

**ORDINANCE NO. 3736**

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING NEW CHAPTERS AND REPEALING CERTAIN CHAPTERS IN TITLE 20 ECDC RELATING TO PROCEDURES FOR APPROVING LAND USE DEVELOPMENT PERMITS; AMENDING VARIOUS ECDC SECTIONS THAT REFERENCE SECTIONS IN REPEALED CHAPTERS IN TITLE 20 ECDC; PROVIDING FOR SEVERABILITY AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

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WHEREAS, the City of Edmonds' current process and procedures for approving land use development permits require revision and modernization to conform more clearly and accurately with procedures set forth in state statutes; and

WHEREAS, revision and modernization of the City's process and procedures for approving land use development permits is also an ideal opportunity to draft the applicable codes to be more user friendly; and

WHEREAS, the City's Planning Board, after public meetings and hearings to consider improvements to the aforementioned process and procedure, forwarded to the City Council its recommended amendments to Title 20 ECDC; and

WHEREAS, the City Council, after holding a public hearing on the same, approved the amendments to Title 20 ECDC recommended by the Planning Board; NOW, THEREFORE,

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

Section 1. Repealed. The following Chapters in Title 20 ECDC are hereby repealed:

Chapter 20.90 ECDC	Application Process.
Chapter 20.91 ECDC	Public Hearings and Notice.
Chapter 20.95 ECDC	Application and Staff Review.
Chapter 20.105 ECDC	Appeals and Court Review.

Section 2. Repealed. Sections 20.100.000 (Scope), 20.100.010 (Hearing examiner review), 20.100.020 (Planning advisory board review), and 20.100.030 (City council action on recommendations) of Chapter 20.100 ECDC are hereby repealed.

Section 3. Retitled. Chapter 20.100 ECDC, Hearing Examiner, Planning Advisory Board And City Council Review, is hereby retitled as Chapter 20.100 ECDC, Miscellaneous Review.

Section 4. Adopted. New Chapters in Title 20 ECDC are hereby adopted to read as hereto attached as Exhibit A.

Section 5. Amended. Subsection 4.85.090(D) of the Edmonds City Code is hereby amended to read as follows:

D. Notice of off street or on street areas designated in accordance with subsection C above shall be clearly posted to provide reasonable notice. Approval or denial of an off or on street area shall be appealable in the same manner as if it were a Type II decision (see Chapter 20.01 ECDC).

Section 6. Amended. Subsection 7.10.065(C) of the Edmonds City Code is hereby amended to read as follows:

C. In the event the owner fails to connect to the sewer line within the 10-day period or to provide the adequate assurances required by subparagraph (B)(2) above, water service to such residential or commercial structures and to the property on which they are located shall be discontinued. Service shall not again be instituted until such time as the owner has connected to the sewer system, paid the actual costs of the city including, but not limited to, disconnecting, reconnecting, notifying the owner and otherwise taking action with respect to the requirements of this section. The actual cost thereof may vary, but the city council hereby establishes such reconnection fee to be \$250.00; provided, however, that in the event the actual costs are greater, they may be imposed by written order of the community services director or his designee and the reconnection shall not

be completed until such time such assessed costs are paid. In the event that the owner or owners believe that the reconnection charges are in excess of the amount actually incurred or which reasonably may be incurred the city, the owner or owners may appeal the set fee or additionally designated fee to the Hearing Examiner in the same manner as if it were a Type II decision (see Chapter 20.01 ECDC).

Section 7. Amended. Subsection 7.80.110(B) of the Edmonds City Code is

hereby amended to read as follows:

B. All existing multifamily residences will also be required to make provisions for the collection of recyclables. It is recognized that in some instances this may require changes to approved site plans including but not limited to common areas of the building site and parking areas. It is also recognized that the provision of recyclable collection facilities in existing multifamily residences may also create violations of certain parts of the zoning chapter. The staff will review proposed facilities for collection of recyclables and/or yard waste, and will make a staff decision on whether a more formal review by the architectural design board is necessary. Such staff decisions shall be staff decisions rendered and appealable in the same manner as if they were Type II decisions (see Chapter 20.01 ECDC). In the event that a required parking space needs to be utilized for a collection facility, it shall still be counted toward meeting the parking requirements in the Edmonds Community Development Code.

Section 8. Amended. Subsection 16.20.050(E)(1) of the Edmonds Community

Development Code is hereby amended to read as follows:

1. The following applications for the following approvals shall be processed as a Type II development project permit application (see Chapter 20.01 ECDC):

Section 9. Amended. Subsection 16.20.050(F)(2) of the Edmonds Community

Development Code is hereby amended to read as follows:

2. The request for waiver shall be reviewed by the hearing examiner as a Type III-A decision and may be granted upon a finding that one of the following sets of criteria have been met.

Section 10. Amended. Subsection 16.43.030(F)(1) of the Edmonds Community

Development Code is hereby amended to read as follows:

1. If a certificate of appropriateness is issued by the Edmonds historic preservation commission under the provisions of Chapter 20.45 ECDC for the proposed project, the staff may modify or waive any of the requirements listed below that would otherwise apply to the expansion, remodeling, or restoration of the building. The decision of staff shall be processed as a Type II development project permit application (see Chapter 20.01 ECDC).

Section 11. Amended. The first paragraph of Section 16.60.030, Site development standards – Design standards., of the Edmonds Community Development Code is hereby amended to read as follows (all subsections shall remain unchanged):

**16.60.030 Site development standards – Design standards.**

Design review by the architectural design board is required for any project that includes buildings exceeding 60 feet in height in the CG zone or 75 feet in height in the CG2 zone. Projects not exceeding these height limits may be reviewed by staff as a Type I decision. Regardless of what review process is required, all projects proposed in the CG or CG2 zone must meet the design standards contained in this section.

Section 12. Amended. Subsection 16.75.020(D)(5) of the Edmonds Community Development Code is hereby amended to read as follows:

5. A master plan may be approved as a comprehensive plan amendment, a planned residential development (PRD), or as a contract rezone. The planning advisory board and city council shall review and act upon a proposed master plan as a Type V development project permit application (see Chapter 20.01 ECDC), except in the case of a PRD, which shall be reviewed in accordance with the provisions of Chapter 20.35 ECDC.

Section 13. Amended. Subsection 17.40.020(F) of the Edmonds Community Development Code is hereby amended to read as follows:

F. Restoration. If a nonconforming building or structure is destroyed or is damaged in an amount equal to 75 percent or more of its replacement cost at the time of destruction, said building shall not be reconstructed except in full conformance with the provisions of the Edmonds Community Development Code. Determination of replacement costs and the level of destruction shall be made by the building official and shall be appealable as a Type II staff decision under the provisions of Chapter 20.06 ECDC. Damage of less than 75 percent of replacement costs may be repaired, and

the building returned to its former size, shape and lot location as existed before the damage occurred, if, but only if, such repair is initiated by the filing of an application for a building permit which vests as provided in ECDC 19.00.015, et seq., within one year of the date such damage occurred. This right of restoration shall not apply if:

Section 14. Amended. Subsection 17.40.020(G)(4) of the Edmonds Community

Development Code is hereby amended to read as follows:

4. A nonconforming residential single-family building may be rebuilt within the defined building envelope if it is rebuilt with materials and design which are substantially similar to the original style and structure after complying with current codes. "Substantial compliance" shall be determined by the city as a Type II staff decision, except that any appeal of the staff decision shall be to the ADB rather than to the hearing examiner. The decision of the ADB shall be final and appealable only as provided in ECDC 20.07.006.

Section 15. Amended. Subsection 17.50.070(C) of the Edmonds Community

Development Code is hereby amended to read as follows:

C. Exceptions to the required parking standards in the downtown area. When requested by the developer, the staff, using information provided by the applicant, may decrease the required parking for a building listed on the Edmonds register of historic places in order to retain historic elements of the building during its expansion, remodeling or restoration. Any building construction or remodeling activities serving as the justification for the parking exception shall be consistent with the criteria and procedures governing historic buildings contained in Chapter 20.45 ECDC. The decision on the parking exception shall be processed as a Type II decision.

Section 16. Amended. Subsection 17.50.090(A)(3) of the Edmonds Community

Development Code is hereby amended to read as follows:

3. Applications for a conditional use permit, or an appeal of a staff decision approving or denying a one-year extension thereof shall be reviewed by the hearing examiner under the same terms and conditions as any conditional use permit utilizing the criteria contained in Chapter 20.05 ECDC and under the procedural requirements contained in Chapter 20.06 ECDC. An application for a two-year extension shall be processed in the same manner as an initial application for a conditional use permit for a temporary parking lot and new or changed conditions may be imposed in

the course of that process.

Section 17. Amended. Subsection 17.70.005(C) of the Edmonds Community

Development Code is hereby amended to read as follows:

C. The granting of a permit for a sales office or sales model shall be processed as a Type I decision.

Section 18. Amended. Section 17.70.010, Other temporary buildings., of the

Edmonds Community Development Code is hereby amended to read as follows:

**17.70.010 Other temporary buildings.**

Except as provided below in ECDC 17.70.030, a conditional use permit shall be required to construct a temporary building in any zone. The permit shall be valid for a period of one year; provided however, that said permit may be extended by the community services director for a single one-year extension upon submittal of a written application prior to the expiration of the original permit. All the requirements of the zoning district shall be met. Said application for a conditional use permit or an appeal of the staff decision granting or denying the extension of such a permit shall be reviewed by the hearing examiner in accordance with the requirements for any other conditional use permit under Chapter 20.06 ECDC.

Section 19. Amended. Section 17.75.020, Primary uses requiring a conditional

use permit., of the Edmonds Community Development Code is hereby amended to read as follows:

**17.75.020 Primary uses requiring a conditional use permit.**

Outdoor dining shall be a primary use requiring a conditional use permit in the BN – neighborhood business zone, BC – community business zone, BD – downtown business zone, CW – commercial waterfront zone, and CG – general commercial zone, for outdoor seating which exceeds 10 percent of the existing interior seating in the establishment or more than eight seats, whichever is greater. This use shall be established and maintained only in accordance with the terms of a conditional use permit approved by the hearing examiner as a Type III-A decision under the procedural requirements contained in Chapter 20.06 ECDC. At a minimum, the conditions considered for imposition by the hearing examiner may include a restriction on operating hours, location of the

outdoor seating, and/or buffering of the noise and visual impacts related to the outdoor dining seating. All seating permitted pursuant to the conditional use permit shall be located outside of public rights-of-way. If outdoor seating is approved under these provisions, no additional parking stalls shall be required for the outdoor dining.

Section 20. Amended. Section 17.90.020, Approval., of the Edmonds Community

Development Code is hereby amended to read as follows:

**17.90.020 Approval.**

The city staff will take general standards to the architectural design board for approval. Once the architectural design board establishes general standards, recycling boxes which meet general standards and comply with the provisions of this chapter may be approved by the staff without further review. Any decision made by the staff is appealable as if it were a Type II decision (see Chapter 20.01 ECDC). Boxes which do not meet general standards shall be reviewed individually by the architectural design board in accordance with the provisions of Chapter 20.10 ECDC upon payment of the fee for such review.

Section 21. Amended. Section 17.90.050, Appeal., of the Edmonds Community

Development Code is hereby amended to read as follows:

**17.90.050 Appeal.**

Any person cited with a notice of violation shall have 10 calendar days from the date of mailing thereof to appeal from the findings of the notice. Such appeal shall be to the city's hearing examiner as a Type II appeal of a staff decision in accordance with Chapter 20.06 ECDC. Failure to appeal shall create a presumption of violation in accordance with the provisions of the notice of violation.

Section 22. Amended. Subsection 17.95.040(C) of the Edmonds Community

Development Code is hereby amended to read as follows:

C. Appeals of Final Decision. Major employers may file a written appeal of the city's final decision regarding the following actions:

1. Rejection of an employer's proposed program;
2. Denial of an employer's requests for a waiver or modification of any of the requirements of this chapter or a modification of the employer's

program;

Such appeals must be filed with the city within 10 calendar days after the employer receives notice of a final decision. Timely appeals shall be heard by the city's hearing examiner as if it were a Type II appeal of a staff decision in accordance with Chapter 20.06 ECDC. The hearing examiner's decision shall be final. Determinations on appeal shall be based on whether the decision being appealed was consistent with this chapter or applicable law.

Section 23. Amended. Subsection 17.100.030(B) of the Edmonds Community

Development Code is hereby amended to read as follows:

B. Decisions to approve, condition, or deny a CUP; to review a CUP; or decline to renew a CUP shall be a Type III-A decision.

Section 24. Amended. Subsection 18.00.020(C) of the Edmonds Community

Development Code is hereby amended to read as follows:

C. Decision. The public works director shall decide whether to approve, conditionally approve, or deny the application, based on the staff analysis and comments from other city departments. The decision shall be in writing and shall be appealable to the hearing examiner pursuant to Chapter 20.06 ECDC as if it were a Type II decision. No application may be approved that conflicts with any portion of the community development code, unless that portion is specifically subject to waiver or variance.

Section 25. Amended. Section 18.05.040, Variances., of the Edmonds

Community Development Code is hereby amended to read as follows:

**18.05.040 Variances.**

Applications for variances from the underground requirements of this chapter shall be reviewed by the community services director as a Type II development project permit application (see Chapter 20.01 ECDC). For the purposes of this chapter, the special circumstances necessary to justify a variance from the undergrounding provisions of this chapter shall be limited to technological impracticability of any required underground installation or to a finding that the cost of the underground installation is excessive in light of the benefits derived and outweighs the benefits to be gained by the public.

Section 26. Amended. Subsection 18.45.045(B) of the Edmonds Community

Development Code is hereby amended to read as follows:

B. Upon receipt of the application for a clearing permit, the staff shall inspect the site and contiguous properties. If the staff determines that the plan is in compliance with the provisions of this section and will result in the removal of no more trees or vegetation than is necessary to achieve the proposed development or improvement, the permit shall be approved as a Type II decision (see Chapter 20.01 ECDC).

Section 27. Amended. Section 18.45.055, Notice., of the Edmonds Community

Development Code is hereby amended to read as follows:

**18.45.055 Notice.**

Notice to surrounding property owners shall be provided pursuant to ECDC 20.02.004, informing them of the application for a clearing permit.

Section 28. Amended. Section 18.45.060, Appeals., of the Edmonds Community

Development Code is hereby amended to read as follows:

**18.45.060 Appeals.**

Any person aggrieved by the decision of the staff regarding a clearing permit may appeal such decision to the hearing examiner within 10 working days of the date of the decision. The appeal shall comply with the provisions of Chapter 20.06 ECDC.

Section 29. Amended. Subsection 18.50.020(C)(2) of the Edmonds Community

Development Code is hereby amended to read as follows:

2. In the event that any applicant believes that the dedication requirement is in excess of that required to mitigate the applicant's actual development impacts, the applicant may appeal the staff decision to the hearing examiner as if it were a Type II decision in accordance with Chapter 20.06 ECDC. On appeal a dedication shall be required only if:

Section 30. Amended. Subsection 18.80.010(Notes)(4) of the Edmonds

Community Development Code is hereby amended to read as follows:

4 If the fire chief and public works director can demonstrate that the fire

fighting or rescue operations may be impaired by limited roadway width, the right-of-way width and paving requirements for a street or access easement may be increased and/or additional paved or graveled shoulders required. Both such decisions shall be staff decisions rendered and appealable as if they were Type II decisions in accordance with Chapter 20.06 ECDC.

Section 31. Amended. Subsection 18.80.060(B)(5)(c) of the Edmonds

Community Development Code is hereby amended to read as follows:

c. In such cases, the city engineer may then consider use of an existing common driveway or other alternative. Only when no other reasonable alternative exists for access to a property will a curb cut be approved which results in the loss of existing on-street parking. No more than one access point per lot will be permitted in the downtown business area. The city engineer's decision to approve alternative access shall be processed as a Type II project permit application and decision (see Chapter 20.01 ECDC).

Section 32. Amended. Subsection 18.80.060(C)(1) of the Edmonds Community

Development Code is hereby amended to read as follows:

1. Except as otherwise provided, the width of any residential driveway shall not exceed 20 feet exclusive of the radii of the turns, with such measurement being made parallel with the center line of the street. Driveway approaches shall extend from the edge of the existing street a distance of 20 feet or to the edge of the property line, whichever is greater. Approaches shall be constructed of asphalt concrete pavement or an equivalent approved by the city engineer. The standard width for commercial and other nonresidential streets shall be 30 feet. At the application of the applicant or the city engineer, additional width in excess of the established standard may be approved as a staff decision to a maximum width of 40 feet. Such decision shall be made only after notice as a Type II project permit application and decision (see Chapter 20.01 ECDC). Such application shall be approved only if: (a) it conforms to the provisions of the comprehensive plan; (b) is found to be in the public interest when the needs of the applicant are reviewed and balanced in light of the benefits to the general public and the impacts, if any, on the immediate neighborhood; and (c) is consistent with or enhances public safety and will not create a hazard to vehicular, pedestrian or bicycle traffic. The public works director may authorize additional residential driveway width for three-car garages and for access driveways necessary for off-street parking or recreational vehicles.

Section 33. Amended. Subsection 18.82.070(E) of the Edmonds Community

Development Code is hereby amended to read as follows:

E. The decision of the director may be appealed to the hearing examiner as a Type II decision in accordance with Chapter 20.06 ECDC.

Section 34. Amended. Subsection 19.00.005(A)(6)(e) of the Edmonds

Community Development Code is hereby amended to read as follows:

e. The maximum amount of time any building permit may be extended shall be a total of three (3) years. At the end of any three (3) year period starting from the original date of permit issuance, the permit shall become null and void and a new building permit shall be required, with full permit fees, in order for the applicant to complete work. The voiding of the prior permit shall negate all previous vesting of zoning or building codes. Whenever an appeal is filed and a necessary development approval is stayed in accordance with ECDC 20.07.004, the time limit periods imposed under this section shall also be stayed until final decision.

Section 35. Amended. Subsection 19.00.025(B)(5) of the Edmonds Community

Development Code is hereby amended to read as follows:

5. Any decision of the city staff regarding the application stated in this section and its interpretation shall be considered a Type I decision appealable only to the superior court of Snohomish County by Land Use Petition Act.

Section 36. Amended. Subsection 19.10.040(A) of the Edmonds Community

Development Code is hereby amended to read as follows:

A. Notices of permit submittal application with the city shall be posted by the applicant pursuant to ECDC 20.02.004 and ECDC 20.03.002(A). Such notices shall be conspicuously posted and maintained at each street frontage at the applicant's expense pursuant to ECDC 20.03.001(A). Notice of permit issuance or denial shall be conspicuously posted as required above. Upon each posting a 10-day appeal period shall commence. Appeals shall be to the Snohomish County superior court in accordance with the Land Use Petition Act, and no other appeal shall be permitted.

Section 37. Amended. Section 20.05.020, General requirements., of the Edmonds

Community Development Code is hereby amended to read as follows:

**20.05.020 General requirements.**

A. Review. The hearing examiner shall review and decide on conditional use permit applications as Type III-A decisions as set forth in ECDC 20.01.003.

B. Appeals. Appeals shall be to the Snohomish County superior court in accordance with the Land Use Petition Act.

C. Time Limit. Unless the owner obtains a building permit, or if no building permit is required, substantially commences the use allowed within one year from the date of approval, the conditional use permit shall expire and be null and void, unless the owner files an application for an extension of time before the expiration date.

D. Review of Extension Application. An application for any extension of time shall be reviewed by the community development director as a Type II decision.

E. Location. A conditional use permit applies only to the property for which it has been approved and may not be transferred to any other property.

F. Denial. A conditional use permit application may be denied if the proposal cannot be conditioned so that the required findings can be made.

Section 38. Amended. Section 20.10.040, Optional pre-application., of the

Edmonds Community Development Code is hereby amended to read as follows:

**20.10.040 Optional pre-application.**

The applicant may submit plans required under ECDC 20.02.002 as part of the complete application in preliminary or sketch form, so that the comments and advice of the architectural design board may be incorporated into the final plans submitted for application.

Section 39. Amended. Section 20.11.010, Review procedure - General design

review., of the Edmonds Community Development Code is hereby amended to read as follows:

**20.11.010 Review procedure – General design review.**

A. Review. The architectural design board (ADB) shall review all proposed developments that require a threshold determination under the State Environmental Policy Act (SEPA). All other developments may be approved by staff as a Type I decision. When design review is required by the ADB, proposed development shall be processed as a Type III-B decision. The role of the ADB shall be dependent upon the nature of the application as follows:

1. The ADB shall conduct a public hearing for the following types of applications:

a. Applications that are not consolidated as set forth in ECDC 20.01.002(B).

b. Applications that are consolidated as set forth in ECDC 20.01.002(B) but in which the ADB serves as the sole decision-making authority.

c. Applications that are consolidated as set forth in ECDC 20.01.002(B) but in which all decision-making authority is exercised both by staff, pursuant to this chapter and Chapter 20.13 ECDC, and by the ADB. The ADB shall act in the place of the staff for these types of applications.

2. The ADB shall review proposed developments at public meetings without a public hearing and make recommendations to the hearing examiner to approve, conditionally approve, or deny proposals for developments that, although consolidated as set forth in ECDC 20.01.002(B), are not subject to a public hearing by the ADB under subsection (A)(1) of this section. The hearing examiner shall subsequently hold a public hearing on the proposal.

3. The ADB under subsection (A)(1) of this section and the hearing examiner under subsection (A)(2) of this section shall approve, conditionally approve, or deny the proposal. The ADB or hearing examiner may continue its public hearing on the proposal to allow changes to the proposal, or to obtain information needed to properly review the proposal. See ECC 3.13.090 regarding exemptions from review required by this chapter.

4. Notwithstanding any contrary requirement, for a development in which the city is the applicant, the action of the ADB under subsection (A)(1) of this section and the hearing examiner under subsection (A)(2) of this section shall be a recommendation to the city council.

B. Notice. Public notice by mail, posting or newspaper publication shall only be required for applications that are subject to environmental review

under Chapter 43.21C RCW, in which case notice of the hearing shall be provided in accordance with Chapter 20.03 ECDC.

Section 40. Amended. Section 20.11.040, Appeals., of the Edmonds Community

Development Code is hereby amended to read as follows:

**20.11.040 Appeals.**

All design review decisions of the hearing examiner or the ADB are appealable to the city council as provided in Chapter 20.07 ECDC.

Section 41. Amended. Subsection 20.11.050(B)(3) of the Edmonds Community

Development Code is hereby amended to read as follows:

3. Review of Extension Application. An application for an extension shall be reviewed by the planning official as a Type I decision (Staff decision – No notice required).

Section 42. Amended. Section 20.12.010, Applicability., of the Edmonds

Community Development Code is hereby amended to read as follows:

**20.12.010 Applicability.**

The architectural design board (ADB) shall review all proposed developments that require a threshold determination under the State Environmental Policy Act (SEPA) using the process set forth in ECDC 20.12.020, below. All other developments may be approved by staff as a Type I decision using the process set forth in ECDC 20.12.030, below. When design review is required by the ADB under ECDC 20.12.020, the application shall be processed as a Type III-B decision.

Section 43. Amended. Subsection 20.12.020(A) of the Edmonds Community

Development Code is hereby amended to read as follows:

A. Public hearing – Phase 1. Phase 1 of the public hearing shall be scheduled with the Architectural Design Board (ADB) as a public meeting. Notice of the meeting shall be provided according to the requirements of ECDC 20.03.004. This notice may be combined with the formal Notice of Application required under ECDC 20.03.002, as appropriate.

Section 44. Amended. Subsection 20.12.020(B)(3) of the Edmonds Community

Development Code is hereby amended to read as follows:

3. Phase 2 of the public hearing shall be conducted by the ADB as a continuation the Phase 1 public hearing. Notice of the meeting shall be provided according to the requirements of Chapter 20.03 ECDC. During Phase 2 of the public hearing, the ADB shall review the application and identify any conditions that the proposal must meet prior to the issuance of any permit or approval by the city. When conducting this review, the ADB shall enter the following findings prior to issuing its decision on the proposal:

Section 45. Amended. Section 20.12.080, Appeals., of the Edmonds Community

Development Code is hereby amended to read as follows:

**20.12.080 Appeals.**

A. Design review decisions by the ADB pursuant to ECDC 20.12.020.B are appealable to the city council as provided in Chapter 20.07 ECDC. These are the only decisions by the ADB in this chapter that are appealable.

B. All design review decisions of the hearing examiner are appealable to the city council as provided in Chapter 20.07 ECDC.

C. Design review decisions by staff under the provisions of ECDC 20.12.030 are only appealable to the extent that the applicable building permit or development approval is an appealable decision under the provisions of the ECDC. Design review by staff is not in itself an appealable decision.

Section 46. Amended. Subsection 20.12.090(B)(3) of the Edmonds Community

Development Code is hereby amended to read as follows:

3. Review of Extension Application. An application for an extension shall be reviewed by the planning official as a Type I decision (Staff Decision – No Notice Required).

Section 47. Amended. Subsection 20.15A.240(D) of the Edmonds Community

Development Code is hereby amended to read as follows:

D. Appeals shall be governed by the procedures specified in Chapter

20.06 ECDC.

Section 48. Amended. Section 20.16.110, Reconsideration and appeal., of the Edmonds Community Development Code is hereby amended to read as follows:

**20.16.110 Reconsideration and appeal.**

Reconsideration of the hearing examiner's ruling shall be governed by ECDC 20.06.010. Appeal of the hearing examiner's ruling shall be governed by Chapter 20.07 ECDC.

Section 49. Amended. Subsection 20.16.130(C) of the Edmonds Community Development Code is hereby amended to read as follows:

C. Building permits for an EPF which fail to comply with the conditions of approval shall be suspended and a report made to the director. The director shall institute a proceeding before the hearing examiner to permit the EPF's sponsor a hearing at which to show cause why its conditional use permit should not be revoked or further conditioned. Such hearing shall be conducted as if it were a Type III-A decision in accordance with Chapter 20.06 ECDC.

Section 50. Amended. Section 20.19.010, Conditional use permit required., of the Edmonds Community Development Code is hereby amended to read as follows:

**20.19.010 Conditional use permit required.**

When a conditional use permit is required by the provisions of Title 16 ECDC relating to the zoning districts, conditional use permit applications for operation of a mini day-care shall be processed as a Type II decision (Staff Decision – Notice Required) utilizing the criteria set forth in this chapter. In addition to the specific criteria set forth herein, the staff and hearing examiner on appeal shall also review the application under the criteria and required findings set forth in Chapter 20.05 ECDC relating to conditional use permits in order to establish that the proposed facility is not deleterious to the immediately surrounding neighborhood nor constitutes a public nuisance. The director of community services or designee, or the hearing examiner on appeal, may impose reasonable conditions on the approval of the conditional use permit for mini day-care facilities in order to ensure that the criteria of ECDC 20.19.020 are met and that the facility is in harmony with the surrounding neighborhood. The hearing examiner's decision on appeal shall be final.

Section 51. Amended. Section 20.19.050, Conditional use permit required., of the

Edmonds Community Development Code is hereby amended to read as follows:

**20.19.050 Appeal.**

Appeals may be taken from staff decision to the hearing examiner under the provisions of Chapter 20.06 ECDC. An appellant may challenge the imposition of conditions or may elect to challenge a later determination as to whether those conditions have been met. The hearing examiner's decision on appeal shall be final.

Section 52. Amended. Subsection 20.20.010(B) of the Edmonds Community

Development Code is hereby amended to read as follows:

B. A home occupation which does not meet one or more of the requirements of subsection A of this section may be approved as a conditional use permit (Type III-A decision) pursuant to Chapter 20.05 ECDC and the procedures set forth in Chapter 20.06 ECDC, if the home occupation:

Section 53. Amended. Subsection 20.21.030(A) of the Edmonds Community

Development Code is hereby amended to read as follows:

A. Permit Required. Any person who occupies or permits another person to occupy an attached accessory dwelling unit as a place of residence shall first obtain a permit. The permit shall be reviewed and processed as a Type II decision (Staff decision – Notice required).

Section 54. Amended. Section 20.30.010, Application., of the Edmonds

Community Development Code is hereby amended to read as follows:

**20.30.010 Application.**

In addition to the information required by ECDC 20.02.002, the applicant shall provide the written consent of all owners of the affected land.

Section 55. Amended. Section 20.30.020, Review., of the Edmonds Community

Development Code is hereby amended to read as follows:

**20.30.020 Review.**

The community development director shall review applications for joint use of parking as a Type II decision (Staff decision – Notice required) using the criteria of this chapter as a basis for review.

Section 56. Amended. Section 20.40.030, Notice., of the Edmonds Community Development Code is hereby amended to read as follows:

**20.40.030 Notice.**

Notice of rezone hearings (and text change) before the planning board shall be the same as set forth for proposed amendments to the comprehensive plan in ECDC 20.00.020 for newspaper publication, and pursuant to ECDC 20.03.004.

Section 57. Amended. Section 20.55.010, Application requirements., of the Edmonds Community Development Code is hereby amended to read as follows:

**20.55.010 Application requirements.**

In addition to the material required in ECDC 20.02.002, the application shall contain all material required by WAC 173-14-110, or as the same may be amended.

Section 58. Amended. Section 20.55.020, Notice., of the Edmonds Community Development Code is hereby amended to read as follows:

**20.55.020 Notice.**

A. Publication. In addition to the requirements of Chapter 20.03 ECDC, notice shall be given by publication in a newspaper of general circulation in Edmonds at least once a week on the same day of the week for two consecutive weeks. Except as provided hereafter in ECDC 20.55.025, the last day of publication shall be at least 30 days before the first public hearing on the permit.

B. Contents. Except as provided hereafter in ECDC 20.55.025, and in addition to the requirements of Chapter 20.03 ECDC, the notice of the hearing examiner shall state that before the first public hearing, any person may request a copy of the final action on the permit. The notice shall also contain all information required by WAC 173-14-070, or as the same may be amended.

Section 59. Amended. Section 20.55.030, Review., of the Edmonds Community

Development Code is hereby amended to read as follows:

**20.55.030 Review.**

The hearing examiner shall review and issue decisions on shoreline permits as a Type III-A decision, using the criteria contained in the city shoreline master program, Chapter 23.10 ECDC, the policies of the Shoreline Act and of Chapter 173-14 WAC, or as the same may be amended.

Section 60. Amended. Subsection 20.60.015(A) of the Edmonds Community

Development Code is hereby amended to read as follows:

A. Staff Approval. Except as referred to the architectural design board pursuant to subsections (A)(1) of this section, and except as provided in subsection B of this section, the planning manager, or designee, shall review all applications for design review under this chapter, and shall approve, conditionally approve or deny the application in accordance with the policies of ECDC 20.10.000, the criteria set forth in ECDC 20.10.070, and the standards and requirements of this chapter. The decision of the planning manager on any sign permit application may be appealed to the hearing examiner pursuant to the procedure established in Chapter 20.06 ECDC for appeal of Type II staff decisions.

Section 61. Amended. Section 20.65.010, Review., of the Edmonds Community

Development Code is hereby amended to read as follows:

**20.65.010 Review.**

The Planning Board shall review proposed changes to the official street map as a Type V decision, using as the basis for its review and recommendation the purposes of the comprehensive plan as stated in Chapter 15.05 ECDC, and the purposes of the Comprehensive Street Plan, as stated in Chapter 15.40 ECDC, and the purposes of the official street map, as stated in Chapter 18.50 ECDC.

Section 62. Amended. The first paragraph of Section 20.75.040, Application., of

the Edmonds Community Development Code is hereby amended to read as follows (all subsections shall remain unchanged):

### **20.75.040 Application.**

Applications for subdivisions shall be made to the community development director on forms provided by the community development department. A subdivision application will be processed concurrently with any applications for rezones, variances, planned unit developments, site plan approvals and other similar approvals, that relate to the proposed subdivision, unless the applicant expressly requests sequential processing. The application shall contain the following items in addition to those specified in ECDC 20.02.002:

- A. A reproducible copy of the preliminary plat and the number of prints required by the community development department;
- B. Title report;
- C. A survey map, if required by the community development director, of the exterior boundaries of the land to be subdivided, prepared by, and bearing the seal and signature of, a professional land surveyor registered in the state of Washington. This map can be combined with the preliminary ECDC 20.75.050 plat at the applicant's option;
- D. The application fee as set in Chapter 15.00 ECDC;
- E. A proposal for dedication of park land rather than payment of "in-lieu" fees, if desired by the applicant;
- F. Source of water supply and name of supplier;
- G. Method of sewage disposal, and name of municipal system if applicable. Percolation rates and other information required by the public works department shall be submitted if septic tanks are to be used;
- H. Other information that may be required by the community development director in order to properly review the proposed subdivision, including information needed to determine the environmental impact of the proposal.

Section 63. Amended. Subsection 20.75.050(G) of the Edmonds Community

Development Code is hereby amended to read as follows:

- G. Review. A certified determination of the planning manager or his/her designee may be appealed to the hearing examiner as a Type II decision as set forth in Chapter 20.06 ECDC.

Section 64. Amended. Subsection 20.75.055(D) of the Edmonds Community

Development Code is hereby amended to read as follows:

D. The director's decision shall be issued in writing and shall be mailed to all properties within 300 feet of the site. Appeal may be taken from the director's decision within 10 working days of mailing of the decision and posting thereof in accordance with the provisions of Chapter 20.06 ECDC.

Section 65. Amended. Section 20.75.065, Preliminary review., of the Edmonds

Community Development Code is hereby amended to read as follows:

**20.75.065 Preliminary review.**

A. Responsibility for Review. The community development director, or a designated planning staff member, is in charge of administering the preliminary review of all subdivisions. The public works director and the fire department, and other departments if needed, shall participate in preliminary review by appropriate recommendations on subjects within their respective areas of expertise.

B. Notice of Hearing.

1. When the director of community services has accepted a subdivision for filing, he shall set a date of hearing, and give notice of the hearing as provided in ECDC 20.03.004, and by the following for a formal subdivision:

a. One publication in a newspaper of general circulation within Snohomish County pursuant to Chapter 1.03 ECC and posting notice in three conspicuous places within 300 feet of any portion of the boundary of the proposed formal subdivision not less than 10 working days prior to the hearing.

b. Mailing to a city if a proposed formal subdivision is adjacent or within one mile of the city's boundary, or the proposed subdivision would use the utilities of the city.

c. Mailing to the county if a proposed formal subdivision is adjacent to the city-county boundary.

d. Mailing to the State Department of Highways if a proposed formal subdivision is adjacent to a state highway right-of-way.

e. The notice must include a legal description and either a vicinity

location sketch or a location description in nonlegal language.

C. Time Limits for Staff Review. Staff review shall be completed within 120 days from the date of filing.

D. Formal Subdivision Review. The hearing examiner shall review a formal subdivision as a Type III-A decision in accordance with provisions of Chapter 20.06 ECDC.

E. Short Subdivisions – Staff Review. The director of community services shall review a short subdivision as a Type II decision (Staff Decision – Notice Required).

F. Appeal of Staff Decision. Any person may appeal to the hearing examiner a Type II decision of the community development director on a short subdivision under the procedure set forth in Chapter 20.06 ECDC.

Section 66. Amended. Subsection 20.75.110(A) of the Edmonds Community

Development Code is hereby amended to read as follows:

A. Preliminary Plats. The community development director may approve as a Type II decision (Staff Decision – Notice Required), minor changes to an approved preliminary plat, or its conditions of approval. If the proposal involves additional lots, rearrangements of lots or roads, additional impacts to surrounding property, or other major changes, the proposal shall be reviewed in the same manner as the original application. Application fees shall be as set in Chapter 15.00 ECDC.

Section 67. Amended. Subsection 20.75.155(C) of the Edmonds Community

Development Code is hereby amended to read as follows:

C. Staff Review. The director of public works and the community development director shall review the final plat of a formal subdivision. They shall then forward the final plat to the city council for a Type IV-A decision after having signed the statements required by ECDC 20.75.140 or attaching their recommendation for disapproval.

Section 68. Amended. Section 20.75.158, Short plat - Staff review., of the

Edmonds Community Development Code is hereby amended to read as follows:

**20.75.158 Short plat – Staff review.**

The community services director, through his/her designees, the director

of public works and the community development director shall conduct an administrative review of a proposed short subdivision and either sign the statements required by ECDC 20.75.140, if all requirements of this chapter have been met, or disapprove such action, stating their reasons in writing. Such administrative action shall be final subject only to right of appeal to the hearing examiner as a Type II decision under Chapter 20.06 ECDC. Dedication of any interest in property contained in an approval of the short subdivision shall be forwarded to the city council for formal acceptance on its consent agent; provided, however, that such acceptance shall not stay any approval, time period for appeal or the effective date of the short subdivision.

Section 69. Amended. Section 20.80.020, Zoning and planning changes., of the

Edmonds Community Development Code is hereby amended to read as follows:

**20.80.020 Zoning and planning changes.**

A. Review. Amendments to the following text materials (and where applicable maps, and other incorporated codes or codifications within them) before amendment by the city council shall first be reviewed by the planning advisory board as a Type V decision using the purposes and criteria set forth in the applicable chapters as the basis for its review and recommendations:

1. Title 15 ECDC, Comprehensive Plan, except application and permit fees.
2. Title 16 ECDC, Zoning Districts.
3. Title 17 ECDC, General Zoning, Regulations.
4. Title 20 ECDC, Review Criteria and Procedure, excluding:
  - a. Chapter 20.15A ECDC, Environmental Review (SEPA);
  - b. Chapter 20.70 ECDC, Street Vacations.
5. Chapter 18.50 ECDC, Official Street Map.

B. Notice. See ECDC 20.03.004.

C. When the city council, in its discretion, deems it appropriate to adopt pre-annexation zoning comparable to that in effect in Snohomish County for a proposed annexation area, the procedural and notice requirements of RCW 35A.14.340 shall control over the provisions of this chapter,

Chapter 20.03 ECDC and ECDC 20.02.004. In the event that the city council determines it appropriate to zone property proposed for annexation to the city in a category which is not comparable to zoning in effect in Snohomish County, the provisions of this chapter, Chapter 20.03 ECDC and ECDC 20.02.004 shall apply. Any change to pre-annexation zoning proposed after annexation to the city shall also comply with the provisions of this chapter, Chapter 20.03 ECDC and ECDC 20.02.004.

Section 70. Amended. Section 20.85.020, General requirements., of the Edmonds

Community Development Code is hereby amended to read as follows:

**20.85.020 General requirements.**

A. Review. The hearing examiner shall review variances as Type III-A decisions in accordance with provisions of Chapter 20.06 ECDC.

B. Appeals. Appeals of hearing examiner decisions on variance shall be to the Snohomish County Superior Court as provided in ECDC 20.07.006.

C. Time Limit. The approved variance must be acted on by the owner within one year from the date of approval or the variance shall expire and be null and void, unless the owner files an application for an extension of time before the expiration and the city approves the application.

D. Review of Extension Application. An application for an extension of time shall be reviewed by the community development director as a Type II decision (Staff Decision – Notice Required).

E. Location. A variance applies only to the property for which it has been approved and may not be transferred to any other property.

Section 71. Amended. Section 23.40.200, Appeals., of the Edmonds Community

Development Code is hereby amended to read as follows:

**23.40.200 Appeals.**

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this title may be appealed according to, and as part of, the appeal procedure, if any, for the permit or approval involved.

Section 72. Amended. Subsection 23.40.210(C) of the Edmonds Community

Development Code is hereby amended to read as follows:

C. Hearing Examiner Review. The city hearing examiner shall, as a Type III-A decision (see Chapter 20.01 ECDC), review variance applications and conduct a public hearing. The hearing examiner shall approve, approve with conditions, or deny variance applications based on a proposal's ability to comply with general and specific variance criteria provided in subsections (A) and (B) of this section.

Section 73. Amended. Subsection 23.40.210(E) of the Edmonds Community

Development Code is hereby amended to read as follows:

E. Time Limit. The director shall prescribe a time limit within which the action for which the variance is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the variance, unless the applicant files an application for an extension of time before the expiration. An application for an extension of time shall be reviewed by the director as a Type II decision (see Chapter 20.01 ECDC).

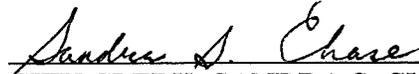
Section 74. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 75. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

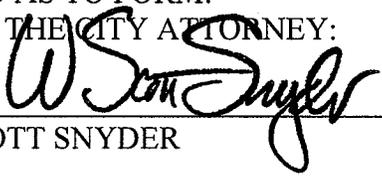
  
MAYOR GARY HAAKENSON

ATTEST/AUTHENTICATED:

  
CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY

  
W. SCOTT SNYDER

FILED WITH THE CITY CLERK:	05/22/2009
PASSED BY THE CITY COUNCIL:	06/02/2009
PUBLISHED:	06/07/2009
EFFECTIVE DATE:	06/12/2009
ORDINANCE NO. <u>3736</u>	

**SUMMARY OF ORDINANCE NO. 3736**

of the City of Edmonds, Washington

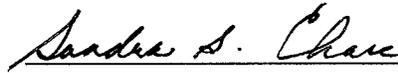
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On the 2nd day of June, 2009, the City Council of the City of Edmonds, passed Ordinance No. 3736. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING NEW CHAPTERS AND REPEALING CERTAIN CHAPTERS IN TITLE 20 ECDC RELATING TO PROCEDURES FOR APPROVING LAND USE DEVELOPMENT PERMITS; AMENDING VARIOUS ECDC SECTIONS THAT REFERENCE SECTIONS IN REPEALED CHAPTERS IN TITLE 20 ECDC; PROVIDING FOR SEVERABILITY AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

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

DATED this 3rd day of June, 2009.

  
CITY CLERK, SANDRA S. CHASE

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# EXHIBIT A

## Chapter 20.01

### TYPES OF DEVELOPMENT PROJECT PERMIT APPLICATIONS

#### Sections:

- 20.01.001 Procedures for processing development project permits.
- 20.01.002 Determination of proper procedure type.
- 20.01.003 Development project permit application framework.
- 20.01.004 Joint public hearings.
- 20.01.005 Decisions.
- 20.01.006 Legislative enactments not restricted.
- 20.01.007 Exemptions from development project permit application processing.

20.01.001 Procedures for processing development project permits.

A. For the purpose of development project permit processing, all development project permit applications shall be classified as one of the following as addressed and referenced in ECDC 20.01.003: Type I, Type II, Type III or Type IV. Legislative decisions are Type V actions, and are addressed in ECDC 20.01.005. Exclusions from the requirements of development project permit application processing are contained in ECDC 20.01.003(B).

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

20.01.002 Determination of proper procedure type.

A. Determination by Director. The Development Services Director or his/her designee (hereinafter the "director") shall determine the proper procedure for all development project applications. Questions concerning the appropriate procedure shall be resolved in favor of the higher numbered procedure.

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

C. Decisionmaker(s). Applications processed in accordance with subsection B of this section which have the same procedure number, but are assigned to different hearing bodies, shall be heard collectively by the highest decisionmaker; the city council being the highest body, followed by the hearing examiner or Planning Board, as applicable, and then the director. Joint public hearings with other agencies shall be processed according to ECDC 20.01.004. Concurrent public hearings held with the design review board and any other decisionmaker shall proceed with both decisionmakers present.

20.01.003 Development project permit application framework.

A. Decisions.

TYPE I	TYPE II	TYPE III-A	TYPE III-B	TYPE IV-A	Type IV-B	TYPE V
Statement of zoning restriction	Modification to landscape plans	Plat vacations and alterations	Essential Public Facilities	Final plats	Site specific / contract rezone	Development agreements
Boundary line adjustments, lot line adjustment, lot combination	Formal interpretation of the text of the ECDC by the Director or designated staff	Shoreline substantial development, shoreline conditional use, shoreline variance	Architectural Design review	Final Planned Residential Development		Zoning text amendments; area-wide zoning map amendments
Permitted uses not requiring site plan review	Home occupation permit	Preliminary Planned Residential Development				Comprehensive plan amendments
Special use permits	Accessory Dwelling Unit	Conditional use				Annexations
Minor amendments to Planned Residential Development	Draft environmental impact statement / SEPA determinations	General variances, and sign permit variances,				Development regulations
Minor Preliminary Plat amendment	Revisions to shoreline management permits	Site plan/major amendments to site plans				Master Plan
Minor design review	Administrative variances	Preliminary plats				
Sign permits	Short plat					
	Land clearing/grading					

B. The following permits or approvals are specifically excluded from the procedures set forth in this Title: landmark designations, building permits, street vacations, street use permits, encroachment permits, and other public works permits issued under Title 18.

C. Action Type.

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

20.01.004 Joint public hearings.

A. Administrator’s Decision to Hold Joint Hearing. The director may combine any public hearing on a development project permit application with any hearing that may be held by another local, state, regional, federal, or other agency, on the proposed action, as long as: (1) the hearing is held within the city limits; and (2) the requirements of subsection C of this section are met.

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

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

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

#### 20.01.005 Decisions.

A. Administrative Decisions. Type I and II decisions are administrative. Administrative decisions are made by the Director. Unless otherwise provided, appeals of Type II decisions shall be initiated as set forth in ECDC 20.07.004.

B. Quasi-judicial Decisions. Type III, Type IV and appeal of Type II decisions are quasi-judicial. Quasi-judicial decisions are made by the Hearing Examiner and/or the city council.

C. Legislative Decision. Type V decisions are legislative. Legislative decisions are made by the city council.

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

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

3. Public Notice. Notice of the public hearing or public meeting shall be provided to the public as set forth in ECDC 20.03.004.

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

20.01.006 Legislative enactments not restricted.

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

20.01.007 Exemptions from development project permit application processing.

A Whenever a permit or approval in the Edmonds Community Development Code has been designated as a Type I, II, III or IV permit, the procedures in this title shall be followed in development project permit processing, except as provided in ECDC 20.01.003(B).

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

1. Notice of application (ECDC 20.02.004) unless an open record hearing is allowed on the development project permit decision;
2. Except as provided in RCW 36.70B.140, optional consolidated development project permit review processing (ECDC 20.01.002(B));
3. Joint public hearings (ECDC 20.01.004);
4. Single report stating all of the decisions and recommendations made as of the date of the report that do not require an open public record hearing (ECDC 20.06.002(C)); and
5. Notice of decision (ECDC 20.06.009).

**Chapter 20.02**  
**TYPE I – IV DEVELOPMENT PROJECT PERMIT APPLICATIONS**

**Sections:**

- 20.02.001 Optional preapplication conference.
- 20.02.002 Development project permit application.
- 20.02.003 Submission and acceptance of application.
- 20.02.004 Notice of application.
- 20.02.005 Referral and review of development project permit applications.

20.02.001 Optional preapplication conference.

A. Prior to filing applications for development project permit Type III actions requiring a preliminary plat or site plan review and Type IV actions, the applicant may request a preapplication conference. The purpose of the preapplication conference is to merely acquaint the applicant with the requirements of the Edmonds Community Development Code. Applicant shall be responsible for verifying the accuracy of information provided by the city at the conference.

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

C. The director shall provide the applicant with the following during the conference:

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

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

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

20.02.002 Development project permit application.

Applications for development project permits shall be submitted on forms provided by the director. An application shall consist of all materials required by the applicable development regulations, and shall include the following general information as applicable:

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

20.02.003 Submission and acceptance of application.

A. Determination of Completeness. Within 28 days after receiving a development project permit application, the city shall mail or personally deliver to the applicant a determination which states either:

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

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

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

D. Incomplete Applications.

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

2. Whenever the applicant receives a notice that the contents of the application, which had been previously determined under ECDC 20.02.003(A)(1) to be complete, is insufficient, ambiguous, undecipherable, or otherwise unresponsive of the information being sought, the applicant shall have 90 days to submit the necessary information.

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

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

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

F Date of Acceptance of Application. Development project permit applications shall not be officially accepted until complete. When an application is found complete, the director shall note the date of acceptance for continued processing.

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

20.02.004 Notice of application.

A. Generally. A notice of application shall be provided to the public, all city departments and agencies with jurisdiction of all Type II, III and IV development project permit applications in accordance with Chapter 20.03 ECDC.

B. Issuance of Notice of Application.

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

2. If any open record predecision hearing is required for the requested development project permit(s), the notice of application shall be provided at least 15 days prior to the open record hearing.

C. Contents. The notice of application shall include:

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

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

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

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

5. A statement setting forth: (a) the time for the public comment period, which shall be not less than 14 nor more than 30 days following the date of notice of application; (b) the right of any person to comment on the application, receive notice of and participate in any hearings, and request a copy of the decision on the application; and (c) any appeal rights;

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

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

D. Public Comment on the Notice of Application. All public comments in response to the notice of application must be received by the city's development services department by 4:00 PM on the last day of the comment period. Comments in response to the notice of application received after the comment period has expired will not be

accepted no matter when they were mailed or postmarked. Comments shall be mailed or personally delivered. Comments should be as specific as possible.

E. SEPA Exempt Projects. A notice of application shall not be required for development project permits that are categorically exempt under SEPA, unless a public comment period or an open record predecision hearing is required.

20.02.005 Referral and review of development project permit applications.

Within 10 days of accepting a complete application, the director shall transmit a copy of the application, or appropriate parts of the application, to each affected government agency and city department for review and comment, including those responsible for determining compliance with state and federal requirements. The affected agencies and city departments shall have 15 days to comment on the application. The agency or city department is presumed to have no comments if comments are not received within the 15-day period. The director shall grant an extension of time only if the application involves unusual circumstances. Extensions shall be for a maximum of five working days.

## Chapter 20.03 PUBLIC NOTICE

Sections:

- 20.03.001      Responsibility for providing public notice.
- 20.03.002      Public notice of application.
- 20.03.003      Optional public notice.
- 20.03.004      Notice of public hearing.

- 20.03.001      Responsibility for providing public notice.

A.      Except where an action is initiated by the city, the applicant for a development project permit application shall be responsible for all posting, publishing, mailing and other notification required by the director.

1.      No later than 14 days after the required date of posting, publishing and/or mailing, the applicant shall provide to the director an affidavit attesting that each required method of notification was carried out in conformance with the regulations in this and other applicable chapters. For required mail notice, the applicant shall submit a U.S. Postal Service Certificate of Mailing containing the names and addresses of all parties provided public notice.

2.      If the affidavit and U.S. Postal Service Certificate of Mailing is not filed as required, any scheduled hearing or date by which the public may comment on an application shall be postponed, if necessary, in order to allow compliance with the notice requirements of this and other applicable chapters.

3.      If the applicant fails to file the affidavit and U.S. Postal Service Certificate of Mailing as herein required within 90 days of required date of posting, publishing and/or mailing, the director shall make findings and issue a decision, according to the Type I procedure, that the application has lapsed for lack of information necessary to complete the review. The decision shall state that no further action will be taken on the applications, and that if the applicant does not make arrangements to pick up the application materials from the planning and/or public works/engineering departments within 30 days from the date of the decision, the application materials will be destroyed.

B.      The appellant of a development project permit decision shall be responsible for all posting, publishing, mailing and other notification required by the director.

1.      No later than 14 days after the required date of posting, publishing and/or mailing, the appellant shall provide to the director an affidavit attesting that each required method of notification was carried out in conformance with the regulations in this and other applicable chapters. For required mail notice, the applicant shall submit a U.S. Postal Service Certificate of Mailing containing the names and addresses of all parties provided public notice.

2. When the responsibility of providing notice is on the appellant, failure to timely or properly file affidavit of notice and certificate of mailing may be grounds for the director to summarily dismiss the appeal.

20.03.002 Public notice of application.

Notice of application for Type II, Type III and Type IV development project permits shall be provided by posting, publishing and mailing.

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

1. A single notice board shall be placed by the applicant:

a. At the midpoint of the street fronting the site or as otherwise directed by the director for maximum visibility;

b. Five feet inside the street property line, except when the board is structurally attached to an existing building; provided, that no notice board shall be placed more than five feet from the street without approval of the director;

c. So that the top of the notice board is between five to six feet above grade; and

d. Where it is completely visible to pedestrians.

2. Additional notice boards may be required when:

a. The site does not abut a public road;

b. A large site abuts more than one public road; or

c. The director determines that additional notice boards are necessary to provide adequate public notice.

3. Notice boards shall be:

a. Maintained in good condition by the applicant during the notice period;

b. In place at least 30 days prior to the date of any hearing, and at least 15 days prior to the end of any required comment period;

c. Removed within 15 days after the end of the notice period.

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

5. Notice boards shall be constructed and installed in accordance with specifications promulgated by the director. The format and content of the notice must be pre-approved by the director, and contain at least the project location, description, type of permit(s) required, comment period dates, and a location where the complete application may be reviewed.

B. **Published Notice.** Notice of application shall be published in the city's official newspaper (or if one has not been designated, in a newspaper of general circulation within the City). The format and content of the notice must be pre-approved by the director, and contain at least the project location, description, type of permit(s) required, comment period dates, and a location where the complete application may be reviewed.

C. **Mailed Notice.** Notice of application shall be mailed to the following: (1) owner of the property involved if different from applicant; and (2) owners of real property, as shown by the records of the county assessor, within 300 feet of the boundaries of the property(ies) involved in the application. The format and content of the notice of application must be pre-approved by the director, and contain at least the project location, description, type of permit(s) required, comment period dates, and a location where the complete application may be reviewed.

D. **Shoreline Master Program (SMP) Permits.**

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

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

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

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

2. **Content of SMP Notice.** SMP notices shall include:

a. A statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application, may submit comments, or requests for the decision, to the

director within 30 days of the last date that notice is published pursuant to this subsection;

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

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

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

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

20.03.003 Optional public notice. The director, in his or her sole discretion, may:

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

B. Notify the news media;

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

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

E. Mail notice to additional neighboring property owners.

20.03.004 Notice of public hearing.

A. Applicants of Type III or Type V actions, and appellants of Type II actions shall provide notice of public hearing by mailing, posting and publishing.

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

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

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

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

4. The nature of the proposed use or development;
5. A statement that all interested persons may appear and provide testimony;
6. The sections of the code that are pertinent to the hearing procedure;
7. A statement explaining when information may be examined, and when and how written comments addressing findings required for a decision by the hearing body may be admitted;
8. The name of a city representative to contact and the telephone number where additional information may be obtained;
9. A statement that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost and that copies will be provided at the requestor's cost; and
10. A statement explaining that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and that copies will be provided at the requestor's cost.

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

1. The notice of the public hearing shall be mailed to:
  - a. The applicant;
  - b. The owner of the subject property, if different from applicant;
  - c. All owners of real property, as shown by the records of the county assessor, within 300 feet of the boundaries of the property(ies) involved in the application; and
  - c. Any person who submits a public comments on an application;
2. Type III Preliminary Plat Actions. In addition to the above, requirements for mailed notice of public hearing for preliminary plats and proposed subdivisions shall also include the following:
  - a. Notice of the filing of a preliminary plat adjacent to or within one mile of the municipal boundaries of any city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities;
  - b. Notice of the filing of a preliminary plat of a proposed subdivision adjoining the boundaries of Snohomish County shall be given to the appropriate county officials;

c. Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway or within two miles of the boundary of a state or municipal airport shall be given to the secretary of transportation;

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

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

4. General Procedure for Mailed Notice of Public Hearing.

a. The records of the Snohomish County assessor's office shall be used for determining the property owner of record. Addresses for a mailed notice required by this code shall be obtained from the applicable county's real property tax records. As required under ECDC 20.03.001, the applicant shall provide a sworn certificate of mailing to all persons entitled to notice under this Chapter.

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

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

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

2. Notice of public hearing shall be published in the city's official newspaper (or if one has not been designated, in a newspaper of general circulation within the City). The format and content of the notice must be pre-approved by the director.

E. Time and Cost of Notice of Public Hearing.

1. Notice shall be mailed, posted and first published not less than 10 or more than 30 days prior to the hearing date. Posted notices shall be removed by the applicant within 15 days following the public hearing.

2. All costs associated with the public notice shall be borne by the applicant of Type III and Type IV actions, or appellant of Type II actions.

## Chapter 20.04

### CONSISTENCY WITH DEVELOPMENT REGULATIONS AND SEPA

Sections:

- 20.04.001 Determination of consistency.
- 20.04.002 Initial SEPA analysis.
- 20.04.003 Categorically exempt and planned actions.

20.04.001 Determination of consistency.

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

B. Consistency. During development project permit application review, the director shall determine whether the development regulations applicable to the proposed project, or in the absence of applicable development regulations, the city's comprehensive plan, address the following:

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

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

20.04.002 Initial SEPA analysis.

A. In addition to the land use consistency review, the director shall review the development project permit application for consistency with the State Environmental

Policy Act (“SEPA”), Chapter 43.21C RCW, the SEPA Rules, Chapter 197-11 WAC, and the city environmental policy ordinance, Chapter 20.15A ECDC, and shall:

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

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

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

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

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

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

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

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

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

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

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

20.04.003 Categorically exempt and planned actions.

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

B. **Planned Actions.**

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

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

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

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

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

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

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

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

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

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

C. **Limitations on Planned Actions.** The city shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the

jurisdictional boundaries of the city, and may limit a planned action to a time period identified in the environmental impact statement or this title.

D. During project review, the city shall not re-examine alternatives to or hear appeals on the items identified in ECDC 20.04.001(B), except for issues of code interpretation.

E. Project review shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts.

Chapter 20.06  
OPEN RECORD PUBLIC HEARINGS

Sections:

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

20.06.001 General.

A. Open record public hearing, or simply public hearing, means a hearing conducted by a single hearing body or officer authorized to conduct such hearings that creates the city's record through testimony and submission of evidence and information, under procedures prescribed in this Chapter. A public hearing may be held prior to the city's decision on a development project permit to be known as an "open record predecision hearing." A public record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the development project permit.

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

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

20.06.002 Responsibility of director for hearing.

The director shall:

- A. Schedule project applications for review and public hearing;
- B. Verify compliance with notice requirements;
- C. Prepare the staff report on the application, which shall be a single report which sets forth all of the decisions made on the proposal as of the date of the report, including recommendations on development project permits in the consolidated permit process that do not require an open record predecision hearing. The report shall also describe any

mitigation required or proposed under the city's development regulations or SEPA authority. If the threshold determination, other than a determination of significance, has not been issued previously by the city, the report shall include or append this determination.

D. Prepare the notice of decision, if required by the hearing body, and mail a copy of the notice of decision to those entitled by this chapter to receive the decision.

#### 20.06.003 Conflict of interest.

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

#### 20.06.004 Ex parte communications.

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

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

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

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

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

#### 20.06.005 Disqualification.

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

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

20.06.006 Burden and nature of proof.

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

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

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

20.06.007 Order of proceedings.

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

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

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

2. Any member disqualifications shall be determined.

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

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

2. Public records and facts judicially noticeable by law.

C. Information officially noticed need not be proved by submission of formal evidence to be considered by the hearing body. Parties requesting official notice of any

information shall do so on the record. The hearing body, however, may take notice of matters listed in subsection B of this section at any time. Any information given official notice may be rebutted.

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

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

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

#### 20.06.008 Decision.

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

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

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

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

#### 20.06.009 Notice of final decision - Miscellaneous.

A. The director shall issue a notice of final decision within 120 days of the issuance of the determination of completeness pursuant to ECDC 20.02.003; provided, that the time period for issuance of a notice of final decision on a preliminary plat shall be 90 days, for a final plat 30 days, and a short plat 30 days. The notice shall include the SEPA threshold determination for the proposal and a description of any available administrative

appeals. For Type II, III and IV development project permits, the notice shall contain the requirements set forth in ECDC 20.06.002(C) and explain that affected property owners may request a change in property tax valuation notwithstanding any program of revaluation.

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

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

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

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

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

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

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

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

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

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

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

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

20.06.010 Reconsideration of decision.

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

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

B. Time to File. A request for reconsideration, including reconsideration fee, must be filed with the city planning director within 10 calendar days of the hearing examiner's written decision. Such requests shall be delivered to the director before 4:30 p.m. on the last business day of the reconsideration period. Requests for reconsideration that are received by mail after 4:30 p.m. on the last day of this reconsideration period will not be accepted, no matter when such requests were sent, mailed or postmarked.

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

D. Content of Request for Reconsideration. Requests for reconsideration shall be in writing, be accompanied by the required reconsideration fee (which shall be the same as the administrative appeal fee), and contain the following information:

1. The name, address and phone number of the requestor;
2. Identification of the application and final decision which is the subject of the request for reconsideration;
3. Requestor's statement of grounds for reconsideration and the facts upon which the request is based;

4. The specific relief requested;

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

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

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

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

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

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

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

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

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

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

## Chapter 20.07 CLOSED RECORD APPEALS

Sections:

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

20.07.001 Appeals of decisions.

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

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

20.07.002 Consolidated appeals.

All appeals of development project permit application decisions, other than appeals of determinations of significance ("DS"), and exempt permits and approvals under ECDC 20.01.007, shall be considered together in a consolidated appeal using the appeal procedure for the highest type permit application.

20.07.003 Standing to initiate an administrative appeal.

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

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

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

4. The city of Edmonds.

20.07.004 Appeals of recommendations and decisions.

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

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

B. Time to File. An appeal must be filed within 14 days after the issuance of the hearing body's written decision. The appeal period shall be extended for an additional seven days, if state or local rules adopted pursuant to chapter 43.21C RCW allow public comment on a determination of nonsignificance issued as part of the appealable project permit decision. Appeals, including fees, must be received by the city's development services department by mail or by personal delivery at or before 4:30 PM on the last business day of the appeal period. Appeals received by mail after 4:30 PM on the last day of the appeal period will not be accepted, no matter when such appeals were mailed or postmarked.

C. Computation of Time. For the purposes of computing the time for filing an appeal, the day the hearing body's decision is issued shall not be counted. If the last day of the appeal is a Saturday, Sunday, legal holiday designated by RCW 1.16.050 or by a city ordinance, or any day when city hall or the City's Development Services Department is closed to the public by formal executive or legislative action, then the appeal may be filed on the next day that is not a Saturday, Sunday, holiday or closed day.

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

1. Appellant's name, address and phone number;
2. A statement describing appellant's standing to appeal;
3. Identification of the application which is the subject of the appeal;
4. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
5. The specific relief sought;
6. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

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

F. Notice of Appeal. The appellant shall provide mailed notice of the appeal to all parties of record as defined in ECDC 20.07.003.

20.07.005 Procedure for closed record decision/appeal.

A. Closed record appeals shall be on the record established at the open record hearing before the hearing body/officer whose decision is appealed, which shall include the written decision of the hearing body/officer, copies of any exhibits admitted into the record, and official transcript, minutes or tape recording of the proceedings.

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

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

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

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

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

C. Parties to the appeal may present written arguments to the city council. Arguments shall describe the particular errors committed by the decision maker below,

with specific references to the administrative record. The appellant shall bear the burden to demonstrate that the decision below is clearly erroneous given the record.

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

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

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

G. The review shall commence with the resolution of appearance of fairness issues, if any, followed by a presentation by the director, or the director's designee, of the general background of the proposed development and the issues in dispute. After the director's presentation, the city council may ask clarifying questions on disputed issues to parties of record, with an opportunity for the director (or designee), appellant and/or applicant, respectively, to rebut to the response. The city council shall not request information outside the administrative record.

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

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

20.07.006 Judicial appeals.

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

20.07.007 Resubmission of application.

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

## Chapter 20.08 DEVELOPMENT AGREEMENTS

Sections:

- 20.08.010 Authority and general provisions.
- 20.08.020 General provisions of development agreements.
- 20.08.030 Enforceability.
- 20.08.040 Approval procedure for development agreements.
- 20.08.050 Form of agreement, council approval, recordation.
- 20.08.060 Judicial appeal.

20.08.010 Authority and general provisions.

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

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

20.08.020 General provisions of development agreements.

A. As applicable, the development agreement shall specify the following:

1. Project components which define and detail the permitted uses, residential densities, nonresidential densities and intensities or building sizes;

2. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

3. Mitigation measures, development conditions and other requirements of Chapter 43.21C RCW;

4. Design standards such as architectural treatment, maximum heights, setbacks, landscaping, drainage and water quality requirements and other development features;

5. Provisions for affordable housing, if applicable;

6. Parks and common open space preservation;

7. Phasing;

8. A build-out or vesting period for applicable standards; and

9. Any other appropriate development requirement or procedure which is based upon a city policy, rule, regulation or standard.

B. As provided in RCW 36.70B.170, the development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

#### 20.08.030 Enforceability.

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

#### 20.08.040 Approval procedure for development agreements.

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

#### 20.08.050 Form of agreement, council approval, recordation.

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

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

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

#### 20.08.060 Judicial appeal.

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

# Affidavit of Publication

STATE OF WASHINGTON,  
COUNTY OF SNOHOMISH

} S.S.

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



**SUMMARY OF ORDINANCE NO. 3736**  
of the City of Edmonds, Washington

On the 2nd day of June, 2009, the City Council of the City of Edmonds, passed Ordinance No. 3736. A summary of the content of said ordinance, consisting of the title, provides as follows:  
AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING NEW CHAPTERS AND REPEALING CERTAIN CHAPTERS IN TITLE 20 ECDC RELATING TO PROCEDURES FOR APPROVING LAND USE DEVELOPMENT PERMITS; AMENDING VARIOUS ECDC SECTIONS THAT REFERENCE SECTIONS IN REPEALED CHAPTERS IN TITLE 20 ECDC; PROVIDING FOR SEVERABILITY AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.  
DATED this 3rd day of June, 2009.

CITY CLERK, SANDRA S. CHASE

Published: June 7, 2009.

Summary of Ordinance No. 3736

Adopting new Chapters

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

June 07, 2009

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

*Jody Inoll*

Principal Clerk

Subscribed and sworn to before me this

8th

day of June, 2009

*[Signature]*

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

RECEIVED

JUN 18 2009

EDMONDS CITY CLERK

Account Name: City of Edmonds

Account Number: 101416

Order Number: 0001652314

