PLANNING COMMISSION MEETING
TUESDAY, APRIL 8, 2025 – 6:30 PM
501 DELTA AVENUE
MARYSVILLE, WA 98270

AGENDA

The Planning Commission meeting is a hybrid meeting which you are welcome to attend in person or via Teams. Anyone wishing to provide verbal public comment is encouraged to pre-register by contacting the Staff Contact for the agenda item outlined above the day prior to the meeting. Those providing verbal public comment will need to provide their name, address, e-mail and phone number for the public record.

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CALL TO ORDER

1. ROLL CALL

2. APPROVAL OF MINUTES

2.1 Approval of March 25, 2025 Planning Commission meeting minutes
Suggested motion: I move to approve the March 25, 2025 Planning Commission meeting minutes.
March 25, 2025

3. AUDIENCE PARTICIPATION *(for topics not on the agenda)*

4. PUBLIC HEARING

5. OLD BUSINESS

5.1 Middle Housing, Accessory Dwelling Unit, and Unit Lot Subdivision Amendments - Batch 2
Discussion only. No action suggested at this time.
Middle Housing, Accessory Dwelling Unit and Unit Lot Subdivision Amendments - Batch 2

6. NEW BUSINESS

7. DIRECTOR'S COMMENTS

8. ADJOURNMENT

9. NEXT MEETING - April 22, 2025

CITY COUNCIL AGENDA ITEMS AND MINUTES

Special Accommodations: The City of Marysville strives to provide accessible meetings for people with disabilities. Please contact the City Clerk's office at (360) 363-8000 or 1-800-833-6384 (Voice Relay), 1-800-833-6388 (TDD Relay) two business days prior to the meeting date if any special accommodations are needed for this meeting.

AGENDA ITEM NO. 2.1

Agenda Bill

PLANNING COMMISSION AGENDA ITEM REPORT

DATE:	April 8, 2025
SUBMITTED BY:	Angela Gemmer, Community Development
ITEM TYPE:	Discussion Item
AGENDA SECTION:	**APPROVAL OF MINUTES**
SUBJECT:	Approval of March 25, 2025 Planning Commission meeting minutes
SUGGESTED ACTION:	Suggested motion: I move to approve the March 25, 2025 Planning Commission meeting minutes.
SUMMARY:	See attached minutes.

ATTACHMENTS:
March 25, 2025

Community Development

501 Delta Ave
Marysville, WA 98270

Planning Commission Meeting Minutes

March 25, 2025

CALL TO ORDER

Chair Leifer called the meeting to order at 6:30 p.m.

1) ROLL CALL

Present: Chair Stephen Leifer, Commissioner Gary Kemp, Commissioner Jerry Andes, Commissioner Shanon Jordan, Vice Chair Brandon Whitaker, Commissioner John Ray, Commissioner Raymond Miller

Staff: Community Development Director Haylie Miller, Principal Planner Angela Gemmer (via Zoom), Senior Planner Emily Morgan

2) APPROVAL OF MINUTES

2.1 Approval of March 11th Planning Commission meeting minutes

March 11, 2025 PC minutes

It was noted that the motion regarding tabling the garage sale discussion on page 2 should reflect that it was seconded by Commissioner Ray, not Commissioner Miller.

Motion to approve the March 11th Planning Commission meeting minutes as corrected moved by Commissioner Jerry Andes seconded by Commissioner Gary Kemp.
AYES: ALL

3) AUDIENCE PARTICIPATION

4) NEW BUSINESS

4.1 Volunteer for Community Development Block Grant (CDBG) Citizen Advisory Committee (CAC) Position

Director Miller reviewed this item. Commissioner Miller volunteered for the position.

5) PUBLIC HEARING

5.1 Forest Practice Applications Code Amendment

PC Hearing Memo with Draft Amendments

Senior Planner Emily Morgan presented this item. There were no comments or questions from commissioners.

The public hearing was opened at 6:35 p.m.

Russell Joe, Master Builders of King and Snohomish County, 335 116th Avenue SE, Bellevue, WA, spoke in support of this amendment. He believes it will help to lower the price of homes in Snohomish County and allow more families to buy homes.

The public hearing was closed at 6:39 p.m.

Motion to recommend approval of the Forest Practice Applications Code Amendments to City Council for adoption by Ordinance moved by Commissioner Gary Kemp seconded by Commissioner Raymond Miller.
AYES: ALL

6) OLD BUSINESS

6.1 Middle Housing and Accessory Dwelling Units - Part 1 of Code Amendments

Middle Housing and ADU memo and code amendments - part 1

Director Miller introduced this follow-up discussion on Middle Housing and Accessory Dwelling Unit code changes.

Exhibit 3: Definitions

Vice Chair Whitaker recalled that stacked flats was one of the items that the Planning Commission decided they were not interested in allowing, but it is listed in the definitions. Director Miller explained that was correct, but including the definition is required by the state.

Exhibit 4: Residential Zones

Director Miller reviewed the proposed amendments.

Commissioner Ray asked if some of the language is required by state. Director Miller indicated that it is.

Exhibit 5: Parking and Loading

Director Miller explained this has been amended to comply with state requirements.

Exhibit 6: Accessory Structures and Accessory Dwelling Units (ADUs)

Director Miller reviewed the cleanup amendments related to Accessory Structures. The ADU changes are to address state requirements.

Exhibit 7: Critical Areas Management

Principal Planner Gemmer reviewed this change.

Exhibit 8: Planned Residential Developments (PRDs)

Director Miller explained this would provide more flexibility for applicants.

Clarification questions and answers followed.

The Planning Commission agreed to take public comments.

Joe Long, Cornerstone Homes, 13805 Smokey Point Blvd, Suite 101, Marysville, WA 98271, spoke against counting the setbacks from the temporary cul-de-sac and not the property line because it could create an untenable building footprint. He spoke to the value of single family detached housing and recommended preserving it wherever possible.

Russell Joe, Master Builders of King and Snohomish County, 335 116th Avenue SE, Bellevue, WA, complimented staff and the Planning Commission for their work on this. He encouraged them to keep it simple. He also urged them to keep in mind that they are trying to set a vision for what housing looks like in Marysville. Master Builders is supportive of keeping the low parking minimums, especially when close to transit. They are also supportive of the 30' heights which will provide the opportunity to build three floors. Mr. Joe stated that he appreciates Marysville's efforts to support ADUs which provide affordable housing options. He asked them to look at the lot splitting issue. Guidelines from the state will be coming soon. He thinks middle housing should still be allowed on lots that have been split as long as they don't change the underlying zoning.

Chair Leifer asked about the market for three story structures. Mr. Joe explained that it is different for each city, but the market will determine what gets built. Mr. Long added that from a building and economic perspective it makes sense to be able to add an extra story.

Principal Planner Gemmer explained that the lot splitting language is mandatory verbiage from the State, but the State has not defined what lot splitting is yet.

Commissioner Ray asked about the requirement to plant trees in tot lots close to benches and picnic tables. Director Miller thought it provided a significant benefit to the public for a low cost. Principal Planner Gemmer concurred. She noted that it would help to provide a better product. Commissioner Ray expressed concern that this might be too nitpicky and encouraged them to keep it simple. Commissioner Miller thought that trees and greenery are a great addition to the environment.

Commissioner Jordan commented that it feels like they are putting the cart before the horse on the middle housing issues. He expressed concern about other agency requirements that add to the costs of housing such as DOE stormwater requirements and undergrounding requirements on the lots. Director Miller acknowledged that there are a lot of unknowns that will need to be monitored as they proceed.

7) DIRECTOR'S COMMENTS

Director Miller announced that this would be her last Planning Commission meeting as she has accepted a new position and will be moving to eastern Washington soon. She praised commissioners for their work and encouraged them to keep it up. Planning commissioners expressed appreciation to Director Miller for her professionalism and great personality, noting that she will be missed.

8) ADJOURNMENT

Motion to adjourn the meeting at 7:26 p.m. moved by Commissioner Shanon Jordan seconded by Commissioner Raymond Miller.
AYES: ALL

9) NEXT MEETING - April 8, 2025

AGENDA ITEM NO. 5.1

Agenda Bill

PLANNING COMMISSION AGENDA ITEM REPORT

DATE:	April 8, 2025
SUBMITTED BY:	Angela Gemmer, Community Development
ITEM TYPE:	Discussion Item
AGENDA SECTION:	**OLD BUSINESS**
SUBJECT:	Middle Housing, Accessory Dwelling Unit, and Unit Lot Subdivision Amendments - Batch 2
SUGGESTED ACTION:	Discussion only. No action suggested at this time.
SUMMARY:	See the attached memo and associated code amendments.

ATTACHMENTS:

Middle Housing, Accessory Dwelling Unit and Unit Lot Subdivision Amendments - Batch 2

COMMUNITY DEVELOPMENT DEPARTMENT
501 Delta Avenue ◆ Marysville, WA 98270

MEMORANDUM

DATE: April 8, 2025

TO: Planning Commission

FROM: Angela Gemmer, Principal Planner

SUBJECT: Middle Housing and Accessory Dwelling Unit – Code Amendments Batch 2

ECC: Haylie Miller, Community Development Director
Chris Holland, Planning Manager

Exhibit 1 Tier 1 and 2 Cities Middle Housing Model Ordinance
Exhibit 2 Middle Housing User Guide
Exhibit 3 MMC Chapter 22A.010, Administration
Exhibit 4 MMC Chapter 22A.030, Zones, Maps and Designations
Exhibit 5 MMC Chapter 22C.050, Small Farms
Exhibit 6 MMC Chapter 22C.090, Residential Density Incentives
Exhibit 7 MMC Chapter 22C.100, Nonconforming Situations
Exhibit 8 MMC Chapter 22C.120, Landscaping and Screening
Exhibit 9 MMC Chapter 22C.190, Home Occupations
Exhibit 10 MMC Chapter 22C.200, Day Care Standards
Exhibit 11 MMC Chapter 22C.220, Master Planned Senior Communities
Exhibit 12 MMC Chapter 22C.230, Mobile/Manufactured Home Parks
Exhibit 13 MMC Chapter 22C.250, Wireless Communication Facilities
Exhibit 14 MMC Chapter 22D.020, Parks, Recreation, Open Space and Trail Impact Fees and Mitigation
Exhibit 15 MMC Chapter 22D.030, Traffic Impact Fees and Mitigation
Exhibit 16 MMC Chapter 22D.040, School Impact Fees and Mitigation
Exhibit 17 MMC Chapter 22E.030, State Environmental Policy Act (SEPA)
Exhibit 18 MMC Chapter 22G.010, Land Use Application Procedures
Exhibit 19 MMC Chapter 22G.030, Land Use and Development Fees
Exhibit 20 MMC Chapter 22G.090, Subdivisions and Short Subdivisions
Exhibit 21 MMC Chapter 22G.100, Binding Site Plan
Exhibit 22 MMC Chapter 22G.120, Site Plan Review

Introduction

Staff presented the first batch of Middle Housing (House Bill (HB) 1110) and Accessory Dwelling Unit House Bill 1337 code amendments to Planning Commission at the March 25th Planning Commission work session. The first batch of code amendments constitute the key substantive amendments and consist of amendments to:

- Chapter 22A.020, Definitions
- Chapter 22C.010, Residential Zones
- Chapter 22C.130, Parking and Loading
- Chapter 22C.180, Accessory Structures

- Chapter 22E.010, Critical Areas
- Chapter 22G.080, Planned Residential Developments

The second batch of Middle Housing amendments is attached and includes amendments throughout Title 22, Unified Development Code.

A third and final batch of Middle Housing amendments will be presented to Planning Commission on April 22nd and will address:

- Site and architectural design standards for single family and Middle Housing;

- MMC amendments pertaining to the Lakewood Neighborhood Master Plan, East Sunnyside – Whiskey Ridge Subarea Plan, and Downtown Master Plan. These amendments will primarily consist of incorporating the site and architectural design standards for single family and Middle Housing referenced above and updated maps reflecting a proposed zoning change consolidating the City's single family residential zones into a Neighborhood Residential zone. This zoning change is discussed further below (see the section on Chapter 22C.010, Residential Zones); and

- Comprehensive Plan amendments consisting of map amendments and minor text amendments primarily to address the consolidation of the City's single family residential zones into a Neighborhood Residential zone.

A Public Hearing before the Planning Commission covering all proposed MMC and Comprehensive Plan amendments is proposed for May 13th. The full package of amendments will then be presented to City Council at the June 2nd work session with action requested at the June 9th City Council meeting to meet the June 30th deadline for adoption.

The following is a summary of the Batch 2 code amendments, which are presented by chapter below:

Chapter 22A.010, Administration (Exhibit 3)

The following amendments are proposed to MMC Chapter 22A.010, Administration, which pertains to administration of Title 22, Unified Development Code (i.e. the land use or zoning code).

- **MMC 22A.010.080.** When land is annexed to the City and does not have a Comprehensive Plan designation, the initial zoning defaults to R-4.5 as an interim zoning classification. The reference to the R-4.5 zone is proposed to be replaced with the Neighborhood Residential (NR) zone since the current single family zones are proposed to be replaced with the NR zone.
- **MMC 22A.010.090.** This code section outlines the roles and responsibilities of the Community Development Director, Planning Commission, Hearing Examiner, and other entities. Currently subsection (2), references MMC 22G.010.150 and 22G.010.160 which list the various reviews that are under the authority of the Community Development Director and also individually lists the same reviews, so is redundant. Recommend streamlining this code by simply retaining the reference to the other code sections that list the reviews under the Community Development Director's authority. In addition, unit lot subdivisions are proposed to be added to the list of the appeals that the Hearing Examiner can hear.

Chapter 22A.030, Zones, Maps and Designations (Exhibit 4)

The following amendments are proposed to MMC Chapter 22A.030, Zones, Maps and Designations, which establishes and describes the various zones throughout the City.

- **MMC 22A.030.020.** This section is amendments to add the NR abbreviation to the residential zones map symbols, and to indicate that residential zones may be calculated either as dwelling units per lot or dwelling units per acre.

- **MMC 22A.030.050.** This section is proposed to amend the residential zones description and a table detailing the various single family zones to reflect the consolidation of the current zones into the Neighborhood Residential zone. Amendments are also proposed to reference Middle Housing in the descriptions, and to include a reference to the WR-R-6-18 zone in the multi-family residential description.

Chapter 22C.050, Small Farms Overlay Zone (Exhibit 5)

- **MMC 22C.050.010.** The purpose statement for the Small Farms Overlay Zone is proposed to be amended to reference small farms adjacent to residential generally rather than single family specifically.

- **MMC 22C.050.050.** The section on permitted uses for small farms has been amended to indicate that one single family residence or Middle Housing building may be built per lot.

Chapter 22C.090, Residential Density Incentives (Exhibit 6)

- **MMC 22G.090.020.** The section pertaining to locations where residential density incentives (RDI) may be pursued is amended to:
    - Eliminate single family zones from the zones eligible for RDI. This is due to comparable or greater levels of density being achievable in the new Neighborhood Residential zone without (RDI) as would have been achieved in the current single family zones with RDI.
    - The Planned Residential Development (PRD) reference is not needed as it is not a zone and the non-single family zones that would allow for the RDI are still listed in this section.
    - Lastly, RDI are not needed in the Downtown Master Plan (DMP) Area in order to achieve the maximum densities, so the reference to those zones is removed.

- **MMC 22G.090.040.** This section outlines the rules for calculating bonus units for open space and recreational areas. In the Batch 1 amendments presented on March 25th, are proposed amendments to the PRD code to not reference disc golf and horseshoes. Those recreation types are also proposed to be eliminated from the RDI code for consistency.

Chapter 22C.100, Nonconforming Situations (Exhibit 7)

- **MMC 22C.100.030 and 22C.100.040.** These sections are proposed to add Middle Housing to the nonconforming structures and uses section to treat Middle Housing in the same manner as single family detached for the purposes of rebuilding or expanding the use and/or structure.

Chapter 22C.120, Landscaping and Screening (Exhibit 8)

- **MMC 22C.120.050.** The water conservation standards section is amended to exempt Middle Housing from the standards since single family detached is exempted.

- **MMC 22C.120.120.** The required landscape buffers table (Table 1) is proposed to:

    - Replace references to single family to Neighborhood Residential;
    - Indicate that Middle Housing is not subject to the same landscape buffer requirements as apartments; and

- Clarify that screening required for multi-family and townhouse units applies when townhouses are five (5) units or more per building (since townhouses four (4) units or less per building are considered Middle Housing).

Chapter 22C.190, Home Occupations (Exhibit 9)

- **MMC 22C.190.020.** Home occupations are small, home-based businesses that are incidental to the primary residential use of the property. The home occupation standards are proposed to be amended to:

  - Allow for one home occupation per dwelling unit when Middle Housing is constructed on a lot;
  - Limit the cumulative square footage for all home occupations on a lot to 600 square feet if the home occupation is in a detached structure; and
  - Indicate that only one non-family member may be employed per home occupation.

  Reviewing this section, are there other changes the Planning Commission believes should be made?

Chapter 22C.200, Day Care Standards (Exhibit 10)

- **MMC 22C.200.030.** The day care standards are proposed to be amended to eliminate the language pertaining to home occupation day cares. This language is a carry-over from when the home occupation and day care standards were contained within the same code and is not needed.

Chapter 22C.220, Master Planned Senior Communities (Exhibit 11)

Master Planned Senior Communities are residential living communities offering a continuum of care and a variety of housing options (e.g. single family detached, assisted living, nursing home, etc.) to enable seniors to age in place. The following revisions are proposed:

- **MMC 22C.220.090.** The development regulations are proposed to be amended to:
  - Reference the Neighborhood Residential zone instead of single family zones;
  - Indicate that detached single family residences and Middle Housing comply with the design standards in MMC 22C.010.310 (note: this code section is currently being updated); and
  - Require that Middle Housing provide the same private open space as single family detached.

- **MMC 22C.220.100.** The section pertaining to modified development regulations is proposed to be amended to:
  - Indicate that the Neighborhood Residential zone has a density capped at 14 dwelling units per acre since the overall units per acre calculations are moving to units per lot in the proposed Neighborhood Residential zone. This level of density would be comparable to what would be allowed for a Master Planned Senior Community in the R-12 since a 20 percent density allowance would mean 14.4 dwelling units per acre. Is this level of density acceptable? Staff recommends a density range of 10 to 14 units for the Neighborhood Residential zone;
  - Update the outdated reference to Downtown Neighborhood Planning Area 1 to simply Downtown Neighborhood, and the reference to single family to Neighborhood Residential in the building height section; and
  - Reference Middle Housing instead of duplexes when discussing street standards.

Chapter 22C.230, Mobile/Manufactured Home Parks (Exhibit 12)

Limited amendments to the Mobile/Manufactured Home Park code are proposed.

- **MMC 22C.230.030.** This section is proposed to reference the Neighborhood Residential zone and eliminate the requirement that a Planned Residential Development be required

for a mobile/manufactured home park in the Neighborhood Residential zone. The requirement to remove the PRD expectation was recently removed from the residential permitted uses matrices as it was determined that the existing mobile/manufactured home park provisions are adequate to address the requirements for a mobile/manufacture home park, and due to the requirements overlapping PRD requirements making the process needlessly cumbersome and confusing.

- **MMC 22C.230.040.** This section is proposed to reference the Neighborhood Residential zone instead of single family residential zone, to eliminate the PRD requirement, and to streamline the language for clarity.

Chapter 22C.250, Wireless Communication Facilities (Exhibit 13)

- **MMC 22C.250.060.** This section is amended to include Middle Housing with single family in the siting hierarchy for new wireless communication facilities. The siting hierarchy is the order in which new wireless facilities are allowed. For example, a new wireless facility cannot be constructed if it is feasible to co-locate on an existing wireless communication facility.

- **MMC 22C.250.070.** This general requirements for new concealed antenna support structures in residential zones is amended to indicate that they should not be located on lots with either single family or Middle Housing.

- **MMC 22C.250.080.** This section is proposed to be amended to reference the Neighborhood Residential zone instead of the current single family zones in the chart providing the height allowances.

Chapter 22D.020, Parks, Recreation, Open Space and Trail Impact Fees and Mitigation (Exhibit 14)

- **MMC 22D.020.030.** The required payment of park impact fees section is proposed to be amended to include that Middle Housing, in addition to single family, is eligible for impact fee deferral.

- **MMC 22D.020.050.** The impact fee table is proposed to be amended to have Middle Housing charged the same rate as single family residences and mobile/manufactured homes. Currently duplexes and attached single family residences (i.e. townhouses) are charged this rate and are the most comparable uses to Middle Housing.

- **MMC 22D.020.130.** This section is amended to include most residential housing types and Middle Housing and clarify how the different housing types should be treated for calculating fees.

Chapter 22D.030, Traffic Impact Fees and Mitigation (Exhibit 15)

- **MMC 22D.030.040.** The definition of 'development' is amended to include Middle Housing and amend other residential housing type references, and is amended to indicate that 'development' does not include detached single family residences. It also is amended to streamline the reference to accessory dwelling units.

- **MMC 22D.030.070.** This section is amended to indicate that deferral of impact fees is allowed for single family, Middle Housing, and townhouses (5 units or more per building).

Chapter 22D.040, School Impact Fees and Mitigation (Exhibit 16)

- **MMC 22D.040.020.** The following definitions of the following terms are proposed to be amended: development, dwelling unit type, and multi-family unit. New definitions are proposed to be added for Middle Housing and townhouse unit.

- **MMC 22D.040.060.** Middle Housing is proposed to be added to the types of school impact fees that can be deferred to treat in a consistent manner with single family.

Chapter 22E.030, State Environmental Policy Act (SEPA) (Exhibit 17)

- MMC 22E.030.090. The SEPA (environmental review) categorical exemptions is amended to treat Middle Housing like single family that exempts construction of 30 residential units from SEPA review.

Chapter 22G.010, Land Use Application Procedures (Exhibit 18)

- **MMC 22G.010.160.** This section adds unit lot subdivisions to the list of administrative reviews that are under the authority of the Community Development Director.

- **MMC 22G.010.250.** The section which pertains to the vesting of land use applications is proposed to be amended to include unit lot subdivisions.

- **MMC 22G.010.260 and 22G.010.270.** These sections relate to the minor and major revisions to approved development applications. Amendments are proposed to include reference to Middle Housing and unit lot subdivisions.

Chapter 22G.030, Land Use and Development Fees (Exhibit 19)

- **MMC 22G.030.020.** The land use fee schedule is proposed to be amended to apply the same fee to unit lot subdivisions as to short subdivisions. For civil construction and inspection, the fee that applies to duplexes is proposed to be amended to apply to Middle Housing.

Chapter 22G.090, Subdivisions and Short Subdivisions (Exhibit 20)

- **MMC 22G.090.580.** The subdivision fence requirements section is proposed to be amended to reference residential subdivisions instead of single family subdivisions to reflect that a variety of housing types are anticipated moving forward.

- **MMC 22G.090.810.** A new article VI/MMC 22G.090.810 is proposed to be added to provide unit lot subdivision standards, which is the fee simple subdivision of Middle Housing, accessory dwelling units, and other residential structures that when the foundation of a unit occupies discrete space on a lot. The currently proposed standards drawing from Department of Commerce's Unit Lot Subdivision Model Ordinance. Additional research is occurring to determine if there are standards that work better for Marysville, so changes may occur at the next work session.

Chapter 22G.100, Binding Site Plan (Exhibit 21)

- **MMC 22G.100.040.** The applicability section for binding site plans is proposed to be amended to include Middle Housing among the residential review types subject to the BSP chapter.

Chapter 22G.120, Site Plan Review (Exhibit 22)

- **MMC 22G.120.030.** The applicability section of the site plan review chapter is proposed to be amended to exempt Middle Housing from the chapter since single family detached is exempt from this chapter. An exception is added to exempt unit lot subdivisions from the expectation that a PRD is required for divisions involving single family, multi-family, and townhouses.

Staff respectfully request any comments or questions on the above amendments at the April 8th Planning Commission work session. As noted above, Batch 3 of the Marysville Municipal Code and Comprehensive Plan amendments will be presented to Planning Commission at the April 22nd work session. A Public Hearing is anticipated on May 13th, which will cover the full package of amendments.

22A.010.080 Interpretation – Zoning maps.

Where uncertainties exist as to the location of any zone boundaries, the following rules of interpretation, listed in priority order, shall apply:

(1) Where district boundaries are indicated as approximately following street lines, alley lines, or lot lines, such lines shall be construed to be such boundaries.

(2) Where boundaries are indicated as following approximately lot lines, the actual lot lines shall be considered the boundaries. In subdivided property or where a district boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions, shall be determined by use of the scale appearing on the map.

(3) Where boundaries are indicated as following lines of ordinary high water, or government meander line, the lines shall be considered to be the actual boundaries. If these lines should change the boundaries shall be considered to move with them.

(4) Where any street, road or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street, road or alley added to the property by virtue of such vacation or abandonment.

(5) All land hereafter annexed to the city shall be zoned consistent with the comprehensive plan designation previously assigned to the property by the city of Marysville. In the event the property does not have a comprehensive plan designation assigned to it by the city of Marysville, it shall be designated ~~R-4.5~~ Neighborhood Residential (NR) as an interim zoning classification, until such time when the city amends its comprehensive plan and assigns a land use designation and corresponding zoning to the property. (Ord. 2852 § 10 (Exh. A), 2011).

22A.010.090 Administration and review authority.

(1) Roles and Responsibilities.

> (a) The regulation of land development is a cooperative activity including many different elected and appointed boards and city staff. The specific responsibilities of these bodies are set forth in subsections (2) through (7) of this section.
>
> (b) An applicant is expected to read and understand the city development code and be prepared to fulfill the obligations placed on the applicant by MMC Title 22.

(2) Community Development Director. The director or designee shall review and act on the following:

> (a) Authority. The director is responsible for the administration of MMC Title 22;

(b) Administrative Interpretation. Upon request or as determined necessary, the director shall interpret the meaning or application of the provisions of said titles and issue a written administrative interpretation within 30 days of said request. Requests for interpretation shall be written and shall concisely identify the issue and desired interpretation;

(c) Administrative Approvals. Administrative approvals set forth in MMC ~~22G.010.140,~~ 22G.010.150 and 22G.010.160;

~~(d) Short plats;~~

~~(e) Shoreline permits for substantial development;~~

~~(f)~~(d) SEPA (State Environmental Policy Act) determinations;

~~(g) Site plan with commercial, industrial, institutional (e.g., church, school) or multiple-family building permit;~~

~~(h) Site plan with administrative conditional use permit;~~

~~(i) Master plan for properties under ownership or contract of applicant(s);~~

~~(j)~~(e) Temporary use permits, unless a public hearing is required as set forth in Chapter 22G.010 MMC, Article V, Code Compliance and Director Review Procedures, in which case this authority shall be exercised by the hearing examiner;

~~(k)~~(f) Conditional use permits, unless a public hearing is required as set forth in Chapter 22G.010 MMC, Article V, Code Compliance and Director Review Procedures, in which case this authority shall be exercised by the hearing examiner;

~~(l)~~(g) The community development director is hereby authorized after the date of the adoption of the ordinance codified in this title to incorporate drawings as necessary for the purpose of illustrating concepts and regulatory standards contained in this title; provided, that the adopted provisions of the code shall control.

(3) City Council. In addition to its legislative responsibility, the city council shall review and act on the following subjects:

(a) Approval of final plats;

(b) Approval of the comprehensive plan and comprehensive plan amendments;

(c) Approval of area-wide rezones, and confirmation by ordinance of site-specific rezones approved by the hearing examiner.

(4) Planning Commission. The planning commission shall review and make recommendations on the following applications and subjects:

(a) Amendments to the comprehensive plan.

(b) Amendments to MMC Title 22C, Land Use Standards.

(c) Amendments to MMC Title 22D, City-Wide Standards.

(d) Amendments to MMC Title 22E, Environmental Standards.

(e) Amendments to Chapter 22G.040 MMC, Security for Performance and Maintenance.

(f) Amendments to Chapter 22G.070 MMC, Siting Process for Essential Public Facilities.

(g) Amendments to Chapter 22G.080 MMC, Planned Residential Developments.

(h) Amendments to Chapter 22G.090 MMC, Subdivisions and Short Subdivisions.

(i) Amendments to Chapter 22G.100 MMC, Binding Site Plan.

(j) Amendments to Chapter 22G.110 MMC, Boundary Line Adjustments.

(k) Master plan, initiated by the city or other governmental agency, for a neighborhood or assembly of parcels under private ownership or contract.

(l) Recommendations to the hearing examiner on master plans initiated by private property owners, which includes outside ownership or contract of the applicants.

(m) Other actions requested or remanded by the city council.

(5) Hearing Examiner. The hearing examiner shall review and act on the following applications and subjects:

(a) Applications for preliminary subdivisions;

(b) Appeals of administrative decisions on preliminary short plats and unit lot subdivisions;

(c) Site-specific rezones (with final approval by ordinance of the city council);

(d) Binding site plan approvals subject to public hearing review;

(e) Conditional use permits subject to public hearing review;

(f) Nonadministrative variances to MMC Title 22;

(g) Appeals of administrative decisions and interpretations relating to MMC Titles 4, 12 and 22;

(h) Appeals of SEPA determinations;

(i) Master plan, initiated by private property owners, including land outside ownership or contract of applicant(s);

(j) Such other matters as are delegated by ordinance of the city council.

(6) Building Official. The building official shall have the authority to grant, condition or deny the following permits in accordance with the procedures set forth in Chapter 22G.010 MMC, Article V, Code Compliance and Director Review Procedures:

(a) Commercial building permits.

(b) Residential building permits.

(c) Clearing and grading permits.

(7) Hearing Examiner. The hearing examiner shall review and act on the following subjects:

(a) Appeals of decisions of the building official on the interpretation or application of the building or fire code;

(b) Disapproval of a permit for failure to meet the International Building or Fire Code.

22A.030.020 Zones and map designations established.

In order to accomplish the purposes of this title, the following zoning designations and zoning map symbols are established:

ZONING DESIGNATIONS	MAP SYMBOL
Residential	NR or R (base density in dwelling units per lot or dwelling units per acre)
Residential mobile home park	R-MHP
Neighborhood business	NB
Community business	CB
General commercial	GC
Downtown commercial	DTC
Mixed use	MU
Light industrial	LI
General industrial	GI
Recreation	REC
Public/institutional zone	P/I
Whiskey ridge	WR (suffix to zone's map symbol)
Small farms overlay	SF (suffix to zone's map symbol)
Adult facilities	AF (suffix to zone's map symbol)
Property-specific development standards	P (suffix to zone's map symbol)

22A.030.050 Residential zones.

(1) The purpose of the residential zones (NR or R) is to implement comprehensive plan goals and policies for housing quality, diversity and affordability, and to efficiently use residential land, public services and energy. These purposes are accomplished by:

(a) Providing, in the Neighborhood Residential ~~R-4.5, R-6.5, and R-8~~ zone~~s~~, for a mix of predominantly single detached dwelling units, Middle Housing, and other development types, with a variety of densities and sizes in locations appropriate for urban densities;

(b) Providing, in the R-12, R-18, ~~and~~ R-28, and WR-R-6-18 zones, for a mix of predominantly apartment and townhome dwelling units, Middle Housing, and other development types, with a variety of densities and sizes in locations appropriate for urban densities;

(c) Providing and preserving high density, affordable detached single-family and senior housing in the R-MHP zone. This zone is assigned to existing mobile home parks within residential zones which contain rental pads, as opposed to fee simple owned lots, and as such are more susceptible to future development;

(d) Allowing only those accessory and complementary nonresidential uses that are compatible with residential communities; and

(e) Establishing density designations to facilitate advanced area-wide planning for public facilities and services, and to protect environmentally sensitive sites from overdevelopment.

(2) Use of ~~this~~ these zones is appropriate in residential areas designated by the comprehensive plan as follows:

(a) Urban lands that are served at the time of development by adequate public sewers, water supply, roads and other needed public facilities and services; and

(b) The corresponding comprehensive plan designations are as follows:

~~R-4.5~~	~~=~~	~~Medium density single-family;~~
~~R-6.5~~	~~=~~	~~High density single-family;~~
~~R-8~~	~~=~~	~~High density single-family, small lot;~~
NR	=	Neighborhood Residential
R-12	=	Low density multiple-family;
R-18	=	Medium density multiple-family;
R-28	=	High density multiple-family.
WR-R-6-18	=	Whiskey Ridge, Medium Density Multiple Family

22C.050.010 Purpose.

The purpose of the small farms overlay is to provide a process for registering small farms, thereby applying the small farms overlay zone and recording official recognition of the existence of the small farm, and to provide some encouragement for the preservation of such farms, as well as encouraging good neighbor relations between ~~single-family~~ small farms and adjacent residential and other development. This chapter provides alternative development standards to address unique site characteristics and addresses development opportunities which can exceed the quality of standard developments, by:

(1) Establishing authority to adopt property-specific development standards for increasing minimum requirements of this code on individual sites; and

(2) Establishing the small farms overlay zone with alternative standards for special areas designated by the comprehensive plan or neighborhood plans.

22C.050.050 Permitted uses in small farms overlay zone.

The following uses are permitted in the small farms overlay zone:

(1) Horticulture.

(2) Floriculture.

(3) Viticulture.

(4) Animal husbandry.

(5) Production of seed, hay and silage.

(6) Christmas tree farming.

(7) Aquaculture.

(8) Roadside stands, subject to the following standards:

(a) Roadside stands not exceeding 300 square feet in area.

(b) Roadside stands shall be exclusively for the sale of products produced on the premises, from the above listed uses.

(c) Space adequate for the parking of a minimum of three vehicles shall be provided adjacent to any stand and not less than 20 feet from any street right-of-way.

(9) One single-family residence or Middle Housing building~~dwelling~~ per lot shall be allowed pursuant to MMC 22C.010.060 and 22C.010.080, together with accessory structures and uses.

22C.090.020 Permitted locations of residential density incentives.

Residential density incentives (RDI) shall be used only on sites served by public sewers and only in the following zones:

(1) In R-12 through R-28 zones;

~~(2) Planned residential developments;~~

~~(3)~~(2) In MU, CB and GC zones; and

(3)~~(4) SF,~~ MF~~,~~ and MU zones within the Whiskey Ridge master plan.~~; and~~

~~(5) DC, MS, F, FR, MMF, MH1, MH2 zones within the downtown master plan.~~

22C.090.040 Rules for calculating bonus units for open space and recreational areas.

To qualify as bonus units, the recreational area (i.e., acreage or square feet) or amenities listed in this section must be provided in excess of the recreational area or amenities otherwise required for the development.

(1) The applicant must clearly delineate and identify on the site and/or landscape plans which areas or amenities are proposed to satisfy the standard code requirements for the development, and which areas or amenities are proposed in excess of the standard code requirements to earn bonus units.

> (a) Area. If additional land area (i.e., acreage or square feet) is provided for open space in excess of the standard code requirements, the applicant shall earn bonus units for the area (i.e., acreage or square feet) provided in excess of the standard code requirements for the project type. Passive and active open space shall be credited at the rates outlined in MMC 22C.090.030(4).
>
> (b) Amenities. If an open space area provides additional amenities in excess of the standard code requirements, the applicant shall earn bonus units for the area or areas where additional amenities are provided. The applicant shall first calculate the amenities that are required for the project type. Additional amenities must be provided as described in subsections (2) and (3) of this section.

(2) Active recreation features qualifying for a density bonus shall include:

(a) One or more of the following per half acre of open space:

(i) Multipurpose, basketball, tennis, pickleball, or similar courts or half-courts;

(ii) Skateboard facilities;

(iii) Baseball, football, soccer, or similar fields;

(iv) Large tot lot with play equipment (soft surface); or

(v) Any other active recreation use approved by the director.

(b) Two or more of the following per half acre of open space:

(i) ~~Disc golf,~~ gGolf~~,~~ or mini golf course;

(ii) ~~Horseshoes,~~ Bbocce~~,~~ or similar lawn games;

(iii) Volleyball or similar net sports;

(iv) Small tot lot with play equipment (soft surface); or

(v) Any other active recreation use approved by the director.

(3) Passive recreation qualifying for a density bonus shall include one or more of the following per half acre of open space:

(a) Open play areas when active amenities are not provided;

(b) Pedestrian or bicycle paths;

(c) Picnic areas with tables and benches;

(d) Gazebos, benches and other resident gathering areas;

(e) Community gardens or areas with enhanced landscaping;

(f) Nature interpretive areas;

(g) Waterfalls, fountains, or other water features; or

(h) Any other passive recreation use approved by the director.

(4) Dual use storm water retention/detention and recreation facilities shall meet the following design criteria:

(a) The facility shall be designed with emphasis as a recreation area, not a storm water control structure, and shall be designed as usable open recreation area.

(b) Control structures shall not be prominently placed. Care should be taken to blend them into the perimeter of the recreation area.

(c) The number of accesses shall be minimized, and the accesses shall be designed to serve as both an access and an amenity to qualify as open space. The following are examples of access treatments that would qualify as open space:

(i) Grasscrete or equivalent;

(ii) Decorative pavers; or

(iii) Concrete or asphalt with a dual use including, but not limited to, sport court, hopscotch, meandering paved trails, etc.

22C.100.030 Nonconforming structures.

A nonconforming structure is one which was in compliance with all land use codes and regulations at the time it was constructed, but which violates the bulk or dimensional requirements of the current land use codes and regulations of the city.

(1) Nonconforming structures may be repaired and maintained. The interior of said structures may be restored, remodeled and improved to the extent of not more than 25 percent of the assessed value of the structure in any consecutive period of 12 months.

(2) The exterior dimensions of a nonconforming structure may be enlarged by up to 100 percent of the floor area existing at the effective date of the nonconformance; provided, that the degree of nonconformance shall not be increased, and the then-current bulk and dimensional requirements of the zone in which it is located shall be observed with respect to the new portion of the building.

(3) A nonconforming structure which is voluntarily or accidentally destroyed, demolished or damaged, or allowed to deteriorate, to the extent where restoration costs would exceed 75 percent of the assessed value of the structure, may be restored and rebuilt only if the structure, in its entirety, is brought into conformity with the then-current bulk and dimensional requirements of the zone in which it is located; provided, that a single-family residence or Middle Housing with nonconforming status in a residential zone may be restored and rebuilt to any extent as long as it does not increase the pre-existing degree of nonconformance; provided, a single-family residence or Middle Housing with nonconforming status in zones other than residential may be restored and rebuilt to any extent on the original footprint of the structure's foundation so long as it does not increase the pre-existing degree of nonconformance.

(4) When a structure or a portion thereof is moved to a new location, it must be made to conform to all then-current land use restrictions applicable to the new location.

(5) Nonconforming structures shall not be exempt from compliance with all current codes and regulations relating to storm drainage, landscaping, off-site traffic mitigation and frontage improvements including curbs, gutters and sidewalks.

22C.100.040 Nonconforming uses.

A nonconforming use is any use of land or of a structure which was legal at the time of its establishment but which violates the land use provisions of the current codes and regulations of the city, including those relating to zoning districts, density, access and off-street parking.

(1) A nonconforming use loses its status, and must be discontinued, if the structure in which it is located is voluntarily or accidentally destroyed, demolished or damaged, or is allowed to

deteriorate, to the extent where restoration costs would exceed 75 percent of the assessed value of the structure. Provided, all nonconforming residential structures which are allowed to be restored and rebuilt, as described in MMC 22C.100.030(3), shall be allowed to continue the residential use thereof.

(2) A nonconforming use cannot be changed to a fundamentally different use unless it is brought into complete conformity with the current codes and regulations. An increase in volume or intensity of a nonconforming use is permissible, however, where the nature and character of the use are unchanged and substantially the same facilities are used. The test is whether the intensified use is different in kind from the nonconforming use in existence at the effective date of the nonconformance.

(3) A nonconforming use may be expanded upon the granting of a conditional use permit as provided in this chapter; provided, that such expansion of a nonconforming use shall not increase the land area devoted to the nonconforming use by more than 150 percent of that in use at the effective date of the nonconformance; provided also, that a conditional use permit shall not be required for enlargement of a single-family residence or Middle Housing in nonresidential zones subject to the limitations set forth in MMC 22C.100.030(2), or for construction of an accessory structure such as a garage or shed; provided, that the expansion or new structure is sited on the property so as not to preclude conversion of the property to a future, nonresidential use.

(4) A use established in part but not all of a building at the effective date of the nonconformance may expand within said building by up to 100 percent of the pre-existing floor area dedicated to said use upon obtaining a conditional use permit as provided in this chapter. Unlimited expansion within the building shall be permissible upon obtaining a conditional use permit if the original design of the building indicates that it was intended to be ultimately dedicated, in its entirety, to the use in question.

22C.120.050 Water conservation standards.

(1) Water Conservation Standards.

(a) Applicability. In order to ensure efficient water use in landscaped areas, the following standards shall be applied to all landscaping associated with office, commercial, industrial, institutional, parks and greenways, multiple-family residential projects, and commonly owned and/or maintained areas of single-family residential or Middle Housing projects.

(b) Exemptions. These standards do not apply to landscaping in private areas of single-family or Middle Housing projects. Parks, playgrounds, sports fields, golf courses, schools, and cemeteries are exempt from specified turf area limitations where a functional need for turf is established. All other requirements are applicable.

(c) Plant Selection and Use Limitation.

(i) Turf, high-water-use plantings (e.g., annuals, container plants) and water features (e.g., fountains, pools) shall be considered high-water uses and shall be limited to not more than 40 percent of the project's landscaped area if nondrought resistant grass is used, and no more than 50 percent of the landscaped area if drought resistant grass is used.

(ii) Plants selected in all areas not identified for turf or high-water-use plantings shall be well suited to the climate, soils, and topographic conditions of the site, and shall be low-water-use plants once established.

(iii) Plants having similar water use shall be grouped together in distinct hydrozones and shall be irrigated with separate irrigation circuits.

(iv) No turf or high-water-use plants shall be allowed on slopes exceeding 25 percent, except where other project water saving techniques can compensate for the increased runoff, and where the need for such slope planting is demonstrated.

(v) No turf or high-water-use plants shall be allowed in areas five feet wide or less except public right-of-way planter strips.

(d) Newly landscaped areas should have soils amended with either four inches of appropriate organic material with the first two-inch layer tilled into existing soils, or as called for in a soil amendment plan for the landscape.

(e) Newly landscaped areas, except turf, should be covered and maintained with at least two inches of organic mulch to minimize evaporation.

(f) Irrigated turf on slopes with finished grades in excess of 33 percent is discouraged.

(g) Retention of existing trees and associated understory vegetation is encouraged to reduce impacts to the storm water system and to reduce water use.

(2) Water Efficient Landscape (Xeriscape) Standards.

(a) As an alternative to traditional landscaping, the city encourages the use of xeriscape practices, which minimize the need for watering or irrigation. Xeriscape principles can be summarized as follows:

(i) Using plants with low moisture requirements;

(ii) Selecting plants for specific site microclimates that vary according to slope, aspect, soil, and exposure to sun and moisture;

(iii) Using native, noninvasive, adapted plant species;

(iv) Minimizing the amount of irrigated turf;

(v) Planting and designing slopes to minimize storm water runoff;

(vi) Use of separate irrigation zones adjusted to plant water requirements and use of drip or trickle irrigation systems;

(vii) Using mulch in planted areas to control weeds, cool the soil and reduce evaporation; and

(viii) Emphasizing soil improvement, such as deep tilling, adding organic matter and other amendments based on soil tests.

(b) Appropriate Plant Species. Trees and plants used in xeriscape plantings pursuant to this section shall:

(i) Be appropriate for the ecological setting in which they are to be planted;

(ii) Have noninvasive growth habits;

(iii) Encourage low maintenance and sustainable landscape design;

(iv) Be commercially available;

(v) Not be plant material that was collected in the wild; and

(vi) Be consistent with the purpose and intent of this section.

(c) Native Vegetation. Within xeriscape areas, a minimum of 50 percent native plants shall be used.

(d) Prohibited Species. The city shall maintain a list of prohibited species, which are invasive or noxious. Where such species already exist, their removal shall be a condition of development approval.

(e) Additional Planting Standards.

(i) For xeriscape areas, soil samples shall be analyzed to determine what soil conditioning or soil amendments should be used at the time of planting. Soil conditioning measures shall be adequate for the plant species selected.

(ii) Trees, shrubs, perennials, perennial grasses and ground covers shall be located and spaced to accommodate their mature size on the site.

(f) Plant Replacement. The developer shall maintain xeriscape plantings for a two-year period from the date of planting. Within the two-year period, the developer shall replace or otherwise guarantee any failed plantings:

(i) Dead or dying trees or shrubs shall be replaced; and

(ii) Plantings or perennials, perennial grasses or ground covers shall be replanted to maintain a maximum 20 percent mortality rate from the date of planting.

(3) Storm Water. Applicants are encouraged to incorporate landscaping into the on-site storm water treatment system to the greatest extent practicable.

22C.120.120 Required landscape buffers.

Table 1

Proposed Use	Adjacent Use	Width of Buffer	Type of Buffer
Commercial	Property designated ~~single-family~~ Neighborhood Residential by the Marysville comprehensive plan	20 feet	L1 (1)
Commercial	Property designated multiple-family by the Marysville comprehensive plan	10 feet	L2 (1)

Table 1

Proposed Use	Adjacent Use	Width of Buffer	Type of Buffer
Commercial, industrial, multifamily and business park parking areas and drive aisles	Public right-of-way and private access roads 30 feet wide or greater	10 feet	L3
Commercial, industrial, multifamily and business park parking areas and drive aisles	Public arterial right-of-way	15 feet	L3
Residential	SR 9	See MMC 22C.120.150	
Industrial and business parks	Property designated residential by the Marysville comprehensive plan	25 feet	L1
Industrial, commercial and business park building and parking areas	I-5 or SR 9 right-of-way	15 feet	L2
Apartment, townhouse (5 units per building or more), or group residence (excluding Middle Housing)	Property designated ~~single-family~~ Neighborhood Residential by the Marysville comprehensive plan	10 feet	L1 (1)
Storm water management facility		5 feet	L5 (3)
Outside storage or waste area or above ground utility boxes		5 feet	L1 (2)
WCF and/or base station not in ROW	Property designated residential by the Marysville comprehensive plan or on property designated residential by the comprehensive plan	10 feet	L1 (1)

(1) Plus a six-foot sight-obscuring fence or wall.

(2) Screening and impact abatement shall be provided in accordance with MMC 22C.120.160.

(3) Screening of storm water facilities shall comply with the following design standards:

(a) All sides visible from a public right-of-way shall be screened;

(b) All sides located adjacent to a residentially zoned property shall be screened, unless it can be demonstrated that adequate screening exists;

(c) Screening shall be consistent with the Marysville administrative landscaping guidelines; and

(d) Dual use retention/detention facilities designed with emphasis as a recreation area, not a storm water control structure, are exempt from the screening requirements.

Chapter 22C.190
HOME OCCUPATIONS

Sections:

22C.190.010 Purpose.

The purpose of this chapter is to allow small scale commercial occupations incidental to residential uses to be located in residences while guaranteeing all residents freedom from excessive noise, traffic, nuisance, fire hazard, and other possible effects of commercial uses being conducted in residential neighborhoods. (Ord. 2852 § 10 (Exh. A), 2011).

22C.190.020 Home occupation standards.

(1) Home occupations are permitted as an accessory use to the residential use of a property only when all of the following conditions are met:

(a) The total area devoted to all home occupation(s) shall not exceed 25 percent of the floor area of the dwelling unit or 600 square feet, whichever is less. When Middle Housing is constructed on the lot, one home occupation is permitted per dwelling unit;

(b) The home occupation may be located in the principal dwelling or in an accessory structure. If located in an accessory structure, the area devoted to the occupation, as described in subsection (1)(a) of this section, shall be based upon the floor area of the dwelling only; provided that, the cumulative square footage devoted for all home occupations in detached structures shall not exceed 600 square feet per lot;

(c) Not more than one person outside of the family shall be employed on the premises per home occupation;

(d) The home occupation shall in no way alter the normal residential character of the premises;

(e) The home occupation(s) shall not use electrical or mechanical equipment that results in:

(i) A change to the fire rating of the structure(s) used for the home occupation(s);

(ii) Visual or audible interference in radio or television receivers, or electronic equipment located off-premises; or

(iii) Fluctuations in line voltage off-premises;

(f) No equipment or material may be stored, altered or repaired on any exterior portion of the premises;

(g) Sales shall be limited to merchandise which is produced on the premises and/or mail order, Internet and telephone sales with off-site delivery;

(h) Services to patrons shall be arranged by appointment or provided off-site;

(i) The home occupation(s) may use or store a vehicle for pickup of materials used by the home occupation(s) or the distribution of products from the site, provided:

(i) No more than one such vehicle shall be allowed;

(ii) Such vehicle shall not park within any required setback areas of the lot or on adjacent streets; and

(iii) Such vehicle shall not exceed a manufacturer's gross vehicle weight in excess of 16,000 pounds, a length in excess of 20 feet, or a width in excess of eight feet;

(j) Signs in connection with the home occupation shall comply with the restrictions of MMC 22C.160.150(9);

(k) No sales or services will be conducted on the premises which will generate more than 10 average daily round trips per day by customers.

(2) A home occupation permit issued to one person shall not be transferable to any other person, nor shall a home occupation permit be valid at any other address than the one listed on the permit.

(3) In granting approval for a home occupation, the reviewing official may attach additional conditions to ensure the home occupation will be in harmony with, and not detrimental to, the character of the residential neighborhood.

(4) Any home occupation authorized under the provisions of this chapter shall be open to inspection and review at all reasonable times by enforcement officials for purposes of verifying compliance with the conditions of approval and other provisions of this title.

(5) The community development director shall have authority to administratively grant a minor modification to the standards listed in subsections (1)(a) and/or (c) of this section, provided the use is consistent with the purposes of this chapter and will be operated in harmony with the character of a residential neighborhood. Minor modifications shall be limited to the home occupations standards in subsections (1)(a) and (c) of this section, provided they create no

significant impacts to the residential neighborhood. The community development director is authorized to approve minor modifications only in cases of unique circumstances such as large property acreage, remote site access or site location, or small scale of use, when these circumstances ensure the commercial operation remains incidental to the dwelling and in no way alters the normal residential character of the premises. No variance shall be granted which would be detrimental to public health, welfare or environment. (Ord. 2852 § 10 (Exh. A), 2011).

22C.200.030 Permit required.

A day care I ~~home occupation~~ permit is required, subject to the following conditions:

(1) A day care I ~~home occupation~~ permit issued to one person shall not be transferable to any other person; nor shall a day care I ~~home occupation~~ permit be valid at any other address than the one listed on the permit.

(2) In granting approval for a day care I ~~home occupation~~, the community development director, or designee, may attach additional conditions to ensure the use~~home occupation~~ will be in harmony with, and not detrimental to, the character of the residential neighborhood.

(3) Any day care I ~~home occupation~~ authorized under the provisions of this chapter shall be open to inspection and review at all reasonable times by enforcement officials for purposes of verifying compliance with the conditions of approval and other provisions of this title.

22C.220.090 Development regulations.

(1) Existing amenities (e.g., views, mature trees, etc.) that are unique to the site should be preserved and incorporated into the project's design whenever possible.

(2) When an MPSC project adjoining residential and commercial uses can mutually benefit from connection rather than separation, appropriate connective elements (e.g., walkways) should be provided.

(3) The site shall be designed and developed utilizing crime prevention through environmental design (CPTED) principles as set forth in MMC 22C.010.290 and 22C.020.250.

(4) Building Design and Layout.

(a) Development of the site is subject to compliance with development standards outlined in Chapters 22C.010 and 22C.020 MMC.

(b) When a master planned senior community is located within, or adjacent to, the Neighborhood Residential zone~~single-family residential zones~~ and is, or may be, surrounded by traditional single-family development, the community shall be designed and developed ~~so as~~ to be consistent with a single-family residential environment. Larger scale (i.e., multi-unit buildings, nursing care facilities) buildings shall be located on the site ~~so as~~ to least impact surrounding single-family uses and to create a consistent streetscape that is in the desired character for a residential area.

(c) When a master planned senior community is located within, or adjacent to, commercial or multifamily zones and is or may be surrounded by traditional commercial or multifamily development, any multi-unit buildings and nursing care facilities on the site shall be placed to consider the visual continuity between the proposed and existing adjacent development with respect to building setbacks and placement of structures to create a consistent streetscape.

(d) Multiple buildings in a single project should provide a functional relationship with one another to achieve a sense of place by use of the following techniques:

(i) Cluster buildings around open space areas or courtyards, not parking lots.

(ii) Provide open space areas and courtyards with landscaping and other pedestrian amenities.

(iii) Provide convenient pedestrian circulation between buildings, open space, and parking areas.

(iv) Link buildings together visually, using such elements as trellis structures, arcades, and/or enhanced paving.

(v) Where feasible and desirable, locate buildings near public streets, thus creating a strong presence thereon.

(5) Building and Unit Design. Universal design (also known as "aging in place") is a method of design that seeks to create development that can be used by everyone, regardless of age or physical condition. All projects shall implement, at minimum, the following universal design principles:

(a) No-step entries.

(b) One-story living such that an eating area, bathroom, and sleeping area are available on the same floor.

(c) ADA accessible doors, hallways and bathrooms.

(d) Room thresholds that are flush.

(e) Adequate lighting throughout the dwelling unit.

(6) Architectural Style and Design Guidelines. Multifamily and nursing/assisted living facilities shall comply with MMC 22C.010.290 and MMC 22C.020.250. ~~Attached/D~~d~~etached single-family residences and Middle Housing~~dwelling units~~ shall comply with MMC 22C.010.310.

(7) Utility and Mechanical Equipment.

(a) All mechanical equipment shall be architecturally screened from view.

(b) Utility equipment (e.g., electric and gas meters, electrical panels, and junction boxes) should be located in utility rooms within the structure or utility cabinets with exterior access.

(8) Solid Waste and Recycling. Developments shall provide storage space and collection points for solid waste and recyclables in accordance with Chapter 7.08 MMC, MMC 22C.010.370 and 22C.020.320.

(9) Parking and Circulation.

(a) Project entries should provide the resident and visitor with an overview of the project through either an easy visual assessment (in smaller projects) or by providing signage or placards that illustrate the circulation, parking, building, and amenity layout of the project.

(b) The principal vehicular access should be through an entry drive rather than a parking aisle, when possible. Colored, textured paving treatment at entry drives together with lush landscaping is strongly encouraged.

(c) The number of required off-street parking stalls shall be in accordance with MMC 22C.130.030. The community development director may approve alternative parking requirements upon satisfactory demonstration by the applicant that the site will have adequate parking to serve all proposed uses and/or that the community is located within walking distance of a neighborhood center that offers a variety of services and a safe walking route is provided.

(d) If parking is not attached to the residential structures, covered carports and dispersed parking courts are the desired alternative.

(e) A parking court should not consist of more than two double-loaded parking aisles (bays) adjacent to each other.

(f) Carports should provide no more than five parking spaces within each structure. The structures should be constructed with material consistent with those used in building construction.

(g) All parking standards identified in Chapter 22C.130 MMC, Parking and Loading, shall apply, except as may be specified herein.

(10) Pedestrian Access.

(a) Drop-off points should be provided at major building entries and plaza areas.

(b) The project should be designed to minimize the need for pedestrians to cross parking aisles and landscape islands to reach building entries.

(c) Stamped or painted concrete walkways should be provided in areas where it is necessary for pedestrians to cross drive or parking aisles.

(d) All projects shall provide a clear connection between the on-site pedestrian circulation system and the off-site public sidewalk.

(11) Landscaping. Landscaping shall comply with Chapter 22C.120 MMC, Landscaping and Screening, except as may be specified herein.

(12) Public Transportation Amenities.

(a) A sheltered bus stop with a canopy provided with architecture consistent with the project shall be provided, if required in coordination with local transit agencies.

(b) In cases when a public bus stop is, or may be in the future, located within the frontage of a proposed site, a bus stop or cover shall be provided.

(13) On-Site Common Recreational Facilities.

(a) Recreational amenities shall be appropriately distributed throughout the community. Such facilities shall consist of open or enclosed areas for residents of the community to congregate for recreation and leisure. Structures with multiple-family style dwelling units (i.e., independent senior housing apartment units, assisted living dwelling units, etc.) shall provide open space or active or indoor recreation space consistent with the following chart:

Type of Dwelling Unit	Outdoor Open Space	Active Outdoor or Indoor Recreation Facility
(a) Studio and one bedroom	90 square feet per unit	45 square feet per unit
(b) Two bedroom	130 square feet per unit	65 square feet per unit
(c) Three or more bedroom	170 square feet per unit	85 square feet per unit

(b) The following standards shall be utilized for outdoor recreational facilities:

(i) The design and orientation of these areas should take advantage of available sunlight and should be sheltered from the noise and traffic of adjacent street or other incompatible uses.

(ii) Each outdoor open space area should have a focal point. The focal point may consist of, but need not be limited to, water fountains, landscape planters, monuments, waterways, view points, artwork, trellises or gazebos. The focal point of all open space areas shall complement one another by maintaining a common theme, consistent furnishing, and signage.

(iii) On-site outdoor recreation space shall:

(A) Be of a grade and surface suitable for recreation;

(B) Be one continuous parcel if less than 3,000 square feet in size;

(C) Have no dimension less than 30 feet (except trail segments);

(D) Be situated and designed to be visible from adjacent buildings and uses on site; and

(E) Be accessible and convenient to all residents within the development.

(iv) The required amount of on-site common recreation space may be reduced by the community development director, if it is demonstrated that the facilities provided on site will offer residents with exceptional opportunities to participate in active aging (i.e., physical activity programs, trails, tennis courts, swimming pools, or other amenities deemed appropriate), and/or if it is demonstrated that the community is located within walking distance of a pedestrian-friendly neighborhood center and a safe walking route is provided.

(14) Private Open Space. Each single-family ~~attached or~~ detached or Middle Housing dwelling unit shall be provided a private open space area, free and clear of any attached or detached accessory structures, as follows:

(a) Each unit shall be provided 100 square feet of private yard with a minimum interior dimension of 10 feet.

(b) The required amount of private open space may be reduced by the community development director as provided in subsection (13)(b)(iv) of this section.

(15) Covenant and Duration. An agreement in a form approved by the city must be recorded on the property requiring that the provisions of this chapter, including age restrictions and site plan approval, be maintained for the life of the project. The agreement shall be recorded prior to building permit issuance. This agreement shall be a covenant running with the land, binding on the assigns, heirs and successors of the applicant.

22C.220.100 Modification of development regulations.

The city's standard development regulations shall be modified for a master planned senior community as provided in this section.

(1) Density and Dimensions. The standard dimensional regulations shall apply to all lots and development in a master planned senior community, except as specifically modified below and as provided in the design review standards in Chapters 22C.010, 22C.020 and/or 22G.080 MMC. The density permitted is modified as follows:

(a) Modified Density Standards:

	Residential Zones	Commercial Zones
Maximum Density: Dwelling Unit/Acre	As per the underlying zone plus 20%; provided that, the Neighborhood	None

	Residential Zones	Commercial Zones
	Residential zone is capped at 14 units/acre	

(b) When projects are proposed on sites that encompass multiple zones, the density built on each zone will be limited to that of the underlying allowed density for each zone.

(2) Maximum Building Height. Outside of the Downtown Neighborhood~~Planning Area 1~~, buildings or portions of buildings located within 50 feet of a property that is zoned Neighborhood Residential~~single-family~~, or where the predominant adjacent use is single-family, shall be limited to a maximum height of 30 feet.

(3) Street Standards. When multiple detached single-family or Middle Housing~~duplex~~ units are proposed, the project shall meet residential right-of-way and access standards as set forth in the Marysville Municipal Code and engineering development and design standards (EDDS). An applicant may request to utilize the city's PRD access street standards, which may be allowed at the discretion of the community development director.

(4) Open Space. Open space requirements may be modified consistent with this chapter.

(5) Additional Modifications. An applicant may request additional dimensional, open space, street, and design standard modifications beyond those provided in this section. Granting of the requested modification(s) will be based on innovative and exceptional architectural design features and/or innovative and exceptional site design and layout that contribute to achieving the purpose of this chapter.

22C.230.030 Mobile/manufactured home park zone.

There is created a mobile/manufactured home park zone (MHP) which shall be construed as an overlay classification which may be enacted for any area within the city zoned Neighborhood Residential (NR) and in the multiple-family residential classification (R-12 through R-28~~), or planned residential development classification (PRD 4.5 through PRD 8)~~.

(1) Purpose. The purposes of the MHP classification are:

(a) To provide a suitable living environment within a park-like atmosphere for persons residing in mobile/manufactured homes;

(b) To encourage variety in housing styles within areas designated for other residential development;

(c) To permit flexibility in the placement of mobile/manufactured homes on a site in order to minimize costs associated with development of roads, utilities, walkways and parking facilities, while providing adequate common and private open space.

(2) Permitted Uses. In the MHP zone the following uses are permitted:

(a) Mobile/manufactured home parks, subject to the requirements of this chapter;

(b) Mobile/manufactured homes, located only within an approved mobile/manufactured home park;

(c) Accessory uses and structures as provided in MMC 22C.010.060 and 22C.020.060;

(d) Recreational facilities located within and primarily for the use of residents of an approved mobile/manufactured home park;

(e) Recreational vehicle and boat storage facilities located within and limited to use by residents of an approved mobile/manufactured home park.

22C.230.040 Procedures for review and approval.

(1) Rezone. For an MHP overlay zoning classification to be enacted, all procedural requirements, including filing fees specified in MMC Title 22G, shall be complied with in full.

(2) Conditional Use Permit. A mobile home park shall be allowed in the Neighborhood Residential ~~a single-family residential~~ zone only upon conditional use permit approval ~~of a PRD rezone and the issuance of a conditional use permit by the city~~. The owner, operator and occupants of a mobile home park shall develop and use the park in strict compliance with the

conditions imposed by the permit. The agency issuing the permit shall maintain continuing jurisdiction for the review and enforcement of said conditions.

(3) Preliminary Site Plan. A preliminary site plan meeting the requirements of MMC 22C.230.060(1) shall be submitted with all applications for MHP rezones. Said site plan shall be subject to review, modification, approval or denial by the city council as an integral part of the MHP rezone process. There shall be no clearing, grading, construction or other development activities commenced on an approved mobile/manufactured home park until a preliminary site plan is upgraded to a binding site plan, and the same is approved and filed.

(4) Final Site Plan. Following final approval by the city council of an MHP rezone, but before development activities commence on the property, the owner shall submit a final site plan meeting the requirements of MMC 22C.230.060(2). The city staff shall review the final site plan to determine whether it conforms to the approved preliminary site plan, the MHP rezone, and applicable state laws and city ordinances which were in effect at the time of the rezone approval. Upon such conformity being found the final site plan shall be signed by the community development director. An approved final site plan shall constitute an integral part of an MHP zoning overlay, and shall be binding upon the owner of the property, its successors and assigns. All development within a mobile/manufactured home park shall be consistent with the final site plan.

(5) Subdivision Exemption. If a mobile/manufactured home park remains completely under single ownership or control, including ownership by a condominium association, compliance with an approved MHP rezone and final site plan shall preclude the necessity to plat the park or comply with any subdivision laws or ordinances.

(6) Amendment of Final Site Plan. An approved final site plan may be modified or amended at the request of the applicant upon receiving administrative approval by the community development director; provided, that if said modification or amendment affects the external impacts of the mobile/manufactured home park, or is determined by the community development director to be substantial in nature, then such modification or amendment shall be resubmitted to the hearing examiner and city council as a rezone application pursuant to Chapter 22G.010 MMC, Article VI, Land Use Application – Decision Criteria.

(7) Duration of Approval. An MHP rezone and the final site plan which is an integral part thereof shall be effective for three years from the date of approval of the rezone by the city council. An applicant who files a written request with the city council at least 30 days before the expiration of said approval period shall be granted a one-year extension upon a showing that the applicant has attempted in good faith to progress with the development of the park. During the approval period all improvements required by the final site plan shall be completed or bonded. Bonding shall conform to the bonding requirements for plats specified in Chapter 22G.040 MMC.

(8) Completion Prior to Occupancy. All required improvements and other conditions of the MHP rezone and final site plan approval shall be met prior to occupancy of any site by a

mobile/manufactured home; provided, that completion may be accomplished by phases if approved by the community development director and security for performance in accordance with the provisions of Chapter 22G.040 MMC and acceptable to the community development director is received by the city. The community development director may also require security for maintenance for a period of up to five years in accordance with the provisions of Chapter 22G.040 MMC.

(9) Compliance. Any use of land which requires an MHP rezone and final site plan approval, as provided in this chapter, and for which such review and approval are not obtained, or which fails to conform to an approved MHP rezone and final site plan, constitutes a violation of this title.

(10) Health District Approval. Prior to occupancy of a mobile/manufactured home park, the owner shall obtain a permit from the Snohomish health district and comply with all rules, regulations and requirements of said district. Said permit must be kept current at all times, subject to the park being closed. The rules, regulations and requirements of the health district shall be construed as being supplements to the provisions of this chapter.

22C.250.060 Wireless communication facilities – Siting hierarchy.

Siting of antenna or support structures shall adhere to the siting hierarchy of this section. The order of ranking for antenna or antenna support structures, from highest to lowest, shall be 1, 2, 3, 4. Where letters (a, b) are present, a is preferable to b. Where a lower ranking alternative is proposed, the applicant must submit relevant information including but not limited to an affidavit by a licensed radio frequency engineer demonstrating that despite diligent efforts to adhere to the established hierarchy within the geographic search area, higher ranking options are not technically feasible or justified given the location of the proposed wireless communications facility and network need.

Example: A new facility meeting the definition of a concealed consolidated WCF is proposed; the applicant demonstrates that the new facility cannot be sited under hierarchy (1)(a) through (1)(b). The applicant then demonstrates the new facility cannot be sited under hierarchy 2. The applicant then moves to hierarchy 3 and is able to propose a site.

1	Co-location with existing antenna support structure: a. That requires no increase in pole or structure height. b. That requires an increase in pole or structure height, which shall comply with MMC 22C.250.080(3).
2	New concealed antenna support structure or concealed consolidation: • On developed, improved sites in nonresidential zoning districts; or • On publicly owned land. Concealed attached WCF: • Within public parks, public open spaces, and on other publicly owned land; or • Within public rights-of-way; or • Within nonresidential zoning districts or residential zoning districts on lots not used for single-family residential or Middle Housing purposes.
3	Concealed consolidations: a. In nonresidential zoning districts. b. In residential zoning districts on lots not used for single-family residential or Middle Housing purposes.
4	New concealed antenna support structure: a. In nonresidential zoning districts.

	b. In residential zoning districts on lots not used for single-family residential or Middle Housing purposes.

The community development director may allow the siting of a facility in a location at a lower position in the hierarchy without demonstration that higher ranking options are not technically feasible or justified, provided the applicant demonstrates that the proposed facility location would result in a lesser visual/aesthetic impact and better meets the purposes of this chapter.

22C.250.070 Wireless communication facilities – General requirements.

(1) Co-located or combined facilities shall comply with the following requirements:

(a) Co-location of antennas onto existing antenna support structures meeting the dimensional standards of this chapter are permitted outright. Antenna mounts shall be flush-mounted onto existing antenna support structure, unless it is demonstrated through RF propagation analysis that flush-mounted antennas will not meet the network objectives of the desired coverage area. Furthermore, an antenna shall only extend vertically above the uppermost portion of the structure to which it is mounted or attached as follows:

(i) Not more than 20 feet on a nonresidential structure; and

(ii) Not more than 15 feet on a multifamily structure.

(b) Co-location of antennas onto a new antenna support structure constructed after May 1, 2006, shall be concealed.

(c) At the time of installation, the WCF base station and ancillary structures shall be brought into compliance with any applicable landscaping requirements.

(d) A co-located or combined WCF, its new base station, and any new ancillary structures shall be subject to the setbacks of the underlying zoning district.

(e) When a co-located or combined WCF is to be located on a nonconforming building or structure, then it shall be subject to the nonconformance provisions of Chapter 22C.100 MMC.

(2) Concealed attached WCFs outside of the public ROW shall comply with the following requirements:

(a) Concealed antennas shall reflect the visual characteristics of the structure to which they are attached and shall be designed to architecturally match the facade, roof, wall, or

structure on which they are affixed so that they blend with the existing structural design, color, and texture. This shall include the use of colors and materials, as appropriate. When located on structures such as buildings or water towers, the placement of the antenna on the structure shall reflect the following order of priority in order to minimize visual impact:

(i) A location as close as possible to the center of the structure; and

(ii) Along the outer edges or side-mounted; provided, that in this instance, additional means such as screens should be considered and may be required by the department on a case-by- case basis; and

(iii) When located on the outer edge or side-mounted, be placed on the portion of the structure less likely to be seen from adjacent lands containing, in descending order of priority, existing residences, public parks and open spaces, and public roadways.

(b) The top of the concealed attached WCF shall not be more than 40 feet above the existing or proposed nonresidential building or structure, or more than 15 feet above a residential building. Maximum height must be consistent with MMC 22C.250.080(3).

(c) Feed lines shall be contained within a principal building or encased and the encasement painted to blend and match the design, color, and texture of the facade, roof, wall, or structure to which they are affixed.

(3) Concealed attached WCFs proposed within the public right-of-way shall comply with the following requirements:

(a) An existing pole may be extended or replaced with a new pole, provided the original pole height may be increased by no more than the sum of the height of the wireless antenna(s) and necessary equipment, plus the minimum vertical separation distance as required by the utility agency.

(b) The pole must serve the original purpose and, if replaced, must be of similar appearance and composition as adjacent utility poles. The community development director may authorize the utilization of a composition material other than that of adjacent poles if it can be demonstrated that the utility's engineering requirements necessitate that the different material be utilized.

(c) Antennas shall be flush-mounted.

(d) Field changes necessary in order to meet other utility agency requirements shall be reviewed and approved by the city prior to structure installation.

(4) Concealed antenna support structures shall comply with the following requirements:

(a) Upon application for a new concealed antenna support structure, the applicant shall provide a map showing all existing antenna support structures or other suitable nonresidential structures located within one-quarter mile of the proposed structure with consideration given to engineering and structural requirements.

(b) No new antenna support structure shall be permitted if an existing structure suitable for attachment of an antenna or co-location is located within one-quarter mile, unless the applicant demonstrates that the existing structure is physically or technologically unfeasible, or is not made available for sale or lease by the owner, or is not made available at a market rate cost, or would result in greater visual impact. The burden of proof shall be on the applicant to show that a suitable structure for mounting of antenna or co-location cannot be reasonably or economically used in accordance with these criteria.

(c) In residential districts, new concealed antenna support structures shall only be permitted on lots whose principal use is not single-family residential or Middle Housing, including but not limited to schools, churches, synagogues, fire stations, parks, and other public property.

(d) To the extent that there is no conflict with the color and lighting requirements of the Federal Communications Commission and the Federal Aviation Administration for aircraft safety purposes, new antenna support structures shall be concealed as defined by this title and shall be configured and located in a manner to have the least visually obtrusive profile on the landscape and adjacent properties.

New concealed antenna support structures shall be designed to complement or match adjacent structures and landscapes with specific design considerations such as architectural designs, height, scale, color, and texture and designed to blend with existing surroundings to the extent feasible. This shall be achieved through the use of compatible colors and materials, and alternative site placement to allow the use of topography, existing vegetation or other structures to screen the proposed concealed antenna support structure from adjacent lands containing, in descending order of priority: existing residences, public parks and open spaces, and public roadways.

(e) At time of application the applicant shall file a letter with the department, agreeing to allow co-location on the tower. The agreement shall commit the applicant to provide, either at a market rate cost or at another cost basis agreeable to the affected parties, the opportunity to co-locate the antenna of other service providers on the applicant's proposed tower to the extent that such co- location is technically and structurally feasible for the affected parties.

(f) All new concealed antenna support structures up to 60 feet in height shall be engineered and constructed to accommodate no less than two antenna arrays. All concealed antenna support structures between 61 feet and 100 feet shall be engineered and constructed to accommodate no less than three antenna arrays. All concealed

antenna support structures between 101 and 140 feet shall be engineered and constructed to accommodate no less than four antenna arrays.

(g) Those providing for co-location shall also submit a plan for placement of base station equipment for potential future providers and/or services provided by additional antenna arrays.

(h) Grading shall be minimized and limited only to the area necessary for the new WCF.

(5) Consolidation of WCFs shall comply with the following requirements; consolidation of two or more existing WCFs may be permitted pursuant to the provisions of this chapter, including a CUP and consideration of the following:

(a) WCF consolidation shall reduce the number of WCFs.

(b) If a consolidation involves the removal of WCFs from two or more different sites and if a consolidated WCF is to be erected on one of those sites, it shall be erected on the site that provides for the greatest compliance with the standards of this chapter.

(c) Consolidated WCFs shall be concealed.

(d) All existing base stations and ancillary equipment shall be brought into compliance with this chapter.

(e) New WCFs approved for consolidation of an existing WCF shall not be required to meet new setback standards so long as the new WCF and its base station and ancillary structures are no closer to any property lines or dwelling units than the WCF and base station and ancillary structures being consolidated. For example, if a new WCF is replacing an old one, the new one is allowed to have the same setbacks as the WCF being removed, even if the old one had nonconforming setbacks.

(f) If the consolidated WCF cannot meet the setback requirements, it shall be located on the portion of the parcel on which it is situated which, giving consideration to the following, provides the optimum practical setback from adjacent properties:

(i) Topography and dimensions of the site;

(ii) Location of any existing structures to be retained.

22C.250.080 Wireless communication facilities – Design standards.

(1) All WCFs shall:

(a) Be designed and constructed to present the least visually obtrusive profile.

(b) Use colors such as gray, blue, or green that reduce visual impacts unless otherwise required by the city of Marysville, the FAA, or the FCC.

(c) Flush-mounted antennas when feasible. Nonflush-mounted antennas are allowed only upon written demonstration by the applicant that flush mounting is not feasible.

(2) Base Stations.

(a) Base stations that are not located underground shall not be visible from public views.

(b) New base stations and ancillary structures shall be designed to complement or match adjacent structures and landscapes with specific design considerations such as architectural designs, height, scale, color, and texture and designed to blend with existing surroundings to the extent feasible. This shall be achieved through the use of compatible colors and building materials of existing buildings or structures on the property, and alternative site placement to allow the use of topography, existing vegetation or other structures to screen the base station and ancillary structures from pedestrian views. Where feasible, one building with multiple compartments shall be constructed to serve the total number of anticipated co-location tenants. If the applicant can demonstrate that one building is not feasible or practical due to site design or other constraints, then a site plan shall be provided to demonstrate how all potential base stations and ancillary structures will be accommodated within the vicinity of the WCF.

(3) Height Standards. The height of the antenna support structure shall be measured from the natural undisturbed ground surface below the center of the base of the tower to the top of the tower or, if higher, to the top of the highest antenna or piece of equipment attached thereto. The height of any WCF shall not exceed the heights provided in the table below.

Zone	**Maximum Height**
GC, DC, DTC, CB, NB, GI, LI, MU, PI, WR-CB, WR-MU, MS, F	140 feet
~~R-4.5, R-6.5, R-8, WR-R-4-8,~~ Neighborhood Residential, R-12, R-18, WR-R-6-18, R-28, FR, MMF, MH1, MH2	80 feet
Open Space and Recreation	140 feet

Notes:

(1) New antenna support structures must comply with MMC 22C.250.070(4)(e) through (g).

(2) Increases to the height of an existing antenna support structure are permitted, provided:

(a) It is consistent with all conditions of the CUP authorizing the use and subsequent approvals thereafter;

(b) The existing conditions and the proposed changes are not in violation of the MMC;

(c) It is necessary to accommodate an actual co-location of the antenna for additional service providers or to accommodate the current provider's antenna required to utilize new technology, provide a new service, or increase capacity;

(d) Height increases are limited to no more than 40 feet above the height of the existing antenna support structure unless explicitly allowed in the CUP;

(e) A nonconformance shall not be created or increased, except as otherwise provided by this chapter;

(f) A detailed certification of compliance with the provisions of this section is prepared, submitted, and approved.

(4) Setback Requirements.

(a) Antenna support structures outside of the right-of-way shall have a setback from property lines of 10 feet from any property line and 50 feet or one foot setback for every one foot in height from any residentially zoned property, whichever provides the greatest setback.

(b) Base stations shall be subject to the setback requirements of the zone in which they are located.

(c) The department shall consider the following criteria and give substantial consideration to on-site location; setback flexibility is authorized when reviewing applications for new antenna support structures and consolidations:

(i) Whether existing trees and vegetation can be preserved in such a manner that would most effectively screen the proposed tower from residences on adjacent properties;

(ii) Whether there are any natural landforms, such as hills or other topographic breaks, that can be utilized to screen the tower from adjacent residences;

(iii) Whether the applicant has utilized a tower design that reduces the silhouette of the portion of the tower extending above the height of surrounding trees.

(5) Landscaping and Fencing Requirements.

(a) All ground-mounted base stations and ancillary structures shall be enclosed with an opaque fence or fully contained within a building. In all residential zones, or a facility abutting a residential zone, or in any zone when the base station and ancillary structures adjoin a public right-of-way, the fence shall be opaque and made of wood, brick, or masonry. In commercial or industrial zones, if a chain-link fence is installed, slats shall be woven into the security fence. Required fencing shall be of sufficient height to screen all ground equipment and shall be subject to MMC 22C.010.380 and 22C.020.330. The city shall have the authority to determine the type of enclosure and materials required based upon review of existing site and surrounding conditions.

(b) Landscaping shall be done in accordance with Chapter 22C.120 MMC.

(c) When a fence is used to prevent access to a WCF or base station, any landscaping required shall be placed outside of the fence.

(d) Landscaping provisions may be modified in accordance with MMC 22C.120.190.

(6) Lighting Standards. Except as specifically required by the FCC or FAA, WCFs shall not be illuminated, except lighting for security purposes that is compatible with the surrounding neighborhood. Any lighting required by the FAA or FCC must be the minimum intensity and number of flashes per minute (i.e., the longest duration between flashes) allowable to minimize the potential attraction to migratory birds. Dual lighting standards (white blinking light in daylight and red blinking light at dusk and nighttime) are required and strobe light standards are prohibited unless required. The lights shall be oriented so as not to project directly onto surrounding residential property, and consistent with FAA and FCC requirements.

(7) Signage. Commercial messages shall not be displayed on any WCF. The only signage that is permitted upon an antenna support structure, base station, or fence shall be informational, and for the purpose of identifying the antenna support structure (such as ASR registration number), as well as the party responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable). If more than 220 voltage is necessary for the operation of the facility and is present in a ground grid or in the antenna support structure, signs located every 20 feet and attached to the fence or wall shall display in large, bold, high contrast letters (minimum letter height of four inches) the following: “HIGH VOLTAGE – DANGER.”

(8) Sounds. Maximum permissible sound levels to intrude into the real property of another person from a wireless communication facility shall not exceed 45 dB(A). In the case of maintenance, construction, and emergencies, these sound levels may be exceeded for short durations as required by the specific circumstance.

Chapter 22D.020
PARKS, RECREATION, OPEN SPACE AND TRAIL IMPACT FEES AND MITIGATION

Sections:

22D.020.010 Authority.

This title is adopted under RCW 82.02.050(2) which authorizes cities planning under the Growth Management Act, primarily codified at Chapters 36.70A and 82.02 RCW, to assess, collect, and use impact fees to pay for park, recreation, open space and trail facilities needed to accommodate growth. The city of Marysville is required to plan under the Growth Management Act and has adopted a comprehensive plan, which includes a capital facilities element which complies with RCW 36.70A.070(3), 82.02.050(4), and all other applicable requirements. Consequently, the city of Marysville is authorized to impose, collect, and use impact fees.

22D.020.020 Purposes.

The purpose of this title is to implement the capital facilities element of the Marysville comprehensive plan and the Growth Management Act by:

(1) Ensuring that adequate park, recreation, open space and trail facilities are available to serve new development.

(2) Maintaining the high quality of life in Marysville by ensuring that adequate facilities are available to serve growth, thereby providing for the needs of new growth and maintaining existing service levels for present businesses and residents.

(3) Establishing standards and procedures whereby new development pays its proportionate share of the costs of park, recreation, open space and trail facilities; reducing transaction costs for both the city and developers; and ensuring the developments are not required to pay arbitrary or duplicative fees.

22D.020.030 Payment of impact fees required.

(1) Payment of Impact Fees Required. Any person who applies for a building permit for any development activity or who undertakes any development activity shall pay the impact fees set in MMC 22D.020.050 or 22D.020.060 to the city of Marysville finance department or its designee. Except as otherwise provided in this section and MMC Title 22, no new building permit shall be issued until the required impact fees have been paid to the city of Marysville finance department or its designee or successor. Where a building permit is not required for a development activity, the impact fees shall be paid to the city of Marysville finance department or its designee before undertaking the development activity.

(2) Deferral of Impact Fee Payments Allowed.

(a) Required impact fee payments may be deferred to final inspection for single-family detached or Middle Housing ~~attached residential~~ dwellings (excluding accessory dwelling units).

(b) The community development department shall allow an applicant to defer payment of the impact fees when, prior to submission of a building permit application for deferment under subsection (2)(a) of this section, the applicant:

(i) Submits a signed and notarized deferred impact fee application and acknowledgement form for the development for which the property owner wishes to defer payment of the impact fees.

(c) Compliance with the requirements of the deferral option shall constitute compliance with the conditions pertaining to the timing of payment of the impact fees.

22D.020.040 Exemptions to the requirement to pay impact fees.

(1) The following are excluded from the requirement to pay some or all of the required impact fees:

(a) The reconstruction, remodeling, or replacement of existing buildings, structures, mobile homes, or manufactured homes, which does not result, for nonresidential structures, in additional floor space or, for all structures, additional dwellings. A complete application for a building permit to replace or reconstruct an existing structure that was removed or destroyed shall be submitted within three years after the structure was removed or destroyed in order for the exemption to apply.

(b) The construction of structures accessory to a residence is exempt from the requirement to pay all impact fees.

(c) Parking garages and building space which is constructed solely to park motor vehicles which are not owned, leased or rented by a business or part of a stock in trade are exempt from the requirement to pay all impact fees. The conversion of parking garages or vehicle parking areas to other uses identified in MMC 22D.020.050(2) requires the payment of impact fees.

(d) Temporary uses and structures authorized by Chapter 22C.110 MMC are exempt from the requirement to pay all impact fees.

(e) The property on which the development activity will take place is exempt from the payment of park, recreation, open space or trail facilities impact fees under RCW 82.02.100 because the property is part of a development activity which mitigated its impacts on the same system improvements under the State Environmental Policy Act (SEPA).

(f) The development activity shall not be required to pay impact fees for a facility type because:

> (i) The impact of the development activity for park, recreation, open space or trail facilities has been mitigated by a voluntary agreement; mitigated State Environmental Policy Act (SEPA) determination; SEPA EIS; permit or approval condition which requires the payment of fees consistent with the fees imposed by this title for park impacts; the dedication of land in lieu of a fee for parks, recreation and trail improvements; or the construction or improvement of parks, recreation, open space or trails in lieu of a fee; and
>
> (ii) The SEPA, permit or approval condition predates the effective date of the ordinance codified in this chapter. If the condition or requirement does not provide that the improvements substitute for impact fees, then the development activity is not exempt. To be exempt from the payment of park facilities impact fees, the voluntary agreement, mitigated SEPA determination, permit or approval condition shall provide for a payment, dedication, or construction of park facility improvements. Where a development activity has not filed a complete building permit application before the effective date of this chapter, the development activity

shall pay any payment under the same terms as an impact fee but in the amount specified by the voluntary agreement, mitigated SEPA determination, permit or approval condition as a condition of being exempt from the requirement to pay mitigation fees. Unless the voluntary agreement, permit condition or approval condition requires payment when the building permit is applied for or issued, the planning director may extend the payment date from before the issuance of a building permit to some later date for development activities required to pay under this exemption.

(g) Accessory dwellings approved by the city under Chapter 22C.180 MMC.

(2) Any claim of exemption shall be made no later than the time of application for a building permit. If a building permit is not required for the development activity, the claim shall be made when the fee is tendered. Any claim not made when required by this section shall be deemed waived.

22D.020.050 Computing required impact fees using adopted impact fee schedules.

At the option of the person applying for a building permit or undertaking development activity, the amount of the impact fees shall be determined by the fee schedules in this section.

(1) When using the impact fee schedules, the impact fees shall be calculated by using the following formula:

Number of units of each use	x	Impact fee amount for a facility type	=	Amount of impact fee that shall be paid for that facility type for that use

(a) The number of units of each use shall be determined as follows:

(i) For residential uses it is the number of housing units for which a building permit application has been made; and

(ii) For office, retail, or manufacturing uses it is the gross floor area of building(s) to be used for each use expressed in square feet divided by 1,000 square feet. If uses other than parking vehicles which does not constitute a stock in trade and uses accessory to residences will take place outside of buildings, the calculations shall include the land area on which these uses will take place.

(b) Using the formula in subsection (1) of this section, impact fees shall be calculated separately for each use and each facility type. The impact fees that shall be paid are the sum of these calculations.

(c) If a development activity will include more than one use in a building or on a site, then the fee shall be determined using the above schedule by apportioning the space committed to the various uses specified on the schedule.

(d) If the type of use or development activity is not specified on the impact fee schedules in this section, the planning director shall use the impact fee applicable to the most comparable type of land use on the fee schedules. The planning director shall be guided in the selection of a comparable type by the most recent Standard Industrial Code Manual and the Marysville development code. If the planning director determines that there is no comparable type of land use on the above fee schedule then the planning director shall determine the proper fee by considering demographic or other documentation which is available from state, local, and regional authorities.

(e) In the case of a change in use, development activity, redevelopment, or expansion or modification of an existing use, the impact fee shall be based upon the net positive increase in the impact fee based on either the number of dwelling units or square feet of commercial or industrial area for the new development activity as compared to the previous development activity. The planning director shall be guided in this determination by the sources and agencies listed above.

(2) Park, Recreation, Open Space or Trail Facility-Type Impact Fee Schedule.

Land Use	Units	Impact Fee That Shall Be Paid per Unit or S.F.
Single-family residences, ~~(including~~ mobile/ manufactured homes, Middle Housing (excluding accessory dwelling units), ~~duplexes~~ and townhouses (5 units per building or more) ~~attached single-family homes~~)	1 housing unit	$1,251.00
Multifamily residences	1 housing unit	$884.00

Note: Land uses are defined in Chapter 22A.020 MMC.

22D.020.060 Computing required impact fees based on an independent fee calculation study.

If a person required to pay impact fees decides not to have the impact fees determined according to MMC 22D.020.050, then the person shall prepare and submit to the director an independent fee calculation study for the proposed development activity. Any person can decide to have an independent fee calculation study for one or more impact fees and use the impact fee schedules in MMC 22D.020.050 for one or more impact fees.

(1) Any person submitting an independent impact fee calculation study shall include the fee set by the city council for reviewing independent impact fee calculation studies. This fee may be set by ordinance or resolution.

(2) The independent fee calculation study shall comply with the following standards:

(a) The study shall follow accepted impact fee assessment practices and methodologies and shall be consistent with this ordinance and Chapter 82.02 RCW.

(b) The study shall use data sources which are acceptable to the planning director, including the city's capital facilities element, and the data shall be comparable with the uses and intensities proposed for the proposed development activity.

(c) The study shall comply with the applicable state laws governing impact fees including RCW 82.02.060 or its successor.

(d) The study, including any data collection and analysis, shall be prepared and documented by professionals qualified in their respective fields.

(e) The study shall show the basis upon which the independent fee calculation was made.

(3) The planning director shall consider the study and documentation submitted by the person required to pay the impact fees, but is not required to accept the study if the planning director determines that the study is not accurate or reliable. The planning director may, in the alternative, require the person submitting the study to submit additional or different documentation for consideration. If the director decides that outside experts are needed to review the study, the applicant shall be responsible for paying for the reasonable cost of a review by outside experts. If an acceptable independent fee calculation study is not presented, the person shall pay the impact fees based upon the process and schedules in MMC 22D.020.050. If an acceptable independent fee calculation study is presented, the fee may be adjusted to that appropriate to the particular development activity.

22D.020.070 Credits and adjustments to required impact fee payments.

(1) Credits. Required impact fees shall be reduced by the following credits when applicable:

(a) The required park, recreation, open space or trail facilities impact fees shall be reduced by the amount of any payment for park, recreation, open space or trail facilities system improvements previously made for the lot on which the development activity will take place either as a condition of approval or under a voluntary agreement with the city entered into after the effective date of the ordinance codified in this chapter.

(b) After the effective date of the ordinance codified in this chapter, whenever a development is granted approval subject to a condition that the developer actually provide sites, facilities, or improvements for parks, recreation, open space, or trails acceptable to the city, or whenever the developer has agreed, pursuant to the terms of a voluntary agreement with the city, to provide land, parks or capital facilities, or to improve existing facilities, the developer shall be entitled to a credit for up to the value of the land or up to the actual cost of construction against the impact fee that would be chargeable under MMC 22D.020.050 or 22D.020.060.

(i) The land value or cost of construction shall be estimated at the time of approval and shall be based on acceptable evidence and documentation. The evidence and documentation shall be reviewed and, if acceptable, approved by the planning director. When land is proposed for dedication, the person required to pay impact fees shall present either an MAI appraisal or evidence of the assessed value as determined by the county assessor's office. If construction costs are estimated, the documentation shall be confirmed after the construction is completed to assure that an accurate credit amount is provided. If the land value or construction cost is less than the calculated fee amount, the difference remaining shall be chargeable as an impact fee for the facility for which the land, system facilities, or improved system facilities were provided.

(ii) In certain cases a park, recreation, open space or trail system improvement may function as a project improvement. Where a system improvement functions as a project improvement, the person who is required to pay impact fees shall only receive a credit for the amount of the improvement that functions as a parks, recreation, open space or trail system improvement.

(c) The amount of the credit for a development activity shall not exceed the amount of the impact fee the development activity is required to pay.

(d) If a development activity includes construction of park, recreation, open space or trail facilities which meet the requirements of this subsection, then the applicant shall be entitled to a credit for that portion of the park, recreation, open space or trail facilities impact fee to be used for that park, recreation, open space or trail facility-type to the extent that the park, recreation, open space or trail system satisfies the needs of the occupants of the development activity and the public.

(i) The credit shall equal:

(A) The reduction in demand by occupants of the development on the city's park, recreation, open space or trail system that is met by the facility.

(B) The reduction in demand by the general public on the city's park, recreation, open space or trail system that is met by the facility, if the facility is open to the general public and signs at the facility notify the public that they can use the facility. To be eligible for the credit in this subsection, the facility shall be located in an area which, based upon adopted level of service standards, is lacking in needed park, recreation, open space or trail facilities. Credit under this subsection shall not be given for the portion of any facility which provides a higher level of service than that set by the level of service standard for that facility.

(ii) The park, recreation, open space or trail facilities shall meet the following criteria to be eligible for a credit:

(A) The area or facility shall function as a park, recreation, open space or trail system improvement and not a project improvement as defined by this chapter, either because it is a system improvement or because it is a project improvement which relieves demand on the city's park, recreation, open space or trail system.

(B) The facilities shall be equivalent to Marysville's adopted standards for park, recreation, open space or trail facilities.

(C) The park, recreation, open space or trail shall be large enough to function as that type of park, recreation, open space or trail system to obtain a credit.

(D) The city may require that legally binding covenants be recorded in the real property records providing that the facility shall be used by the facility's occupants or the general public. If these facilities are closed or converted to another use, the amount of the credit in current dollars shall be paid to the Marysville finance department or its designee or successor before the facilities are closed or converted.

(2) Adjustments. The director may adjust the required impact fees where the director determines one of the following circumstances exists and the discount included in the impact fee formula fails to adjust for the error in the calculation or to ameliorate the unfairness of the fee:

(a) The person required to pay the impact fee demonstrates that an impact fee was incorrectly computed.

(b) The person required to pay the impact fee demonstrates that unusual circumstances make the standard impact fee applied to the development unfair or unjust. These circumstances shall not be circumstances generally applicable to similar types of land uses or generally applicable to development activities in that vicinity. Unusual circumstances may include that the development activity will have substantially less impact on the system improvement than the other development activities in the category.

(3) Any claim of a credit or adjustment shall be made no later than the time of application for a building permit. If a building permit is not required for the development activity, the claim may be made when the fee is tendered. Any claim not made when required by this section shall be deemed waived.

22D.020.080 Appeals and payments under protest.

(1) Any decision made by the planning director, or his or her designee, in the course of administering this chapter may be appealed in accordance with the procedures for appealing the underlying permit and shall not be subject to a separate appeal process. This shall include the requirement to pay impact fees. Where no other appeal process is provided, an appeal may be made as an appeal of an administrative decision, pursuant to MMC Title 22G. Any errors in the formula for calculating the impact fee shall be referred to the mayor and city council for possible modification.

(2) Impact fees may be paid under written protest to obtain a building permit or other approval or permit.

22D.020.090 Impact fee accounts and disbursements.

(1) The city of Marysville finance department shall identify the funds collected as to the person paying them, the date paid, and the type of impact fee paid. The finance department shall deposit the fees in special interest-bearing accounts. A separate account shall be established for each type of impact fee. All interest shall be retained in the account and expended for the purposes for which the impact fee was imposed. While maintaining fees in separate accounts, pooled investments may be used.

(2) Park, recreation, open space or trail impact fees shall only be expended on system improvements which are included in the capital facilities chapter of the comprehensive plan.

(3) For system improvements included in the capital facilities chapter, impact fees may be expended on facility planning; land acquisition; site improvements; application fees; necessary off-site improvements; required mitigation; construction, engineering, architectural, permitting, financing, and administrative expenses; relocatable facilities; capital equipment; repayment of system improvement costs previously incurred by the city to the extent that new growth and development will be served by the system improvements; and any other expenses which could be capitalized and are consistent with the capital facilities element.

(4) In the event that bonds or similar debt instruments are issued for the advanced provision of system improvements for which impact fees may be expended and where consistent with provisions of the bond covenants, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section.

(5) Impact fees shall be expended or encumbered for a permissible use within 10 years of the date they are received by the city of Marysville finance department unless the city council makes written findings that there exists an extraordinary and compelling reason for fees to be held longer than 10 years.

22D.020.100 Impact fee refunds.

(1) All requests for impact fee refunds shall be made by the owner of the property on which the impact fee was paid and shall be made in writing. The written request shall be submitted to the city of Marysville finance department or its successor, if the city holds the funds. The written request shall be received within one year of the date the right to the claim for the refund arises. Notwithstanding any other provision of this section, where notice of eligibility of a refund is required by subsection (2)(b) of this section, the written request shall be received within one year of the date on which the city mails the notice that the person may be eligible for a refund.

(2) Refunds of Unencumbered Impact Fees.

(a) The current owner of property on which impact fees have been paid may apply for and receive a refund of these fees if the impact fees have not been expended or encumbered within the time limits in MMC 22D.020.090(5) unless the city council has extended the 10-year period by finding that there is an extraordinary and compelling reason to hold such fees for a longer period. Refunds of impact fees under this subsection (2) shall include any interest earned on the impact fees by the city. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first-in, first-out basis.

(b) If the city holds impact fees beyond the time limits set in MMC 22D.020.090(5), the city shall notify potential claimants by first class mail deposited with the United States Postal Service addressed to the owner of the property as shown in the county tax records or a commercial compendium of the tax records.

(c) Any impact fees that are not expended within the time limits in MMC 22D.020.090(5) and for which no application for a refund has been made within the one-year period set by subsection (1) of this section shall be retained and expended on the system improvements for which the impact fees were imposed.

(3) Refunds of Impact Fees for When Development Does Not Proceed. Any person who was required to pay impact fees may request and shall receive a refund, including interest earned on the impact fees, when both of the following conditions are met:

(a) A final inspection is not requested for the building or, if no building is being constructed as part of the development activity, if the use is not started.

(b) No impact has resulted on the park, recreation, open space or trail facilities. "Impact" shall be deemed to include cases where the city has expended or encumbered the impact fees in good faith before the application for the refund. In the event that the city has expended or encumbered the fees in good faith no refund shall be given. However, if within a period of five years the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner shall be eligible for a credit. The owner shall request the credit in writing by the deadline set for claiming credits and shall provide receipts for the impact fees paid by the owner for a development activity of the same or substantially similar nature on the same property or some part of the property. The planning director shall determine whether to grant a credit, and a decision to deny a credit request may be appealed as an appeal of an administrative decision pursuant to Chapter 22G.010 MMC.

(4) See RCW 82.02.080 or its successor for rules on the termination of impact fee requirements.

(5) The interest due on the refund of impact fees required by this chapter or RCW 82.02.080 or its successor shall be calculated according to the average rate received by the city on invested funds throughout the period during which the impact fees were retained by that local government.

22D.020.110 Annual impact fee report.

Each year, the city of Marysville finance department shall prepare a report on each impact fee account showing the source and amount of all moneys collected, earned, or received and the system improvements that were financed in whole or in part by the impact fees. This report may be part of an existing annual report or a separate report.

22D.020.120 Periodic review of fee schedules.

The city council shall review the fee schedules in MMC 22D.020.050 at least once every four years.

22D.020.130 Formula for determining park, recreation, open space or trail impact fees.

(1) The park, recreation, open space or trail impact fees for MMC 22D.020.050(2) shall be the developer fee obligation (F) calculated using the formula and table in this section.

(2) The impact fee service area for park, recreation, open space or trail impact fees shall be the entire city of Marysville.

(3) Separate fees shall be calculated for single-family residences, mobile/manufactured homes, Middle Housing (excluding accessory dwelling units), townhouses (5 units per building or more), multifamily residences, offices, retail trade, manufacturing, and other uses. For the purposes of this chapter, mobile~~/ homes or~~ manufactured homes, ~~duplexes~~ Middle Housing (excluding accessory dwelling units), and townhouses (5 units per building or more)~~single-family attached dwellings~~ shall be charged ~~treated as~~ the single-family residence~~s~~ rate.

(4) The schedule of fees set forth in MMC 22D.020.050(2) shall be adjusted annually beginning January 1, 2001, based upon the change in the Consumer Price Index (CPI-U) for the Seattle-Everett area for the preceding 12 months for which such CPI data is available.

Formulas for Determining Park, Recreation, Open Space or Trail Impact Fees:

For assessing impacts of residential properties, the capital facility plan is used as the basis for the fee calculation.

IF:

A = Parks, recreation, open space or trails capital facility program.

B = City of Marysville contribution.

C = Percent of total park use demanded by land use category.

D = Projected growth by number of units per land use category.

F = Developer fee obligation.

THEN:

F = [(A – B) x C]/D

(Ord. 2852 § 10 (Exh. A), 2011).

22D.020.140 Severability.

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

22D.020.150 No special duty created.

It is the purpose of this chapter to provide for the health, welfare and safety of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter. No provision or term used in this chapter is intended to impose any duty whatsoever upon the city or any of its officers, agents, or employees for whom the implementation or enforcement of this chapter shall be discretionary and not mandatory.

Nothing contained in this chapter is intended to be, nor shall be construed to create or form the basis for, any liability on the part of the city or its officers, agents and employees for any injury or damage resulting from the failure of any premises to abate a nuisance or to comply with the provisions of this chapter or be a reason or a consequence of any inspection, notice or order, in connection with the implementation or enforcement of this chapter, or by reason of any action of the city related in any manner to enforcement of this chapter by its officer, agents or employees.

22D.020.160 Emergency.

In light of the rapid rate of development in the city of Marysville and Snohomish County and the need to provide adequate parks, recreation, open space and trail facilities to serve development, an emergency is hereby declared to exist due to the fiscal impacts of delay on the city and in order to preserve the public health, safety and welfare.

22D.030.040 Definitions.

(1) “Approving authority” means the city employee, agency or official having authority to issue the approval or permit for the development involved.

(2) “Arterial unit” means a road, segment of a road, or portion of a road or a system of roads, or intersection, consistent with the level of service methodology adopted in the city transportation element of the comprehensive plan and consistent with the criteria established by the director, for the purpose of making level of service concurrency determinations.

(3) “Arterial unit in arrears” means any arterial unit operating below the adopted level of service standard adopted in the transportation element of the comprehensive plan, except where improvements to such a unit have been programmed in the city six-year transportation improvement program adopted pursuant to RCW 36.81.121 with funding identified that would remedy the deficiency within six years.

(4) “Capacity improvements” means any improvements that increase the vehicle and/or people moving capacity of the road system.

(5) “Capital facilities plan” means all documents comprising the capital facilities element of the comprehensive plan that, for capital facilities, consists of an inventory of facilities owned by public entities, forecasts of future needs, new and expanded facilities, and a multi-year financing plan, adopted pursuant to Chapter 36.70A RCW.

(6) “Comprehensive plan” means the generalized, coordinated land use policy statement of the city council adopted pursuant to Chapter 36.70A RCW, which may include a land use plan, a capital facilities plan, a transportation element, subarea plans and any such other documents or portions of documents identified as constituting part of the comprehensive plan under Chapter 36.70A RCW.

(7) “Dedication” means conveyance of land to the city for road purposes by deed or some other instrument of conveyance or by dedication on a duly filed and recorded plat or short plat.

(8) “Department” means either the city of Marysville public works or community development department, whichever department is relevant to the city action being referred to in this title.

(9) “Developer” means the person applying for or receiving a permit or approval for a development as defined in subsection (10) of this section.

(10) “Development” means all the subdivisions, short subdivisions, industrial or commercial building permits, conditional use permits, binding site plans (including those associated with rezone applications), or building permits (including building permits for single-family detached, Middle Housing, townhouses (5 units per building or more), multifamily ~~and duplex residential~~

~~structures~~, and all similar uses), changes in occupancy and other applications pertaining to land uses that:

(a) Require land use permits or approval by the city of Marysville; or

(b) Which are located in areas of the county or other cities and which will impact the city of Marysville's public road system.

"Development" does not include building permits for single-family detached~~residential dwellings~~, ~~attached or detached~~ accessory ~~apartments~~dwelling units, or duplex conversions, on existing tax lots.

(11) "Direct traffic impact" means any new vehicular trip added by new development to its road system as defined in subsection (20) of this section.

(12) "Director" means the director of the city of Marysville department of either public works or community development or his/her authorized designee, whichever director is relevant to the city action being referred to in this title.

(13) "Frontage improvements" means improvements on roadways abutting a development and tapers thereto required as a result of a development. Generally, frontage improvements shall consist of appropriate base materials; curb, gutter, and sidewalk; storm drainage improvements; bus pullouts and waiting areas where necessary; bicycle lanes and bicycle paths where applicable; and lane improvements.

(14) "Highway capacity manual" means the current Highway Capacity Manual, Transportation Research Board, National Research Council, 2101 Constitution Avenue, Washington, D.C.; amendments thereto; and any supplemental editions or documents published by the Transportation Research Board adopted by the U.S. Department of Transportation, Federal Highway Administration.

(15) "Inadequate road condition" means any road condition, whether existing on the road system or created by a new development's access or impact on the road system, which jeopardizes the safety of road users, including nonautomotive users, as determined by the city engineer in accordance with the department policy and procedure for the determination of inadequate road conditions.

(16) "Level of service (LOS)" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level of service standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The highway capacity manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with level-of-service A representing

the best operating condition, and level-of-service F the worst. For the purposes of this title, level of service will be measured only on arterial units.

(17) “Off-site road improvement” means improvement, except a frontage improvement, to an existing or proposed city or county road outside the boundaries of a development, which improvement is required or recommended in accordance with this title.

(18) “Public agency” means any school district, public water, sewer or utility district; fire district; airport district; public transportation benefit area; or local government agency seeking a land use permit or approval reviewed under this title.

(19) “Road” means an open, public way for the passage of vehicles that, where appropriate, may include pedestrian, equestrian and bicycle facilities. Limits include the outside edge of sidewalks, or curbs and gutters, paths, walkways, or side ditches, including the appertaining shoulder and all slopes, ditches, channels, waterways, and other features necessary for proper drainage and structural stability within the right-of-way or access easement.

(20) “Road system” means those existing or proposed public roads, whether state, county or city (including freeway interchanges with county roads or city streets and the ramps for those interchanges but excluding freeway mainlines), within the transportation service area.

(21) “Transportation element” means the element of the city comprehensive plan that for transportation consists of goals and policies, an inventory of facilities and services, adopted level of service standards, an analysis of deficiencies and needs, system improvements and management strategies and a multi-year financial plan, adopted pursuant to Chapter 36.70A RCW.

(22) “Transportation service area” means a geographic area of the city, as defined in the transportation element, identified for the purpose of evaluating the transportation impacts of development, determining proportionate shares of needed transportation improvements and allocating revenue to transportation improvement projects.

(23) “WSDOT” means the Washington State Department of Transportation.

22D.030.070 Determination and fulfillment of road system obligations.

(1) Determination of Developer Obligations.

(a) Applications which have a prior SEPA threshold determination establishing developer obligation for the transportation impacts at time of enactment of the ordinance codified in this section shall be vested under the development obligation identified under SEPA.

(b) A determination of developer obligation shall be made by the city before approval of preliminary plats, short subdivisions, and conditional use permits. For binding site plans (including those associated with rezone applications) and commercial permits, the determination of developer obligation shall be made prior to issuance of a building permit.

(c) Mitigation measures imposed as conditions of approval of conditional use permits or binding site plans shall remain valid until the expiration date of the concurrency determination for a development. Any building permit application submitted after the expiration date shall be subject to full reinvestigation of traffic impacts under this title before the building permit can be issued. Determination of new or additional impact mitigation measures shall take into consideration, and may allow credit for, mitigation measures fully accomplished in connection with approval of the conditional use permit, the binding site plan, or prior building permits pursuant to a binding site plan, only where those mitigation measures addressed impacts of the current building permit application.

(d) The director, following review of any required traffic study and any other pertinent data, shall inform the developer in writing what the development's impacts and mitigation obligations are under this title. The developer shall make a written proposal for mitigation of the development's traffic impact, except when such mitigation is by payment of any impact fee under the authority provided to the city under RCW 82.02.050(2). When the developer's written proposal has been reviewed for accuracy and completeness by the director, the director shall make a recommendation to the community development department as to the concurrency determination and conditions of approval or reasons for recommending denial of the land use application, citing the requirements of this title.

(e) For developments which require a public hearing, a developer must submit a written proposal to the director for mitigation of the development's traffic impact, except where such mitigation is by payment of any impact fee under the authority provided to the city under RCW 82.02.050(2). The written proposal must be submitted after any required traffic study has been reviewed and the director has stated the mitigation requirements pursuant to this chapter.

(f) Any request to amend a proposed development, following the determination of developer obligations and approval of the development, which causes an increase in the traffic generated by the development, or a change in points of access, shall be processed in the same manner as an original application and determined to be a substantial project revision, except where written concurrence is provided by the community development director that such request may be administratively approved.

(2) Road System Capacity Requirements.

(a) All developments must mitigate their impact upon the future capacity of the road system either by constructing off-site road improvements which offset the traffic impact

of the development or by paying the development's proportionate share cost of the future capacity improvements as set forth in subsection (3) of this section.

(b) Construction Option – Requirements.

(i) If a developer chooses to mitigate the development's impact to the road system capacity by constructing off-site road improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the director for construction of the off-site improvements.

(ii) In cases where two or more developers have agreed to fully fund a certain improvement, the proportionate sharing of the costs shall be on any basis that the developers agree among themselves would be equitable. Under such an arrangement, the terms of the agreement shall be binding on each development as conditions of approval.

(iii) Any developer who volunteers to construct more than the development's share of the cost of off-site improvements may apply for a reimbursement contract.

(c) Payment Option – Requirements.

(i) If a developer chooses to mitigate the development's impact by making a proportionate share mitigating payment, the development's share of the cost of future capacity improvements will be equal to the development's peak-hour traffic (PHT) times the per-trip amount as identified in the transportation element of the comprehensive plan, as codified below.

(ii) If a developer chooses to mitigate the development's impact by making a proportionate share mitigating payment, the payment is required prior to building permit issuance unless the development is a subdivision or short subdivision, wherein the payment is required prior to the recording of the subdivision or short subdivision.

(iii) Any developer who volunteers to pay more than the development's share of the cost of off-site improvements may apply for a reimbursement contract.

(3) Traffic Impact Fee.

(a) The proportionate share fee amount shall be calculated in accordance with the formula established in Table I:

Table I:

A. Formula	
Step 1.	Calculate total transportation plan costs (20-year).
Step 2.	Subtract costs assigned to other agencies = total city of Marysville costs.
Step 3.	Subtract city-funded noncapacity projects from total city of Marysville costs.
Step 4.	Subtract LID or other separate developer funding sources = capacity added projects.
Step 5.	Subtract city share for external capacity added traffic.
Step 6.	Calculate applied discount.

The fee amount resulting from Step 5 is the required traffic impact fee payment.

(b) Data needed for calculation of the fee amount shall be provided in the adopted transportation element and street capital facility plan contained within the adopted city comprehensive plan, which data shall be updated at least annually.

(4) Temporary Enhanced Discount. For a period of three years from the effective date of the ordinance codified in this section, the discount referenced in step 6 of Table I (and which is based on data contained in Appendix A, Traffic Impact Fee Methodology, of the city's Transportation Element) shall be adjusted from seven percent to 22 percent. From and after three years of the effective date of the ordinance codified in this section the subject discount shall automatically revert to seven percent without further action of the Marysville city council.

(5) Traffic Impact Fee Exemption.

(a) Traffic Impact Fee Exemption Established. Pursuant to RCW 82.02.060(2) and (4), there is hereby established an exemption from the traffic impact fee set forth in subsection (3) of this section for development activity which meets the criteria of subsection (5)(c) of this section.

(b) Application for Traffic Impact Fee Exemption. Any developer applying for or receiving a building permit which meets the criteria set forth in subsection (5)(c) of this section may apply to the director of public works or designee for an exemption from the traffic impact fee established pursuant to subsection (3) of this section. Said application shall be on forms provided by the city and shall be accompanied by all information and data the city deems necessary to process the application. To the extent it is authorized by law the city shall endeavor to keep all proprietary information submitted with said application

confidential; provided, however, this section shall not create or establish a special duty to do so.

(c) Exemption Criteria. To be eligible for the traffic impact fee exemption established by this section, the applicant shall meet each of the following criteria:

(i) The applicant must be a new commercial retail business in the Marysville city limits. For purposes of this section, "new commercial retail business" shall mean any business which sells retail goods and services which are subject to the retail sales tax provisions of Chapter 3.84 MMC and which applies for a building permit and which is subject to payment of traffic impact fees pursuant to this title.

(ii) Based on similar store sales or other reliable data, as determined by the city, the applicant must demonstrate that it is likely to generate to the city of Marysville average annual city of Marysville portion sales and use tax revenue of at least $200,000 based upon the three-year period commencing from date of certificate of occupancy.

(iii) The applicant must be a new retail business located within one of the following prescribed land use zones: light industrial (LI), general commercial (GC), community business (CB), mixed use (MU), downtown core (DC), downtown commercial (DTC), main street (MS), or flex (F).

(d) Administration of Traffic Impact Fee Exemption.

(i) Upon acceptance of an application for exemption from traffic impact fees pursuant to subsection (5)(b) of this section, the applicant shall pay to the city the full amount of the traffic impact fees required pursuant to subsection (3) of this section. Following receipt of the traffic impact fees the city shall deposit and manage the fees as set forth in subsection (5)(e) of this section. At the expiration of a three-year period commencing from the date of issuance of a certificate of occupancy the public works director, with the assistance of the city finance director, shall determine if the average annual city of Marysville portion sales and use tax revenue received by the city meets the minimum amount stated in subsection (5)(c)(ii) of this section. The determination shall be based upon the sales tax reporting requirements of Chapter 3.84 MMC as it now reads or is hereafter amended.

(ii) In the event the three-year average annual city of Marysville portion sales and use tax revenue criterion of subsection (5)(c)(ii) of this section has been met as determined by the director of public works, there shall be an exemption of 50 percent from the traffic impact fees otherwise due pursuant to subsection (3) of this section. In such case, 50 percent of the amount paid to the city pursuant to subsection (5)(d)(i) of this section shall be refunded to the applicant, plus any accrued

interest. The remainder of the funds deposited pursuant to subsection (5)(d) of this section shall belong to the city and shall be released to the city.

(iii) In the event the three-year average annual city of Marysville portion sales and use tax revenue criterion of subsection (5)(c)(ii) of this section has not been met, the traffic impact fee required under subsection (3) of this section shall immediately belong to and shall be released to the city; provided, however, in cases where the applicant has met at least 75 percent of the amount set forth in subsection (5)(c)(ii) of this section, the applicant shall receive a partial exemption which shall result in a refund of 25 percent of the amount paid to the city pursuant to subsection (5)(d) of this section plus any accrued interest. The remainder of the funds deposited pursuant to subsection (5)(d) of this section shall belong to the city and shall be released to the city.

(iv) In cases where the applicant has not met either the three-year annual sales and use tax revenue criterion of subsection (5)(c)(ii) of this section or 75 percent thereof, all traffic impact fees paid pursuant to subsection (3) of this section shall belong to the city.

(v) By mutual agreement of the city and the applicant, any refund due under this section may be applied to an obligation or assessment owed by the applicant for city street improvement purposes, including, but not limited to, any obligation or assessment under a local improvement district for streets.

(e) Deposit and Management of Traffic Impact Fees. Traffic impact fees paid by an applicant pursuant to this section and the provisions of subsection (3) of this section shall be deposited by the city into a separate interest bearing account with any qualified public depository for local government as determined by the city. The account holder shall be the city of Marysville. The city may at its option withdraw up to 50 percent of said funds at any time for uses authorized by this title. All other funds deposited in that account shall be used exclusively for payment of refunds to eligible applicants pursuant to subsection (5)(d) of this section and balances, if any, to which the city is entitled. All refunds and interest to which an applicant is entitled shall be paid by the city within 120 days following the three-year period following the issuance of a certificate of occupancy.

(f) Appeals. Any applicant aggrieved by the determination of the director of public works as to whether the criteria of subsection (5)(c) of this section have been met or the eligibility for an exemption from subsection (3) of this section or the amount of refund to which an applicant is entitled pursuant to subsection (5)(d) of this section may file a written appeal to the city's land use hearing examiner as established by Chapter 22G.060 MMC. The city examiner is hereby specifically authorized to hear and decide such appeals and the decision of the hearing examiner shall be final action of the city and subject to appeal pursuant to MMC 22G.010.540.

(g) Application of Sales and Use Tax Revenue From Businesses Which Receive an Exemption or Partial Exemption.

(i) All sales and use tax received by the city from applicants who receive an exemption or partial exemption from the requirements of this title shall be deposited in a special account to be administered by the city. Said account shall be established to pay traffic impact fees that otherwise would have been paid had an exemption or partial exemption not been granted. Said amounts shall be expended for purposes authorized by and in accordance with the provisions of this title and the provisions of the city's capital improvement plan for streets. All sales and use tax revenues in excess of the amount paid as traffic impact fees received by the city from the applicant may be deposited in the city's general fund and may be expended for any lawful purpose as directed by the city council.

(ii) Special Sales Tax Account. The city shall establish by separate ordinance a special sales tax account for the purposes set forth in subsection (5)(g)(i) of this section.

(6) Level of Service Requirements – Concurrency Determinations.

(a) The department shall make a concurrency determination for each development application. The concurrency determination will establish whether the development will impact an arterial unit where the level of service is below the adopted level of service standard, or cause the level of service on an arterial unit to fall below the adopted level of service standard, unless improvements are programmed and funding identified which would remedy the deficiency within six years. In either case, the development will be deemed not concurrent. The approving authority shall not approve any development that is not deemed concurrent under this section. Building permit applications for development within an approved rezone with binding site plan, nonresidential subdivision or short subdivision, for which a concurrency determination has been made in accordance with this section, shall be deemed concurrent; provided, that the building permit will not cause the approved traffic generation of the prior approval to be exceeded, there is no change in points of access, and mitigation required pursuant to the rezone with binding site plan, subdivision or short subdivision approval is performed as a condition of building permit issuance.

(i) The department shall make a concurrency determination upon receipt of a development's application submittal. The determination may change based upon revisions in the application. Any change in the development after approval will be resubmitted to the director, and the development will be reevaluated for concurrency purposes.

(ii) Concurrency shall expire six years after the date of the concurrency determination, or, in the case of approved residential subdivisions, when the approval expires or when the application is withdrawn or allowed to lapse.

(iii) Building permits for a development must be issued prior to expiration of concurrency for the development. No additional concurrency determination shall apply to residential dwellings within a subdivision or short subdivisions recorded in compliance with this section.

(iv) If concurrency expires prior to building permit issuance, the director shall at the request of the developer consider evidence that conditions have not significantly changed and make a new concurrency determination in accordance with subsection (6)(a)(i) of this section.

(b) In determining whether or not to deem a proposed development as concurrent, the department shall analyze likely road system impacts on arterial units based on the size and location of the development. A development shall be deemed concurrent for the period prior to the expiration date of concurrency for the development.

(i) A development's forecast trip generation at full occupancy shall be the basis for determining the impacts of the development on the road system. The city will accept valid data from a traffic study prepared under MMC 22D.030.060.

(c) A concurrency determination made for a proposed development under this section will evaluate the development's impacts on any arterial units in arrears.

(i) If a development which generates 10 or more p.m. peak-hour trips, or a nonresidential development which generates five or more p.m. peak-hour trips, is proposed to affect an arterial unit in arrears, then the development may only be deemed concurrent based on a trip distribution analysis to determine the impacts of the development. Impacts shall be determined based on each of the following:

(A) If the trip distribution analysis indicates that the development will not place three or more p.m. peak-hour trips on any arterial units in arrears, then the development shall be deemed concurrent.

(B) If the trip distribution analysis indicates that the development will place three or more p.m. peak-hour trips on any arterial unit in arrears, then the development shall not be deemed concurrent except where the development is deemed concurrent in accordance with the options under subsection (6)(e) of this section.

(d) Any residential development that generates less than 10 p.m. peak-hour trips, or any nonresidential development that generates less than 10 p.m. peak-hour trips, shall be considered to have only minor impact on city arterials for purposes of a concurrency determination on impacts to level of service on arterial units and shall be deemed concurrent.

(e) Any development not deemed concurrent shall have options available to enable the development to be deemed concurrent as follows:

(i) A development which meets the department's criteria for transit compatibility, in accordance with the director's policy and procedure for transit compatibility under MMC 22D.030.050(12), shall be deemed concurrent if the impacted arterial unit in arrears meets the criteria for transit supportive design in accordance with the director's policy and procedure for transit compatibility, and if the level of service on the impacted arterial unit in arrears meets the LOS standards adopted within the comprehensive plan; and provided, that the development can be deemed concurrent in accordance with all other provisions of subsection (6)(c) of this section.

(ii) A development may modify its proposal to lessen its impacts on the road system in such a way as to allow the city to deem the development concurrent under this section.

(iii) The city may deem such development concurrent based upon a written proposal signed by the proponent of the development and attached to the director's recommendation under MMC 22D.030.050(2), and referenced in the concurrency determination, as a condition of approval.

(A) Such proposal may include conditions which would defer construction of all or identified subsequent phases of a development until such time as the city has made or programmed capacity improvements which would remedy any arterial units in arrears.

(B) Such proposals may include conditions which would defer construction of all or identified subsequent phases of a development until such time as the developer constructs capacity improvements which would remedy any arterial units in arrears.

1. If a developer chooses to mitigate the development's impact by constructing off-site road improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the director for construction of the off-site improvements. Construction of improvements shall be in accordance with the engineering design and development standards.

2. In cases where two or more developers have agreed to fully fund a certain improvement, the proportionate sharing of the cost shall be on any basis that the developers agree among themselves would be equitable. Under such an arrangement, the terms of the agreement shall be binding on each development as conditions of approval.

3. Any developer who volunteers to construct off-site improvements of greater value than any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of city roads may apply for a reimbursement contract.

4. Any developer who chooses to mitigate a development's impact by constructing off-site improvements may propose to the council that a joint public/private partnership be established to jointly fund and/or construct the proposed improvements. The director will determine whether or not such a partnership is to be established.

5. Construction of capacity improvements under this section must be complete or under contract prior to the issuance of any building permits and must be complete prior to approval for occupancy or final inspection; provided, that where no building permit will be associated with a change in occupancy, then construction of improvements is required as a precondition to approval.

(f) Adopted Level of Service. The level of service for principal, minor, and collector arterials at signalized intersections shall be at a LOS consistent with the transportation element of the comprehensive plan using the operational method as a standard of review.

(7) Inadequate Road Condition Requirements.

(a) Regardless of the existing level of service, development which adds three or more p.m. peak-hour trips to an inadequate road condition existing on the road system, at the time of determination in accordance with subsection (1) of this section, or development whose traffic will cause an inadequate road condition at the time of full occupancy of the development will only be approved for occupancy or final inspection when provisions are made in accordance with this chapter for elimination of the inadequate road condition. The improvements removing the inadequate road condition must be complete or under contract before a building permit on the development will be issued and the road improvement must be complete before any certificate of occupancy or final inspection will be issued; provided, that where no building permit will be associated with a conditional use permit, then the improvements removing the inadequate road condition must be complete as a precondition to approval.

(b) The director shall determine whether or not a location constitutes an inadequate road condition. Any known inadequate road condition to which the development adds three or more p.m. peak-hour trips shall be identified as part of the director's recommendation under subsection (6) of this section.

(c) A development's access onto a public road shall be designed so as not to create an inadequate road condition. Developments shall be designed so that inadequate road conditions are not created.

(d) Construction Option – Requirements.

(i) If a developer chooses to eliminate an inadequate road condition by constructing off-site road improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the director for construction of the off-site improvements.

(ii) In cases where two or more developers have agreed to fully fund a certain improvement, the proportionate sharing of the costs shall be on any basis that the developers agree among themselves would be equitable. Under such an arrangement, the terms of the agreement shall be binding on each development as conditions of approval.

(iii) Any developer who volunteers to construct off-site improvements of greater value than any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of city roads, which are contained within the cost basis, contained within the transportation element, or which are not part of the cost basis of any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of city roads, and therefore not credited against any proportionate share mitigating payment, may apply for a reimbursement contract.

(8) Special Circumstances. Where the only remedy to an arterial unit in arrears is the installation of a traffic signal, but signalization warrants contained in the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) are not met at present, developments impacting the arterial unit will be allowed to proceed without the installation of the traffic signal; provided, that all other warranted level of service and transit-related improvements are made on the arterial unit within the deficient level of service. Developments impacting such arterial units will not be issued building permits or occupancies (whichever comes first) until the improvements (not including the traffic signal) to the level of service deficient arterial unit are under contract or being performed. Such developments will be subject to all other obligations as specified in this title.

(9) Administration of Traffic Impact Fees.

(a) Any traffic impact fees made pursuant to this title shall be subject to the following provisions:

(i) Except as otherwise provided in this section and MMC Title 22, the traffic impact fee payment is required prior to building permit issuance unless the development is

a subdivision or short subdivision, in which case the payment shall be made prior to the recording of the subdivision or short subdivision; provided, that where no building permit will be associated with a change in occupancy or conditional use permit then payment is required prior to approval of occupancy.

(ii) The traffic impact fees shall be held in a reserve account and shall be expended to fund improvements on the road system.

(iii) An appropriate and reasonable portion of traffic impact fees collected may be used for administration of this title.

(iv) The fee payer may receive a refund of such fees if the city fails to expend or encumber the impact fees within six years of when the fees were paid, or other such period of time established pursuant to RCW 82.02.070(3), on transportation facilities intended to benefit the development for which the traffic impact fees were paid, unless the city council finds that there exists an extraordinary and compelling reason for fees to be held longer than six years. These findings shall be set forth in writing and approved by the city council. In determining whether traffic impact fees have been encumbered, impact fees shall be considered encumbered on a first-in first-out basis. The city shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of claimants.

(v) The request for a refund must be submitted by the applicant to the city in writing within 90 days of the date the right to claim the refund arises, or the date that notice is given, whichever is later. Any traffic impact fees that are not expended within these time limitations, and for which no application for a refund has been made within this 90-day period, shall be retained and expended on projects identified in the adopted transportation element. Refunds of traffic impact fees under this subsection shall include interest earned on the impact fees.

(b) Off-site improvements include construction of improvements to mitigate an arterial unit in arrears and/or specific inadequate road condition locations. If a developer chooses to construct improvements to mitigate an arterial unit in arrears or inadequate road condition problem, and the improvements constructed are part of the cost basis of any traffic impact fees imposed under this title to mitigate the development's impact on the future capacity of city roads, the cost of these improvements will be credited against the traffic impact fee amount; provided, that the amount of the cost to be credited shall be the estimate of the public works director as to what the city's cost would be to construct the improvement. Any developer who volunteers to pay for and/or construct off-site improvements of greater value than any traffic impact fees imposed under this title, to mitigate the development's impact on the future capacity of city roads, based on the cost basis contained within the transportation element, or which are not part of the cost basis of any traffic impact fees imposed under this title to mitigate the development's impact on the future capacity of city roads, and therefore not credited against the traffic impact fees, may apply for a reimbursement contract.

(c) Deferral of Impact Fees Allowed.

(i) Required payment of impact fees may be deferred to final inspection for single-family detached, Middle Housing, or townhouses (5 units or more per building)~~or attached residential dwelling~~.

(ii) Payment of required impact fees for a commercial building, or industrial building, may be deferred from the time of building permit issuance in accordance with following:

(A) Fifty percent of the impact fees shall be paid prior to approved occupancy of the structure; and

(B) The remaining 50 percent of the impact fees shall be paid within 18 months from the date of building occupancy, or when ownership of the property is transferred, whichever is earlier.

(iii) The community development department shall allow an applicant to defer payment of the impact fees when, prior to submission of a building permit application for deferment under subsection (9)(c)(i) of this section or prior to final inspection for deferment under subsection (9)(c)(ii) of this section, the applicant:

(A) Submits a signed and notarized deferred impact fee application and acknowledgment form for the development for which the property owner wishes to defer payment of the impact fees; and

(B) With regard to deferred payment under subsection (9)(c)(ii) of this section, records a lien for impact fees against the property in favor of the city in the total amount of all deferred impact fees for the development. The lien for impact fees shall:

1. Be in a form approved by the city attorney;

2. Include the legal description, tax account number and address of the property;

3. Be signed by all owners of the property, with all signatures as required for a deed, and recorded in the county in which the property is located;

4. Be binding on all successors in title after the recordation; and

5. Be junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

//(iv) In the event that the impact fees are not paid in accordance with subsection (9)(c)(ii) of this section, the city shall institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW, except as revised herein. In addition to any unpaid impact fees, the city shall be entitled to interest on the unpaid impact fees at the rate provided for in RCW 19.52.020 and the reasonable attorney fees and costs incurred by the city in the foreclosure process. Notwithstanding the foregoing, prior to commencement of foreclosure, the city shall give not less than 30 days' written notice to the person or entity whose name appears on the assessment rolls of the county assessor as owner of the property via certified mail with return receipt requested and regular mail advising of its intent to commence foreclosure proceedings. If the impact fees are paid in full to the city within the 30-day notice period, no attorney fees, costs and interest will be owed.

(v) In the event that the deferred impact fees are not paid in accordance with this section, and in addition to foreclosure proceedings provided in subsection (9)(c)(iv) of this section, the city may initiate any other action(s) legally available to collect such impact fees.

(vi) Upon receipt of final payment of all deferred impact fees for the development, the department shall execute a separate lien release for the property in a form approved by the city attorney. The property owner, at their expense, will be responsible for recording each lien release.

(vii) Compliance with the requirements of the deferral option shall constitute compliance with the conditions pertaining to the timing of payment of the impact fees.

22D.040.020 Definitions.

(1) Words Defined by RCW 82.02.090. Words used in this chapter and defined in RCW 82.02.090 shall have the same meaning assigned in RCW 82.02.090 unless a more specific definition is contained in subsection (2) of this section.

(2) Other Definitions.

(a) “Average assessed value” means the district’s average assessed value for each dwelling unit type.

(b) “Boeckh index” means the current construction trade index of construction costs for each school type.

(c) “Capital facilities” means school facilities identified in a school district’s capital facilities plan and are “system improvements” as defined by the GMA as opposed to localized “project improvements.”

(d) “Capital facilities plan” means a district’s facilities plan adopted by its school board consisting of those elements required by MMC 22D.040.030 and meeting the requirements of the GMA.

(e) “Council” means the Marysville city council.

(f) “County” means Snohomish County.

(g) “Department” means the city of Marysville planning and building department.

(h) “Developer” means the proponent of a development activity, such as any person or entity who owns or holds purchase options or other development control over property for which development activity is proposed.

(i) “Development” means all subdivisions, short subdivisions, conditional or special use permits, binding site plan approvals, rezones accompanied by an official site plan, or building permits (including building permits for single family detached, Middle Housing, townhouses (5 units or more per building), and multifamily ~~and duplex~~ residential structures, and all similar uses) and other applications requiring land use permits or approval by the city of Marysville.

(j) “Development activity” means any residential construction or expansion of a building, structure or use of land, or any other change in use of a building, structure, or land that creates additional demand and need for school facilities, but excluding building permits for remodeling or renovation permits which do not result in additional dwelling units. Also

excluded from this definition is “housing for older persons” as defined by 46 U.S.C. Section 3607, when guaranteed by a restrictive covenant, and new single-family detached units constructed on legal lots created prior to the effective date of the ordinance codified in this chapter.

(k) “Development approval” means any written authorization from the city which authorizes the commencement of a development activity.

(l) “Director” means the city planner or the city planner’s designee.

(m) “District” means a school district whose geographic boundaries include areas within the city of Marysville.

(n) “District property tax levy rate” means the district’s current capital property tax rate per $1,000 of assessed value.

(o) “Dwelling unit type” means:

(i) Single-family residences;

(ii) Middle Housing units as defined in MMC 22A.020.140 (excluding accessory dwelling units);

~~(ii)~~ (iii) Multifamily studio or one-bedroom apartment or condominium units; and

~~(iii)~~ (iv) Multifamily multiple-bedroom apartment or condominium units.

(v) Townhouse units as defined in MMC 22A.020.210.

(p) “Encumbered” means school impact fees identified by the district to be committed as part of the funding for capital facilities for which the publicly funded share has been assured, development approvals have been sought or construction contracts have been let.

(q) “Estimated facility construction cost” means the planned costs of new schools or the actual construction costs of schools of the same grade span recently constructed by the district, including on-site and off-site improvement costs. If the district does not have this cost information available, construction costs of school facilities of the same or similar grade span within another district are acceptable.

(r) “Facility design capacity” means the number of students each school type is designed to accommodate, based on the district’s standard of service as determined by the district.

(s) “Grade span” means a category into which a district groups its grades of students (e.g., elementary, middle or junior high, and high school).

(t) “Growth Management Act/GMA” means the Growth Management Act, Chapter 17, Laws of the State of Washington of 1990, First Executive Session, as now in existence or as hereafter amended.

(u) “Interest rate” means the current interest rate as stated in the Bond Buyer Twenty Bond General Obligation Bond Index.

(v) “Land cost per acre” means the estimated average land acquisition cost per acre (in current dollars) based on recent site acquisition costs, comparisons of comparable site acquisition costs in other districts, or the average assessed value per acre of properties comparable to school sites located within the district.

(w) “Middle Housing unit” means any residential dwelling unit meeting the definition of Middle Housing in MMC 22A.020.140, excluding accessory dwelling units.

~~(w)~~(x) “Multifamily unit” means any residential dwelling unit meeting the definition of multifamily dwelling unit in MMC 22A.020.140~~that is not a single-family unit as defined by this chapter~~.

~~(x)~~(y) “Permanent facilities” means school facilities of the district with a fixed foundation.

~~(y)~~(z) “Relocatable facilities” means factory-built structures, transportable in one or more sections, that are designed to be used as education spaces and are needed to prevent the overbuilding of school facilities, to meet the needs of service areas within a district, or to cover the gap between the time that families move into new residential developments and the date that construction is completed on permanent school facilities.

~~(z)~~(aa) “Relocatable facilities cost” means the total cost, based on actual costs incurred by the district, for purchasing and installing portable classrooms.

~~(aa)~~(bb) “Relocatable facilities student capacity” means the rated capacity for a typical portable classroom used for a specified grade span.

~~(bb)~~(cc) “School impact fee” means a payment of money imposed upon development as a condition of development approval to pay for school facilities needed to serve new growth and development. The school impact fee does not include a reasonable permit fee, an application fee, the administrative fee for collecting and handling impact fees, or the cost of reviewing independent fee calculations.

~~(cc)~~(dd) “Single-family unit” means any detached residential dwelling unit designed for occupancy by a single family or household.

~~(dd)~~(ee) “Standard of service” means the standard adopted by each district which identifies the program year, the class size by grade span and taking into account the requirements of students with special needs, the number of classrooms, the types of facilities the district believes will best serve its student population, and other factors as identified in the district’s capital facilities plan. The district’s standard of service shall not be adjusted for any portion of the classrooms housed in relocatable facilities which are used as transitional facilities or from any specialized facilities housed in relocatable facilities.

~~(ee)~~(ff) “State match percentage” means the proportion of funds that are provided to the district for specific capital projects from the state’s common school construction fund. These funds are disbursed based on a formula which calculates district assessed valuation per pupil relative to the whole state assessed valuation per pupil to establish the maximum percentage of the total project eligible to be paid by the state.

~~(ff)~~(gg) “Student factor (student generation rate)” means the number of students of each grade span (elementary, middle/junior high, high school) that a district determines are typically generated by different dwelling unit types within the district. Each school district will use a survey or statistically valid methodology to derive the specific student generation rate; provided, that the survey or methodology is approved by the Marysville city council as part of the adopted capital facilities plan for each school district.

(hh) “Townhouse unit” means any residential dwelling unit meeting the definition of townhouses as defined in MMC 22A.020.210.

22D.040.060 Impact fee accounting.

(1) Collection and Transfer of Fees, Fund Authorized and Created.

(a) Except as otherwise provided in this section and MMC Title 22, school impact fees shall be due and payable to the city by the developer at or before the time of issuance of residential building permits for all development activities.

(b) In conjunction with the adoption of the city budget, there is hereby authorized the creation and establishment of a fund to be designated the “school impact fee fund.” The city shall temporarily deposit all impact fees collected on behalf of a district pursuant to this chapter and any interest earned thereon in the school impact fee fund with specific organizational identity for a district until the transfer of the fees to the school district’s school impact fee account pursuant to the interlocal agreement between the city and the district.

(c) Districts eligible to receive school impact fees collected by the city shall establish an interest-bearing account separate from all other district accounts. The city shall deposit

school impact fees in the appropriate district account within 10 days after receipt, and shall contemporaneously provide the receiving district with a notice of deposit.

(d) Each district shall institute a procedure for the disposition of impact fees and providing for annual reporting to the city that demonstrates compliance with the requirements of RCW 82.02.070, and other applicable laws.

(2) Use of Funds.

(a) School impact fees may be used by the district only for capital facilities that are reasonably related to the development for which they were assessed and may be expended only in conformance with the district's adopted capital facilities plan.

(b) In the event that bonds or similar debt instruments are issued for the advance provision of capital facilities for which school impact fees may be expended, and where consistent with the provisions of the bond covenants and state law, school impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the capital facilities provided are consistent with the requirements of this title.

(c) The responsibility for assuring that school impact fees are used for authorized purposes rests with the district receiving the school impact fees. All interest earned on a school impact fee account must be retained in the account and expended for the purpose or purposes for which the school impact fees were imposed, subject to the provisions of subsection (3) of this section.

(d) Each district shall provide the city an annual report showing the source and the amount of school impact fees received by the district and the capital facilities financed in whole or in part with those school impact fees.

(3) Deferral of School Impact Fee Payments Allowed.

(a) Required school impact fee payments may be deferred to final inspection for a single-family detached or ~~attached residential~~ Middle Housing dwelling as defined in MMC 22A.020.140 (excluding accessory dwelling units).

(b) The community development department shall allow an applicant to defer payment of the impact fees when, prior to submission of a building permit application for deferment or prior to final inspection for deferment under subsection (3)(a) of this section, the applicant:

(i) Submits a signed and notarized deferred impact fee application and acknowledgement form for the development for which the property owner wishes to defer payment of the impact fees.

(c) The city may initiate any other action(s) legally available to collect such school impact fees.

(d) Compliance with the requirements of the deferral option shall constitute compliance with the conditions pertaining to the timing of payment of the impact fees.

(4) Refunds.

(a) School impact fees not spent or encumbered within six years after they were collected shall, upon receipt of a proper and accurate claim, be refunded, together with interest, to the then current owner of the property. In determining whether school impact fees have been encumbered, impact fees shall be considered encumbered on a first-in, first-out basis. At least annually, the city, based on the annual report received from each district pursuant to subsection (2)(d) of this section, shall give notice to the last known address of potential claimants of any funds, if any, that it has collected that have not been spent or encumbered. The notice will state that any persons entitled to such refunds may make claims.

(b) Refunds provided for under this section shall be paid only upon submission of a proper claim pursuant to city claim procedures. Such claims must be submitted to the director within one year of the date the right to claim the refund arises, or the date of notification provided for above, where applicable, whichever is later.

(5) Reimbursement for City Administrative Costs, Legal Expenses, and Refund Payments. Each participating school district shall enter into an agreement with the city of Marysville providing for such matters as the collection, distribution and expenditure of fees and for reimbursement of any legal expenses and staff time associated with defense of this chapter as more specifically set forth in an interlocal agreement between the city and a school district, and payment of any refunds provided under subsection (3) of this section. The city's costs of administering the impact fee program shall be paid by the applicant to the city as part of the development application fee. Said fee shall be as set forth in Chapter 22G.030 MMC and shall be an amount that approximates, as nearly as possible, the actual administrative costs of administering the school impact fee program.

22E.030.090 Categorical exemptions, threshold determinations, and enforcement of mitigating measures.

The city of Marysville adopts WAC 197-11-300 through 197-11-390, 197-11-800 through 197-11-890, and 197-11-908 as now existing or hereinafter amended, by reference, subject to the following:

(1) Establishment of Flexible Thresholds for Categorically Exempt Actions. The following exempt threshold levels are hereby established pursuant to WAC 197-11-800(1)(d):

(a) The construction or location of any single-family residential or Middle Housing structures of less than or equal to 30 dwelling units;

(b) The construction or location of any multifamily residential structures of less than or equal to 60 dwelling units;

(c) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering less than or equal to 40,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots;

(d) The construction of an office, school, commercial recreational, service or storage building with less than or equal to 30,000 square feet of gross floor area, and with associated parking facilities and/or independent parking facilities designed for less than or equal to 90 automobiles;

(e) Any landfill or excavation of less than or equal to 1,000 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

(2) The exemptions in this subsection apply except when the project:

(a) Is undertaken wholly or partly on lands covered by water and this remains true whether lands covered by water are mapped;

(b) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;

(c) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800(7) or (8); or

(d) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(e) A series of exempt actions that are physically or functionally related to each other, and that together may have a probable significant adverse environmental impact in the judgment of the director/agency with jurisdiction may be subject to SEPA.

(3) Categorical Exemptions without Flexible Thresholds. The following proposed actions that do not have flexible thresholds are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305:

(a) Actions listed in WAC 197-11-800(2) through (26).

(4) Environmentally Critical Areas. The Marysville shoreline environments map and the critical areas maps adopted pursuant to this title designate the location of environmentally sensitive areas within the city and are adopted by reference. For each environmentally sensitive area, the exemptions within WAC 197-11-800 that are inapplicable for the area are (1), (2)(d), (2)(e), (6)(a) and (24)(a) through (g). Unidentified exemptions shall continue to apply within environmentally sensitive areas of the city.

(a) Lands Covered by Water. Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

(b) Treatment. The city shall treat proposals located wholly or partially within an environmentally critical area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The city shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally critical area.

(5) Responsibility for Determination of Categorical Exempt Status. The determination of whether a proposal is categorically exempt shall be made by the responsible official.

(6) Mitigation Measures. Modifications to a SEPA checklist or other environmental documentation that result in substantive mitigating measures shall follow one of the following processes:

(a) The responsible official may notify the applicant of the requested modifications to the proposal and identify the concerns regarding unmitigated impacts. The applicant may elect to revise or modify the environmental checklist, application, or supporting documentation. The modifications may include different mitigation measures than those requested by the responsible official; however, acceptance of the proposed measures is subject to subsequent review and approval by the responsible official.

(b) The responsible official may make a mitigated determination of nonsignificance (MDNS), identifying mitigating measures. The MDNS may be appealed by the applicant pursuant to MMC 22E.030.180.

(c) The responsible official may identify mitigating measures in a letter and mail that letter to the applicant. In writing, the applicant may acknowledge acceptance of these measures as mitigating conditions. The acknowledgement shall be incorporated into the application packet as supporting environmental documentation or as an addendum to the environmental checklist.

(7) Enforcing Mitigation Measures. Pursuant to WAC 197-11-350(7), the city hereby adopts the following procedures for the enforcement of mitigation measures:

(a) Incorporation of Representations Made by Applicant into MDNS or DNS and Approval. Representations made in the environmental checklist and supporting documentation shall be considered as the foundation of any decision or recommendation of approval of the action. As such, the responsible official relies on this documentation in making a decision on a proposal. Unless specifically revised by the responsible official or applicant, those statements, representations, and mitigating measures contained in the environmental checklist, application, and supporting documentation shall be considered material conditions of any approval. Mitigating measures shall only be included on a DNS under the following circumstances:

(i) When the UDC does not provide adequate regulations to mitigate for an identified impact, and when any one of the following circumstances or combination of circumstances exists:

(A) When such conditions are not specifically written in the environmental checklist, application, or supporting information; or

(B) When the responsible official determines that the proposed conditions or representations contained within that information do not adequately address impacts from a proposal.

(b) Modifications to a Proposal – Responsible Official May Withdraw Threshold Determination. If, at any time, the proposal or proposed mitigation measures are substantially changed, or if proposed mitigation measures are withdrawn, then the responsible official shall review the threshold determination and, if necessary, may withdraw the threshold determination and issue a revised determination, including a determination of significance (DS), as deemed appropriate.

(c) Enforcement of Mitigation Measures. Mitigation measures that are identified in an environmental checklist, development application, supporting documentation, an EIS or an MDNS shall be considered material conditions of the permit or approval that is issued by the reviewing department. As such, failure to comply with these measures may be enforceable through the enforcement provisions that regulate the proposal.

22G.010.160 Administrative approvals subject to notice.

(1) The director may grant preliminary approval or approval with conditions, or may deny the following actions subject to the notice provisions in MMC 22G.010.100 and appeal requirements of this section:

(a) Binding site plans;

(b) Conditional use permits;

(c) Major revisions to approved developments or permits in accordance with MMC 22G.010.270;

(d) Master plans for properties under ownership or contract of applicant(s);

(e) Shoreline permits for substantial developments;

(f) Short subdivisions; ~~and~~

(g) Site plans with commercial, industrial, institutional (e.g., church, school), multifamily, or townhouse~~.~~; and

(h) Unit lot subdivisions.

(2) Final Administrative Approvals. Preliminary approvals under this section shall become final subject to the following:

(a) If no appeal is submitted, the preliminary approval becomes final at the expiration of the 14-day notice period.

(b) If a written notice of appeal is received within the specified appeal periods, the matter will be referred to the hearing examiner for an open record public hearing.

22G.010.250 Vesting.

(1) Purpose. The purpose of this section is to implement plan policies and state laws that provide for vesting. This section is intended to provide property owners, permit applicants, and the general public assurance that regulations for project development will remain consistent during the lifetime of the application. The section also establishes time limitations on vesting for permit approvals and clarifies that once those time limitations expire, all current development regulations and current land use controls apply.

(2) Applicability. This section applies to complete applications and permit approvals required by the city of Marysville pursuant to MMC Title 22, including and limited to land use permits, preliminary subdivisions, final subdivisions, short subdivisions, unit lot subdivisions, binding site plans, conditional use permits, shoreline development permits and any other land use permit application that is determined by Washington State law to be subject to the Vested Rights Doctrine. Vesting of building permit applications is governed by the rules of RCW 19.27.095 and MMC Title 16.

(3) Vesting of Applications.

(a) An application described in subsection (2) of this section shall be reviewed for consistency with the applicable development regulations in effect on the date the application is deemed complete.

(b) An application described in subsection (2) of this section shall be reviewed for consistency with the construction and utility standards in effect on the date the separate application for a construction or utility permit is deemed complete. An applicant may submit a separate construction or utility permit application simultaneously with any application described in subsection (2) of this section to vest for a construction or utility standard. The application or approval of a construction or utility permit or the payment of connection charges or administrative fees to a public utility does not constitute a binding agreement for service and shall not establish a vesting date for development regulations used in the review of applications described in subsection (2) of this section.

(c) An application described in subsection (2) of this section utilizing vested rights shall be subject to all development regulations in effect on the vesting date.

(d) An application described in subsection (2) of this section that is deemed complete is vested for the specific use, density, and physical development that is identified in the application submittal.

(e) Applications submitted pursuant to MMC Title 22 that are not listed in subsection (2) of this section shall be governed by those standards which apply to said application. These applications shall not vest for any additional development regulations.

(f) The property owner is responsible for monitoring the time limitations and review deadlines for the application. The city shall not be responsible for maintaining a valid application. If the application expires, a new application may be filed with the community development department, but shall be subject to the development regulations in effect on the date of the new application.

(4) Duration of Vesting.

(a) Land Use Permits. The development of an approved land use permit shall be governed by the terms of approval of the permit unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.

(b) Preliminary Subdivision. Development of an approved preliminary subdivision shall be based on the controls contained in the hearing examiner's decision. A final subdivision meeting all of the requirements of the preliminary subdivision approval shall be submitted within the time period specified in MMC 22G.090.170 and RCW 58.17.140. Any extension of time beyond the time period specified in MMC 22G.090.170 and RCW 58.17.140 may contain additional or altered conditions and requirements based on current development regulations and other land use controls.

(c) Land Use Permits Associated with a Preliminary Subdivision. Land use permit applications, such as planned residential development applications that are approved as a companion to a preliminary subdivision application shall remain valid for the duration of the preliminary and final subdivision as provided in subsections (4)(b) and (d) of this section.

(d) Final Subdivision. The lots in a final subdivision may be developed by the terms of approval of the final subdivision, and the development regulations in effect at the time the preliminary subdivision application was deemed complete for a period as specified in RCW 58.17.170 unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.

(e) Short Subdivision or Unit Lot Subdivision. The lots in a short subdivision or unit lot subdivision may be developed by the terms and conditions of approval, and the development regulations in effect at the time the application was deemed complete for a period specified in RCW 58.17.170 unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.

(f) Binding Site Plan. The lots in a binding site plan may be developed by the terms of approval of the binding site plan, and the development regulations in effect at the time the application was deemed complete unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.

(g) All approvals described in this section shall be vested for the specific use, density, and physical development that is identified in the permit approval.

(h) Sign Permit. A sign permit shall expire if the permit is not exercised within one year of its issuance. No extensions of the expiration date shall be permitted.

(i) Stormwater Design Requirements. See MMC 14.15.015 for stormwater design vesting time frames.

(5) Waiver of Vesting. A property owner may voluntarily waive vested rights at any time during the processing of an application by delivering a written and signed waiver to the director stating that the property owner agrees to comply with all development regulations in effect on the date of delivery of the waiver. Any change to the application is subject to the modification criteria described in MMC 22G.010.260 and 22G.010.270 and may require revised public notice and/or additional review fees.

22G.010.260 Minor revisions to approved development applications.

The purpose and intent of this section is to provide an administrative process for minor revisions to approved development applications. For the purposes of this section, approved development applications shall include preliminary approval for subdivisions, ~~and~~ short subdivisions, and unit lot subdivisions, and final approval prior to construction for all other development applications.

(1) A minor revision to an approved residential development application is limited to the following when compared to the original development application; provided, that there shall be no change in the proposed type of development or use:

(a) Short subdivisions shall be limited to no more than one additional lot, provided the maximum number of lots allowed in a short subdivision is not exceeded.

(b) Subdivisions, single-family detached unit ~~developments~~, Middle Housing, cottage housing, townhomes and multiple-family developments shall be limited to the lesser of:

(i) A 10 percent increase in the number of lots or units; or

(ii) An additional 10 lots or units, provided the additional/lots units will not cause the project to exceed the maximum categorical exemption threshold level established in MMC 22E.030.090.

(c) A reduction in the number of lots or units.

(d) A change in access points may be allowed when combined with subsection (1)(a) or (b) of this section or as a standalone minor revision; provided, that it does not change the trip distribution. No change in access points that changes the trip distribution can be approved as a minor revision.

(e) A change to the project boundaries required to address surveying errors or other issues with the boundaries of the approved development application; provided, that the number of lots or units cannot be increased above the number that could be approved as a minor revision to the original approved development application on the original project site before any boundary changes.

(f) A change to the internal lot lines that does not increase lot or unit count beyond the amount allowed for a minor revision.

(g) A change in the aggregate area of designated open space that does not decrease the amount of designated open space by more than 10 percent. Under no circumstances shall the quality or amount of designated open space be decreased to an amount that is less than that required by code.

(h) A change not addressed by the criteria in subsections (1)(a) through (g) of this section which does not substantially alter the character of the approved development application or site plan and prior approval.

(2) A minor revision to an approved nonresidential development application is limited to the following when compared to the original development application; provided, that there is no change in the proposed type of development or use or no more than a 10 percent increase in trip generation:

(a) A utility structure shall be limited to no more than a 400-square-foot increase in the gross floor area.

(b) All other structures shall be limited to no more than a 10 percent increase in the gross floor area.

(c) A change in access points when combined with subsection (2)(a) or (b) of this section or as a standalone minor revision.

(d) A change which does not substantially alter the character of the approved development application or site plan and prior approval.

(3) A minor revision may be approved subject to the following:

(a) An application for a minor revision shall be submitted on forms approved by the community development department. An application for a minor revision shall not be accepted if a variance is required to accomplish the change to the approved development.

(b) An application for a minor revision shall be accompanied by any fees specified in Chapter 22G.030 MMC.

(c) An application for a minor revision shall require notification of the relevant city departments and agencies.

(d) An application for a minor revision shall be subject to the development regulations in effect as of the date the original development application was determined to be complete.

(e) The director shall grant approval of the request for a minor revision if it is determined that the minor revision does not substantially alter:

(i) The previous approval of the development application;

(ii) The final conditions of approval; or

(iii) The public health, safety and welfare.

(f) A minor revision shall be properly documented as a part of the records for the approved development application.

(g) A minor revision does not extend the life or term of the development application approval and concurrency determination, which shall run from the original date of:

(i) Preliminary approval for subdivisions, ~~or~~ short subdivisions, or unit lot subdivisions; or

(ii) Approval for all other development applications.

(4) The final determination of what constitutes a minor revision shall be made by the community development director.

22G.010.270 Major revisions to approved residential development applications.

The purpose and intent of this section is to provide a process for major revisions to approved residential development applications. Residential development applications shall include short subdivisions, unit lot subdivisions, subdivisions, single-family detached unit ~~developments~~, Middle Housing, cottage housing, townhomes and multiple-family developments. For the purposes of this section, approved residential development applications shall include preliminary approval for subdivisions, ~~and~~ short subdivisions, unit lot subdivisions, and final approval prior to construction for all other residential development applications.

(1) A major revision to an approved residential development application is limited to the following when compared to the original development application, provided there is no change in the proposed type of development or use:

(a) Subdivisions, single-family detached unit ~~developments~~, Middle Housing, cottage housing, townhomes and multiple-family developments shall be limited to the lesser of:

(i) A 20 percent increase in the number of lots or units; or

(ii) An additional 20 lots or units.

(b) A change in access points, when combined with subsection (1)(a) of this section.

(c) A change to the project boundaries required to address surveying errors or other issues with the boundaries of the approved development application; provided, that the number of lots or units cannot be increased above the number that could be approved as a minor revision to the original approved development application on the original project site before any boundary changes.

(d) A change to the internal lot lines when combined with another criteria in subsection (1) of this section that does not increase lot or unit count beyond the amount allowed for a major revision.

(e) A change in the aggregate area of designated open space beyond that allowed as a minor revision; provided, that the decrease will not result in an amount that is less than that required by code.

(f) A change not addressed by the criteria in subsections (1)(a) through (e) of this section which does not substantially alter the character of the approved development application or site plan and prior approval.

(2) A major revision shall require processing through the same process as a new development application subject to the following:

(a) An application for a major revision shall be submitted on forms approved by the department. An application for a major revision shall not be accepted if a variance is required to accomplish the change to the approved development.

(b) An application for a major revision shall be accompanied by any fees specified in Chapter 22G.030 MMC.

(c) An application for a major revision shall require public notice pursuant to MMC 22G.010.090.

(d) An application for a major revision shall be subject to the development regulations in effect as of the date the original development application was determined to be complete.

(e) The community development director or the hearing examiner shall grant approval of the major revision if it is determined that the major revision does not substantially alter:

(i) The previous approval of the development application;

(ii) The final conditions of approval; or

(iii) The public health, safety and welfare.

(f) A major revision shall be properly documented as a part of the records for the approved development application.

(g) A major revision does not extend the life or term of the development application approval and concurrency determination, which shall run from the original date of:

(i) Preliminary approval for subdivisions, ~~or~~ short subdivisions, or unit lot subdivisions; or

(ii) Approval for all other residential development applications.

(3) The final determination of what constitutes a major revision shall be made by the community development director.

Chapter 22G.030
LAND USE AND DEVELOPMENT FEES

Sections:

22G.030.010 Purpose.

The purpose of this chapter is to establish a comprehensive schedule of fees for various applications and permits authorized pursuant to MMC Title 22.

It is also the purpose of this chapter to consolidate the various fees.

22G.030.020 General fee structure.

(1) The city shall review and adjust fees as necessary every five years based on the cost of fee service.

(2) The community development department is authorized to charge and collect the following fees:

Type of Activity	2023/2024 Fees	2025 Fees	2026 Fees	2027 Fees	2028 Fees
Land Use Review Fees					
Administrative approval (bed and breakfast, zoning verification letter, or similar request)	$251	$259	$267	$275	$283
Annexation:					
Under 10 acres	$7,524	$7,750	$7,983	$8,222	$8,469
Over 10 acres	$10,031	$10,332	$10,642	$10,961	$11,290
Appeal (quasi-judicial):					
All appeal fees include the hearing examiner fee.					
For residential properties with 1 – 9 lots and/or units; or commercial properties that are 0 – 1 acres in size.	$1,000	$1,030	$1,061	$1,092	$1,125
For residential properties with 10 – 20 lots and/or units; or	$1,750	$1,803	$1,857	$1,912	$1,970

Type of Activity	2023/2024 Fees	2025 Fees	2026 Fees	2027 Fees	2028 Fees
commercial properties that are 1.01 – 3 acres in size.					
For residential properties more than 20 lots and/or units; or commercial properties greater than 3 acres in size.	$2,500	$2,575	$2,652	$2,731	$2,814
Appeals (administrative)	$500	$515	$530	$546	$563
Boundary line adjustment	$1,003 for two lots plus $250 each additional lot	$1,033 for two lots plus $258 each additional lot	$1,064 for two lots plus $266 each additional lot	$1,096 for two lots plus $274 each additional lot	$1,129 for two lots plus $282 each additional lot
Comprehensive plan amendment:					
Map amendment with rezone (under 5 acres)	$3,261	$3,359	$3,460	$3,564	$3,671
Map amendment with rezone (over 5 acres)	$4,012	$4,132	$4,256	$4,384	$4,516
Text amendment	$2,445	$2,518	$2,594	$2,672	$2,752
Conditional use permit (administrative):					
Residential, group residence or communication facility	$2,006	$2,066	$2,128	$2,192	$2,258
Commercial (including RV park, churches)	$2,759	$2,842	$2,927	$3,015	$3,105
Conditional use permit (public hearing)	$2,508 plus the hearing examiner	$2,583 plus the hearing examiner	$2,660 plus the hearing examiner	$2,740 plus the hearing examiner	$2,822 plus the hearing examiner
Critical areas review:					
Under 0.50 acre	$534*	$550*	$567*	$584*	$602*
0.51 – 2 acres	$784*	$808*	$832*	$857*	$883*
2.01 – 10 acres	$1,034*	$1,065*	$1,097*	$1,130*	$1,164*
10.01 – 20 acres	$1,284*	$1,323*	$1,363*	$1,404*	$1,446*
20.01 – 50 acres	$1,536*	$1,582*	$1,629*	$1,678*	$1,728*
50.01+ acres	$1,913*	$1,970*	$2,029*	$2,090*	$2,153*
*Peer review costs for all critical areas reviews will also be charged in addition to the fees noted above, if applicable.					
EIS preparation and review	$10,031	$10,332	$10,642	$10,961	$11,290

Type of Activity	2023/2024 Fees	2025 Fees	2026 Fees	2027 Fees	2028 Fees
Public hearing/hearing examiner cost: Hearing examiner costs typically range from $800 – $2,800 depending on the complexity of the project.	Cost as billed by the hearing examiner				
Lot status determination:					
Readily verifiable with documents submitted by applicant	$282	$290	$299	$308	$317
Requires research and detailed document evaluation and confirmation	$534	$550	$567	$584	$602
Modifications:					
Minor	$2,540	$2,616	$2,694	$2,775	$2,858
Major	The minor modification fees, or 80 percent of the original land use review fee, whichever is greater.				
Miscellaneous reviews not otherwise listed	$125/hour	$129/hour	$133/hour	$137/hour	$141/hour
Preapplication review fee	$900	$927	$955	$983	$1,043
Public notice fee: Per notice (includes land use sign, posting, mailings, publishing and staff time)	$200	$206	$212	$225	$232
Rezone	$2,508	$2,583	$2,660	$2,740	$2,822
SEPA checklist	$753	$776	$799	$823	$848
Shoreline permit (administrative review)	$2,508	$2,583	$2,660	$2,740	$2,822
Shoreline permit, shoreline conditional use permit, or shoreline variance permit with public hearing	$2,508 plus the hearing examiner fee	$2,583 plus the hearing examiner fee	$2,660 plus the hearing examiner fee	$2,740 plus the hearing examiner fee	$2,822 plus the hearing examiner fee
Site plan review (commercial, multifamily, PRD, master plan); this rate does not apply to subdivisions:					
Under 0.50 acre	$1,756 plus $50/unit	$1,809 plus $50/unit	$1,863 plus $50/unit	$1,919 plus $50/unit	$1,977 plus $50/unit
0.51 – 2 acres	$2,258 plus $50/unit	$2,326 plus $50/unit	$2,396 plus $50/unit	$2,468 plus $50/unit	$2,542 plus $50/unit

Type of Activity	2023/2024 Fees	2025 Fees	2026 Fees	2027 Fees	2028 Fees
2.01 – 10 acres	$3,010 plus $50/unit	$3,100 plus $50/unit	$3,193 plus $50/unit	$3,289 plus $50/unit	$3,388 plus $50/unit
10.01+ acres	$3,762 plus $50/unit	$3,875 plus $50/unit	$3,991 plus $50/unit	$4,111 plus $50/unit	$4,234 plus $50/unit
Site/subdivision plan review (with utility availability for county projects):					
Under 0.50 acre	$1,505	$1,550	$1,597	$1,645	$1,694
0.51 – 2 acres	$2,006	$2,066	$2,128	$2,192	$2,258
2.01 – 10 acres	$3,010	$3,100	$3,193	$3,289	$3,388
10.01+ acres	$4,012	$4,132	$4,256	$4,384	$4,516
Subdivisions:					
Preliminary binding site plan (commercial, industrial)	$4,012 plus $100/lot or unit	$4,132 plus $100/lot or unit	$4,256 plus $100/lot or unit	$4,384 plus $100/lot or unit	$4,516 plus $100/lot or unit
Preliminary plat	$4,012 plus $100/lot or unit	$4,132 plus $100/lot or unit	$4,256 plus $100/lot or unit	$4,384 plus $100/lot or unit	$4,516 plus $100/lot or unit
Preliminary short plat or unit lot subdivision	$3,010 plus $100/lot or unit	$3,100 plus $100/lot or unit	$3,193 plus $100/lot or unit	$3,289 plus $100/lot or unit	$3,388 plus $100/lot or unit
Final binding site plan, plat, ~~or~~ short plat, or unit lot subdivision	$1,254 plus $100/lot or unit	$1,292 plus $100/lot or unit	$1,331 plus $100/lot or unit	$1,371 plus $100/lot or unit	$1,412 plus $100/lot or unit
Subdivision time extension requests	$187	$193	$199	$205	$211
Temporary use permit	$627	$646	$665	$685	$706
Transitory accommodations permit	$5,016	$5,166	$5,321	$5,481	$5,645
Variance (quasi-judicial decision – zoning, utility)	$1,034	$1,065	$1,097	$1,130	$1,164
Zoning code text amendment	$1,034	$1,065	$1,097	$1,130	$1,164
Engineering Review Fees and Grading Fees					
Engineering construction plan review:					
Early grade (EG) – site grading only. No utility plans.	$600 plus $130/hour with a $500 deposit*	$618 plus $134/hour with a $500 deposit*	$636 plus $138/hour with a $500 deposit*	$655 plus $142/hour with a $500 deposit*	$675 plus $146/hour with a $500 deposit*
Land disturbing activity (LDA) – Residential/multiple residential/commercial/industrial (applies to all engineering	$976 plus $130/hour with a $2,000 deposit*	$1,005 plus $134/hour with a $2,000 deposit*	$1,035 plus $138/hour with a $2,000 deposit*	$1,066 plus $142/hour with a $2,000 deposit*	$1,098 plus $146/hour with a $2,000 deposit*

Type of Activity	2023/2024 Fees	2025 Fees	2026 Fees	2027 Fees	2028 Fees
reviews including: full/partial plan sets, roads, drainage, utilities and associated grading)					
*The average review time for engineering construction plan review ranges from 10 to 30 hours depending on the nature of the project and the quality of the submittal. The deposit is required at time of submittal. Remaining balance owed prior to issuance.					
Engineering, design and development standards modifications/variances (administrative)	$714	$735	$757	$780	$803
Miscellaneous reviews not otherwise listed	$130/hour	$134/hour	$138/hour	$142/hour	$146/hour
Construction Inspection Fees					
Inspection for security release	$260/lot or unit, with a minimum amount being $260	$268/lot or unit, with a minimum amount being $268	$276/lot or unit, with a minimum amount being $276	$284/lot or unit, with a minimum amount being $284	$292/lot or unit, with a minimum amount being $292
Inspection for water, sewer, storm, street improvements associated with approved residential construction plans	$260/lot or unit (for Middle Housing~~duplex~~ or condominium projects), $2,000 minimum	$268/lot or unit (for Middle Housing~~duplex~~ or condominium projects), $2,000 minimum	$276/lot or unit (for Middle Housing~~duplex~~ or condominium projects), $2,000 minimum	$284/lot or unit (for Middle Housing~~duplex~~ or condominium projects), $2,000 minimum	$292/lot or unit (for Middle Housing~~duplex~~ or condominium projects), $2,000 minimum
Inspection for utilities only (residential)	$520 plus $260/lot or unit for inspections that exceed four hours (for Middle Housing~~duplex~~ or condominium projects)	$536 plus $268/lot or unit for inspections that exceed four hours (for Middle Housing~~duplex~~ or condominium projects)	$552 plus $276/lot or unit for inspections that exceed four hours (for Middle Housing~~duplex~~ or condominium projects)	$568 plus $284/lot or unit for inspections that exceed four hours (for Middle Housing~~duplex~~ or condominium projects)	$584 plus $292/lot or unit for inspections that exceed four hours (for Middle Housing~~duplex~~ or condominium projects)
Multiple residential/commercial/industrial	$130/hour with a $2,500 deposit*	$134/hour with a $2,500 deposit*	$138/hour with a $2,500 deposit*	$142/hour with a $2,500 deposit*	$146/hour with a $2,500 deposit*
*The deposit is required prior to issuance of construction permit. The remaining balance for inspection hours (based on time spent) is due prior to project acceptance.					
Right-of-way permit	$648	$667	$687	$708	$729

Type of Activity	2023/2024 Fees	2025 Fees	2026 Fees	2027 Fees	2028 Fees
Miscellaneous reviews and inspections not otherwise listed	$130/hour	$134/hour	$138/hour	$142/hour	$146/hour
Impact Fee Administration Charge					
School impact fee administrative charge	$63/single-family or Middle Housing~~duplex~~, or $125/apartment building	$65/single-family or Middle Housing~~duplex~~, or $129/apartment building	$67/single-family or Middle Housing~~duplex~~, or $133/apartment building	$69/single-family or Middle Housing~~duplex~~, or $137/apartment building	$71/single-family or Middle Housing~~duplex~~, or $141/apartment building

(3) If final decisions are issued after the review time frame set forth in MMC 22G.010.010(3), then the following fee refunds shall apply:

(a) Ten percent refund if the final decision was issued after the applicable deadline and the additional time did not exceed 20 percent of the review time frame.

(b) Twenty percent refund if the final decision was issued after the applicable deadline and the additional time exceeded 20 percent of the review time frame.

Chapter 22G.090
SUBDIVISIONS AND SHORT SUBDIVISIONS

Sections:

Article I. General Provisions

Article II. Preliminary Subdivision Review

Article III. Final Subdivision Review

Article IV. Short Subdivision Review

Article V. Land Division Requirements

22G.090.950 Savings.

22G.090.580 Fence requirements.

Prior to preliminary plat or short plat approval, it shall be determined whether a six-foot-high, sight-obscuring fence shall be required along the affected perimeter of new formal residential ~~single-family~~ subdivisions or short subdivisions. A fence shall be

required when one or more of the following criteria have been met (unless waived by adjacent property owner):

(1) If it is determined during grading plan review that the existing grade will be increased by a two-foot or greater vertical grade change and the grade increase causes the newly created lots to be at a higher elevation than the abutting property. The grade change shall be measured from the affected property line to the foundation wall of the newly constructed dwelling. In the case of formal subdivisions, the fencing issue shall be determined by the hearing examiner at the public hearing for the preliminary plat. The community development director shall be responsible for determining the fencing requirements for short subdivisions. The community development director's decision may be appealed to the hearing examiner, in accordance with Chapter 22G.010 MMC, Article VIII, Appeals.

(2) If a newly created lot contains a front yard that directly abuts the rear yard of an adjacent property, and the existing lot contains a dwelling unit that is located within 20 feet of the newly created lot.

(3) If a newly constructed plat road (public or private) directly abuts either the side or rear yard of a residentially developed property, and the existing dwelling unit is located within 20 feet of the newly constructed road.

All required fencing shall be constructed prior to final plat and/or short plat approval. Where existing trees and associated vegetation or existing fencing serve the same or similar function on either the subject property or the abutting property, they shall have priority over and may be substituted for the required fencing, provided the following conditions are met:

(a) Supplemental landscaping is provided within or adjacent to these areas, as necessary, to accomplish the specific intent of this section.

All required screening shall be reviewed to ensure that access and connectivity between ~~single-family~~ residential developments are not being precluded as a result of these requirements.

Article VI. Unit Lot Subdivisions

22G.090.810 Unit Lot Subdivisions.

Unit lot subdivisions. A lot may be divided into separately owned unit lots and common areas, provided the following standards are met.

1. Process. Unit lot subdivisions shall follow the application, review, and approval procedures for a short subdivision or subdivision, depending on the number of lots.

2. Applicability. A lot to be developed with middle housing or multiple detached single-family residences, in which no dwelling units are stacked on another dwelling unit or other use, may be subdivided into individual unit lots as provided herein.

3. Development as a whole on the parent lot, rather than individual unit lots, shall comply with applicable design and development standards.

4. Subsequent platting actions and additions or modifications to structure(s) may not create or increase any nonconformity of the parent lot.

5. Access easements, joint use and maintenance agreements, and covenants, conditions and restrictions (CC&Rs) identifying the rights and responsibilities of property owners and/or the homeowners' association shall be executed for use and maintenance of common garage, parking, and vehicle access areas; bike parking; solid waste collection areas; underground utilities; common open space; shared interior walls; exterior building facades and roofs; and other similar features shall be recorded with the county auditor.

6. Portions of the parent lot not subdivided for individual unit lots shall be owned in common by the owners of the individual unit lots, or by a homeowners' association comprised of the owners of the individual unit lots.

7. Notes shall be placed on the face of the plat or short plat as recorded with the county auditor to state the following:

a. The title of the plat shall include the phrase "Unit Lot Subdivision."

b. Approval of the development on each unit lot was granted by the review of the development, as a whole, on the parent lot.

8. Effect of Preliminary Approval. Preliminary approval constitutes authorization for the applicant to develop the required facilities and improvements, upon review and approval of construction drawings by the public works department. All development shall be subject to any conditions imposed by the city on the preliminary approval.

9. Revision and Expiration. Unit lot subdivisions follow the revision and expiration procedures for a short subdivision.

Article VII. Tax Segregated Lots

22G.090.8~~1~~20 Subdivision requirements.

(1) Tax lots created through the tax segregation process, Chapter 84.56 RCW, are not recognized as lots for the purpose of the city subdivision ordinance and zoning code unless they have been formally divided pursuant to the requirements of Chapter 58.17 RCW and applicable city ordinance. If the lots have not been formally divided pursuant to the requirements of Chapter 58.17 RCW and applicable city ordinances, then they must be subdivided or short subdivided in accordance with the requirements of this title; provided, however, lots which have been created solely through the tax segregation process shall not be required to be divided in accordance with the requirements of Chapter 58.17 RCW and this title if they meet the following requirements:

(a) The lots were created by the tax segregation process defined in Chapter 84.56 RCW prior to August 10, 1969; and the lots meet all zoning regulations in effect at the time they were created;

(b) In the event the subject property has been annexed into the city, the property must meet county zoning regulations as of the time of annexation.

(2) If a tax segregated lot was created prior to August 10, 1969, and does not meet the zoning requirements set forth in subsection (1)(a) of this section, an application for a variance as set forth in MMC 22G.090.820 may be made to the hearing examiner. When considering the variance, the hearing examiner may consider as an "exceptional circumstance or condition" for purposes of MMC 22G.090.820(5)(a), when appropriate for the subject property, whether building permit(s) were issued by the city and whether the information provided by the applicant when applying for said building permit(s) was complete and accurate. In granting a modification/variance the hearing examiner may impose, as a condition of approval, any conditions which the hearing examiner determines to be necessary for the health, safety and welfare of the general public.

Article VIII. Modifications and Variances

22G.090.8~~2~~30 Modifications and variances.

(1) Applications for variances are limited to the following sections of this title:
MMC 22G.090.550, 22G.090.600(6), 22G.090.670 and 22G.090.810. Variances are not permitted from other sections of this title.

(2) For subdivisions and short subdivisions, a request for a variance of more than 10 percent shall be considered by the hearing examiner. The application shall be submitted with the subdivision or short subdivision application.

(3) For subdivisions and short subdivisions, a request for a variance of less than or equal to 10 percent shall be considered by the community development director. The application shall be submitted with the subdivision or short subdivision application.

(4) All variances to new lots created under this subdivision code relating to MMC 22G.090.550 and 22G.090.670 shall be heard by the hearing examiner or community development director per subsections (2) and (3) of this section. The hearing examiner shall hear requests for variances made pursuant to MMC 22G.090.600(6) and 22G.090.810.

(5) In order for the community development director or hearing examiner to grant a variance, he or she must find that all of the following conditions have been met:

(a) There are exceptional circumstances or conditions such as: location of existing structures, lot configuration, or topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this title;

(b) The authorization of the variance will not be detrimental to the public welfare or injurious to the property in the vicinity or zone in which the property is located; and

(c) A hardship would be incurred by the applicant if required to comply with the strict application of the section or sections identified in subsection (1) of this section.

(6) The filing of an application with the city requesting a variance shall stay the running of the time period for preliminary subdivision and short subdivision approval as is set forth in Article II of this chapter, Preliminary Subdivision Review, and Article IV of this chapter, Short Subdivision Review.

Article ~~VIII~~IX. Appeals

22G.090.8~~3~~40 Preliminary subdivision – Appeals of hearing examiner decisions.

All decisions rendered by the hearing examiner on preliminary subdivisions shall be appealed pursuant to the provisions of Chapter 22G.010 MMC, Article VIII, Appeals.

22G.090.845~~0~~ Short subdivisions – Appeals to hearing examiner.

(1) All appeals of decisions relating to short subdivisions shall be made to the hearing examiner. Such appeals must be made in writing and filed with the office of the hearing examiner within 14 calendar days from the date on which the preliminary decision was rendered.

(2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be final with a right of appeal to superior court as provided in MMC 22G.010.560.

(3) Standing to appeal to the hearing examiner is limited to the following:

(a) The applicant or owner of the property on which the short subdivision is proposed;

(b) Any aggrieved person who will thereby suffer a direct and substantial impact from the proposed short subdivision; and

(c) RCW 58.17.180 grants standing to property owners within 300 feet of the subject property.

22G.090.8560 Time period stay – Effect of appeal.

The filing of an appeal shall stay the running of the time periods for subdivision and short subdivision approval as are set forth in this article.

Article IX. Enforcement and Penalties

22G.090.8670 Delegation of responsibilities.

Whenever the terms of this title specifically authorize the community development director or the city engineer to perform specific acts, the community development director and city engineer are authorized to delegate those specific responsibilities to members of their respective staffs.

22G.090.8780 Compliance – Prior provisions – Transition.

All applications for preliminary subdivisions and short subdivisions which are properly filed with the city on or after the fifteenth day following the validation date of the ordinance codified in this title shall proceed in full compliance with the requirements of this article as it presently is or is hereafter amended and state law. All other subdivisions and short subdivisions which received preliminary approval prior to the fifteenth day following the validation date of the ordinance codified in this title shall comply with the requirements of the prior subdivision code and state law.

22G.090.8890 Effect of noncompliance.

No building permit or other development permit including approvals for preliminary subdivisions and short subdivisions shall be issued for any lot or parcel of land divided in violation of Chapter 58.17 RCW or this title. All purchases or transfers of property shall comply with the provisions of Chapter 58.17 RCW and this title, and each purchaser, transferee or other

legal entity may recover his damages from any person, firm, corporation or agent selling or transferring land in violation of Chapter 58.17 RCW or this title, including any amount reasonably spent as a result of an inability to obtain any development permit and spent to conform to the requirements of Chapter 58.17 RCW and this title as well as the cost of investigation, suit and reasonable attorneys' fees. A purchaser, transferee or other legal entity may, as an alternative to conforming the property to these requirements, rescind the sale or transfer and recover the cost of investigation, suit and reasonable attorneys' fees.

22G.090.~~8~~900 Filing unapproved subdivisions or short subdivisions.

The county auditor shall refuse to accept the filing of any division or redivision of land that has not been approved by the city in accordance with the provisions of this title. Should any division or redivision of land be filed without such certification, as set forth in Article III of this chapter, Final Subdivision Review, and Article IV of this chapter, Short Subdivision Review, the city attorney may apply for a writ of mandamus on behalf of the city directing the auditor to remove the unapproved subdivision from the auditor's files.

22G.090.9~~0~~10 Violation – Injunctive action.

Any violation of the provisions of this title constitutes a public nuisance per se which the city can abate by action in Snohomish County superior court. All costs of such action, including attorneys' fees, shall be taxed against the violator.

22G.090.9~~1~~20 Violation – Exception.

If performance of an offer or agreement to sell, lease or otherwise transfer a lot, tract or parcel of land following preliminary plat or preliminary short plat approval is expressly conditioned on the recording of the final plat or short plat containing the lot, tract or parcel under this title, the offer or agreement is not a violation of any provisions of this title. All payments on account of an offer or agreement conditioned as provided in this section shall be deposited in an escrow or other regulated trust account and no disbursement to sellers shall be permitted until the final plat or short plat is recorded.

22G.090.9~~2~~30 Provisions nonexclusive.

Penalty and enforcement provisions provided in this title are not to be exclusive, and the city may pursue any remedy or relief it deems appropriate.

22G.090.9~~3~~40 Rules and regulations.

The city's community development director is authorized to promulgate rules and regulations which are consistent with the terms of this title.

22G.090.9450 Severability.

If any provision of this chapter shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that this chapter would have been enacted without the provision so held unconstitutional or invalid, and the remainder of this chapter shall not be affected as a result of said part being held unconstitutional or invalid.

22G.090.9560 Savings.

Nothing contained in this chapter shall be construed as abating any action now pending under or by virtue of any ordinance of the city herein repealed, or as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of the city under any ordinance or provision thereof in force at the time of passage of the ordinance codified in this chapter.

22G.100.040 Jurisdiction.

These regulations shall apply to all properties which are exempt from the city's subdivision code pursuant to RCW 58.17.040(4) or (7) and which are being divided through the binding site plan process in:

(1) Commercial, industrial, recreation, and public institutional zones;

(2) Multifamily and townhome development in the mixed use zone; or

(3) Single-family, multifamily, Middle Housing, and townhome development in residential zones.

Divisions involving single-family, multifamily, and townhome developments must comply with the planned residential development provisions of Chapter 22G.080 MMC. Exception: this limitation does not apply to unit lot subdivisions.

22G.120.030 Scope.

Review and approval is required for all new construction, redevelopment, and exterior expansion of multiple-family, commercial, industrial, utility, shoreline development, public-initiated land use proposals, parking, and landscaping site plan reviews; or as otherwise specified in MMC Title 22, Unified Development Code. All of the above projects require the review and approval of a site plan except for:

(1) Construction activities which do not require a building permit;

(2) Construction of a single-family residence or Middle Housing not located within shoreline jurisdiction or a regulated critical area or buffer;

(3) Construction or expansion of a residential accessory structure;

(4) Interior remodels of existing structures when not a change of occupancy (such as converting from a residential use to a commercial use); and

(5) Tenant improvements when the modification or addition does not necessitate an expansion to the parking area.