



CITY OF SNOHOMISH

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NOTICE OF REGULAR MEETING

PLANNING COMMISSION

in the
George Gilbertson Boardroom
1601 Avenue D

WEDNESDAY
February 1, 2017
6:00 p.m.

1. **CALL TO ORDER**
2. **FLAG SALUTE**
3. **ROLL CALL**
4. **APPROVAL OF AGENDA ORDER**
5. **APPROVAL** of the minutes of the January 4, 2017 regular meeting (*P.1*)
6. **GENERAL PUBLIC COMMENTS** on items not on the agenda
7. **FENCE CODE AMENDMENT PUBLIC HEARING** (*P.5*)
 - a. Chair opens hearing
 - b. Staff presentation
 - c. Commission questions
 - d. Public testimony
 - e. Close hearing
 - f. Deliberations
8. **ACTION ITEM** – Planning Commission Bylaws (*P.25*)
9. **DISCUSSION ITEMS**
 - a. Development Agreements code amendment (*P.41*)
 - b. Commissioner attendance at other Boards and Commissions Meetings (*P.59*)
10. **DIRECTOR'S REPORT**
11. **ADJOURNMENT**

NEXT MEETING: The next regular meeting is scheduled for **Wednesday, March 1, 2017**, at 6:00 p.m. in the George Gilbertson Boardroom, Snohomish School District Resource Center, 1601 Avenue D, Snohomish, WA 98290.

AGENDA ITEM 5

CITY OF SNOHOMISH REGULAR MEETING OF THE PLANNING COMMISSION MEETING MINUTES January 4, 2017

1. **CALL TO ORDER** The regular meeting of the Planning Commission was opened by Chair Laura Scott at 6:00 p.m. in the George Gilbertson Boardroom, 1601 Avenue D.
2. **FLAG SALUTE**
3. **ROLL CALL**

COMMISSIONERS PRESENT:

Christine Wakefield Nichols
Gordon Cole
Laura Scott, Chair
Hank Eskridge
Steve Dana
Terry Lippincott
Van Tormohlen

STAFF:

Brooke Eidem, Associate Planner
Glen Pickus, Planning Director
Katie Hoole, Permit Coordinator

4. **APPROVAL OF AGENDA ORDER**
5. **APPROVAL** of the minutes of the November 2, 2016, regular meeting

Mr. Eskridge moved to approve the November 2, 2016, minutes; Ms. Wakefield Nichols seconded, and the motion was approved, 7-0.

6. **GENERAL PUBLIC COMMENTS** on items not on the agenda
7. **ELECTION OF OFFICERS**

- a. Election of Chair

Mr. Pickus opened the floor to nominations for 2017 Planning Commission Chair. Mr. Cole nominated Mr. Eskridge; the nomination passed 7-0.

- b. Election of Vice Chair

Mr. Eskridge asked for Vice Chair nominations. Mr. Cole nominated Mr. Tormohlen; the nomination passed 7-0.

8. **DISCUSSION ITEMS**

- a. Planning Commission Bylaws

Mr. Pickus presented the draft Planning Commission Bylaws; most of the time, these will not be important, but they will provide the Chair with something to refer back to—the Commission’s rules for conducting business—if a meeting becomes contentious. Bylaws cannot be inconsistent with the Code and after the Commission adopts them, they will be presented to the City Council for approval.

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Ms. Lippincott confirmed the Planning Commission does not have any bylaws and asked how the Commission has run without them. Mr. Cole said they have generally followed Robert's Rules of Order, but nothing has ever been formally adopted.

Ms. Wakefield Nichols proposed a change to Article II, Section 4: if someone wants to resign, they should submit the request to the Chair and the Mayor, who would then pass the request to the Planning Director. Mr. Pickus confirmed there was Commissioner consensus on the change.

Similarly, in Article V, Section 2, Ms. Wakefield Nichols suggested the election of the Chair should be the Commission's responsibility. Commissioners agreed.

Regarding the third paragraph of Article VI, Section 2, "Each speaker is to state their first and last name and city of residence," Ms. Lippincott asked if that meant that people who refused would not be allowed to speak. Mr. Pickus suggested revising it to read, "Each speaker is asked to state . . ." instead.

Commissioners wondered if comments can be refused from someone who does not provide their name and residence; they also discussed speakers becoming public hearing parties of record. Mr. Pickus will consult with the City Attorney for clarification.

Mr. Cole noted there was a step d missing under Article VI, Section 1, number 8, for Commission deliberation.

In Article VIII, Section 1, Mr. Cole proposed removing reference to "what a reasonable person would conclude," and using instead the state definitions. The revised language would read, "For the purposes of this section, conflict of interest is defined as those conflicts described in RCW Chapter 42.23 . . ." Commissioner's concurred.

Mr. Dana recommended everyone attend the Short Course on Local Planning; Mr. Pickus confirmed Commissioners were open to this type of training.

Ms. Wakefield Nichols was concerned that Article II, Section 3 was too punitive. Staff and Commissioners discussed the need for the section and the likelihood of ever using it; Commissioners chose to retain it.

Mr. Pickus will revise the Bylaws and will bring them back at next meeting for approval.

b. Annual Report

The Snohomish Municipal Code requires a Planning Commission annual report be provided to the City Council. Mr. Pickus presented a recap of the 2016 activities and asked if Commissioner's had any changes.

Mr. Cole noted the December meeting did not take place, so the reference to it should be deleted; with that correction, he moved to accept the proposed 2016 Annual Report, and to forward it to the City Council as required by SMC 2.16.060. Ms. Lippincott seconded, and the motion passed 7-0.

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c. 2017 Work Program

Mr. Pickus presented the draft 2017 Work Program and said the important thing to remember is that it is a living document that will change all the time; items will be added and removed throughout the year. The Commission-approved program would be presented to the Council for acceptance at their January 17 meeting.

Commissioners were asked whether any items should be added or removed, and no changes were proposed. Ms. Lippincott moved to approve and forward to City Council the 2017 Work Program, with the understanding that it can be amended. Ms. Wakefield Nichols seconded, and the motion passed 7-0.

d. Development Agreements code amendment

A recent court case found that vesting rights only applied to building permits, subdivisions, and development agreements, unless another permit type is specifically addressed in the Code. Ms. Eidem led the staff presentation, explaining that the proposed amendment would create regulations in the Snohomish Municipal Code to allow for development agreements. A development agreement is a voluntary contract between the City and a developer or property owner for future development of a specific site; an agreement contains explicit obligations, standards, and conditions for a particular development.

Staff will provide examples of development agreements to the Commission, and rather than the intended public hearing at the next meeting, this topic will come back for another discussion instead.

e. Fences in the right-of-way code amendment

Mr. Pickus explained how this topic was brought to his attention after a citizen was not allowed to construct a fence in the right of way because her residence is located in a non-residential land use designation. He provided the draft code amendments, and the Planning Commission will hold a Public Hearing on this topic at their February meeting.

9. DIRECTOR'S REPORT

Mr. Pickus added this item to the agenda as a way to ensure the Commission receives updates from Council or other items of interest; sometimes there won't be anything to report. He would like to have a joint work session at the City Council's January 17, 2017, meeting to talk about the Planning Commission's 2016 annual report and work program. Mr. Pickus confirmed four Commissioner's could attend the meeting; he will send out a reminder.

10. ADJOURNMENT

Mr. Cole moved to adjourn the meeting and Ms. Lippincott seconded. The meeting adjourned at 7:40 p.m.

Approved this 1st day of February, 2017

By: _____
Commissioner Hank Eskridge, Chair

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PUBLIC HEARING 7

Date: February 1, 2017
To: Planning Commission
From: Glen Pickus, Planning Director
Subject: **Fence Code Amendment**

SUMMARY: Current regulations do not allow fences to be built in the right-of-way except when located in a residential land use designation area and when the right-of-way is in excess of 60 feet wide. A strict reading of the code prevents many residential uses from having a fence in the right-of-way when it appears that is not the intent of the code.

BACKGROUND: Several non-residential land use designation areas, including the Historic Business, Commercial, Neighborhood Business, and Mixed Use areas, allow residential uses. It would be appropriate to allow fences in the right-of-way in those areas so the ground floor dwelling units could have a fenced front yard but the code prevents that.

In addition, the typical width of right-of-way for local streets is 60 feet. Therefore, in many residential areas fences cannot be allowed in the right-of-way because the right-of-way is not “in excess of 60 feet”.

This issue came to the attention of staff when responding to a call about a street sign that was knocked down. The resident who called in was in the process of installing a fence partially in the right-of-way in order to create a secure front yard. However, because she lives in a dwelling unit in the Historic Business area she was told the fence could not encroach into the right-of-way. The resident spoke to the City Council at their October 18, 2016 meeting asking for a code amendment to allow her to build a fence in the right-of-way. Council directed staff to work with her to resolve the issue.

Fence regulations are in Snohomish Municipal Code (SMC) 14.240.060. While researching how to amend SMC 14.240.060 to address the resident’s issue, staff also identified parts of the section that require amending to improve clarity.

PROPOSAL: The proposed changes address the issue raised by the resident and rewrite other subsections to improve clarity.

Amend Section Title - SMC 14.240.060(A)

The section title, “Fence and Wall Regulations”, is ambiguous in its reference to walls. Staff believes it is clearer to refer to “freestanding walls” to differentiate them from walls that are part of a structure. Walls that are part of a structure are not regulated by SMC 14.240.060.

Clarify Measuring the Height of Fences - SMC 14.240.060(A)(6-8)

The proposed changes specify how to measure the height of fences. It also establishes how to measure the height of fences on or near a retaining wall/rockery. If the fence is within 3 feet of

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the face of a retaining wall or rockery than the height of the wall/rockery is included in the fence height calculation. This will alleviate the aesthetic impact when fences are merely extensions of a retaining wall.

Revise Regulations for Fences in the Right-of-way - SMC 14.240.060(B)

Staff believes the intent of the existing regulations is to allow residential **uses** to be able to fence in their front yards that sometimes requires building a fence in the right-of-way. However, the use of the term “residential designation” does not reflect that intent.

Similarly, staff believes the intent was to allow fences in the right-of-way in residential areas where the typical right-of-way width is 60 feet. However, because the code uses the phrase, “in excess of 60 feet”, for the most part fences in the right-of-way in residential areas are not allowed. Thus, the way the code is written does not reflect what staff believes is the intent of the code.

Staff proposes amending the language to replace “residential areas” with “residential use on the ground floor” and to add “equal to or” before “in excess of 60 feet”.

Clarify regulations for fences in residential areas (SMC 14.240.060D)

The proposal is to reformat Sections D-F so they are similar. This will make administering the code easier. Substantive changes to this section include:

- Limiting the fence height, without exceptions, to 3 feet when located in the front setback area. This eliminates the ability to increase the fence height to 5 feet for an “open fence”. The term open fence is undefined thus allowing an increase to 5 feet for open fences becomes a subjective and somewhat arbitrary decision, a situation best avoided.
- Adding electrical fences as a prohibited type of fence and expanding on the prohibition of barbed wire to include concertina wire, a more common name for razor wire.
- Requiring fences located in the side yard setback area on the street side of a corner lot to meet sight clearance requirements.

Clarify regulations for fences in Commercial and Industrial areas (SMC 14.240.060E)

Reformatting only to make it easier to understand and administer the code and to compare the varying fence regulations between the different types of land use designation areas.

Clarify regulations for fences in Urban Horticulture areas (SMC 14.240.060F)

Reformatting only to make it easier to understand and administer the code and to compare the varying fence regulations between the different types of land use designation areas.

Clarify regulations for retaining walls and create a two-tier permit system (SMC 14.240.060H)

Most of the proposed changes are written to improve clarity. Substantive changes include:

- Specifically stating there is no height limit on retaining walls and rockeries constructed in the buildable area of a lot. However, they may not be any higher than necessary to allow them to function as necessary.
- Limit height of retaining walls and rockeries in the right-of-way to 6 feet.
- Create a two-tier retaining wall permit systems. Processing of Type 1 Retaining Wall Permits is simplified and has fewer required submittals. Retaining walls less than 4 feet

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in height qualify for a Type 1 Retaining Wall Permit. Type 2 Retaining Wall Permits are for walls more than 4 feet in height. They would require submittal of a geotechnical report, structural calculations and a designed drainage system behind the wall.

Clarify definitions (SMC 14.100)

The definition amendments are primarily directed towards improving consistency and clarity and to make it easier to locate relevant definitions. For instance, the proposed changes make all “lot” definitions start with the word “lot” (e.g. “Lot, interior”, “Lot, parent”; “Lot, corner”) making it easier to find the lot definition you are interested in. Also, the format for defining yard and setback areas is standardized to read “Front yard area or front yard setback area”, “Rear yard area or front yard setback area”, etc. to make it easier to compare the various setback rules. Currently, there are separate definitions for “Rear yard”, “Front setback”, “Front yard”, “Side yard”, and “Side yard setback”.

New definitions proposed include:

- “Buildable area” since the proposed amendments to SMC 14.240.060 use the term frequently and the term also is used throughout Title 14, yet currently is undefined.
- “Freestanding wall” since the proposed amendments to SMC 14.240.060 created the term.
- “Planning Director” (which means the same as City Planner, which is found throughout Title 14).
- “Rockery” to make clear rockeries are regulated the same way as retaining walls.

RECOMMENDATION: Open the public hearing to consider the proposed code amendments. After closing the public hearing and deliberating pass the following MOTION:

“Motion to adopt the Findings of Facts & Conclusions and to recommend City Council approval of the revisions to SMC 14.240.060 – Fences and Walls and to SMC 14.100 – Definitions.”

ATTACHMENTS:

- A. Clean copy of proposed SMC 14.240.060
- B. Strike-through and underline copy of proposed SMC 14.240.060
- C. Clean copy of proposed changes to definitions
- D. Strike-through and underline copy of proposed changes to definitions
- E. Findings of Fact & Conclusions

ATTACHMENT A

SMC 14.240.060 (proposed)

14.240.060 Fence and Freestanding Wall Regulations

A. General regulations. Installation of fences and freestanding walls, except for public utility purposes, shall comply with the following general requirements:

1. The design of all fences and freestanding walls shall be consistent with the City of Snohomish *Design Standards and Guidelines for the City's Historic District* and the *Design Standards and Guidelines for Areas Outside of the Historic District*, whichever is applicable to the site.
2. A building permit issued by the Building Official shall be required prior to installation of a fence or freestanding wall, except for when the fence or freestanding wall is located in the Single Family Land Use Designation Area outside of the Historic District.
3. All fences and freestanding walls shall meet the requirements for height, setback, sight obstruction, maintenance, and special location provisions as set forth in this section.
4. The type, size, location, and height of fencing proposed for tennis courts, parks, or athletic fields shall be categorically exempt from the requirements outlined in this chapter and will be reviewed and approved by the Planning and Development Services Department on a project-by-project basis.
5. No fence or freestanding wall shall create a safety hazard or sight obstruction as described in SMC 14.210.160.
6. Fence and freestanding wall height shall be measured from the ground level where the fence/freestanding wall touches the ground (or if it does not touch the ground, the ground level where it would touch if extended straight down to the ground) to the highest point on of the fence/freestanding wall. Where the ground levels on either side of a fence/freestanding wall differ, the height shall be measured from the lowest ground level elevation.
 - a. When a fence is located within three (3) feet of the face of a freestanding wall, the height shall be measured from the ground level at the bottom of the wall to the highest point of the fence.
 - b. When a fence is located more than three (3) feet from the face of a freestanding wall, the height of the fence and of the wall shall be measured separately.
7. The maximum allowed height of fences and freestanding walls located in the buildable area of the lot shall be the same as the maximum height allowed for the land use designation area where it is located.
8. Decorative features, artwork, or trellises placed on top of a fence or freestanding wall that do not add to the screening effect or opaqueness of the fence/freestanding wall shall not be included when calculating the height of the fence/freestanding wall.

B. Fences in the Right-of-way. Freestanding walls shall not be allowed in the public right-of-way. Fences shall not be allowed in the public right-of-way except under the following conditions:

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1. The proposed fence is on a lot with a residential use on the ground floor.
 2. The right-of-way is equal to or in excess of sixty (60) feet.
 3. There will be no obstruction to the operation of utility equipment and the maintenance of utility lines.
 4. The fence is located on the non-street side of the sidewalk.
 5. The property owner executes and records an agreement, approved by the Planning Director or designee, to maintain and remove the fence at the owner's expense if required by the City or other public utility in order to work in the right-of-way.
- C. Electrical fences. All electrical fences shall:
1. Be located at least two (2) feet from the property line and shall not be located in the right-of-way;
 2. Use an interrupted flow of current at intervals of one second on and two seconds off.
 3. Be limited to two thousand (2,000) volts at seventeen (17) mill amperes current.
 4. Require an "U.L. Approved" seal.
 5. Be posted with permanent signs with a minimum area of thirty-six (36) square inches at intervals of not more than fifty (50) feet stating that the fence is electrified.
- D. Fences and decorative freestanding walls in Single Family, Residential, Parks, and Open Space land use designation areas. Fences/freestanding walls constructed in Single Family, Residential, Parks and Open Space use designation areas shall comply with the following requirements:
1. Electrical fences and fences with barbed wire, razor wire, concertina wire, or similar products are prohibited.
 2. If located within a Front Setback area, the maximum height allowed shall be three (3) feet.
 3. If located within a Rear Yard Setback area the maximum allowed height shall be six (6) feet.
 4. If located within a Side Yard Setback area the maximum allowed height shall be six (6) feet except fences located in a Side Yard Setback area on the street side of a corner lot shall also be required to meet the sight clearance requirements for intersections as set forth in SMC 14.210.160.
- E. Fences and decorative freestanding walls in Commercial and Industrial land use designation areas. The maximum allowed height of fences/freestanding walls constructed in Commercial and Industrial land use designation areas shall be eight (8) feet and shall comply with the adopted design standards areas applicable to where the fence/freestanding wall is located.

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- F. Fences and decorative freestanding walls in the Urban Horticulture land use designation area. The maximum allowed height of fences/freestanding walls in the Urban Horticulture land use designation area shall be seven (7) feet on any part of the lot (including within the buildable area).
- G. Fences and decorative freestanding walls in the Historic District. Fences constructed in the Historic District shall comply with the *Design Standards and Guidelines for the City's Historic District*.
- H. Retaining walls and rockeries.
1. Retaining wall and rockery installations in all land use designation areas shall comply with the adopted City of Snohomish Design Standards and development regulations which are applicable to the area where the retaining wall is located, except that:
 - a. There shall not be a maximum height limit on retaining walls and rockeries located in the buildable area of a lot. However, the height of retaining walls and rockeries in the buildable area of a lot shall be the lowest necessary to achieve its intended functional purpose. If the proposed wall or rockery height exceeds the height limitation for the land use designation area where it is located it must be reviewed and approved by the Planning Director or designee on a project-by-project basis.
 - b. The maximum height limit on retaining walls and rockeries located in a setback area shall be six (6) feet.
 2. Except as otherwise provided below, retaining wall permits shall be required for all retaining walls. The permit application shall include a site plan, drawn to scale which shows:
 - a. The entire project site and all property lines; and
 - b. Areas within fifty (50) feet of the proposed retaining wall/rockery even if that includes adjacent properties; and
 - c. All structures, including existing retaining walls and rockeries, within fifty (50) feet of the proposed wall/rockery; and
 - d. Existing topography with contour lines at two (2)-foot vertical intervals. Topographical data obtained from public records is acceptable; and
 - e. The materials proposed for use in construction; and
 - f. The location of the proposed wall/rockery with all dimensions necessary to describe its location, depth, and height; and
 - g. A cross-section showing the wall/rockery and provisions for drainage.
 3. If the Building Official determines it is necessary, structural calculations and/or a geotechnical report prepared by a licensed professional engineer legally entitled to practice in the State of Washington shall be submitted with the application.

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4. A Type 1 retaining wall permit shall be required for retaining walls/rockeries four (4) feet or less in height.
 - a. Only retaining walls/rockeries that do not require structural calculation and/or a drainage system are eligible for a Type 1 permit.
 - b. If a series of retaining walls/rockeries four (4) feet or less in height where the slope measured from the bottom of the lowest retaining wall/rockery to the top of the highest retaining wall/rockery is greater than 1.5 feet horizontal to 1.0 feet vertical than a Type 2 retaining wall permit shall be required.
5. A Type 2 retaining wall permit shall be required for all retaining walls/rockeries greater than four (4) feet in height.
 - a. Type 2 retaining wall permits shall require submittal of a:
 - i. geotechnical report; and
 - ii. structural calculations; and
 - iii. drainage system behind wall
 - b. The City Engineer may require additional submittals for Type 2 retaining wall permits.
6. Private retaining walls/rockeries shall not be located in City rights-of-way except as may be otherwise provided in the Snohomish Municipal Code.
7. The height of a retaining wall/rockery shall be measured from the lowest part of the wall/rockery or wall/rockery footing to the highest part of the wall/rockery at every location along the wall/rockery.
8. No part of a retaining wall/rockery may extend into an adjacent lot.
9. Guardrails required to be placed at the top of retaining walls/rockeries, pursuant to the City-adopted building codes, shall be permitted as part of the wall/rockery, and shall not be considered to be a fence or part of the wall/rockery height.
10. A retaining wall may terminate at a property line, provided that it must abut a retaining wall on the adjacent property and is structurally independent from such wall.
11. Exemptions.
 - a. Permits shall not be required for fences or freestanding walls two (2) feet or less in height.
 - b. The City may waive the requirement for a retaining wall permit when:
 - i. Every part of the wall/rockery is set back at least five (5) feet from all property lines; and
 - ii. The wall/rockery is no greater than four (4) feet in height; and
 - iii. The wall/rockery is not load bearing; and
 - iv. The wall/rockery does not affect the structural integrity of adjacent

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structures; and

- v. Such waiver is made in writing by the Planning Director or designee.
- c. Permits shall not be required for retaining walls within new plats that are reviewed and approved by the City as part of the plat improvements.
- l. Variations. All requests for variations from the requirements of this chapter shall be processed as a Minor Variance as provided for in SMC 14.70.020.

Draft

SMC 14.240.060 (proposed)

14.240.060 Fence and Freestanding Wall Regulations

- A. General regulations. Installation of fences and freestanding walls, except for public utility purposes, shall comply with the following general requirements:
1. The ~~two sets of Design Standards adopted by design of all fences and freestanding walls shall be consistent with~~ the City of Snohomish ~~the Design Standards and Guidelines for the City's Historic District and the Design Standards and Guidelines for Areas Outside of the Historic District,~~ will apply whichever is applicable to the site.
 2. A building permit issued by the Building Official ~~is shall be~~ required ~~for prior to~~ installation of a fence or freestanding wall, except for when the fence or freestanding wall is located in the Single Family Land Use Designation Area outside of the Historic District. ~~Plans and specifications may also be required for permit approval.~~
 3. All fences and freestanding walls ~~must shall~~ meet the requirements for height, setback, sight obstruction, maintenance, and special location provisions as set forth in this section.
 - ~~3.4.~~ The type, size, location, and height of fencing proposed for tennis courts, parks, or athletic fields shall be categorically exempt from the requirements outlined in this chapter and will be reviewed and approved by the Planning and Development Services Department on a project-by-project basis.
 - ~~4.5.~~ No fence or freestanding wall shall create a safety hazard or sight obstruction as described in accordance with SMC 14.210.160.
 - ~~5.6.~~ Fence and freestanding wall height is based on elevation shall be measured from the ground level where the fence/freestanding wall touches the ground (or if it does not touch the ground, the ground level where it would touch if extended straight down to the ground) to the highest point on of the fence/freestanding wall ground level. Where the ground levels on either side of a fence/freestanding wall differ, the height shall be measured from the lowest ground level elevation.
 - a. When a fence is located within three (3) feet of the face of a freestanding wall, the height shall be measured from the ground level at the bottom of the wall to the highest point of the fence.
 - ~~a.b.~~ When a fence is located more than three (3) feet from the face of a freestanding wall, the height of the fence and of the wall shall be measured separately.
 7. The maximum allowed height of fences and freestanding walls located in the buildable area of the lot shall be the same as the maximum height allowed for the land use designation area where it is located.
 8. Decorative features, artwork, or trellises placed on top of a fence or freestanding wall that do not add to the screening effect or opaqueness of the fence/freestanding wall shall not be included when calculating the height of the fence/freestanding wall.
- B. ~~6.~~ Fences in the Right-of-way. ~~No~~ Freestanding walls shall not be allowed in the public right-of-way. Fences shall not be allowed in the public right-of-way except under the following

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conditions:

1. The proposed fence is ~~in a residential land use designation~~ on a lot with a residential use on the ground floor.
 2. The right-of-way is equal to or in excess of sixty (60) feet.
 - ~~3. No safety or vision problem is created for vehicular or pedestrian traffic.~~
 - ~~4.3.~~ _____ There will be no obstruction to the operation of utility equipment and the maintenance of utility lines.
 - ~~5.4.~~ _____ The fence ~~will is be~~ located on the non-street side of the sidewalk.
 - ~~6.5.~~ _____ The property owner ~~shall executes~~ and ~~records~~ an agreement, approved by the Planning Director or designee, to maintain and remove the fence at the owner's expense if required by the City or other public utility in order to work in the right-of-way.
 - ~~2. Electric fences shall be a minimum of two (2) feet from the property line.~~
- C. ~~B.~~ Electrical fences. ~~Electrical~~ All electrical fences shall ~~comply with the following:~~
1. Be located at least two (2) feet from the property line and shall not be located in the right-of-way;
 - ~~1.2.~~ _____ Use an interrupted flow of current at intervals of one second on and two seconds off.
 - ~~2.3.~~ _____ Be limited to two thousand (2,000) volts at seventeen (17) mill amperes current.
 - ~~3.4.~~ _____ Require an "U.L. Approved" seal.
 - ~~4.5.~~ _____ Be posted with permanent signs with a minimum area of thirty-six (36) square inches at intervals of not more than fifty (50) feet stating that the fence is electrified.
- D. ~~C.~~ Fences and decorative freestanding walls in Single Family, Residential, Parks, and public Open Space land use designation areas-regulations. Fences/freestanding walls constructed in Single Family, Residential, Parks and ~~public land~~ Open Space use designation areas shall comply with the following requirements:
1. Electrical fences and fences with Bbarbed wire, razor wire, concertina wire, or similar products ~~is are~~ prohibited.
 - ~~2. If located W~~ within a Front Setback area, the maximum height allowed shall be three (3) feet.
 - ~~1.2.~~ _____ Solid Fence. No higher than three (3) feet unless it connects side fences to the structure.
 - ~~2. Open Fence. Up to five (5) feet if it does not create a sight obstruction.~~
 3. If located W within a Rear Yard Setback area. Any type fence no higher than the maximum allowed height shall be six (6) feet.
 4. If located W within a Side Yard Setback area the maximum allowed height shall be. Any

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~~type fence no higher than~~ six (6) feet except fences located in a Side Yard Setback area on the street side of a corner lot ~~where a fence must~~ shall also be required to meet the sight clearance requirements for intersections as set forth in SMC 14.210.160[GP1].

- E. ~~D. Fences and decorative freestanding walls in Commercial and industry-Industrial land use designation areas. regulations. The maximum allowed height of Ffences/freestanding walls constructed in eCommercial and industry-Industrial land use designation areas shall be eight (8) feet and shall comply with the adopted Ddesign Sstandards which apply in these areasareas applicable to where the fence/freestanding wall is located.~~
- F. ~~E. Fences and decorative freestanding walls in the Urban hHorticulture land use designation area. The maximum allowed height of Ffences/freestanding walls constructed in the uUrban hHorticulture land use designation areas may be of any suitable material no higher thanshall be seven (7) feet on any part of the lot (including within the buildable area).~~
- G. Fences and decorative freestanding walls in the Historic District. Fences constructed in the Historic District shall comply with the *Design Standards and Guidelines for the City's Historic District*.
- H. Retaining walls and rockeries.
1. ~~1. Retaining wall and rockery installations in all land use designation areas must shall comply with the adopted City of Snohomish Design Standards and development regulations which apply within said areasare applicable to the area where the retaining wall is located, except that:~~
 - a. There shall not be a maximum height limit on retaining walls and rockeries located in the buildable area of a lot. However, the height of retaining walls and rockeries in the buildable area of a lot shall be the lowest necessary to achieve its intended functional purpose. If the proposed wall or rockery height exceeds the height limitation for the land use designation area where it is located it must be reviewed and approved by the Planning Director or designee on a project-by-project basis.
 - b. The maximum height limit on retaining walls and rockeries located in a setback area shall be six (6) feet.
 1. ~~Retaining wall installations in all land use designation areas must comply with the adopted City of Snohomish Design Standards which apply within said are.~~
 2. Except as otherwise provided below, retaining wall permits shall be required for all retaining walls. The permit application ~~must shall~~ include a site plan, drawn to scale which shows:
 - a. ~~The whole-entire project siteproperty and the-all~~ property lines; and
 - b. ~~At least~~Areas within fifty (50) feet of ~~all adjacent properties, as measured from the~~ proposed retaining wall/~~rockery even if that includes adjacent properties; and~~

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- c. All structures, including existing retaining walls and rockeries, within ~~50 (fifty)~~fifty (50) feet of the proposed wall/rockery; and
 - d. Existing topography with contour lines at two (2)-foot vertical intervals. Topographical data obtained from public records is acceptable; and
 - e. The materials proposed for use in construction; and
 - f. The location of the proposed wall/rockery with all dimensions necessary to describe its location, depth, and height; and
 - g. A cross-section showing the wall/rockery and provisions for drainage.
- ~~b. Building permits, in addition to retaining wall permits, are required for all retaining walls greater than four feet in height.~~
3. If the Building Official determines it is necessary, structural calculations and/or a geotechnical report prepared by a licensed professional engineer legally entitled to practice in the State of Washington shall be submitted with the application.
- ~~1.4. A Type 1 retaining wall permit shall be require for retaining walls/rockeries four (4) feet or less in height.~~
- a. Only retaining walls/rockeries that do not require structural calculation and/or a drainage system are eligible for a Type 1 permit.
 - b. If a series of retaining walls/rockeries four (4) feet or less in height where the slope measured from the bottom of the lowest retaining wall/rockery to the top of the highest retaining wall/rockery is greater than 1.5 feet horizontal to 1.0 feet vertical then a Type 2 retaining wall permit shall be required.
- ~~4.5. A Type 2 retaining wall permit are shall be required for all retaining walls/rockeries greater than four (4) feet in height.~~
- ~~e.a. Type 2 retaining wall permits shall require submittal of a:~~
 - i. geotechnical report; and
 - ii. structural calculations; and
 - iii. drainage system behind wall
 - ~~d.b. The City Engineer may require additional submittals for Type 2 retaining wall permits.~~
- ~~5.6. No Private retaining walls/rockeries may shall not be located in City rights-of-way except as may be otherwise provided in the Snohomish Municipal Code.~~
- ~~6.7. The height of a retaining wall/rockery shall be measured from the lowest part of the wall/rockery or wall/rockery footing to the highest part of the wall/rockery at every location along the wall/rockery.~~
- ~~7.8. No part of a retaining wall/rockery may extend into an adjacent lot.~~
- ~~8.9. Guardrails required to be placed at the top of retaining walls/rockeries, pursuant~~

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to the ~~Uniform Building Code~~ City-adopted building codes, shall be permitted as part of the wall/rockery, and shall not be considered to be a fence or part of the wall/rockery height.

~~2.10.~~ 2.10. A retaining wall may terminate at a property line, provided that it must abut a retaining wall on the adjacent property and is structurally independent from such wall.

~~2.11.~~ 2.11. Exemptions.

~~1.a. No p~~ Permits shall not be required for fences or freestanding walls ~~walls~~ two (2) feet or less in height.

~~2.b.~~ 2.b. The City may waive the requirement for a retaining wall permit when:

i. Every part of the wall/rockery is set back at least five (5) feet from all property lines; and

ii. The wall/rockery is no greater than four (4) feet in height; and

~~ii.~~ iii. The wall/rockery is not load bearing; and

~~iii.~~ iv. The wall/rockery does not affect the structural integrity of adjacent structures; and

~~1.v.~~ 1.v. Such waiver is made in writing by the ~~City Planner~~ Planning Director or designee.

~~3.c. No p~~ Permits shall not be required for retaining walls within new plats that are reviewed and approved by the City as part of the plat improvements.

~~3.l.~~ 3.l. Variances. All requests for variances from the requirements of this chapter shall be processed as a Minor Variance as provided for in SMC 14.70.020.

ATTACHMENT C

Buildable area means the portion of a lot free of special restrictions that can be developed subject only to the dimensional and other requirements established in Chapter 14.210 Snohomish Municipal Code. Buildable area does not include setback areas established by this Development Code for the land use designation area in which the lot is located nor any easements, Native Growth Protection Areas, open space tracts, drainage facilities, or other similar restrictions on construction.

City Planner means the same as Planning Director.

Freestanding wall means a stand-alone wall not attached to a structure. Freestanding walls can be decorative or functional. Decorative freestanding walls are walls with a primary purpose other than to resist the lateral displacement of soil. For the most part, the primary purpose of decorative freestanding walls to serve an aesthetic, screening, or buffering purpose. Functional freestanding walls are walls whose primary purpose is to resist the lateral displacement of soil. Retaining walls and rockeries are functional freestanding walls.

~~**Front yard** means a yard extending across the full width of the lot between any building and the front lot line measured horizontally from the nearest point of the front lot line to the nearest part of the building, as required in a particular land use designation.~~

Front yard area or front yard setback area means the space between the front lot line and the front setback line and between the side lot lines.

Lots, contiguous (“Contiguous lots”) means lots with a common lot line.

Lot, corner (“Corner lot”) means a lot bounded by more than one street, road private road. On corner lots, the front lot line is the line separating the lot from the street from which the primary pedestrian entrance is taken.

Lot, interior (“Interior lot”) means a lot bounded by no more than one street, road, or private road with the remainder of the lot lines abutting other lots, tracts, or alleys.

Lot, parent (“Parent lot”) means the initial lot from which unit lots are subdivided pursuant to Section 14.215.125 SMC.

Lot, unit (“Unit lot”) means one of the individual lots created by the subdivision of a parent lot pursuant to Section 14.215.125 SMC.

Lot line, front means the lot line separating the lot from the street. In the case of corner lots where there are two or more lot lines that abut streets, the front lot line shall be the lot line abutting the street from which the primary pedestrian entrance is taken.

Lot line, rear means the lot line which is opposite and most distant from the front lot line. In the case of a triangular or irregularly shaped lot, it means a line twenty (20) feet in length within the lot parallel to and at the maximum distance from the front lot line. When a lot extends into and beyond the mean low water line of a body of water, the rear lot line shall be the mean low water line.

Lot line, side means any lot line other than a front or rear lot line.

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Planning Director means the manager of the City of Snohomish Department of Planning & Development Services. It means the same as City Planner as provided for in Chapter 2.34 Snohomish Municipal Code.

~~**Rear yard** means a yard extending across the full width of the lot between the most rear main building and the rear lot line. The depth of the required rear yard shall be measured horizontally from the nearest point of the rear lot line toward the nearest part of the main building, as required by this Development Code for the land use designation in which the lot is located.~~

Rear yard area or Rear yard setback area means the space between the rear lot line and the rear setback line and between the side property lines.

Retaining wall means a wall of any material to resist the lateral displacement of soil, the slope of which is greater than 1.5 horizontal to 1 vertical. Retaining walls are not subject to the setback requirements in Chapter 14.210 SMC. Retaining walls are a type of functional Freestanding Wall. Rockeries are a type of retaining wall.

Rockery means the same as “retaining wall.” Rockeries are a type of functional Freestanding Wall.

Setback means the required minimum distance between structures on a lot and a property line ~~and the corresponding setback line~~, measured horizontally and at a ninety-degree angle to the property line if straight or to a tangent thereto if curved.

~~**Side yard** means a yard extending from the front yard to the rear yard along the side of the main building, the width of which yard is the minimum distance from the side lot line to the main building as specified in this title.~~

Side yard area or Side yard setback area means the space between a side lot line and the nearest side yard setback line and between the front setback line and the rear setback line.

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ATTACHMENT D

Buildable area means the portion of a lot free of special restrictions that can be developed subject only to the dimensional and other requirements established in Chapter 14.210 Snohomish Municipal Code. Buildable area does not include setback areas established by this Development Code for the land use designation area in which the lot is located nor any easements, Native Growth Protection Areas, open space tracts, drainage facilities, or other similar restrictions on construction.

City Planner means the same as Snohomish City-Planning Manager Director.

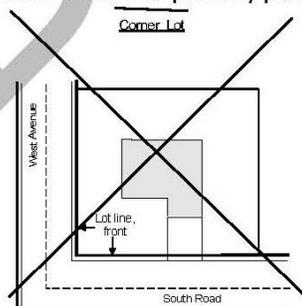
Freestanding wall means a stand-alone wall not attached to a structure. Freestanding walls can be decorative or functional. Decorative freestanding walls are walls with a primary purpose other than to resist the lateral displacement of soil. For the most part, the primary purpose of decorative freestanding walls to serve an aesthetic, screening, or buffering purpose. Functional freestanding walls are walls whose primary purpose is to resist the lateral displacement of soil. Retaining walls and rockeries are functional freestanding walls.

Front yard means a yard extending across the full width of the lot between any building and the front lot line measured horizontally from the nearest point of the front lot line to the nearest part of the building, as required in a particular land use designation.

Front yard area or front yard setback area means the setback space between the front lot line and the front setback line and between the side lot lines.

Lots, contiguous ("Contiguous lots") means a lot with having a common lot line boundary with another lot.

Lot, corner ("Corner lot") means a lot bounded by situated at the intersection of two or more than one street, s or road, s or private roads, or bounded on two or more adjacent sides by street or road or private road lot lines. The angle of intersection of such lot lines shall not exceed 135 degrees. The following diagram depicts a typical corner lot: . On corner lots, the front lot line is the line separating the lot from the street from which the primary pedestrian entrance is taken.



Lot, interior ("Interior lot") means a lot bounded by no more than one street, road, or private road with the remainder of the lot boundary adjoining lines abutting other lots, tracts, or alleys.

Lot, parent ("Parent lot") means the initial lot from which unit lots are subdivided pursuant to Section 14.215.125 SMC.

Lot, unit ("Unit lot") means one of the individual lots created by the subdivision of a parent lot pursuant to Section 14.215.125 SMC.

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Lot line, front~~Front lot line~~ means the lot line separating the lot from the street. In the case of a corner lots where there are two or more lot lines that ~~abut~~ adjoin streets, ~~When the lot adjoins two streets which intersect on the boundaries of such lot,~~ the front lot line shall be the lot line abutting the ~~relate to that~~ street from which the primary pedestrian entrance is taken.

Lot line, rear~~Rear lot line~~ means ~~a~~ the lot line which is opposite and most distant from the front lot line. In the case of a triangular or irregularly shaped lot, it means a line twenty (20) feet in length within the lot parallel to and at the maximum distance from the front lot line. When a lot extends into and beyond the mean low water line of a body of water, the rear lot line shall be the mean low water line.

Lot line, side~~Side lot line~~ means any lot line other than a front or rear lot line.

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Side yard means a yard extending from the front yard to the rear yard along the side of the main building, the width of which yard is the minimum distance from the side lot line to the main building as specified in this title.

Side yard area or Side yard setback area means the setback space between a side lot line and the corresponding nearest side yard setback line and between the front setback line and the rear setback line.

ATTACHMENT E

Snohomish Planning Commission Findings of Fact

Based on the review of the proposed changes to fence and freestanding walls regulations and to related definitions, the Planning Commission of the City of Snohomish makes the following Findings of Fact:

1. The proposed amendments implement the following goals and policies contained in the Snohomish Comprehensive Plan:
 - **LU 2.4:** Innovative design. Consider innovative design concepts for public and private sites, buildings, and infrastructure to distinguish districts and to continue, improve, and promote the livability of the City and its districts.
 - **GOAL LU 3:** Preserve and enhance the quality of character of and connections between the City's residential and mixed-use neighborhoods.
 - **MF 5.4:** Transitional land use. Multi-family designations may be used to provide a transition between areas of differential intensity of land use where existing or future adjacent land uses will not compromise the health or quality of life for multi-family residents.
 - **GOAL LU 14:** Encourage a network of public and private open spaces.
2. A Notice of Proposed Code Amendment was issued on Jan. 13, 2017 with a two-week comment period. The notice also included a notice of Planning Commission public hearing on Feb. 1, 2017. All notices were circulated and published pursuant to City and State requirements.
3. Pursuant to RCW 36.70A.106 the State of Washington Department of Commerce was notified on Jan. 3, 2017 of the City's intend to amend its development regulations for fences and freestanding walls. An acknowledgment letter from the Department of Commerce stating the procedural requirement was met was received on Jan. 5, 2017.
4. Pursuant to WAC 197-11-310, a Determination of Non-Significance (DNS) was issued on Jan. 13, 2017. The appeal/comment period ended Jan. 31, 2017. No appeals were submitted so the determination stands.
5. The Planning Commission discussed the proposed code amendments at their Jan. 4, 2017 meeting.
6. The Planning Commission held a public hearing on the proposed code amendments on Feb. 1, 2017.
7. At the conclusion of the public hearing on Feb. 1, 2017, the Planning Commission voted to recommend City Council approval of the proposed amendments.
8. The proposed amendments will revise Snohomish Municipal Code 14.240.060, Fence and Wall Regulations.
9. The proposed amendments will revise Chapter 14.100 Snohomish Municipal Code, Definitions.

Based on the foregoing Findings of Fact, the Snohomish Planning Commission hereby makes the following conclusions:

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1. The proposed amendments meet the original intent of the code to allow residential uses to fence in their front yards even if that requires constructing a fence in the right-of-way.
2. The proposed amends clarify the regulations and definitions which will make the code easier to understand and administer.
3. The proposed amendments are consistent with Washington State law.
4. The proposed amendments implement and are consistent with the goals and policies of the City of Snohomish Comprehensive Plan.
5. The proposed amendments protect the public health, safety, and general welfare.
6. The proposed amendments do not result in an unconstitutional taking of private property for a public purpose and they do not violate substantive due process guarantees.

Date: _____

By: _____
Hank Eskridge, Planning Commission Chair

PUBLIC HEARING 7

ACTION ITEM 8

Date: February 1, 2017
To: Planning Commission
From: Glen Pickus, Planning Director
Subject: Bylaws

SUMMARY: Bylaws are procedural rules that any board, commission, or group will find useful to regulate its normal activities to ensure consistency and fairness. Currently, the Planning Commission does not have bylaws despite the fact Snohomish Municipal Code (SMC) 2.16.060 states, “The Commission shall adopt rules and regulations for the conduct of its business, subject to approval of the City Council.”

BACKGROUND: In parliamentary procedure, the bylaws are generally the supreme governing document of the organization. They contain the most fundamental principles and rules regarding the nature of the organization. That said, the Commission’s bylaws are subservient to Snohomish Municipal Code. Therefore, they may not conflict with any provisions of the code and in the case of the Planning Commission, specifically SMC 2.16 – Planning Commission.

At the January 4, 2017 meeting, the Commission discussed draft bylaws presented by staff. The Commission then directed staff to make some changes to the draft. After incorporating those changes, staff transmitted the second draft to the City Attorney’s Office for their review. The City Attorney recommended a few additional changes. After incorporating those recommendations, staff did a final review of the second draft and added a few additional minor changes.

ANALYSIS: The changes that the Commission directed staff to make to the bylaws included:

- Article II, Section 4: remove the Planning Director from the process of notifying the Mayor of a commissioner’s resignation
- Article IV, Section 2: remove the Planning Director from the election of officers process
- Article V, Section 4: Clarify language that the Chair has the right to vote on any issue but is not required to but the Chair, as the tiebreaker, must vote to break ties.
- Article VI, Section 1: Add “Commission Deliberations” under “Discussion Items”.
- Article VIII, Section 1: Remove the phrase defining what a conflict of interest is and simply refer to the relevant RCW as to what a conflict of interest is.

The changes that the City Attorney and staff are recommending include:

- Article II, Section 1: Establishing the number of Commissioners that comprise the Planning Commission. This language simply repeats what is in Snohomish Municipal Code.

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- Article VI, Section 1: Add an agenda item called “Action Items”, with the same four steps under “Discussion Items” (Staff presentation, Commission questions, Public comments, Commission deliberations).
- Article VII: Change “Work Plan” references to “Work Program” and add a section stating the Work Program is to be forwarded to the City Council for their consideration and approval.
- Article IX: Change the time when the agenda and staff reports must be finalized to five days before the meeting from one week.

Article VI, Section 2: During the discussion at the Jan. 4th meeting Commissioners had questions about legal rules regarding taking public comment, specifically regarding whether commenters can be required to provide their address. Staff was not able to answer the questions at the meeting because they needed to consult with the City Attorney’s Office.

Per the City Attorney, people testifying at a Public Hearing must provide their name and address in order to have a complete record. If they do not provide that information, they should not be allowed to testify or offer comments.

During other public comment periods, the issue is not as clear. RCW 42.30.040 states a person cannot be required to provide their name or other information in order to attend a public meeting. The City Attorney said it is unclear and there is not case law to clarify if the right to “attend” also extends to the right to speak. In advising the City Council on this issue, the City Attorney took the conservative approach and recommended they not require a commenter to provide their name and address, but it was permissible to ask. That same recommendation would apply to the Planning Commission. The bylaws have been drafted to reflect the City Attorney’s recommendation.

RECOMMENDATION: MOTION to ADOPT the Planning Commission bylaws as presented [or as discussed], to forward them to the City Council for their approval, and that upon approval by the City Council the bylaws shall become effective.

ATTACHMENTS:

- A. Clean copy of Planning Commission Bylaws (proposed - draft 2)
- B. ~~Strike through~~ and underline copy of Planning Commission Bylaws (proposed - draft 2)

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ATTACHMENT A

CITY OF SNOHOMISH PLANNING COMMISSION BYLAWS - DRAFT

ARTICLE I PURPOSE

The objectives, purposes, powers, and duties of the Planning Commission of the City of Snohomish are those set forth in Chapter 2.16 of the Snohomish Municipal Code (SMC). These bylaws are adopted pursuant to SMC 2.16.060 which states, “The Commission shall adopt rules and regulations for the conduct of its business, subject to the approval of the City Council.”

ARTICLE II MEMBERSHIP

- Section 1. The City of Snohomish Planning Commission shall consist of seven (7) members. Members of the Planning Commission shall be appointed by the Mayor and confirmed by the City Council, without respect to political affiliations, consistent with the requirements of SMC 2.16.020.
- Section 2. Members may be removed from the Planning Commission by the Mayor, with the approval of the City Council, for inefficiency, neglect of duty or malfeasance in office, consistent with the requirements of SMC 2.16.070.
- Section 3. By a majority vote of the Planning Commission it may request the Mayor to remove or ask to resign a member from the Planning Commission as provided for in Section 2.
- Section 4. Any Commissioner desiring to resign from the Planning Commission shall submit his/her resignation in writing to the Chair who will present it to the Mayor.

ARTICLE III OFFICERS AND THEIR DUTIES

- Section 1. The officers of the Planning Commission shall consist of a Chair and Vice-Chair.
- Section 2. The Chair shall preside at all meetings and public hearings of the Planning Commission and have the duties conferred to the presiding officer as prescribed in Robert’s Rules of Order Newly Revised.
- Section 3. The Chair shall be one of the appointed members of the Commission. He or she shall have the privilege of discussing all matters before the Commission and of voting thereon. The Chair shall preside at all meetings of the Commission; may call special meetings of the Commission in accordance with the bylaws; sign

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documents of the Commission; and see that all actions of the Commission are properly taken and recorded.

Section 4. In the absence of the Chair, the Vice-Chair shall serve as presiding officer as described in Section 3. The Vice-Chair shall be an appointed member of the Commission. During the absence, disability, or disqualification of the Chair, the Vice-Chair shall exercise or perform all the duties and be subject to all the responsibilities of the Chair.

Section 5. The Vice-Chair shall succeed the Chair if the office is vacated before the term is completed, and shall serve the unexpired term of the vacated office.

ARTICLE IV ELECTION OF OFFICERS

Section 1. Election of officers shall be conducted consistent with SMC 2.16.060. Such election shall take place at the December meeting. Elected officers shall assume their duties on January 1st. If there is no December meeting the election shall take place at the next meeting and officers shall assume their duties immediately upon election.

Section 2. The election of the Chair shall be conducted by the current Chair who will initially seek nominations for Chair. Nominations do not require a second. The Chair will declare the nominations closed when it appears no one else wishes to make any further nomination.

After nominations are closed, voting for the Chair will take place in the order nominations were made. Voting will be made by raising hands. As soon as one nominee receives a majority (four) votes the current Chair will declare him/her the winner. If none of the nominees receives a majority vote, the current Chair will call for nominations again and repeat the process until a single candidate receives a majority vote.

The election for Vice-Chair shall follow the same process as for the Chair except the newly elected Chair shall conduct the election process.

Section 3. No member may serve more than two consecutive one-year terms as Chair. No member may serve more than two consecutive one-year terms as Vice-Chair. A member who has served four consecutive years as either Chair or Vice-Chair shall be ineligible for election to any officer position for one year. In any of the cases above, following one year of ineligibility a member becomes eligible for election to any officer position.

Section 4. In the event the office of the Chair is vacated mid-term, the Vice-Chair shall automatically succeed the Chair without an election. The then vacant office of

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the Vice-Chair shall be filled by election at the next regular meeting following the process described in Section 2 above.

Section 5. When a Chair or Vice-Chair assumes the office mid-term it will be as if they had served an entire term as regards eligibility at the next December election.

ARTICLE V MEETINGS, RULES OF MEETINGS, AND VOTING

Section 1. The Planning Commission shall hold regular meetings according to the following schedule:

First Wednesday of each month. Meetings shall begin at 6:00 p.m. Should a regular meeting day be a legal holiday, the scheduled meeting shall be postponed to the succeeding Wednesday, unless a majority of the Commission votes to select another day or to cancel the meeting.

Section 2. A majority of the membership of the Commission shall constitute a quorum. Action by the Commission shall be by a majority vote of all members who are present, provided a quorum is present. Voting may be by voice vote, a show of hands, or by roll call as determined by the Chair. A record of the vote shall be kept as part of the minutes.

Section 3. The current edition of Robert's Rules of Order Newly Revised shall provide the basis for meeting structure. Official decisions shall be made by motion and vote of the Commission.

Section 4. Each member shall have one vote. No proxies shall be allowed. Present members may abstain. The Chair may vote on any issue but shall be required to vote in the event of a tie. A majority vote shall carry. No action shall be taken if a tie vote continues even with the Chair having voted.

Section 5. Meetings shall be adjourned by a majority vote of the Commission or by the Chair when it appears that there is no further business.

The Commission, by a majority vote or consensus, may recess for a short break of specified duration.

The Commission, by a majority vote may continue meetings to a definite time and place.

Section 6. Special meetings may be held by the Commission subject to notice requirements prescribed by State law. Special meetings may be called using a written notice emailed or delivered to each member of the Commission at least forty-eight (48) hours before the time specified for the proposed special meeting. The written notice shall specify the purpose of the meeting and no other business can be conducted at that meeting. Special meetings may be called by the Chair, the

ACTION ITEM 8

City Council or Mayor, City Manager or designee, or by written request by any three (3) Commissioners.

Section 7. All meetings shall comply with the requirements of the Open Public Meetings Act (Chapter 42.30 RCW). All meetings shall be noticed and open to the public.

Section 8. Public Hearings are the only meetings that must meet legal noticing requirements, by advertising in the chosen local legal notice paper, ten (10) days prior to the scheduled meeting, unless city code or state law requires other or additional notice.

ARTICLE VI ORDER OF BUSINESS AND PUBLIC COMMENT

Section 1. The order of business for each regular meeting of the Commission shall be as follows:

1. Call to order
2. Flag salute
3. Roll call
4. Approval of agenda order
5. Approval of minutes
6. General public comments on items not on the agenda
7. Public Hearings (if necessary)
 - a. Chair opens hearing
 - b. Staff presentation
 - c. Commission questions regarding the staff presentation and report
 - d. Applicant testimony (if there is an applicant)
 - e. Public testimony
 - f. The Chair may allow further testimony. Commissioners may ask any questions it may have of the applicants, proponents, opponents, the public, or staff.
 - g. The Chair calls for a motion to close the public hearing. After hearing is closed, no further testimony shall be allowed.
 - h. Planning Commission deliberates and takes a vote on a recommendation to the City Council.
8. Action items (if any)
 - a. Staff presentation
 - b. Commission questions
 - c. Public comments
 - d. Commission deliberations
9. Discussion items (if any)

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- a. Staff presentation
 - b. Commission questions
 - c. Public comments
 - d. Commission deliberation
10. Director's report
 11. Adjournment

Section 2. The public shall be allowed to express its views during three public comment periods at Planning Commission meetings: "General Public Comments", "Public Hearing Testimony", and "Discussion Item Public Comments".

During General Public Comments, the Planning Commission will take public comment on any subject which is not specifically scheduled for later on the agenda. Public Hearing Testimony and Discussion Item Public Comments will follow the presentation of each staff report and Commission questions. During Public Hearing Testimony the testimony of the applicant, if any, shall be heard first.

In all cases, speakers shall be asked to come to the podium to have their comments recorded. Speakers are to be asked to state their first and last name and address. During General Public Comments and Discussion Item Public Comments, speakers who decline to offer their name and/or address shall not be denied the opportunity to speak. However, speakers offering testimony at a public hearing shall be required to provide the name and address before being allowed to speak. Each speaker may speak for three (3) minutes or less, except, subject to due process requirements, an applicant may speak for ten (10) minutes or less. Speakers may not give their time to another speaker.

A speaker may be allowed to speak a second time on the same subject only after all other public testimony has been received and only if approved by a majority vote of the members present.

ARTICLE VII WORK PROGRAM

Section 1. A work program for the calendar year shall be prepared and presented by the Planning Director to the Planning Commission at the first meeting of each calendar year. The work program shall, at a minimum, include a tentative schedule of meetings and topics for the calendar year. The Planning Commission shall discuss the proposed work program and members may suggest adding and/or deleting items from the work plan.

Section 2. By vote of a majority of the members present at the meeting, the Planning Commission shall approve the work program, which will serve as an organizational and scheduling tool but shall not be binding and shall not serve to limit items brought before the Planning Commission for their consideration.

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Section 3. The approved work program shall be forwarded to the City Council for their consideration and approval.

ARTICLE VIII CONFLICT OF INTEREST AND APPEARANCE OF FAIRNESS

Section 1. Conflict of Interest: Whenever any member of the Planning Commission has a conflict of interest with respect to any matter on a Commission agenda, the member shall voluntarily excuse himself or herself from further participation in the discussion and consideration of the matter and shall vacate his or her seat and leave the Commission chambers until all proceedings with respect to the matter at that meeting are concluded. The member shall further refrain from discussing the matter with any other Commissioner, or from attempting to influence any other Commissioner with respect to the matter, outside the meeting. For purposes of this section, conflict of interest shall include, at a minimum, the conflicts described in RCW Chapter 42.23 – Code of Ethics for Municipal Officers, Contract Interests, as the same exists or as may hereinafter be amended and developed.

Section 2. Appearance of Fairness: Whenever the continued participation of any member of the Commission would violate the appearance of fairness doctrine, that member shall excuse himself or herself from further participation in the discussion or consideration of the matter and shall vacate his or her seat and leave the Commission chambers until all further proceedings with respect to the matter at that meeting have been concluded. The member shall further refrain from discussing the matter with any other Commissioner, or from attempting to influence any other Commissioner with respect to the matter, outside the meeting. For purposes of this Section, the appearance of fairness doctrine means that legal doctrine relating to quasi-judicial matters which has been developed by the courts and by the legislative enactment of RCW Chapter 42.36, as the same exists or as may be hereinafter amended and developed.

ARTICLE IX AGENDA PACKET DELIVERY

Completed packets, including staff reports, shall be finalized at least five (5) days preceding the day of a regular meeting but not less than twenty-four (24) hours prior to a special meeting. When finalized, completed packets shall be made available to Commissioners and the public via the City website or paper copies may be obtained at City Hall during normal business hours.

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ARTICLE X
AMENDMENTS

These bylaws may be amended at any meeting of the Planning Commission by a favorable vote of not less than five (5) of the seven (7) Planning Commission members, provided that notice of said proposed amendment is given to each member in writing at least two (2) weeks prior to said meeting, and said amendment is presented to and approved by the City Council.

APPROVED this 1st day of February 2017.

SIGNED BY:

Hank Eskridge
Chair, Planning Commission

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ATTACHMENT B

CITY OF SNOHOMISH PLANNING COMMISSION BYLAWS - DRAFT

ARTICLE I PURPOSE

The objectives, purposes, powers, and duties of the Planning Commission of the City of Snohomish are those set forth in Chapter 2.16 of the Snohomish Municipal Code (SMC). These bylaws are adopted pursuant to SMC 2.16.060 which states, “The Commission shall adopt rules and regulations for the conduct of its business, subject to the approval of the City Council.”

ARTICLE II MEMBERSHIP

- Section 1. [The City of Snohomish Planning Commission shall consist of seven \(7\) members.](#) Members of the Planning Commission shall be appointed by the Mayor and confirmed by the City Council, without respect to political affiliations, consistent with the requirements of SMC 2.16.020.
- Section 2. Members may be removed from the Planning Commission by the Mayor, with the approval of the City Council, for inefficiency, neglect of duty or malfeasance in office, consistent with the requirements of SMC 2.16.070.
- Section 3. By a majority vote of the Planning Commission it may request the Mayor to remove or ask to resign a member from the Planning Commission as provided for in Section 2.
- Section 4. Any Commissioner desiring to resign from the Planning Commission shall submit his/her resignation in writing to the [Planning Director who will present it to the Chair and who will present it](#) to the Mayor.

ARTICLE III OFFICERS AND THEIR DUTIES

- Section 1. The officers of the Planning Commission shall consist of a Chair and Vice-Chair.
- Section 2. The Chair shall preside at all meetings and public hearings of the Planning Commission and have the duties conferred to the presiding officer as prescribed in Robert’s Rules of Order Newly Revised.
- Section 3. The Chair shall be one of the appointed members of the Commission. He or she shall have the privilege of discussing all matters before the Commission and of voting thereon. The Chair shall preside at all meetings of the Commission; may call special meetings of the Commission in accordance with the bylaws; sign

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documents of the Commission; and see that all actions of the Commission are properly taken and recorded.

Section 4. In the absence of the Chair, the Vice-Chair shall serve as presiding officer as described in Section 3. The Vice-Chair shall be an appointed member of the Commission. During the absence, disability, or disqualification of the Chair, the Vice-Chair shall exercise or perform all the duties and be subject to all the responsibilities of the Chair.

Section 5. The Vice-Chair shall succeed the Chair if the office is vacated before the term is completed, and shall serve the unexpired term of the vacated office.

ARTICLE IV ELECTION OF OFFICERS

Section 1. Election of officers shall be conducted consistent with SMC 2.16.060. Such election shall take place at the December meeting. Elected officers shall assume their duties on January 1st. If there is no December meeting the election shall take place at the next meeting and officers shall assume their duties immediately upon election.

Section 2. The election of the Chair shall be conducted by the ~~Planning Director~~current Chair who will initially seek nominations for Chair. Nominations do not require a second. The ~~Planning Director~~Chair will declare the nominations closed when it appears no one else wishes to make any further nomination.

After nominations are closed, voting for the Chair will take place in the order nominations were made. Voting will be made by raising hands. As soon as one nominee receives a majority (four) votes the ~~Planning Director~~current Chair will declare him/her the winner. If none of the nominees receives a majority vote, the ~~Planning Director~~current Chair will call for nominations again and repeat the process until a single candidate receives a majority vote.

The election for Vice-Chair shall follow the same process as for the Chair except the newly elected ~~Chair~~ shall conduct the election process.

Section 3. No member may serve more than two consecutive one-year terms as Chair. No member may serve more than two consecutive one-year terms as Vice-Chair. A member who has served four consecutive years as either Chair or Vice-Chair shall be ineligible for election to any officer position for one year. In any of the cases above, following one year of ineligibility a member becomes eligible for election to any officer position.

Section 4. In the event the office of the Chair is vacated mid-term, the Vice-Chair shall automatically succeed the Chair without an election. The then vacant office of

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the Vice-Chair shall be filled by election at the next regular meeting following the process described in Section 2 above.

Section 5. When a Chair or Vice-Chair assumes the office mid-term it will be as if they had served an entire term as regards eligibility at the next December election.

ARTICLE V MEETINGS, RULES OF MEETINGS, AND VOTING

Section 1. The Planning Commission shall hold regular meetings according to the following schedule:

First Wednesday of each month. Meetings shall begin at 6:00 p.m. Should a regular meeting day be a legal holiday, the scheduled meeting shall be postponed to the succeeding Wednesday, unless a majority of the Commission votes to select another day or to cancel the meeting.

Section 2. A majority of the membership of the Commission shall constitute a quorum. Action by the Commission shall be by a majority vote of all members who are present, provided a quorum is present. Voting may be by voice vote, a show of hands, or by roll call as determined by the Chair. A record of the vote shall be kept as part of the minutes.

Section 3. The current edition of Robert's Rules of Order Newly Revised shall provide the basis for meeting structure. Official decisions shall be made by motion and vote of the Commission.

Section 4. Each member shall have one vote. No proxies shall be allowed. Present members may abstain. The Chair may vote on any issue ~~and but~~ shall be required to vote in the event of a tie. A majority vote shall carry. No action shall be taken. No action is taken if a tie vote continues even with the Chair having votes and the tie continues. ~~A majority vote shall carry.~~

Section 5. Meetings shall be adjourned by a majority vote of the Commission or by the Chair when it appears that there is no further business.

The Commission, by a majority vote or consensus, may recess for a short break of specified duration.

The Commission, by a majority vote may continue meetings to a definite time and place.

Section 6. Special meetings may be held by the Commission subject to notice requirements prescribed by State law. Special meetings may be called using a written notice emailed or delivered to each member of the Commission at least forty-eight (48) hours before the time specified for the proposed special meeting. The written notice shall specify the purpose of the meeting and no other business can be

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conducted at that meeting. Special meetings may be called by the Chair, the City Council or Mayor, City Manager or designee, or by written request by any three (3) Commissioners.

Section 7. All meetings shall comply with the requirements of the Open Public Meetings Act (Chapter 42.30 RCW). All meetings shall be noticed and open to the public.

Section 8. Public Hearings are the only meetings that must meet legal noticing requirements, by advertising in the chosen local legal notice paper, ten (10) days prior to the scheduled meeting, unless city code or state law requires other or additional notice.

ARTICLE VI ORDER OF BUSINESS AND PUBLIC COMMENT

Section 1. The order of business for each regular meeting of the Commission shall be as follows:

1. Call to order
2. Flag salute
3. Roll call
4. Approval of agenda order
5. Approval of minutes
6. General public comments on items not on the agenda
7. Public Hearings (if necessary)
 - i. Chair opens hearing
 - j. Staff presentation
 - k. Commission questions regarding the staff presentation and report
 - l. Applicant testimony (if there is an applicant)
 - m. Public testimony
 - n. The Chair may allow further testimony. Commissioners may ask any questions it may have of the applicants, proponents, opponents, the public, or staff.
 - o. The Chair calls for a motion to close the public hearing. After hearing is closed, no further testimony shall be allowed.
 - p. Planning Commission deliberates and takes a vote on a recommendation to the City Council.
8. Action items (if any)
 - a. Staff presentation
 - b. Commission questions
 - c. Public comments
 - d. Commission deliberations

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- 8-9. Discussion items (if any)
 - e. Staff presentation
 - f. Commission questions
 - g. Public comments
 - ~~g~~-h. [Commission deliberation](#)
- 9-10. Director's report
- ~~10~~-11. _____ Adjournment

Section 2. The public shall be allowed to express its views during three public comment periods at Planning Commission meetings: "General Public Comments", "Public Hearing Testimony", and "Discussion Item Public Comments".

During General Public Comments, the Planning Commission will take public comment on any subject which is not specifically scheduled for later on the agenda. Public Hearing Testimony and Discussion Item Public Comments will follow the presentation of each staff report and Commission questions. During Public Hearing Testimony the testimony of the applicant, if any, shall be heard first.

In all cases, speakers shall be asked to come to the podium to have their comments recorded. Speakers are to be asked to state their first and last name and ~~city of residence~~[address](#). [During General Public Comments and Discussion Item Public Comments, speakers who decline to offer their name and/or address shall not be denied the opportunity to speak. However, speakers offering testimony at a public hearing shall be required to provide the name and address before being allowed to speak.](#) Each speaker may speak for three (3) minutes or less, except, subject to due process requirements, an applicant may speak for ten (10) minutes or less. Speakers may not give their time to another speaker.

A speaker may be allowed to speak a second time on the same subject only after all other public testimony has been received and only if approved by a majority vote of the members present.

ARTICLE VII WORK ~~PLAN~~PROGRAM

Section 1. A work ~~plan~~[program](#) for the calendar year shall be prepared and presented by the Planning Director to the Planning Commission at the first meeting of each calendar year. The work ~~plan~~[program](#) shall, at a minimum, include a tentative schedule of meetings and topics for the calendar year. The Planning Commission shall discuss the proposed work ~~plan~~[program](#) and members may suggest adding and/or deleting items from the work plan.

Section 2. By vote of a majority of the members present at the meeting, the Planning Commission shall approve the work ~~plan~~[program](#), which will serve as an

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organizational and scheduling tool but shall not be binding and shall not serve to limit items brought before the Planning Commission for their consideration.

Section 3. The approved work program shall be forwarded to the City Council for their consideration and approval.

ARTICLE VIII **CONFLICT OF INTEREST AND APPEARANCE OF FAIRNESS**

Section 1. Conflict of Interest: Whenever any member of the Planning Commission has a conflict of interest with respect to any matter on a Commission agenda, the member shall voluntarily excuse himself or herself from further participation in the discussion and consideration of the matter and shall vacate his or her seat and leave the Commission chambers until all proceedings with respect to the matter at that meeting are concluded. The member shall further refrain from discussing the matter with any other Commissioner, or from attempting to influence any other Commissioner with respect to the matter, outside the meeting. For purposes of this section, conflict of interest ~~is defined as a situation in which a reasonable person would conclude that the member's independent judgement would be impaired by the member's direct or indirect financial or other interest in the matter.~~ It shall include, at a minimum, the conflicts described in RCW Chapter 42.23 – Code of Ethics for Municipal Officers, Contract Interests, as the same exists or as may hereinafter be amended and developed.

Section 2. Appearance of Fairness: Whenever the continued participation of any member of the Commission would violate the appearance of fairness doctrine, that member shall excuse himself or herself from further participation in the discussion or consideration of the matter and shall vacate his or her seat and leave the Commission chambers until all further proceedings with respect to the matter at that meeting have been concluded. The member shall further refrain from discussing the matter with any other Commissioner, or from attempting to influence any other Commissioner with respect to the matter, outside the meeting. For purposes of this Section, the appearance of fairness doctrine means that legal doctrine relating to quasi-judicial matters which has been developed by the courts and by the legislative enactment of RCW Chapter 42.36, as the same exists or as may be hereinafter amended and developed.

ARTICLE IX **AGENDA PACKET DELIVERY**

Completed packets, including staff reports, shall be finalized at least ~~one (1) week~~ five (5) days preceding the day of a regular meeting but not less than twenty-four (24) hours prior to a special meeting. When finalized, completed packets shall be made available to Commissioners and the

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public via the City website or paper copies may be obtained at City Hall during normal business hours.

ARTICLE X
AMENDMENTS

These bylaws may be amended at any meeting of the Planning Commission by a favorable vote of not less than five (5) of the seven (7) Planning Commission members, provided that notice of said proposed amendment is given to each member in writing at least two (2) weeks prior to said meeting, and said amendment is presented to and approved by the City Council.

APPROVED this 1st day of February 2017.

SIGNED BY:

Hank Eskridge
Chair, Planning Commission

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Date: February 1, 2017
To: Planning Commission
From: Brooke Eidem, Associate Planner
Subject: **Development Agreements**

SUMMARY: This agenda item provides for the Planning Commission’s discussion of a proposed code amendment to provide for development agreements. A development agreement is a voluntary contract between a local jurisdiction and a property owner regarding future development of a specific site. The agreement details the obligations of both parties and specifies standards and conditions for development. For property owners, development agreements provide assurance the regulations that apply to the project will not change. Development agreements allow the City to apply conditions and mitigation for project impacts, impose design standards beyond what the code provides for, and can include clarification about project phasing or public improvements.

BACKGROUND: RCW 36.70B provides the statutory authority and legal requirements for development agreements. Entering into a development agreement is entirely voluntary. However, once agreed upon its provisions become binding. A development agreement establishes site-specific development standards. The development standards can deviate from the standards established in the municipal code. Development agreements can also provide for other provisions such as expedited processing of permits, phasing, vesting, and mitigation requirements. Development agreements require at least one public hearing and must be approved by the City Council.

Development agreements are a tool the City can use to have greater control over the quality of a development’s design. It provides flexibility from codified development regulations allowing the City to relax some rules (frequently setbacks, street widths) while imposing stricter rules that result in higher quality developments. The stricter rules can cover just about anything but frequently address exterior building design, public amenities, streetscapes, and community spaces.

One important benefit for property owners that a development agreement can provide is the establishment of vested rights. Currently, vested rights are an area of concern for developers because a recent court case (*Potala Village LLC, v. City of Kirkland*) found that vested rights only exist if codified. Currently, in the City the only codified vested rights are for building permits and subdivisions (both formal and short). If Snohomish Municipal Code is amended to provide for development agreements then development agreements would be another way to establish vested rights.

PROPOSAL: Draft code language is provided as Attachment A, outlining the proposed regulations and process for entering into a development agreement with the City. Staff is requesting input from the Planning Commission on certain areas of discretion provided within the RCW such as the process for approving them, how long the agreements can be in effect, and what sections of existing code can be modified by a development agreement.

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NEXT STEPS: A public hearing will be held in May to consider a final draft ordinance providing for development agreements.

ATTACHMENTS:

- A. Draft Language for Development Agreement Regulations
- B. Example Development Agreement Regulations from other cities (Bothell, Gig Harbor, Issaquah, Mukilteo)

ATTACHMENT A

Draft Language for Development Agreement Regulations

Development Agreements

Purpose and authority
General provisions
Decision criteria
Procedure
Enforceability
Modifications and extensions
Appeals

Purpose and authority

- A. Purpose. The purpose of this section is to establish procedures and criteria for development agreements. In adopting these provisions, the City acknowledges the benefits of providing certainty regarding applicable development standards, uses, and mitigation for projects. This section applies to development agreement applications made pursuant to RCW 36.70B and the provisions herein.
- B. Authority. The City may consider and enter into a development agreement with a person having ownership or control of real property within the city limits. The City may also consider a development agreement for real property outside the city limits but within the urban growth area (UGA) as part of a proposed annexation.

General provisions

- A. Use of Development Agreements.
 - 1. Development Agreements shall contain site-specific development standards for any parcel within the City of Snohomish or its Urban Growth Area except in the following Land Use Designation Areas:
 - a. Historic Business
 - b. Pilchuck District
 - 2. Development Agreements may modify any of the provisions of Title 14, except they shall not deviate from the permitted uses allowed as described in Chapter 14.205, Permitted Land Use, Snohomish Municipal Code.
 - 3. Development Agreements may modify any of the provisions of the Engineering Design and Construction Standards, except they shall not deviate from stormwater regulations, or any other regulation that is required by state law.
- B. Contents of a Development Agreement. The agreement shall contain project elements, a vesting period, establishment of the development standards on a site-specific basis, and any

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additional related information as determined by the Planning Director. As applicable, the development agreement should specify the following:

1. Development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development for the duration of the agreement;
 2. Project components which define and detail the permitted uses, residential densities, nonresidential intensities, building sizes or nonresidential floor area;
 3. Location of critical areas and their buffers, landscaping, and/or open space;
 4. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, or financial contributions by the property owner, inspection fees, or dedications;
 5. Mitigation measures, development conditions, and other requirements of 43.21C RCW.
 6. Design standards such as architectural treatment, maximum heights, setbacks, landscaping, drainage, and water quality requirements and other development features;
 7. Provisions for affordable housing;
 8. Parks and common open space preservation;
 9. Review procedures and standards for implementing decisions;
 10. A build-out or vesting period for application standards;
 11. Any other appropriate development requirement or procedure which is based upon a City policy, rule, regulation, or standard; and
 12. Language reserving authority for the City to impose new or different regulations to the extent required by a serious threat to the public health or safety.
- C. Form. Applications for development agreement shall be submitted on a form provided by the Planning Director. Every development agreement shall be signed by the property owner and all other parties with a substantial beneficial interest in the property that is the subject of the agreement, prior to any public hearing held for the purpose of authorizing execution of the development agreement.

Decision criteria

The City Council may adopt a development agreement only after passage of an ordinance or resolution containing the following findings.

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1. The proposed agreement is compatible with the goals and policies of the comprehensive plan;
2. The proposed agreement protects the public health, safety, and general welfare.
3. The proposed agreement provides for adequate mitigation of adverse environmental impacts, or provides a process for evaluating and appropriately mitigating such impacts in the future; and
4. The proposed agreement reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

Procedure

- A. Review authority. The City Council shall only approve development agreements, or amendments thereto, by ordinance after a public hearing.
- B. Timeline of Approvals. Development agreements shall be processed prior to the underlying project permit application, approval, or annexation request, if applicable.
- C. Public notice. All public hearings on a development agreement shall follow the public notice procedures of SMC 14.55.040.
- D. Term. In determining the appropriate term for a development agreement, the City Council shall consider the size, type, and location of development and phasing, if proposed. In no case may the term of a development agreement exceed 20 years.
- E. Recording required. A development agreement shall be recorded with the real property records of the Snohomish County Auditor. Recording costs shall be borne by the proponent.
- F. Deadlines. Development agreements are not “project permit applications” as defined in RCW 36.70B.020. Therefore, there is no deadline for processing a development agreement.

Enforceability

Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement. Except as provided herein, the agreement may not be subject to an amendment to a zoning ordinance or development standard or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. The permit approval issued by the City after the execution of the agreement must be consistent with the development agreement.

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Modifications and Extensions

A. Modifications.

1. Major Modifications to an approved development agreement, as defined within the development agreement, shall require approval by the City Council following a public hearing.
2. Minor Modifications to an approved development agreement, as defined within the development agreement, shall require approval of the Planning Director or designee.

B. Extensions. If extensions are authorized in a development agreement, an applicant must request the extension in writing at least 60 days prior to expiration. The Planning Director may approve the extension request if the applicant can satisfactorily show that at least 50 percent of the residential units have been constructed and/or 50 percent of the gross floor area has been constructed. All other requests for extensions shall be reviewed by the City Council, unless another process is expressly provided for in the development agreement. In no case shall an extension be granted which would allow a development agreement to exceed 20 years.

Appeals

If the development agreement relates to a project permit application, the provisions of Chapter 36.70 RCW shall apply to any appeal of the decision on the development agreement. The cost of preparing the record for such an appeal shall be borne by the appellant(s).

Example Development Agreement Regulations From Other Cities

City of Bothell

Chapter 11.16 DEVELOPMENT AGREEMENTS

Sections:

- 11.16.001 Type of approval.
- 11.16.002 Authority.
- 11.16.003 General provisions of development agreements.
- 11.16.004 Enforceability.
- 11.16.005 Form of agreement, council approval, public hearing, recordation, appeal.

11.16.001 Type of approval.

Development agreements shall accompany and be processed in conjunction with the underlying project permit application, approval or annexation request. The type of project permit application or other approval shall control the type of application, as more specifically described in Chapter 11.04 BMC. (Ord. 1691 § 1, 1997; Ord. 1628 § 1, 1996).

11.16.002 Authority.

A. The execution of a development agreement is a proper exercise of city police power and contract authority. The city may consider, and enter into, a development agreement with a person having ownership or control of real property within the city limits. The city may consider a development agreement for real property outside of the city limits but within the urban growth area (“UGA,” as defined in RCW 36.70A.030(15), or as designated by the county pursuant to RCW 36.70A.110) as part of a proposed annexation or a service agreement.

B. A development agreement shall be consistent with applicable development regulations adopted by the city under Chapter 36.70A RCW. (Ord. 1691 § 1, 1997; Ord. 1628 § 1, 1996).

11.16.003 General provisions of development agreements.

- A. The development agreement must include the following:
 - 1. The development standards and other provisions that shall apply to and govern and vest the development, use and mitigation of the development of real property for the duration of the agreement;
 - 2. Project components which define and detail the permitted uses, residential densities, nonresidential densities and intensities, building sizes, or nonresidential floor area;
 - 3. Location of buffers, landscaping or open space;

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4. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, local ordinance, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
5. Mitigation measures, development conditions and other requirements of Chapter 43.21C RCW;
6. Design standards such as architectural treatment, maximum heights, setbacks, landscaping, drainage and water quality requirements and other development features;
7. Provisions for affordable housing;
8. Parks and common open space preservation;
9. Review procedures and standards for implementing decisions;
10. A build-out or vesting period for application standards;
11. Any other appropriate development requirement or procedure which is based upon a city policy, rule, regulation or standard; and
12. Phasing.

B. The development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to the public health or safety. (Ord. 1691 § 1, 1997; Ord. 1628 § 1, 1996).

11.16.004 Enforceability.

Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the specified build-out period. The agreement may not be subject to a new or an amendment to a zoning ordinance or development standard adopted after the effective date of the agreement, unless otherwise provided in the agreement. Any permit or approval issued by the city after the execution of the agreement must be consistent with the development agreement. (Ord. 1691 § 1, 1997; Ord. 1628 § 1, 1996).

11.16.005 Form of agreement, council approval, public hearing, recordation, appeal.

A. Form. All development agreements shall be in the form provided by the city attorney's office. The city attorney shall approve all development agreements prior to consideration by the city council.

B. Council Approval. The city council shall only approve development agreements, or amendments thereto, by ordinance after a public hearing by the designated hearing body.

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C. Recordation. Development agreements shall be recorded with the real property records of the county in which the property is located at the cost of the applicant. During the term of the development agreement, the agreement is binding on the parties and their successors in interest.

D. Appeal. If the development agreement relates to a project permit application, the provisions of Chapter 36.70C RCW shall apply to any appeal of the decision on the development agreement. (Ord. 1691 § 1, 1997; Ord. 1628 § 1, 1996).

City of Gig Harbor

Chapter 19.08 DEVELOPMENT AGREEMENTS

Sections:

- 19.08.010 Authority.
- 19.08.020 General provisions of development agreements.
- 19.08.030 Enforceability.
- 19.08.040 Processing procedure for development agreements.
- 19.08.050 No deadline for final decision, form of agreement, term, recordation.

19.08.010 Authority.

The city may consider, and enter into, a development agreement with a person having ownership or control of real property within the city limits. The city may consider a development agreement for real property outside of the city limits but within the urban growth area (UGA) as part of a proposed annexation or a service agreement. (Ord. 1170 § 1, 2009; Ord. 829 § 1, 1999).

19.08.020 General provisions of development agreements.

A. Comprehensive Plan. A development agreement shall be consistent with the applicable policies and goals of the city of Gig Harbor comprehensive plan.

B. Development Standards. Except as provided in subsection C of this section, a development agreement shall be consistent with applicable development regulations; provided, a development agreement may extend the durations of approval of project permits and allow phasing plans different from those otherwise imposed under the Gig Harbor Municipal Code.

1. Any approved development standards that differ from those in the code shall not require any further rezone, variance from city standards or other city approval apart from development agreement approval. The development standards as approved through a development agreement shall apply to and govern the development and implementation of each covered property in lieu of any conflicting or different standards or requirements elsewhere in the Gig Harbor Municipal Code.
2. Subsequently adopted standards which differ from those of a development agreement adopted by the city shall apply to the covered property only where necessary to address

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imminent public health and safety hazards or where the development agreement specifies a time period or phase after which certain identified standards can be modified.

3. Projects subject to a development agreement are required to obtain approval for all applicable project permits unless otherwise expressly provided for in the approved development agreement.

C. Deviations from Development Standards. Deviations from development standards in addition to those allowed in subsection B of this section shall only be allowed as described below.

1. A development agreement related to property in a planned community development land use designation (PCD) may allow deviations from development standards imposed under the Gig Harbor Municipal Code for the following reasons:

- a. To provide flexibility to achieve public benefits; or
- b. In order to respond to changing community needs; or
- c. To encourage modifications which provide the functional equivalent or adequately achieve the purposes of otherwise applicable city standards.

2. A development agreement related to property within the downtown area may allow deviations from development standards imposed under the Gig Harbor Municipal Code as provided for in the subsections below.

a. The proponent shall demonstrate consistency with the following requirements:

- i. The project is consistent with the adopted vision for the Harbor; and
- ii. The project preserves significant historic structures or demonstrates preservation and enhancement of the existing downtown character; and
- iii. The project will provide public amenities above that required by the existing zoning standards, including but not limited to parks, shoreline access, plazas, and/or pedestrian connections; and
- iv. The project will result in a superior design solution to what would otherwise be achieved by applying the specific requirements of Chapter 17.99 GHMC, Design Manual; and
- v. The proposed deviations to zoning development standards are consistent with the public health, safety, convenience and general welfare.

b. All land use permits for projects developed utilizing this subsection shall be processed as a Type III permit or higher numbered permit type if applicable. The design review application for a project utilizing this subsection shall be reviewed by the city's design

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review board for consistency with the general requirements of Chapter 17.99 GHMC, Design Manual. The design review board's recommendation on the project shall be forwarded to hearing examiner for consideration as part of the underlying project permit.

c. The downtown area is defined as the properties within:

- i. The downtown business district (DB); and
- ii. The waterfront commercial (WC) district adjacent to the DB district; and
- iii. The residential and business district (RB-1) at the intersection of Soundview Drive and Harborview Drive; and
- iv. Pierce County assessor treasurer tax parcel No. 0221081108.

3. A development agreement cannot authorize deviations from the uses, minimum and maximum densities, maximum gross floor area, or maximum structure height allowed in the underlying zoning district unless approved by a majority plus one of the whole council after a minimum of two public hearings on the agreement.

4. In no case shall a development agreement authorize deviations from the following development standards. Variance and deviation processes contained within the following specified codes may be applied for during project permitting after the approval of a development agreement:

- a. A development agreement cannot authorize deviations from requirements of GHMC Title 15, Buildings and Construction. Building permit applications shall be subject to the building codes in effect when a complete building permit application is submitted.
- b. A development agreement cannot authorize deviations from requirements of GHMC Title 18, Environment.
- c. A development agreement cannot authorize deviations from the requirements of the Gig Harbor shoreline master program.

D. Contents of a Development Agreement. As applicable, the development agreement shall specify the following:

1. Project components which define and detail the permitted uses, residential densities, nonresidential densities and intensities or building sizes;
2. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

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3. Mitigation measures, development conditions and other requirements of Chapter 43.21C RCW;
4. Design standards such as architectural treatment, maximum heights, setbacks, landscaping, drainage and water quality requirements and other development features;
5. Provisions for affordable housing, if applicable;
6. Parks and common open space preservation;
7. Phasing;
8. A build-out or vesting period for applicable standards; and
9. Any other appropriate development requirement or procedure which is based upon a city policy, rule, regulation or standard.

E. As provided in RCW 36.70B.170, the development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety. (Ord. 1256 § 1, 2013; Ord. 1170 § 2, 2009; Ord. 829 § 1, 1999).

19.08.030 Enforceability.

Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement. The agreement may not be subject to an amendment to a zoning ordinance or development standard or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. The permit approval issued by the city after the execution of the agreement must be consistent with the development agreement. (Ord. 829 § 1, 1999).

19.08.040 Processing procedure for development agreements.

A. Legislative Actions. A development agreement associated with a legislative action such as a comprehensive plan amendment or area-wide rezone shall be processed in accordance with the procedures established in this title and subsection, except as provided for in subsection C of this section. The planning commission shall make its recommendation on any development agreement relating to legislative action to the city council. A public hearing shall be held on the development agreement and if approved, the council shall authorize the mayor, in a resolution or ordinance, to execute the development agreement on behalf of the city.

B. Project Permits. A development agreement associated with a project permit application shall be processed in accordance with the procedures established in this title and subsection, except as provided for in subsection C of this section.

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1. If the final decision on the underlying project permit application is made by the hearing examiner, then the hearing examiner shall consider both the project permit application and the proposed development agreement together during the public hearing. The hearing examiner shall make a recommendation to the council on the development agreement and his/her decision on the underlying project permit application shall be held in abeyance until the city council considers the proposed development agreement in a public hearing. If the city council approves the development agreement, the council shall, by resolution or ordinance, authorize the mayor to execute the development agreement on behalf of the city. At this point, the hearing examiner may then issue his/her final decision on the underlying project permit application. Nothing in this section obligates the hearing examiner to forward a recommendation to the city council for further consideration if the hearing examiner denies the underlying project permit application.

2. If the final decision on the underlying project permit application is made by the city administrative staff, then the city staff shall consider both the project permit application and the proposed development agreement together. The city staff shall make a recommendation to the council on the development agreement, and the city staff's decision on the underlying project permit application shall be held in abeyance until the city council considers the proposed development agreement in a public hearing. If the city council approves the development agreement, the council shall, by resolution or ordinance, authorize the mayor to execute the development agreement on behalf of the city. At this point, the city staff may then issue its final decision on the underlying project permit application. Nothing in this section obligates city staff to forward a recommendation to the city council for further consideration if city staff denies the underlying project permit application.

3. If a final decision on an underlying project permit application has been previously made by the hearing examiner or city administrative staff and the application was approved, the city staff shall make a recommendation to the council on the development agreement. A public hearing shall be held on the development agreement and if approved, the council shall authorize the mayor, in a resolution or ordinance, to execute the development agreement on behalf of the city.

C. PCD and Downtown. A development agreement associated with property in a planned community development (PCD) land use designation or downtown area as defined by GHMC 19.08.020(C)(2)(c) shall be processed in accordance with the procedures established in this title and subsection. The council shall consider the proposed development agreement at a regular council meeting and decide if the agreement should be processed further. If a majority of the whole council approves further review of the development agreement, the agreement shall be reviewed as follows:

1. If the development agreement is associated with a legislative action, the planning commission shall make a recommendation to the council on the development agreement. The council shall hold a public hearing on the development agreement and if approved, the council shall authorize the mayor, in a resolution or ordinance, to execute the development agreement on behalf of the city.

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2. If the development agreement is associated with a project permit application or not associated with any underlying action, the planning and building committee of the council shall make a recommendation to the council on the development agreement. The council shall hold a public hearing on the development agreement and if approved, the council shall authorize the mayor, in a resolution or ordinance, to execute the development agreement on behalf of the city.

D. Public Notice. All public meetings and public hearings on a development agreement shall be noticed as follows:

1. Not less than 10 days prior to the public hearing date, a notice of the public hearing shall be sent to property owners within 300 feet of the property subject to the development agreement and to others who have submitted comments and/or requested notice.
2. Notice of the public hearing shall be posted on the property subject to the development agreement not less than 10 days prior to the hearing date. Notice shall be posted in the manner required by GHMC 19.03.001(A).
3. Notice of the public meeting shall be published in the city's official newspaper not less than 10 days prior to the meeting date.
4. The notice of the public hearing shall contain all items listed in GHMC 19.03.003(A).
5. All costs associated with the public notice shall be borne by the applicant. (Ord. 1256 § 2, 2013; Ord. 1197 § 117, 2010; Ord. 1170 § 4, 2009).

19.08.050 No deadline for final decision, form of agreement, term, recordation.

A. Development agreements are not "project permit applications" as defined in RCW 36.70B.020. Therefore, there is no deadline for processing a development agreement. If an applicant requests that the city execute a development agreement as part of its approval of a project permit application, the applicant must agree to sign a written waiver of the deadline for issuance of a final decision of the project permit application, so that the development agreement may be processed.

B. No development agreement shall be presented to the decision-making body unless in a form approved by the city attorney. Every development agreement shall be signed by the property owner and all other parties with a substantial beneficial interest in the property that is the subject of the development agreement, prior to any public hearing held for the purpose of authorizing execution of the development agreement.

C. Term.

1. Development agreements may be approved for a maximum period of 20 years.

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2. In determining the appropriate term for a development agreement, the council should consider the type, size and location of development and phasing if proposed.

3. Extensions. If extensions are authorized in a development agreement, an applicant must request the extension at least 60 days prior to expiration. For development agreements associated with project permit applications, the planning director may grant an extension for up to five years if the applicant can satisfactorily show that, for a residential project, at least 50 percent of the residential units are constructed, or for nonresidential and mixed use projects, at least 50 percent of the gross floor area is constructed. All other requests for extensions shall be reviewed by the city council, unless another process is expressly provided for in the development agreement. In no case shall an extension be granted which would allow a development agreement to exceed 20 years.

D. Recordation. A development agreement shall be recorded against the property, in the real property records of the Pierce County auditor's office. During the term of the development agreement, the agreement is binding on the parties and their successors, including the property owners in any area that is annexed to the city. (Ord. 1256 § 3, 2013; Ord. 1170 § 5, 2009; Ord. 829 § 1, 1999).

City of Issaquah

18.06.120 Urban Village District – UV.

Purpose: The Urban Village (UV) District is established to encourage innovative uses, sites and comprehensive planning of large (fifteen (15) acres or more) land parcels. Master planning and development of larger parcels provides the opportunity for reasonably priced housing, enhanced public services and concurrency, infrastructure solutions and improvements, and allows creative land development through clustering, permanent preservation of wetlands and other natural areas, integration of recreational facilities and phasing of infrastructure.

A. Designation of Urban Village and Development Agreement Approval: The City Council may adopt outright UV Zoning District (concurrent with approval of a Development Agreement meeting the requirements of subsection B of this section or designate potential UV areas where a Development Agreement is to be reviewed and adopted subsequently. The UV District may be adopted as part of the City's Comprehensive Plan or as an amendment thereto, or as the zoning to be applied upon annexation of unincorporated land, or through individual reclassification. The Development Agreement for a particular UV parcel may be adopted concurrently with the UV District. The UV District may also be applied as an "overlay" zone district over another district.

B. Development Agreement Contents: Each Development Agreement approved by the City Council shall include the following components:

1. Project description and conceptual site plan;

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2. Open space and recreation lands and facilities, including preservation of sensitive areas and buffers;
3. Residential uses and densities including a range or maximum of housing types, lot sizes and single or multifamily;
4. Commercial uses and intensities, including a range or maximum square footages permitted for retail, business park or other approved commercial uses;
5. Site design, bulk and/or building standards, including criteria for flexibility to encourage innovative design, preservation of sensitive areas and reasonably priced housing;
6. Capital facilities plan showing infrastructure such as road improvements, transportation management plans, utilities, schools, police and fire and any other public services or facilities.

C. Development Agreement Approval Procedures: The City Council may approve Development Agreements through one of the following procedures:

1. Concurrent with Annexation Approval: The City may approve a Development Agreement incorporating the elements of subsection B of this section as part of its annexation of property to the City;
2. Concurrent with City Comprehensive Plan: The City may approve a Development Agreement incorporating the elements of subsection B of this section as part of adoption or an amendment of the City's Comprehensive Plan, and any proposed Development Agreement shall be reviewed concurrent with and using the same procedures as followed for City Comprehensive Plan adoption or amendment;
3. Individually Submitted Request: A Development Agreement application incorporating the elements stated in subsection B of this section may be submitted by a property owner on a form and with any additional related information as determined by the Planning Director/Manager. After staff review and SEPA compliance, the Development Agreement application shall be reviewed by the Planning Policy Commission, or a Development Commission or both as determined by the Planning Director/Manager based on the Development Agreement exhibits set forth in subsection B of this section, which shall make a recommendation to the City Council for final approval, approval with additional conditions, or denial;
4. Recorded Development Agreement: Upon City Council approval of a Development Agreement under one of the procedures set forth in subsection C of this section, the City and property owner shall execute and record the Development Agreement (or a memorandum thereof) with the King County Real Property Records to run with the land and bind and govern development of the property.

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D. Subsequent Plat and Permitting: Upon City Council approval of a Development Agreement, the property's development shall be governed by the substantive provisions of the approved Development Agreement and implemented through subdivisions, short plats, binding site plans or other applicable permits in accordance with the procedures specified in the Development Agreement, or standard City procedures if none are specified in the Development Agreement. Any conditions or standards of approval for any subdivision, short plat, binding site plan or other permit or approval for the property shall utilize and incorporate the development standards set forth in the approved Development Agreement.

E. Development Commission: The City Council may establish by ordinance a special Development Commission, in lieu of other specified City boards and commissions, to review and approve all matters for permits or approvals for all projects within a UV District. Proposals for the membership, jurisdiction and procedures of a special development commission may be set forth in a Development Agreement. (Ord. 2108 § 6.3.6, 1996).

City of Mukilteo

17.20.085 Development agreements.

A. Development Agreements. The city council may approve, for any parcel within the city, a development agreement which contains project elements, a vesting period, and establishes or modifies the development standards on a site-specific basis, including but not limited to density, parking, streets, setbacks, building separation, landscaping and other standards, pursuant to the procedures of RCW 36.70B.170 through 36.70B.210.

Development agreements may not deviate from the permitted uses as allowed in each of the above referenced zones and as contained in Section 17.16.040.

B. Procedure—Community Meeting. Within thirty days of the notice of application a community meeting shall be held to obtain public comments on the proposed development agreement. The purpose of the meeting is to identify issues, concerns and/or constraints which may affect the project and surrounding community. The community meeting is not intended to be part of the official record of the application. At a minimum the development agreement shall include:

1. An outline of the agreement;
2. Bubble diagram showing proposed uses and access;
3. List of permitted uses and issues.

C. Community Meetings. For projects that will include a development agreement, the following notice and comment periods apply:

1. The notice of application shall include the date, time and place for the community meeting.
2. Written comments regarding the development agreement may be submitted before the community meeting, at the community meeting, or within fourteen days after the community meeting.

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D. Final Decision. Consideration and a decision on the final draft of the development agreement shall be done after a public hearing but prior to the final decision on the related project. (Ord. 1193 § 1, 2008; Ord. 956 § 4, 1998)

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Date: February 1, 2017
To: Planning Commission
From: Glen Pickus, Planning Director
Subject: **Commissioner Attendance at other Boards and Commission Meetings**

SUMMARY: The Planning Commission is one of five boards and commissions that advise the City Council. Each board and commission operates independently. Commissioners can learn how the work of the Planning Commission relates to the work of these other groups by attending their meetings.

BACKGROUND: One of the City Council goals is to establish an ongoing invitation with boards, commissions, and other community organizations to enhance collaboration and coordination.

Similarly, the Public Safety Commission recently discussed having their members attend various City board and commission meetings to gain a better understanding of what they do and to identify areas where their interests overlap with the Public Safety Commission's interests. Eventually, this could lead to the Commission collaborating with others in working on projects of common interest.

It is possible the Planning Commission could also benefit by having a better understanding of what their fellow board members and commissioners are doing.

RECOMMENDATION: **Discuss whether it would be worthwhile for individual Commissioners to attend the meetings of other City boards and commissions. If it is determined to be worthwhile, then have Commissioners volunteer/assigned to attend a specific board or commission meeting.**