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ORDINANCE NO. 3817

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE COMMUNITY DEVELOPMENT CODE BY REPEALING AND REENACTING CERTAIN PROVISIONS OF TITLE 20, TO WIT, CHAPTER 20.01 TYPES OF DEVELOPMENT PROJECT PERMITS; CHAPTER 20.02 TYPE I - IV, DEVELOPMENT PROJECT PERMIT APPLICATIONS, CHAPTER 20.03 PUBLIC NOTICE REQUIREMENTS; CHAPTER 20.04 CONSISTENCY WITH DEVELOPMENT REGULATIONS AND SEPA; CHAPTER 20.06 OPEN RECORD PUBLIC HEARINGS; CHAPTER 20.07 CLOSED RECORD APPEALS; AND CHAPTER 20.08 DEVELOPMENT AGREEMENTS ARE HEREBY AMENDED IN ORDER TO PROVIDE FOR THE REINSERTION OF THE CITY COUNCIL AS AN APPEAL BODY, MAKE TECHNICAL CORRECTIONS AND REVISE REFERENCES, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, Title 20 of the Edmonds Community Development Code dealing with the procedural structure for the processing of development project permits and their review, were substantially revised and amended in 2009; and

WHEREAS, the City Council believes it to be in the public interest to conclude the Edmonds City Council as a final quasi-judicial review process on many project permits, and

WHEREAS, in the course of administering the new code, certain inconsistencies have been found requiring technical correction, and

WHEREAS, the Edmonds Planning Board has delivered its recommendation following public hearing, and

WHEREAS, after holding a public hearing of its own, the Edmonds City Council deems it to be in the public interest to amend the provisions of Title 20 to reestablish the City

Council as the final hearing body on many types of project permit applications and to make certain technical corrections, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. The Edmonds Community Development Code, Title 20, Chapter 20.01 Types of Development Project Permit Applications is hereby amended to read as follows:

Chapter 20.01
TYPES OF DEVELOPMENT PROJECT PERMITS

Sections:

- 20.01.000 Purpose and general provisions.**
- 20.01.001 Types of actions.**
- 20.01.002 Determination of proper procedure type.**
- 20.01.003 Permit type and decision framework.**
- 20.01.006 Legislative enactments not restricted.**
- 20.01.007 Exempt projects.**

20.01.000 Purpose and general provisions.

A. The purpose of this chapter is to establish standard procedures, decision criteria, public notification, and timing for development project permit application decisions made by the City of Edmonds. These procedures are intended to:

- Promote timely and informed public participation;
- Eliminate redundancy in the application, permit review, and appeals processes;
- Process permits equitably and expediently;
- Balance the needs of permit applicants with neighbors;
- Ensure that decisions are made consistently and predictably;
and
- Result in development that furthers City goals as set forth in the Comprehensive Plan.

These procedures provide for an integrated and consolidated land use permit process. The procedures integrate the environmental

review process with land use procedures, decisions, and consolidated appeal processes.

B. The provisions of this Title supersede all other procedural requirements that may exist in other sections of the City Code. When interpreting and applying the standards of this Title, its provisions shall be the minimum requirements. Where conflicts occur within provisions of this Title and/or between this Title and other City Code provisions and regulations, the more restrictive provisions shall apply. Where conflict between the text of this Title and the zoning map ensue, the text of this Title shall prevail.

C. Unless otherwise specified, all references to days shall be calendar days. Whenever the last day of a deadline falls on a Saturday, Sunday, legal holiday designated by RCW 1.16.050 or by a city ordinance, or any day when city hall or the City's Development Services Department is closed to the public by formal executive or legislative action the deadline shall run until the next day that is not a Saturday, Sunday, or holiday or closed day.

20.01.001 Types of actions.

There are five main types of actions (or permits) that are reviewed under the provisions of this chapter. The types of actions are based on who makes the decision, the amount of discretion exercised by the decision making body, the level of impact associated with the decision, the amount and type of public input sought, and the type of appeal opportunity.

A. Administrative Decisions. Type I and II decisions are administrative decisions made by the Development Services Director or his/her designee (hereinafter the "director"). Type I permits are ministerial decisions are based on compliance with specific, nondiscretionary and/or technical standards that are clearly enumerated. Type II permits are administrative decisions where the Director makes a decision based on standards and clearly identified criteria, but where public notice is required. Unless otherwise provided, appeals of Type II decisions shall be initiated as set forth in ECDC 20.07.004.

B. Quasi-judicial Decisions. Type III, Type IV and appeal of Type II and Type III (B only) decisions are quasi-judicial decisions that involve the use of discretionary judgment in the review of each specific application. Quasi-judicial decisions are made by the Hearing Examiner, the Architectural Design Board, and/or the city council.

C. Legislative Decision. Type V actions are legislative decisions made by the city council under its authority to establish policies and regulations regarding future private and public developments, and management of public lands.

1. Planning Board. The Planning Board shall hold a public hearing and make recommendations to the city council on Type V actions, except that the city council may hold a public hearing itself on area-wide rezones to implement city policies, or amendments to zoning code text, development regulations or the zoning map. The public hearing shall be held in accordance with the requirements of Chapter 20.06 ECDC, RCW 36.70A.035 and all other applicable law.

2. City Council. The city council may consider the Planning Board's recommendation in a public hearing held in accordance with the requirements of Chapter 20.06 ECDC and RCW 36.70A.035 and all other applicable law. If the city council desires to hold a public hearing on area-wide rezones to implement city policies, or amendments to zoning code text, development regulations or the zoning map, it may do so without forwarding the proposed decision to the Planning Board for a hearing.

3. Public Notice. Notice of the public hearing or public meeting shall be provided to the public as set forth in Chapter 20.03 ECDC.

4. Implementation. City council Type V decision shall be by ordinance or resolution and shall become effective on the effective date of the ordinance or resolution.

20.01.002 Determination of proper procedure type.

A. Determination by Director. The director shall determine the proper procedure for all project applications. Questions concerning the appropriate procedure shall be resolved in favor of the higher numbered procedure.

B. Optional Consolidated Permit Processing. An application that involves two or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or may be processed individually under each of the application procedures identified in ECDC 20.01.003. The applicant may determine whether the application will be processed collectively or individually. If the applications are processed individually, the highest numbered type procedure shall be

undertaken first, followed by the other procedures in sequence from the highest numbered to the lowest.

C. Decisionmaker(s). Applications processed in accordance with subsection B of this section which have the same procedure number, but are assigned to different hearing bodies, shall be heard collectively by the highest decisionmaker; the city council being the highest body, followed by the hearing examiner, Architectural Design Board or Planning Board, as applicable, and then the director. Joint public hearings with other agencies shall be processed according to ECDC 20.06.001. Concurrent public hearings held with the Architectural Design Board and any other decisionmaker shall proceed with both decisionmakers present.

20.01.003 Permit Type and Decision Framework.

A. Permit Types.

TYPE I	TYPE II	TYPE III-A	TYPE III-B	TYPE IV-A	TYPE IV-B	TYPE V
Zoning Compliance Letter	Accessory Dwelling Unit	Outdoor Dining	Essential Public Facilities	Final formal plats	Site specific rezone	Development agreements
Lot Line Adjustment	Formal interpretation of the text of the ECDC by the Director	Technological impracticality waiver for amateur radio antennas	Design review (where public hearing by Architectural Design Board is required)	Final Planned Residential Development		Zoning text amendments; area-wide zoning map amendments
Critical Area Determinations	SEPA determinations		Shoreline substantial development, shoreline conditional use, shoreline variance			Comprehensive plan amendments
Shoreline Exemptions	Preliminary short plat		Conditional use permits (where public hearing by Hearing Examiner is required)			Annexations
Minor Amendments to Planned	Land clearing/Grading		Variances			Development regulations

Residential Development						
Minor Preliminary Plat Amendment	Revisions to shoreline management permits		Home Occupation Permit (where public hearing by Hearing Examiner is required.)			
Staff design review, including signs	Administrative variances		Preliminary formal plat			
Final Short Plat	Land Use Permit Extension Requests		Preliminary Planned Residential Development			
Sales Office/Model (17.70.005)	Guest House					

B. Decision Table.

PROCEDURE FOR DEVELOPMENT PROJECT PERMIT APPLICATIONS (TYPE I – IV)							LEGISLATIVE
	TYPE I	TYPE II	TYPE III-A	TYPE III-B	TYPE IV-A	TYPE IV-B	TYPE V
Recommendation by:	N/A	N/A	N/A	N/A	N/A	Planning Board	Planning Board
Final decision by:	Director	Director	Hearing examiner	Hearing examiner / ADB	City council	City council	City council
Notice of application:	No	Yes	Yes	Yes	Yes	Yes	No
Open record public hearing or open record appeal of a final decision:	No	Only if appealed, open record hearing before hearing examiner	Yes, before hearing examiner to render final decision	Yes, before hearing examiner or board to render final decision	No	Yes, before Planning Board which makes recommendation to council	Yes, before Planning Board which makes recommendation to council or council could hold its own hearing
Closed record review:	No	No	No	Yes, before	No	Yes, before	

				the council		the council	
Judicial appeal:	Yes	Yes	Yes	Yes	Yes	Yes	Yes

20.01.006 Legislative enactments not restricted.

Nothing in this chapter or the permit processing procedures shall limit the authority of the city council to make changes to the city's comprehensive plan, or the city's development regulations as part of the annual revision process.

20.01.007 Exempt projects.

A. The following projects are specifically excluded from the procedures set forth in this Chapter: historic register designations, building permits, street vacations, street use permits, encroachment permits, and other public works permits issued under Title 18.

B. Pursuant RCW 36.70B.140(2), lot line or boundary adjustments, building and/or other construction permits, or similar administrative approvals categorically exempt from environmental review under SEPA (Chapter 43.21C RCW and the city's SEPA/environmental policy ordinance, Chapter 20.15A ECDC), or permits/approvals for which environmental review has been completed in connection with other project permits, are excluded from the requirements of RCW 36.70B.060 and 36.70B.110 through 36.70B.130, which includes the following procedures:

1. Notice of application (ECDC 20.03.002) unless an open record hearing is allowed on the permit decision;
2. Except as provided in RCW 36.70B.140, optional consolidated permit review processing (ECDC 20.01.002(B));
3. Joint public hearings (ECDC 20.06.001);
4. Single report stating all of the decisions and recommendations made as of the date of the report that do not require an open public record hearing (ECDC 20.06.002(C)); and
5. Notice of decision (ECDC 20.06.009).

Section 2. The Edmonds Community Development Code, Title 20, Chapter 20.02 Type I to IV Development Project Permit Applications is hereby amended to read as follows:

Chapter 20.02
DEVELOPMENT PROJECT PERMIT APPLICATIONS

Sections:

- 20.02.001 Optional preapplication conference.**
- 20.02.002 Permit application requirements.**
- 20.02.003 Submission and acceptance of application.**
- 20.02.005 Referral and review of permit applications.**

20.02.001 Optional preapplication conference.

A. Prior to filing applications for Type II actions requiring a preliminary plat and Type III and IV actions, applicants are encouraged to participate in a preapplication conference. Preapplication meetings with staff provide an opportunity to discuss the proposal in general terms, identify the applicable City requirements and the project review process including the permits required by the action, timing of the permits and the approval process. Plans presented at the preapplication meeting are nonbinding and do not “vest” an application.

B. The conference shall be held within 28 days of the request, upon payment of applicable fee(s) as set forth in the city’s adopted fee resolution.

C. The Development Services Director or his/her designee (hereinafter the “director”) shall provide the applicant with the following during the conference:

1. A form which lists the requirements for a completed application;
2. A general summary of the procedures to be used to process the application;
3. The references to the relevant code provisions or development standards which may apply to approval of the application; and
4. The city’s design guidelines.

D. Neither the discussions at the conference nor the information on the form provided by the director to the applicant under ECDC 20.02.001(C) shall bind the city in any manner or prevent the city's future application or enforcement of all applicable codes, ordinances and regulations.

E. Requests for preapplication conferences for all other types of applications will be considered on a time-available basis by the director.

20.02.002 Permit application requirements.

An application shall consist of all materials required by the applicable development regulations and shall include the following general information:

- A. A completed land use application form;
- B. A verified statement by the applicant that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all owners of the affected property;
- C. A property and/or legal description of the site for all applications, as required by the applicable development regulations;
- D. The applicable fee; and
- E. Cover letter describing how the proposal satisfies the applicable standards, requirements and criteria in the development regulations.

20.02.003 Submission and acceptance of application.

A. Determination of Completeness. Within 28 days after receiving an application, the director shall mail or personally deliver to the applicant a determination which states that either:

- 1. The application is complete; or
- 2. The application is incomplete and what is necessary to make the application complete.

B. Identification of Other Agencies with Jurisdiction. To the extent known by the city, other agencies with jurisdiction over the project shall be identified in the determination of completeness.

C. Additional Information. An application is complete for the purposes of this section when it meets the submission requirements of ECDC 20.02.002 and the submission requirements of the applicable development regulations. The determination of completeness shall be made when the application is sufficiently complete for review, even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the director's ability to request additional information or studies whenever new information is required, or when substantial changes are made to the proposed project.

D. Incomplete Applications.

1. Whenever the applicant receives a determination from the city pursuant to ECDC 20.02.003(A)(2) that the application is incomplete, the applicant shall have 90 days to submit the necessary information. Within 14 days after an applicant has submitted the requested additional information, the director shall make a determination of completeness and notify the applicant in the manner provided in subsection A of this section.

2. Whenever the applicant receives a notice that the contents of the application, which had been previously determined under ECDC 20.02.003(A)(1) to be complete, is insufficient, ambiguous, undecipherable, or otherwise unresponsive of the information being sought, the applicant shall have 90 days to submit the necessary information. If circumstances warrant, the applicant may apply in writing to the director requesting a one-time 90-day extension. The extension request must be received by the City prior to the end of the initial 90-day compliance period.

3. If the applicant does not submit the additional information requested within the 90-day period (or within the 90-day extension period, as applicable), the director shall make findings and issue a decision, according to the Type I procedure, that the application has lapsed for lack of information necessary to complete the review. The decision shall state that no further action will be taken on the application, and that if the applicant does not make arrangements to pick up the application materials from the planning and/or public works/engineering departments within 30 days from the date of the decision, the application materials will be destroyed.

4. When the director determines that an application has lapsed because the applicant has failed to submit required information within the necessary time period, the applicant may request a refund of the application fee remaining after the city's determination of completeness.

E. Director's Failure to Provide Determination of Completeness. An application shall be deemed complete under this section if the director does not provide a written determination to the applicant that the application is incomplete as provided in subsection A of this section.

F Date of Acceptance of Application. Permit applications shall not be officially accepted until complete. When an application is determined to be complete, the director shall note the date of acceptance for continued processing.

G. After acceptance, the city shall begin processing the application. Under no circumstances shall the city place any application on "hold" to be processed at some later date, even if the request for the "hold" is made by the applicant, and regardless of the requested length of the "holding" period. This subsection does not apply to applications placed on "hold" upon determination by the city that additional information is required in order to make a decision.

20.02.005 Referral and review of development project permit applications.

Within 10 days of accepting an application, the director shall transmit a copy of the application, or appropriate parts of the application, to each affected government agency and city department for review and comment, including those responsible for determining compliance with state and federal requirements.

Section 3. The Edmonds Community Development Code, Title 20, Chapter

20.03 Public Notice is hereby amended to read as follows:

Chapter 20.03

PUBLIC NOTICE REQUIREMENTS

Sections:

- 20.03.002 Notice of application.**
- 20.03.003 Notice of public hearing.**
- 20.03.004 State Environmental Policy Act (SEPA) notice.**
- 20.03.005 Shoreline Management Plan (SMP) notice.**
- 20.03.006 Optional public notice.**

20.03.002 Notice of application.

A. Generally. A notice of application shall be provided by the director to the public, all city departments and agencies with jurisdiction of all Type II, III and IV development project permit applications in accordance with Chapter 20.03 ECDC. The notice of application for these permits shall also be provided to the public by posting, publishing and mailing.

B. Issuance of Notice of Application.

1. A notice of application shall be issued within 14 days after the city has made a determination of completeness pursuant to ECDC 20.02.003.

2. If any open record predecision hearing is required for the requested development project permit(s), the notice of application shall be provided at least 14 days prior to the open record hearing.

C. Contents. The notice of application shall include the following information in a format determined by the director:

1. The date of submission of the initial application, the date of the notice of completion and acceptance of the application, and the date of the notice of application;

2. A description of the proposed project and a list of the development project permits requested in the application and, if applicable, a list of any studies requested under Chapter 36.70B RCW;

3. A description of other required permits not included in the application, to the extent known by the city at that time;

4. A description of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;

5. A statement setting forth: (a) the time for the public comment period, which shall be not less than 14 days following the date of notice of application; (b) the right of any person to comment on the application, receive notice of and participate in any hearings, and request a copy of the decision on the application; and (c) any appeal rights;

6. The date, time, place and type of hearing, if a hearing has been scheduled when the date of notice of application is issued;

7. Any other information determined appropriate by the director such as the director's threshold determination, if complete at the time of issuance of the notice of application.

D. Mailed Notice. Notice of application shall be mailed to:

1. The owners of the property involved if different from applicant; and

2. The owners of real property within 300 feet of the boundaries of the property(ies) involved in the application. Addresses for a mailed notice required by this code shall be obtained from the applicable county's real property tax records. The adjacent property owners list must be current to within six (6) months of the date of initial application.

3. Type III Preliminary Plat Actions. In addition to the above, requirements for mailed notice of filing for preliminary plats and proposed subdivisions shall also include the following:

a. Notice of the filing of a preliminary plat adjacent to or within one mile of the municipal boundaries of any city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities;

b. Notice of the filing of a preliminary plat of a proposed subdivision adjoining the boundaries of Snohomish County shall be given to the appropriate county officials;

c. Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway shall be given to the secretary of transportation;

4. For a plat alteration or a plat vacation, notice shall be as provided in RCW 58.17.080 and 58.17.090.

All mailed public notices shall be deemed to have been received on the next business day following the day that the notice is deposited in the mail.

E. Published Notice. Notice of application shall be published in the city's official newspaper (The Everett Herald, as identified

in ECDC 1.03). The format shall be determined by the director and the notice must contain the information listed in ECDC 20.03.002.C.

F. Posting. Posting of the property for site specific proposals shall consist of one or more notice boards as follows:

1. A single notice board shall be placed:
 - a. At the midpoint of the street fronting the site or as otherwise directed by the director for maximum visibility;
 - b. Five feet inside the street property line, except when the board is structurally attached to an existing building; provided, that no notice board shall be placed more than five feet from the street without approval of the director;
 - c. So that the bottom of the notice board is between two and four feet above grade; and
 - d. Where it is completely visible to pedestrians.
 - e. The size of the notice board shall be determined by the director.
2. Additional notice boards may be required when:
 - a. The site does not abut a public road;
 - b. A large site abuts more than one public road; or
 - c. The director determines that additional notice boards are necessary to provide adequate public notice.
3. Notice boards shall be:
 - a. Maintained in good condition during the notice period;
 - b. In place at least 14 days prior to the date of any hearing, and at least 14 days prior to the end of any required comment period;
 - c. Removed within 30 days of the date of the project decision, unless the decision is appealed. If the project decision is

appealed, the sign must be removed 30 after the appeal decision is issued.

4. Removal of the notice board prior to the end of the notice period shall be cause for discontinuance of the department review until the notice board is replaced and remains in place for the specified time period.

G. Public Comment on the Notice of Application. All public comments in response to the notice of application must be received by the city's development services department by 4:30 PM on the last day of the comment period. Comments in response to the notice of application received after the comment period has expired will not be accepted no matter when they were mailed or postmarked. Comments shall be mailed or personally delivered. Comments should be as specific as possible.

20.03.003 Notice of public hearing.

A. A notice of public hearing shall be provided by the City for Type III or Type IV actions, as well as appeals of Type II actions, by mailing, posting and publishing.

B. Content of Notice of Public Hearing for All Applications. The notice of a public hearing required by this chapter shall contain:

1. The name and address of the applicant and the applicant's representative;

2. A description of the subject property reasonably sufficient to inform the public of its location, including but not limited to a vicinity location or written description, a map or postal address, and a subdivision lot and block designation (complete legal description not required);

3. The date, time and place of the hearing;

4. The nature of the proposed use or development;

5. A statement that all interested persons may appear and provide testimony;

6. The sections of the code that are pertinent to the hearing procedure;

7. A statement explaining when information may be examined, and when and how written comments addressing findings required for a decision by the hearing body may be admitted;

8. The name of a city representative to contact and the telephone number where additional information may be obtained;

9. A statement that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost and that copies will be provided at the requestor's cost; and

10. A statement explaining that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and that copies will be provided at the requestor's cost.

C. Mailed Notice. Mailed notice of the public hearing shall be provided as follows:

1. The notice of the public hearing shall be mailed to:

a. The applicant;

b. The owner of the subject property, if different from applicant;

c. All owners of real property, as shown by the records of the county assessor, within 300 feet of the boundaries of the property(ies) involved in the application; and

d. Any person who submits a public comments on an application;

2. Type III Preliminary Plat Actions. In addition to the above, requirements for mailed notice of public hearing for preliminary plats and proposed subdivisions shall also include the following:

a. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, notice under RCW 58.17.090(1)(b) shall be given to owners of real property located with 300 feet from any portion of the boundaries of the adjacent parcels owned by the owner of the real property to be subdivided.

3. For a plat alteration or a plat vacation, notice shall be as provided in RCW 58.17.080 and 58.17.090.

4. Procedure for Mailed Notice of Public Hearing.

a. The records of the Snohomish County assessor's office shall be used for determining the property owner of record. Addresses for a mailed notice required by this code shall be obtained from the applicable county's real property tax records.

b. All mailed public notices shall be deemed to have been received on the next business day following the day that the notice is deposited in the mail.

D. Procedure for Posted or Published Notice of Public Hearing.

1. Posted notice of the public hearing shall comply with requirements set forth in ECDC 20.03.002.F.

2. Notice of public hearing shall be published in the city's official newspaper (The Everett Herald, as identified in Chapter 1.03 ECC). The format shall be determined by the director and the notice must contain the information listed in ECDC 20.03.003.B.

E. Time of Notice of Public Hearing.

1. Notice shall be mailed, posted and first published not less than 14 or more than 30 days prior to the hearing date.

20.03.004 State Environmental Policy Act (SEPA) notice.

A. Whenever possible, the city shall integrate the public notice required under this subsection with existing notice procedures for the City's nonexempt permits(s) or approvals(s) required for the proposal.

B. Whenever the City issues a determination of nonsignificance (DNS) under WAC 197-11-340(2) or a determination of significance (DS) under WAC 197-11-360(3) the City shall give public notice as follows:

1. If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.

2. If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application in RCW 36.70B.110(4) will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).

3. If no public notice is otherwise required for the permit or approval, the City shall give notice of the DNS or DS by:

a. Posting the property, for site specific proposals;

b. Mailed to real property owners as shown by the records of the county assessor within 300 feet of the boundary of the property, for site specific proposals; and

c. Publishing notice in the City's official newspaper (or if one has not been designated, in a newspaper of general circulation within the City).

4. Whenever the City issues a DS under WAC 197-11-360(3), the City shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

C. If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in RCW 36.70B.110(4) as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1)(b).

D. Whenever the City issues a draft environmental impact statement (DEIS) under WAC 197-11-455(5) or a supplemental environmental impact statement (SEIS) under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. Indicating the availability of the DEIS in any public notice required for a nonexempt license;

2. Posting the property, for site specific proposals;

3. Mailed to real property owners as shown by the records of the county assessor within 300 feet of the boundary of the property, for site specific proposals; and

4. Publishing notice in the City's official newspaper (or if one has not been designated, in a newspaper of general circulation within the City).

E. Public notice for projects that qualify as planned actions shall be tied to underlying permit as specified in WAC 197-11-172(3).

F. The City may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

20.03.005 Shoreline Master Program (SMP) notice.

A. Methods of Providing SMP Notice. Notice of the application of a permit under the purview of the city's shoreline master program shall be given by one or more of the following methods:

1. Mailing of the notice to real property owners as shown by the records of the county assessor within 300 feet of the boundary of the property upon which the proposed project is to be built;

2. Posting of the notice in a conspicuous manner, as determined by the director, on the property upon which the project is to be constructed; or

3. Any other manner deemed appropriate by the director to accomplish the objectives of reasonable notice to adjacent landowners and the public.

B. Content of SMP Notice. SMP notices shall include:

1. A statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application, may submit comments, or requests for the decision, to the director within 30 days of the last date that notice is published pursuant to this subsection;

2. A statement that any person may submit oral or written comments at the hearing;

3. An explanation of the manner in which the public may obtain a copy of the city's decision on the application no later than two days after its issuance.

C. Public Comment Period. The public comment period shall be 30 days.

D. The director shall mail or otherwise deliver a copy of the decision to each person who submits comments or a written request for the decision.

20.03.006 Optional public notice.

The director, in his or her sole discretion, may:

A. Notify the public or private groups with known interest in a proposal or type of proposal;

B. Notify the news media;

C. Place notices in appropriate regional or neighborhood newspapers or trade journals;

D. Publish notice in agency newsletters or send notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; and

E. Mail notice to additional neighboring property owners.

Section 4. The Edmonds Community Development Code, Title 20, Chapter 20.04 Consistency With Development Regulations and SEPA is hereby amended to read as follows:

Chapter 20.04

**CONSISTENCY WITH
DEVELOPMENT REGULATIONS AND SEPA**

Sections:

20.04.001 Determination of consistency.

20.04.002 Initial SEPA analysis.

20.04.003 Categorically exempt and planned actions.

20.04.001 Determination of consistency.

A. Purpose. Consistency between a proposed development project permit application, applicable regulations and comprehensive plan shall be determined through the process described in this section.

B. Consistency. During application review, the Development Services Director or his/her designee (hereinafter the "director") shall determine whether the development regulations applicable to the proposed project, or in the absence of applicable development regulations, the city's comprehensive plan, address the following:

1. The type of land use permitted at the site, including uses that may be allowed if the criteria for their approval have been satisfied;
2. The level of development, such as units per acre, density of residential development in urban growth areas, or other measures of density;
3. Availability and adequacy of infrastructure and public facilities identified in the comprehensive plan; and
4. Whether the plan or development regulations provide for funding of these facilities as required by Chapter 36.70A RCW.

C. Project Review. Project review by the director and appropriate city staff shall identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, the payment of impact fees, or other measures to mitigate a proposal's probable significant adverse environmental impacts. During project review, neither the director nor any other city reviewing body may re-examine alternatives or hear appeals on decided matters which have already been found to be consistent with development regulations and/or the comprehensive plan, except for issues of code interpretation.

20.04.002 Initial SEPA analysis.

A. In addition to the land use consistency review, the director shall review the permit application for consistency with the State Environmental Policy Act ("SEPA"), Chapter 43.21C RCW, the SEPA Rules, Chapter 197-11 WAC, and the city environmental policy ordinance, Chapter 20.15A ECDC, and shall:

1. Determine whether applicable regulations require studies to adequately analyze all of the proposed project's specific probable adverse environmental impacts;

2. Determine whether applicable regulations require mitigation measures to adequately address identified environmental impacts; and

3. Provide prompt and coordinated review by other government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level.

B. In the review of a permit application, the director shall determine whether the requirements for environmental analysis, protection and mitigation measures in the applicable development regulations, comprehensive plan and/or in other applicable local, state or federal laws provide adequate analysis of, and mitigation for, the specific adverse environmental impacts of the proposal.

C. If the director bases or conditions his or her approval of the application on compliance with the requirements or mitigation measures described in subsection A of this section, the city shall not impose additional mitigation under SEPA during project review for the same adverse environmental impacts.

D. A comprehensive plan, development regulation or other applicable local, state or federal law provides adequate analysis of, and mitigation for, the specific adverse environmental impacts of a proposal when:

1. The impacts have been avoided or otherwise mitigated; or

2. The city has designated in the plan, regulation or law that certain levels of service, land use designations, development standards or other land use conditions allowed by Chapter 36.70A RCW are acceptable.

E. In deciding whether a specific adverse environmental impact has been addressed by an existing city plan or development regulation, or by the regulations or laws of another government agency, the director shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the director shall base or condition any project approval on compliance with these other regulations.

F. Nothing in this section limits the authority of the director in reviewing or mitigating the impacts of a proposed project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by Chapter 43.21C RCW.

G. The director shall also review the application under Chapter 20.15A ECDC, the city environmental policy ordinance; provided, that such review shall be coordinated with the underlying permit application review.

20.04.003 Categorically exempt and planned actions.

A. Categorically Exempt. Actions categorically exempt under RCW 43.21C.110(1)(a) do not require environmental review or the preparation of an environmental impact statement. An action that is categorically exempt under the rules adopted by the Department of Ecology (Chapter 197-11 WAC) may not be conditioned or denied under SEPA.

B. Planned Actions.

1. A planned action does not require a threshold determination or the preparation of an environmental impact statement under SEPA, but is subject to environmental review and mitigation under SEPA.

2. A “planned action” means one or more types of project action that:

a. Are designated planned actions by an ordinance or resolution adopted by the city;

b. Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with:

i. A comprehensive plan or subarea plan adopted under Chapter 36.70A RCW, or

ii. A fully contained community, a master planned resort, a master planned development or a phased project;

c. Are subsequent or implementing projects for the proposals listed in paragraph (2)(b) of this subsection;

d. Are located within an urban growth area, as defined in RCW 36.70A.030;

e. Are not essential public facilities, as defined in RCW 36.70A.200; and

f. Are consistent with the city's comprehensive plan adopted under Chapter 36.70A RCW.

C. Limitations on Planned Actions. The city shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the city, and may limit a planned action to a time period identified in the environmental impact statement or this title.

Section 5. The Edmonds Community Development Code Title 20, Chapter 20.06

Open Public Record Hearings is hereby amended to read as follows:

Chapter 20.06
OPEN RECORD PUBLIC HEARINGS

Sections:

- 20.06.000 General.**
- 20.06.001 Joint Public Hearings**
- 20.06.002 Responsibility of director for hearing.**
- 20.06.003 Conflict of interest.**
- 20.06.004 Ex parte communications.**
- 20.06.005 Disqualification.**
- 20.06.006 Burden and nature of proof.**
- 20.06.007 Order of proceedings.**
- 20.06.008 Decision.**
- 20.06.009 Notice of final decision.**
- 20.06.010 Reconsideration of decision.**

20.06.000 General.

A. An open record public hearing is a hearing conducted by an authorized body or officer that creates the city's record through testimony and submission of evidence and information. A public hearing may be held prior to the city's decision on a development project permit application; this is an "open record predecision hearing." A public hearing may be held on an appeal if no open record predecision hearing was held for the permit; this is an "open record appeal hearing."

B. Open record predecision hearings on all Type III and IV permit applications and open record appeal hearings on all Type II decision appeals shall be conducted in accordance with this chapter. Public hearings conducted by the city hearing examiner shall also be subject to the hearing examiner's rules.

C. Unless otherwise provided, appeals of Type II decisions shall be initiated as set forth in ECDC 20.07.004.

20.06.001 Joint public hearings.

A. Decision to Hold Joint Hearing. The Development Services Director or his/her designee (hereinafter the "director") may combine any public hearing on a project application with any hearing that may be held by another local, state, regional, federal, or other agency, on the proposed action, as long as the requirements of subsection C of this section are met.

B. Applicant's Request for a Joint Hearing. The applicant may request that the public hearing on a permit application be combined as long as the joint hearing can be held within the time periods set forth in this chapter. In the alternative, the applicant may agree to a particular schedule if additional time is needed in order to complete the hearings.

C. Prerequisites to Joint Public Hearing. A joint public hearing may be held with another local, state, regional, federal or other agency and the city, when:

1. The other agency is not expressly prohibited by statute from doing so;
2. Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statutes, ordinances, or rules;
3. The agency has received the necessary information about the proposed project from the applicant in enough time to hold its hearing at the same time as the city hearing; or
4. The hearing is held within the geographic boundary of the city.

20.06.002 Responsibility of director for hearing.

The director shall:

- A. Schedule project applications for review and public hearing;
- B. Verify compliance with notice requirements;
- C. Prepare the staff report on the application, which shall be a single report which sets forth all of the decisions made on the proposal as of the date of the report, including recommendations on project permits in the consolidated permit process that do not require an open record predecision hearing. The report shall also describe any mitigation required or proposed under the city's development regulations or SEPA authority. If the threshold determination, other than a determination of significance, has not been issued previously by the city, the report shall include or append this determination.
- D. Prepare the notice of decision, if required by the hearing body, and mail a copy of the notice of decision to those entitled by this chapter to receive the decision.

20.06.003 Conflict of interest.

The hearing body shall be subject to the code of ethics, prohibitions on conflict of interest and appearance of fairness doctrine as set forth in Chapter 42.23 RCW, and Chapter 42.36 RCW as the same now exists or may hereafter be amended.

20.06.004 Ex parte communications.

A. No member of the hearing body may communicate, directly or indirectly, regarding any issue in a proceeding before him or her, other than to participate in communications regarding procedural aspects necessary for maintaining an orderly process, unless he or she provides notice and opportunity for all parties to participate. Nothing herein shall prevent the hearing body from seeking legal advice from its legal counsel on any issue.

B. If, before serving as the hearing body in a quasi-judicial proceeding, any member of the hearing body receives an ex parte communication of a type that could not properly be received while serving, the member of the hearing body, promptly after starting to serve, shall disclose the communication as described in ECDC 20.06.004(C).

C. If a member of the hearing body receives an ex parte communication in violation of this section, he or she shall place in the record:

1. All written communications received;
2. All written responses to the communications;
3. The substance of all oral communications received, and all responses made; and
4. The identity of each person from whom the member received any ex parte communication.

The hearing body shall advise all parties that these matters have been placed on the record. Upon request made after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a rebuttal statement on the record.

20.06.005 Disqualification.

A. Any member who is disqualified shall make full disclosure to the audience of the reason(s) for the disqualification, abstain from voting on the proposal, and physically leave the hearing.

B. If enough members of the hearing body are disqualified so that a quorum cannot be achieved, then all members present, after stating their reasons for disqualification, shall be prequalified and deliberations shall proceed.

20.06.006 Burden and nature of proof.

A. Except for Type V actions, appeal of Type II actions and closed record appeals, the burden of proof is on the proponent. The development project permit application must be supported by convincing proof that it conforms to the applicable elements of the city's development regulations and comprehensive plan (review criteria). The proponent must also prove that any significant adverse environmental impacts have been adequately mitigated.

B. In an appeal of Type II actions or closed record appeal, the appellant has the burden of proof with respect to points raised on appeal.

C. In a closed record appeal of the Architectural Design Board, its decision shall be given substantial deference regarding decision review within its expertise and contained in its decisions.

20.06.007 Order of proceedings.

The order of proceedings for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures as appropriate.

A. Before receiving testimony and other evidence on the issue, the following shall be determined:

1. Any objections on jurisdictional grounds shall be noted on the record and if there is objection, the hearing body may proceed or terminate the proceeding;

2. Any member disqualifications shall be determined.

B. The presiding officer may take official notice of commonly known and accepted information, such as:

1. Ordinances, resolutions, rules, officially adopted development standards, and state law;

2. Public records and facts judicially noticeable by law.

C. Information officially noticed need not be proved by submission of formal evidence to be considered by the hearing body. Parties requesting official notice of any information shall do so on the record. The hearing body, however, may take notice of matters listed in subsection B of this section at any time. Any information given official notice may be rebutted.

D. The hearing body may view the proposed project site or planning area with or without notification to the parties, but shall put into the record a statement setting forth the time, manner and circumstances of the site visit.

E. Information shall be received from the staff and from proponents and opponents. The presiding officer may, in his or her discretion, permit persons attending the hearing to ask questions. Unless the presiding officer specifies otherwise, approved questions will be asked of persons submitting testimony by the presiding officer.

F. When the presiding officer has closed the public comment portion of the hearing, the hearing body may openly discuss the issue and may further question the staff or any person submitting information. An opportunity to present rebuttal shall be provided if new information is presented in the questioning. When all evidence

has been presented and all questioning and rebuttal completed, the presiding officer shall officially close the record and end the hearing.

20.06.008 Decision.

A. Following the hearing procedure described in ECDC 20.06.007, the hearing body shall approve, conditionally approve, or deny the application. If the hearing is an appeal, the hearing body shall affirm, reverse or, with the written consent of the applicant, which shall include a waiver of the statutory prohibition against two open record hearings, remand the decision for additional information.

B. The hearing body's written decision shall be issued within 10 working days after the close of record of the hearing and within 90 days of the opening of the hearing, unless a longer period is agreed to by the parties.

C. The city shall provide a notice of decision as provided in ECDC 20.06.009.

D. If the city is unable to issue its final decision on an application within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of decision.

20.06.009 Notice of final decision.

A. The director shall issue a notice of final decision within 120 days of the issuance of the determination of completeness pursuant to ECDC 20.02.003; provided, that the time period for issuance of a notice of final decision on a preliminary plat shall be 90 days, for a final plat 30 days, and a final short plat 30 days. The notice shall include the SEPA threshold determination for the proposal and a description of any available administrative appeals. For Type II, III and IV permits, the notice shall contain the requirements set forth in ECDC 20.06.002(C) and explain that affected property owners may request a change in property tax valuation notwithstanding any program of revaluation.

1. The notice of final decision shall be mailed or otherwise delivered to the applicant, to any person who submitted comments on the application or requested a copy of the decision, and to the Snohomish County assessor.

2. Notice of the decision shall be provided to the public by any means deemed reasonable by the director.

B. In calculating the 120-day period for issuance of the notice of final decision, or other decision period specified in 20.06.009(A) ECDC, the following periods shall be excluded:

1. Any period during which the applicant has been requested by the director to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the director notifies the applicant of the need for additional information until the earlier of the dates the director determines that the additional information provided satisfies the request for information, or 14 days after the date the additional information is provided to the city;

2. If the director determines that the information submitted is insufficient, the applicant shall be informed of the deficiencies and the procedures set forth in subsection (B)(1) of this section for calculating the exclusion period shall apply;

3. Any period during which an environmental impact statement (EIS) is being prepared pursuant to Chapter 43.21C RCW and Chapter 20.15A ECDC. The time period for preparation of an EIS shall be governed by Chapter 20.15A ECDC;

4. Any period for consideration and issuance of a decision for administrative appeals of development project permits, which shall be not more than 90 days for open record appeals and 60 days for closed record appeals, unless a longer period is agreed to by the director and the applicant;

5. Any extension of time mutually agreed to by the director and the applicant in writing.

C. The time limits established in this title do not apply if a permit application:

1. Requires an amendment to the comprehensive plan or a development regulation;

2. Requires siting approval of an essential public facility as provided in RCW 36.70A.200; or

3. Is substantially revised by the applicant, in which case the time period shall start from the date that a determination of completeness for the revised application is issued by the director pursuant to ECDC 20.02.003 and RCW 36.70B.070.

20.06.010 Reconsideration of decision.

A. General. Any person identified in ECDC 20.07.003 as having standing to file an administrative appeal may request reconsideration of a decision of the hearing examiner which issues immediately after the open record public hearing on a permit application described in this chapter. (There shall be no reconsideration of a decision of the director (staff), ADB or city council.) Reconsideration is not a condition precedent to any appeal. Reconsideration shall be limited to:

1. error(s) of procedure;
2. error(s) of law or fact;
3. error(s) of judgment; and/or
4. the discovery of new evidence that was not known and could not in the exercise of reasonable diligence, been discovered.

B. Time to File. A request for reconsideration, including reconsideration fee, must be filed with the director within 10 calendar days of the hearing examiner's written decision. Such requests shall be delivered to the director before 4:00 p.m. on the last business day of the reconsideration period. Requests for reconsideration that are received by mail after 4:00 p.m. on the last day of this reconsideration period will not be accepted, no matter when such requests were sent, mailed or postmarked.

C. Computation of Time. For the purposes of computing the time for filing a request for reconsideration, the day the hearing examiner's decision is issued shall not be counted. If the last day of the reconsideration is a Saturday, Sunday, or holiday designated by RCW 1.16.050, or by a city ordinance, then the reconsideration may be filed on the next business day.

D. Content of Request for Reconsideration. Requests for reconsideration shall be in writing, be accompanied by the required reconsideration fee, and contain the following information:

1. The name, address and phone number of the requestor;
2. Identification of the application and final decision which is the subject of the request for reconsideration;

3. Requestor's statement of grounds for reconsideration and the facts upon which the request is based;

4. The specific relief requested;

5. A statement that the requestor believes the contents of the request to be true, followed by his/her signature.

6. All written submittals should be typed on letter size paper (8.5 x 11), with one inch margins, using readable font type (such as Times New Roman) and size (no smaller than 12), single sided.

E. Effect. The timely filing of a request for reconsideration shall stay the hearing examiner's decision until such time as the hearing examiner issues a decision on reconsideration.

F. Notice of Request for Reconsideration. The director shall provide mailed notice that a request for reconsideration has been filed to all parties of record as defined in ECDC 20.07.003.

G. Hearing Examiner's Action on Request. The hearing examiner shall consider the request for reconsideration without a hearing, but may solicit written arguments from parties of record. A decision on the request for reconsideration shall be issued within 10 business days after receipt of the request for reconsideration by the city.

1. The time period for appeal shall recommence and be the same for all parties of record, regardless of whether a party filed a motion for reconsideration.

2. Only one request for reconsideration may be made by a party of record. Any ground not stated in the initial motion is waived.

3. A decision on reconsideration or a matter that is remanded to the hearing examiner by the City Council is not subject to a motion for reconsideration.

H. Limitations on Hearing Examiner's Reconsideration. The hearing examiner shall consider the request for reconsideration based on the administrative record compiled on the application up to and including the date of the hearing examiner's decision. The hearing examiner may require or permit corrections of ministerial errors or inadvertent omissions in the preparation of the record and the hearing examiner's decision. The reconsideration decision

issued by the hearing examiner may modify, affirm or reverse the hearing examiner's decision.

I. Notice of Final Decision on Reconsideration. The director shall issue a notice of final decision on reconsideration in the manner set forth and to the persons identified in ECDC 20.06.009.

J. Further Appeals. If no administrative appeal is allowed of the hearing examiner's decision, and a request for reconsideration was timely filed, then any judicial appeal must be filed within 21 days after issuance of the decision on reconsideration, as provided in Chapter 36.70C RCW.

Section 6. The Edmonds Community Development Code, Title 20, Chapter 20.07 Closed Record Appeals is hereby amended to read as follows:

**Chapter 20.07
CLOSED RECORD APPEALS**

Sections:

- 20.07.001 Appeals of decisions.**
- 20.07.002 Consolidated appeals.**
- 20.07.003 Standing to initiate an administrative appeal.**
- 20.07.004 Appeals of recommendations and decisions.**
- 20.07.005 Procedure for closed record decision/appeal.**
- 20.07.006 Judicial appeals.**
- 20.07.007 Resubmission of application.**

20.07.001 Appeals of decisions.

A. "Closed record appeal" means an administrative appeal on the record to the city council, following an open record public hearing on a development project permit application when the appeal is on the record with no new evidence or information allowed to be submitted, except as provided in ECDC 20.07.005(B), and only appeal argument allowed.

B. The right of appeal for all permit applications and Type V land use decisions shall be as described in the matrix set forth in ECDC 20.01.003.

20.07.002 Consolidated appeals.

All appeals of development project permit application decisions, other than appeals of determinations of significance ("DS"), and exempt permits and approvals under ECDC 20.01.007, shall be

considered together in a consolidated appeal using the appeal procedure for the highest type permit application.

20.07.003 Standing to initiate an administrative appeal.

A. Limited to Parties of Record. Only parties of record may file an administrative appeal.

B. Definition. The term “parties of record,” for the purposes of this chapter, shall mean:

1. The applicant;
2. Any person who testified at the open record public hearing on the application;
3. Any person who individually submits written comments concerning the application at the open record public hearing (or to staff if an appeal of a Type II decision). Persons who have only signed petitions are not parties of record; and/or
4. The city of Edmonds.

20.07.004 Appeals of recommendations and decisions.

Permit Decisions or Recommendations. Appeals of a hearing body’s recommendation or decision on a permit application shall be governed by the following:

A. Standing. Only parties of record have standing to appeal the hearing body’s decision.

B. Time to File. An appeal must be filed within 14 days after the issuance of the hearing body’s written decision. The appeal period shall be extended for an additional seven days, if state or local rules adopted pursuant to chapter 43.21C RCW allow public comment on a determination of nonsignificance issued as part of the appealable project permit decision. Appeals, including fees, must be received by the city’s development services department by mail or by personal delivery at or before 4:00 PM on the last business day of the appeal period. Appeals received by mail after 4:00 PM on the last day of the appeal period will not be accepted, no matter when such appeals were mailed or postmarked.

C. Computation of Time. For the purposes of computing the time for filing an appeal, the day the hearing body’s decision is issued shall not be counted. If the last day of the appeal is a

Saturday, Sunday, legal holiday designated by RCW 1.16.050 or by a city ordinance, or any day when city hall or the City's Development Services Department is closed to the public by formal executive or legislative action, then the appeal may be filed on the next day that is not a Saturday, Sunday, holiday or closed day.

D. Content of Appeal. Appeals shall be in writing, be accompanied by the required appeal fee as set forth in the city's adopted fee resolution, and contain the following information:

1. Appellant's name, address and phone number;
2. A statement describing appellant's standing to appeal;
3. Identification of the application which is the subject of the appeal;
4. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
5. The specific relief sought;
6. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.
7. All written submittals should be typed on letter size paper (8.5 x 11), with one inch margins, using readable font type (such as Times New Roman) and size (no smaller than 12), single sided.

E. Effect. The timely filing of an appeal shall stay the hearing body's decision until such time as the appeal is concluded or withdrawn.

F. Notice of Appeal. The Development Services Director (hereinafter the "director") shall provide mailed notice of the appeal to all parties of record as defined in ECDC 20.07.003.

20.07.005 Procedure for closed record decision/appeal.

A. Closed record appeals shall be based on the record established at the open record hearing before the hearing body/officer whose decision is appealed, which shall include the written decision of the hearing body/officer, copies of any exhibits

admitted into the record, and official transcript, minutes or tape recording of the proceedings.

1. At his/her own expense, a party to the appeal may have the official tape recording of the open record hearing transcribed; however, to be admitted into the record, the transcription must be performed and certified by a transcriber that is pre-approved by the City. In addition, the certified transcription must be received by the City directly from the transcriber at least 16 working days before the date scheduled for the closed record review. It shall be each party of record's responsibility to obtain a copy of the transcription from the City.

2. The director shall maintain a list of pre-approved transcribers that are court approved; and if needed, shall coordinate with parties to the appeal so that no more than one official transcription is admitted into the record.

B. No new testimony or other evidence will be accepted by the city council except: (1) new information required to rebut the substance of any written or oral ex parte communication provided during an appearance of fairness disclosure; and (2) relevant information that, in the opinion of the city council, was improperly excluded by the hearing body/officer.

1. Appellants who believe that information was improperly excluded must specifically request in writing within 5 working days of the appeal deadline that the information be made part of the record. The request shall be addressed to the city council president, describing the information excluded, its relevance to the issues appealed, the reason(s) that the information was excluded by the hearing body/officer, and the reason why the hearing body/officer erred in excluding the information.

2. In determining whether the information should be admitted, the city council president may request other parties of record to submit written arguments rebutting the above. Non response by the city council president within 5 working days of the initial request that the information be made part of the record shall constitute a rejection of the same.

C. Parties to the appeal may present written arguments to the city council. Arguments shall describe the particular errors committed by the decision maker, with specific references to the administrative record. The appellant shall bear the burden to demonstrate that the decision is clearly erroneous given the record.

D. While not required, appellant may submit his or her written arguments 12 working days before the date scheduled for the closed record review. Parties of record, except for the appellant, may submit his or her written arguments or respond in writing to appellant's arguments no later than 7 working days before the closed record review. Appellant may rebut in writing to responses submitted by parties of record no later than 4 working days before the closed record review. If the applicant is not the appellant, applicant may submit a final surrebuttal in writing to appellant's rebuttal no later than 2 working days before the closed record review.

E. Written arguments, responses, rebuttal and surrebuttals must be received by the city's development services department by mail or personal delivery at or before 4:30 PM of the date due. Late submittals shall not be accepted. Submittals received by mail after 4:30 PM on the last day of the appeal period will not be accepted, no matter when such submittals were mailed or postmarked. It shall be the responsibility of the parties involved to obtain for their own use from the city copies of written arguments, responses, rebuttals and surrebuttals submitted.

F. All written submittals should be typed on letter size paper (8.5 x 11), with one inch margins, using readable font type (such as Times New Roman) and size (no smaller than 12), single sided, double spaced and without exceeding twelve pages in length, including exhibits, if any. Exhibits that are not already in the record shall not be allowed.

G. The review shall commence with the resolution of appearance of fairness issues, if any, followed by the opportunity for oral presentations by the director and other parties of records, including the appellant. After the presentations, the city council may ask clarifying questions on disputed issues to parties of record, with an opportunity for the director, appellant and/or applicant, respectively, to rebut to the response. The city council shall not request information outside the administrative record.

If information outside the administrative record is offered (in written submittals or oral presentation) by a party of record, it shall be the responsibility of other parties of record opposing the same to timely object and provide justification in support of the objection. Objections to information outside the administrative record shall be brought before the city council begins deliberations.

The party offering the information shall have the opportunity to show where in the record said information is contained.

H. The city council shall determine whether the decision by the hearing body/officer is clearly erroneous given the evidence in the record. The city council shall affirm, modify or reverse the decision of the hearing body/officer accordingly. Upon written agreement by the applicant to waive the requirement for a decision within the time periods set forth in RCW 36.70B.080, as allowed by RCW 36.70B.080(3), the city council may remand the decision with instructions to the hearing body for additional information.

I. Notice of Final Decision on Closed Record Appeal. The director shall issue a notice of final decision on closed record appeal in the manner set forth and to the persons identified in ECDC 20.06.009.

20.07.006 Judicial appeals.

The city's final decision on an application may be appealed by a party of record with standing to file a land use petition in Snohomish County superior court. Such petition must be filed within 21 days after issuance of the decision, as provided in Chapter 36.70C RCW.

20.07.007 Resubmission of application.

Any permit application or other request for approval submitted pursuant to this chapter that is denied shall not be resubmitted or accepted by the director for review for a period of 12 months from the date of the last action by the city on the application or request unless, in the opinion of the director, there has been a significant change in the application or a significant change in conditions related to the impacts of the proposed project.

Section 7. The Edmonds Community Development Code, Title 20, Chapter

20.08 Development Agreements is hereby amended to read as follows:

**Chapter 20.08
DEVELOPMENT AGREEMENTS**

Sections:

- | | |
|------------------|--|
| 20.08.010 | Authority. |
| 20.08.020 | General provisions of development agreements. |
| 20.08.030 | Enforceability. |

- 20.08.040 Approval procedure for development agreements.**
- 20.08.050 Form of agreement, council approval, recordation.**
- 20.08.060 Judicial appeal.**
- 20.08.010 Authority.**

A. The city may enter into a development agreement with a person having ownership or control of real property within the city limits. The city may also enter a development agreement for real property outside of the city limit but within the urban growth area (UGA) as part of a proposed annexation or a service agreement.

20.08.020 General provisions of development agreements.

A. A development agreement shall be consistent with the applicable policies and goals of the city of Edmonds comprehensive plan and applicable development regulations. 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;
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.

B. 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.

20.08.030 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.

20.08.040 Approval procedure for development agreements.

A development agreement is a Type V development project permit application and shall be processed in accordance with the procedures established in this title. A development agreement shall be approved by the Edmonds city council after a public hearing.

20.08.050 Form of agreement, council approval, recordation.

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

B. Term. Development agreements may be approved for a maximum period of five years.

C. Recordation. A development agreement shall be recorded against the real property records of the Snohomish County assessor's office. During the term of the development agreement, the agreement is binding on the parties and their successors, including any area that is annexed to the city.

20.08.060 Judicial appeal.

If the development agreement relates to a project permit application, the provision of Chapter 36.70C RCW shall apply to the appeal of the decision on the development agreement.

Section 8. Amended. 18.45.055, Notice., of the Edmonds Community

Development Code is hereby amended to read as follows:

18.45.055 Notice.

Notice to surrounding property owners shall be provided pursuant to ECDC 20.03.002, informing them of the application for a clearing permit.

Section 9. Amended. Subsection 19.10.040(A) of the Edmonds Community

Development Code is hereby amended to read as follows:

A. Notices of permit submittal application with the city shall be posted pursuant to ECDC 20.03.002. Such notices shall be conspicuously posted and maintained at each street frontage. Notice of permit issuance or denial shall be conspicuously posted as required above. Upon each posting a 10-day appeal period shall commence. Appeals shall be to the Snohomish County superior court in accordance with the Land Use Petition Act, and no other appeal shall be permitted.

Section 10. Amended. Subsection 20.12.020.(A) of the Edmonds Community

Development Code is hereby amended to read as follows:

A. Public Hearing – Phase 1. Phase 1 of the public hearing shall be scheduled with the architectural design board (ADB) as a public meeting. Notice of the meeting shall be provided according to the requirements of ECDC 20.03.003. This notice may be combined with the formal notice of application required under ECDC 20.03.002, as appropriate.

Section 11. Amended. 20.40.030, Notice., of the Edmonds Community

Development Code is hereby amended to read as follows:

20.40.030 Notice.

Notice of rezone hearings (and text change) before the planning board shall be the same as set forth for proposed amendments to the comprehensive plan in ECDC 20.00.020 for newspaper publication, and pursuant to ECDC 20.03.003.

Section 12. Amended. Subsection 20.75.065(B)(1) of the Edmonds Community Development Code is hereby amended to read as follows:

1. When the director of community services has accepted a subdivision for filing, he shall set a date of hearing, and give notice of the hearing as provided in ECDC 20.03.003, and by the following for a formal subdivision:

Section 13. Amended. Subsection 20.80.020(B) of the Edmonds Community Development Code is hereby amended to read as follows:

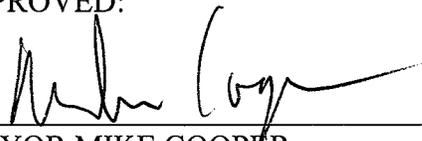
B. Notice. See ECDC 20.03.003.

Section 14. Amended. Subsection 20.80.020(C) of the Edmonds Community Development Code is hereby amended to read as follows:

C. When the city council, in its discretion, deems it appropriate to adopt pre-annexation zoning comparable to that in effect in Snohomish County for a proposed annexation area, the procedural and notice requirements of RCW 35A.14.340 shall control over the provisions of this chapter and Chapter 20.03 ECDC. In the event that the city council determines it appropriate to zone property proposed for annexation to the city in a category which is not comparable to zoning in effect in Snohomish County, the provisions of this chapter and Chapter 20.03 ECDC shall apply. Any change to pre-annexation zoning proposed after annexation to the city shall also comply with the provisions of this chapter and Chapter 20.03 ECDC.

Section 15. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:



MAYOR MIKE COOPER

ATTEST/AUTHENTICATED:

Sandra S. Chase
CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY W. Scott Snyder
W. SCOTT SNYDER

FILED WITH THE CITY CLERK:	11/12/2010
PASSED BY THE CITY COUNCIL:	11/16/2010
PUBLISHED:	11/21/2010
EFFECTIVE DATE:	11/26/2010
ORDINANCE NO. <u>3817</u>	

SUMMARY OF ORDINANCE NO. 3817

of the City of Edmonds, Washington

On the 16th day of November, 2010, the City Council of the City of Edmonds, passed Ordinance No. 3817. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE COMMUNITY DEVELOPMENT CODE BY REPEALING AND REENACTING CERTAIN PROVISIONS OF TITLE 20, TO WIT, CHAPTER 20.01 TYPES OF DEVELOPMENT PROJECT PERMITS; CHAPTER 20.02 TYPE I - IV, DEVELOPMENT PROJECT PERMIT APPLICATIONS, CHAPTER 20.03 PUBLIC NOTICE REQUIREMENTS; CHAPTER 20.04 CONSISTENCY WITH DEVELOPMENT REGULATIONS AND SEPA; CHAPTER 20.06 OPEN RECORD PUBLIC HEARINGS; CHAPTER 20.07 CLOSED RECORD APPEALS; AND CHAPTER 20.08 DEVELOPMENT AGREEMENTS ARE HEREBY AMENDED IN ORDER TO PROVIDE FOR THE REINSERTION OF THE CITY COUNCIL AS AN APPEAL BODY, MAKE TECHNICAL CORRECTIONS AND REVISE REFERENCES, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

DATED this 17th day of November, 2010.



CITY CLERK, SANDRA S. CHASE

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH

} S.S.



SUMMARY OF ORDINANCE NO. 3817
of the City of Edmonds, Washington

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The full text of this Ordinance will be mailed upon request.
DATED this 17th day of November, 2010.
CITY CLERK, SANDRA S. CHASE
Published: November 21, 2010.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

Summary of Ordinance NO. 3817

Amending the Community Development Code

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

November 21, 2010

and that said newspaper was regularly distributed to its subscribers during all of said period.

Jody Snohl

Principal Clerk

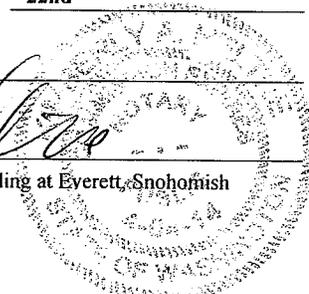
Subscribed and sworn to before me this

22nd

day of November, 2010

[Signature]

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.



RECEIVED

DEC 02 2010

EDMONDS CITY CLERK