



PLANNING COMMISSION AGENDA

March 13, 2023– 6:30 PM

Stanwood Fire Station (8117 267th Pl NW)

1. Call to Order
2. Roll Call
 - Introduction of New Planning Commissioner
3. Public Requests and Comments
4. Approval of Minutes
 - Approval of the February 13, 2023, Planning Commission Minutes
5. New Business
 - Public Meeting: Westchester Preliminary Plat
6. Old Business
 - International Property Maintenance Code
 - Municipal Code Draft Titles 9 and 13
7. Miscellaneous Business
8. Recent Council Action on Commission Items
 - Municipal Code Titles 1, 2 & 4
9. Upcoming Items
 - Comprehensive Plan Land Use Element
 - Draft Housing Action Plan
10. Adjourn

Zoom Meeting Information

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/83099113579?pwd=ZXVib2MxYWUxRm9Bd1lCTWREZGU2QT09>

Passcode: 502157
Telephone: 253-215-8782
Webinar ID: 830 9911 3579

February 13, 2023
Planning Commission
Meeting Minutes



Planning Commission
Meeting Minutes
February 13, 2023 – 6:30 pm

Call to Order: 6:30 pm

Roll Call

Commissioners Present:

Eric Warnat, Commissioner
Melissa Toner, Commissioner (online)
Patrick Hosterman, Commission Chair
Cody Davis, Commission Vice-Chair
Justin Burns, Commissioner (online)
Jeff Wheatley, Commissioner

Staff Present:

Patricia Love, Community Development Director
Tansy Schroeder, City Planner
Audrey Rotrock, Associate Planner

Absent: N/A

Also known to be present: Kevin Flynn

Public Requests and Comments:

None

Approval of Minutes:

The minutes from the November 14, 2022 meeting and January 9, 2023 meeting were unanimously approved.

New Business:

Building Code Update

Every three years the International Code Council (ICC) updates the International Building Code which is the standard by which all building permits are reviewed against in the United States. The State of Washington mandates that all counties, cities and towns adopt the updates by July 1 of the code cycle year.

Wildland Urban Interface Code:

The Wildland Urban Interface Code, while not new, was previously included in the Fire code. Now it will be a standalone code which addresses fire spread, accessibility, defensible space, and water supply for buildings constructed near wildland areas. For cities in Snohomish County:

1. This code will require some type of gutter guards on all residences; and
2. It may also require an enclosed crawlspace, which will require mechanical ventilation.

Commissioner Questions & Comments

- Commissioners would like more information on gutter guards and enclosed crawlspaces and what these requirements would entail for homeowners.

International Property Maintenance Code:

Consider adopting the International Property Maintenance Code (IPMC) which emphasizes protection of health, safety and welfare while providing code requirements that are enforceable in the diverse types of buildings that exist. Adoption of the Property Maintenance Code is optional, not mandated by the



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State, and is enforced by the City's Code Enforcement Officer. The IPMC applies to all existing structures, including residential and nonresidential property and addresses the following:

1. Administration, enforcement, and penalties associated with the code.
2. Determination and assignment of responsibility for code compliance among the owner, operator, and occupant of a property.
3. Minimum property maintenance conditions for existing structures and premises in regard to structural safety, sanitation, health, and comfort.
4. Regulating the use of existing dwelling through the establishment of occupancy limitations.
5. Maintenance of egress and fire safety, with appropriate references to the International Fire Code.

Commissioner Questions & Comments

- After a brief discussion on the International Property Maintenance Code, the Commissioners are leaning toward adoption, but would like to see an analysis of code enforcement activities in other cities and also to learn more about the scope of coverage that this code would provide.
- The Commissioners would like to understand how the IPMC differs from the existing public nuisance code

Capital Improvements Project List and Survey

While the City Council adopts a capital budget each year, the planning and actual expenditure of funds for capital projects generally occur over a period of years. The City's plans identify the capital improvements needed to serve existing residents and maintain levels of service as new residents and businesses move into the City. The Capital Improvement Project List is a list of needed infrastructure improvements such as sidewalks, roads, trails, stormwater drainage, and other issues that impact the City. This list allows the Mayor and City Council to prioritize and budget infrastructure projects over 6-year and 20-year timeframes and is referred to as the Capital Improvement Plan (CIP).

City Staff launched a Capital Improvement Plan Questionnaire in November 2022 in order to survey the community on what parts of Stanwood need maintenance or improvements. The survey closed at the end of January. The Questionnaire was intended to help the city identify community infrastructure concerns, needs, and desires regarding roads, parks, and drainage systems.

Information gathered from this survey will be used to update the 20-year Capital Improvement Plan list that is included in the Capital Facilities Element of the Comprehensive Plan. Staff is working with each of the city departments to review the 2015 Comprehensive Plan CIP list and will remove projects that have been completed and generate a new CIP list for inclusion in the 2044 Comprehensive Plan.

The Commissioners were provided large street maps of the City and were asked to take them home. Staff requested that the Commissioners take time to think about any areas of town they feel that should be added to the Capital Improvements Project list and to mark it on their maps. There will be a discussion at the March Planning Commission meeting of improvements that the Commissioners find.



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Stanwood Municipal Code Titles 9 and 13

The next batch of Municipal Code Amendments is Title 9 – Public Peace, Morals, and Safety and Title 13 – Code Enforcement. These two Titles have been grouped together for review as they both address enforcement issues and have direct code correlations.

Title 9 – Public Peace, Morals, and Safety:

The City’s Police Chief and City Attorney have reviewed existing Title 9, Public Peace, Morals, and Safety and have provided their recommended changes to staff and the consultant. Using their recommendations, the scoping memo suggests that the Title be reorganized so that the chapters are more consistent with state law terminology. The change also adopts current state law citations, known as Revised Codes of Washington (RCW’s), as many sections refer to laws adopted in the 1940’s – 1970’s. These amendments will also bring city code up to date with recent changes in state law and state supreme court decisions in regard to use / possession of narcotics and vagrancy. This reorganization also provides room for future amendments in the code structure if the city decides to adopt its own offenses for behavior that is not covered by state law.

Other notable changes to this Title include:

- Moving *Public Nuisances and Disturbance Noises* to Title 7 to be combined with other nuisances contained in SMC 7.16. This keeps all “nuisance” sections together in one chapter.
- Adds a new chapter on *Trespass from City Facilities* that adopts a code of conduct so that people may be removed from city property if they behave dangerously, illegally or threateningly.

The Parks section is recommended to stay in Title 9 with the following questions:

Do you want to prohibit any of the following behaviors in city parks?

- Smoking
- Vaping
- Fireworks, with the exception of city sponsored events
- Remove or destroy park property
- Post signs, place structures, or store debris in a park
- Sale of food, drink, merchandise, or services on park property

Maintain the same civil infraction penalty of \$50?

- Make violations of this chapter a Class 3 civil infraction (\$50.00 penalty); or
- Prescribe a class of civil infraction for each type of violation (e.g., a larger penalty for littering than smoking).

Commissioner Questions & Comments on Title 9:

- The Commissioners would like to see more specific language in this Title in order to allow fundraising, for example children selling T-shirts for Little League fundraising or candy for school fundraisers, at local parks.
- The Commissioners support Title 9.



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Title 13 – Code Enforcement:

Title 13 contains the general enforcement provisions for the entire Municipal Code for non-criminal proceedings. However, it is difficult to apply to situations outside of zoning enforcement. As such staff, City Attorney, and the consultant support rewriting the entire Title while keeping the focus on the mechanisms of civil enforcement without introducing substantive rule changes in this title.

Notable Changes to this Title include:

- Rename title to civil enforcement as it applies to the entire municipal code, not just zoning.
- Reorganize into multiple chapters as noted above.
- Adds a civil infraction procedure to allow the City Code Enforcement Officer and Police Department to issue municipal civil infraction citations (tickets) for minor / reoccurring code enforcement cases.
- Maintains notice of violation process for major land use violations.
- Ensure appeal section is consistent with Hearing Examiner authority and process.

The Commissioners unanimously support Title 13.

Old Business:

Economic Development Element Full Design

Staff is working with the consultant team updating the Comprehensive Plan as part of the periodic update process currently underway. Blueline, one of the consultant firms on the project team, has been tasked with coordinating, writing, and designing the Comprehensive Plan's chapters, graphics, and overall document. Each elemental chapter will be presented for review individually and the first draft chapter ready for review is Economic Development.

Commissioner Questions & Comments

- The design is less intimidating and easy to read.
- The Commissioners unanimously support all changes made to the Economic Development Policy and full design.

Miscellaneous Business:

None

Recent Council Action on Commission Items:

- The Nonconforming Signage Emergency Ordinance was approved by City Council. Signs along 271st Street will be permitted to be replaced and/or repaired with a sign permit. To address the issue of signs previously permitted in the right-of-way, sign owners will also apply for a Right-of-Way permit.
- The Storefront Improvement Program was approved by City Council. Staff plans to have the program up and running by the end of February.



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- Municipal Code Titles 1, 2, and 4 will have their second reading at the March 9, 2023 City Council Meeting.

Upcoming Items:

- Comprehensive Plan – Land Use Element
- Cedarside Commons Project Update

Adjourn: 8:04 pm

Agenda Staff Report



CITY OF STANWOOD
PLANNING COMMISSION
AGENDA STAFF REPORT

MEETING DATES: March 13, 2023
SUBJECT: March Agenda Items
CONTACT PERSON: Patricia Love, Community Development Director
Tansy Schroeder, City Planner

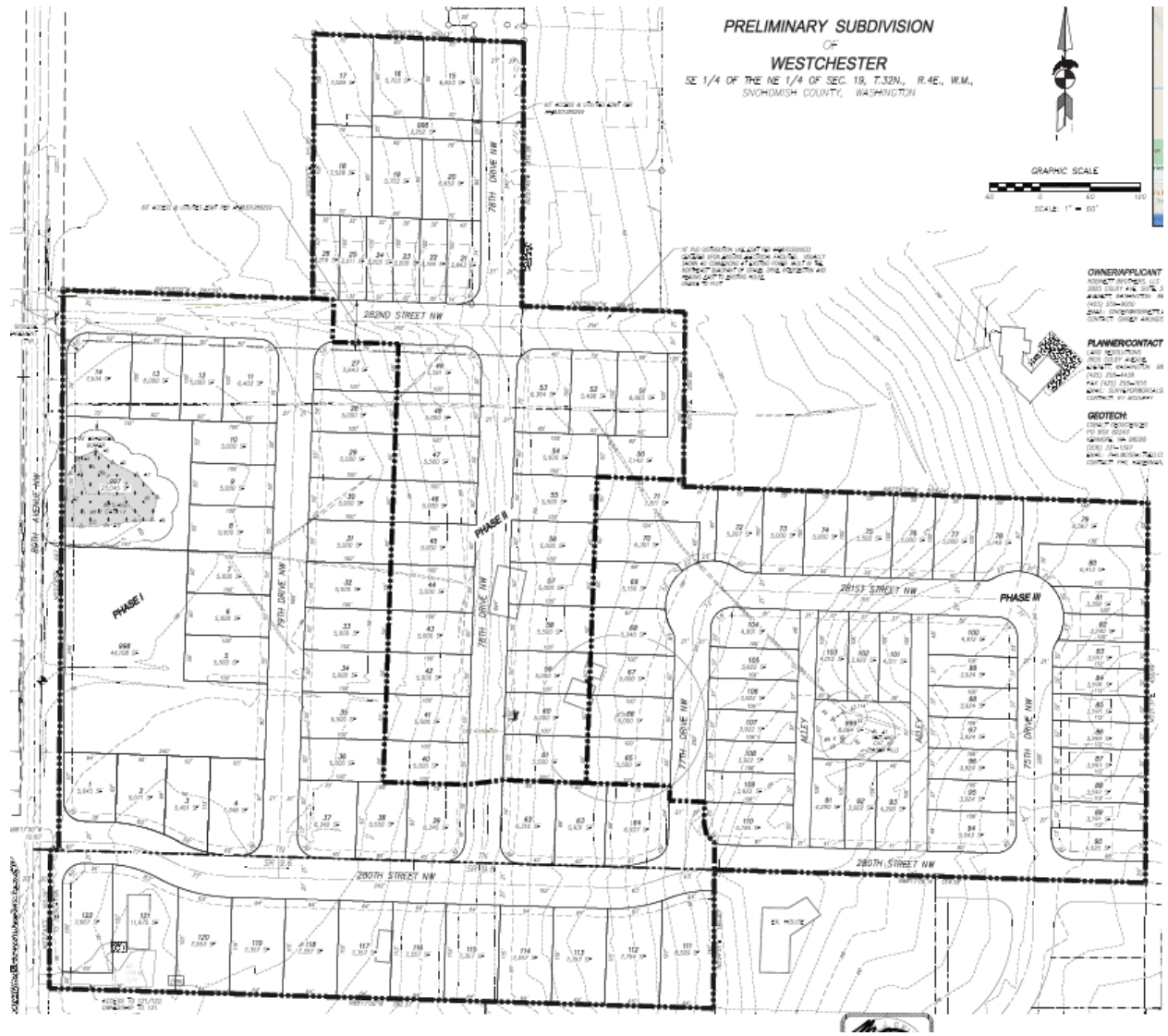
Westchester Preliminary Planned Residential Development

Request: The applicant is proposing to construct a 122-lot single-family planned residential development. The project will consist of 86 detached single-family residences, 20 cottage units, and 16 duplexes. The project is located northeast of the intersection of 80th Avenue NW and 280th Street NW. The site consists of two parcels for a total of approximately 18.91 acres zoned Traditional Neighborhood (TN) and one parcel approximately three acres zoned Single Family Residential 9.6 (SR 9.6). Resident vehicular access to the site will be from 80th Avenue NW and will connect to the proposed Bakerview PRD to the east and Summerset Division II PRD to the southeast. The proposed community will include open space tracts, storm water management, and street and landscaping improvements.

The proposed Planned Residential Development (PRD) is located at 28025 80th Ave NW, 28123 80th Ave NW, and 27923 80th Ave NW, Stanwood, WA 98292 on two properties commonly referred to as the “Skyline” property and the “Schonberg” property. The project site is approximately 21.91 acres and is encompassed by two different zoning districts consisting of Traditional Neighborhood (TN) and Single Family Residential 9.6 (SR 9.6). Lots 111 through 122 will be required to meet the SR 9.6 zoning standards and lots 1 through 110 will be required to meet the TN zoning standards. All lots and open space are required to meet the PRD design standards.

The applicant is proposing two access points into the development from the existing 80th Avenue NW, including continuing 280th Street NW into the development. The proposed development will also connect to the approved Bakerview and Summerset Division II subdivisions. The development will consist of 70% single-family residences (86 units), and the remaining lots will consist of 56% cottage lots (20 units) and 44% duplex lots (16 units); meeting the required mix of uses for the TN zone. The majority of developed area around this site is made up of single-family residences, or is undeveloped land approved for residential subdivision, which is consistent with this development.

All PRD's are required to provide at least 10% of the gross land area as common open space. The site is generally flat with existing vegetation and pasture land. All PRD's are required to provide at least 10% of the gross land area as common open space. The development plans provide all of the public improvements, facilities, and utilities and will be reviewed to meet city requirements (See development plans). These facilities include but are not limited to city streets, sidewalks, all utilities, open space and recreational facilities.



International Property Maintenance Code

Consider adopting the International Property Maintenance Code (IPMC) which emphasizes protection of health, safety and welfare while providing code requirements

that are enforceable in the diverse types of buildings that exist. Adoption of the Property Maintenance Code is optional, not mandated by the State, and is enforced by the City's Code Enforcement Officer. The IPMC applies to all existing structures, including residential and nonresidential property and addresses the following:

1. Administration, enforcement, and penalties associated with the code.
2. Determination and assignment of responsibility for code compliance among the owner, operator, and occupant of a property.
3. Minimum property maintenance conditions for existing structures and premises in regard to structural safety, sanitation, health, and comfort.
4. Regulating the use of existing dwelling through the establishment of occupancy limitations.
5. Maintenance of egress and fire safety, with appropriate references to the International Fire Code.

General similarities / differences between the International Property Maintenance Code and the City's Nuisances codes are shown below. The IPMC deals mostly with buildings whereas the Municipal Code deals with property. However, there is some overlap when it comes to grounds maintenance, junk vehicles and pest control. Where there is overlap, the IPMC will provide additional enforcement authority.

International Property Maintenance Code	Stanwood Municipal Code: Nuisances
Fire Safety / Smoke Alarms	Noise
Basic Equipment	Dangerous Trees and Vegetation
Adequate Light	Blockage of Public Utilities / Obstruction of Streets and Sidewalks
Building Ventilation	Rotting / Rat-Harboring / Disease Causing Debris or Conditions
Permanent Heating Sources	Burning
Lack of Power and Water	Fences in Disrepair
Adequate Bathroom / Kitchen Facilities	Junk / Junk Vehicles / Junk Trailers
Wiring and Plumbing	Discarded Appliances
Property Working Windows and Doors	Weeds / Infested Trees
Rodent and Pest Control	Toxic Substances / Hazards / Noxious Fumes
Grounds / Property Maintenance	Dumping of Debris / Animal Carcasses
Inoperable / Unregistered Vehicles	

The City manages code enforcement on a complaint basis. The Code Enforcement Officer / Building Official receives the complaint, investigates and determines if a violation exists, and then follows through with enforcement as needed. This process is not expected to change with adoption of the IPMC. It does, however, have the potential to increase the number of code enforcement cases the city receives. Based on the activity of other cities, we are not expecting that it will require an increase in staffing, but

monitoring will be required over the next few years to truly understand the full effect on staffing levels.

Jurisdiction	2022 Code Enforcement Cases	Population	Ratio of Cases to Population
Monroe	340	20,209	1 : 60
Lake Stevens	175	36,288	1 : 207
Stanwood	41	8,405	1: 205

Below are a few examples of how the IPMC enforcement could be applied:

Uninhabitable Structures:

The Stanwood Municipal Code (SMC) does not provide a process for dealing with uninhabitable structures. Adopting the IPMC would provide city staff with an abatement process for properly addressing uninhabitable or unsafe structures.

Water or Sewer Turnoff's:

The SMC does not provide a process for handling sanitation failure issues. For example, if the water meter to a property was shut off and the building is still occupied this can create sanitation emergencies. The IPMC would require that the water system be maintained to provide an adequate supply and pressure of water to the plumbing fixtures in addition to providing provisions for sewer. This means that a property owner would need to get on a payment plan or find other housing.

Unsafe Deck / Structures:

Current adopted building codes only address new construction and remodels. There are no provisions for existing buildings that fall into disrepair. The IPMC will provide the City with a process to bring unsafe building conditions into compliance with code or require demolition of the structure. Processes include options for repair, replacement and/or removal. Schedules and timelines are flexible and can be agreed to by the Building Official and the owner.

Stanwood Municipal Code Titles 9 and 13

The next batch of Municipal Code Amendments is Title 9 – Public Peace, Morals, and Safety and Title 13 – Code Enforcement. These two Titles have been grouped together for review as they both address enforcement issues and have direct code correlations. Using the approved style guide, the attached draft amendments delete outdated code citations and modernize by applying current best practices. It notes where new sections have been added or where moved. In general, these titles and chapters have been reorganized for better flow and readability with similar topics being grouped together.

Purpose of Titles:

- Title 9: Public Peace, Morals, and Safety: Title 9 contains the laws and regulations enforced by the City’s Police Department.

- Title 13: Code Enforcement: Title 13 contains the code enforcement procedures generally applied to the remaining municipal code titles including zoning and development standards. The Building Official is the City’s Code Enforcement Officer.

Using the scoping memo prepared for these two Titles, full drafts have been prepared for formal review. The drafts are being circulated for review by the City Attorney, Police Chief and Department Heads. The Comprehensive Plan / Municipal Code Advisory Group and Planning Commission will review the drafts at their March meetings.

Title 9 – Public Peace, Morals, and Safety (Exhibit C):

Title 9 is reorganized so that the chapters are more consistent with state law terminology, adopts current state law citations, and brings city code up to date with recent changes in state law and state supreme court case decisions.

Existing Title 9 Organization	Proposed Title 9 Organization
Assault Civil Emergency Crimes Against Property Disorderly Conduct Drug Paraphernalia Restrictions Intoxicating Liquor Emergency Response Code Recovery Houses of Prostitution Vagrancy Interference with or Impersonation of Police Officers Park Regulations Narcotic Drugs Public Indecency and Obscenity Public Nuisance and Disturbance Noises Jail Facilities	Anticipatory Offenses Offenses against Persons Offenses against Property Offenses against Public Morals Offenses against Public Order Offenses against Juveniles Domestic Violence Violations and Orders Substance Abuse Parks

Other notable changes to this Title include:

- Moving *Public Nuisances and Disturbance Noises* to Title 7 to be combined with other nuisances contained in SMC 7.16. This keeps all “nuisance” sections together in one chapter.
- Adds a new chapter on *Trespass from City Facilities* that adopts a code of conduct so that people may be removed from city property if they behave dangerously, illegally or threateningly.

The Community Development Committee had the following comments on Title 9:

- Combine all nuisance code sections together in a single section.
- Review the definition of “intoxication”; it should apply to more than alcohol.
- Define “Failing to Summon Assistance” and consequences.
- Speeding in park parking lots should be a higher-class violation due to the inherent danger to children and others.

Title 13 – Code Enforcement (Exhibit D):

Title 13 contains the general enforcement provisions for the entire Municipal Code for non-criminal proceedings. For ease of use and readability, this Title is broken into multiple chapters as follows:

General Provisions	Procedures	Administrative Orders	Penalties and Remedies
<ul style="list-style-type: none"> ▪ Policy ▪ Applicability ▪ Definitions ▪ Duty to enforce ▪ Joint and several liability 	<ul style="list-style-type: none"> ▪ Investigation— Right of entry ▪ Appeals 	<ul style="list-style-type: none"> ▪ General provisions ▪ Stop work / emergency orders ▪ Contents ▪ Service 	<ul style="list-style-type: none"> ▪ Voluntary compliance agreement ▪ Certificate of non-compliance ▪ Civil infraction ▪ Civil penalty ▪ Abatement by the City (including liens) ▪ Alternative remedies

Notable Changes to this Title include:

- Rename title to civil enforcement as it applies to the entire municipal code, not just zoning.
- Reorganize into multiple chapters as noted above.
- Adds a civil infraction procedure to allow the City Code Enforcement Officer and Police Department to issue municipal civil infraction citations (tickets) for minor / reoccurring code enforcement cases.
- Maintains notice of violation process for major land use violations.
- Ensure appeal section is consistent with Hearing Examiner authority and process.

The Community Development Committee had the following comments on Title 13:

- Consider when repeated offences may become a criminal action.
- Should there be a lower standard of proof versus the City being “clearly erroneous”?
- Provide better explanation of who has appeal rights (13.30.050).

**Stanwood Municipal Code
Title 9 Draft**

SMC Title 9 Draft

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-  Because RCW 35A.12.130 requires an ordinance to contain no more than one subject, each of Titles 9 and 13 should be adopted as three separate ordinances.
-  Because of the interactivity between Title 13 and other provisions for the code, the other sections identified for amendment in Title 13 should be adopted simultaneously.

 The following adopting language is proposed to handle codification instructions for adoption of these ordinances.

SMC Title 9 is amended to read as shown in the attachment.

SMC 5.04.050 and SMC 5.04.060 is repealed.

SMC Title 13 is amended to read as shown in the attachment.

Title 9 Public Peace, Safety, and Welfare

- i** This title is based on the existing SMC Title 9, Public Peace, Morals, and Safety.
- i** We have slightly renamed this title to be more consistent with contemporary language and other jurisdictions' codes. Other jurisdictions frequently name this title their "Criminal Code" or "Penal Code" however we disfavor that because other code chapters will likely also include criminal provisions.
- i** This title is intended for general criminal provisions. Other provisions through the SMC may also include criminal penalties (e.g., traffic regulations in Title 10, health/sanitation in Title 7, animals in Title 8).
- i** Many existing chapters of SMC Title 9 have been reorganized into the new chapter structure. See the December 2022 scoping memo for details.
- i** Generally, this title seeks to incorporate by reference criminal state law provisions and avoid re-inventing the wheel in description of offenses.
- i** Why is it important to locally adopt these laws? Because RCW 3.50.100 provides that fees imposed by municipal court for the violation of any municipal ordinances are deposited in the city's general fund.

! The City attorney has recommended that existing chapter 9.50 Public Nuisance and Disturbance Noises be moved to Title 7, Health and Sanitation. Noise is frequently characterized as a health issue, so it may make sense to place it in Title 7, but noise also certainly disturbs the peace, and could be left in Title 9, which is also a common practice. We need a decision on organization of this chapter soon because the readoption of Title 9 as constructed below will replace chapter 9.50.

Chapter 9.02 General Provisions

- i** This is a new chapter for some important universal provisions.

9.02.010 Applicability

This chapter applies to the entirety of SMC Title 9.

9.02.020 Definitions

The provisions of RCW 9A.04.110 Definitions as presently constituted or hereinafter amended are adopted by reference.

9.02.030 General Provisions

- (1) The provision of a criminal penalty for any unlawful act does not preclude the City's use of civil remedies.
- (2) Where not otherwise specified, a violation of the Stanwood Municipal Code that is categorized as a crime is to be considered a misdemeanor.

- i** The following subsection replaces existing SMC Chapter 9.25 Emergency Response Cost Recovery and increases the recovery amount from \$1000 to \$2500.

- (3) It is the policy of the City of Stanwood to exercise the provisions of RCW 38.52.430 to recover the expenses of emergency response where that response is related to a person's intoxication.

9.02.040 Adoption by reference

The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

- RCW 9.01.110 Omission, when not punishable.
- RCW 9A.04.060 Common law to supplement statutes
- RCW 9A.04.070 Who amenable to criminal statutes
- RCW 9A.04.090 Application of general provisions of code.

9.02.050 Restitution

The municipal court may require any defendant convicted under this code, or any person subject to a civil infraction per RCW 7.80.120, to make restitution.

9.02.060 Severability

If any section, sentence, clause, or phrase of this title is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality may not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this title.

Chapter 9.08 Anticipatory Offenses

i The following adopted sections make any attempt, solicitation, and conspiracy for all Class C felonies prosecutable by the City as gross misdemeanors.

9.08.010 Adoption by reference

The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

- RCW 9A.28.020 Criminal attempt.
- RCW 9A.28.030 Criminal solicitation.
- RCW 9A.28.040 Criminal conspiracy.

Chapter 9.10 Offenses against Persons

i This chapter replaces existing SMC 9.04 Assault and most of existing SMC 9.20 Disorderly Conduct.

9.10.010 Adoption by reference

The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

- RCW 9.61.230 Telephone harassment
- RCW 9A.36.041 Assault in the fourth degree
- RCW 9A.36.050 Reckless endangerment

RCW 9A.36.070 Coercion
RCW 9A.36.160 Failing to summon assistance.
RCW 9A.36.161 Failing to summon assistance—Penalty.

RCW 9A.46.020 Harassment
RCW 9A.46.040 Court ordered requirements upon person charged with crime – Violation
RCW 9A.46.080 Order restricting contact – Violation
RCW 9A.46.110 Stalking

RCW 9A.49.030 Unlawful discharge of a laser in the second degree
RCW 9A.86.010 Disclosing intimate images
RCW 9A.90.120 Cyber harassment

Chapter 9.12 Offenses against Property

i This chapter replaces existing SMC 9.12 Crimes Against Property.

9.12.010 Adoption by reference

The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

RCW 9.45.062 Failure to deliver leased personal property.

RCW 9A.48.010 Definitions.

RCW 9A.48.050 Reckless burning in the second degree.

RCW 9A.48.060 Reckless burning – Defense.

RCW 9A.48.090 Malicious mischief in the third degree.

RCW 9A.52.060 Making or having burglar tools.

RCW 9A.52.010 Definitions.

RCW 9A.52.070 Criminal trespass in the first degree.

RCW 9A.52.080 Criminal trespass in the second degree.

RCW 9A.52.090 Criminal trespass – Defenses.

RCW 9A.52.100 Vehicle prowling in the second degree.

RCW 9A.56.010 Definitions

RCW 9A.56.050 Theft in the third degree

RCW 9A.56.063 Making or possessing motor vehicle theft tools

RCW 9A.56.060 Unlawful issuance of checks or drafts

RCW 9A.56.170 Possessing stolen property in the third degree

RCW 9A.56.180 Obscuring the identity of a machine

RCW 9A.56.270 Shopping cart theft

RCW 9A.61.010 Definitions

RCW 9A.61.020 Defrauding a public utility

RCW 9A.61.050 Defrauding a public utility in the third degree

RCW 9A.90.030 Definitions

RCW 9A.90.50 Computer trespass in the second degree

i The following section addresses catalytic converter theft.

RCW 19.290.100 Scrap metal license—Penalties

Chapter 9.14 Offenses against Public Morals

i This chapter replaces existing AMC 9.28 Houses of Prostitution.

9.14.010 Adoption by reference

The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

RCW 9A.42.010 Definitions.

RCW 9A.42.035 Criminal mistreatment third degree

RCW 9A.42.037 Criminal mistreatment fourth degree

RCW 9A.42.080 Abandonment of a dependent person

RCW 9A.42.090 Defense to abandonment of a dependent person

RCW 9A.44.130 Registration of sex offender

RCW 9A.44.132 Failure to register as a sex offender or kidnapping offender – Refusal to provide DNA

RCW 9A.88.010 Indecent exposure

RCW 9A.88.030 Prostitution

RCW 9A.88.090 Permitting prostitution

RCW 9A.88.110 Patronizing a prostitute

RCW 66.44.100 Opening or consuming liquor in public place—Penalty

RCW 66.44.150 Buying liquor illegally

RCW 66.44.180 General penalties—Jurisdiction for violations

RCW 66.44.270 Furnishing liquor to minors

Chapter 9.16 Offenses against Public Order

9.16.010 Adoption by reference

The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

RCW 9.40.100 Tampering with fire alarm or firefighting equipment.

RCW 9A.50.020 Interfering with access to health care.

RCW 9A.60.045 Criminal impersonation in the second degree.

RCW 9A.72.150 Tampering with physical evidence.

RCW 9A.76.020 Obstructing a law enforcement officer.

RCW 9A.76.030 Refusing to summon aid for a peace officer.

RCW 9A.76.040 Resisting arrest.

RCW 9A.76.130 Escape.

RCW 9A.84.010 Riot.

RCW 9A.84.030 Disorderly conduct

RCW 9A.84.020 Failure to disperse.

RCW 9A.84.040 False reporting.

9.16.020 Aiming or discharging weapons.

i This section replaces SMC 9.20.110, Discharge of Firearms, and is expanded to include additional weapons and aiming such weapons.

(1) It is unlawful for any person to:

(a) aim any firearm, whether loaded or not, at or toward any human being;

(b) willfully discharge any firearm;

(c) willfully discharge an air gun, bow and arrow, sling shot, or like weapon in any place where persons or property might be unreasonably endangered thereby, whether or not injury or damage results.

(2) This section does not apply to:

- (a) police officers while in the discharge of their lawful duties;
 - (b) persons exercising the right specified in RCW 9A.16.020;
 - (c) persons continuing with best farm management practices currently in existence, including, but not limited to, the slaughtering or humane destruction of livestock or wildlife, or the hazing of wildlife or wildfowl in conformance with the requirements of the Washington State Fish and Wildlife Department, the U.S. Department of Agriculture, and the United States Fish and Wildlife Service;
 - (d) persons discharging firearms loaded with blank cartridges for signal or ceremonial purposes in any athletic or sports event, recognized public event, any public ceremonial functions such as military funeral salutes, or by any memorial or military organizations or service groups for ceremonial purposes.
- (3) A violation of this section is a misdemeanor.

Chapter 9.18 Offenses against Juveniles

9.18.010 Adoption by reference

The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

- RCW 9.68A.090 Communicating with a minor for immoral purpose
- RCW 9.68A.150 Allowing minor on the premises of a live erotic performance
- RCW 9.69.100 Duty of witness of offense against minor or any violent offense
- RCW 9A.44.096 Sexual misconduct with a minor in the second degree
- RCW 13.32A.080 Harboring a minor

i RCW 26.28.080 regarding sales of tobacco to a minor includes vapor products.

RCW 26.28.080 Selling or giving tobacco to a minor

RCW 70.345.010 Definitions

RCW 70.345.030 License required [for sale of vapor products]

RCW 70.345.100 Product tastings—Requirements—Penalty.

RCW 70.345.140 Purchase or possession [of vapor products] by persons under eighteen

9.18.020 Leaving children unattended in parked automobile

i RCW 9.91.060 governs leaving children unattended in parked automobile, but only while the adult enters a tavern. This section mirrors that provision without the restrictive clause. Note that RCW 46.61.685, in the traffic code that is adopted by Title 10, governs leaving children unattended in standing vehicle with motor running.

- (1) It is unlawful for a person having the care and custody, whether temporary or permanent, of minor children under the age of twelve years, to leave such children in a parked automobile unattended by an adult.
- (2) A violation of this section is a misdemeanor.

Chapter 9.20 Domestic Violence Violations and Orders

9.20.010 Adoption by reference

The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

RCW 7.105.010 Definitions.

RCW 7.105.450 Enforcement and penalties – Other than antiharassment protection orders and extreme risk protection orders.

RCW 7.105.455 Enforcement and penalties – Antiharassment protection orders.

RCW 7.105.460 Enforcement and penalties – Extreme risk protection orders – False petitions.

RCW 7.105.465 Enforcement and penalties – Knowledge of order.

RCW 9.41.040 Unlawful possession of firearms – Ownership, possession by certain persons.

RCW 9.41.800 Surrender of weapons or licenses – Prohibition on future possession or licensing.

RCW 9.41.810 Violation – Penalty.

RCW 9A.36.150 Interfering with the reporting of domestic violence.

RCW 9A.40.010 Definitions.

RCW 9A.40.070 Custodial interference in the second degree.

RCW 9A.40.080 Custodial interference – Assessment of costs – Defense – Consent defense, restricted.

RCW 10.99.020 Definitions.

RCW 10.99.040 Restrictions upon and duties of court.

RCW 10.99.045 Appearances by defendant – No-contact order.

RCW 10.99.050 Victim contact – Restriction, prohibition – Violation, penalties – Written order – Procedures.

RCW 10.99.055 Enforcement of orders.

RCW 10.99.070 Liability of peace officers.

RCW 26.09.300 Restraining orders – Notice – Refusal to comply – Arrest – Penalty – Defense.

Chapter 9.22 Substance Abuse

9.22.010 Adoption by reference

The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

RCW 69.38.010 "Poison" defined.

RCW 69.38.050 False representation—Penalty.

RCW 69.38.060 Manufacturers and sellers of poisons—License required—Penalty.

RCW 69.41.010 Definitions.

RCW 69.41.030 Legend drug without prescription or order prohibited—Exceptions—Penalty

RCW 69.41.350 Steroid—Penalties.

RCW 69.50.101 Definitions.

RCW 69.50.412 Prohibited acts: E—Penalties.

RCW 69.50.445 Cannabis in view of general public or public place—Penalty

RCW 69.50.4011 Counterfeit substances—Penalties

RCW 69.50.4013 Possession of controlled substance—Penalty

RCW 69.50.4014 Possession of forty grams or less of cannabis—Penalty

9.22.020 Possession of Drug Paraphernalia

i This section replaces existing SMC Chapter 9.22 Drug Paraphernalia Restrictions.

i Note that the *use* of drug paraphernalia is prohibited by RCW 69.50.412, incorporated by reference above.

- (1) It is unlawful to possess “drug paraphernalia,” as defined in RCW 69.50.102, for any purpose related to any controlled substance other than cannabis.
- (2) A violation of this section is a misdemeanor.

Chapter 9.40 Parks

i Based on existing SMC 9.40 regarding park regulations.

9.40.010 Applicability

This chapter applies to all parks owned and operated by the City of Stanwood.

9.40.020 Definitions

! Confirm that the Public Works Director is the official in charge of parks.


"Director" means the director of Public Works or the director's designee.


"Park" means any park owned or operated by the City of Stanwood.


9.40.030 Use of Parks

Consistent with SMC Chapter 9.50, use of city parks is conditioned upon compliance with the rules in this chapter and SMC 9.50.040.


9.40.040 General Rules

 This chapter organizes types of rules by subject and class of civil infraction. Each section has a single class of infraction for violations. If you want to prescribe a different class of infraction for a violation, let's move that rule to its own section.


 For reference, each class of infraction is set by statute and also includes substantial statutory assessments:
class 1: \$250
class 2: \$125
class 3: \$50
class 4: \$25

 The rules that follow are based on existing SMC 9.40.010.


(1) Within the boundaries of any park owned or operated by the City of Stanwood, it is unlawful to:

 Fixed hours would be easier to enforce than "dusk till dawn". Deleted "camp or remain overnight," as it is included in the hourly prohibition.

- (a) be present in any park, or park any vehicle in any park, between dusk and dawn except with written permission of the Director;
- (b) possess or consume any alcoholic beverage except within a permitted beer garden;
- (c) permit any dog to be off-leash except in designated off-leash areas;
- (d) knowingly causes a horse to be upon park premises;
- (e) operate, stop, park, or leave a motor vehicle, including any motorcycle or motor-driven cycle, any place in the park, except on a driveway or parking area;
- (f) engages in the sale of any merchandise or services, or operate any concession, without authorization from a special event permit issued under Chapter 5.06 SMC or a temporary use permit issued under SMC Title 17;

 Deleted "engage in any disorderly conduct proscribed by a city ordinance" because that is now covered by SMC 9.50.

(g) use park facilities without paying any applicable user fee adopted by city council resolution.

 Existing SMC 9.40.040 Violations uses the Class B infraction system defined in existing SMC Title 13 that we propose to eliminate. Converting the Class B infraction to a Class 3 civil infraction would carry the same \$50 penalty, plus statutory assessments.

(2) A violation of this section is a class 3 civil infraction.

9.40.050 Speed Limits

(1) The Director may set speed limits for roads, paths, and parking lots in City parks applicable to all vehicles.

(2) It is unlawful to operate any vehicle, including any bicycle, in excess of the posted speed limits.

(3) A violation of this section is a class 4 civil infraction.

9.40.060 Closed Areas

- (1) The Director may close any section of a park at any time by posting notice in the closed section.
- (2) It is unlawful for a person to enter or remain in a closed section of a park without written permission from the Director.
- (3) A violation of this section is a class 3 civil infraction.

9.40.070 Smoking and Vaping.

- (1) It is unlawful to smoke within any city park.
- (2) It is unlawful to vape or carry any active vaping device within any city park.
- (3) A violation of this section is a class 4 civil infraction.

9.40.080 Damage to Parks and Park Facilities

- (1) It is unlawful to:
 - (a) build any fire within the park except in a designated area;
 - (b) cut, remove, or damage any flower, tree, shrub, or other landscaping;
 - (c) mutilate, deface, injure, damage, or molest any building installation, personal property, or equipment;
or
 - (d) scatters any litter, including broken glass, waste or discarded paper or waste of any kind, in the park, except in receptacles provided for that purpose.
- (2) A violation of this section is a class 1 civil infraction.

Chapter 9.42 Fireworks

i This chapter will supplant some portions of SMC Chapter 5.04 which governs permits for display fireworks so that police enforcement of fireworks violations are contained in Title 9, while the regulations and procedures regarding fireworks permits are contained in Title 5.

9.42.010 Adoption by reference

The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

RCW 70.77.485 Unlawful possession of fireworks—Penalties.

RCW 70.77.488 Unlawful [reckless] discharge or use of fireworks—Penalty.

RCW 70.77.510 Unlawful sales or transfers of display fireworks—Penalty.

RCW 70.77.515 Unlawful sales or transfers of consumer fireworks—Penalty.

RCW 70.77.520 Unlawful to permit fire nuisance where fireworks kept—Penalty.

RCW 70.77.540 Penalty.

9.42.020 Purchase and Sales.

- (1) It is unlawful to sell or purchase consumer fireworks within the City of Stanwood except during the following times:

- (a) from 12:00 noon to 11:00 p.m. on June 28;
 - (b) from 9:00 a.m. to 11:00 p.m. on each day from June 29 through July 4;
 - (c) from 9:00 a.m. to 9:00 p.m. on July 5; and
 - (d) from 12:00 noon to 11:00 p.m. on each day from December 27 through December 31.
- (2) It is unlawful to sell fireworks without a valid license issued per SMC Chapter 5.04.
- (3) A violation of this section is a class 1 civil infraction.

9.42.030 Use and Discharge.

- (1) It is unlawful to use or discharge consumer fireworks within the City of Stanwood except during the following times:
- (a) from 12:00 noon to 11:00 p.m. on June 28
 - (b) from 9:00 a.m. to 11:00 p.m. on each day from June 29 to July 3
 - (c) from 9:00 a.m. to 12:00 midnight on July 4;
 - (d) from 9:00 a.m. to 11:00 p.m. on July 5;
 - (e) from 6:00 p.m. on December 31 until 1:00 a.m. on January 1 of the subsequent year.
- (2) This section does not apply to a public display of fireworks licensed per SMC Chapter 5.04.
- (3) A violation of this section is a class 2 civil infraction.

Chapter 9.50 Conduct and Trespass from City Property


i People that behave dangerously, illegally, or threateningly may need to be trespassed from city property. To protect the due process rights of those people, it's important to adopt a code of conduct, procedures, graduated exclusion periods, and appeal provisions. This chapter is based on similar code chapters from Port Townsend and Anacortes.

9.50.010 Purpose and policy.

- (1) The purpose of this chapter is to:
- (a) Adopt a legally sound process for being able to exclude from city property persons whose behavior is dangerous, unsafe, illegal, or unreasonably disruptive to other users;
 - (b) Define the process for issuance of trespass warnings and their content; and
 - (c) Provide procedures for a recipient of a trespass warning to promptly appeal the warning to protect their right to engage in legitimate activities protected by the state and federal constitutions.
- (2) This chapter is enacted as an exercise of the city's authority to protect and preserve the public health, safety, and welfare under Article XI, Section 11 of the Washington State Constitution.
- (3) This chapter is intended to be enforced to emphasize voluntary compliance with laws and city rules and so that inadvertent minor violations of this section can be corrected without resorting to a trespass warning.


9.50.020 Applicability.

- (1) This chapter applies to behavior on all real property in the City of Stanwood owned or leased by the City of Stanwood, including real property that the city owns or operates in common with another jurisdiction, including but not limited to:

 Staff should add any other city-owned facilities that might be otherwise questioned into the list below.

- (a) Municipal buildings, including City Hall;
 - (b) Parks, trails, and other open spaces.
- (2) This chapter does not apply to public streets and sidewalks.

9.50.030 Definitions.

 See note about the person designated to hear appeals below.

“Police Chief” means the Chief of the City of Stanwood Police Department or other person designated by the Chief to perform the duties described in this chapter.

“Trespass warning” means a document informing the recipient that they are prohibited from entering a specified place for a specified period of time, consistent with the requirements of this chapter.

9.50.040 Prohibited conduct.

- (1) The following behavior is prohibited by this chapter in the places to which this chapter applies:
- (a) Dangerous Behavior. Any behavior that creates an imminent and unreasonable risk of injury or harm to either persons or property of another or the actor.
 - (b) Illegal Behavior. Any behavior that is prohibited by the laws of the United States, Washington State, Snohomish County, or the city including, but not limited to, any of the following types of behavior:
 - (i) Threatening another person by communicating either directly or indirectly to another person the intent to cause bodily injury in the future to the person threatened or to any other person;
 - (ii) Selling or using alcohol or drugs;
 - (iii) Threatening or harassing behavior (e.g., fighting or threatening to fight, brandishing a weapon, stalking, verbally threatening to harm others or their property);
 - (iv) Assaulting staff or other patrons;
 - (v) Urination or defecation other than in facilities intended for that function;
 - (vi) Sexual misconduct or harassment (e.g., indecent exposure, offensive touching, sexual acts);
 - (vii) Vandalism or placing graffiti;
 - (viii) Starting a fire in an undesignated area.
 - (c) Unreasonably Disruptive Behavior. Any behavior that, in consideration of the nature, scope, use and purpose of the city property in question, unreasonably interferes with others’ use and enjoyment of city property, including but not limited to:
 - (i) Use of unreasonably hostile or aggressive language or gestures; or
 - (ii) Unreasonably loud vocal expression or unreasonably boisterous physical behavior; or

- (iii) Using electronic or other communication devices in a manner that is unreasonably disruptive to others; or
 - (iv) Unreasonably interfering with the free passage of staff or patrons in or on public property; or
 - (v) Behavior that is unreasonably inconsistent with the normal use for which the publicly owned property was designed and intended to be used (e.g., engaging in loud conversation in a library setting);
 - (vi) Violation of the posted rules of the city property in question.
- (2) Exception. Any constitutionally protected action or speech is excluded from the prohibited conduct described in this section.

9.50.050 Authority to issue trespass warnings – Service.

- (1) Officers of the city Police Department are authorized to issue a trespass warning to any person who the officer has probable cause to believe has violated SMC 9.50.040.
- (2) The warning may be based upon observation by a police officer or a city employee or may be based upon a civilian report that would ordinarily be relied upon by police officers in the determination of probable cause.
- (3) The person need not be charged, tried, or convicted of any crime or infraction for the trespass warning to be issued or be effective.
- (4) Trespass warnings may be served upon the person subject to the warning using one of the following methods:
 - (a) First-class mail to the person at the person’s last known address;
 - (b) Personally; or
 - (c) If the person cannot be located by one of the first two methods after a diligent search, by publication in a newspaper of general circulation.
- (5) Service is effective:
 - (a) On the date the notice is personally received;
 - (b) In the case of service by mail, three days after the notice is mailed; or
 - (c) In the case of service by publication, 15 days after publication.
- (6) The trespass warning becomes effective, and the duration starts to run, upon the effective date of service.


9.50.060 Content of trespass warning.

- (1) The trespass warning must be in writing and contain:
 - (a) The date of issuance;
 - (b) A description the behavior that is the basis for the trespass warning;
 - (c) The place(s) of exclusion consistent with subsection (2) of this section;
 - (d) The length of exclusion consistent with SMC 9.50.070;
 - (e) The signature of the issuing police officer;
 - (f) A description of the consequences for failure to comply consistent with SMC 9.50.100.
- (2) A trespass warning for a place or places may not prohibit access to another place or places that are unrelated to or not a part of the place where the conduct that is the subject of the trespass warning occurred.

9.50.070 Duration of exclusion.

- (1) An officer who issues a trespass warning under this Chapter must determine a duration of exclusion consistent with this section.
- (2) If the person subject to the trespass warning:
 - (a) Has not been excluded from City property by a trespass warning issued within one year prior to the violation, then the warning may exclude the person for a period not exceeding 7 days.
 - (b) Has been the subject of only one prior trespass warning issued within one year prior to the current violation, then the warning may exclude the person up to 90 days.
 - (c) Has been the subject of two or more prior trespass warnings issued within one year prior to the current violation, then the warning may exclude the person up to one year.

9.50.080 Review procedure.

 Note this review could alternatively be performed by the City Administrator, as it is in Port Townsend's code.

- (1) For good cause, the Police Chief may rescind, shorten, or modify a trespass warning consistent with this section.
 - (a) A written request for review of a trespass warning must be delivered to the Police Chief no later than seven business days after it is issued.
 - (b) The Police Chief must hold a review hearing on the decision within one week of receipt of a request for review of a trespass warning.
 - (c) The Police Chief must notify the person subject to the warning of the date, time, and place, telephone number or electronic means at or by which the review will be conducted.
 - (d) The review decision must be communicated no later than five business days following the review.
 - (e) The review decision must inform the person subject to the warning of the right to seek judicial review of the decision and that the time frame for seeking judicial review runs from the date of service of the written decision.
- (2) For purposes of this section, "good cause" to rescind, shorten, or modify a trespass warning must be found where any of the following are true:
 - (a) The person subject to the warning demonstrates by a preponderance of the evidence that his or her conduct was intended to be expressive conduct protected by the First Amendment;
 - (b) The person subject to the warning was not given warning that the conduct in question was subject to a trespass warning;
 - (c) The trespass warning was based solely upon the statement of a third party, was not observed personally by the issuing officer or a city employee, would not ordinarily be relied upon by police officers in the determination of probable cause, and the person subject to the warning claims that he or she did not commit the action for which he or she was warned; or
 - (d) Reasonable minds could differ on the question of whether the conduct in question was unreasonably disruptive to others on the same property at the same time.
- (3) At the review hearing, the violation must be proved by a preponderance of the evidence to uphold the trespass warning. The Police Chief may consider a sworn report or declaration from the officer who issued the trespass warning or upon whose observation the trespass warning was based, without further evidentiary foundation, as prima facie evidence that the person committed the violation as described. The

Police Chief may consider information that would not be admissible under the evidence rules in a court of law but that the Police Chief considers relevant and trustworthy. If the warning was issued because of the alleged violation of any criminal law, the person need not be charged, tried, or convicted for the warning to be upheld.

- (4) The decision of the Police Chief constitutes the city's final decision. A person seeking judicial review of the city's final decision must file an application for a writ of review in Superior Court within 15 days of receipt of the city's final decision.
- (5) The trespass warning remains in effect during the pendency of any administrative or judicial proceeding.
- (6) No determination of facts made by the Police Chief may have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and may not preclude litigation of those same facts in a subsequent criminal prosecution or civil proceeding.

9.50.090 Permitted entry notwithstanding warning.

- (1) The Police Chief may, upon request, authorize a person who has received a trespass warning in accordance with this chapter to enter city property to exercise his or her First Amendment rights or to conduct government business if there is no other reasonable alternative location to exercise such rights or conduct such business. Authorization must be in writing and specify the duration of the authorization and any conditions thereof, which may include a requirement that the person be escorted by a police officer.
- (2) The Police Chief must issue a decision on a request for entry onto public property by the recipient of a trespass warning during a period of exclusion no later than 48 hours after receipt of the request.

9.50.100 Violation – Penalty.

- (1) Any person who is found on city or other publicly owned property in violation of a trespass warning issued in accordance with this chapter may be arrested for criminal trespass as defined in Chapter 9A.52 RCW, except as otherwise provided in this section.
- (2) This chapter does not supplant the city's ability to enforce any other section of the Stanwood Municipal Code regulating behavior on public property or the city's ability to pursue other civil or criminal remedies and penalties.
- (3) A city employee who becomes aware of a violation of a trespass warning issued in accordance with this chapter is expected to notify the Police Department.

**Stanwood Municipal Code
Title 13 Draft**

SMC Title 13 DRAFT

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- ! Because RCW 35A.12.130 requires an ordinance to contain no more than one subject, each of Titles 9 and 13 should be adopted as three separate ordinances.
- ! Because of the interactivity between Title 13 and other provisions for the code, the other sections identified for amendment in Title 13 should be adopted simultaneously.

i The following adopting language is proposed to handle codification instructions for adoption of these ordinances.

SMC Title 9 is amended to read as shown in the attachment.

SMC 5.04.050 and SMC 5.04.060 is repealed.

SMC Title 13 is amended to read as shown in the attachment.

Title 13 Civil Enforcement

- i This title is a complete rewrite of existing SMC Title 13, currently titled "Code Enforcement." We propose renaming the title "Civil Enforcement" to clarify that it concerns only the civil aspects of enforcement and lays out the process for enforcement of the code through non-criminal processes.
- i Existing SMC 13.01.100, Criminal Penalties, has been deleted. The City has already made the policy choice to make the default penalty for a code violation a civil matter, not a criminal one.
- i Existing Title 13 consists of only a single chapter with 12 sections. This proposed revisions divides the title into logical chapters.

Chapter 13.10 General Provisions

13.10.010 Policy

- (1) The policy of the City of Stanwood is to:
 - (a) Fairly, actively, and uniformly enforce the municipal code to preserve the health, safety, and welfare of the public and the environment and not for the benefit of any particular class of persons;
 - (b) Conduct all investigations into alleged violations consistent with statutory and constitutional protections of the right of privacy;
 - (c) Use education as a first step toward achieving compliance with those codes and offer property owners the opportunity to correct violations before imposing fines;
 - (d) Consider the economic circumstances of violators and their ability to comply with code requirements;
 - (e) Use administrative orders and other measures when necessary to ensure violations are corrected.
- (2) To achieve this policy, this Chapter provides authority and procedures for:
 - (a) Efficient and effective notice and opportunities to correct violations;

- (b) Progressive monetary penalties proportionate to the violations;
- (c) Appeal of administrative orders regarding violations;
- (d) Collection of civil penalties; and
- (e) Abatement and remediation of violations.

13.10.020 Applicability

This title applies to civil enforcement of all violations of the Stanwood Municipal Code.

13.10.030 Definitions

The following definitions apply to the entirety of this title:

"Civil violation" means a failure to comply with any mandatory provision of the Stanwood Municipal Code, including failure to comply with a permit condition or an administrative order issued pursuant to this title.

"Director" means the director of the Department of Community Development or the director's designee.

"Violator" means a person who violates any mandatory provision of the Stanwood Municipal Code, including failure to comply with a permit or an administrative order issued pursuant to this title.

13.10.040 Duty to Enforce

i Based on existing SMC 13.01.020 Duty to Enforce.

- (1) The Director has the duty to enforce this chapter.
- (2) In lieu of the enforcement procedures set forth in this chapter, the Director may implement the enforcement procedures set forth in any of the uniform codes adopted by reference in SMC Title 14.
- (3) Although generally the City will not pursue civil enforcement when a criminal penalty for a violation is prescribed, civil enforcement is not precluded under those circumstances.
- (4) This title is to be enforced for the benefit of health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.
- (5) Nothing in this chapter is intended to impose any duty upon the city or any of its officers or employees that would subject them to damages in a civil action.

13.10.050 Violations are Public Nuisances

Any uncorrected violation is detrimental to the public health, safety, and welfare and is a public nuisance. A public nuisance is a continuing offense against the order and economy of the City of Stanwood and is subject to enforcement under RCW Chapter 7.48 and RCW Chapter 9.66.

13.10.060 Joint and Several Liability

In addition to any other person who may be liable for a civil violation, the property owner is jointly and severally liable for the civil violation, payment of any civil penalties, and restoration of the site.

13.10.070 Required Report to City Council

i This is a new section intended to ensure policymakers receive feedback on how well this code title is operating.

In addition to any other person who may be liable for a civil violation, the property owner is jointly and severally liable for the civil violation, payment of any civil penalties, and restoration of the site.

13.10.080 Severability

i This section is based on existing SMC 13.01.120 Severability.

If any section, sentence, clause, or phrase of this title is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality may not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this title.

Chapter 13.20 Procedures

13.20.010 Initiation of Civil Enforcement

- (1) Any person who believes a violation has occurred may notify the Director.
- (2) If the Director becomes aware of a violation, the Director may initiate the civil enforcement process without a third-party complaint.

13.20.020 Investigation—Right of entry

i This section is based on existing 13.01.030(1).

- (1) The Director must investigate an alleged violation and confirm it has occurred before proceeding with civil enforcement.
- (2) Whenever necessary to make an inspection of an alleged or suspected civil violation, the Director may, upon presentation of proper credentials and consent of the property owner or other person having charge or control of the building, structure or property, enter such building, structure, property or portion thereof at all reasonable times to inspect the same.
- (3) If the building, structure, property, or portion thereof is unoccupied, the Director must make a reasonable effort to locate the owner or other persons having charge or control of the building, structure, property, or portion thereof and request entry.
- (4) If entry is refused or a responsible party cannot be located, the Director may ask the City Attorney to assist in obtaining a warrant.

13.20.030 Issuance of Administrative Orders or Exercise of Other Remedies

- (1) After confirmation of a violation, the Director may choose from any combination of the remedies available in SMC Chapter 13.40 to resolve the violation.
- (2) Discretion.
 - (a) Generally, the Director should use a graduated enforcement process that uses notification and education as a first step and should offer violators the opportunity to correct violations before imposing fines.

- (b) The Director may determine that a violation is so egregious that graduated enforcement is inappropriate or would require more time than is appropriate compared to the gravity of the violation.
- (c) The Director may decide not to take action to correct a violation, especially for de minimis violations or violations that require interpretations or discretionary judgments of the applicability of the land use code.

Chapter 13.30 Administrative Orders

i Existing SMC 13.01.030(2) describes a “notice of violation” that is also characterized as an order. Since it’s more than a “notice,” we should characterize it accurately. Here, we drop the term notice and only refer to administrative orders as the global term for each of these types of orders.

13.30.010 Administrative Orders including Emergency/Stop Work Orders

- (1) Generally. The Director may issue an administrative order to compel correction of a violation, abatement of a nuisance, or payment of civil penalties.
- (2) Emergency/Stop Work orders. Whenever any use or activity in violation of the Stanwood Municipal Code threatens the health and safety of the occupants of the premises or any member of the public, the Director may issue an administrative order to immediately cease any work or activity that is causing a violation or a public nuisance.
- (3) Supplemental orders. The Director may at any time add to, rescind in part, or otherwise modify an administrative order by issuing a supplemental order.
- (4) Final orders. An administrative order becomes final if it is not timely appealed, or if it is timely appealed and not stayed or reversed.

13.30.020 Contents of Orders

i Existing 13.01.040 Time to comply.

An administrative order must contain the following:

- (1) The name and address of the property owner, the person in possession of the property, and any other person responsible for the violation or condition.
- (2) The street address or description of the property sufficient for identification of the location where the violation occurred or condition is located.
- (3) A statement that the Director has identified a public nuisance or found a violation of specific code sections, permit condition, stop work order, or other administrative order.
- (4) For stop work orders:
 - (a) A directive to immediately cease the work or activity until the Director rescinds the order.
 - (b) A statement of the penalties for failure to comply.
- (5) For orders other than stop work orders:
 - (a) A statement of the corrective action required to be taken. If the Director has determined that corrective work is required, the order must require that all necessary permits be secured and the corrective work physically commence within a reasonable time, as determined by the Director, and a reasonable date by which the work must be completed.

- (b) An order to pay civil penalties per SMC 13.40.050.
- (c) A statement that if the corrective action is not commenced or completed within the time specified, the Director may proceed to abate the violation, cause the corrective work to be done, and charge the costs thereof as a lien against the property and as a joint and separate personal obligation of any person in violation.
- (d) A statement of the procedural steps the City may take to ensure compliance if the violation is not corrected consistent with the order.
- (e) A statement that the order is effective upon service or, for stop work orders, when the Director posts it on the subject property or serves it on the persons engaged in the work.
- (f) A statement of the right to appeal an order and the method and deadline for doing so, and that failure to file a timely and complete appeal may constitute a waiver of all rights to appeal the order.

13.40.030 Civil Penalties

- (1) An administrative order may include an order to pay civil penalties assessed as a result of the violation and, if applicable, the conditions on which assessment of such civil penalty are contingent.
- (2) Amount of Civil Penalty.
 - (a) The amount of civil penalty is \$100 per day per violation unless otherwise provided.
 - (b) For a civil violation related to critical areas, as defined in the Stanwood Municipal Code, the Director may impose an additional civil penalty up to:
 - (i) An amount, not to exceed \$25,000, that is reasonable based upon the nature and extent of the violation and the costs to the City of enforcing this Chapter against the violator; or
 - (ii) An amount equal to twice the economic benefit that the violator derived from the violation as measured by the greater of:
 - (A) The resulting increase in the market value of the property or the value received by the violator; or
 - (B) The savings of construction costs realized by the violator derived from the act that constituted the violation.
 - (c) A person found in violation of a new and separate violation within one year of the resolution of a prior related violation may be subject to double the civil penalties normally imposed for such a violation.
 - (d) The Director may reduce the civil penalty based on one or more of the following mitigating factors:
 - (i) The violator showed good faith or substantial progress, or both, in correcting the violation; or
 - (ii) The violator was not the primary cause of the violation.
- (3) Collection of Civil Penalties.
 - (a) An order to pay civil penalties is valid for the penalties accrued as of the date of the order, and for future penalties that accrue until a specified event.
 - (b) The Director may issue a supplemental order for additional civil penalties. That order is appealable only for the additional civil penalties imposed by the supplemental order.
 - (c) Per RCW 19.16.500, the Director may refer orders to pay civil penalties to collection agencies thirty days after service, and may add a reasonable fee to cover the costs of collection.
- (4) Payment of a civil penalty pursuant to this Chapter does not relieve the violator of the duty to correct the violation.

13.30.040 Service of Orders—Posting

- (1) All persons identified in the order must be served either personally or by mail.
- (2) If the address of a person cannot reasonably be ascertained, then a copy of the order must be mailed by certified mail, return receipt requested, to such person at the address of the location of the violation and a copy must be posted in a conspicuous location on the premises. The failure of any such person to receive such notice does not affect the validity of any proceedings taken under this Chapter. Service by certified mail is effective on the date of mailing.
- (3) Posting. A copy of the order must also be posted at a conspicuous place on the relevant property that is the subject of a violation, unless posting the notice is not physically possible or poses a risk of harm to the city official.

13.30.050 Appeals

i This section replaces existing SMC 13.01.070, Review by Hearing Examiner.

- (1) An administrative order issued per this Chapter may be appealed consistent with this section.
- (2) Filing.
 - (a) Who May File. Any person subject to an administrative order issued pursuant to this Chapter may appeal it in writing to the Hearing Examiner.
 - (b) When to File. An appeal must be filed within 14 calendar days of service of the administrative order being appealed.
 - (c) How to File. An appeal must be filed by submitting a Notice of Appeal to the Director on forms provided by the City, with the appeal fee set by City Council resolution.
 - (d) Fees.
 - (i) The City Council will establish a fee schedule for appeals of administrative orders.
 - (ii) If an appellant prevails on their appeal, the City will reimburse the appeal fee paid by appellant.
- (3) Contents. The Notice of Appeal must contain the following:
 - (a) Identification of the order being appealed;
 - (b) The name and address of the appellant and the appellant's interest(s) in the matter;
 - (c) The specific reasons why the appellant believes the order is in error;
 - (d) The requested relief;
 - (e) Identification of any applicable Stanwood Municipal Code sections.
- (4) Automatic Stay. An administrative order other than a stop work order is stayed during an appeal to the Hearing Examiner except when the Director determines that the violation will cause immediate and irreparable harm and so states in the order.
- (5) Standard of Review.
 - (a) The appellant bears the burden of proving that the administrative order was clearly erroneous.
 - (b) The Hearing Examiner may not overturn or modify the Director's order unless he or she finds it was clearly erroneous.
- (6) Hearing.

- (a) The Hearing Examiner must hold a hearing, during regular business hours, to provide opportunities for the parties to be heard on the appeal.
 - (b) Before testifying, any witness, including city staff, must be required to declare that he or she will testify truthfully, by oath or affirmation.
- (7) Decision.
- (a) The Hearing Examiner may affirm, reverse, or modify the appealed order.
 - (b) The Hearing Examiner's written decision must include findings of fact, conclusions of law, and a decision on the appeal.
 - (c) The Hearing Examiner must hold the hearing and provide the written decision on the appeal within 90 days of filing of the Notice of Appeal.
- (8) Reconsideration.
- (a) A party to an appeal may seek reconsideration of the Hearing Examiner's decision by filing a written request for reconsideration, describing the specific errors alleged, within ten days of the date of decision.
 - (b) The Hearing Examiner must consider the request, without public comment or argument by the party filing the request. Reconsideration may be granted only when a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision.
 - (c) A request for reconsideration is not required to exhaust the appellant's administrative remedies.
- (9) Exhaustion of Administrative Remedies.
- (a) The Hearing Examiner's decision is the final decision of the City on the order.
 - (b) The date of final decision is the date the Hearing Examiner issued its decision, unless any party timely requests reconsideration, in which case the date of final decision is the date the Hearing Examiner makes its decision on reconsideration.

13.30.060 Violations of administrative orders.

- (1) If a person to whom an order is directed does not obey the order or does not pay the civil penalty assessed by the order, the Director may pursue any combination of the remedies in SMC Chapter 13.40.
- (2) Any person who removes a posted emergency or stop work order without authorization is guilty of a misdemeanor.
- (3) If a person to whom an order is directed fails to comply with an emergency or stop work order, that person is guilty of a gross misdemeanor. Each day or part thereof of noncompliance with a stop work order is a separate offense.

Chapter 13.40 Additional Remedies

13.40.010 Discretion

The Director may pursue one or more of the remedies described in this chapter to resolve a violation of the Stanwood Municipal Code.

13.40.020 Civil infraction

- (1) In accordance with RCW Chapter 7.80, the Director may issue a class 1 civil infraction to a violator.

- (2) The Director may issue a civil infraction for each day the violation continues.
- (3) The Director may issue a civil infraction in addition to, or as an alternative to, any other judicial or administrative remedy.

13.40.030 Voluntary compliance agreement

i This is a new provision with which we have had success in other jurisdictions.

- (1) The City and the violator may enter into a voluntary compliance agreement at any time.
- (2) The Director is authorized on behalf of the City to enter into a voluntary compliance agreement, as provided for in this Section, at any time before the City becomes involved in any lawsuit related to the enforcement action.
- (3) Contents. A voluntary compliance agreement must contain the following:
 - (a) The name and address of the property owner, the person in possession of the property, and any other person responsible for the violation or condition.
 - (b) The street address or description of the property sufficient for identification of the location where the violation occurred or is located.
 - (c) A description of the civil violation and a reference to the specific code provisions that were allegedly violated.
 - (d) A detailed description of the agreed corrective action and the date by which it must be completed.
 - (e) The amount of the civil penalty that will be imposed, if any, pursuant to SMC 13.40.050 if the terms of the voluntary compliance agreement are not met and that the City has a consensual lien against the property for the amount of the civil penalty plus any recording fees and costs.
 - (f) A statement that the City retains the right to enforce the agreement as a matter of contract and retains all other rights and remedies available at law.
 - (g) A statement that if the Director determines that the terms of the voluntary compliance agreement are not met, the Director may proceed with enforcement consistent with this Title.
 - (h) A statement that by entering into the voluntary compliance agreement the violator admits that the conditions described in the voluntary compliance agreement exist and constitute a civil violation.
 - (i) A statement that the violator knowingly, voluntarily, and intelligently waives the right to appeal any current or future administrative order arising from the same conditions or violations, including current or future civil penalties associated with the same conditions or violations.
- (4) The Director may grant an extension of the time limit for compliance or a modification of the required corrective action if the violator has shown due diligence or substantial progress in correcting the violation and the circumstances support such an extension.

13.40.040 Certificate of non-compliance

i This is a new provision with which we have had success in other jurisdictions.

- (1) After an administrative order becomes final, the Director may record with the County Auditor a certificate of non-compliance against any real property subject to the order.
- (2) The certificate of non-compliance must describe:
 - (a) the date of the order;

- (b) the property subject to the order;
 - (c) the violation;
 - (d) the amount of unpaid civil penalties;
 - (e) the method of releasing the certificate of non-compliance.
- (3) Upon request of the property owner or violator, the Director must record a release of the certificate of non-compliance if:
- (a) The administrative order is satisfied;
 - (b) All civil penalties are paid; and
 - (c) All costs associated with recording the certificate of non-compliance and the release of the certificate of non-compliance are paid.

13.40.050 Abatement

- (1) After an administrative order becomes final, if the required corrective work is not commenced or completed within the time specified in the order, the City may abate a violation itself.
- (2) If a violation poses an imminent threat to health or safety or to the environment, the City may abate the violation itself without prior notice to the property owner.
- (3) When the city abates the violation itself it may charge the costs of abating the violation as a public nuisance lien against the property.
- (4) When the City abates unfit dwellings, buildings, structures, or property following the procedures in this Title and RCW 35.80.030, the Director may ask the County Treasurer to charge the costs of abatement as an assessment upon the tax rolls against the real property.
 - (a) The Director is the municipal officer designated and authorized to exercise the powers necessary to carry out the purposes authorized by RCW 35.80.030.
 - (b) The Hearing Examiner is the appeals commission designated to hear and decide appeals within sixty days of date of filing, as required by RCW 35.80.030(1)(g).

13.40.060 Settlement

The Director may, with the advice and consent of the City Attorney, enter into negotiations with parties in an enforcement action or named in a lawsuit under this Title or their legal representatives, for the purposes of negotiating a settlement to such action or lawsuit. The settlement may include a compromise regarding the collection of civil penalties but must consider the interests of the public and be in the best interests of the City.

13.40.070 Alternative Remedies

i This section replaces existing SMC 13.01.110.

In addition to any other penalty or method of enforcement, the City Attorney may bring actions for legal, equitable, injunctive, or other relief to enforce the Stanwood Municipal Code.