

ORDINANCE 1264

AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON, REVISING THE CITY'S REGULATIONS FOR ADMINISTRATIVE INTERPRETATIONS AND ESTABLISHING A FEE THEREFOR, ADOPTING ADMINISTRATIVE PROVISIONS FOR UNCLASSIFIED USES, CONDITIONAL USES, AND ACCESSORY USES, CLARIFYING REGULATIONS FOR ACCESSORY BUILDINGS, AMENDING CHAPTERS 3.30, 17.20, 17.25, AND 17.80 OF THE STANWOOD MUNICIPAL CODE, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on August 7, 2009 The Stanwood City Council approved a work program for revision of regulation for Administrative Procedures including interpretive decisions, conditional and unclassified uses and referred that work program to the Planning Commission for review; and

WHEREAS, on September 21, 2009 the Planning Commission held a pre-application meeting to consider these issues; and

WHEREAS, on November 25, 2009 the Community Development Department filed Application LZCA 09-06; and

WHEREAS, on November 25, 2009 the City of Stanwood SEPA Responsible Official issued a threshold determination of non-significance; and

WHEREAS, on December 14, and December 28, 2009, a public hearing was held by the Planning Commission, and all persons wishing to provide public input concerning the docketed requests were heard; and

WHEREAS, public notice of the above-referenced public hearing were provided as required by law; and

WHEREAS, on December 28, 2009 the Planning Commission made a recommendation to the City Council; and

WHEREAS, on January 14, 2010 the City Council met to consider the Planning Commission's recommendation on the proposed zoning text amendments; and

WHEREAS, pursuant to RCW 36.70A.106, the City has notified the Washington State Department of Community, Trade, and Economic Development of the City's intent to adopt the proposed change in zoning text amendments;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF STANWOOD, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. SMC Title 17 Zoning, Chapter 17.80 Administration is hereby amended to add a new Section **17.80.115 Administrative Interpretations** to read as follows:

17.80.115 Administrative Interpretations

(1) This section establishes the procedure and criteria that the City will use in deciding upon a written request to interpret the provisions of Title 17, Zoning. The interpretation of the provisions of a development agreement or concomitant agreement will be treated as an interpretation of the Zoning Code.

(2) Applicability.

This section applies to each written request to interpret the provisions of the Zoning Code.

(3) Purpose.

An interpretation of the provisions of the Zoning Code clarifies conflicting or ambiguous wording or the scope or intent of the provisions of the Zoning Code. A request for a Zoning Code interpretation must relate to a specific site, land use district, use or application within the City of Stanwood. An interpretation of the provisions of the Zoning Code may not be used as, or considered to be, an amendment to that the Zoning Code.

(4) Applicable procedure.

a. The Community Development Director (Director) shall interpret the provisions of the Zoning Code in conformance with this Section.

b. A Zoning Code interpretation requested by a person other than the project proponent or property owner must be requested prior to the date of expiration of any applicable administrative appeal period for a land use decision on the application to which the request relates. Any Zoning Code interpretation requested after the applicable administrative appeal period shall not affect an issued permit or decision.

c. The Director shall determine how to process the Zoning Code interpretation request. The request may be:

(i). Processed pursuant to SMC 17.80.130 Table of Land Use Procedures Type I; or

(ii). Consolidated with the process for the review of the application; provided that ~~An~~ an appeal of a Zoning Code interpretation consolidated with the process associated with the review of the application shall be consolidated with the appeal of the decision on the underlying application.

(5) Submittal requirements.

Any person requesting an interpretation of the Zoning Code shall submit a written request on a form provided by the City specifying each provision of the ~~Municipal~~ Zoning Code for which an interpretation is requested, why an interpretation of each provision is necessary, and any reasons or material in support of a proposed interpretation.

(6) Factors for consideration.

In making an interpretation of the provisions of the Zoning Code, the Director shall consider the following factors:

- a. The applicable provisions of the Zoning Code including their purpose, intent, and context; and
- b. The impact of the interpretation on other provisions of the Municipal Code;
- c. The implications of the interpretation for development within the City as a whole;
- d. The applicable provisions of the Comprehensive Plan and other relevant codes and policies; and
- e. Any applicable state statutes and court decisions.

(7) Effect of interpretation.

An interpretation of the Zoning Code issued under this section shall have the same effect as any provision of the Zoning Code.

(8) Time limitation.

An interpretation of the Zoning Code remains in effect until rescinded in writing by the Director.

(9) Fee

The fee for administrative interpretations shall be as listed in SMC 3.30 Fee Schedule

Section 2

SMC Title 17 Zoning, Chapter 17.25 General Provisions, Section **17.25.020 Permitted Uses** is amended to read as follows:

17.25.020 Permitted Classification of Uses.

(1) No building or structure shall be erected, converted, enlarged, reconstructed, or structurally altered, nor shall any building or structure or land be used, designed, or arranged for any purpose other than is permitted pursuant to this Section in the district in which the building or structure or land is located; provided, that such regulations shall not prohibit the continuance of an existing use. (Ord. 929 Ch. 6(B), 1995).

(2) Land Use Classifications Established.

This Section establishes permitted, conditional, accessory and prohibited uses for all properties within the City Limits. All uses in a given zone are one of the following five (5) types:

ia. Permitted Use: Land uses allowed outright within a zone. The specific types of permitted uses are set forth in the Zoning Code chapters for each zoning district.

b. Conditional Use (Hearing Examiner): Uses with special characteristics that may not generally be appropriate within a zoning district, but may be permitted subject to review by the Hearing Examiner to establish conditions to protect public health, safety

and welfare. The specific types of conditional uses are set forth in the Zoning Code chapters for each zoning district.

c. Accessory Use: Uses customarily incidental and subordinate to the principal use and located upon the same lot occupied by the principal use. Accessory uses are determined by the Community Development Director or designee on a case-by-case basis.

d. Prohibited Use: Any use which is not specifically enumerated or interpreted by the City as allowable in that district. Any use not specifically listed as a permitted, conditional, or accessory use is prohibited, except those uses determined to be unclassified and permitted by the Community Development Director pursuant to SMC 17.25.025. Any prohibited use is illegal and is subject to civil or criminal penalties under SMC Title 13, Code Enforcement.

e. Unclassified Use: A use which is not a permitted use, a conditional use, or an accessory use, but which is interpreted by the Community Development Director as similar to a permitted, conditionally permitted, or accessory use and not otherwise prohibited, pursuant to SMC 17.25.025, Unclassified Uses.

Section 3 SMC Title 17 Zoning Chapter 17.25 General Provisions is amended to add a new **Section 17.25.025 Unclassified Uses** to read as follows:

17.25.025 Unclassified Uses

(1). Unclassified Uses: Upon inquiry by an applicant, an administrative interpretation shall be made by the Community Development Director or designee to determine if a proposed use not specifically listed is either allowed or prohibited, utilizing the criteria in subsection (2) of this Section. Should an interpretation be made that a proposed, unlisted use not be allowed in a specific zoning district, the Director shall indicate which zones, if any, do permit the use. If the Community Development Director's interpretation indicates that an unlisted use is not consistent with the permitted, conditional or accessory uses in any district, or if a party does not concur with the permit type applied to a use, appeal may be made pursuant to SMC 17.80.130. Interpretations made by the Community Development Director may be documented, and updates to Title 17, when consistent with the title format and level of detail, shall incorporate "unclassified use" interpretations upon adoption of a Zoning Code amendment by the City Council.

(2). Criteria for Unclassified Uses: In order to make a determination that an unclassified use is permitted, conditionally permitted, or accessory, the Community Development Director must find that the use is:

i. In keeping with the purpose and intent of the zone, and consistent with the Stanwood Comprehensive Plan policies; and

ii. Similar in nature to, and no more intense than, a specifically listed permitted, conditional or accessory use.

Section 4 SMC Title 17 Zoning Chapter 17.80 Administration **Section 17.080.120 Conditional Use Permits** is amended as to read as follows:

SMC 17.080.120 Conditional Use Permits

~~The City requires conditional use permits following an open record public hearing before the City Hearing Examiner pursuant to SMC 17.80.130.~~

1. Purpose: The purpose of a conditional use permit is to allow certain uses in districts where they are normally prohibited by this Chapter, when the proposed uses are deemed consistent with other existing and potential uses within the general area of the proposed use. Except as provided in this Section, a conditional use permit may not reduce the requirements of the zone in which the use is to be located.

2. Who may apply: A property owner, or his duly authorized agent, may file an application for a conditional use permit, when the proposed use or development requires any such permit as set forth in the zone districts.

3. City Authority: The Hearing Examiner shall have the authority to permit conditional uses following an open record public hearing pursuant to SMC 17.80.130.

4. Applicant's responsibility: The application shall set forth fully the grounds and the facts justifying the granting of the conditional use permit.

5. Fees

Fees for a conditional use permit shall be as listed in SMC Chapter 3.30 SMC Fee Schedule.

6. Decision Criteria

The Hearing Examiner shall consider the following factors, among all other relevant information:

a. Comprehensive Plan: The proposed use shall be compatible with the general purpose, goals, objectives and standards of the Comprehensive Plan, the zoning regulations and any other plan, program, map or ordinance of the City of Stanwood.

b. Community Need: There shall be a community need for the proposed use at the proposed location. In the determination of community need the Hearing Examiner shall consider the following factors, among all other relevant information:

i. The proposed location shall not result in either the detrimental overconcentration of a particular use within the City or within the immediate area of the proposed use.

ii. That the proposed location is suited for the proposed use.

c. Effect on Adjacent Properties: The proposed use at the proposed location shall not result in substantial or undue adverse effects on adjacent property. The following factors shall be considered.

- i. Compatibility: The proposed use shall be compatible with the scale and character of the neighborhood.
- ii. Traffic: Traffic and circulation patterns of vehicles and pedestrians relating to the proposed use and surrounding area shall be reviewed for potential effects on, and to ensure safe movement in, the surrounding area.
- iii Noise, Glare: Potential noise, light and glare impacts shall be evaluated based on the location of the proposed use on the lot and the location of on-site parking areas, outdoor recreational areas and refuse storage areas.
- iv Landscaping: The Hearing Examiner may require additional landscaping to buffer adjacent properties from potentially adverse effects of the proposed use.
- v. Public Improvements: The proposed use and location shall be adequately served by and not impose an undue burden on any public improvements, facilities, utilities and services. Approval of a conditional use permit may be conditioned upon the provision and/or guarantee by the applicant of necessary public improvements, facilities, utilities and/or services.

4. 7. Additional conditions for bed and breakfast uses in single-family residential zones are set forth in SMC 17.100.060 (Ord 1253 Oct. 2009)

2. 8. Additional conditions for schools uses in single family residential zones are set forth in SMC 17.100.070 (Ord 1253 Oct. 2009)

9. Additional conditions for wireless communications facilities are set forth in Chapter 17.154 SMC.

Section 5 SMC Title 17 Zoning Chapter 17.25 General Provisions **Section 17.25.110 Accessory uses and structures** is amended to read as follows:--

17.25.110 Standards for Accessory uses and structures.

No accessory uses or structures shall be located in any required yard except as provided for below or as otherwise permitted in this code:

(1) In all zoning districts, accessory uses and structures over 120 square feet shall not be located in required front yards, but may be located in required side or rear yards, not less than five feet from the side or rear lot line; provided, however, that accessory structures for the housing of persons, such as a garage apartment, shall not be located in any required yard. Additionally, notwithstanding the minimum front yard setback requirement for single-family detached dwellings, any garage, whether attached or detached, shall have a minimum front yard setback requirement of 20 feet.

~~(2) On lots fronting on two or more streets or corner lots, accessory uses and structures may be located not less than five feet from the lot lines of one, but not both, required yards that abut upon an adjacent lot.~~

(3) In all zoning districts, rooftop air conditioning and ventilating units shall be so screened as to not be visible from the immediate public right-of-way. This requirement shall not apply to single-family detached dwelling units.

(4) When an accessory building is attached to and made a part of the main building for at least 50 percent of the length of one of the abutting walls of such accessory

buildings, or when the total length of the abutting walls of the accessory building is equal to 50 percent of the longest wall of the accessory building, then the accessory building shall be considered an integral part of the main building.

(4) An accessory building, unless attached to and made a part of the main building, shall be not closer than five feet to the main building (Ord. 1110 § 3, 2002; Ord. 929 Ch. 6(K), 1995).

Section 6 SMC Title 17 Zoning, Section 17.20 Construction of Language Definitions

Section 17.20.040 Definition of Accessory Building is amended to read as follows:;

Accessory building.

“Accessory building” means a subordinate building, or portion of the main building, the use of which is incidental to that of the main building on the same lot. ~~Where an accessory building is attached to and made a part of the main building for at least 50 percent of the length of one of the abutting walls of such accessory buildings, or where the total length of the abutting walls of the accessory building is equal to 50 percent of the longest wall of the accessory building, then the accessory building shall be considered an integral part of the main building.~~ An accessory building, unless attached to and made a part of the main building, shall be not closer than five feet to the main building. (Ord. 929 Ch. 5, 1995).

Section 7 SMC Title 3 Revenue and Finance, Chapter 3.30 Fee Schedule, Section

3.30.060 Other fees is amended to add a fee for an administrative interpretation as follows:;

3.30.060 Other fees.

Administrative interpretation	\$60.00
Annexation	\$350.00
Boundary line adjustment	\$950.00
Comprehensive plan amendment	\$800.00
Concurrency evaluation	\$400.00 plus consulting fees for engineering review
Concurrency reconsideration	\$200.00 plus consulting fees for engineering review
Concurrency appeal	\$500.00 plus consulting, engineering, hearing examiner, and legal fees
Right-of-way vacation	\$350.00
Right-to-farm application (under 10 acres)	\$50.00

Right-to-farm application (10 acres or greater)	\$100.00
Water/sewer certificate of availability	\$500.00
Zoning code amendment	\$800.00

(Ord. 1171 § 4, 2005; Ord. 1032 § 6, 2002; Ord. 1092 § 2, 2000; Ord. 1047A, 1999; Ord. 1047, 1998; Ord. 933, 1995; Ord. 901 § 3, 1994).

Section 8

Having reviewed all of the record made before the Planning Commission and the record before the City Council, the Findings of Fact and Conclusions attached hereto as Exhibit A are hereby adopted and incorporated by this reference.

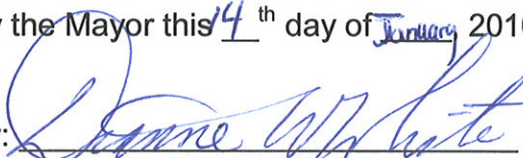
Section 9

If any section, sentence, clause, or phrase of this Ordinance is 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 10

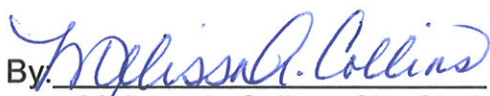
This Ordinance shall take effect five days after its publication by summary.

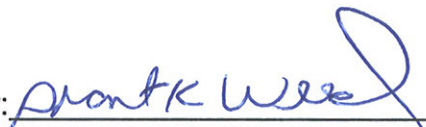
PASSED by the City Council and signed by the Mayor this 14th day of January 2010.

By: 
Dianne W. White, Mayor

Attest:

Approved as to form:

By: 
Melissa A. Collins, City Clerk

By: 
Grant K. Weed, City Attorney

FINDINGS OF FACT AND CONCLUSIONS

Findings of Fact:

- 1) August 13, 2009 the Stanwood City Council approved a work program for Administrative interpretation, unclassified uses and conditional use permits and referred that work program to the Planning Commission for review.
- 2) The work program was processed by the City as file # LZCA 09-06.
- 3) The Planning Commission held a duly noticed public hearing on December 14 and December 28, to consider the draft zoning text amendments for amendments to SMC 17.25. General Standards, SMC 17.80 Administration, SMC Chapter 3.30 Fee Schedule
- 4) The amendments to the Administrative and General Standards sections of code are consistent with the Comprehensive Plan in that they provide for improved processing of applications and flexibility in interpretation of the zoning code. These provisions implement Economic Development Element Goal EDG 5 and Policy EDP-6.1 which call for equitable, coherent, fair and efficient permitting procedures,
- 5) Consistent with RCW 43.21C, the Responsible Official issued a Determination of Non-significance November 25, 2009.
- 6) At its regularly scheduled City Council meeting, January 14, 2010, after review of the application, staff report, and Planning Commission recommendation and after consideration of the public testimony submitted at or as part of the public hearing, the City Council held first and second reading of Ordinance No. 1263.
- 7) Pursuant to RCW 36.70A.106, the City has notified the Washington State Department of Commerce of the City's intent to adopt the proposed change in zoning text amendments.

Conclusions/Decision:

1. Based upon the entire record in this matter, which shall be incorporated by reference, the Stanwood City Council adopts the following conclusions and decisions.
2. SMC Chapter 17.25 General Provisions is amended to add
 - a. Categories of Uses included permitted, conditional, accessory, prohibited and unclassified uses
 - b. Criteria for making a decision about unclassified uses
 - c. Amendments to standards for accessory uses
3. SMC 17.80 Administration is amended to adopt procedures for
 - a. administrative interpretations
 - b. conditional use permit criteria

- 4 . SMC 17.20.040 Definition of Accessory Building is amended to delete regulatory language which is moved to Chapter 17.25.110 Standards for Accessory Uses.
- 5 . SMC 3.30 Fee Schedule is amended to adopt a \$60.fee for administrative interpretation.