

## ORDINANCE 1271

**AMENDING TITLE 14 SMC BUILDINGS AND CONSTRUCTION, TO ADOPT CHAPTER 14.42 ENCROACHMENT PERMIT FOR STRUCTURES AND PROPERTY IMPROVEMENTS IN THE CITY RIGHT OF WAY, AMENDING TITLE 3 SMC, SECTION 3.30.060 FEE SCHEDULE, AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Stanwood City Council approved a work program for revision of regulation for sight distance triangle standards on August 13, 2009 and referred that work program to the Planning Commission for review; and

**WHEREAS**, the Planning Commission held a pre-application meeting to consider these issues on January 21, 2010; and

**WHEREAS**, the Planning Commission determined that a new encroachment permit process was needed to address the issue of structures in the City right of way, and therefore added review of an encroachment permit process to the work program; and

**WHEREAS**, the Community Development Department filed Application LZCA 10-01 on January 26, 2010; and

**WHEREAS**, the City of Stanwood SEPA Responsible Official issued a SEPA threshold determination of non-significance on January 27, 2010; and

**WHEREAS**, on February 22, 2010 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 was provided as required by law; and

**WHEREAS**, the Planning Commission made a recommendation to the City Council on February 22, 2010; and

**WHEREAS**, the City Council met April 8 and May 13, 2010 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 Commerce of the City's intent to adopt the proposed change in regulations;

NOW THEREFORE, it is hereby ordained by the City Council of the City of Stanwood, Washington as follows:

**Section 1.** SMC Title 14 Buildings and Construction, **Chapter 14.42 Encroachment Permit for Structures** is hereby adopted to read as follows:

#### 14.42 ENCROACHMENT PERMIT FOR STRUCTURES

Sections:

- 14.42.010 Applicability.
- 14.42.020 Encroachment permit.
- 14.42.030 Encroachment permit application.
- 14.42.040 Maintenance.
- 14.42.050 Restrictions.

##### **14.42.010 Applicability.**

This Chapter applies to erection, construction or maintenance of signs, structures, other property, or improvements on or over city rights-of-way.

##### **14. 42.020 Encroachment permit.**

(1) It is the responsibility of the person who erects, constructs, or maintains signs, structures, or other property and improvements on the city-right-of-way to obtain an encroachment permit.

(2) The encroachment permit may be granted at the discretion of the Community Development Director and Public Works Director, who shall consider the permit based on the following review criteria:

- (a) The encroachment does not impact public use.
- (b) The proposed structure/improvement does not obstruct traffic or create safety hazards.
- (c) The proposed structure does not conflict with future city improvement plans and/or can be removed when the city needs to use the right-of-way.
- (d) The use is appropriate at the proposed location.

(3) The Community Development Director and Public Works Director may impose limitations and restrictions such as size, location, type of improvement, duration of the permit, or other limitations.

(4) The permit may be revoked and improvements required to be removed at no cost to the city when the right-of-way is to be improved or used for public purposes including but not limited to road widening, utilities, signage, and for maintenance of sight triangle clearance.

(5) Any structure existing as of June 1, 2010 that is located within the city right of way shall be made to conform with the provisions of this chapter and obtain an encroachment permit or be removed within 6 years except :

- (a) when an existing structure is located in a right of way scheduled for improvement in the 2010 CIP, it shall be removed, or granted a limited term encroachment permit based on the schedule of the planned improvement.

(b) when an existing structure is located in a new right of way dedicated to the city as part of a development proposal it shall be removed or made to conform to the provisions of this chapter upon acceptance of the right of way by the city.

(c) when an existing structure is deemed to create a safety hazard it shall be removed.

**14. 42.030 Encroachment permit application**

(1) The application shall include a description of the encroaching structure and a site plan showing private property line, right of way location, grounds to be maintained, and location of the proposed structure with height, dimensions and distance from the paved travel lane and/or sidewalk.

(2) The application shall include a statement signed by the applicant to hold the city harmless from damages to private property or grounds included in the proposal.

(3) The application shall be reviewed and approved as a Type I administrative decision by the Community Development Director and Public Works Director with an appeal right as set forth in SMC 17.80.140.

**14. 42.040 Maintenance.**

(1) Maintenance of all structures, signs, property improvements and the improved grounds is the responsibility of the permittee.

**Section 2** Title 17 Zoning, Chapter 17.80 Administration, **Section 17.80.160 Table of land use procedures, Type I** is hereby amended to read as follows, with the remainder of the table for Types II, III, IV and V remaining unchanged:

TYPE OF APPLICATION	PUBLIC COMMENT/ NOTICE PERIOD	PRE-APPLICATION MEETING	OPEN RECORD HEARING	DECISION	OPEN RECORD APPEAL	CLOSED RECORD APPEAL	NON-CITY OR JUDICIAL APPEAL
<b>Type I:</b>							
Administrative Site development permit, Grading permit, Sign permit	No	No	No	CDD	CC	No	Yes
Home occupation permit	No	No	No	CDD	CC	No	Yes
Accessory dwelling unit	No	No	No	CDD	CC	No	Yes
Parcel combination	No	No	No	CDD	CC	No	Yes
Manufactured housing infill	No	No	No	CDD	CC	No	Yes

Boundary line adjustment	No	No	No	CDD	CC	No	Yes
Administrative Interpretation	No	No	No	CDD	HE	No	Yes
Encroachment Permit	No	No	No	CDD/PWD	HE	No	Yes

### Section 3

Title 3 Revenue and Finance, Chapter 3.30 Fee Schedule, **Section 3.30.060 Other fees** is hereby amended to read as follows:.

#### 3.30.060 Other fees.

Boundary line adjustment	\$950.00
Annexation	\$350.00
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
Encroachment Permit	New Structures \$50.00 plus consulting fees for engineering and legal review Existing Structures permitted by 2016: No Fee
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 4

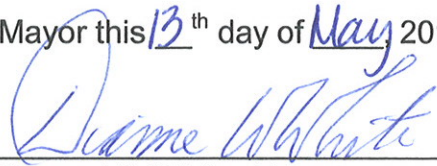
Having reviewed all of the record made before the Planning Commission and the record

before the City Council, the Findings of Fact and Conclusions attached hereto as Exhibit A are hereby adopted and incorporated by this reference.

**Section 5** 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.

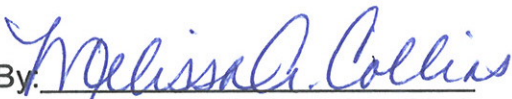
**Section 6** This Ordinance shall take effect five days after its publication by summary.

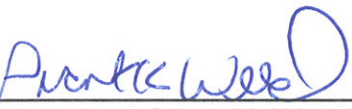
PASSED by the City Council and signed by the Mayor this 13<sup>th</sup> day of May 2010.

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 the sight distance triangle and referred that work program to the Planning Commission for review.
- 2) The Planning Commission expanded the scope of the review to include a new encroachment permit process at their pre-application meeting January 21, 2010.
- 3) The work program was processed by the City as file # LZCA 10-01.
- 4) The Planning Commission held a duly noticed public hearing on February 22, 2010 to consider amendments to SMC 14 Building and Construction, and SMC Chapter 3.30 Fee Schedule.
- 5) Consistent with RCW 43.21C, the Responsible Official issued a Determination of Non-significance January 27, 2010.
- 6) At its regularly scheduled City Council meeting, May 13, 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. 1271
- 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 14, Buildings and Construction , is amended to adopt an encroachment permit process.
3. SMC 17.80.130 Table of land use procedures is amended to add Encroachment Permit as a Type I application.
4. SMC 3.30 Fee Schedule is amended to adopt a \$50 fee for an encroachment permit and exempt structures existing as of 2010 for a six year period.