the City's emergency operations and information server and it is located at the Fire District in the training annex. At the Fire District location, the City network will be connected to the Snohomish County fiber optic network. In the near future, the City will be connecting to the fiber network. The City's files, documents and databases will be backed up to this server. This is a huge step in our emergency management preparedness. As this City equipment will be located at the Fire District, an interlocal agreement for the City's use of their facility is in order.

**MOTION** by Schilaty, second by Hamilton to authorize the City Manager to execute an interlocal agreement between the City of Snohomish and Snohomish County Fire District #4 for building use at the City's Emergency Operation Center (EOC) for the storage of communication and computer equipment and access to the fiber optic system.

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The motion passed unanimously (6-0).

d. **ADOPT** City Council Rules and Procedures – **PASS** Resolution 1339.

Mr. Bauman stated the purpose of this item is for the City Council to consider adoption of Resolution 1339, which is the Council's updated rules and procedures for its operations. This process for establishing the Council's rules and procedures by resolution dates back to 1994. Most recently, staff has addressed with Council the recommendations to make significant changes regarding communications technology, as a new item within the Council's rules and procedures. These address primarily, the Open Public Meetings Act and Public Records Act regarding concerns on the use of cell phones and other electronic devices. The other changes that are recommended and have been reviewed by Council, include the section regarding public testimony Section 6, Oral and Written Comments. In this section, staff has recommended the Council adopt changes that would allow public comment as a standard practice for all items on the Council agenda, for discussion and action items in addition to public hearings. An additional change not previously discussed by Council and now recommended by the City Attorney for this same section, regarding oral and written comments would add the following new text and delete one sentence from the version that the Council reviewed on January 5, and it reads as follows: Where a public hearing is scheduled, whether quasi-judicial or not, all public comment and testimony will be provided during the hearing so an adequate record can be made. Except for matters of procedure, public comment, and/or testimony shall not be given during the general citizen comment portion of the agenda, and will be reserved for the time of the hearing.

The struck portion includes the following:

Public or oral testimony shall not be given in quasi-judicial matters outside of a public hearing, except on matters of procedure. With this additional change, staff's recommended changes are complete.

Mayor Guzak asked the City Attorney to provide background on the recommended language change.

Attorney Weed replied the purpose of this suggested change is in the case where we have any type of public hearing. It is important to create a record and to allow comments during the regular citizen comment period, which doesn't necessarily make that a part of the hearing record. The hearing record begins when the hearing is opened and citizen comments are called for, so it's not precluding any citizen from commenting, it is just asking them to do so when the public hearing is open so we can create an adequate record.

Mayor Guzak asked if Mr. Davis wanted to speak on this issue.

**Morgan Davis, 206 Avenue I**, questioned ex parte communication and requested that the City Attorney be asked for clarification. He provided an example, by stating, last Fall on the Lance Harvey Spruce Street vacation request, the Mayor was seen conversing with Lance Harvey just prior to the start of the public hearing. He asked that the Mayor ask

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Mr. Weed if that constituted ex parte communication. During the hearing, the Mayor voted to accept Marty Glaser's low-ball appraisal. However all of the other Council members except Councilmember Rohrscheib voted to order Mr. Harvey to get a second appraisal from someone other than Marty Glaser. Mr. Davis stated his point is the Mayor was seen conversing with Lance Harvey and the way he understands it, she is not to have her mind made up until all the evidence in. It's quasi-judicial.

Mayor Guzak confirmed that she did speak to Mr. Harvey and she welcomed him to the Council meeting, and greeted his children. She did not discuss the subject at hand in anyway.

City Attorney Grant Weed commented that generally speaking, a street vacation matter, while it does require a public hearing, is not a quasi-judicial process it is a legislative process. The reason is because the ultimate decision the Council makes is the approval of a street vacation by virtual of adoption of an ordinance, which a legislative type of action. In this instance, speaking with constituents about the pros and cons of a street vacation outside of a public hearing is not inappropriate.

Mayor Guzak stated she did not discuss the pros and cons of the street vacation with Mr. Harvey.

Mayor Guzak spoke to Mr. Davis about process. She stated if Mr. Davis asks questions during his three minute comment period, she would answer his questions. If he would like to make a list of issues that can be answered later, she is willing to do that. However, Mr. Davis' comment period is over.

Mayor Guzak returned to the discussion on Council Rules and Procedures and asked if Council had any further comments or questions.

Councilmember Randall noted the Council has reviewed the rules and procedures several times. He believes it does clarify cell phone use and it's a good proposal. **MOTION** by Randall, second by Burke that the City Council adopt Resolution 1339, amending the City Council's Rules and Procedures.

Councilmember Schilaty wished to review the public's responsibility during the three minute comment period. She stated it is expected that the public have decorum and respect. She would just like to remind the audience that the Council appreciates it when communication is respectful. Councilmember Schilaty believes the Mayor exemplifies this in her communications. She clarified she is directing her comments to Mr. Davis. She stated the Council often feels they are being yelled at and it not productive.

Councilmember Hamilton commented on the section regarding Non-issued City Cell Phones and Other Devices used by individual Councilmembers for texting and receiving texts related to City business will require archiving in accordance with the records retention schedule. How would the Council do that?

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Mr. Bauman replied the process the City is working toward is a third party vendor. The vendor is working with our cell phone provider, Verizon. They are working through their security protocols, so that Verizon will permit this third party vendor to receive the cell phone text data. Currently, they have not worked out all their disagreements and as a result, we are still waiting for that to be completed.

Councilmember Hamilton asked if somebody made a public records request, then the third party would attempt to retrieve the information.

Mr. Bauman stated the expectation would be that they would do more than attempt to retrieve the information. The City expects they will possess and preserve all of the text data for two years, which is required by State law. The agreement the City will have with them would commit them to that performance.

Councilmember Hamilton asked if this would apply to a non-city issued cell phones.

Mr. Bauman stated this would be for a City-issued cell phone. He apologized for misunderstanding the question. The City is trying to resolve that issue by locating a service that will provide the same results for a non-city issued cell phone. The City needs to consider that councilmembers may have many different providers for their cell phone service. Not all of them may be able to work with the vendor we have chosen for this, or may not have any third party vendor that can perform the same kind of text, archiving and retrieval services. Staff is continuing to look at the market to determine what services are available.

Mayor Guzak stated as the rules are written, Councilmembers can decide either to use their personal cell phone or use a city-issued cell phone. She indicated that personally she prefers the City phone. However, it appears the City is not in a position to implement this particular program yet.

Mr. Bauman responded the Mayor is correct. Currently, using a City cell phone is the only reliable method available resulting in the archiving of text messages for the required retention period. The City is continuing to look for other vendors, who may be able to work with other providers and will apprise the Council when a vendor is located. The Council will also be given the option to select a City cell phone, if that is their preferred option.

Councilmember Hamilton commented this is a difficult issue, which he will address in Councilmember comments. He noted he spoke with a constituent today and he initiated the phone call. It was simply a phone call. He questioned how a determination would be made that he did, or did not have a text communication with somebody on City business? He stated he has multiple devices. He views this as a difficult situation. He indicated he will vote in favor of this procedure, but believes there are unresolved issues.

City Attorney Weed noted that Councilmember Hamilton is absolutely correct, there are unresolved issues. However, over the past couple of years, the case decisional law in the

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State of Washington interpreting our public records act has been very active. There are a couple of cases that are driving the City's need to archive and retrieve any kind of written communication, or electronic communication that involves City Councilmember business-related communications of the City. Whenever a Councilmember uses a device that communicates City business, whether it's a personal device or not, under the Public Records Act, the City is required to do a reasonably adequate search to locate those records and provide them to the requestor. Therein lies the challenge, all the cities around the State are working through this issue, but it becomes more complicated when you have a computer, a laptop, a tablet, or a cell phone that comingles your personal business with City business. If you can't retrieve your City oriented business records and should a law suit ensue under the Public Records Act, in theory the requestor could ask the court for an order to seize your entire device. That's one of the reasons why many cities are going toward a policy of issuing city-issued phones, City issued tablets and/or other computers and asking their councilmembers and staff to limit their communications related to City business strictly to those devices. In other words, to try to keep your personal devices separate from the devices that are designated for City business. This will reduce the exposure to liability for Public Records Act violations, and it also reduces the elected official's burden from attempting to separate out City related business from personal business

Mr. Bauman stated he believes the safest course in the interim while the City is waiting to get these technical issues resolved, is to follow the practice that he uses, which is not to use texting for any City business.

Councilmember Burke stated if you look at this historically, this appears to be a good thing. There's a lot of talk about public records and privacy. He believes it's great that the Council can use these devices, and there are methods to retain improved records of how City business is being conducted. There was a time when the exact opposite was true. He believes this process is much better.

**VOTE ON THE MOTION:** The motion passed unanimously (6-0).

- e. **ADOPT** Snohomish Fee Schedule – **PASS** Ordinance 2299.

Ms. Olson stated the purpose of this agenda item is for Council's consideration of Ordinance 2299 which serves to update the Snohomish Municipal Code relating to fees. There are multiple codes which reference actual fee amounts within the code. In an effort to streamline the City's fee schedule, staff has created one document where all City fees are located, along with a revised fee schedule format. Ordinance 2299 will update the codes and will refer to a fee schedule to be amended and adopted by City Council Resolution on a periodic basis. The first reading of Ordinance 2299 occurred on January 19.

Councilmember Burke asked as the Council moves forward and revisits the fee schedule periodically, would some of those fees possibly include concerts in City parks and related park fees. The revenue from those type of activities strikes him as something to be discussed. He recently attended his first Parks Board meeting, and they were

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brainstorming about a number of ideas like that. He stated parks maintenance is mostly funded from the general fund, and he doesn't know the mechanics of what types of funds are allotted to parks maintenance, but in the future, he would like to talk about creating an avenue where some of the parks program fees will be reinvested into maintaining parks.

Ms. Olson replied this is a general fund issue and concerns the disposition of the fees and where the fees would be reserved within the funds. This could be accomplished by identifying a level of reserves that could be set aside for specific uses. Council would need to have a discussion about committing funds and establishing that process would be accomplished through the budget cycle.

**MOTION** by Guzak, second by Hamilton that the City Council adopt Ordinance 2299 amending Snohomish Municipal Codes to reference a fee schedule approved by City Council Resolution. The motion passed unanimously (6-0).

f. **ADOPT** Snohomish Fee Schedule – **PASS** Resolution 1340

Ms. Olson stated Resolution 1340 is the Fee Schedule presented for Council's consideration, and of which is referenced within Ordinance 2299. All City Fees for goods and services are now combined into the new fee schedule format. The resolution reflect the fees that were proposed for change and presented at the January 19 City Council meeting. The revised Resolution 1340 is provided, with the fee schedule exhibit included.

**MOTION** by Schilaty, second by Wilde that the City Council approve Resolution 1340 updating the City of Snohomish Fee Schedule. The motion passed unanimously (6-0).

6. **DISCUSSION ITEM** – Solid Waste 2016 Rates

Ms. Olson stated the purpose for this agenda item is for a discussion concerning the 2016 solid waste rates. She explained under the City's current contract, the annual rates are established by the contractor based on the Refuse Rate Index (RRI). The index is explained within the contract and consists of three weighted indices; the CPI for wage earners; the employment cost index; and diesel prices. According to the contract, Republic Services has notified the City that rates effective April 1, 2016 will result in a zero percent increase. Staff reviewed the three components of the index and verified the RRI formula.

Mayor Guzak recalled when this item was previously discussed that the RRI is a somewhat complicated formula, but nevertheless a standard in the solid waste removal industry.

Ms. Olson confirmed the Mayor is correct.

Mayor Guzak explained the RRI are variables that are examined annually, which includes energy, which is only 8% of the total, but also other factors which involve CPI and workers' wages. Bottom line, there is a zero increase in 2016.

**Morgan Davis, 206 Avenue I**, recalled a discussion at the last meeting concerning putting the solid waste contract out to bid between Republic and Waste Management. He stated Councilmember Rohrscheib was in favor of that. He thought the discussion tonight would address that topic.

Mayor Guzak responded that was not the topic of discussion for this meeting,

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Mr. Davis questioned when the Council will discuss the new solid waste contract for next year.

Mayor Guzak responded the new contract starts in March of 2017, and asked Ms. Olson for an estimate on a date when discussions will begin.

Ms. Olson responded the City is currently conducting a survey of its customers. The first surveys went out with the bill cycle two customers at the end of January. The second half of the survey will be out to the remaining City customers in February and will be returned in March. Staff anticipates bringing the results of the survey before the Council for discussion at the end of April. At that time, we will review the survey results and discuss next steps for reviewing the solid waste fees and contract options. The City's current contract expires on March 31, 2017.

Mr. Davis questioned whether the survey will contain a question or an area for citizens' opinions on whether the City will want to have open competitive bids.

Mayor Guzak stated that question will not be a part of the survey. The survey focus will be on services and rates.

Mr. Davis asked if the survey is a public record.

Ms. Olson replied the survey asks questions of the City's utility customers concerning customer service, and asks for feedback regarding current services. The survey form does provide for some open ended comments about solid waste services. Staff is asking that customers return their surveys to City Hall. They can include it in their utility bill payments, drop it off at City Hall or they can place it in the drop box at City Hall. Staff intends to compile the results of the surveys and place that on the Council agenda for future discussion.

Mayor Guzak thanked Ms. Olson for her presentation.

#### **7. CONSENT ITEMS:**

- a. **AUTHORIZE** payment of claim warrants #58071 through #58159 in the amount of \$422,477.61 issued since the last regular meeting
- b. **ADOPT** Ordinance 2295 regarding 13<sup>th</sup> Street/Avenue A Annexation

**MOTION** by Hamilton second by Burke to authorize and adopt the Consent Items. The motion passed unanimously (6-0).

#### **8. OTHER BUSINESS/INFORMATION ITEMS:**

Mayor Guzak mentioned the City of Monroe's request to sign a letter to its State Representatives in support of Highway 522 funding. She believed she forwarded a copy of the letter to all Councilmembers a while ago without asking for a response. She would now like to discuss the letter with the Council. Mayor Guzak feels it is important that the City support its regional cities especially where we share the highways and waterways. She is in favor of supporting the SR 522 coalition efforts to reallocate and accelerate funding for their Highway 522. The letter would be sent to Senator Hobbs, Representative Dunshee and Representative Harmsworth. They are the City's District Representatives.

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**MOTION** by Hamilton second by Randall to approve the letter in support of SR 522 to the City of Monroe. The motion passed unanimously (6-0).

Mayor Guzak asked the City Manager to provide the letter in final form for her signature.

Mayor Guzak noted that a letter was sent to the State regarding Mr. Davis' request concerning affordable housing. The letter was signed and mailed a couple of days after the last Council meeting.

Mayor Guzak stated the Snohomish Affordable Housing Group has asked the City Council to consider supporting their request for senior housing at the Hal Moe Pool site.

Councilmember Schilaty said there may be some value as the City goes down this path to have some disposition on whether or not this proposal is even a possibility based on the deed restrictions in place with that piece of property. She doesn't see that the Council should make public at this point whether they support this option or not. She stated there is a process in place and the Council is in the information gathering stage. To send the committee down the path of even considering this option if it's not a possibility should be communicated upfront before going any further. Councilmember Schilaty believes there is value in having staff report back to Council concerning any restrictions.

Mayor Guzak asked Planning Director Owen Dennison if he would provide the Council with comments regarding the site proposal and his thoughts concerning what the City would need to do if they were to consider senior housing on the Hal Moe pool site.

Mr. Dennison replied in terms of the deed restrictions, it would require a legislative change to the zoning, as the property has two deed restrictions. One restriction is dated in 1924 from the Snohomish Playgrounds Association which limits the property to playground use only. When the City purchased the property back from the School District, there was a covenant limiting use to those uses that are allowed under the current zoning, none of which are housing. So it would require the approval of the School District to go forward as well.

Mayor Guzak stated her understanding is the City Council would need to make a zoning change, request the School District change their requirements, and address the underlying deed restriction from 1924.

Mr. Dennison asked Mr. Weed to describe the quiet title process the City might have to go through.

Mr. Weed explained the 1924 for playground purposes only deed had the restriction placed on the property by an organization that he doesn't believe is currently active. However, there may be successors to those who placed the restriction on it. He stated the safest way to remove the restriction, if the City were to go in that direction, would be to file a quiet title action. The City would give notices as required by law, such as by publication and also by making a reasonably diligent effort to identify whether any of the parties who placed the deed restriction still remain to ensure they receive notice of the City's intent to request the Court remove the restriction. It's not likely there would be any opposition to it. The only way to be sure to remove it is through quiet title and getting a Court Order. The other restriction imposed by the School District would simply require School Board action agreeing to remove it and would likely require some discussion with the School District as to whether they would be interested in doing that.

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Public Works Director, Steve Schuller pointed out his staff attends the Parks Board meetings and stated there are very strong feelings about both the history of the site and it being used for open public purposes and playground use. We would now use the broader term of recreation use. There are very strong feelings within the group concerning both the history of the site being used for public recreational purposes, along with the deed restrictions. If Council wishes to pursue alternate uses, he thinks the City should be very open to allowing many parties to come and speak to Council on the topic before any decision is made. He noted the Mayor also mentioned the School District restriction that the site be used for public purposes only. So, with all three of those concerns, he wanted to put on his parks hat and make sure Council was aware of those issues as they move forward in this process.

Councilmember Schilaty stated Mr. Schuller's concerns are exactly what she wanted to speak to. This has been a very sensitive topic as the Council discovered with the cell tower and she would like the record to reflect procedurally this is only a discussion. Under no circumstances is the Council considering removal of the deed restrictions. Although Mr. Weed stated he didn't think there would be any opposition to the removal of the deed restriction from the County's point of view, she believes from the public perception there would be quite an opposition to that action. She wanted to make it clear this is only a discussion and she thinks what this reflects is that there is a strong need for the process in place right now. The ad hoc committee for the Hal Moe pool site is very much needed. She acknowledged the Snohomish Affordable Housing Group is a very important group within the community and has accomplished extremely good work for the City. She stated she respects their work, and believes the Council also respects their contributions. However, she does not want them strung along and acknowledged the need to work together and come to the best resolution.

Councilmember Randall agreed with Councilmember Schilaty and is also very supportive of affordable housing for seniors. He wondered if there were other sites available within the City limits of Snohomish that could accommodate senior housing. He stated he thinks it would be a very complicated process if the Council attempted to take a portion of the existing Hal Moe Pool site and turn it into affordable housing.

Mayor Guzak asked the City Manager if he had been following this process and if the Affordable Housing Group had looked at other sites, but understands they want a City owned site because the land would be free.

Mr. Bauman responded that the group needs free land in order to be able to build market rate affordable housing, as they need to get their cost per unit down to a level that is comparable to subsidized housing. He stated that is the issue for affordable housing as he understands it. If they cannot reduce their cost for development, then they really can't create market rate affordable housing.

Mayor Guzak stated the Olympic 4x4 site may be a good site and is within the area and very close to the Senior Center. However, she agreed with Mr. Bauman the group requires a free site. In exchange, the group completes the site preparation. She confirmed the City has a process in place with the Hal Moe Pool Advisory Committee and she is very reluctant to interrupt that process even though the Affordable Housing Group would like the Council to take a stand either for or against their proposal.

Councilmember Hamilton agreed that if the Council wishes to support the SAHG proposal, they should speak with the School District first. The School District was very specific about what can and cannot be done there. This may be a moot point. Mayor Guzak summarized that there is the issue in speaking with the School District, and there is the deed restriction. She suspects the City Council is committed to the Hal Moe Pool Advisory Committee process because that is a community process and the Council is committed to that.

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Councilmember Wilde stated the two things that concern him are cost and time. If Council waits for the committee to go through their process, and the committee presents their recommendations, but the Council doesn't look at the SAHG proposal, it may be another two to six months while they evaluate the proposal. He said he grew up swimming there, and he drives by it now and it's an eyesore. Councilmember Wilde would love to see the site evolve into something usable while following the process and ensuring the Council is open to all options.

Mayor Guzak suggested that the City Manager speak to the School District to confirm the Council understands the three hurdles, and the Council is only one of them.

Mayor Guzak stated she is the representative from our City for Snohomish County Tomorrow. They have asked that the City also assign an alternate from the City Council. She said she briefly spoke with Councilmember Schilaty as Mayor Pro Tem to ascertain if she would be willing to serve in this capacity and she has tentatively agreed, if the Council approves.

There being no objections, Mayor Guzak directed City Manager Bauman to write a letter to Snohomish County Tomorrow affirming that Councilmember Schilaty is the alternate.

Councilmember Hamilton stated on Saturday, January 30 there was a commentary in the Everett Herald penned by Mr. Bill Betten and Rolf Rautenberg that he thought had a number of inaccuracies in it. He telephoned Mr. Rautenberg and had a lengthy discussion with him regarding those issues. The first question he asked him concerned the issue of a 2.5 million dollar City Council Chamber. He asked Mr. Rautenberg where that number came from. Mr. Rautenberg replied he had never seen the letter. He had authorized Mr. Betten to use his name, but he had never seen the amount and had no idea where that number came from. Councilmember Hamilton's second question concerned the \$700,000 for an Artist in Residence Program. He asked him where that number came from. Again, Mr. Rautenberg said he had no clue and had not seen the letter. There was further discussion about the Ludwig property. Councilmember Hamilton asked if he knew the history of this property. He was not familiar with it. Councilmember Hamilton provided Mr. Rautenberg with some background because he was on the strategic long range parks plan committee that identified needing a ten-acre park on that side of town, and explained to him how the City became the beneficiary of it. He stated he enlightened him that while the Council was looking at a number of potential actions with this park in the short term, they developed a long term plan for it and confirmed that an Artist in Residence plan was something that was considered. Although, it would have generated income for the City, the Council did not feel that was a direction they wanted to go in and choose looking at a different path. Councilmember Hamilton then gave him the opportunity to tell him why he thought a strong mayor system might be a good idea and they spoke on the topic for forty minutes. Councilmember Hamilton is concerned that one of the co-authors to a letter that was published in a public forum wasn't even privy to the information being dispensed. He noted at some point in the near future, he will have a discussion with Mr. Betten and Mr. Rautenberg. He stated it was really some bad information and there had been a discussion on whether the Council should respond to it, and it was decided it wasn't a good idea to have this discussion in an open forum like the newspaper. It would be better to sit down and hear from them concerning where they came up with these particular numbers and ideas and try to clear the air as part of the open government communication.

Mayor Guzak stated she appreciated Councilmember Hamilton's comments and she was also distressed about the inaccuracies in their letter, and in other letters to the editor she has read. She believes by communicating those inaccuracies and in using false figures to justify a change of Government is really unfortunate. She said the truth is primary and she wrestles with how much the Council should reach out to correct these inaccuracies. She believes it is

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very important to communicate the facts and the truth and it is a primary function of what the Council should do as civic leaders and elected officials.

#### **9. COUNCILMEMBER COMMENTS/LIAISON REPORTS:**

Councilmember Hamilton reported the Planning Commission will be meeting on Wednesday, February 3, and has a public hearing on cell tower regulations. He notified Mr. Rautenberg to be sure and attend since he has great interest in it. Community Transit has their monthly board meeting on Thursday, February 4 in Everett. Councilmember Hamilton said that he toured Republic's recycling plant in Seattle. He stated he loves looking at machinery and noted they operate 24/7. Recycling is done five days per week with two shifts. They have thirty-seven pickers and eight equipment operators. They sort all of the City's recycling. He is really impressed with their operation. 95% of what they package is clean. A lot of facilities are at around 20-25% . They have an outstanding record and he learned a lot more about the company and their operations.

Mayor Guzak indicated she attended a tour a number of years ago, but understands they are willing to take any Councilmember on a tour of their operations.

Councilmember Hamilton confirmed the next tour will occur in approximately six weeks, as they are installing new equipment. He noted Ms. Olson distributed contact information if anyone is interested in scheduling a tour of Republic's facility.

Councilmember Randall stated unfortunately he was sick most of last week, so he did not attend the Economic Development Committee meeting.

Councilmember Burke noted that Historic Downtown Snohomish has its next upcoming meeting the last Thursday of the month. The annual retreat is later this month. He will report back after the retreat. He did attend the Parks Board meeting last week and is learning a lot. A lot of time was spent reviewing the master park plan. He looks forward to working with them.

Councilmember Schilaty reported that she was also ill and unable to attend the Economic Development Committee meeting.

#### **10. MANAGER'S COMMENTS:**

Mr. Bauman stated at the last City Council meeting, Council directed him to research the request received during citizen comments concerning the Academic Link Outreach Program. Mr. Bauman contacted Snohomish School District Superintendent Dr. Mester and asked him about the program. Dr. Mester was not aware of the program. This group has not presented this issue to the School Board or to the staff at the School District. Dr. Mester went on to say the way District funding is used for tutoring programs is that it is removed from their basic education primary fund, and if he understood the way this proposed program would work, it would create a potential hole in their budget for general education if utilized to the extent the program intends. Without any additional State funding allocated for this program, it was clear to Mr. Bauman this program could be problematic for the District.

Mayor Guzak replied that a letter of support of this program is not appropriate.

Mr. Bauman reported good news from the Washington State Ratings Bureau responsible for the City's fire insurance protection rating. They have upgraded the community's rating from 4 to 5. This will take effect later this year and the City will produce additional information for the public and urge them to contact their own insurers to determine if this has any impact on their premiums. He is aware that a number of insurers have stopped using the WSRB, so it may have no impact for a number of insurance programs but in some cases, it may have.

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Mr. Bauman stated there was the first meeting of the Hal Moe Pool Advisory Committee last week and his understanding is it went very well. Mayor Guzak was in attendance and may provide additional detail. February 1 was the first meeting of the Open Government Committee and he thought the process went extremely well and staff looks forward to continuing meetings with that group.

#### **11. MAYOR'S COMMENTS:**

Mayor Guzak stated she attended the Economic Development Committee meeting and provided a presentation on the State of the City, which was previously provided to the City's Boards and Commissions during the year-end appreciation dinner. She also provided the committee with some new information regarding new businesses in the City and businesses which have closed. She reported the City is up approximately 5% in new businesses, some of which are stand alone businesses, Farmers Market, or a part of the antique mall. The City has approximately 700 City business licenses. Her report to the EDC was basically that business is good in the City. There was some conversation regarding the effort to change the form of government and there were no members of the Economic Development Committee in favor of that. Things are working well from their point of view. Mayor Guzak was happy to attend.

The Eastside Rail Corridor group met at City Hall. The City Manager and other staff were in attendance. Doug Engle, the rail operator, operates some freight trains around Maltby. He told us he has a letter of credit for 50 million dollars and he expects some private investment. He is looking to the Port of Seattle to purchase that corridor. They talked about a boutique hotel in Woodinville and in Snohomish. Mr. Engle has great ideas and they'll see if he is able to accomplish these goals. She is hoping in a few months to know the deposition of this situation.

Mayor Guzak met with Gordon Cole regarding the Snohomish Affordable Housing Group and she sent the Council an email regarding that discussion. She also met with the North County Mayors group and they had a presentation regarding the Safe Streets Initiative that Mayor Stephanson in Everett has initiated. There is a United Way grant that has helped for hiring a coordinator for the Safe Streets program to make it a more viable project. Basically, the project is dealing with hardcore homelessness. The homeless population inventory was completed a few days ago and shows that homelessness is up by about 50%. These are drastic numbers. The general new thinking about homelessness is to use the Utah model, which is to provide housing for some of these chronically homeless. It gets very expensive for the judicial and hospital system to care for people who are on the edges of our society and it is much more cost effective to provide housing. Everett is committed to a number of units to start to house the homeless there, but it is a drop in the bucket. It is an issue that affects all of us. The homeless are here in our community, so we have an interest in what's going on and the City's police force have been in contact with the Sheriff's Office and Everett.

Mayor Guzak stated she attended the Democratic Party Candidate Forum between the three democrats looking at taking over Dave Somer's seat at the County Council. It was Hans Dunshee, the City's State Representative, Mark Hintz, the Fire District Commissioner and Guy Palumbo, also a Fire District Commissioner who sat on the Snohomish County Planning Commission. She was very impressed with all of them. The process as she understands it is the Democratic Party will make a nomination and rank these three candidates and those nominations will go forward to the County Council and the Council will select one of the three. We can expect whoever it is that the City will have good relationships with them.

Mayor Guzak attended the Hal Moe Pool Advisory Committee Meeting and she thinks it will be a good committee. Mr. Dennison explained the land use issues which will guide some of what the City can and cannot do, and what the challenges may be related to the zoning, the

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School District's definitions, and the deed restriction. She felt there was a general consensus that they want to do something that really supports what this community needs and Ms. Emge will assist the process. The process will take some time and she is very excited to see how it evolves. Mayor Guzak commented that Project Manager Denise Johns did an excellent job of chairing the meeting.

Mayor Guzak attended the GroundFrog Day activities and kissed the frog. First time she kissed a frog. The frog told everybody we will have an early Spring.

Mayor Guzak agreed with City Manager Bauman, the Open Government Committee is wonderful and she is very pleased with the consultant, Margaret Norton. She believes Ms. Norton will do great work consolidating all of the information that is coming from that committee.

The Sky to Sound group is working on a water trail and Ms. Emge has been very involved with that. It is from Skykomish up above Index coming down where the Skykomish meets the Snohomish at Index and going all the way out through the valley and to the Sound. The concept is river trails which go from the head waters all the way out to the Puget Sound. There are already a number of amenities along this water trail and the City's boat launch will be one of them. She was glad to welcome the group to Snohomish.

- 12. Adjourn to **EXECUTIVE SESSION** at 8:58 p.m. to discuss potential litigation with no action to follow.
- 13. Reconvene and **ADJOURN** at 9:12 p.m.

APPROVED this 16<sup>th</sup> Day of February, 2016.

CITY OF SNOHOMISH

ATTEST:

\_\_\_\_\_  
Karen Guzak, Mayor

\_\_\_\_\_  
Pat Adams, City Clerk

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## **PUBLIC HEARINGS 5a**

**Date:** February 16, 2016  
**To:** City Council  
**From:** Brooke Eidem, Associate Planner  
**Subject:** **Minor Amendments to Land Use Development Code**

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This agenda item provides an opportunity for a public hearing on draft Ordinance 2296. The proposed amendments to Title 14 of the Snohomish Municipal Code (SMC) were discussed by the City Council on January 5, 2016. At that time, no questions or specific concerns were raised. The proposed amendments have been recommended for approval by the Planning Commission. The Planning Commission's discussion of the proposed amendments is provided as Attachment C.

**BACKGROUND:** These relatively minor amendments are intended to address what are, in the view of staff and the Planning Commission, existing errors, inconsistencies, and administrative inefficiencies in the code. The proposed amendments would affect Chapters 14.65 SMC, *Amendments to the Development Code's Land Use Designation Map, Conditional Use Permits, and Recorded Development Plans*, 14.207 SMC, *Land Use Tables*, 14.210 SMC, *Dimensional and other Requirements*, and 14.290 SMC, *School Impact Fees*. The complete amendment proposal is contained in draft Ordinance 2296, provided as Attachment A and summarized in Attachment B.

**ANALYSIS:** In staff's view, most of these amendments are not particularly significant in the scope of their changes and do not address significant policy issues. One minor exception may be the proposed revisions to setback standards for the Business Park (BP) land use designation. These changes were initially intended to reconcile contradictory standards in two sections of Chapter 14.210 SMC and thereby clarify the policy intent of the regulations. With the concurrence of the Planning Commission, staff's analysis of the current setbacks led to a conclusion that the current setbacks do not provide a community benefit and may be entirely removed without adverse consequences.

Currently, standards in the Dimensional Requirements Table in SMC 14.210.330 for street setbacks in the BP designation conflict with the setback standards in section SMC 14.210.230. According to SMC 14.210.330, the front setback standard is 20-feet, which may be eliminated for office and retail uses. Side yard setbacks are not specified except where the side yard abuts a secondary street frontage, as with a corner lot, where the setback is one-half the front setback. As the front yard setback is variable, a side yard facing a street will vary accordingly from ten feet to zero, depending on whether the land use is retail or office or another use. However, the conflicting BP setback standards in SMC 14.210.230 require a minimum 20-foot setback from *all* rights-of-way.

Setbacks are an element of urban form that can be applied to achieve an intended impression from the street or to separate structures on adjacent lots. Reduced or eliminated front setbacks

## **PUBLIC HEARINGS 5a**

can increase the sense of immediacy of building façades, e.g., retail shops on First Street. In single family neighborhoods, where the intent is to achieve a sense of privacy, the minimum setback standards create a feeling of separation from the street and from buildings on adjacent properties. Setbacks can also reduce the impression of scale and massing from off-site viewpoints. However, in the view of the Planning Commission and staff, setbacks in BP designations do not serve a clear urban design purpose or community benefit, and instead may limit the efficient use of development sites. In the existing code, ambivalence regarding the purpose of BP setbacks is apparent in the allowed reduction for office and retail uses but not other uses.

The Planning Commission recommends eliminating minimum setback standards for the BP designation in both SMC 14.210.230 and SMC 14.210.330 and allowing other requirements to limit lot coverage and the appearance of building mass. This would make the setback standards for all land uses—except exclusively residential development—consistent with the current zero front yard and side yard setbacks for office and retail uses. The existing ten-foot rear yard setback would also be removed. Other code provisions would continue to require single family and multi-family proposals in the Business Park designation to meet the setbacks prescribed for the Single Family or Medium Density Residential designation, respectively. Regulations other than setbacks that limit the extent of non-residential building coverage and the impression of scale and massing include landscape screening requirements in Chapter 14.240 SMC, parking requirements in Chapter 14.235 SMC, open space requirements in Chapter 14.210 SMC, and building and fire code requirements. Additionally, where a BP parcel abuts a residential designation, existing provisions require a 50-foot building setback. These requirements are proposed to remain.

In addition to the setbacks, the Planning Commission recommends a change to clarify the allowance for additional building height in the BP designation. The maximum height standard in the BP designation is currently 45 feet or three stories. An additional foot of height is allowed for each additional foot of structural setback, up to a maximum of 60-foot building height, or four stories. For example, an increase of five feet in height from 45 to 50 feet requires an additional five foot of setback from all property lines. With the setback reductions proposed above, this would result in a total setback of five feet on all sides in most cases. Where the site abuts a residential designation with a required standard setback of 50 feet, the setback on the abutting side would increase to 55 feet. No change is proposed to this existing allowance.

As currently adopted, this increase in height is granted upon approval of a variance. According to Chapter 14.70, granting of a variance requires findings of a “special circumstance” of the property that results in denial of a “substantial property right” available to other properties in the vicinity. It is not clear that such justification was intended for additional building height in the BP designation when the variance provision was adopted. Further, a variance requires a quasi-judicial Hearing Examiner process, which appears to be excessive relative to the potential impacts of an additional 15 feet of building height. Since the variance process does not appear to serve a beneficial purpose, the Planning Commission recommends removal of requirement. Requests for height increases above the 45-foot standard would be determined administratively, subject only to confirmation of the increased setback.

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As the intent of the added setback in exchange for added height is to address massing, the necessity of incorporating a restriction on stories in addition to height is also not clear. Therefore, the amendment proposal removes the reference to number of stories as well as the variance process requirement. Again, any increase in height above the 45 feet allowed by right will still require additional setback equal to the excess height. The maximum height would remain at 60 feet irrespective of the number of stories.

**STRATEGIC PLAN REFERENCE:** No Strategic Plan initiatives specifically apply to these proposed amendments.

**RECOMMENDATION:** That the City Council ADOPT Ordinance 2296.

### **ATTACHMENTS:**

- A. Summary of Amendments
- B. Ordinance 2296
- C. Planning Commission meeting minutes

ATTACHMENT A

Summary of Ordinance 2296

	<b>Ord. Page</b>	<b>SMC Section</b>	<b>Description/purpose</b>
1.	4	14.65.030	Removes the requirement for an Administrative Development Plan (ADP) approval for construction of one single family home on one lot in land use designations where an ADP is required. Site requirements for a single family lot are sufficiently simple to be adequately addressed through building permit review.
2.	5	14.207.080	A) Amends the Land Use Tables to allow the <i>church, synagogue, temple, and mosque</i> use as a permitted use in Commercial and Mixed Use land use designations. Places of religious assembly are currently a conditional use in the Commercial designation and prohibited in the Mixed Use designation.  B) Amends the Land Use Tables so that footnote 2 no longer applies to <i>social service</i> uses. The footnote addresses child drop off and pick up and outdoor play areas for <i>childcare</i> uses. This footnote appears to be an unintended artifact of a 2005 amendment to the Land Use Tables when the footnote was revised to address a new <i>childcare</i> use but not deleted from the <i>social service</i> use.  C) Amends the Land Use Tables to allow <i>elementary or middle/junior high schools, and secondary or high schools</i> as permitted uses in the Commercial and Business Park land use designations.
3.	6	14.207.085	Amends footnote 2 for <i>childcare</i> uses in SMC 14.207.080 to remove the requirement for an approved time schedule for outside play areas. While the intent to minimize impacts to adjacent, less intensive uses is clear, enforceability is difficult and it is not likely that a childcare facility would have outdoor recreation at a time that would conflict with the repose of nearby residents.
4.	7	14.210.110	Removes provision A, which requires a boundary line adjustment where existing buildings cross property lines prior to issuance of issuance of another permit for the property. The requirement to withhold issuance of a permit in all cases conflicts with a 2011 amendment to Chapter 14.55 SMC that relieved proposals qualifying as “partial” or “incidental” development from correcting existing nonconformities. Further, there is a question as to the enforceability of this requirement with respect to the right to develop a legal lot of record. Curing an existing property encroachment is typically a civil rather than zoning issue.

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5.	7	14.210.230	Removes an inconsistency between the standards in the text in SMC 14.210.230 and the dimensional tables in SMC 14.210.330 regarding setbacks in the Business Park designation. Amends provisions for a building height variance to clarify the process and standards for additional height in the Business Park designation.
6.	9	14.210.330	Revises standard setbacks for the Business Park designation from a variable front yard setback standard of zero to 20 feet to one standard of zero feet and consolidates references to the landscape screening standards of Chapter 14.240 SMC. Open space requirements within the Historic Business designation would be removed for consistency with the allowance for zero lot line development. Amendments would also remove regulations not related to dimensions, including arterial access requirements and process requirements for recorded development plans. Both access and development plan requirements are addressed elsewhere in Title 14 SMC.
7.	11	14.290.040	Removes reference to specific dollar amounts for School Mitigation fees, which are updated every two years with adoption by the Snohomish School District of a new capital facilities plan. The dollar amount will instead be listed in the fee schedule, which is adopted by resolution and revised as needed.

ATTACHMENT B

**CITY OF SNOHOMISH  
Snohomish, Washington**

**DRAFT ORDINANCE 2296**

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, AMENDING THE CITY’S DEVELOPMENT CODE AS SET FORTH IN TITLE 14 OF THE SNOHOMISH MUNICIPAL CODE, BY AMENDING SECTIONS 14.65.030 ENTITLED “ADMINISTRATIVE DEVELOPMENT PLANS AND RECORDED DEVELOPMENT PLANS”; 14.207.085 ENTITLED “GENERAL SERVICES LAND USES: REGULATIONS”; 14.207.085 ENTITLED “GENERAL SERVICES LAND USES: REGULATIONS”; 14.210.110 ENTITLED “SETBACKS – MODIFICATIONS”; 14.210.230 ENTITLED “BUSINESS PARK AND AIRPORT INDUSTRY”; 14.210.330 ENTITLED “DIMENSIONAL REQUIREMENTS - TABLE 1 and Table 2” AND 14.290.040 AS AMENDED BY ORDINANCE NO. 2299 ENTITLED “ESTABLISHMENT OF IMPACT FEES”; AND PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE**

**WHEREAS**, the City has adopted a Land Use Development Code as Title 14 of the Snohomish Municipal Code (“Development Code”) to implement the Comprehensive Plan and to ensure compatible and rational land development and land use in all portions of the City; and

**WHEREAS**, it is appropriate for the City Council to review and amend the City’s regulations from time to time to ensure the intent of the regulations is achieved; and

**WHEREAS**, because the various amendments provided herein are relatively minor in scope and impact, it is appropriate to consolidate these separate amendments to the Land Use Development Code within one ordinance; and

**WHEREAS**, the amendments provided herein were prepared to improve the functionality, clarity, and internal consistency of the Land Use Development Code; and

**WHEREAS**, the City Planner, acting as the SEPA Responsible Official, reviewed this proposed legislation and on February 1, 2016, issued a determination of non-significance (DNS); and

**WHEREAS**, in a public meeting on December 2, 2015, the Planning Commission evaluated issues related to the proposed amendments to the Development Code and recommended approval of the amendments as reflected in the minutes of the meeting; and

**WHEREAS**, on February 16, 2016, a public hearing on the proposed amendments was held by the City Council, and all persons wishing to be heard were heard; and

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**WHEREAS**, public notice of the SEPA threshold determination and the public hearing for the legislation contained herein was provided as required by law; and

**WHEREAS**, pursuant to SMC 14.15.070 and 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 City's Development Code; and

**WHEREAS**, the City Council find that the Land Use Development Code amendments contained in this ordinance are: 1) internally consistent with the Comprehensive Plan; 2) consistent with the Growth Management Act and the State Environmental Policy Act; and 3) in the interest of the public health, safety, and welfare of Snohomish residents;

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

Section 1. SMC section 14.65.030 entitled "Administrative Development Plans and Recorded Development Plans" is hereby amended as follows:

### 14.65.030 Administrative Development Plans and Recorded Development Plans

A. Administrative development plans shall have the same purpose, process (Type 1 or 4 permit depending on whether the action is SEPA-exempt), and criteria as conditional use permits. An administrative development plan is required for several types of development within Title 14 SMC in the BP and MU designations. No administrative development plan shall be required for construction of one single family home on one lot, where permitted. In each instance where the approval of an administrative development plan is required, specific issues are noted that must be addressed as part of the approval and will be discussed in the staff report and included in the recommended action.

B. Recorded development plans shall have the same purpose, process (Type 5 or 6 permit depending on whether the action is SEPA-exempt), and criteria as conditional use permits except that recorded development plans, upon approval, shall be recorded in the same manner as subdivision in order to assure that the development plan will be implemented. A recorded development plan is required for several types of development within Title 14 SMC in the Airport Industry designation. In each instance where the approval of a recorded development plan is required, specific issues are noted that must be addressed as part of the approval and will be discussed in the staff report and included in the recommended action. (Ord. 2111, 2006; Ord. 2296, 2016)

Section 2. SMC section 14.207.080 entitled "General Services Land Use Table" is hereby amended as follows:

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Land Use	Open Space	Public Park	Urban Horticulture	Single Family Residential	Low Density Residential	Medium Density Residential	High Density Residential	Commercial	Neighborhood Business	Historic Business District	Business Park	Industrial	Airport Industry	Mixed Use
<b>Personal Services</b>														
Adult uses												p7		
Automotive repair								p		p1	p1	p	p1	
Automotive service								p		p	p	p	p	p
Cemetery, columbarium or mausoleum								p		p	p	p		
Childcare		c			p2	p2	p2	p2	p2		p			p2
Childcare, family – 12 children or less		c	c	c	c	c	c	c		c				c
Childcare, family – 6 children or less		c	p	p	p	p	p	p		p				p
Church, synagogue, temple, mosque				c9	c	c	c	((e))p		p	p	p	p	p
Community stable		c	p			c								
Funeral home/crematory								p		p	p	p		
General personal services								p		p	p	p	p	p
Industrial launderers											p	p		
Commercial kennel or cattery			p4	p4				p			p	p		
Animal grooming w/o kenneling/boarding								p		p	p	p		p
Miscellaneous repair								p		p	p	p	p	p
Social services								p((2))		p	p	c		c
Veterinary clinic w/o kenneling/boarding			c8					p4		p4	p4	p		p4
Veterinary clinic w/ kenneling/boarding			c8					p4			p4	p		p4
<b>Health Services</b>														
Hospital								p		p	p	p		p
Medical/dental lab								p		p	p	p		p
Miscellaneous health								p		p	p	p		p
Nursing/convalescent home				c6	c	p	p	p		p	p	p		p
Office/patient clinic								p	p	p	p			p
Congregate care/assisted living				c6	c	p	p	p		p	p			p
<b>Education Services</b>														
Elementary or middle/junior				c	c	c	c	p			p			p
School district support facility					c	c	c	p		p	p	p		p5
Secondary or high school				c	c	c	c	p			p			p
Specialized instruction school		c	c		c	c	c	p		p	p		p	p
Vocational school					c	c	c	p		p	p	p	p	p

(Ord. 2180, 2009; Ord. 2193, 2010; Ord. 2214, 2011; Ord 2268, 2014; Ord 2296, 2016)

Section 3. SMC Section 14.207.085 entitled “General Services Land Uses: Regulations” is hereby amended as follows:

1. Except tire retreading. See Manufacturing Land Uses Table.

## **PUBLIC HEARINGS 5a**

2. Subject to a child drop off and pick up system that meets DSHS standards and subject to design features (~~((and a time schedule))~~) for use of outside play areas that will protect adjacent uses from significant noise levels. (Ord. 2296, 2016)
3. Only as an accessory to a cemetery.
4. Animal cremation services are not permitted. (Ord. 2193, 2010)
5. Only when adjacent to an existing or proposed school.
6. Subject to the following conditions: (Ord 2268, 2014)
  - a. Minimum contiguous site area of three acres.
  - b. Parking areas shall be screened from adjacent streets and residential uses.
  - c. All structures shall be offset from property lines a minimum of 20 feet.
7. Adult uses will be allowed in the area designated for Industry located between Bonneville Avenue, Highway 9 and Seventh Street.
8. Limited to large animal veterinaries.
9. Site must be located less than 300 feet from a street designated as a collector or arterial.

Section 4. SMC Section 14.210.110 entitled “Setbacks – Modifications” is hereby amended as follows:

The following setback modifications are permitted:

~~((A. When the common property line of two (2) lots is covered by a building(s), the setbacks required by this chapter shall not apply along the common property lines, and the two lots shall be considered one lot. Any subsequent permit requests must be accompanied by a lot line adjustment application.))~~

~~((B))~~A. When a lot in a single-family designated area is located between lots having non-conforming front yard setbacks, the required front yard setback for such lot may be the average of the two (2) non-conforming setbacks or 60 percent of the required street setback, whichever results in the greater street setback.

~~((C))~~B. When deviations from standard setbacks are permitted for unit lot subdivisions pursuant to the provisions of SMC 14.215.125. (Ord. 2240, 2012; Ord. 2296, 2016)

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Section 5. SMC Section 14.210.230 entitled “Business Park and Airport Industry” is hereby amended as follows:

A. Chapters 14.205 and 14.207 SMC govern permitted land uses in the Business Park and Airport Industry designations.

B. Minimum Area. A minimum of five (5) acres will normally be required for a Business Park development; however, existing smaller parcels that cannot be aggregated together to establish a 5 acre project will be allowed, subject to appropriate review and conditions.

C. Setbacks. Structures shall be a minimum distance of 50 feet from any property line abutting a residential land use designation. Where not abutting a residential designation, the minimum setback shall be zero, subject to compliance with the landscape screening requirements in Chapter 14.240 SMC.

~~((1. From all public rights of way: A minimum setback of twenty (20) feet shall be complied with for structures designed for other than office and retail use. Buildings designed for office and/or retail use can be located so that they abut the front property line when pedestrian sidewalks and walkways abut the buildings.~~

~~2. From all other property lines forming the perimeter development:~~

~~a. Adjacent to nonresidential land use designations: Ten (10) feet.~~

~~b. Adjacent to residential land use designations: A visual screen and a setback of not less than fifty (50) feet in depth shall be provided.))~~

D. Landscaping and Open Space.

1. The site shall consist of not less than 20 percent landscaping and/or open space, which open space may consist of undisturbed vegetation or water and will include the 5% area of required landscaping. In addition, any parking lot of over twenty (20) cars must provide a minimum of one contiguous one hundred (100) square foot landscaped island within the parking area for each ten (10) spaces. Up to 50% of the landscaping and open space requirement for a business park development may be provided by permanent dedication of a conservation easement to the City, a land trust, or another entity acceptable to the City of Snohomish, which easement shall restrict property to remain in open space in perpetuity within the same business park designation as the development in question.

2. At least 5% of the site must be in formal developed landscaping no less than two thousand (2,000) square feet in area and oriented towards the main entrance and public right-of-way.

3. Landscaping Adjacent to Streets. All uses which adjoin a street will also provide a landscape corridor of trees, planted no more than fifty (50) feet on center. Such

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landscaping shall not obscure the sight distance for traffic and pedestrians at the intersection of streets or driveways.

E. Access

1. Access Limitation. Business Parks shall have access to at least one major arterial. Access to the adjacent arterial and other streets will be provided in accordance with City traffic plans and will be constructed per Public Works Design and Construction Standards.

2. Access Assurance to Adjacent Properties. At the time of permit review the City may require as a condition of approval either:

- a. That a frontage road or marginal access street be constructed to provide access to the arterial for adjacent properties.
- b. That the applicant grants to adjacent properties the right to use the applicant’s arterial access.

F. Height Limitation. Building heights shall not exceed ~~((three (3) stories or forty five ((4)45((7)) feet. ((If a variance is applied for and granted to exceed three stories or forty five (45) feet, there shall be added one (1)))~~ One additional foot of building height may be added for each additional foot of ((yard)) setback on all sides ((for each one (1) foot of additional building height)), provided that the total building height ((may))shall not exceed ((four (4) stories or))60 feet(( for buildings not having stories)).(Ord. 2296, 2016)

Section 6. SMC Section 14.210.330 entitled “Dimensional Requirements - Table 1 and Table 2” is hereby amended as set for in Exhibit A.

Section 7. SMC Section 14.290.040 entitled “Establishment of Impact Fees” as previously amended by Ordinance 2299 is hereby amended as follows:

As a condition of approval of all development or development activity, as defined herein, or as a condition of issuance of a building permit for existing undeveloped lots, the City will require mitigation of adverse impacts on school services pursuant to the State Growth Management Act, RCW 36.70A, RCW 82.02 and this chapter. School impact fee amounts shall be based on the Snohomish School District’s adopted Capital Facilities Plan in the amounts shown in the adopted fee resolution No. 1340 as it now reads or is hereafter amended. ~~((2012-2017 as follows:~~

<del>((Development</del>	<del>Per Dwelling</del> <del>Impact Fee</del>
<del>Single Family Dwelling</del>	<del>\$896</del>
<del>Studio or one-bedroom multifamily dwelling</del>	<del>\$0</del>
<del>Multifamily dwelling</del>	<del>\$0</del>

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with ~~two~~ or ~~more~~ bedrooms))  
(Ord. 2196, 2010; Ord. 2242, 2012; Ord. 2296, 2016)

Section 8. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such a decision or preemption shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other persons or circumstances.

Section 9. Effective Date. This ordinance shall be effective five days after adoption and publication by summary.

**ADOPTED** by the City Council and **APPROVED** by the Mayor this 16<sup>th</sup> day of February, 2016.

CITY OF SNOHOMISH

By \_\_\_\_\_  
KAREN GUZAK, MAYOR

ATTEST:

APPROVED AS TO FORM:

By \_\_\_\_\_  
PAT ADAMS, CITY CLERK

By \_\_\_\_\_  
GRANT K. WEED, CITY ATTORNEY

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Exhibit A

**Exhibit A14.210.330 Dimensional Requirements - Table 1**

Commercial and Industry Designations

	Commercial           CO	Historic District Business           HB	Business Park           BP	Industry           IND	Airport Industry           AI	Mixed Use           MU
Minimum Lot Size, in sq. ft.	5,000	none	20,000	none	25,000	5,000
<del>((Min. Area for recorded development plan))</del>	<del>((none))</del>	<del>((none))</del>	<del>((5 acres))</del>	<del>((none))</del>	<del>((5 acres))</del>	<del>((none))</del>
Lot Width, in feet	50	none	none	none	none	50
Permitted maximum density, du/ac <sup>1</sup>	18	18	18	na	1 per 10 acres	18
Front Yard Setback, in feet						
a. From street	0	0	0 <sup>2</sup>	0	35	0
b. From property line	0	0	0 <sup>2</sup>	0	0	0
Side Yard Setback <sup>2,3</sup> , in feet	0	0	0	0	0	0
Side Yard abuts residential designation	<del>((See 14.240 (landscape)))</del>	<del>((See 14.240 (landscape)))</del>	50	<del>((See 14.240 (landscape)))</del>	<del>((See 14.240 (landscape)))</del>	<del>((See 14.240 (landscape)))</del>
Rear Yard Setback, in feet	0	0	0 <sup>2</sup>	0	0	0
Rear Yard abuts residential designation <sup>2</sup>	<del>((See 14.240))</del>	<del>((See 14.240))</del>	50	<del>((See 14.240))</del>	<del>((See 14.240))</del>	<del>((See 14.240))</del>
Rear access from an alley	na	15				
Open space (vegetated) <sup>4</sup>	15% <del>((<sup>4</sup>))</del>	<del>((15%))</del> <del>((<sup>5</sup>))</del>	20%	15%	20%	15% <del>((<sup>6</sup>))</del>
a. Percent landscaped (excl. screening)	5%	0%	5%	5%	5%	5%
Height limitation <sup>5</sup> <del>((<sup>7</sup>))</del> in feet <sup>6</sup> <del>((<sup>8</sup>))</del>	35	40	45	40	40	35
<del>((Access allowed per site))</del>						
<del>((a. From arterial))</del>			<del>((±))</del>			
<del>((b. From non arterial))</del>			<del>((subject to sdp))</del>			
<del>((Recorded development plan required))</del>			<del>((yes))</del>		<del>((yes))</del>	<del>((yes<sup>9</sup>))</del>

<sup>1</sup> An alternative maximum density may be permitted by Chapter 14.285 SMC.

<sup>2</sup> ~~((Setback for office and/or retail use can be located so that they abut the front property line when pedestrian sidewalks and walkways abut the buildings.))~~ Subject to compliance with landscape screening requirements of Chapter 14.240 SMC.

<sup>3</sup> Side yards abutting streets shall conform to one-half (1/2) the front yard setbacks.

<sup>4</sup> Twenty percent (20%) vegetated open space required for multi-family developments.

~~((<sup>5</sup> Off site landscaping or improvements to the streetscape may be substituted for on site landscaping with the recommendation of the Design Review Board and approval of the City Planner; twenty percent (20%) vegetated open space shall be required for Multi family developments.))~~

<sup>6</sup> ~~((Twenty percent (20%) vegetated open space required for multi family developments.))~~

<sup>7</sup> ~~((<sup>7</sup>))~~ Measured per SMC 14.210.170.

<sup>8</sup> ~~((<sup>8</sup>))~~ Height limitation of fifty-five (55) feet for public schools and other public educational facilities such as aquatic centers, stadiums and gymnasiums.

~~((<sup>9</sup> Unless single family residence.))~~



ATTACHMENT C

**Excerpt – Snohomish Planning Commission Meeting Minutes  
December 2, 2015**

4. **ACTION ITEM** – Minor Amendments to Land Use Development Code

Mr. Dennison introduced Associate Planner Brooke Eidem who would present a draft omnibus ordinance addressing a number of items including inconsistencies within the code and in case law, as well as other issues.

Ms. Eidem said the intent of the amendments is to provide clarification and correct inconsistencies. If the Commission is comfortable with the revisions, staff requests action tonight. The first proposal in the ordinance is to add a sentence to SMC 14.65.030 exempting construction of a single family home on an existing lot from the Administrative Development Plan (ADP) requirements, as construction of a single family home typically only requires a simple site plan and building plans. The ADP process is onerous for a single family applicant and adds unnecessary process.

Mr. Dennison added that many zoning codes have a site plan approval process applicable to a wide variety of uses, rather than specific zones; the City's process applies to the Mixed Use, Airport Industrial, and Business Park zones. In the Mixed Use designation, all uses currently require site plan approval and single family homes are an allowed use.

Ms. Eidem moved on to SMC 14.207, Land Use Tables. Currently places of worship are conditional uses in the Commercial zone and are not allowed in Mixed Use, while conference centers, considered to have similar impacts, are outright permitted in both designations. The proposal is to make these consistent and allow places of worship as permitted uses in Commercial and Mixed Use designations.

Another proposed change relates to note 2 in the General Services Land Use Table which refers to a child drop off and pick up system. This note was intended to apply to for Child Care but was erroneously applied to Social Services in the Commercial zone. Staff proposes to remove the note from the Social Services use listing and add it to the Child Care use listing in the Commercial designation. Additionally, a modification to the language of the note is proposed to remove the requirement for approval of a schedule for outdoor play areas associated with Childcare uses. A time schedule would be difficult to enforce, and the effectiveness of outdoor play time restrictions at reducing adverse impacts on adjacent properties is assumed to be minimal.

Ms. Eidem said the next revision is in SMC 14.210.110, Setbacks - Modifications. Item A currently requires a Boundary Line Adjustment for an existing building that crosses a property line; any encroachment must be cured before a new permit can be issued for either property. However, it may be difficult for the City to deny a permit for a lot of record with a building encroachment. Mr. Dennison added that existing setback regulations would continue to prohibit approval of new buildings crossing a lot line.

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Structural encroachments across property lines are typically civil issues between two property owners rather than regulatory issues.

Mr. Tormohlen asked about modifications to an existing building. Mr. Dennison said any addition or modification would continue to be required to meet all setbacks and would not be allowed to cross the property line.

The next revision is proposed in the Business Park designation dimensional requirements. There is an inconsistency between the text in SMC 14.210.230 and the table in SMC 14.210.330 regarding setbacks in the Business Park zone. Staff's proposal is to change all the setbacks in Business Park to zero feet, except where the property abuts a residential designation. In such cases the minimum setback is fifty feet. Office and retail uses are currently allowed to reduce the front and street-facing side yard to zero. As the use of buildings change over time, staff's proposed amendment would make setbacks consistent across all permitted uses. Illustrations of the current discrepancy between setback provisions and staff's proposed revision were shown for comparison in a slideshow. Ms. Eidem noted that compliance with the parking, open space, landscaping, design review, and building/fire code requirements would still be required.

Ms. Eidem said the next revision was in SMC 14.210.230(f), Height Limitation. The current standard allows 45 feet or three stories in the BP designation. With approval of a variance, an additional foot of height for each additional foot of structural setback is currently permitted, up to a maximum of 60 feet or four stories. However, the section does not specify whether the variance criteria in Chapter 14.70 would apply. Mr. Dennison described the variance criteria: an applicant must demonstrate there is something about a development site that is different from other sites of the same zoning in the same vicinity and this circumstance is denying the property owner a substantial property right that is available to others. Staff is unclear whether this section was intended to refer to the standard quasi-judicial variance process and require the standard variance justification. Staff also proposes the additional height allowance provision rely exclusively on building height and eliminate the stories measure.

Ms. Wakefield Nichols asked for clarification; Ms. Eidem explained that it didn't make sense to include both feet and stories when using an incremental height allowance of one additional foot in height for each one foot of structural setback. Mr. Dennison added that, from the outside, it doesn't matter how many stories are contained within the building.

In response to a question from Mr. Eskridge, Mr. Dennison described the measurement of building height in Title 14 SMC.

Ms. Wakefield Nichols noted that a measure of stories provided the visual reference within the existing language and felt it addressed the character of a building. Mr. Tormohlen stated that, in looking at the mass of a building, it shouldn't matter how many windows there are. Mr. Dana said that, due to the potential for variability in the height of individual stories, gross height was a better standard. Ms. Wakefield Nichols

## **PUBLIC HEARINGS 5a**

thought they should keep an eye on character; although, because they are discussing it in the context of the Business Park and Airport Industry designations, it was probably less important.

The next revisions address general clean up of the dimensional tables in SMC 14.210.330: 1) Non-dimensional requirements that are listed elsewhere in the code are proposed for removal. 2) A new footnote is proposed referencing the landscape screening requirements in 14.240. The new footnote replaces the multiple instances of the text “See 14.240 (Landscape)” within the table. 3) The footnote numbering was adjusted. Because Table 2 is a separate table, it makes sense to restart the numbering at one rather than continuing from the list associated with Table 1. 4) In Table 2, old note 11 is amended to correct an inaccurate statement regarding setbacks for lots less than 7,200 square feet.

Ms. Eidem said the final proposal is to remove the specific dollar amount of the School Impact Fee under SMC 14.290.040. The School District adopts a new Capital Facilities Plan every two years. If the District requests a different dollar amount, the City has to amend Chapter 14.290 SMC to incorporate the change. Mr. Dennison added that the City has adopted a fee schedule by resolution which is more easily amended; multiple fees can be updated at once and it doesn’t require updating the land use code. Ms. Eidem said the proposal is to reference the fee resolution and keep it up to date, rather than going through the code amendment process every time the School District updates its Capital Facilities Plan.

Ms. Eidem referred to Commissioner Cole’s email which suggested allowing primary and secondary schools in the Business Park and Commercial designations as permitted uses. Mr. Dennison added that this could mean small private schools as well as public schools.

Responding to Mr. Eskridge, Mr. Dennison clarified that these uses are currently prohibited uses in the Business Park and Commercial designations.

Commissioners supported the allowance of primary and secondary schools in the Business Park and Commercial designations.

Mr. Dana moved to approve the code changes as outlined in Attachment A with addition of the reference to schools in the Business Park and Commercial designations as mentioned in Mr. Cole’s letter; Ms. Wakefield Nichols seconded. The vote was called and the motion passed 5-0.

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## **PUBLIC HEARINGS 5b**

**Date:** February 16, 2016  
**To:** City Council  
**From:** Owen Dennison, Planning Director  
**Subject:** **Public Hearing - Wireless Communications Facilities Amendments**

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This agenda item provides a public hearing and City Council deliberation on Ordinance 2301 to amend regulations in Title 14 SMC applicable to wireless communication facilities (WCFs). A prior version of the draft regulations was discussed by the City Council on December 1, 2015. As addressed further below, the Planning Commission recommends adoption of the proposed amendments.

**BACKGROUND:** Demand for wireless bandwidth is increasing. To meeting the growing capacity requirements, service providers are upgrading existing facilities and installing new infrastructure. As a consequence, the density of WCFs across the community may increase over the coming years. The form these facilities take and any attendant ramifications for the visual character of the City depend on the regulations that guide them.

The recent application, now withdrawn, to construct a new wireless monopole adjacent to the Boys and Girls Club highlighted the obsolescence of the current wireless facility regulations. These regulations have not been updated for about nine years and are little changed from those adopted in 1998. Wireless facilities are currently regulated as *communications facility-major* and *communications facility-minor*. In general, a new monopole is a *communications facility-major*, and antennas mounted on buildings or on existing cell towers or extending from utility poles are *communications facilities-minor*. The former are conditional uses where allowed and the latter are permitted uses where allowed, except in the Historic Business designation where they are conditional uses. However, apart from the limited guidance of the conditional use criteria in Chapter 14.65 SMC, current regulations do not specifically limit the height, location, or design of new wireless facilities or require consideration of other, less prominent facility types.

**ANALYSIS:** 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

## **PUBLIC HEARINGS 5b**

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.

### **PROPOSED AMENDMENTS**

If adopted, Ordinance 2301 would supplant existing WCF regulations in the Land Use Tables Chapter 14.207 SMC with a new Chapter 14.242.

The proposed code was developed with the expectation that wireless facilities of certain scales, forms, and locations are perceived to have a lower impact than others on surrounding neighborhoods and the overall visual character of Snohomish. In general, new monopoles are considered to be incongruous with the image and identity of the community, although not necessarily in all potential locations. However, prohibiting new facilities is inconsistent with federal law and may limit the range and quality of services to City residents. Therefore, the approach was to create an enforceable hierarchy of preferences as well as other conditions to minimize the visual prominence of WCFs while allowing services to expand.

The hierarchy in Section 14.242.050 incorporates land use designations to specify potential locations for new WCFs. Unlike the Land Use Tables in Chapter 14.207 SMC where these facilities are currently regulated, land use designations are only one variable of the regulatory preference status. Others include whether the WCF is within or on a building or other structure such as a utility pole or water tower, the height of the proposed WCF, whether the WCF is within a public street or transmission line right-of-way, ownership of the site, and whether the presence of existing buildings or vegetation on the site will provide screening.

Certain geographies, such as residential designations and the Historic District, are regarded as more sensitive to new WCFs than others. The draft regulations discourage, but do not prohibit, WCFs in these locations to avoid challenges based on the federal preemption. Within and adjacent to residential designations, a WCF may be:

- Entirely enclosed within a non-residential building (Tier 1);
- Incorporated into the architecture of an existing building above the first floor where it must match the building’s design (Tier 1);
- Located on a transmission tower within a transmission easement (Tier 1);
- On a City water tower (Tier 1);
- On a utility within a City right-of-way where the extension above the original pole height is no more than 25 feet (Tier 2);

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- On City-owned land where vegetation will screen 80 percent of the height where visible from off-site locations (Tier 3);
- On a utility pole in a minor arterial right-of-way, where the extension is no more than 40 feet above the original pole height (Tier 3);
- Within a public right-of-way where located on a wood support structure and limited to 60 feet in height (Tier 4); and
- In a non-building tract, such as for utilities, open space, or private recreation, where vegetation will screen 80 percent of the height where visible from off-site locations (Tier 4).

Of these, only the Tier 3 and Tier 4 options may be new monopoles. Any proposal for a Tier 3 or Tier 4 WCF must demonstrate that no higher-tier alternative will meet the needs of the applicant's functional requirements for the facility.

The proposed regulations prohibit new monopoles within the Historic District unless the applicant can demonstrate the site is necessary and without any effective alternative. As with the residential designations, the concern is that a blanket prohibition would not be legally sustainable in all circumstances. However, the justification is anticipated to represent a sufficiently high bar that the likelihood of a monopole in the Historic District is low. Also as with the residential designations, options to locate antennas on or inside a building or on a utility pole are available to service providers.

The tiers of the hierarchy are intended to categorize WCF alternatives solely on the basis of preference. As a result, colocations, new monopoles, building mounts, utility pole mounts, and other options are commingled within tiers. At the same time, the code addresses eligible facility requests, non-eligible colocations, and new structures as separate permit categories following the federal classification of WCFs. Combining the federal classifications with the hierarchy tiers results in a fairly complex regulatory scheme. On several occasions, this complexity has been raised as a fault with the proposal. In the view of staff and the Planning Commission, however, the complexity is not a defect provided the requirements can be understood and implemented by applicants and project reviewers. Ultimately, staff believes that effectiveness would be more important to the community than increasing the simplicity of these regulations.

Several policy issues of which the City Council should be aware are contained within the regulatory proposal. The first regards potential locations within City-owned parks. Clearly, following the issues at the Boys and Girls Club location, there is community sensitivity to this issue. Over the course of the Planning Commission's review, several public commenters requested provisions to remove public parks as a location option. After some debate, the Planning Commission determined that a categorical exclusion was not in the public interest, provided that new monopoles or other facilities are adequately screened to reduce their prominence and will not displace recreational opportunities. To address these concerns, the Planning Commission recommends that WCFs be allowed as a Tier 3 option on City-owned land where vegetation removal is the minimum necessary to allow installation and maintenance of the facilities and where vegetation adjacent to the WCF location screens 80 percent of the height of the WCF where visible from off-site locations. The Tier 3 classification means that an applicant would need to provide technical justification that all alternatives in Tiers 1 or 2 are infeasible. The example discussed by the Planning Commission was within the dense stand of trees at the east end of Hill Park adjacent to Park Avenue. A location within the trees provides the necessary

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screening and does not compete for space with recreational activities. However, it is likely there is still sensitivity within the community on any potential park location.

The second policy issue regards proposed Section 14.242.070, which is intended to address concerns about the installation of WCFs on City-owned property, including parks. Private development on City lands requires both development approvals and lease approval. While the City is legally constrained in how land use approvals are processed and decided, the City Council has complete latitude to grant or deny the use of City property for a non-public use. These two processes are entirely separate although both are necessary to allow a WCF in a park or on other public property. Although Section 14.242.070 is located within the development regulations, the provision addresses the City Council's public process to determine whether to make the land available for a WCF rather than the permit approval process. The provision would require a specific public process—a public hearing—before taking action on a request to place a WCF on City property.

The final policy issue regards notification of land use proposals to install WCFs. Members of the public have voiced concerns that the standard notification provided for former the Verizon proposal was inadequate, as the sensitivity was community wide and not limited to the immediate vicinity of the project site. Standard development application notice includes site posting, publication of notice, and mailing to a 300-foot radius around the site. The Planning Commission recommends a citywide mailed notice for all new Tier 3 and 4 proposals. WCF types included in Tiers 3 and 4 include new monopoles outside the Business Park and Industrial designations and 40-foot utility pole extensions within a minor arterial right-of-way. While staff appreciates the concerns this is intended to address, citywide notice is a significant departure from the notification procedures for all other development types.

### **PUBLIC COMMENT**

The Planning Commission received public comment from various sources as it reviewed the draft regulations. Commenters have addressed the following issues.

- Encourage distributed antenna systems (DAS) and other small cell systems.

Staff comment: According to case law, the City cannot require or specifically favor one technological approach over another. Technology is the purview of the Federal Communications Commission. The City can however, encourage its use. Draft Section 14.242.010A.3 provides a statement to this effect.

- As technology is progressing, there may be solutions the City cannot envision at this point that may be consistent with community expectations. The regulations should address this possibility.

Staff comment: Tier 1 of the siting hierarchy includes a provision (14.242.050A.9) allowing other unforeseen options that would provide a result equal to or better than other Tier 1 WCF types.

- Prohibit new monopoles within the viewshed of gateways and primary arterials.

Staff comment: While the policy intent is appreciated, implementation would be difficult. Gateway viewsheds are more difficult to define for purposes of regulation than discrete geographic areas. Further, many areas of the City are visible from a major corridor. For example, the three cell towers on and adjacent to the BPA site are visible from Avenue D. Almost all portions of the Business Park designation are visible from Bickford Avenue. Staff

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and the Planning Commission prefer using mapped geographies such as land use designations, rights-of-way, and the Historic District as the basis for WCF regulation.

- Broaden the Historic District exclusion zone to the older portion of the City south of Sixth Street, as the Historic District does not incorporate all areas that give the community its historic character and contribute to the City's "brand".

Staff comment: Out of caution for establishing differential protections not related to zoning or other adopted geographies, this suggestion was not incorporated in the draft chapter. However, excluding the Pilchuck District, the area in question is almost entirely in residential designations. Apart from locating WCFs on utility poles, locations within or adjacent to residential designations are Tier 4 types, meaning that other options would need to be exhausted before such locations could be approved and a public hearing before the Hearing Examiner would be required for approval.

- Prohibit WCFs in recreational tracts within residential plats.

Staff comment: This issue was discussed at length by the Planning Commission. Ultimately, the Commission determined that the same screening provisions applicable to public parks should apply to private parks (e.g., "tot lots" created in some subdivisions). In general, it is not likely that sufficient tree cover will be available in a pocket park to allow approval. However, the decision on whether to commit a portion of a private park to a WCF should be left to the homeowners association.

- Prohibit WCFs in public parks.

Staff comment: See policy issue discussion above.

Finally, a written comment summary was provided by Mr. Rolf Rautenberg at the Planning Commission's public hearing on February 3, 2016 (see Attachment B). According to his comments, Mr. Rautenberg engaged the services of an engineer with broad experience with WCF codes to evaluate the draft regulations. While Mr. Rautenberg noted that the engineer had provided him an annotated copy of the draft chapter, only the summary was offered to the Planning Commission for its review. While staff appreciates Mr. Rautenberg's efforts and expense on behalf of the community, staff's review of the summary does not reveal fatal flaws or, in fact, anything else that would necessitate changes to the current draft of Ordinance 2301. According to staff's reading, the primary approach within this summary indicates that the draft ordinance is overcautious with regard to timeframes in federal law, and over-inclusive in the definitions subject to federal requirements. Neither appears to represent a significant concern or obstacle to implementation.

### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission recommends adoption of Ordinance 2301 as written. However, the Planning Commission also recommends the City Council consider engaging a professional engineer with expertise in wireless communications facilities and applicable federal law to review the draft, as a precautionary measure. Staff appreciates the cautious approach proposed by the Planning Commission. However, staff suggests that the costs, both in time and financial resources, be weighed against the benefits of a City-funded technical review. While WCFs are a potentially noticeable component of the landscape, they are but one of many land uses in the City. It is not clear how much valuable information would be contributed to the very significant effort already invested in the analysis for this code development process.

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**STRATEGIC PLAN REFERENCE:** This item generally furthers Strategy A: Enhance the streetscapes of primary corridors and improve gateways, signage, and way-finding to strengthen the City's identity and invite people to the City; of Initiative 7, Strengthen the City's attractiveness as a regional destination.

**RECOMMENDATION:** That the City Council **ACCEPT** public comment and **ADOPT Ordinance 2301** as written or as amended.

### **ATTACHMENTS:**

- A. Draft Ordinance 2301
- B. Public comment
- C. Meeting minutes

ATTACHMENT A

**CITY OF SNOHOMISH  
Snohomish, Washington**

**DRAFT ORDINANCE 2301**

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, AMENDING THE CITY'S DEVELOPMENT CODE AS SET FORTH IN TITLE 14 OF THE SNOHOMISH MUNICIPAL CODE (SMC) BY ADDING A NEW CHAPTER 14.242 ENTITLED "WIRELESS COMMUNICATIONS FACILITIES" RELATING TO STANDARDS FOR REVIEW OF WIRELESS COMMUNICATIONS FACILITY PROPOSALS; AMENDING SMC 14.100.120 BY DELETING DEFINITIONS OF PLANNING TERMS; BY AMENDING SMC SECTIONS 14.207.090, 14.207.120, 14.207.125 AND 14.207.150 RELATING TO PERMITTED USES; PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE**

**WHEREAS**, the City has adopted a Land Use Development Code as Title 14 of the Snohomish Municipal Code ("Development Code") to implement the Comprehensive Plan and promote compatible and rational land development and land use in all portions of the City; and

**WHEREAS**, the Development Code identifies processes for review of land use applications and conditions under which land uses may be approved; and

**WHEREAS**, the City's regulations applicable to wireless communications facilities are determined to be no longer consistent with community needs and expectations; and

**WHEREAS**, the City Council affirms it is in the public interest to allow and encourage investment in communications infrastructure in the City to provide adequate wireless services to City residents, businesses, and visitors; and

**WHEREAS**, since the current wireless communications facility regulations were last amended, federal regulations and court decisions, wireless technologies, and consumer demand have reshaped the environment within which wireless communication facilities are permitted and regulated; and

**WHEREAS**, through the Federal Communication Commission's rules, the federal government has mandated strict timeframes for review of applications for new and modified wireless communication facilities; and

**WHEREAS**, the City Council has determined that certain land use and development contexts are more sensitive than others to visual impacts related to new wireless communication facilities; and

**WHEREAS**, the community has articulated preferences for the form and location of new wireless communications facilities; and

**WHEREAS**, following duly published notice, on February 3, 2016, a public hearing on the proposed amendments was held before the Snohomish Planning Commission and all persons wishing to be heard were heard; and

## **PUBLIC HEARINGS 5b**

**WHEREAS**, following the public hearing, the Planning Commission evaluated issues related to proposed wireless communications facilities amendments; and

**WHEREAS**, consistent with SMC 14.15.090, the Planning Commission made findings and issued a recommendation to the City Council regarding the proposed amendments in which the Planning Commission found that the proposed amendments are internally consistent with the Comprehensive Plan, the Growth Management Act, and the State Environmental Policy Act, and are in the interest of the public health, safety, and welfare of Snohomish residents; and

**WHEREAS**, the Planning Commission recommends that the City Council adopt the proposed Development Code amendments set forth herein; and

**WHEREAS**, pursuant to SMC 14.15.070 and RCW 36.70A.106, the City has notified the Washington State Department of Commerce of the City's intent to adopt proposed amendments to the City's Development Code set forth herein; and

**WHEREAS**, acting as the City of Snohomish SEPA Responsible Official, the City Planning Director reviewed the proposed amendments and issued a Determination of Non-significance (DNS); and

**WHEREAS**, following duly published public notice, on February 16, 2016, a public hearing on the proposed amendments was held by the City Council, and all persons wishing to be heard were heard;

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

**Section 1. Adoption of Planning Commission Findings and Recommendation.** The Planning Commission findings are hereby adopted and incorporated herein by reference, including but not limited to the findings that the Development Code amendments adopted by this Ordinance are:

- a. Internally consistent with the City of Snohomish Comprehensive Plan;
- b. Consistent with the Washington State Growth Management Act;
- c. Consistent with the Washington State Environmental Policy Act (Chapter 43.21C RCW); and
- d. In the interest of the public health, safety, and welfare of Snohomish residents.

**Section 2. Adoption of Chapter 14.242 SMC.** Title 14 of the Snohomish Municipal Code is hereby amended by adding a new Chapter 14.242 entitled "WIRELESS COMMUNICATIONS FACILITIES" as provided and attached to this Ordinance as **Exhibit A**.

**Section 3. Amendment of SMC Section 14.100.020 .** SMC Section 14.100.020 is hereby amended by deleting terms and definitions as set forth in the attached **Exhibit B** which is incorporated herein by this reference. Except for those deletions contained in Exhibit B, all other terms and definitions contained in SMC 14.100.020 remain in full force, unchanged.

**Section 4. Amendment of SMC 14.207.090, 14.207.120, 14.207.125 and 14.207.150.** SMC Sections 14.207.090, 14.207.120, 14.207.125, and 14.207.150 are hereby amended to delete land uses and associated conditions set forth in the attached **Exhibit C** which is incorporated herein

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by this reference. Except for those deletions contained in Exhibit C, all other provisions of SMC 14.207.090, 14.207.120, 14.207.125 and 14.207.150 and associated conditions shall remain in full force, unchanged.

**Section 5. Severability.** If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

**Section 6. Effective Date.** This ordinance shall be effective five days after adoption and publication by summary.

**ADOPTED** by the City Council and **APPROVED** by the Mayor this 16<sup>th</sup> day of February, 2016.

CITY OF SNOHOMISH

By \_\_\_\_\_  
KAREN GUZAK, MAYOR

ATTEST:

APPROVED AS TO FORM:

By \_\_\_\_\_  
PAT ADAMS, CITY CLERK

By \_\_\_\_\_  
GRANT K. WEED, CITY ATTORNEY

Date of Publication: \_\_\_\_\_

Effective Date (5 days after publication): \_\_\_\_\_

**Chapter 14.242 WIRELESS COMMUNICATIONS FACILITIES**

**Sections**

14.242.010	Purpose
14.242.020	Definitions
14.242.030	Applicability and Exemptions
14.242.040	Prohibitions
14.242.050	Siting Hierarchy
14.242.060	Exception from the Standards.
14.242.070	City-Owned WCF Sites
14.242.080	Types of WCF Permits Required
14.242.090	WCF Application Requirements
14.242.100	Permit Review (“Shot Clock”) Time Periods
14.242.110	Category 1 WCF Permit Process and Findings
14.242.120	Category 2 WCF Permit Process and Findings
14.242.130	Category 3 WCF Permit Process and Findings
14.242.140	Development Standards
14.242.150	Conditions of Approval
14.242.160	Third Party Technical Review
14.242.170	Public Notice
14.242.180	Removal of Abandoned Equipment
14.242.190	Revocation

**14.242.010 Purpose.**

The purpose of this chapter is to accommodate wireless communication facilities (WCFs) in a manner that preserves the visual and aesthetic landscape and character of the City and minimizes adverse impacts to residents. These regulations are intended to provide all purveyors of wireless services an equal opportunity to serve the community in accordance with federal law.

- A. This chapter is intended to further the following objectives:
1. To establish procedural requirements and substantive criteria applicable to approval or denial of applications to modify existing WCFs or to locate and construct new WCFs in compliance with all applicable law.
  2. To minimize the adverse aesthetic impacts associated with WCFs through appropriate design and siting.
  3. To encourage the use of Distributed Antenna Systems (DAS) and other small cell systems that use components that are a small fraction of the size of macrocell deployments, and can be installed with little or no impact on utility support structures, buildings, and other existing structures.
  4. To encourage WCFs to locate on utility poles within the public right-of-way where a location in a residential area is necessary to meet the functional requirements of the telecommunication industry as defined by the Federal Communications Commission.

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5. To foster networks of telecommunications facilities that provide adequate wireless communication coverage to customers within the City and serve as an effective part of the City's emergency response network.
  6. To ensure that decisions are made in a timely, consistent and competitively neutral manner.
- B. To further these objectives, the City shall give due consideration to the zoning code, existing land uses, and environmentally, culturally and historically sensitive areas when approving sites for the location of communication towers and antennas.
- C. These objectives are intended to protect the public health, safety, and welfare, to protect property values, and to minimize visual impacts, while furthering the development of enhanced telecommunications services in the City. These objectives were designed to comply with the Telecommunications Act of 1996. The provisions of this chapter are not intended to and shall not be interpreted to prohibit or have the effect of prohibiting personal wireless services. This chapter shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent wireless communication services.
- D. To the extent that any provision of this chapter is inconsistent or conflicts with any other City ordinance, this chapter shall control. Otherwise, this chapter shall be construed consistently with the other provisions and regulations of the City.

### **14.242.020 Definitions.**

The following abbreviations, phrases, terms and words shall have the meanings assigned in the section or, as appropriate, in Chapter 14.100 SMC, as amended, unless the context indicates otherwise. Words that are not defined in this section or elsewhere in this title shall have the meanings set forth in Chapter 5 of Title 47 of the United States Code, Part 1 of Title 47 of the Code of Federal Regulations, and, if not defined therein, their common and ordinary meaning.

- A. "Antenna" means a specific device, the surface of which is used to transmit and/or receive radio-frequency signals, microwave signals, or other signals transmitted to or from other antennas for commercial purposes.
- B. "Base station" means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not include a tower, as defined herein, or any equipment associated with a tower. Base station includes, without limitation:
1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
  2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell networks).
  3. Any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in paragraphs 1-2 above that has been reviewed and approved by the City.

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- C. “Colocation” means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.
- D. “Distributed Antenna System” or “DAS” means a network consisting of transceiver equipment at a central hub site to support multiple antenna locations throughout the designed coverage area.
- E. “Eligible facilities request” means any request for modification of an existing tower or base station that, within the meaning of the Spectrum Act, does not substantially change the physical dimensions of that tower or base station and involves (a) the colocation of new transmission equipment, (b) the removal of transmission equipment, or (c) the replacement of transmission equipment.
- F. “Eligible support structure” means any tower or base station that exists at the time the application is filed with the City.
- G. “FCC” means the Federal Communications Commission or successor agency.
- H. “Monopole” means a style of free-standing antenna support structure consisting of a single shaft usually composed of two or more hollow sections that are attached to a foundation on the ground. This type of antenna support structure is designed to support itself without the use of guy wires or other stabilization devices.
- I. “Project” means a WCF for which a permit is required by the City.
- J. “RF” means radio frequency on the radio spectrum.
- K. “Spectrum Act” means Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act, 42 U.S.C. §1344(a) (providing, in part, “...a State or local government may not deny, and shall approve, any eligible facilities request for a modification of any existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”).
- L. “Substantially change” means, in the context of an eligible support structure, a modification of an existing tower or base station where any of the following criteria is met:
  - 1. For a tower located outside of public rights-of-way:
    - a. The height of the tower is increased by more than twenty feet or by more than ten percent, whichever is greater; or
    - b. There is added an appurtenance to the body of the tower that would protrude from the edge of the tower by more than twenty feet or more than the width of the tower structure at the level of the appurtenance, whichever is greater.
  - 2. For a tower located in the public right-of-way and for all base stations:

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- a. The height of the tower is increased by more than ten percent or ten feet, whichever is greater; or
  - b. There is added an appurtenance to the body of that structure that would protrude from edge of the tower by more than six feet.
3. For all base stations:
- a. The height of the base station is increased by more than ten percent or ten feet, whichever is greater; or
  - b. It involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not more than for four cabinets.
4. For either a tower or a base station:
- a. There is entailed in the proposed modification any excavation or deployment outside the current site of the tower or base station; or
  - b. The proposed modification would cause the concealment or camouflage elements of the tower or base station to be defeated; or
  - c. It does not comply with conditions associated with the prior approval of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds.
5. To measure changes in height for the purposes of this section, the baseline is:
- a. For deployments that are or will be separated horizontally, measured from the original support structure.
  - b. For all others, measured from the dimensions of the tower or base station, inclusive of the originally approved appurtenances and any modifications that were approved by the City or Snohomish County, in the case of annexed facilities, prior to February 22, 2012.
  - c. To measure changes for the purposes of this section, the baseline is the dimensions that were approved by the City or Snohomish County, in the case of annexed facilities, prior to February 22, 2012.

M. “Tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or FCC-authorized antenna, including any structure that is constructed for wireless communication service. This term does not include base station.

N. “Temporary WCF” means a nonpermanent WCF installed on a short-term basis, for the purpose of evaluating the technical feasibility of a particular site for placement of a WCF, for providing news coverage of a limited event, or for providing emergency communications during a natural disaster or other emergencies that may threaten the public health, safety and welfare.

## **PUBLIC HEARINGS 5b**

O. “Transmission equipment” means equipment that facilitates transmission of any FCC-licensed or FCC-authorized wireless communication service.

P. “Wireless communications facility” or “WCF” means any antenna, associated equipment, base station, small cell system, tower, and/or transmission equipment.

Q. “Wireless communications service” means, without limitation, all FCC-licensed backhaul and other fixed wireless services, broadcast, private, and public safety communication services, and unlicensed wireless services.

### **14.242.030 Applicability and Exemptions.**

The provisions of this chapter shall apply to all applications for new and expanded/altered wireless communication facilities located within the boundaries of the City except the following, which shall be permitted in all land use designations unless otherwise regulated by Title 14 SMC:

- A. Systems for military and government communication and navigation.
- B. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.
- C. Hand-held, mobile marine and portable radio transmitters and/or receivers.
- D. Two-way radio used for temporary or emergency services’ communications.
- E. Federally licensed amateur (ham) radio stations and citizen band stations, provided that:
  - 1. No portion of the tower or antenna exceeds the height limits of the applicable land use designation;
  - 2. The tower shall be located a distance equal to or greater than its height from any existing residential structure located on an adjacent parcel;
  - 3. Towers shall not be used for commercial purposes; and
  - 4. All towers shall meet all applicable state and federal statutes, rules, and regulations, including obtaining a building permit from the City, if applicable.
- F. Receive-only television and satellite dish antennas as an accessory use.
- G. A temporary WCF.

### **14.242.040 Prohibitions.**

- A. The following new wireless communication facilities are prohibited:
  - 1. Guyed towers.
  - 2. Lattice towers.

## **PUBLIC HEARINGS 5b**

B. Unless demonstrated to be necessary and without effective alternative, new monopoles are prohibited within the boundaries of the Historic District.

### **14.242.050 Siting Hierarchy.**

Siting of antennas or support structures shall adhere to the siting hierarchy of this section. The order of preference ranking for antennas or antenna support structures, from highest to lowest, shall be Tier 1 to Tier 4. Except where a Tier 1 WCF is proposed, the applicant shall file relevant information including but not limited to an analysis and affidavit by a registered professional electrical engineer licensed in the State of Washington demonstrating that, despite diligent efforts to adhere to the established hierarchy within the geographic search area, higher tier options are not technically feasible or not justified given the location of the proposed wireless communications facility and the need to cover significant gaps in network coverage.

A. Tier 1 -A WCF that is:

1. Concealed entirely within a non-residential building.
2. Incorporated into the exterior architecture of an existing building above the first floor to match the building's design.
3. Designed with no antenna extending more than 12 feet above a utility pole or structure (other than a building) constructed for a non-WCF purpose upon which it is mounted.
4. Located on an existing monopole or lattice structure in compliance with all original conditions of approval.
5. Located on a high-voltage transmission tower within a transmission right-of-way and outside a public street right-of-way.
6. A new monopole-style WCF with antennas in a canister located within the Business Park or Industrial designation.
7. Located on a City water tower.
8. Except as otherwise listed, any alternative not visible, and not anticipated to become visible, from any off-site location.
9. Determined to be consistent with the purpose of this subsection and resulting in an equivalent or lower visual impact than the WCF alternatives in this subsection due to incorporation of technologies not in common use as of the date of this ordinance.

B. Tier 2 - A WCF that is:

1. Located on a new or existing utility pole within a City right-of-way and extending no more than 25 feet above the existing pole height and having no antenna or other equipment extending more than 3 feet from the exterior of the pole on which it is mounted.
2. Located on the flat roof of an existing non-residential building in a commercial or industrial designation and extending no more than 20 feet above the existing roof, provided the WCF is no closer to the edge of the roof than the height of the WCF.

## **PUBLIC HEARINGS 5b**

- C. Tier 3 - A WCF that is:
1. Located on City-owned land where vegetation removal is the minimum necessary to allow installation and maintenance of the facilities, and where vegetation adjacent to the WCF location screens 80 percent of the height of the WCF where visible from off-site locations.
  2. Located on a new or existing utility pole within a City minor arterial and extending no more than 40 feet above the existing pole height and having no antenna or other equipment extending more than 3 feet from the exterior of the pole on which it is mounted.
- D. Tier 4 - WCF not meeting any of the options in A through C above when no reasonable alternative exists, where the facility height is demonstrated to be the lowest necessary to meet functional requirements, and when consistent with the following provisions:
1. In developed street rights-of-way adjacent to residential designations where located on wood support structures a maximum of 60 feet in height.
  2. On non-building tracts within residential designations where vegetation removal is the minimum necessary to allow installation and maintenance of the facilities, and where vegetation adjacent to the WCF screens 80 percent of the height of the WCF from off-site locations.
  3. On publicly owned lands of three acres or larger and located to minimize visibility from and impacts to adjacent properties.
  4. In the Commercial, Mixed Use, and Pilchuck District designations, only where located on properties without residential uses and set back at least 20 feet from the front property line. The support structure shall be set back a distance equal to the height of the support structure from any residential designation.

### **14.242.060 Exception from the Standards.**

Except as otherwise provided in this chapter, no WCF shall be used or developed contrary to any applicable development standard unless an exception has been granted pursuant to this section. These provisions apply exclusively to WCFs and are in lieu of the generally applicable variance provisions in Chapter 14.70 SMC.

A. A WCF exception is a Type 6 permit process.

B. Submittal Requirements. In addition to the submittal requirements for the WCF permit application, an application for a WCF exception shall include:

1. A written statement demonstrating how the exception would meet the criteria.
2. A site plan that includes:
  - a. A description of the proposed facility's design and dimensions, as it would appear with and without the exception.

## **PUBLIC HEARINGS 5b**

- b. Elevations showing all components of the WCF as it would appear with and without the exception.
- c. Color simulations of the WCF after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.

C. Criteria. An application for a WCF exception shall be granted if the following criteria are met:

1. The exception is consistent with the purpose of the development standard for which the exception is sought.
2. Based on a visual analysis, the design minimizes the visual impacts to residential designations, the Historic District, and public places, including street rights-of-way through mitigating measures, including, but not limited to, building heights, design, bulk, color, and landscaping.
3. The applicant demonstrates the following:
  - a. A significant gap in the coverage, capacity, or technologies of the service network exists such that users are regularly unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;
  - b. The gap in coverage or connectivity can only be filled through an exception to one or more of the standards of this chapter; and
  - c. The exception requested is narrowly tailored to fill the service gap such that the wireless communication facility conforms to this chapter's objectives and standards to the greatest extent possible.
4. Except as otherwise provided in this chapter, for a new tower proposed to be located within or adjacent to a residential designation, the applicant must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, connectivity, capacity, or technologies of the service network is the least visually intrusive to the surrounding community and the most consistent with the standards in this chapter.

### **14.242.070 City-Owned WCF Sites.**

Except within rights-of-way, sale, lease or other use of City-owned lands for a WCF shall be subject to City Council approval following a public hearing. Public review of such sales, lease, or other use by the City Council is not subject to the permit review timeframes in SMC 14.242.100. Through its review, the City Council may deny a request to use City-owned land or, if approved, may require conditions in excess of this chapter.

### **14.242.080 Types of WCF Permits Required.**

A WCF permit shall be required prior to the construction or installation of each new or modified WCF other than a temporary WCF as defined herein. A WCF permit is required in addition to

## **PUBLIC HEARINGS 5b**

any land use, building, or right-of-way use permit or approval to which the proposal is subject under this title.

A. A Category 1 WCF Permit shall be required for an eligible facilities request, as defined in this chapter.

B. A Category 2 WCF Permit shall be required for:

1. Any modification of an eligible support structure, including the collocation of new equipment, that substantially changes the physical dimensions of the eligible support structure on which it is mounted; or
2. Any collocation not eligible for a Category 1 WCF Permit.

C. A Category 3 WCF Permit shall be required for the siting of any WCF that is not a collocation subject to a Category 1 or 2 WCF Permit.

### **14.242.090 WCF Application Requirements.**

All applications for a WCF Permit shall contain the following items:

A. The applicant shall specify in writing the classification of the proposal on the siting preference hierarchy in SMC 14.242.050. Except applications for any WCF Permit that are consistent with a siting preference Tier 1 WCF type, a justification for a lower tier shall be provided.

B. The applicant shall specify in writing whether the applicant believes the application is for an eligible facilities request subject to the Spectrum Act, and if so, provide a detailed written explanation as to why the applicant believes that the application qualifies as an eligible facilities request.

C. The applicant shall submit a land use application form, as may be amended from time to time.

D. The applicant shall submit a complete and signed application checklist available from the City, including all information required by the application checklist.

E. The applicant shall remit fees as prescribed in the adopted fee schedule.

F. The application shall be accompanied by all applicable permit applications with required application materials for each separate permit required by the City for the proposed WCF.

G. For Category 3 WCF Permits, the plans shall include a scaled depiction of the maximum permitted increase in the physical dimensions of the proposed project that would be permitted by the Spectrum Act, using the proposed project as a baseline.

H. The application submittal shall include such requirements as may be, from time to time, required by the City Planner, as publicly stated in the application checklist.

## **PUBLIC HEARINGS 5b**

### **14.242.100 Permit Review (“Shot Clock”) Time Periods.**

A. City review of application materials. For the purposes of this chapter, all time periods are measured in calendar days. The timeframe for review of an application shall begin to run when the application is submitted, but shall be “tolled”, meaning temporarily suspended, if the City finds the application incomplete and provides notice of incompleteness that delineates the missing information in writing. A notice of incomplete application shall be made within 30 days of submittal of the application. After submittal of all additional information included on the notice(s), the City will notify the applicant within 10 days of this submittal if the additional information failed to complete the application. If the City makes a determination pursuant to SMC 14.242.080B1 that the application submitted as a Category 1 eligible facilities request should be processed as a Category 2 or Category 3 WCF Permit, then the Category 2 or Category 3 processing time, as applicable, shall begin to run when the City issues this decision.

B. Category 1 WCF Permit processing time. For Category 1 WCF Permit applications, the City will act on the WCF application, together with any other City permits required for a WCF modification, within 60 days, adjusted for any tolling due to requests for additional information or mutually agreed extensions of time.

1. If the City determines that the application does not qualify as a Category 1 eligible facilities request, the City will notify the applicant of that determination in writing and will process the application as a Category 2 or Category 3 WCF permit application, as applicable.
2. To the extent federal law provides a “deemed granted” remedy for Category 1 WCF Permit applications not timely acted upon by the City, no such application shall be deemed granted until the applicant provides notice to the City, in writing, that the application has been deemed granted after the time period provided in Section B above has expired.
3. Any Category 1 WCF Permit application that the City grants or that is deemed granted by operation of federal law shall be subject to all requirements of Section 14.242.140C and E and 14.242.150A through F.

C. Category 2 processing time. For Category 2 WCF Permit applications, the City will act on the application within 90 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.

D. Category 3 processing time. For Category 3 WCF Permit applications, the City will act on the application within 150 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.

E. Denial of application. If the City denies a WCF application, the City will notify the applicant of the denial and the reasons for the denial, in writing.

### **14.242.110 Category 1 WCF Permit Process and Findings.**

A. A Category 1 WCF Permit shall be reviewed by the City Planner, whose decision shall be final and shall not be appealable pursuant to Chapter 14.75 SMC.

## **PUBLIC HEARINGS 5b**

B. The City Planner shall grant a Category 1 WCF Permit provided that the City Planner finds that the applicant proposes an eligible facilities request.

C. The City Planner shall impose the following conditions on the grant of a Category 1 WCF Permit:

1. The proposed colocation or modification shall not defeat any existing concealment elements of the support structure; and
2. The proposed WCF shall comply with the development standards in SMC 14.242.140C and E and the conditions of approval in SMC 14.242.150.

### **14.242.120 Category 2 WCF Permit Process and Findings.**

A. A Category 2 WCF Permit shall be reviewed by the City Planner, whose decision shall be appealable to the Hearing Examiner pursuant to Chapter 14.75 SMC.

B. The Hearing Examiner, on appeal, shall grant a Category 2 WCF Permit subject to findings the proposed WCF complies with the development standards in SMC 14.242.140 and the conditions of approval in SMC 14.242.150 and that the justification under SMC 14.242.050 and SMC 14.242.060, as applicable, contain sufficient engineering analysis to justify the proposal.

### **14.242.130 Category 3 WCF Permit Process and Findings.**

A. A Category 3 WCF Permit for a WCF designated as Tier 4 in the siting preference hierarchy in SMC 14.242.050 shall be reviewed by the Hearing Examiner as a conditional use permit. All other Category 3 WCF Permits shall be reviewed by the City Planner. Approval shall be subject to findings of compliance with the development standards in SMC 14.242.140, the conditions of approval in SMC 14.242.150, and the conditional use approval criteria in SMC 14.65.020B, and that the justification under SMC 14.242.050 and SMC 14.242.060, as applicable, contains sufficient engineering analysis to justify the proposal.

B. The City Planner and Hearing Examiner decisions shall be appealable according to the provisions of Chapter 14.75 SMC.

### **14.242.140 Development Standards.**

Except as otherwise provided in this chapter, a proposed WCF project shall comply with the following standards:

A. The WCF project shall utilize the smallest footprint possible consistent with its functional service requirements.

B. The WCF project shall be designed to minimize the overall height, mass, and size of the base station.

C. The base station shall be screened from public view.

D. The WCF project shall be architecturally compatible with the existing site to the extent possible.

## **PUBLIC HEARINGS 5b**

E. An antenna, base station, or tower shall be designed to minimize its visibility from off-site locations. Concealment, screening, and other techniques may be used to blend the facilities with the visual character of the surrounding area.

F. A building-mounted antenna, base station, or tower shall be architecturally compatible with the existing building on which the equipment is attached.

G. Any WCF project in the Historic District, except when subject to an eligible facilities request, shall be reviewed by the Design Review Board and a recommendation issued for the project record.

H. Except where proposed within a public right-of-way, a new support structure shall be set back from the street frontage to the extent possible.

I. Where aviation safety beacon lights are required, red is preferred over white. Where applicable, applicants shall identify the type of lighting proposed and provide a justification for the use of white lights over red lights.

### **14.242.150 Conditions of Approval.**

In addition to any other conditions of approval permitted under federal and state law and this code that the decision authority deems appropriate or required under this chapter, all WCF projects approved under this chapter, whether approved or deemed granted by operation of law, shall be subject to the following conditions of approval:

A. Permit conditions. The grant or approval of a WCF Category 1 Permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by the Spectrum Act.

B. As-built plans. The applicant shall submit to the City Planner an as-built set of plans and photographs depicting the entire WCF as modified, including all transmission equipment and all utilities, within 90 days after the completion of construction.

C. The applicant shall hire a qualified engineer licensed by the State of Washington to measure actual radio frequency emission of the WCF and determine if it meets the FCC's standards. A report, certified by the engineer, of all calculations, required measurements, and the engineer's findings with respect to compliance with the FCC's radio frequency emission standards shall be submitted to the City Planner within one year of commencement of operation.

D. Indemnification. To the extent permitted by law, the applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion and at the applicant's expense, elect to defend any such action with attorneys of its own choice.

## **PUBLIC HEARINGS 5b**

E. Compliance with applicable laws. The applicant shall comply with all applicable provisions of this Code, any permit issued under this Code, and all other applicable federal, state, and local laws including, without limitation, all building codes, electrical code, and other public safety requirements. Any failure by the City to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.

F. Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file with the City.

### **14.242.160 Third Party Technical Review.**

Although the City intends for City staff to review administrative matters to the extent feasible, the City may retain the services of an independent, RF technical expert to provide technical evaluation of permit applications for WCFs. The selection of the third party expert is at the discretion of the City. The applicant shall pay the cost for any independent consultant fees, along with applicable overhead recovery, through a deposit, estimated by the City, paid within 10 days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines. In the event such costs and fees do not exceed the initial deposit amount, the City shall refund any unused portion within thirty days after the final permit is released or, if no final permit is released, within thirty days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City before the permit is issued. The third party expert review is intended to address interference and public safety issues and be a site-specific review of engineering and technical aspects of the proposed wireless communication facilities and/or a review of the applicants' methodology and equipment used, and is not intended to be a subjective review of the site which was selected by an applicant. Based on the results of the expert review, the City may require changes to the proposal. The third party review may include, but is not limited to, the following:

- A. The technical accuracy and completeness of submittals;
- B. The applicability of analysis techniques and methodologies;
- C. The validity of conclusions reached by the applicant;
- D. The viability of other site or sites in the city for the use intended by the applicant;
- E. Whether the WCF complies with the applicable approval criteria set forth in this chapter; and
- F. Any specific engineering or technical issues identified by the City.

### **14.242.170 Public Notice.**

Public notice of WCF applications shall be in accordance with the provisions of SMC 14.55.040. Notice of WCF applications shall be provided as follows:

- A. SEPA-exempt Category 1 and Category 2 permits shall be exempt from notice requirements.

## **PUBLIC HEARINGS 5b**

B. Notice of application shall be issued for Category 3 permits for WCFs listed as Tier 3 or Tier 4 on the preference hierarchy in SMC 14.242.050.

C. Public notice shall be in accordance with SMC 14.55.040, except that notice of application required under part B. shall be mailed to all owners of property located within the city.

### **14.242.180 Removal of Abandoned Equipment.**

A WCF (Category 1, Category 2, or Category 3) or a component of that WCF that ceases to be in use for more than 90 days shall be considered abandoned and shall be removed by the applicant, wireless communications service provider, or property owner within 180 days of the cessation of the use of the WCF. This presumption may be rebutted by a showing that such WCF is an auxiliary back-up or emergency utility or device not subject to regular use or that the WCF is otherwise not abandoned. If the WCF is not removed within the prescribed time period and within 90 days written notice from the City, the City may remove the WCF at the owner of the property's expense or at the owner of the WCF's expense, including all costs and attorney's fees. If there are two or more wireless communications providers collocated on a single support structure, this provision shall not become effective until all providers cease using the WCF for a continuous period of 180 days.

### **14.242.190 Revocation.**

The City Planner may revoke any WCF Permit if the permit holder fails to comply with any condition of the permit. The City Planner's decision to revoke a permit shall be appealable pursuant to Chapter 14.75 SMC.

**PUBLIC HEARINGS 5b**

EXHIBIT B

**14.100.020 Definitions.**

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~~((**Communication facility — major** means a structural and/or freestanding tower facility for transmission and reception of UHF and VHF television signals, commercial FM or AM radio signals, or cellular radio signals. Large (over 6 feet diameter) microwave and satellite transmission dish assemblies are included in this description.))~~

~~((**Communication facility — minor** means communication antennas mounted on buildings, low power FM radio signals for short range use, and cellular radio antennas mounted on existing power poles or replacement poles and not adding more than fifteen feet to the original height of such poles.))~~

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**PUBLIC HEARINGS 5b**

EXHIBIT C

**14.207.090 Government/Business Services Land Use Table.**

Land Use	Open Space	Public Park	Urban Horticulture	Single Family Residential	Low Density Residential	Medium Density Residential	High Density Residential	Commercial	Neighborhood Business	Historic Business District	Business Park	Industrial	Airport Industry	Mixed Use
<b>Government Services</b>														
((Communications facility, minor))				((p))	((p))	((p))	((p))	((p))		((e))	((p))	((p))	((p))	((p))
Court								p		p	p	p		p
Fire facility				c1	c1	c1	c1	p		p	p	p	p	c
Police facility								p		p	p	p		c
Public agency archives								p		p	p	p	p	p
Public agency office								p		p	p	p	p	p
Public agency yard								p			p	p	p	c
Sub regional utility			c	c	c	c	c	c		c	c	c	c	c
<b>Business Services</b>														
Professional office								p		p	p	p	p	p
Automobile dismantling												c10		c10
Automobile wrecking & scrap metal												c11		
Automotive parking								p		c	p	p	p	p
Automotive rental and leasing								p		p6	p	p	p	p6
Commercial/industrial accessory uses								p7		p7	p7	p	p	p7
Communication offices								p2		p2	p	p	p	p2
Construction and trade								p2		p2	p2	p	p	p2
Farm product refrigeration/storage			p6					p6			p	p	p	
Farm product warehousing			p6					p6			p6	p	p	p6
Freight and cargo service								p2		p2	p	p	p	p2
General business service								p		p	p	p	p	p
Heavy equipment and truck repair								p			p	p	p	p
Helipad													p	
Individual transportation and taxi								p2		p2	p	p	p	p2
Log storage												p		
Miscellaneous equipment rental								p		p6	p	p	p	p6
Outdoor advertising service								p6		p6	p6	p	p	
Passenger transportation service								p2		p2	p	p	p	p2
Professional sport teams/promoters								p2		p2	p2	p	p	p2
Research, development and testing								p		p	p	p	p	p
Self-service storage					p4	p4	p4	p6			p	p	p	
Telegraph and other communications								p2		p2	p	p	p	p2
Transportation service								p2		p2	p	p	p	p2
Trucking and courier service								p2		c3	p	p	p	p2
Warehousing and wholesale trade								p6			p6	p	p	p2

**PUBLIC HEARINGS 5b**

**14.207.120 Regional Land Use Table.**

Land Use	Open Space	Public Park	Urban Horticulture	Single Family Residential	Low Density Residential	Medium Density Residential	High Density Residential	Commercial	Neighborhood Business	Historic Business District	Business Park	Industrial	Airport Industry	Mixed Use
Regional land uses														
Airport/heliport													p	
College/university								p		p	p	p	p	p
<del>((Communication facility — major))</del>		((e4,5))	((e4))	((e4))	((e4))	((e4))	((e4))	((e4))		((e4))	((e4))	((e4))	((e4))	
Jail								p3						
Landing field													p	
Municipal water production												p		
Non-hydroelectric generation facility												p		
Public agency animal control facility												p		
Public agency training facility												p2		
School bus base											p	p		
Stadium/arena		c						p						
Transfer station												c		
Transit bus base												c		
Transit park and ride lot								p			p		p	p
Wastewater treatment facility												p		
<u>Wireless Communication Facilities (see Ch. 14.242 SMC)</u>														
Zoo/wildlife exhibit		c	p1											

**PUBLIC HEARINGS 5b**

**14.207.125 Regional Land Uses: Regulations.**

1. For arboretum -- see Recreational/ Cultural Land Use Table.

2. Except outdoor shooting ranges.

3. Twenty-four (24) hour holding cells as part of City Police Department.

~~((4. Major communication facilities are permitted on existing utility towers where the new facility will not exceed the height of the existing tower. In all other instances, a conditional use permit is required. (Ord. 2092, 2006))~~

~~((5. Major communication facilities shall not interfere with use of the property for recreational purposes.))~~

**PUBLIC HEARINGS 5b**

**14.207.150 Essential Public Facility Regulations.**

Land Use	Open Space	Public Park	Urban Horticulture	Single Family Residential	Low Density Residential	Medium Density Residential	High Density Residential	Commercial	Neighborhood Business	Historic Business District	Business Park	Industrial	Airport Industry	Mixed Use
Essential Public Facilities														
Airport													p	
<del>((Communication facility major))</del>												((e))		
Earth station												c		
Energy resource recovery facility												c		
Hazardous waste storage & recycling												c		
Natural gas/electrical power generating facility												p		
Transfer station												c		
Work release facility												c		

ATTACHMENT B

Review document provided by Rolf Rautenberg at the Planning Commission public hearing,  
February 3, 2016

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Re: Draft Snohomish Wireless Code  
February 2, 2016

I have attached my markup of the draft Section 14.242 of the Snohomish Municipal Code. First let me note that the authors have made a noble and largely successful attempt to account for federal wireless facility zoning limitations. Also note that this report is not legal advice but observations from an independent engineer who has participated in more than 500 wireless facility zoning processes, has had to interpret awkward code for local authorities or applicants, and has assisted municipalities in creating or modifying wireless ordinances.

In my opinion, this draft code is not ready for adoption. It is laced with the kinds of flaws commonly found in draft technical regulations. Some language demonstrates misunderstandings about meaning and application of rules. Most are minor things that just require editorial cleanup. Examples: prohibiting wireless service versus prohibiting the provision of wireless services, the inclusion of "microwave signals" which is not a technical class and for which the term "radio frequency signals" already suffices, the lack of the key category of personal wireless services in the definition of wireless communications service, etc. Missing words, confusing punctuation (or lack), inconsistent intermingling of terms and similar writing flaws make the draft more confusing than necessary. Some Code references seem to have the wrong numbers. There are some gaps in the Siting Hierarchy that could be plugged. Other clarifications too numerous to summarize are marked on the draft.

The effort to incorporate shot clocks, deemed-granted restrictions and other arcane elements of federal regulation is commendable. However, there are some cases where the City gives up some rights in the way it codifies federal rules. For example, the FCC shot clocks of 90 and 150 days for acting on certain applications are not hard and fast deadlines with immediate penalties. Only the 60 day period for Section 6409 applications is hard and fast and results in a deemed granted status if not satisfied. The 90/150 day clocks are a presumption on the part of the FCC, rebuttable in court. Rather than incorporating these two clocks in the Code per se, we recommend noting that the decision maker should make reasonable efforts to meet the time frames.

Because of your group's desire to move quickly and to spare the formalities, this report and the markup are notably abridged. Please let us know if there is anything else we can do to assist.

## **PUBLIC HEARINGS 5b**

Re: Draft Snohomish Wireless Code

February 3, 2016

You have asked a followup question. It relates to whether the applicant should provide evidence of need for the facility. Certainly if one is building a swimming pool or a barn, there is no interest on the part of the City as to whether the applicant needs it. However, those applications which are for personal wireless facilities ("PWSFs") subject to the Telecommunications Act of 1996 ("TCA") are in a different realm. [This document is not legal advice and comes from one highly experienced in providing technical advice to applicants and municipalities in permitting wireless facilities.]

First, one thing I observed in the draft Code is the intermingling of various kinds of services in the broad definition of Wireless Communications Facility. It appears the goal of this term is to harmonize the Code with the Section 6409 requirements regarding modifications of facilities, which it does. Section 6409 has been interpreted to apply to more facility types than just PWSFs. So, Tier 1 facilities are Sec. 6409 *eligible facilities* and are suitably defined by the terms *existing base station* and *existing tower*. The draft chooses to incorporate WCFs rather than PWSFs in order for Tier 1 to apply to the broader family of WCFs according to FCC expectations.

For those proposed facilities that are PWSFs, the TCA applies. Follow this thread for an explanation of why a PWSF applicant should be required to provide evidence of need:

1. TCA says denials shall be supported by substantial evidence in the record.
2. TCA says a denial shall not effectively prohibit the provision of personal wireless services.
  - A. The draft code applies to more than just PWS, so it gets a little murky.
3. Assume a decision denies a permit for a PWSF proposal.
4. The TCA test for the court to override that decision includes things like
  - A. significant gaps in the applicant's service and
  - B. a lack of reasonable alternatives or a lack of less intrusive alternatives  
[less intrusive in this context is not visually less intrusive, but less intrusive to the intent of the regulation, which could include visual intrusiveness and other aspects].
5. Courts have found that if a City has effectively prohibited the provision of PWS, the City should have known and should have approved under federal mandate.
6. In order to know in advance whether a denial will be an effective prohibition, the record must be filled with facts about the purported gap and an evaluation of feasible alternatives that are likely to be less objectionable to the City.
7. In order to have that on record, it must be required as part of the application and must be part of the deliberations (Proof of need would be an application requirement. Vetting alternatives only occurs after the application is filed and the City reviews alternatives considered by the applicant and the City suggests alternatives to the applicant. TCA compliance is often an iterative process.)
8. Bear in mind that a decision making authority does not know in advance whether an approval or denial will result, so all evidence must be requested for the possible event of a denial.

Final note: the FCC 90/150 day shot clock applies to PWSFs. The draft Code applies this to all WCFs.

**Snohomish City Council Meeting Minutes Excerpt  
December 1, 2015**

**7. DISCUSSION ITEMS**

**b. Cell Tower Regulations**

The City's current wireless communication facility regulations dated from 1998 and were out of date with more recent federal rule changes. As recent history had shown, they were out of step with the expectations of portions of the community. The Planning Commission was working on a draft chapter to Title 14 intended to balance the needs for adequate cellular services in the City with federal law and community values. It was important to emphasize that one of the intents was to enhance access to good wireless services because that helped economic development and was something the community would demand.

Types of wireless communication facilities were shown. The monopole was what most people typically considered a standard cell tower. The canister monopole was initially proposed for the Boys & Girls Club. Then there were the guyed and lattice towers. A guyed tower was fairly inexpensive but the guy wires came out quite a distance with a radius of 70-80% of the height of the tower, requiring about a half acre to support one 100' tower. This type of facility was proposed for outright prohibition. An example of the lattice tower was at the Bonneville Power Administration station. The primary reason it was proposed to be prohibited was that it wasn't attractive and looked industrial.

There was the type that was inside a building such as was in the old firehouse bell tower. All the base station equipment was within the building. Facilities on top of existing utility facilities such as a pole on top of a water tower was another approach. Towers were disguised with fake trees or architectural features. There had been discussion of small cell and distributed antenna systems used in buildings and in concentrated areas like stadiums where there was a high demand and a small area. It had also been used in urban areas where a taller tower didn't work. These were preferred in some quarters because the facilities were small additions to existing architecture.

Several federal codes were important to understand in constructing a new ordinance. Those from 1996 and 2012 were intended to facilitate the rapid deployment of new wireless facilities to match increasing demand. The first was the 1996 Telecommunication Act and the second was section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012.

The 1996 TCA said that jurisdictions shall not unreasonably discriminate among providers of equivalent services. The current and proposed codes were democratic with regard to the various providers. Secondly, regulations shall not prohibit or have the effect of prohibiting provision of wireless services. The 'have the effect of prohibiting' was important to keep in mind. It was not whether the City allowed some forms of wireless communication facilities but that those allowed were not unreasonable to the point where a carrier could argue that it wasn't possible to economically construct facilities to provide their service. The jurisdiction shall act on any request within a reasonable period of time. The Federal Communications Commission interpreted this as a shot clock, the period the jurisdiction had to act on the application. It was 90 days for a colocation and 150 days for a new facility. A colocation was placing new antennas on an existing tower supplementing the existing facilities or an additional carrier on an existing tower or adjacent to

## **PUBLIC HEARINGS 5b**

an existing base station. Any decision to deny must be in writing and supported by substantial evidence, which was the way the City conducted all its development reviews.

A jurisdiction may not regulate based on the environmental effects of radio frequency emissions when the facility was functioning according to the FCC certification. FCC had certain thresholds for radio frequency emanations and, provided that the facility met FCC standards, the City could not use that for denial or even consideration in evaluating an application.

The 2012 federal action, section 6409, addressed colocation specifically with a number of important phrases. The 'may not deny and shall approve' took out the local discretionary authority. This applied to what was now known as 'eligible facility' requests which were requests to add infrastructure or modify existing wireless structures that did not result in a substantial change to the physical dimensions. FCC has codified what it meant to substantially change the physical dimensions. That was part of the proposed definitions within the draft chapter.

The FCC reduced the review time for eligible facilities to 60 days and stated that if a jurisdiction failed to act within the 60 day shot clock, the application was deemed granted. The shot clock was 60 days for an eligible facility; 90 days if it fell outside the FCC standards for what qualified as substantial change; and 150 days for a new facility. The FCC also determined that states and local jurisdictions had a window of 30 days following submittal of the application to request additional information. That additional information needed to be reflected on publicly available documents such as a submittal check list. The City could not randomly request more information that wasn't specified in City documents. The 'deemed granted' provision applied to eligible facilities requests, not for a new facility or a substantial modification to an existing facility. If the City missed the 90 or 150 day deadlines, there was potential for legal action by the applicant.

The proposed code provided opportunities for enhanced cellular service in the community; demand was growing year over year. The number of users and the band width required by each user was increasing as well. The City had to incorporate the federal requirements. It was very important to incorporate the shot clocks, time intervals the City has to act, within the code, as well as specifying those materials that were needed to reach a decision on compliance with City standards. Getting back to the community values, the City wanted the appearance to be consistent with the expectations of the community, balancing the need for facilities to serve the community. Those preferences for the kind of facilities the City wanted needed to be clearly enunciated within the code. Staff wanted the standards to be very clear.

Currently the only standards staff had to go by were the conditional use criteria, which were fairly loose and not dependable for regulating these facilities, particularly under the constraints of federal law with all the materials being required up front. The City needed to identify what they wanted to see and to put that into the code. Certain assumptions were needed for the types of facilities and the locations desired. The assumptions that staff and the Planning Commission had been working on with community input were (1) new equipment on an existing or inside an existing building was preferred to a new pole or facility; (2) small scale as opposed to a larger more obtrusive facility like a monopole. However new monopoles within the Industrial and Business Park zones were considered fairly benign. There were four poles currently within the Industrial and Business Park zones. He wasn't aware that those had aroused any particular concern in the community. New monopoles in the heart of the City, and residential and commercial areas (Pilchuck District, Commercial, Historic Business District) were the last places where new poles were wanted.

## **PUBLIC HEARINGS 5b**

Business Park and Industrial zones were shown on the map. Industrial included the wastewater treatment plant and south of the river outside the City. The Business Park zone extended along Bickford Avenue and a small area east of State Route 9. The City couldn't depend just on putting monopolies in those sites. There was a broad swath of community, particularly single-family areas, outside these areas, so they needed to ensure that all areas were serviceable within the context of the code.

Currently there were three monopolies near the Bonneville Power Administration; one between Bickford and Sinclair Avenues, and one on the BPA transmission lines east of Terrace Avenue. There was one at the police station on a utility pole, and the one inside the old firehouse building at Second Street/Avenue A.

The approach that staff and the Planning Commission had been using, and it seemed to be acceptable to members of the public that had commented at the Planning Commission meetings, was a preference hierarchy, identifying the things they would like to see first, and then in declining level of preference what the community could accept, down to the fourth tier which was 'if everything else failed, where did a facility need to go; what did the City need to accommodate to stay out of court.' There were regulatory considerations of the federal classifications for shot clocks; acknowledgement that there were three federal classifications that may not mesh with the hierarchies of preference; or our processes. There was a review process – administrative and the quasi-judicial hearing examiner process. There were the four hierarchical siting preferences; three shot clock tiers; and the two general process types. The first order of preference in the siting hierarchy included all three tiers. As currently proposed, the hearing examiner would address applications that came under the fourth order preference; and the top three preference levels would all be administrative. The idea was that the regulations would identify sufficiently what the community was willing to accept specifically enough that there is no need for a discretionary decision as would come with a quasi-judicial hearing.

In terms of where the federal requirements crossed with the local process, if an applicant said they had an eligible facilities request, the first order of business was to determine if it met the federal requirements as staff proposed to codify them in the definitions for what actually constituted that nonsubstantial change to an existing facility. Then they had to look at where it fit within the preference hierarchy and anything that was other than a first order preference had to be justified for why the first order couldn't be met. If it was the third or fourth preference level, why they couldn't meet the preferences above that. The tiers had to be included so staff was tracking the available time to process these applications. Then it had to be meshed with the City's regulatory scheme for all other permits as an administrative or quasi-judicial process. Currently the only ones that would need a conditional use permit and go through the hearing examiner process were those lowest preference monopolies.

The draft regulations started with a purpose and then extensive definitions, a lot of which were taken straight from federal law, either verbatim or paraphrased. There were several exemptions such as ham operators or emergency communications, which may fall under wireless communications but would be outside the scope of these regulations; certain prohibitions such as guyed towers and lattice towers that the City didn't want to see; and there wasn't a need for them, so applicants could meet their needs without relying on these means.

The preference hierarchy was for the towers and antennas as well as the base stations. Tomorrow night the Planning Commission will discuss whether there needed to be a preference hierarchy for the base stations. There were many types of antennas and

structures to hold antennas but the range of options for base stations were screen them on the ground behind vegetation or architectural screening of some sort, or have them inside a building, and that was really the extent of it. That will be based more on the context of where the applicant was proposing to locate it than the City's preferences for it. The Commission will discuss whether the base stations should actually be taken out of the preference hierarchy altogether.

There were the types of permits which accord with the various shot clocks: the application requirements for each type; time periods that needed to be met; the process and findings for each type of wireless permit; certain development standards that were laid out for screening and for minimizing the intrusiveness of facilities irrespective of the type of facility. Certain facilities like the eligible facilities will not trigger many of these but they will be codified so they can be relied on for the other permit types. There were specific conditions of approval such as providing the City with as-built plans; holding the City harmless in the event anything should occur with regard to the facilities; and as several other jurisdictions have done, the draft includes the potential for third-party review. Staff may need an expert in radio frequency engineering to review it, as critical areas applications were reviewed; someone with the scientific basis to say 'this was blowing smoke' or these were accurate. Staff could draw on that expertise and charge it back to the applicant as needed. Staff had talked with several jurisdictions that had this provision on the books and none of them had availed themselves of the option of bringing in an expert third party. Other provisions include removal of abandoned equipment, permit revocation should they not meet the conditions of approval; and finally one that hadn't been added yet in the current draft, but staff felt it was important, to identify what sort of public notification would be required. There was sensitivity to it in the public but because there was such variety, everything from essentially a building permit to a conditional use permit. The code should identify specifically what triggers public notification; and what level of public notification. That was pending the Planning Commission's discussion.

The siting hierarchy for anything but the most preferred group of facilities will require justification. The approval criteria identified certain criteria by tier type which was the first, second and third tier according to the federal identification of facility types. The development standards and compliance with those standards and conditions of approval were what the City was specifying.

Mayor Guzak noted the base station proposed at the Boys & Girls Club was about 700 square feet; that was a substantial structure. At the first hearing, she heard the applicant's testimony about the need of that size for the base equipment; it was bigger than a three-car garage. The City needed some criteria for what the base station was going to look like. If it was attached to a building it needed to be compatible with the structure of the building; if it was going to be freestanding, it needed to be compatible with the neighborhood it was in. The Planning Commission was thinking about taking away the tiering potential for base stations but hearing that was a warning flag for her.

Mr. Dennison agreed that was a very important point. Just because it was not in the preference hierarchy didn't mean there weren't standards for it. Those were included in the development standards including screening base stations from public view; making it architecturally compatible with the existing site to the extent possible; minimizing the overall height, mass, and size of the base station; using concealing and screening techniques; making it architecturally compatible with an existing building when attached to the building; and applicant justifications for why they weren't putting it in a building rather than using on-the-ground screening which would probably relate more to the context of the site than community preference.

## **PUBLIC HEARINGS 5b**

Mayor Guzak asked what “defeated” meant. For example, for either a tower or base station, the proposed modification would cause the concealment or camouflage elements of the tower or base station to be defeated.

Mr. Dennison said that was from the federal code language. It meant that the efforts to hide it would be lost if the modification occurred. There had to be respect for any prior approval of a facility that included some screening or concealment elements.

Councilmember Kaftanski complimented staff and the Planning Commission for putting this thorough study together. It was breaking new ground. He had two questions. One was showcased at the Planning Commission where several citizens had been actively involved with the issue. Please characterize the general comments that were received by the Commission with respect to the draft provided tonight.

Mr. Dennison said speakers had been supportive of the approach and they believed the Commission was on the right track. The hierarchy had gone over very well. There had been two suggestions that would be discussed by the Planning Commission tomorrow. Both were a little problematic from a regulatory standpoint, for compliance with federal law, and for equity. One was to have special provisions that would apply to portions of the City south of Sixth Street but not north of Sixth Street. The rationale was that this was an older part of town and represented to a great extent the City’s brand in terms of the historic character. One question was whether that could be accomplished and still not have the effect of prohibiting the provision of cell service in this part of town. There may also be the equity issue of whether the neighborhoods south of Sixth Street were more deserving of special consideration than those north of Sixth Street. A lot of the City’s population lived north of Sixth Street. The other was a request to include provisions to limit the visibility of new facilities at gateways and from major corridors. Part of that was because the proposed tower at Averill Field was very apparent from the Second Street entry to the City. He understood the intent but unless a geographic area was being identified, view-scapes were difficult to enforce, difficult to write for, and disallowing facilities that were invisible from a major transportation corridor was difficult. Four monopoles were already visible from Bickford and Avenue D. That conflicted with the proposal to allow new canister-type poles within the Industry and Business Park designations where they would be visible from the major corridors. He appreciated the intent but wasn’t sure how implementable those concepts were, but in general there has been support. The speakers felt the code was responding to their concerns.

Councilmember Kaftanski saw several references to 30 and 60 days. Were those calendar or business days? Was there an opportunity to specify which of those it would be in the version that came back to Council?

Mr. Dennison said it would. According to federal law it would be calendar days. The other related point was the chapter copied federal law in using the term “tolled” which meant to temporarily suspend. That may not be clear to people who hadn’t read the federal codes. Staff will include a clarification of terms within the code.

Councilmember Burke had a question about the Land Use Table and what the acronyms in some cells stood for.

Mr. Dennison clarified that was the existing code. This applied to all land uses outside the Pilchuck District in the City. “P” meant outright permitted, which did not require a land use permit. “C” was conditional use permit so that went through the hearing examiner process. Numbers beside either letter were the conditions that applied specifically to that use in that zone.

## **PUBLIC HEARINGS 5b**

Councilmember Rohrscheib said they hadn't talked about a location yet which was near the current one proposed such as the library. It was a pretty large building already and the cell tower wouldn't stand out that much at that location.

Mr. Dennison had heard nothing from the current applicant since the application was withdrawn. The applicant had been looking at a utility pole extension similar to the one adjacent to the police station, one of the 70' poles. The issue there as elsewhere was where to put the base station. This also referred back to the issue of the size of the base station. The one at the police station couldn't be more than a few hundred square feet. It was much smaller than 750 sf. He wasn't sure what the calculation was for the Boys & Girls Club addition although it did incorporate the area required for the tower itself. It would be up to the Sno-Isle Library District if they wanted to lease part of their site for the base station. It did seem like a fairly innocuous place, capable of being landscaped and screened.

Mayor Guzak asked about the location proposed at the Boys & Girls Club. There had been some questions about the covenant or deed. What was the history there? Mr. Dennison said it was a continuing point of contention with certain members of the public. The block between Second and Third Streets that included Hal Moe Pool, Boys & Girls Club, and the skate park was received by the City in the early 1920's in three grants. The southern two were from Snohomish County and the northern one, from about the midpoint of the Hal Moe building north, was from a group called the Snohomish Playgrounds Association. Each of the deeds included the 'for playground purposes only' restriction. The deed restriction was removed from the central portion of the site. It was extinguished by the county since they were the grantor in 1988, which coincided with the construction of the building around the Hal Moe Pool. The deed restriction on the northern portion of the building north to Third Street exists yet today. In December 2014 City staff asked county staff if the county would agree to extinguish the covenant for the area remaining from about the north line of the Club south to Second Street. Correctly or not, the request wasn't seen as a policy or practical change for several reasons. While the site was used as a playground for decades, the decision by a former Council to provide the land for construction of the Boys & Girls Club made that restriction somewhat pointless since it was no longer 'for playground purposes only' with a building in the middle of it. The same covenant was removed from the parcel to the north in 1988 with no evident detrimental effects or public concern that staff could find in the record. The City Council had full legislative authority to determine what occurred on the land through the zoning process as well as full authority as property owner to determine what uses or activities may occur there. As the covenant was imposed by an outside agency, it didn't seem to be particularly reflective of any specific City policy and therefore staff did not perceive this was contrary to any intended policy. The combined site, and in particular the southern site, was used and will continue to be used for public recreation irrespective of the existence of the covenant. All that said, there was still some concern by members of the public that the request went to the county and that the action was taken by the Snohomish County Council to lift the covenant without local public discussion. If the City Council believed that there was an issue to be addressed, staff would be happy to come back and address this in terms of potential modifications to tighten up zoning, with options for another covenant that the City could apply, although if the City applied it, the City could just as easily remove it. And it would have to be something other than 'for playground purposes only' since that went away with construction of the Boys & Girls Club. Staff would be happy to bring back a discussion if the Council felt there was an outstanding issue.

Councilmember Burke considered two separate issues when he was looking at land use and conditional permitting for wireless towers. One was the idea of removing things like

## **PUBLIC HEARINGS 5b**

public parks from the available categories of zoning types in which to put a cell tower. The second thing about that particular property was the 1922 grant. A lot of the uses on the property seemed to be in the spirit of the grant. When he thought about the rest of the property and what to do with it, he was willing to consider creating a structure that made it look like property for kids.

Mayor Guzak confirmed the Boys & Girls Club was considered appropriate, given the covenant just recently lifted.

Mr. Dennison said it was appropriate for a cell tower in that the existing code allowed cell towers as a conditional use in the Public Park zone. In the proposed code, public parks, recreational facilities including parks, were not eligible sites for monopoles.

Councilmember Rohrscheib asked while they were speaking about the Hal Moe area, was there a deed on that property currently solely as a park?

Mr. Dennison said it was deeded to the City 'for playground purposes only.'

Councilmember Rohrscheib said the Council had talked a few months ago about senior housing and the idea of transforming that property into senior housing. If that went forward, the deed would have to be changed. Was that something the Council could vote on or was it a bigger issue?

Mr. Dennison thought there were two issues. One was what would have to be done about a deed restriction applied by an agency, the Snohomish Playgrounds Association, that probably didn't exist anymore or the City couldn't identify successors and interests. The other issue for housing on that site was that the conditions under which the school district deeded it back to the City did not include housing. Two deeds were working against senior housing at that site.

Mr. Weed said the only practical way was by filing a Quiet Title action where the party that imposed the restriction may not exist any longer, would not appear, and by default the court might enter an order releasing the restriction if there was good cause or reason that could be shown why it should be done. There would be mutual cooperation and understanding with the school district as they would have to be a cooperating party in order to remove that restriction.

Councilmember Burke asked about the zoning map. Wasn't the Snohomish Iron Works building Industrial property?

Mr. Dennison said it was Commercial. The Visitor Information Center was within the Historic Business District but west to SR 9 was all Commercial.

Mayor Guzak asked when this would come back to Council. It was mentioned there would be a couple more meetings with the Planning Commission which met once a month. That meant maybe February?

Mr. Dennison said it was hoped the Planning Commission would hold a public hearing in January, provided that they felt comfortable with it, following tomorrow night's meeting to have a basis for a public hearing.

Mayor Guzak thanked Mr. Dennison for the report and all his work. She knew he had made it a priority and the Council appreciated it.



## **PUBLIC HEARINGS 5c**

**Date:** February 16, 2016  
**To:** City Council  
**From:** Owen Dennison, Planning Director  
**Subject:** **Public Hearing – Chapter 14.10 SMC Amendments**

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This agenda item provides a public hearing and City Council deliberation on Ordinance 2300 to amend Chapter 14.10 SMC, Land Use Development Code Fees. The code amendments proposed in the draft ordinance are the final step in the current process to update the City's Fee Schedule. Other fee-related code amendments were adopted with passage of Ordinance 2299 on February 2, together with the fee changes in Resolution 1340. The amendments to Chapter 14.10 SMC were determined to have sufficient policy implications that a separate ordinance is warranted.

State law authorizes jurisdictions to collect reasonable fees from applicants for permits or other governmental approvals to cover the cost of processing the application, inspecting and reviewing plans, and conducting environmental review under SEPA. In 1999, the City moved from a system of prescribed fees for each type of application to a deposit system. The deposit process directs that staff estimate the number of hours that will be necessary to review the application prior to formal submittal. The applicant deposits the predetermined amount at the time of application. Actual costs are deducted as the review progresses. If exhausted, the City has the authority to cease review until additional funds are deposited.

In 2003, however, the City Council adopted an updated schedule for land use review charges that re-instituted specific amounts for most permits. According to the staff report to the City Council, the intent of the change was "to better inform applicants of the expected costs of the City's review of their application". However, the deposit language in Title 14 SMC was retained "to provide appropriate adjustments for unusually simple and unusually complex review situations." Current staff has significant concerns that Chapter 14.10 SMC does not describe the process as it has occurred for the past 12 years. Further, implementation of the process described in the chapter is particularly cumbersome and challenging from the perspective of record keeping.

Staff's current recommendation to the City Council is to amend Chapter 14.10 to make it consistent with the decade-long convention by establishing the charges as fees rather than deposits for most applications. Staff does not believe it is prudent to maintain the discrepancy for the sake of outlier applications that may be more cost-intensive. Further, it is confusing for applicants to have process described in one manner and implemented another.

The current proposal would retain the deposit method only for Hearing Examiner and peer-review consultant charges. These costs are subject to variability between applications and a set fee would be difficult to calculate. Further, the variability of each is controlled, to some extent, by the applicant. For example, an application that includes a detailed critical area study that adequately addresses the City's critical area regulations will require less review time, i.e., fewer

## **PUBLIC HEARINGS 5c**

iterations, by the City's critical area consultant than a more generic submittal. Similarly, an application for which the applicant has addressed all community or staff concerns within the proposal may require less time for the Hearing Examiner to conduct the hearing and prepare the decision. Hearing Examiner deposits specific to each type of quasi-judicial review and consultant deposit amounts are included in the Fee Schedule adopted with Resolution 1340.

The draft language is contained in draft Ordinance 2300, provided as Attachment A. The proposed amendments are shown in legislative format in Attachment B. As a departure from the standard practice with amendments to Title 14 SMC, the Planning Commission has not reviewed this proposal. In staff's view the changes are procedural rather than substantive changes to land use regulation.

**STRATEGIC PLAN REFERENCE:** This item does not respond to any of the eight Strategic Plan initiatives, or their subordinate strategies 6.

**RECOMMENDATION:** That the City Council **ACCEPT** public comment and **ADOPT Ordinance 2300**.

### **ATTACHMENT:**

- A. Draft Ordinance 2300
- B. Proposed amendments in legislative format

ATTACHMENT A

**CITY OF SNOHOMISH  
Snohomish, Washington**

**DRAFT ORDINANCE 2300**

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON,  
AMENDING SMC CHAPTER 14.10 ENTITLED “LAND USE DEVELOPMENT  
CODE FEES” PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE**

**WHEREAS**, the City Council finds the current land use development fee policy inefficient in recovering actual costs associated with processing of certain permits; and

**WHEREAS**, the City Council desires to provide a more efficient and predictable approach to recovering costs associated with land use and development review; and

**WHEREAS**, these fees may need to be modified from time to time and will be set forth in a Fee Schedule as adopted by resolution of the City Council; and

**WHEREAS**, acting as the City of Snohomish SEPA Responsible Official, the City Planning Director reviewed the proposed amendments and determined the proposed procedural action exempt from a SEPA threshold determination pursuant to Section 197-11-800(19); and

**WHEREAS**, pursuant to SMC 14.15.070 and 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 City’s Development Code;

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

Section 1. SMC Chapter 14.10 is hereby amended to read as follows:

Sections:

**14.10.010** Fees

**14.10.020** Hearing Examiner and Consultant Deposits

**14.10.010 Fees**

- A. Fees sufficient to cover the costs of administration, inspection, publication of notice, and similar matters may be charged to applicants for permits, approvals, variances, and other administrative relief. Appeal filing fees are not intended to cover all City costs. The amount of the fees charged shall be as established by resolution of the City Council.
- B. All permit applications shall be accompanied by an application fee as set by resolution of the City Council. Application fees are for City processing services, and are not refundable because an application is denied or modified. The City Council may adopt rules providing

## **PUBLIC HEARINGS 5c**

for the partial refund of application fees for withdrawn applications or appeals in relation to actual City costs expended to the time a written request is received to withdraw the application or appeal.

### **14.10.020 Hearing Examiner and Consultant Deposits**

- A. Costs for Hearing Examiner review, except appeals, and/or third-party technical review by consultants under contract with the City for review of critical areas, radio frequency engineering, or other disciplines shall be borne by the applicant in full at the actual cost invoiced by the Hearing Examiner and/or consultant.
- B. When a Hearing Examiner review is required according to this title or when peer-review of a land use application is determined necessary by the City Planner or designee, the applicant shall provide a deposit or deposits and associated administrative fee(s) in the amounts established by resolution of the City Council.
- C. In the event such costs do not exceed the initial deposit amount(s), the City shall refund any unused portion within thirty days of receipt of the Hearing Examiner's or consultant's final invoice.
- D. If the application is withdrawn before billable time is expended by the Hearing Examiner and/or consultant(s), the deposit(s) shall be returned in full within sixty days of written request to withdraw the application.
- E. If the invoiced costs exceed the cumulative amount for all deposits for an application, the applicant shall pay the difference before the final permit is released. In any event, the applicant shall be responsible for all project costs invoiced by the Hearing Examiner or consultant(s). The City shall endeavor to monitor the deposit amount(s) and may, but shall not be required to, notify the applicant before costs exceed the initial deposit. The City may halt processing of a development application until a supplemental deposit covering the reasonable additional costs of Hearing Examiner or consultant services is received. The City shall not be liable for a failure to notify the applicant that costs have exceeded the deposit amount(s).

Section 2. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such a decision or preemption shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other persons or circumstances.

Section 3. Effective Date. This ordinance shall be effective five days after adoption and publication by summary.

**PUBLIC HEARINGS 5c**

**ADOPTED** by the City Council and **APPROVED** by the Mayor this 16<sup>th</sup> day of February, 2016.

CITY OF SNOHOMISH

By \_\_\_\_\_  
MAYOR KAREN GUZAK

ATTEST:

APPROVED AS TO FORM:

By \_\_\_\_\_  
PAT ADAMS, CITY CLERK

By \_\_\_\_\_  
GRANT K. WEED, CITY ATTORNEY

**Chapter 14.10, LAND USE DEVELOPMENT CODE FEES**

Sections:

**14.10.010 Fees**

**14.10.020 ~~((Staff and consultant hourly rates))~~Hearing Examiner and Consultant Deposits**

**14.10.010 Fees**

- A. ~~((Reasonable f))~~Fees sufficient to cover the costs of administration, inspection, publication of notice, and similar matters may be charged to applicants for permits, approvals, variances, and other administrative relief. Appeal filing fees are not intended to cover all City costs. The amount of the fees charged shall be as established by resolution of the City Council.
- B. ~~((City administrative costs of processing all land use actions, including all appeals and all lawsuits brought by third parties, shall be borne by the applicant.))~~All permit applications shall be accompanied by an application fee as set by resolution of the City Council. Application fees are for City processing services, and are not refundable because an application is denied or modified. The City Council may adopt rules providing for the partial refund of application fees for withdrawn applications or appeals in relation to actual City costs expended to the time a written request is received to withdraw the application or appeal.
- ~~((C. As part of the pre-application review, the City Planner shall estimate the amount of all costs anticipated to be incurred by the City associated with processing all land use actions. The estimated City costs shall include, but not be limited to, all costs of staff and/or consultant review, reports and meetings, legal support, SEPA review, notices, advertising, posting, hearing room rental, staffing, record keeping, Hearing Examiner, improvement plan and specification review, materials, copies, reproduction as required, permits, permit preparation, permit fees, inspection, testing, plat review, plat checking, and administration.))~~
- D. ~~The applicant shall initially deposit with the City at the time of filing, a sum as determined by the City Planner to be equivalent to estimated City costs to process the land use action. City costs, as they occur, shall be deducted from the deposit. In the event the deposit balance becomes less than the actual cost to complete processing the land use action, additional deposit(s) in an amount equal to the actual further City costs will be required as a condition of continued processing of the land use action, and all processing and/or inspection will be stopped, and all construction must cease until the deposit balance is restored as required.))~~
- E. ~~This section is intended to supplement the fee schedules of any and all other City ordinances and resolutions to add thereto the obligation of the applicant to pay, in addition to scheduled fees, actual City costs incurred in processing land use actions.))~~

## **PUBLIC HEARINGS 5c**

### **14.10.020 ((Staff and Consultant Hourly Rates))Hearing Examiner and Consultant Deposits**

((Hourly rates for City staff time for land use applications shall be as from time to time set by resolution of the City Council. Costs of consultants contracted by the City, if any, shall be charged to the applicant at the rates charged to the City.))

- A. Costs for Hearing Examiner review, except appeals, and/or third-party technical review by consultants under contract with the City for review of critical areas, radio frequency engineering, or other disciplines shall be borne by the applicant in full at the actual cost invoiced by the Hearing Examiner and/or consultant.
- B. When a Hearing Examiner review is required according to this title or when peer-review of a land use application is determined necessary by the City Planner or designee, the applicant shall provide a deposit or deposits and associated administrative fee(s) in the amounts established by resolution of the City Council.
- C. In the event such costs do not exceed the initial deposit amount(s), the City shall refund any unused portion within thirty days of receipt of the Hearing Examiner's or consultant's final invoice.
- D. If the application is withdrawn before billable time is expended by the Hearing Examiner and/or consultant(s), the deposit(s) shall be returned in full within sixty days of written request to withdraw the application.
- E. If the invoiced costs exceed the cumulative amount for all deposits for an application, the applicant shall pay the difference before the final permit is released. In any event, the applicant shall be responsible for all project costs invoiced by the Hearing Examiner or consultant(s). The City shall endeavor to monitor the deposit amount(s) and may, but shall not be required to, notify the applicant before costs exceed the initial deposit. The City may halt processing of a development application until a supplemental deposit covering the reasonable additional costs of Hearing Examiner or Consultant services is received. The City shall not be liable for a failure to notify the applicant that costs have exceeded the deposit amount(s).



## **DISCUSSION ITEM 6**

**Date:** February 16, 2016  
**To:** City Council  
**From:** Owen Dennison, Planning Director  
**Subject:** **Marijuana Uses Revisited**

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In response to the request from several Councilmembers, this agenda item has been scheduled to provide the City Council an opportunity for discussion and direction to staff on whether changes to current code restrictions on marijuana land uses may be desired. The intent for this discussion item is also to update the City Council regarding the most recent legislation related to the consolidation of medical and recreational marijuana regulations. Marijuana uses have been an intermittent discussion topic for the City Council and the community since 2011 when the legislature passed ESSB 5073 relating to medical marijuana uses. The City Council's legislative response to this measure, following a series of moratoria, was adoption of cannabis nuisance regulations in Chapter 9.100 SMC. These nuisance regulations specify that "collective gardens"—narrowly defined to exclude dispensaries—are not subject to enforcement. Following passage and implementation of Initiative 502 that legalized the production, processing, distribution, and possession of recreational marijuana, the City Council considered conditions under which the uses may be allowed within the City's zoning framework. After extensive public comment, however, the City Council ultimately adopted the current ban on all marijuana businesses in October 2014.

**BACKGROUND:** Until the State's 2015 legislative session, medical and recreational marijuana were regulated entirely independently. Where recreational marijuana production, processing, and retail uses are tightly controlled for product packaging, labeling, testing, and traceability, security, ownership, employment, and signage, the medical marijuana market has been largely uncontrolled. Then Governor Gregoire's veto of portions of the original medical marijuana bill removed the State from an oversight role, primarily leaving the law only with the basis for collective gardens and establishment of maximum possession quantities for which those arrested may claim an affirmative defense. Licensing of medical marijuana facilities, if desired, was left to local jurisdictions. While the benefit of medical marijuana to qualifying patients has not been questioned, the loose definition of collective gardens and lack of oversight and control over who may qualify as a legitimate patient has allowed medical dispensaries to proliferate. To some extent, this has occurred at the expense of the highly regulated recreational marijuana industry. Concerns have also been raised that the tight quality controls over recreational marijuana have not been enforced for medical marijuana, and that the uncontrolled medical market may threaten the state's somewhat tenuous position relative to federal enforcement of the Controlled Substances Act.

Consequently, in its 2015 session, the Washington State legislature amended the marijuana laws by combining the regulation of medical and recreational marijuana markets. All rules applicable to recreational marijuana production, processing, and distribution now apply to medical marijuana. Further, medical marijuana is now under the jurisdiction of the Washington State Liquor and

## **DISCUSSION ITEM 6**

Cannabis Board (LCB). Existing medical dispensaries that intend to continue operating are required to apply for and receive a State license, with or without a medical marijuana endorsement.

### **MEDICAL MARIJUANA**

The terms “qualifying patient” and “designated provider” are continued from the former regulations. However, the new rules require that each qualifying patient and designated provider hold a “recognition card” that confirms the holder’s entry in the State’s medical marijuana authorization database. Possessing a recognition card provides legal protection for qualifying patients, although those without valid recognition cards may still assert an affirmative defense at trial if prosecuted.

The intent and expectation is that qualifying patients who now purchase from an unregistered medical marijuana dispensary will purchase product from State-licensed stores with a medical endorsement. The endorsement allows outlets to offer medical marijuana exempt from sales tax and allows qualifying patients under the age of 21 to enter retail stores. Qualifying patients at least 18 years old may purchase product and those under 18 may enter only in the company of their designated provider.

The current allowance for collective gardens, which was intended to allow ten qualifying patients or their designated providers to grow up to 15 cannabis plants per patient up to a maximum of 45 plants, will be replaced with “cooperatives” in July 2016. Unlike collective gardens, cooperatives are:

- Limited to four members, each of whom must be at least 21 years, possess a valid recognition card, and contribute nonmonetary resources and labor;
- Required to be registered with and approved by the State with an accounting of each of its members;
- Not permitted to accept new members until a former member has been gone for 60 days;
- Not permitted within one mile of a marijuana retailer;
- Required to be located at the residence of one of the members;
- Required to implement the “seed to sale” traceability model used by licensed commercial operations; and
- Required to allow inspections by the LCB.

The legislature also explicitly provided for local jurisdictions to prohibit cooperatives through zoning regulations.

Unless registered as a collective, housing units where qualifying patients with recognition cards reside are permitted to have a maximum of 15 plants for the personal consumption of occupants. Personal grows are not permitted where any related activity can be easily seen or smelled from off-site locations.

### **Staff analysis**

Staff is not aware of any existing collective gardens in the City. A grower who was evidently claiming to be a collective garden was apprised of the City’s nuisance regulations and ceased operation in 2013. Given the State’s new acceptance of oversight for noncommercial production of medical marijuana, the more stringent rules, and the changes in definitions, the current cannabis

## **DISCUSSION ITEM 6**

nuisance regulations in Chapter 9.100 SMC are now inconsistent with the revised statute and may no longer be necessary for protection of the public health, safety, and welfare. The City Council may wish to consider repealing or at least amending this chapter.

### **RECREATIONAL MARIJUANA**

In addition to the changes to the way medical marijuana operations are regulated, the State also amended aspects of recreational marijuana regulations. Under the former statute, the primary State revenues from recreational marijuana operations were received from a 25 percent excise tax of applied at each of the three stages—production, processing, and retail. This is now replaced with a single excise tax of 37 percent imposed at the time of retail sale. A portion of this excise tax will be shared with counties and cities. Beginning in 2018, if excise tax revenues deposited in the State’s general fund in the previous year—that is, all revenues not otherwise allocated by statute—exceed 25 million dollars, 30 percent of these fund will be distributed to local jurisdictions as follows:

- 30 percent to county, cities and towns where retailers are located, based on retail sales from stores within each jurisdiction;
- 70 percent to county, cities, and towns on per capita basis, but only to those jurisdictions that allow the siting of State-licensed producers, processors, and retailers.

The total share of marijuana excise tax revenues distributed to cities and counties is capped at 15 million dollars in fiscal years 2018 and 2019, and 20 million dollars in subsequent years.

Additional changes to the regulation of the recreational market include:

- Allowing local jurisdictions to reduce the 1,000-foot buffer zones around certain types of facilities where children may be present to 100 feet. Elementary and secondary schools and playgrounds remain subject to the 1,000-foot buffers.
- Permitting licensed retail outlets to have two signs rather than one. Signs are limited to 1,600 square inches, or about 11 square feet.
- Clarifying the meaning of “public places” for the purposes of prohibitions on marijuana consumption.
- Allowing producers, processors, and retailers to use common carriers, i.e., commercial transporters, to transport marijuana, with limitations on carrying and using firearms in the course of providing the service.
- Requiring applicants for State marijuana licenses to post a sign at the premises to be licensed notifying the public of the application. Local jurisdictions may require individual notice to schools, recreation centers, child care centers, churches, agencies that operate public parks, transit centers, libraries, and arcades admitting minors.

### **Staff Analysis**

The City Council has the authority to prohibit or allow and condition some or all marijuana businesses. This is, of course, subject to change according to future judicial rulings that cannot be anticipated. In staff’s view, the circumstances under which the City Council made its original decision to ban commercial marijuana businesses in October 2014 have not materially changed. With additional time for a record of local experiences to develop, staff is not aware of significant patterns of negative social, criminal, or economic consequences in jurisdictions where marijuana uses have been allowed. However, the question remains largely one of community values and

## **DISCUSSION ITEM 6**

whether the City Council, as representative of the community, believes there may be more subtle adverse effects that are not be measurable or even immediately apparent.

Apart from the question of community values and from a practical standpoint, there are several potential considerations.

**Convenience:** Clearly there are options for consumers in the vicinity of, but outside, city limits, as shown in the attached marijuana facility map. However, retail establishments within the city limits would decrease the travel distance for City residents. The City Council could consider convenience from the standpoint of any other consumer good or service. While not all residents of legal age may be part of the potential market, the City's economic development approach includes enticing a broad range of local consumer options for residents.

**Financial:** Staff understands from prior City Council discussions that potential revenues are likely not a primary factor in determining whether to allow marijuana businesses in the City. However, it is a component of the larger picture that may be considered. Since the market potential for new marijuana businesses in the City is unknown, as is the level of sales such outlets would realize, assumptions are required to derive even a rough estimate of potential revenues.

The Finance Director reviewed current sales by jurisdictions comparable in size to Snohomish. Based on this data, annual retail sales of \$1,118,800 are estimated. This theoretical amount would equate to \$22, 376 in annual sales tax.

Based on assumptions of the number of jurisdictions that may allow marijuana businesses, their populations, and State excise tax revenues, the per capita distribution is for Snohomish would be about \$9,000 in 2016 and 2017 and about \$14,500 in 2018 and 2019. Since staff cannot forecast the proportional share of all retail marijuana sales by outlets in the City, no estimate has been attempted for this shared revenue stream.

While it is impossible to predict potential revenues with any degree of precision given the number of variables, it appears that allowing marijuana businesses would not be likely to represent a significant revenue source relative to the City's budget.

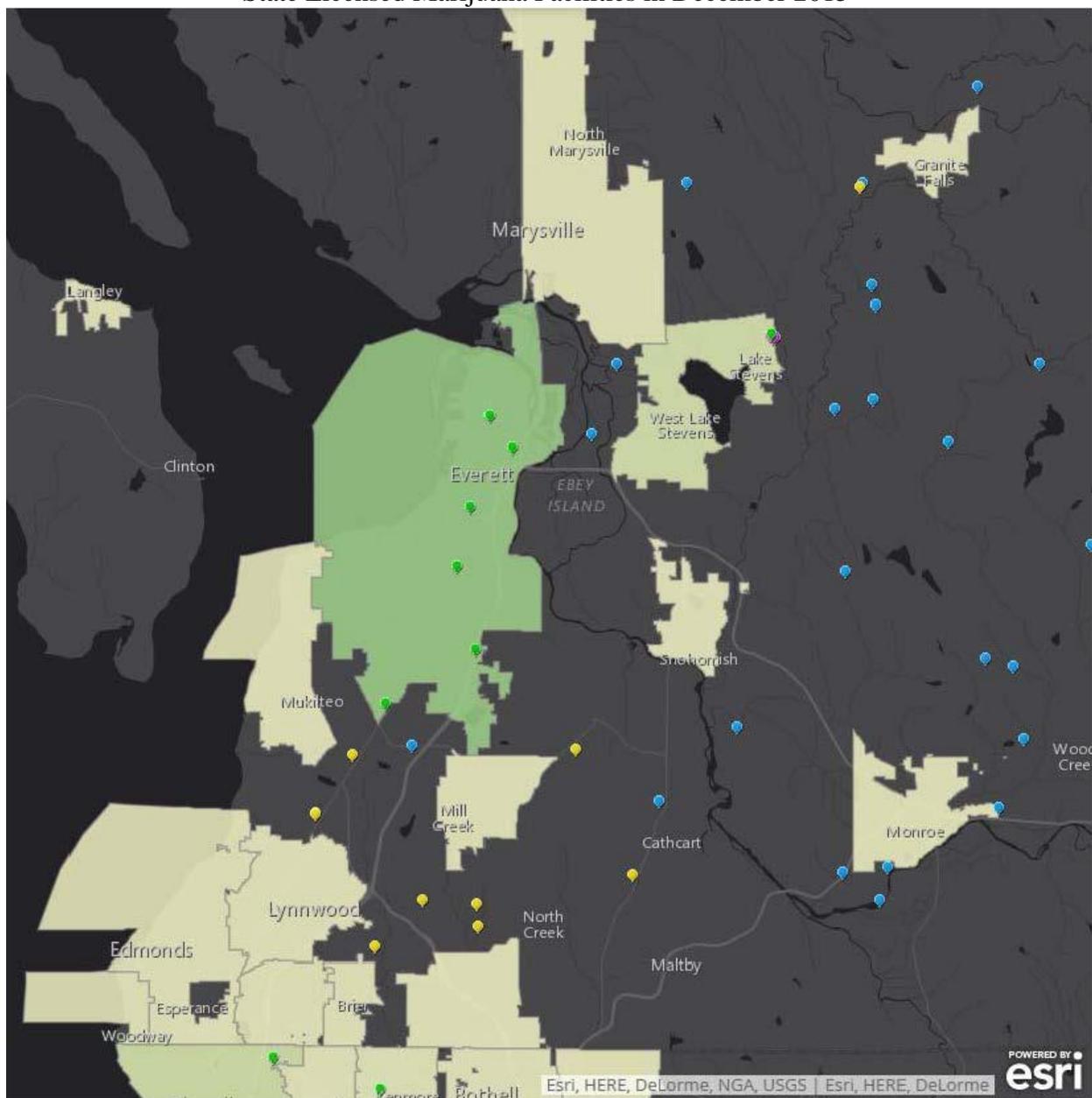
**STRATEGIC PLAN REFERENCE:** This item generally responds to Strategic Plan Initiative 6, *Cultivate local businesses and promote the City as a great place to do business*, but does not specifically further or conflict with any of the subordinate strategies.

**RECOMMENDATION:** That the City Council **DISCUSS** whether to consider changes to medical and recreational marijuana regulation and **DIRECT** staff on next steps.

**ATTACHMENT:** Map of existing State-licensed marijuana businesses

**DISCUSSION ITEM 6**

State Licensed Marijuana Facilities in December 2015



- Retail within city limits
- ◆ Retail in unincorporated area
- Producer/processor in unincorporated area

Source: Association of Washington Cities Open Data Portal – ESRI mapping/LCB data  
[<http://awcnet.maps.arcgis.com/apps/MapJournal/index.html?appid=29770439d2a44aceb3179aeb54d9b185>]

**DISCUSSION ITEM 6**

**CONSENT ITEM 7*****Schedule of Checks for the Checks Issued Since the February 2, 2016 Meeting***

<i>Name</i>	<i>Check #</i>	<i>Invoice #</i>	<i>Check Date</i>	<i>Description</i>	<i>Amount</i>
<b>Smith</b>					
	58160		2/10/16	Refund check	\$19.35
	58160		2/10/16	Refund check	\$7.77
	58160		2/10/16	Refund check	\$15.87
	58160		2/10/16	Refund check	\$38.31
	58160		2/10/16	Refund check	\$93.36
	58160		2/10/16	Refund check	\$14.18
				Check Total	<b>\$188.84</b>
<b>Johnson</b>					
	58161		2/10/16	Refund check	\$320.55
				Check Total	<b>\$320.55</b>
				Batch Total	<b>\$509.39</b>
<b>AAA Champion LLC</b>					
	58162	86	2/10/16	janitorial Feb	\$1,852.93
				Check Total	<b>\$1,852.93</b>
<b>Automatic Funds Transfer Services, Inc</b>					
	58163	85822	2/10/16	Storm Printing for Nov/Dec Billing	\$87.47
	58163	85822	2/10/16	Garbage Printing for Nov/Dec Billing	\$87.47
	58163	85822	2/10/16	Sewer Printing for Nov/Dec Billing	\$87.47
	58163	85822	2/10/16	Water Printing for Nov/Dec Billing	\$87.48
	58163	85822	2/10/16	Storm Postage for Nov/Dec Billing	\$179.54
	58163	85822	2/10/16	Garbage Postage for Nov/Dec Billing	\$179.55
	58163	85822	2/10/16	Sewer Postage for Nov/Dec Billing	\$179.55
	58163	85822	2/10/16	Water Postage for Nov/Dec Billing	\$179.55
				Check Total	<b>\$1,068.08</b>
<b>Allied Waste of Lynnwood</b>					
	58164	January 2016	2/10/16	Recycling Services January 2016	\$47,437.71
	58164	January 2016	2/10/16	Solid Waste Services January 2016	\$102,569.99
	58164	January 2016	2/10/16	Solid Waste Tax January 2016	-\$470.54
	58164	January 2016	2/10/16	Billing Correction	-\$778.64
				Check Total	<b>\$148,758.52</b>
<b>Amsberry's Painting, Inc</b>					
	58165	I-6333	2/10/16	Ludwig house - interior paint	\$3,405.44
				Check Total	<b>\$3,405.44</b>
<b>Washington Tractor</b>					
	58166	910912	2/10/16	shutoff cock, nut, oring	\$49.66
	58166	912515	2/10/16	bolt, blade, lock nut	\$189.28
	58166	913432	2/10/16	spark plug, filters	\$43.39
				Check Total	<b>\$282.33</b>
<b>Bath Fitter</b>					
	58167	M7978	2/10/16	Ludwig bath/shower	\$3,357.85
				Check Total	<b>\$3,357.85</b>
<b>Bills Blueprint Inc.</b>					
	58168	522839	2/10/16	plan copies-Parks	\$135.46
				Check Total	<b>\$135.46</b>

**CONSENT ITEM 7*****Schedule of Checks******for the Checks Issued Since the February 2, 2016 Meeting***

<i>Name</i>	<i>Check #</i>	<i>Invoice #</i>	<i>Check Date</i>	<i>Description</i>	<i>Amount</i>
<b>Central Welding Supply Inc.</b>					
	58169	RN01161027	2/10/16	acetylene	\$13.92
				Check Total	<b>\$13.92</b>
<b>Chemsearch</b>					
	58170	2187051	2/10/16	drain cobra program	\$141.44
				Check Total	<b>\$141.44</b>
<b>Chinook Lumber</b>					
	58171	1258602	2/10/16	lumber-cedar	\$284.42
				Check Total	<b>\$284.42</b>
<b>Comcast</b>					
	58172	475077-2/16	2/10/16	Skate Park Video	\$111.35
	58172	482016-2/16	2/10/16	Manager Share City Hall Internet	\$17.85
	58172	482016-2/16	2/10/16	Human Resources Share City Hall Internet	\$17.85
	58172	482016-2/16	2/10/16	Clerk Share City Hall Internet	\$17.85
	58172	482016-2/16	2/10/16	Inspection Share City Hall Internet	\$17.85
	58172	482016-2/16	2/10/16	Economic Dev Share City Hall Internet	\$17.85
	58172	482016-2/16	2/10/16	Planning Share City Hall Internet	\$17.85
	58172	482016-2/16	2/10/16	Finance Share City Hall Internet	\$17.85
	58172	482016-2/16	2/10/16	IS Share City Hall Internet	\$17.87
	58172	482016-2/16	2/10/16	Engineering Share City Hall Internet	\$17.85
	58172	892709-2/16	2/10/16	Water Share Shop Internet	\$20.14
	58172	892709-2/16	2/10/16	Storm Share Shop Internet	\$20.13
	58172	892709-2/16	2/10/16	Wastewater Share Shop Internet	\$20.13
	58172	892709-2/16	2/10/16	Streets Share Shop Internet	\$20.13
	58172	892709-2/16	2/10/16	Parks Share Shop Internet	\$10.06
	58172	892709-2/16	2/10/16	Fleet & Facilities Share Shop Internet	\$30.18
				Check Total	<b>\$392.79</b>
<b>Cues</b>					
	58173	450071	2/10/16	halogen bulbs	\$79.93
				Check Total	<b>\$79.93</b>
<b>Dannie Allen</b>					
	58174	allenmealreimb	2/10/16	meal reimbursement-2 day class	\$30.00
				Check Total	<b>\$30.00</b>
<b>DataQuest</b>					
	58175	CISNOH-20160131	2/10/16	Preemployment Background Screening	\$51.50
				Check Total	<b>\$51.50</b>
<b>Debbie Emge</b>					
	58176	FM020116	2/10/16	Food and Supplies for Open Gov't Committee Meeting	\$73.14
				Check Total	<b>\$73.14</b>
<b>Dog Waste Depot</b>					
	58177	96207	2/10/16	dog waste bags	\$234.00
				Check Total	<b>\$234.00</b>
<b>Edge Analytical</b>					
	58178	16-00923	2/10/16	sample testing	\$1,335.00
				Check Total	<b>\$1,335.00</b>

## **CONSENT ITEM 7**

### ***Schedule of Checks for the Checks Issued Since the February 2, 2016 Meeting***

<b>Name</b>	<b>Check #</b>	<b>Invoice #</b>	<b>Check Date</b>	<b>Description</b>	<b>Amount</b>
<b>E S A</b>					
	58179	118960	2/10/16	#22-15-SP & #23-16-SP site visit & memo	\$1,032.54
				Check Total	<b>\$1,032.54</b>
<b>Evergreen State Heat &amp; AC</b>					
	58180	29988	2/10/16	HVAC service repair-WWTP	\$598.42
				Check Total	<b>\$598.42</b>
<b>Federal Express Corp.</b>					
	58181	5-303-41062	2/10/16	Shipping Charges	\$22.26
				Check Total	<b>\$22.26</b>
<b>GCR Tires &amp; Service</b>					
	58182	801-29889	2/10/16	flat repair	\$45.65
				Check Total	<b>\$45.65</b>
<b>Granite Falls Hardware</b>					
	58183	15201	2/10/16	wash brush	\$26.05
				Check Total	<b>\$26.05</b>
<b>H. D. Fowler Company</b>					
	58184	I4123794	2/10/16	meter boxes, meter covers	\$1,104.92
	58184	I4123495	2/10/16	water stock parts	\$1,332.41
				Check Total	<b>\$2,437.33</b>
<b>Home Depot - Parks</b>					
	58185	7140933	2/10/16	ludwig house supplies	\$149.83
	58185	4021584	2/10/16	ludwig house supplies	\$64.89
	58185	3011543	2/10/16	ludwig house supplies	\$16.48
	58185	1591175	2/10/16	ludwig house supplies	\$28.22
	58185	7582482	2/10/16	staple gun, staples	\$144.48
	58185	6021735	2/10/16	cedar - ludwig house	\$69.50
				Check Total	<b>\$473.40</b>
<b>Home Depot - Streets</b>					
	58186	4591019	2/10/16	heat shrink tubing	\$36.09
				Check Total	<b>\$36.09</b>
<b>Home Depot - Storm</b>					
	58187	3011536	2/10/16	pipe insulation	\$29.15
	58187	2071926	2/10/16	bulbs, socket set	\$49.94
	58187	2011689	2/10/16	conduit	\$3.70
	58187	1571606	2/10/16	ratchet, impact wrench	\$205.60
	58187	1021644	2/10/16	conduit, 90 bell, sealant	\$116.07
	58187	0011894	2/10/16	all weather patch, flex tubing	\$41.38
	58187	7012233	2/10/16	pvc elbow, adapter	\$3.68
	58187	7011156	2/10/16	apple 8 pin, photo eye	\$30.94
				Check Total	<b>\$480.46</b>
<b>Home Depot Waste Water Treatment</b>					
	58188	8011071	2/10/16	colored flags	\$7.40
				Check Total	<b>\$7.40</b>
<b>IER Environmental Services, Inc</b>					
	58189	2015-2582	2/10/16	magnesium hydroxide	\$8,574.75
	58189	2016-4036	2/10/16	magnesium hydroxide	\$9,318.94
	58189	2016-4134	2/10/16	magnesium hydroxide	\$9,484.31
				Check Total	<b>\$27,378.00</b>

**CONSENT ITEM 7*****Schedule of Checks******for the Checks Issued Since the February 2, 2016 Meeting***

<i>Name</i>	<i>Check #</i>	<i>Invoice #</i>	<i>Check Date</i>	<i>Description</i>	<i>Amount</i>
<b>Integra Telecom</b>					
	58190	13613923	2/10/16	Waste Water Treatment Plant Phone	\$185.65
	58190	13612981	2/10/16	Water Treatment Plant Phones	\$181.44
	58190	13615487	2/10/16	City Hall Digital Phone	\$66.90
	58190	13612952	2/10/16	Water Department Share Shop Phones	\$51.51
	58190	13612952	2/10/16	Street Dept. Share Shop Phone	\$51.52
	58190	13612952	2/10/16	Parks Share Shop Phones	\$25.74
	58190	13612952	2/10/16	Fleet & Facilities Share Shop Phone	\$77.23
	58190	13612952	2/10/16	Collections Share Shop Phone	\$51.52
	58190	13612952	2/10/16	Storm Share Shop Phone	\$51.52
				Check Total	<b>\$743.03</b>
<b>Jones Chemicals Inc</b>					
	58191	679524	2/10/16	chlorine, sulfur dioxide	\$4,479.33
	58191	679604	2/10/16	container return	\$-999.96
				Check Total	<b>\$3,479.37</b>
<b>Joseph Hopper</b>					
	58192	hoppermealreim	2/10/16	meal reimbursement-pesticide class	\$15.00
				Check Total	<b>\$15.00</b>
<b>Karen Allen</b>					
	58193	ALLENKCERTS	2/10/16	cert renewal reimbursements	\$72.00
				Check Total	<b>\$72.00</b>
<b>Kool Change Printing Inc</b>					
	58194	34149	2/10/16	Snohomish City Police Sheriff Stickers	\$402.93
				Check Total	<b>\$402.93</b>
<b>McDaniel Do It Center - Parks</b>					
	58195	467781	2/10/16	screws, bucket	\$19.56
	58195	467951	2/10/16	blade, clorox	\$57.97
	58195	467720	2/10/16	fasteners	\$0.65
	58195	467715	2/10/16	3 pk brushes	\$5.43
	58195	467822	2/10/16	TFE paste, tape	\$11.18
	58195	467860	2/10/16	bits, tap	\$15.53
	58195	467863	2/10/16	fasteners	\$1.69
	58195	467936	2/10/16	wood chisels	\$25.55
	58195	467977	2/10/16	knife, wire brush	\$16.84
	58195	467993	2/10/16	fasteners	\$1.69
				Check Total	<b>\$156.09</b>
<b>McDaniel Do It Center – Storm</b>					
	58196	467338	2/10/16	coupling, sleeve, connector	\$22.79
	58196	467650	2/10/16	grease, duster	\$12.49
	58196	467918	2/10/16	motor oil	\$2.71
	58196	467921	2/10/16	starting fluid	\$3.25
				Check Total	<b>\$41.24</b>
<b>McDaniel Do It Center- Streets</b>					
	58197	467603	2/10/16	concrete mix	\$13.01
	58197	467777	2/10/16	mag light, batteries	\$39.15
	58197	467837	2/10/16	hardware cloth, rebar	\$33.67
	58197	467838	2/10/16	rebar pricing correction	\$-8.70
				Check Total	<b>\$77.13</b>

## **CONSENT ITEM 7**

### ***Schedule of Checks for the Checks Issued Since the February 2, 2016 Meeting***

<b>Name</b>	<b>Check #</b>	<b>Invoice #</b>	<b>Check Date</b>	<b>Description</b>	<b>Amount</b>
<b>McDaniel Do It Center - Water</b>					
	58198	467654	2/10/16	insul tape, heating cable	\$41.10
	58198	467933	2/10/16	shovel	\$19.58
				Check Total	<b>\$60.68</b>
<b>McDaniel's Do It Center Wastewater</b>					
	58199	467919	2/10/16	u bolt, fasteners	\$9.94
	58199	467960	2/10/16	screw pack, fasteners	\$10.61
				Check Total	<b>\$20.55</b>
<b>Partner Construction Products</b>					
	58200	7611	2/10/16	disk tip adapter, shroud	\$70.72
				Check Total	<b>\$70.72</b>
<b>Paul Morse</b>					
	58201	morsedoh	2/10/16	DOH water cert renewal	\$42.00
				Check Total	<b>\$42.00</b>
<b>Rubatino Refuse Removal Inc</b>					
	58202	354402012016	2/10/16	35yd drop box	\$98.53
				Check Total	<b>\$98.53</b>
<b>Snohomish County Auditor</b>					
	58203	I-VR-15	2/10/16	District Portion Cost Voter Registration	\$12,123.30
				Check Total	<b>\$12,123.30</b>
<b>Snohomish County Finance Department</b>					
	58204	I000405133	2/10/16	2016 Assessment 800 MHZ P2 O&M	\$33,730.00
	58204	I000405105	2/10/16	2016 Capital Costs 800 MHZ P2	\$53,094.00
				Check Total	<b>\$86,824.00</b>
<b>Snohomish County Department of Public Works</b>					
	58205	DR000000734	2/10/16	street light mainten. materials	\$44.34
	58205	DR000000734	2/10/16	equipment usage-sweeping	\$574.80
	58205	DR000000734	2/10/16	equipment usage-sweeping	\$574.80
	58205	I000403208	2/10/16	traffic signals	\$1,066.71
	58205	I000403208	2/10/16	sweeping	\$1,487.64
	58205	I000403208	2/10/16	sweeping	\$1,487.64
				Check Total	<b>\$5,235.93</b>
<b>Snohomish County Prosecuting Attorney</b>					
	58206	2015-4 SNO	2/10/16	Prosecution Svcs Oct-Dec 2015	\$4,154.36
				Check Total	<b>\$4,154.36</b>
<b>Snohomish County Pud #1</b>					
	58207	121007304	2/10/16	#1000275828, 1110 Ferguson Pk, L/S	\$79.02
	58207	150651288	2/10/16	#1000385243, 1329 Bonneville, L/S	\$152.96
	58207	157095541	2/10/16	#1000575906, 400 Rainbow Pl, L/S	\$19.10
	58207	163511980	2/10/16	#1000463019, 1801 Lakemount, Casino L/S	\$198.92
	58207	104400048	2/10/16	#1000230125, 219 13th, S Zone Reservoir	\$191.48
	58207	104405807	2/10/16	Various Locations, Street Lighting	\$50.90
	58207	144069506	2/10/16	Various Locations, Street Lighting	\$104.95
	58207	157096614	2/10/16	Various Locations, Street Lighting	\$3,851.26
	58207	157096616	2/10/16	Various Locations, Street Lighting	\$262.54
	58207	160301382	2/10/16	Various Locations, Street Lighting	\$976.20

**CONSENT ITEM 7*****Schedule of Checks******for the Checks Issued Since the February 2, 2016 Meeting***

<i>Name</i>	<i>Check #</i>	<i>Invoice #</i>	<i>Check Date</i>	<i>Description</i>	<i>Amount</i>
	58207	163513961	2/10/16	Various Locations, Street Lighting	\$30.10
	58207	166784066	2/10/16	Various Locations, Street Lighting	\$11.00
	58207	166784067	2/10/16	Various Locations, Street Lighting	\$41.59
	58207	107741780	2/10/16	#1000531660, 9101 56th, 30th St/Bickford	\$80.07
	58207	127627544	2/10/16	#1000368128, 700 Ave D, Street Lighting	\$40.25
	58207	137440954	2/10/16	#1000370579, 1301 Ave D, Street Lighting	\$22.28
	58207	140747707	2/10/16	1330 Ferguson Pk Rd, Street Lighting	\$8.58
	58207	153902558	2/10/16	#1000578758, 1501 Ave D, Street Lighting	\$143.74
	58207	127623642	2/10/16	#1000508263, 24021 24th Intake structure	\$18.65
	58207	127627512	2/10/16	#1000320746, 2504 Menzel, WTP site	\$2,298.59
	58207	157092429	2/10/16	#1000272824, 24022 24th, Wtr Plant House	\$38.08
	58207	1900005940	2/10/16	PUD inter-tie activation fee	\$219.35
	58207	1900005962	2/10/16	PUD emergency inter-tie	\$691.50
	58207	140753662	2/10/16	#1000125213, 169 Cypress, Pilchuck Pk	\$184.22
	58207	114373017	2/10/16	#1000571566, 501 2nd, Traffic Signal	\$119.63
	58207	121011312	2/10/16	#1000483278, 1001 Ave D, Traffic Signal	\$83.71
	58207	124323948	2/10/16	#1000380098, 1109 13th, Lighting	\$30.38
				Check Total	<b>\$9,949.05</b>

**Snohomish County Corrections**

	58208	2015-2976	2/10/16	Jail Services December 2015	\$15,825.50
	58208	2015-2954	2/10/16	Jail Services November 2015	\$5,905.44
	58208	2015-2993	2/10/16	Jail Inmate Pharmaceutical Svc Nov 2015	\$1.57
				Check Total	<b>\$21,732.51</b>

**Shaun Murphy**

	58209	murphymealreimb	2/10/16	meal reimbursement-2 day class	\$30.00
				Check Total	<b>\$30.00</b>

**Smarsh, Inc**

	58210	137262	2/10/16	Archiving Platform - social media	\$100.00
				Check Total	<b>\$100.00</b>

**Snohomish Auto Parts**

	58211	437423	2/10/16	filters	\$-37.76
	58211	437539	2/10/16	oil, clip	\$62.03
	58211	438013	2/10/16	gear oil, seal tape, gauge	\$26.70
	58211	438216	2/10/16	JB weld	\$13.71
	58211	438475	2/10/16	toolbox	\$358.49
	58211	438481	2/10/16	filter	\$7.53
	58211	438484	2/10/16	fuel filter	\$8.00
	58211	438513	2/10/16	lock spray	\$7.00
	58211	438691	2/10/16	oil filter	\$7.54
	58211	438756	2/10/16	grease fittings	\$3.80
	58211	438806	2/10/16	oil dry	\$8.76
	58211	438939	2/10/16	spark plug, sockets	\$33.31
	58211	438957	2/10/16	filters, fittings, hose end, clamp	\$28.89
	58211	439049	2/10/16	spark plug, air filter	\$37.51
	58211	439113	2/10/16	oil dry	\$8.76
	58211	437980	2/10/16	wiper blades	\$3.26
	58211	437942	2/10/16	gauge	\$10.87
	58211	438332	2/10/16	filters, wiper blades	\$85.31
				Check Total	<b>\$673.71</b>

**Snohomish Co-Op**

	58212	259133	2/10/16	unleaded fuel	\$37.68
	58212	258640	2/10/16	pellets-Ludwig	\$21.72
				Check Total	<b>\$59.40</b>

**CONSENT ITEM 7*****Schedule of Checks for the Checks Issued Since the February 2, 2016 Meeting***

<i>Name</i>	<i>Check #</i>	<i>Invoice #</i>	<i>Check Date</i>	<i>Description</i>	<i>Amount</i>
<b>Snopac</b>					
	58213	8037	2/10/16	Dispatch Services	\$11,723.71
				Check Total	<b>\$11,723.71</b>
<b>Snohomish Senior Center</b>					
	58214	16-453	2/10/16	Monthly Fee	\$1,000.00
				Check Total	<b>\$1,000.00</b>
<b>Sonsray Machinery LLC</b>					
	58215	P12502-08	2/10/16	switch, flasher	\$279.12
	58215	P12572-08	2/10/16	switch	\$112.73
				Check Total	<b>\$391.85</b>
<b>Sound Tractor</b>					
	58216	IN05414	2/10/16	filters	\$45.39
				Check Total	<b>\$45.39</b>
<b>Speedway Chevrolet</b>					
	58217	99321	2/10/16	weather seal	\$87.23
				Check Total	<b>\$87.23</b>
<b>Staples Advantage</b>					
	58218	1681191	2/10/16	printer ink-WTP	\$152.24
	58218	3288878527	2/10/16	Clerk/HR Office Supplies	\$47.37
	58218	3288878528	2/10/16	Clerk/HR Office Supplies	\$10.22
	58218	3291648548	2/10/16	office supplies	\$71.42
	58218	3291648549	2/10/16	office supplies	\$6.30
	58218	3291648550	2/10/16	paper	\$26.13
				Check Total	<b>\$313.68</b>
<b>Steven Miller</b>					
	58219	mealreimburs	2/10/16	lunch reimburse - 2 day class	\$30.00
				Check Total	<b>\$30.00</b>
<b>Summit Law Group PLLC</b>					
	58220	77176	2/10/16	Labor Relations Consulting Services	\$1,179.50
				Check Total	<b>\$1,179.50</b>
<b>Sound Publishing</b>					
	58221	EDH680677	2/10/16	File #01-16-SEPA Notice of DNS	\$110.08
	58221	EDH680679	2/10/16	File #02-16-SEPA Notice of DNS	\$106.64
	58221	EDH680418	2/10/16	Public Hearing Publication-Land Use Fee	\$24.08
	58221	EDH680412	2/10/16	Public Hearing Publication-Code Title 14	\$24.08
	58221	EDH680415	2/10/16	Public Hearing Wireless Communicat Regul	\$24.08
				Check Total	<b>\$288.96</b>
<b>Tyler Enterprises</b>					
	58222	Jan 2016	2/10/16	Bldg Insp Svcs 1/11 & 1/27	\$200.00
				Check Total	<b>\$200.00</b>
<b>Unum Life Insurance</b>					
	58223	220603027-2/16	2/10/16	retiree life insurance - February 2016	\$130.50
				Check Total	<b>\$130.50</b>
<b>Usa Bluebook Inc</b>					
	58224	844166	2/10/16	membrane kit, pipet pump, dispos. wipes	\$176.69
				Check Total	<b>\$176.69</b>

**CONSENT ITEM 7*****Schedule of Checks******for the Checks Issued Since the February 2, 2016 Meeting***

<i>Name</i>	<i>Check #</i>	<i>Invoice #</i>	<i>Check Date</i>	<i>Description</i>	<i>Amount</i>
<b>US Bank CPS</b>					
	58225	47608	2/10/16	Lens Computer: Sony LTO-5 Tapes	\$259.35
	58225	79687206	2/10/16	Rakuten: Black Ribbon Cartridge	\$23.87
	58225	9435600	2/10/16	Lowes: tile	\$35.54
	58225	122928	2/10/16	Everett Steel: steel	\$167.16
	58225	11739	2/10/16	Premium Polaris: speed sensor	\$147.00
	58225	10780	2/10/16	Swift Tool Company: drill sharpened	\$105.12
	58225	1035597318	2/10/16	Bath Fitter: Ludwig bath	\$1,300.00
	58225	5958637	2/10/16	Amazon: trimble AC charger	\$56.26
	58225	25608	2/10/16	Collector's Choice: WWTP Team Luncheon	\$101.48
	58225	14001991299	2/10/16	Safeway: Hal Moe Committee Refreshments	\$12.00
	58225	46001991898	2/10/16	Safeway: Sky to Sound Regional Mtg Refre	\$25.15
	58225	2172777	2/10/16	Starbucks: Sky to Sound Regional Mtg Ref	\$48.80
	58225	904QMH1	2/10/16	Amazon: prime membership	\$99.00
	58225	568100	2/10/16	4th Street Medical: CDL physical-Galde	\$125.00
	58225	37223	2/10/16	Comserv: Reproduction Fees Public Record	\$19.37
	58225	5-007303	2/10/16	G&H Auto Electric: starter	\$479.66
	58225	S3-829549	2/10/16	Seattle Automotive: connector	\$26.27
	58225	94001	2/10/16	Thai Naan: Rep Suzan DelBene Luncheon	\$74.60
	58225	3148208	2/10/16	Amazon: Trimble R3 comp battery boot mod	\$98.99
				Check Total	<b>\$3,204.62</b>
<b>U.S. Bank N.A - Custody</b>					
	58226	January 2016	2/10/16	Monthly Maintenance Fee	\$26.00
				Check Total	<b>\$26.00</b>
<b>U.S. Postmaster</b>					
	58227	012216-012816	2/10/16	Council Postage	\$2.91
	58227	012216-012816	2/10/16	City Manager Postage	\$0.49
	58227	012216-012816	2/10/16	Clerk Postage	\$28.10
	58227	012216-012816	2/10/16	Finance Postage	\$8.47
	58227	012216-012816	2/10/16	Police Postage	\$5.26
	58227	012216-012816	2/10/16	Planning Postage	\$2.16
	58227	012216-012816	2/10/16	Public Works Postage	\$2.43
	58227	012216-012816	2/10/16	Water Postage	\$185.73
	58227	012216-012816	2/10/16	Sewer Postage	\$164.90
	58227	012916-020416	2/10/16	Council Postage	\$9.63
	58227	012916-020416	2/10/16	City Manager Postage	\$0.49
	58227	012916-020416	2/10/16	Clerk Postage	\$28.79
	58227	012916-020416	2/10/16	Finance Postage	\$37.81
	58227	012916-020416	2/10/16	Police Postage	\$1.46
	58227	012916-020416	2/10/16	Planning Postage	\$24.88
	58227	012916-020416	2/10/16	Water Postage	\$5.82
				Check Total	<b>\$509.33</b>
<b>Weed, Graafstra &amp; Associates, Inc. P.S.</b>					
	58228	181	2/10/16	Legal Fees - Litigation	\$331.50
	58228	204	2/10/16	Legal Fees	\$609.00
	58228	204	2/10/16	Legal Fees	\$52.50
	58228	204	2/10/16	Legal Fees	\$35.00
	58228	204	2/10/16	Legal Fees	\$127.50
	58228	204	2/10/16	Legal Fees	\$12,985.25
				Check Total	<b>\$14,140.75</b>

**CONSENT ITEM 7**

***Schedule of Checks for the Checks Issued Since the February 2, 2016 Meeting***

<i>Name</i>	<i>Check #</i>	<i>Invoice #</i>	<i>Check Date</i>	<i>Description</i>	<i>Amount</i>
<b>Western Facilities Supply Inc</b>					
	58229	4022	2/10/16	chemicals, wypalls	\$190.16
	58229	003956	2/10/16	janitorial supplies	\$1,244.43
				Check Total	<b>\$1,434.59</b>
<b>Whistle Workwear</b>					
	58230	283378	2/10/16	work boots-R. deLeuw	\$117.93
	58230	281892	2/10/16	partial uniforms-Wessel	\$393.05
				Check Total	<b>\$510.98</b>
<b>WA State Dept of Agriculture</b>					
	58231	murphypesticid	2/10/16	pesticide license-Murphy	\$33.00
				Check Total	<b>\$33.00</b>
<b>Washington State Department of Health</b>					
	58232	watropper2016	2/10/16	annual operating permit fee-2016	\$5,467.30
				Check Total	<b>\$5,467.30</b>
<b>Washington State Employment Security Department</b>					
	58233	4th Qtr 2015	2/10/16	Unemployment Insurance UI Tax	\$6,542.94
				Check Total	<b>\$6,542.94</b>
<b>Xerox Corporation</b>					
	58234	083274068	2/10/16	#GNX-212028, 122515-012216	\$58.07
	58234	083274069	2/10/16	#WTM-003709, 122115-012116	\$15.26
	58234	083274066	2/10/16	#XL1-395908, 122115-012116	\$45.32
	58234	083274065	2/10/16	#MX4-332344, 122115-012116	\$488.17
	58234	083274064	2/10/16	#GNX-216657, 122515-012216	\$79.98
				Check Total	<b>\$686.80</b>
<b>Zumar Industries</b>					
	58235	0180365	2/10/16	stock signs	\$96.22
				Check Total	<b>\$96.22</b>
				Batch Total	<b>\$388,415.92</b>
				Total All Checks	<b>\$388,925.31</b>

I hereby certify that the goods and services charged on the vouchers listed below have been furnished to the best of my knowledge. I further certify that the claims below to be valid and correct.

\_\_\_\_\_  
City Treasurer

WE, the undersigned council members of the City of Snohomish, Washington, do hereby certify that the claim warrants #58160 through #58235 in the total of \$388,925.31 dated through February 10, 2016 are approved for payment on February 16, 2016.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
Councilmember