



# PLANNING BOARD AGENDA

## PLANNING DEPARTMENT

March 15, 2022 - 7:00 PM  
**HYBRID/ZOOM MEETING**  
319 Main Street, Sultan WA 98294

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- I. **Call to Order, Pledge of Allegiance**
- II. **Roll Call**
- III. **Approval/Changes to the Agenda**
- IV. **Public Comments/Visitors**  
Anyone who wishes to speak on any matter not appearing on the agenda may do so at this time. Citizens are requested to keep Public Comments to a 3-minute maximum (3-minutes or less per person) to allow time for everyone to speak.
- V. **Planning Board Member Comments**
- VI. **Staff Comments**
  - a. Project and Permit Updates
- VII. **Approval of Minutes**  
March 1, 2022, Meeting Minutes
- VIII. **Public Hearing**
  - a. Appeal and Hearing Examiner Changes
    - i. Staff Presentation
    - ii. Public Comment
    - iii. Board Discussion
    - iv. Close Public Hearing
- IX. **Discussion Item**
- X. **Summary of Meeting Results and Actions for Next Meeting**
- XI. **Public Comments on Agenda Items Only**
- XII. **Planning Board Member Comments**
- XIII. **Adjournment**

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Andy Galuska is inviting you to a scheduled Zoom meeting.

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### **PLANNING BOARD MISSION STATEMENT**

*The City of Sultan Planning Board's mission is to translate its knowledge of the community into recommendations on land use plans and codes that help the community to achieve its goals and desires for health, prosperity, and quality of life for present and future generations.*

#### **Planning Board Members**

Janet Peterson, Chair  
Mike Weidman, Pro-Tem  
Judie Cyr  
Emily Keyes  
Andrew Rockwell

#### **Community Development Staff**

Andy Galuska, Community Development Director  
Cyd Donk, Secretary of the Board/Assistant Planner

**ADA NOTICE:** City of Sultan Community Center is ADA accessible. Accommodations for person with disabilities will be provided upon request. Please make arrangements prior to the meeting by calling City Hall at 360.793.2231. For additional information please contact the city at [cityhall@ci.sultan.wa.us](mailto:cityhall@ci.sultan.wa.us) or visit our website at [www.ci.sultan.wa.us](http://www.ci.sultan.wa.us)

(360) 793-1311, FAX (360) 793-3344  
Staff Email: [planning.department@ci.sultan.wa.us](mailto:planning.department@ci.sultan.wa.us)



**SULTAN PLANNING BOARD MINUTES  
REMOTE MEETING  
March 1, 2022**

**PLANNING BOARD MEMBERS PRESENT:**

Janet Peterson  
Michael Weidman  
Andrew Rockwell  
Judie Cyr  
Emily Keyes

**STAFF PRESENT:**

Andy Galuska, Planning Director, Absent  
Cyd Donk, Assistant Planner

**CALL TO ORDER:**

Call to Order at 7:05 p.m.

**CHANGES TO THE AGENDA:**

Public Hearing will be re-scheduled to March 15<sup>th</sup> Planning Board Meeting. Public Hearing notice for the March 1<sup>st</sup> meeting was incorrectly posted as March 2, 2022.

**PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA:**

None

**PLANNING BOARD MEMBER COMMENTS:**

None.

**STAFF COMMENTS:**

Staff gave update on projects that are keeping us very busy. Went over current projects, updating progress and new business inquiries.

All information for land use projects, hearings and Decisions are available on-line here:  
<https://www.ci.sultan.wa.us/167/Land-Use-Planning-Projects>

**APPROVAL OF MINUTES:** Weidman made a motion to approve the February 2, 2022, as submitted. Seconded by Rockwell. All Ayes.

**PRESENTATION:**

None.

**DISCUSSION AND STUDY ITEMS:**

Move everything to March 15<sup>th</sup> Planning Board meeting.

**SUMMARY OF MEETING RESULTS AND ACTIONS FOR NEXT MEETING:**

Next meeting March 15, 2022.

Public Hearing for Hearing Examiner and Board of Adjustments code update.

**PUBLIC COMMENTS ON AGENDA ITEMS ONLY:**

None.

**PLANNING BOARD MEMBER COMMENTS:**

Introduction of Emily Keyes, our newest member. Board welcomes Emily to the group, and they have a conversation about everyone's time in Sultan. Janet has been in Sultan for 51-years! Welcome Emily! We look forward to having you on board.

Rockwell asked about an update on the corridor study. Staff stated that they would get an update for the next scheduled meeting.

**STAFF COMMENTS:**

Will re-schedule public hearing tomorrow for March 15<sup>th</sup>.

**ADJOURNMENT:**

Rockwell made a motion to adjourn and close the meeting, Weidman seconded the motion. All Ayes.

**ADJOURNED 7:30 P.M.**



# SULTAN PLANNING BOARD

## Public Hearing

|                |   |
|----------------|---|
| <b>SUBJECT</b> | <b>Appeal and Hearing Examiner Code</b> |
|----------------|---|

| <b>DATE</b> | <b>DEPARTMENT</b> | <b>CONTACT</b> | <b>PRESENTER</b> | <b>ITEM</b>       |
|-------------|-------------------|----------------|------------------|-------------------|
| 03/01/22    | Com Dev           | Andy Galuska   | Andy Galuska     | Public Hearing #1 |

**Date Presented:** PB 01/18/22, 2/01/22, 03/01/22 (PH)

**Attachments:** Draft Code Changes (Strike-Through)

|   |
|---|
| <b>REQUESTED ACTION:</b> Hold a public hearing to consider the proposed code changes. After closing the hearing pass a recommendation to the City Council to adopt the proposed code changes. |
|---|

### DESCRIPTION/BACKGROUND

Today's public hearing is to consider changes to the city's appeal procedures and method for appointment and removal of a hearing examiner. The code project was begun in reaction to an appeal of a recent administrative decision. Processing of the appeal request highlighted portions of the existing code were unclear and misleading and updates were needed.

Proposed changes to the code are attached with this staff report. The new code clarifies that appeals will be heard by a hearing examiner and removes the Board of Adjustments. This change was made because staff felt that a hearing examiner is more knowledgeable about the procedural and substantive issues at hand. It has also proven difficult to keep a board in place for the rare case of appeals.

Additionally, changes are being proposed to how hearing examiners are selected and removed. These are housekeeping to make the hearing examiner selection process more like other consultant hirings. Staff is going to look at possibly having two hearing examiners, including a lower cost second option for more minor appeal cases such as animal impounds.

Following a public hearing staff would ask for the board to forward a recommendation to Council to adopt the proposed changes.

## Chapter 2.26 HEARING EXAMINER

Sections:

- 2.26.010 Purpose.**
- 2.26.020 Creation of hearing examiner position.**
- 2.26.030 Appointment.**
- 2.26.040 Qualifications.**
- 2.26.050 Removal.**
- 2.26.060 Freedom from improper influence.**
- 2.26.070 Conflict of interest.**
- 2.26.080 Rules.**
- 2.26.090 Duties of the examiner – Applications.**
- 2.26.100 Reports of city departments.**
- 2.26.110 Public hearing.**
- 2.26.120 Examiner’s decision.**
- 2.26.125 Reconsideration of examiner’s decision.**
- 2.26.130 Notice of examiner’s decision.**
- 2.26.140 Appeal from examiner’s decision.**
- 2.26.150 *Repealed.***
- 2.26.160 *Repealed.***
- 2.26.180 Local improvement district assessment roll hearings.**
- 2.26.190 Variance criteria.**

### **2.26.010 Purpose.**

The purpose of this chapter is to establish a system of land use regulatory hearings which will satisfy the following basic needs:

- A. A more prompt opportunity for a hearing and decision on alleged violations of land use regulations, and such other regulations as may be assigned to the hearing examiner;
- B. To provide an efficient and effective system for deciding quasi-judicial actions including conditional use applications, variance applications, preliminary subdivision applications, appeals from administrative decisions, and various other procedures as specified in this code (RCW [58.17.330](#)); and
- C. To help ensure procedural due process and appearance of fairness by holding such hearings before a neutral party, competent in the fields of land use and procedural requirements. (Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 550, 1990)

### **2.26.020 Creation of hearing examiner position.**

Pursuant to Chapter [35A.63](#) RCW, the office of hearing examiner, hereinafter referred to as examiner, is created. Except for appeals of administrative decisions, all land use development regulation and

construction code matters of a quasi-judicial nature not requiring a modification of any ordinance or legislation shall be referred to the examiner who shall interpret, review and implement land use regulations in accordance with the procedures set forth herein. (Ord. 1236-16 § 1; Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 701, 1999; Ord. 550, 1990)

#### **2.26.030 Appointment.**

Hearing examiner(s) shall be appointed by the mayor and confirmed by a majority vote of the city council. Compensation for the services to be rendered by the hearing examiner(s) shall be negotiated through contract. A hearing examiner shall serve until the end of the term as identified in the contract, or until the appointment is revoked by majority of the city council. The mayor may also appoint, and approve contracts for, deputy hearing examiner(s) or hearing examiner(s) pro tem in the event of the hearing examiner(s) absence or inability to act. (Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 701, 1999; Ord. 550, 1990)

#### **2.26.040 Qualifications.**

Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge the other functions conferred upon them. Examiners shall hold no other elective or appointive office or position in the city of Sultan. (Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 550, 1990)

#### **2.26.050 Removal.**

The mayor ~~may remove an examiner from office.~~ ~~with concurrent majority vote of the city council may remove an examiner from office for cause.~~ (Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 550, 1990)

#### **2.26.060 Freedom from improper influence.**

No person, including city officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his duties in any other way; provided, that this section shall not prohibit the city's attorney from rendering legal service to the examiner upon request. (Ord. 1050-09 § 1; Ord. 979-08 (9/11/08); Ord. 550, 1990)

#### **2.26.070 Conflict of interest.**

No examiner shall conduct or participate in any hearing, decision, or recommendation in which the examiner has a direct or indirect substantial financial or familial interest or concerning which the examiner has had substantial prehearing contacts with proponents or opponents. Nor, in considering an examiner's recommendation, shall any member of the council who has such an interest or has had such contacts participate in consideration thereof. (Ord. 1050-09 § 1; Ord. 979-08 § 1 (9/11/08); Ord. 550, 1990)

#### **2.26.080 Rules.**

The examiner shall have the power to prescribe rules for the scheduling and conduct of hearings and other procedural matters related to the duties of his office. Such rules may provide for cross-examination of witnesses. (Ord. 1050-09 § 1; Ord. 979-08 § 1 (9/11/08); Ord. 550, 1990)

**2.26.090 Duties of the examiner – Applications.**

A. The examiner shall receive and examine available information, conduct fair and impartial public hearings, prepare a record thereof, and enter findings, conclusions, recommendations, or decisions as provided throughout the Sultan Municipal Code.

B. Except for appeals of administrative decisions, the examiner is empowered to act in lieu of such other officials, boards or commissions as may be assigned. Whenever existing ordinances, codes or policies authorize or direct other officials, boards or commissions to undertake certain activities which the examiner has been assigned, such ordinances, codes or policies shall be construed to refer to the examiner.

C. The hearing examiner is empowered consistent with SMC [2.26.125\(D\)](#) and rules adopted by the hearing examiner to reconsider decisions or recommendations of the hearing examiner. (Ord. 1236-16 § 2; Ord. 1050-09 § 1; Ord. 979-08 § 2 (9/11/08); Ord. 764-01; Ord. 550, 1990)

**2.26.100 Reports of city departments.**

On any land use issue coming before the examiner, the community development director shall coordinate and assemble the reviews of other city departments, governmental agencies, and other interested parties and shall prepare a report summarizing the factors involved. At least seven calendar days prior to the scheduled hearing, the report shall be filed with the examiner and copies thereof shall be mailed to the applicant and made available for public inspection. Copies thereof shall be provided to interested parties upon payment of reproduction costs. In the event that information to be provided by the applicant or other parties outside of city control has not been provided in sufficient time for filing seven days in advance of the hearing, the examiner may reschedule the hearing and notify interested parties. (Ord. 1347-21 § 2 ; Ord. 1236-16 § 3; Ord. 1050-09 § 1; Ord. 979-08 § 2 (9/11/08); Ord. 550, 1990)

**2.26.110 Public hearing.**

A. Before rendering a decision or recommendation on any application, the examiner shall hold at least one public hearing thereon.

B. Notice of the time and place of the public hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given no less than 10 calendar days before the public hearing.

C. The examiner shall have the power to prescribe rules and regulations for the conduct of hearings under this chapter and also to administer oaths, and preserve order. (Ord. 1050-09 § 1; Ord. 979-08 § 2 (9/11/08); Ord. 821-03 § 1; Ord. 550, 1990)

**2.26.120 Examiner’s decision.**



The hearing examiner shall render a written decision within 10 working days of the conclusion of a hearing, unless the applicant or appellant agrees to a longer period in writing. The decision shall include at least the following:

- A. Findings of fact and conclusions of law based upon and supported by the record;
- B. A decision on the application, or the appeal, to grant, deny, or grant with such conditions, modifications, and restrictions as the examiner finds reasonable to make the application or appeal compatible with its environment, the Sultan Municipal Code, the city of Sultan comprehensive plan, other official policies and objectives, and land use regulatory enactments. Examples of the kinds of conditions, modifications, and restrictions that may be imposed include but are not limited to additional setbacks, screenings in the form of fencing or landscaping, easements, dedications, or additional right-of-way and performance bonds;
- C. A statement of the date the decision will become final. (Ord. 1050-09 § 1; Ord. 979-08 § 3 (9/11/08); Ord. 764-01; Ord. 550, 1990)

**2.26.125 Reconsideration of examiner's decision.**

- A. All decisions or recommendations of the hearing examiner are subject to reconsideration, unless reconsideration is waived. Reconsideration is waived unless within seven calendar days of the date of mailing of the decision or recommendation, the applicant, the city, or a party of record submits a written request for reconsideration in accordance with rules issued by the hearing examiner.
- B. Pending reconsideration by the hearing examiner, a decision shall not be deemed final for the purpose of commencement of the period of time in which to commence an appeal.
- C. If reconsideration is waived because no timely request for reconsideration is made, the initial decision of the hearing examiner, subject to any right of appeal, shall be deemed final as of the eighth calendar day after the date of mailing of the decision.
- D. If a timely request for reconsideration is made, the hearing examiner shall grant or deny reconsideration within 10 working days of the date of receipt of the request for reconsideration. (Ord. 979-08 § 3 (9/11/08); Ord. 1050-09 § 1)

**2.26.130 Notice of examiner's decision.**

Not later than three working days following the rendering of a written decision, copies thereof shall be mailed to the applicant and to other parties of record in the case. "Parties of record" shall include the applicant and all other persons who specifically request notice by signing a register provided for such purpose at the public hearing, or otherwise provide written request for such notice. (Ord. 1050-09 § 1; Ord. 979-08 § 4 (9/11/08); Ord. 550, 1990)

**2.26.140 Appeal from examiner's decision.**

Examiner's decisions may be appealed to superior court by a party with standing in accordance with the procedures of Chapter [36.70C](#) RCW, or other court of competent jurisdiction as provided by law. (Ord. 1050-09 § 1; Ord. 979-08 § 6 (9/11/08); Ord. 979-08 § 1 (2/14/08); Ord. 550, 1990)

**2.26.150 Council consideration.**

*Repealed by Ord. 1050-09. (Ord. 979-08 § 7 (9/11/08); Ord. 550, 1990)*

**2.26.160 Effect of council action.**

*Repealed by Ord. 979-08, 9/11/08. (Ord. 550, 1990)*

**2.26.180 Local improvement district assessment roll hearings.**

A. As authorized by RCW [35.44.070](#), the city council hereby provides for delegating the duty of conducting public hearings for the purpose of considering and making recommendations on final assessment rolls and the individual assessments upon property within local improvement districts to a hearing examiner appointed under this section, and the hearing examiner is directed to conduct such hearings and make those recommendations to the city council.

B. All objections to the confirmation of the assessment roll shall be in writing and identify the property, be signed by the owners and clearly state the grounds of the objection. Objections not made within the time and in the manner prescribed and as required by law shall be conclusively presumed to have been waived.

C. The hearing examiner shall conduct the hearing to be commenced at the time and place designated by the city council, cause an adequate record to be made of the proceedings, and make written findings, conclusions and recommendations to the city council following the completion of such hearings, which may be continued and recontinued as provided by law whenever deemed proper by the hearing examiner, and the city council shall either adopt or reject the recommendations of the hearing examiner.

D. The recommendations of the hearing examiner shall be that the city council correct, revise, lower, change or modify the roll or any part thereof, or set aside the roll in order for the assessment to be made de novo, or that the city council adopt or correct the roll or take other action on the roll as appropriate, including confirmation of the roll without change. The recommendations of the hearing examiner shall be filed with the city clerk and be open to public inspection. All persons whose names appear upon the recommended assessment roll who timely filed written objections to their assessments shall receive mailed written notification of their recommended assessments.

E. Any persons who shall have timely filed objections to their assessments may appeal the recommendations of the hearing examiner regarding their properties to the city council by filing written notice of such appeal with the city clerk within 10 calendar days after the date of mailing of the hearing examiner's recommendations.

F. The appeal shall be based exclusively upon the record made before the hearing examiner and shall be considered by the city council at a public meeting. No new evidence may be presented. Arguments on appeal shall be either oral or written as the city council may order.

G. The city council shall adopt or reject the recommendations of the hearing examiner at a public meeting, after considering any appeals, and shall act by ordinance in confirming the final assessment roll.

H. Any appeal from a decision of the city council regarding any assessment may be made to the superior court within the time and in the manner provided by law.

I. The procedures set forth in this section are independent of and alternative to any other hearing or review processes heretofore or hereafter established by the city, and shall govern the conduct and review of final assessment hearings conducted before hearing examiners and related proceedings when authorized by the city council. (Ord. 1050-09 § 1; Ord. 979-08 § 8 (9/11/08); Ord. 775-01 § 1)

#### **2.26.190 Variance criteria.**

No application for a variance shall be granted unless the examiner finds:

A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which their application was filed is located; and

B. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and

C. That such variance is necessary:

1. Because of special circumstances set forth in the findings relating to size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

2. Because for reasons set forth in the findings, the variance as approved would contribute significantly to the improvement of environmental conditions, either existing or potentially arising from the proposed improvement. (Ord. 1050-09 § 1; Ord. 979-08 § 9 (9/11/08))

**8.06.080 Retail permit – Appeal.**

The person applying for a retail permit to sell fireworks may appeal in writing the denial of the permit or the conditions of the permit to the hearing examiner as a Type I permit application.

**9.14.160 Appeal.**

The applicant has the right to appeal permit conditions or denial of application to the hearing examiner as a Type I permit action.

**15.25.040 Appeal.**

Any appeal of the building official's certification, or lack of certification, shall be to the hearing examiner and shall be brought within the time and manner of SMC [16.06.050](#), except that no notice shall be given to adjoining property owners and no notice shall be published in the newspaper. The decision of the hearing examiner shall be final and conclusive and not subject to any further appeal. All costs of an appeal shall be the responsibility of tenant as specified in any resolution of the city council concerning fees.

## Chapter 16.06 PERMIT PROCESSING

Sections:

- 16.06.010 Purpose.**
- 16.06.020 Type of permit applications.**
- 16.06.030 Types I – IV project permit applications.**
- 16.06.040 Public notice.**
- 16.06.050 Consistency with development regulations and SEPA.**
- 16.06.060 Appeals.**
- 16.06.070 Open record public hearings.**

### **16.06.010 Purpose.**

The purpose of this chapter is to outline the permit processing application type, requirements, decision and noticing procedures for land use permit applications as outlined in this title. Procedures for legislative land use actions, or those that require actions taken by the city council, are also outlined in this chapter. (Ord. 1328-20 § 5 (Exh. A))

### **16.06.020 Type of permit applications.**

A. Procedures for Processing Permit Applications. For the purpose of permit processing, all land division permit applications shall be classified as one of the following: Types I, II, III, and IV. Legislative decisions are Type IV actions and are addressed in subsection (E) of this section. Exemptions from permit processing procedures are listed in subsection (F) of this section.

B. Determination of Procedure Type.

1. The director or designee shall determine the proper procedure for all project permit applications. If there is a question as to the appropriate type of procedure, the director shall resolve the question in favor of the higher procedure and type number. If a permit type is not included in section (C)(1) of this section, the director shall determine the proper procedure for that permit type by reviewing the permit in light of subsection (C)(1) of this section, and determining which procedure the permit most closely resembles.

2. Optional Consolidated Permit Processing.

a. An application that involves two or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or processed individually under each of the procedures identified by code. If the application is processed under the individual procedure option, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure. If multiple applications are

submitted concurrently, the city shall process them as a consolidated application unless otherwise notified by the applicant.

b. Except as otherwise exempted by Chapter [17.04](#) SMC, environmental (SEPA) review shall be conducted concurrently with the project review.

c. Applications processed in accordance with subsection (B)(1) of this section which have the same numbered procedure, but are assigned to different hearing bodies, shall be consolidated and heard by the highest decision maker. The city council is the highest decision maker, followed by the hearing examiner, and then the director. Joint public hearings with other agencies shall be processed according to subsection (D) of this section.

d. Project permit applications are allowed a maximum of one open record hearing and one closed record appeal hearing.

C. Permit Applications. The following tables set out the project permit decision making and appeal processes, the division of action types into permit types, the required procedure for each permit type, and the notice requirements for project permits.

**Table 16.06-A: Permit Applications – Action Type**

| <b>Type I</b>   | <b>Type II</b>   | <b>Type III</b>                           | <b>Type IV</b>                 |
|---|--|---|--------------------------------|
| Boundary line adjustments   | Building permits – SEPA required                                   | Conditional use permits (CUP)             | Comprehensive plan amendment   |
| Minor building remodels, no permit required                           | Other construction permits – SEPA required                         | Variances                                 | Zoning code text/map amendment |
| Building permits – no SEPA required                                   | Preliminary short subdivisions                                     | Site plan permit (commercial/multifamily) | Rezoning                       |
| Other construction permits – no SEPA required                         | Minor adjustments to preliminary plats                             | Shoreline CUP <sup>1</sup>                | Development agreement          |
| Administrative interpretations  | All other land division proposals determined by the director to be | Reasonable use exceptions                 | Pre-annexation zoning          |
| Shoreline exemptions (Chapter <a href="#">17.20</a> SMC) <sup>1</sup> |  | Shoreline variances <sup>1</sup>          | Annexation                     |



**Table 16.06-A: Permit Applications – Action Type**

| <b>Type I</b>   | <b>Type II</b>                              | <b>Type III</b>  | <b>Type IV</b> |
|---|---|--|----------------|
| Grading permit – no SEPA required   | most similar to Type II applications        | Preliminary subdivision applications   |                |
| Vegetation removal permit <sup>2</sup>  | Grading permit <sup>3</sup> – SEPA required | Final subdivision plats  |                |
| Eligible facilities requests  | Binding site plans                          | All other land division proposals determined by the director to be most similar to Type III applications |                |
| All other land use proposals determined by the director to be most closely similar to Type I applications | Site plan permit                            |  |                |

1. Shoreline applications and permit processes are defined in the city’s shoreline master program.
2. In addition to the procedural requirements established in this title, vegetation removal permit applications shall be governed by the performance standards in Chapter [17.14 SMC](#).
3. In addition to the procedural requirements established in this title, grading permit applications shall be governed by the performance standards established in Chapter [17.13 SMC](#).

**Table 16.06-B: Decision Making and Appeal Process**

|                                       | <b>Type I</b>    | <b>Type II</b>   | <b>Type III</b>                | <b>Type IV</b>      |
|---------------------------------------|------------------|------------------|--------------------------------|---------------------|
| Final decision made by                | Director         | Director         | Hearing examiner/director      | City council        |
| Recommendation made by                | N/A              | N/A              | Community development director | Planning commission |
| Open record public hearing – Decision | N/A              | N/A              | Hearing examiner               | City council        |
| Open record public hearing – Appeal   | Yes              | Yes              | No                             | No                  |
| Closed record appeal                  | Hearing examiner | Hearing examiner | County superior court          | No                  |

**Table 16.06-B: Decision Making and Appeal Process**

|                 | <b>Type I</b>    | <b>Type II</b>   | <b>Type III</b>       | <b>Type IV</b>        |
|-----------------|------------------|------------------|-----------------------|-----------------------|
| Appeal to:      | Hearing examiner | Hearing examiner | County superior court | County superior court |
| Judicial appeal | N/A              | N/A              | Yes                   | Yes                   |

**Table 16.06-C: Required Procedures for Permit Applications**

|                                 | <b>Type I</b>    | <b>Type II</b> | <b>Type III</b> | <b>Type IV</b> |
|---------------------------------|------------------|----------------|-----------------|----------------|
| Preapplication conference       | Yes <sup>1</sup> | Yes            | Yes             | No             |
| Notice of completeness          | Yes              | Yes            | Yes             | Yes            |
| Notice of application           | No               | Yes            | Yes             | Yes            |
| SEPA determination <sup>2</sup> | No               | Yes            | Yes             | Yes            |
| Notice of hearing               | No               | Yes            | Yes             | Yes            |
| Notice of decision              | No               | Yes            | Yes             | Yes            |
| Review period <sup>3</sup>      | 90 days          | 90 days        | 120             | No             |

1. Pursuant to SMC [19.16.030](#), when a proposed boundary line adjustment involves only two regular rectangular parcels and the proposed boundary line adjustment is to move the common line to create two revised regular rectangular parcels, the applicant may submit the application without a preapplication conference.
2. SEPA not required for applications that are categorically exempt in accordance with Chapter [17.04](#) SMC.
3. One-hundred-twenty-day-review does not apply to preliminary or final subdivisions. Preliminary short or long subdivisions have a 90-day review clock and final short or long subdivisions a 30-day review clock in accordance with RCW [58.17.140](#).

**Table 16.06-D: Notice Requirements for Permit Applications**

|  | <b>Send to Property Owners Within 300'</b> | <b>Post Property</b> | <b>Publish Notice</b> | <b>Send to Agencies</b> | <b>Send to Applicant</b> |
|--|--|----------------------|-----------------------|-------------------------|--------------------------|
| Notice of completeness                                   | No   | No                   | No                    | No                      | Yes                      |
| Notice of application                                    | Yes  | Yes <sup>1</sup>     | Yes <sup>2</sup>      | Yes <sup>3</sup>        | Yes                      |
| SEPA determination                                       | No   | No <sup>4</sup>      | Yes                   | Yes                     | Yes                      |
| Notice of open record predecision hearing, if applicable | Yes  | Yes                  | Yes                   | No                      | Yes                      |
| Notice of decision <sup>5, 6</sup>                       | No   | Yes                  | Yes                   | No                      | Yes                      |
| Notice of open record appeal hearing, if applicable      | Yes  | Yes                  | Yes                   | No                      | Yes                      |

1. Notices are posted on site for Type II – IV applications, if applicable.
2. Notices are published in the city’s paper of record for Type II – IV applications, if applicable.
3. Notices are sent to agencies for projects not categorically exempt under SEPA to directors and agencies with jurisdiction over the project permit application.
4. SEPA appeal hearing notices are posted.
5. Notices are sent to parties of record.
6. Additional (duplicate) notice may be sent electronically (email).

**D. Joint Public Hearings.**

1. The director may combine a public hearing on a permit application with a hearing that may be held by another local, state, regional, federal, or other agency on the proposed action if the requirements of subsection (D)(3) of this section are met.
2. The applicant may request that the public hearing on a permit application be combined with a hearing held by another government agency if the joint hearing can be held within the time periods set forth in this title.

3. A joint public hearing may be held with another local, state, regional, federal or other agency and the city, as long as:

- a. The other agency is not expressly prohibited by statute from doing so;
- b. Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule;
- c. The agency has received the necessary information about the proposed project from the applicant in enough time to hold its hearing at the same time as the city's hearing; and
- d. The hearing is held within the incorporated city limits.

E. Type IV – Legislative Decisions.

1. All Types IV actions set forth in subsection (C)(1) of this section are legislative and are not subject to the procedures in this chapter unless otherwise specified.

2. The planning board shall make a written recommendation to the city council regarding Type IV actions at the close of their final public hearing or at their next scheduled meeting. The written recommendation to the city council shall be one of the following:

- a. Recommendation for additional time and/or resources on the application;
- b. Recommendation of approval of the legislative action;
- c. Recommendation of approval of the legislative action with modifications;
- d. Recommendation of denial of the legislative action.

3. Type IV applications require a minimum of one public hearing before the city council held in accordance with established rules. The city council shall consider the recommendation of the planning commission and the public testimony in making its legislative decision.

4. Notices for public hearing shall be distributed following the threshold determination for the application and comments on the application, and shall be provided at least 20 calendar days prior to the hearing. The conduct of the hearing shall be as set forth in Chapter [16.86](#) SMC.

F. Exemptions from Project Permit Application Processing. The following permits or approvals are excluded from the procedures set forth in this title:

1. Street vacations shall be processed in accordance with Chapter [35.79](#) RCW and any applicable city regulations;
2. Temporary use permits shall be processed in accordance with Chapter [15.14](#);

3. Street use (right-of-way) permits shall be processed in accordance with SMC [13.08.030\(C\)](#) and [13.12.080\(C\)](#);
4. Special event permits shall be processed in accordance with Chapter [9.14](#) SMC; and
5. Other permits as determined appropriate by the director. (Ord. 1347-21 § 10; Ord. 1328-20 § 5 (Exh. A))

**16.06.030 Types I – IV project permit applications.**

A. Types I – III Permits. Types I – III permit applications shall be processed in accordance with the criteria and regulations set out in the appropriate title of this code and in accordance with this chapter as applicable.

1. Boundary line adjustments shall meet the criteria set out in Chapter [19.16](#) SMC.
2. Minor exterior remodels, no building permit required.
3. Building permits and related improvements shall be in accordance with this title as determined by the director, and with the IBC as determined by the building official.
4. Other construction permits shall be in accordance with this title as determined by the director and with the city of Sultan EDDS and other standards as approved by the public works director, notwithstanding deviations from the EDDS approved under Chapter [11.12](#) SMC.
5. Wireless facilities on existing structures, camouflaged, shall meet the criteria set out in Chapter [16.66](#) SMC.
6. Critical areas permits shall meet the criteria set out in Chapter [17.10](#) SMC.
7. Clearing and grading permits shall meet the criteria established in Chapters [17.13](#) and [17.14](#) SMC.
8. Shoreline exemptions shall meet the criteria set out in the city of Sultan's shoreline master program.

B. Preapplication Meeting.

1. Applications for Types III – IV permits will not be accepted until the applicant has attended a preapplication meeting. Preapplication meetings may be required for Type IV permits at the director's discretion. The director may waive preapplication meetings on a case-by-case basis if special circumstances, as determined by the director, exist.
2. The director shall establish procedures, reasonable schedules, and staff participation for preapplication meetings.

3. The applicant shall be responsible for all staff costs related to the preapplication meeting.

C. Project Permit Applications. This section applies to all project permit application types, except that applications for building permits shall be on forms as determined by the building official and applications for construction permits shall be on forms as determined by the public works director.

1. An application shall consist of all materials required by the application submittal checklist, the applicable development regulations and shall, at a minimum, include the following:

a. A completed project permit application form signed by the property owner(s) and/or applicant;

b. A statement that the applicant attests by written oath to the accuracy and completeness of all information submitted for an application;

c. A statement by the applicant that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the written consent of all owners of the affected property and such written consent is supplied with the application;

d. A property and/or legal description of the site;

e. The application deposit, with a statement signed by the applicant accepting responsibility for all fees and charges over the deposit amount;

f. Evidence of sewer availability and payment of sewer fees, if applicable;

g. Any additional information as required by the specific submittal checklist for each specific application type;

h. A project permit application is complete when it meets the submittal requirements specified by the director.

2. The director shall have the authority to prepare and revise submittal requirements.

D. Submission and Acceptance of Application.

1. Where applicable, within 28 days after receiving a project permit application, the director shall provide a written determination to the applicant which states either that the application is complete, or that the application is incomplete and states the necessary items to make the application complete.

2. To the extent known by the city, other agencies with jurisdiction over the project permit application shall be identified in the city's determination required by subsection (D)(1) of this section.

3. A project permit application is complete for purposes of this section when it meets the submittal requirements in subsection (C) of this section. A determination of completeness shall be made when the application is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The city's determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the determination or at a later time, if new information is required or where there are significant changes in the proposed action.

#### 4. Incomplete Application Procedure.

a. If the applicant receives a determination from the city that an application is not complete, or if additional information has been required by the city, the applicant shall have 90 days to submit the requested information to the city. Within 14 days after an applicant has submitted the requested information, the city shall make the determination as described in subsection (D)(1) of this section.

b. If the applicant does not submit the requested information within the 90-day period, the application shall lapse.

c. In those situations where the application has lapsed because the applicant has failed to submit the required information within the necessary time period, the applicant may request a refund of the unexpended application fee.

5. The applicant shall designate a single person or entity to receive all notices required by this chapter and to receive all billing statements.

E. Notice of Application. A notice of application shall be issued in accordance with the provisions of Table 16.06-C and shall include the information set out in SMC [16.06.040](#), Public notice.

#### F. Referral and Review of Project Permit Applications.

1. The director shall route project permit applications to all affected city departments for review and comment. Timing of such routing shall be determined in consultation with the director. Project permit applications shall be reviewed in accordance with applicable city policies and regulations. The director shall set out time periods for review by affected departments and distribute information.

2. The director shall route project permit applications to consultants as the director determines necessary. All costs of consultant review shall be billed to the project applicant.

G. Time Limits/Review Clock. Following are the time limits that are set out for project review:

1. The city shall issue a notice of final decision on a project permit application for a preliminary long or short plat within 90 days after the applicant is notified that the application is complete.
2. The city shall issue a notice of final decision on a project permit application for a final plat within 30 days after the applicant is notified that the application is complete.
3. The city shall issue a notice of final decision on all other project permit applications within 120 days after the applicant is notified that the application is complete or within 14 days of approval.
4. The city shall exclude the following periods from the time limits of subsections (G)(1) through (3) of this section:
  - a. Any period during which the applicant has been requested by the city to correct plans, perform required studies, or provide additional information. The period shall be calculated from the date the city notifies the applicant by mail, at a meeting, or by email that additional information is required until a date no more than 14 days after the applicant has submitted the requested information. The city shall determine if the information submitted is sufficient. If the information is not sufficient, this process will begin again;
  - b. Any period of time in excess of that allowed by the city for applicant review of city comments and documents;
  - c. Any period during which an environmental impact statement (EIS) is being prepared following a determination of significance;
  - d. Any period for administrative appeals of project permits, if applicable;
  - e. Any period where the city and applicant agree in writing to a waiver of the clock, if applicable.

H. Notice of Decision.

1. The city shall provide a notice of decision that also includes a statement of any SEPA threshold determination made and the procedures for administrative appeal. The notice shall be provided to the applicant and any person who, prior to the rendering of the decision, requested notice of decision or submitted substantive comments on the application. The staff report can be the notice of decision.
2. The city shall make every effort to process applications in a timely manner. When time limitations are not met, the city shall provide a written explanation to the applicant. The explanation shall state the reasons why the decision has not been issued and the estimated date of the decision. Alternatively, an applicant and the city can mutually agree to extend the time period for a decision.



I. Substantial Revisions or Modifications to Proposal.

1. A revision or modification to the contents of an application before or after issuance of the permit, either voluntarily or to conform with applicable standards and requirements, shall be deemed a new application for the purpose of vesting when the revision or modification would result in a significant increase in a project's impacts as determined by the director. In reaching a decision on whether a revision is significant, the director's consideration shall include but not be limited to the magnitude of the revision and the effect on the environment, the environmental sensitivity of the site, any changes in location of significant elements of the project and their relationships to public facilities, the impact of the revision on the review clock, and impacts to surrounding lands and land uses.

2. Written notice of such determination of substantial revision or modification shall be provided to the applicant and to all parties of record.

3. Any revision or modification deemed by the director to be substantial shall conform to the time periods set forth in subsection (G) of this section. The review cycle for the revised project application shall begin with the date the revised project application is determined to be complete. The revised project application shall be subject to all laws, regulations, and standards in effect on the date of receipt of a complete, revised project application. (Ord. 1328-20 § 5 (Exh. A))

**16.06.040 Public notice.**

A. Publication and Certification of Notice.

1. The director shall publish notices for which publication is required in the city's official newspaper.

2. Publication is deemed complete on the date of publication. Proof of publication provided by the newspaper shall be presumptive evidence of the date of publication.

3. The director shall post, or cause to be posted, notices in the manner required by this code. Proof of posting in the following form executed by director or director's representative shall be presumptive evidence of the date of posting:

CERTIFICATE

I certify under penalty of perjury under the laws of the state of Washington that the content of the attached form of notice was posted in the following described manner on the following stated date(s):

\_\_\_\_\_.

\_\_\_\_\_

(Date and Place of Signing)

\_\_\_\_\_

(Signature)

B. Notice of Application – Contents.

1. Where formal notice of application is required for individual notice to applicants, agencies, surrounding property owners, or other persons, said notice shall include the following:

- a. The identity of the applicant;
- b. The date of the notice of application;
- c. Notice that the city uses the optional threshold determination process authorized by WAC [197-11-355](#);
- d. Notice that the application comment period for nonexempt proposals may be the only opportunity to comment on the environmental impacts of the proposal;
- e. Notice that the proposal may include mitigation measures under applicable codes and the project review process may incorporate or require mitigation measures regardless of whether an environmental impact statement is prepared;
- f. Notice that a copy of the subsequent threshold determination on the proposal may be obtained upon request;
- g. A statement identifying the public comment period, the right to comment on the application, receive notice of and participate in hearings, request a copy of decision on the proposal once made and any appeal rights;
- h. To the extent applicable, the date, time, place and type of hearing upon the application if such hearing has been scheduled at the time the notice of application/proposal is given; and
- i. Other information that the director determines to be appropriate.

C. Notice of Application – Distribution. Notice shall be distributed in the following manner, as appropriate to the level of review applicable to the project:

1. Applicant Notice. The director shall deliver or mail notice of application to the applicant or the person or entity designated by the applicant to receive notice. The notice of application may be provided to the applicant or applicant's designee contemporaneously with the determination of completeness.

2. Agency Notice. The director shall mail notice of applications that are not categorically exempt under SEPA to directors and agencies with jurisdiction over the project permit application.

3. Combined Notice. Notice of application may be combined with notice of hearing if the hearing date has been set at the time notice of application is given. Each combined notice shall contain the notice of application information required herein and the notice of hearing information required by Chapter [2.26](#) SMC.

4. The director will document the date and manner by which any notice is given.

5. The director may remove, or cause to be removed, posted notice upon expiration of the comment period.

6. Publication costs and costs incurred to post and remove notice at the proposal site shall be borne by the applicant in addition to other costs and fees which apply, as provided by the then-current city of Sultan annual fee schedule.

D. Notice of Application – Type I Applications Categorically Exempt from SEPA Review.

1. The director shall deliver or mail notice of interpretation requests and applications for Type I proposals that are categorically exempt under SEPA to parties that have filed a special notification request in accordance with SMC [16.06.050](#).

2. Such notice shall explain that there is no comment period and that the proposal is categorically exempt under SEPA.

E. Notice of Application – Type II Applications and Type I Applications Nonexempt from SEPA Review.

1. The director shall deliver or mail notice for application of Type II proposals and Type I applications that are not categorically exempt under SEPA to parties that have filed a special notification request in accordance with SMC [16.06.050](#).

2. The director shall additionally post notice on the city internet website containing the following information:

a. The identity of the applicant;

b. The date of the application and the date of the determination of completeness;

c. A brief description of the proposed action;

d. If a preliminary determination has been made, a statement that the proposal is subject to threshold determination requirements and the preliminary threshold determination that it expects to issue;

e. A statement identifying the public comment period and where comments may be made and a statement that the application comment period may be the only opportunity to comment on the environmental impacts of the proposal;

f. A statement explaining how interested parties may request special notice.

F. Notice of Application – Level III and Level IV Applications.

1. The director shall deliver or mail notice for application/proposal of Level III and Level IV applications to:

a. The record owner(s) of property within 300 feet of the proposal site measured from each property line of the proposal site, as shown by the records of the Snohomish County assessor's office.

b. Parties that have filed a special notification request in accordance with SMC [16.06.050](#).

2. The director shall post, or cause to be posted, conspicuous notice at the proposal site and post notice on the city internet website which states:

a. The identity of the applicant;

b. The date of the application and the date of the determination of completeness;

c. A brief description of the proposed action;

d. If a preliminary determination has been made, a statement that the proposal is subject to threshold determination requirements and the preliminary threshold determination that it expects to issue;

e. A statement identifying the public comment period and where comments may be made and a statement that the application comment period may be the only opportunity to comment on the environmental impacts of the proposal;

f. A statement explaining how interested parties may request special notice.

G. Notice of Application – Level III and Level IV Public Hearings.

1. Notice shall be published in the city's official newspaper as provided in subsection (A) of this section.

2. The director shall deliver or mail notice for application/proposal of Level III and Level IV applications to:

a. Parties that have filed a special notification request in accordance with SMC [16.06.050](#).

b. The record owner(s) of property which is within 300 feet of the exterior boundaries of the subject parcel.

3. The director shall post, or cause to be posted, conspicuous notice at the proposal site and post notice on the city internet website which states:

a. The identity of the applicant;

b. The date of the application and the date of the determination of completeness;

c. A brief description of the proposed action;

d. If a preliminary determination has been made, a statement that the proposal is subject to threshold determination requirements and the preliminary threshold determination that it expects to issue;

e. A statement identifying the public comment period and where comments may be made and a statement that the application comment period may be the only opportunity to comment on the environmental impacts of the proposal;

f. A statement explaining how interested parties may request special notice.

#### H. Comment Period.

1. There is no public comment period on Level I proposals that are categorically exempt under SEPA.

2. There shall be a 14-day public comment period on Level II proposals and Level I proposals that are not categorically exempt under SEPA.

3. There shall be a 14-day public comment period on all Level III and IV proposals even if they are categorically exempt under SEPA.

4. The length of the comment period shall be identified in the notice of application.

5. The applicant is deemed to be a participant in the comment period and may submit comments during the comment period in addition to those submitted by agencies and the public.

6. Comments must be submitted in writing to the director prior to expiration of the comment period.

7. The city may assume that parties which do not respond with written comments within the time period for commenting have no information relating to the proposal or its potential impact(s).

#### I. Integration of Notice Procedures with Environmental Review Procedures.

1. If the city has made a determination of significance under Chapter [43.21C](#) RCW concurrently with the notice of application, the notice of application shall be combined with the determination of significance and scoping notice. Nothing in this chapter prevents a determination of significance and scoping notice from being issued prior to the notice of application.

2. Except for a determination of significance, the city may not issue its threshold determination, or issue a decision or a recommendation on a project permit, until the expiration of the public comment period on the notice of application.

J. Request for Special Notice.

1. "Special notice" means that the city will provide the information required by subsection (E), (F), or (G) of this section, whichever is appropriate to the specified application process, to a person not specified by the applicable code provisions to receive such notice. "Special notice" does not mean that the person may request or expect to receive information beyond that normally called for by the notice provisions applicable to the application.

2. A person may request to be provided notice of a particular application process filed under the provisions of this title by one of the following methods:

a. Filing a no-cost form provided by the city for the purpose of requesting a special notice.

b. Providing by letter or email a request for special notice which clearly states:

i. The requester's name and contact information;

ii. The specific application of interest in the request.

3. The city shall have five days to respond to a request for special notice. If the hearing or other event that is the subject of the special notice request has already taken place, there shall be no effect or recourse available to the requester based on lack of notice.

K. Notice of Decision. Notice of decisions made pursuant to this title shall be provided according to the following provisions:

1. Notice of decision on an application under this title shall be provided to the following:

a. A letter delivered, or sent by first-class mail; or by email sent to:

i. The applicant, or the person or entity designated by the applicant to receive notice;

ii. The appellant, if any;

iii. Parties that have filed a special notification request in accordance with SMC [16.06.050](#) prior to rendering of the decision;

iv. Identifiable parties who have provided addresses and have submitted substantive written comments on the proposal prior to rendering of the decision.

b. For Level II applications and Level I applications nonexempt from SEPA review, notice shall be as provided in subsection (A)(1) of this section and shall also include:

i. Posting on the city's website.

ii. Individual notice to the record owner(s) of property which is adjacent to the proposal site, as shown by the records of the Snohomish County assessor's office.

c. For Level III and Level IV applications, notice shall be as provided in subsection (A)(1) of this section and shall also include:

i. Posting on the city's internet website.

ii. The record owner(s) of property within 300 feet of the proposal site measured from each property line of the proposal site, as shown by the records of the Snohomish County assessor's office.

d. A notice of decision shall include the following:

i. The name and a brief description of the project;

ii. The identity of the applicant;

iii. Date of the decision;

iv. Brief description of the decision and any conditions;

v. The appeal rights that apply to the decision and the final date to file an appeal. (Ord. 1328-20 § 5 (Exh. A))

#### **16.06.050 Consistency with development regulations and SEPA.**

##### **A. Consistency with Other Regulations and Plans.**

1. When the city receives a project permit application, consistency between the proposed project and the applicable regulations in this title and the policies set out in the Sultan comprehensive plan shall be determined through staff review of the project and the issuance of a permit or the preparation of a staff report to the decision maker.

2. During project permit application review, the city shall determine whether the items listed in this section are defined in the development regulations applicable to the proposed project and if the proposed project meets the development regulations. In the absence of applicable development regulations, the city shall determine whether the items listed in this section are defined in the city's adopted comprehensive plan and if the proposed project meets the comprehensive plan policies. This determination of consistency shall include, but is not limited to, the following:

- a. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;
- b. The level of development, such as units per acre, floor area ratio, lot coverage, etc.;
- c. Availability and adequacy of infrastructure and public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by Chapter [36.70A](#) RCW; and
- d. Character of the development, such as development standards.

3. The project permit application shall be reviewed for consistency with all criteria set out in this title for the project permit application type(s).

B. Initial SEPA Analysis. The city shall review the project permit application under the requirements of SEPA, Chapter [43.21C](#) RCW; the SEPA rules, Chapter [197-11](#) WAC; and the city's SEPA regulations, Chapter [17.04](#) SMC. (Ord. 1328-20 § 5 (Exh. A))

#### 16.06.060 Appeals.

A. Appeal of Decisions. Project permit applications shall be appealable as provided in Table 16.06-B of this chapter.

B. Consolidated Appeals.

1. All appeals of project permit application decisions, other than an appeal of determination of significance (DS), shall be considered together in a consolidated appeal.
2. Appeals of environmental determinations under SEPA shall proceed as an appeal of the underlying permit in the process set out in this chapter.

C. SEPA Appeals.

1. SEPA appeals associated with a Type I or II project permit applications can be on procedural or substantive grounds and are administered as follows:
  - a. SEPA appeals shall be heard by the hearing examiner in consolidation with any appeal of the underlying project permit application.



b. Appeals shall only be of the determination of nonsignificance or mitigated determination of nonsignificance, or final determination if issued.

c. Appeal of a SEPA determination shall be made by filing an appeal form containing all of the information listed in subsection (D) of this section and other information as determined to be necessary by the director and paying the applicable fee set out by resolution.

d. Appeals shall be filed within 21 days of the issuance of a determination of nonsignificance where public comment is required.

e. Appeals shall be filed within 14 days after the issuance of a determination of significance with no comment period.

f. Appeals shall be filed within 14 days after a determination of nonsignificance is issued if such determination is issued at the same time a decision on a project permit is filed.

g. Appeals shall be consistent with the provisions of Chapter [43.21C](#) RCW and WAC [197-11-680](#).

2. SEPA appeals associated with Type III, IV, or V permits shall be to Snohomish County superior court within the provisions of this chapter, or to the Shorelines Hearings Board or the Growth Management Hearings Board consistent with state law.

D. Appeal Procedures. Appeals of the decision shall be governed by the following:

1. Standing. Only parties of record have standing to appeal the decision maker's decision.

2. Time to File. An appeal of the decision maker's decision must be filed within 14 days after service or publication of the notice of decision or as stated in subsection (C) of this section. The appeal must be submitted before the end of business day on the last business day of the appeal period.

3. Computation of Time. For the purposes of computing the time for filing an appeal, the day the decision maker's decision is rendered shall not be included. The last day of the appeal period shall be included unless it is a Saturday, Sunday, or a day designated by RCW [1.16.050](#) or by the city's ordinances as a legal holiday, then that day also is excluded and the filing must be completed by 4:30 p.m. on the next business day.

4. Content of Appeal. Appeals shall be in writing, be accompanied by the appeal fee, and contain the following information:

a. Appellant's name, address and phone number; appellant's statement describing his or her standing to appeal;

- b. Identification of the application which is the subject of the appeal;
- c. Appellant's statement of grounds for appeal and the facts upon which the appeal is based;
- d. The relief sought;
- e. A statement that the appellant has read the appeal and believes the contents to be true, signed by the appellant.

5. Effect. The timely filing of an appeal shall stay the effective date of the decision maker's decision until such time as the appeal is adjudicated or withdrawn.

E. Judicial Appeals. The city's final decision on an application may be appealed by a party of record with standing to file a land use petition in Snohomish County court. Such petition must be filed within 21 days of issuance of the decision, as provided in Chapter [36.70C](#) RCW. (Ord. 1328-20 § 5 (Exh. A))

#### **16.06.070 Open record public hearings.**

A. General. Public hearings on all Types III and IV project permit applications, as defined in SMC [16.06.020](#)(D), shall be conducted in accordance with this chapter.

B. Responsibility of Director. The director shall:

- 1. Schedule an application for public review and/or public hearing;
- 2. Give notice as required by SMC [16.06.040](#);
- 3. Prepare a staff report on the application, providing all pertinent information, including recommendations on project permits in the consolidated permit process that do not require an open record public hearing. The report shall state any mitigation required or proposed under the development regulations or the city's authority under SEPA. The staff report may constitute the permit and the notice of decision.

C. Conflict of Interest, Ethics, Open Public Meetings, Appearance of Fairness. The hearing body shall be subject to the code of ethics (RCW [35A.42.020](#)), prohibitions on conflict of interest (RCW [35A.42.020](#) and Chapter [42.23](#) RCW), Open Public Meetings Act (Chapter [42.30](#) RCW), and appearance of fairness (Chapter [42.36](#) RCW) as the same now exist or may hereafter be amended.

#### **16.06.080 Appeals – Procedure.**

A. The appeal hearing shall be based on the record and no new evidence may be presented except as provided herein.

- 1. For director interpretations and Level I decisions and SEPA determinations for which there was no comment period, the record for appellate review may be supplemented by evidence of material facts that were not made part of the original record.

2. For Level II decisions and SEPA determinations for which there was a comment period, the record may be supplemented by additional evidence only if the additional evidence relates to:

- a. Grounds for disqualification of the approving authority that made the decision, when such grounds were unknown by the petitioner at the time the record was created;
- b. Matters that were improperly excluded from the record after being offered by a party to the approving authority; or
- c. Matters that were outside the jurisdiction of the approving authority that made the decision.

3. If the appellate body allows the record to be supplemented, it shall require the parties to disclose before the appeal hearing the specific evidence they intend to offer. If any party, or anyone acting on behalf of any party, requests records under Chapter [42.56](#) RCW relating to the matters at issue, a copy of the request and response thereto shall simultaneously be given to all other parties and the appellate body.

4. The appellate body may require or permit corrections of ministerial errors or inadvertent omissions from the record of the approving authority.

B. The scope of an appeal shall be limited to issues timely raised by the appellant before the approving authority. An appellant shall be deemed to have waived any objection that was not raised at a time and in a manner to allow the approving authority to make correction prior to issuance of the decision which is the subject of the appeal.

C. The appellate body shall review the record and may grant relief only if the appellant has carried the burden of establishing that one of the standards set forth in subsections (C)(1) through (6) of this section applies:

1. The approving authority engaged in unlawful procedure or failed to follow prescribed process, unless the error was harmless;
2. The decision of the approving authority is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by the approving authority with expertise;
3. The decision of the approving authority is not supported by substantial evidence when viewed in light of the whole record before the appellate body;
4. The decision of the approving authority is a clearly erroneous application of the law to the facts;
5. The decision of the approving authority is outside the authority or jurisdiction of the body or officer making the decision;

6. The decision of the approving authority violates the constitutional rights of the party seeking relief.

D. The appellant, respondent and city staff shall be permitted to address the appellate body and present argument upon the appeal. Such argument may not be used to introduce new evidence into the record except as provided in subsection (A) of this section.

E. Copies of the administrative appeal decision shall be sent to the appellant and to other parties of record as soon as practicable following the hearing at which the appeal is considered and, if applicable, within the time required by state law.

## Chapter 16.80 ADMINISTRATION

Sections:

- 16.80.010 Purpose.**
- 16.80.015 Administration – Enforcement.**
- 16.80.020 Development permits required.**
- 16.80.030 Permits, terms, and conditions.**
- 16.80.040 When a permit is not required or may be waived.**
- 16.80.050 Application for development permits.**
- 16.80.060 Regulations.**
- 16.80.070 Criteria for approval of an application and issuance of a permit.**
- 16.80.080 Occupancy permit.**
- 16.80.090 Appeals of development permit decisions.**
- 16.80.100 Calculation of time – Delivery – Notice to parties – Filing with the board of adjustment and the city.**

### **16.80.010 Purpose.**

It is the purpose of this chapter to establish administration procedures for land use decisions in the city of Sultan. The administration of the zoning code will be done by the community development staff under the direction of the community development director. (Ord. 1347-21 § 31; Ord. 1263-17 § 4 (Exh. D); Ord. 1244-16 § 3 (Exh. A))

### **16.80.015 Administration – Enforcement.**

A. The community development director shall have the power to render interpretations of this title and to adopt and enforce rules and supplemental regulations to clarify the application of its provisions. Such interpretations, rules, and regulations shall conform to the intent and purpose of this title.

B. The community development director, or his or her duly authorized representative, is authorized to utilize the procedures of Chapter [1.10](#) SMC to enforce against violations of any land use or other code within his or her administrative jurisdiction. (Ord. 1347-21 § 32; Ord. 1263-17 § 4 (Exh. D); Ord. 1244-16 § 3 (Exh. A))

### **16.80.020 Development permits required.**

To implement the purpose and scope of the zoning code, all development within the city is required to be in conformance with the city of Sultan comprehensive plan and the provisions of this title. A development permit must be approved by the city of Sultan and its designated agents prior to any physical alterations to any site specific piece of property including, but are not limited to, the following development actions:

A. Grading/Filling. Modification of land and landscape where grading and/or filling of more than 50 cubic yards of material is moved, whether from one parcel/ownership to another or within the same parcel/ownership.

B. Clearing of vegetation protected under SMC Title [17](#).

C. Constructing any building, addition or expansion or other improvement that is not specifically exempt from requiring a building, fence, or other construction permit. (Ord. 1263-17 § 4 (Exh. D); Ord. 1244-16 § 3 (Exh. A))

**16.80.030 Permits, terms, and conditions.** 

A. Development Permit. Any development permit that is issued shall be subject to the terms and conditions imposed by the community development director to ensure that such development will be in accordance with the provisions of the city of Sultan comprehensive plan, zoning code, and land division code.

B. Reapplication. If an application for a permit under the zoning code is denied, the applicant may not submit another such application for development of the same property sooner than 120 calendar days after the date of such denial.

C. Permit Commencement and Expiration. Any development approved pursuant to the zoning code shall be commenced, performed, and completed in compliance with the provisions and conditions of the permits for such development stipulated by the community development director, hearing examiner, or city council.

Any development approved by a permit under the zoning code shall be commenced within 36 months from the date such permit is issued. Failure to complete substantial development within such period shall cause the permit to lapse and render it null and void. The community development director may administratively authorize a one-time extension. For purposes of this section, a permit shall be considered issued on the date it is signed by the community development director or hearing examiner.

D. Extensions. An application or an extension shall make written request for the extension a minimum of 30 calendar days prior to expiration of the development permit. The community development director shall in consideration of granting an extension find:

1. There have been substantial changes in the laws governing the development of the site, with which lack of compliance would be contrary to the public health, safety and welfare; or
2. The applicant has pursued development diligently, as evidenced by progress on final surveying, engineering, construction or the financial security of improvements; or
3. There have been substantial changes in economic conditions and market forces that have substantively limited the ability of the applicant to pursue completing the site development.

E. Evidence of Ownership or Legal Interest. Upon filing an application, the applicant shall be required to show evidence in writing of his or her legal interest in and the right to perform development upon all property on which work would be performed if the application is approved, including submission of all

relevant legal documents. Where the applicant is not the owner of the property, the owner must co-sign the application before it will be accepted for filing. The applicant shall have the burden of demonstrating to the satisfaction of the community development director the current validity of the legal interest upon which he or she bases any part of the application before such application can be deemed to be complete. (Ord. 1347-21 § 33; Ord. 1263-17 § 4 (Exh. D); Ord. 1244-16 § 3 (Exh. A))

**16.80.040 When a permit is not required or may be waived.** 

A. Notwithstanding any provision in the zoning code to the contrary, no minor development permit shall be required pursuant to the zoning code for activities related to the repair or maintenance of an object or facility, where such activities shall not result in an addition to or enlargement or expansion of such object or facility. However, this does not preclude the requirement for a building permit or other development permit for such activity.

B. Where immediate action by a person is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster or serious accident, or in other cases of emergency, the requirement of obtaining a development permit prior to initiating such action under this section may be waived by the community development director or other authorized city official. The applicant shall notify the community development director in writing of the type and location of the work, the length of time necessary to complete the work, and the name of the person or public agency conducting the work. This shall be done within 30 days following the disaster, accident, or other emergency. However, this shall not preclude the requirement for building permits or other development permits for such activity. (Ord. 1347-21 § 34; Ord. 1263-17 § 4 (Exh. D); Ord. 1244-16 § 3 (Exh. A))

**16.80.050 Application for development permits.** 

All applications for development permits under the zoning code shall contain at least the following information; provided, however, that the applicant may request a waiver of any of the following requirements. Unless the applicant can prove to the satisfaction of the community development staff that a waiver is appropriate, he or she shall supply the following information:

A. Four copies of a site plan, one of which shall be a mylar reproducible of the property to a scale of 100 feet to one inch, prepared by a registered engineer, architect or land surveyor illustrating the proposed development of the property and including, but not limited to, the following:

1. Topographical features showing present grades and any proposed grades if present grades are to be altered. Unless otherwise required by the community development director or public works director, contours at an interval not greater than five feet shall be shown;
2. Property boundary lines and dimensions including any platted lot lines within the subject property of the development permit;
3. Location and dimensions of all existing and proposed buildings, including height in stories and feet and including total square feet of ground area coverage;

4. Location and dimensions of all existing and proposed driveways and entrances, minimum yard dimensions, and where relevant, relation of yard dimensions to the height of any side of any building or structure;
5. Location and dimensions of parking stalls, access aisles, and total area of lot coverage of all parking areas and driveways;
6. Location and dimension, including height clearance, of all off-street loading areas;
7. Location, designation and total area of all usable open space, including use of any paved areas as distinguished from grass, sodded, or other landscaped areas;
8. Location and height of fences, walls (including retaining walls), or screen planting, and the type or kind of building materials or planting proposed to be used;
9. Proposed surface stormwater drainage treatment facilities;
10. Location of easements or other rights-of-way; and
11. Location and designation of any open storage space.

B. Four copies of a location map at a scale of 200 feet to one inch showing, at a minimum, the uses of all property within 200 feet of the subject property, including the following:

1. All streets, alleys or other public rights-of-way, public parks and places and all lots and lot lines, drainage ways, waterways, and easements;
2. All structures and the principal use of each structure, including the type of residential, commercial, or industrial use; and
3. All off-street parking and loading areas as may be significant to the application in question.

C. The following shall be submitted, if required:

1. Original signed environmental (SEPA) checklist;
2. Critical areas study;
3. Traffic impact analysis;
4. Geotechnical report/soils report;
5. Stormwater drainage report;
6. Title report, not more than 30 days old at time of submittal;



7. Landscape plan (includes lighting).

D. Any other information as may be required by the community development director to determine that the application is in compliance with the zoning code shall be furnished, including but not limited to wetlands, aquifer or groundwater recharge zones, floodplains, elevations, profiles, perspectives, sign placement, vegetation, landscaping, or any other material necessary for a complete understanding of the application.

E. A statement in writing signed by the applicant stating that the information as shown on the plans, maps, and application is true and correct. Any failure to comply with the provisions of this section shall be good cause to deny the application and/or to revoke any permit which may have been issued for any building or use of land. (Ord. 1347-21 § 35; Ord. 1263-17 § 4 (Exh. D); Ord. 1244-16 § 3 (Exh. A))

**16.80.060 Regulations.** 

The community development director shall, in the manner required by law and after public hearings, adopt such rules and regulations pertaining to the issuance of permits as it deems necessary. The community development director may thereafter, in the manner required by law, and from time to time, after public hearings, modify or adopt additional rules and regulations as deemed necessary to carry out the provisions of the zoning code; provided, any such rules and regulations issued pursuant to this code may be amended or repealed by the city council in accordance with the appropriate provisions of the Sultan Municipal Code. Such regulations shall include but are not limited to the following:

A. Procedures for the submission, review and approval or denial of permit applications, and the form of application for permits. The community development director shall devise a temporary application form that shall be used upon enactment of the zoning code until such time as rules and regulations are adopted;

B. Information to be required in the application, including, without limitation, proof of legal interest in the property, authority to sign the application, drawings, maps, data, and charts concerning land and uses and areas in the vicinity of the proposed development, and appropriate supplementary data reasonably required to describe and evaluate the proposed development and to determine whether the proposed development complies with statutory criteria under which it might be approved;

C. The payment of reasonable application, processing, permit and other fees necessary for the proper administration of the permitting process;

D. Standards, in addition to those set out in this code, for determining whether a project requires a major project permit;

E. Requirements for the conduct and continuance of public hearings and the methods of providing public notice on major project permits. A public notice shall, at a minimum, state the nature and location of the proposed development, the time and place of the public hearing, the date of the public hearing (which shall be, in any event, at least 10 working days following the date that the hearing was first advertised),

and shall be advertised in a newspaper of general circulation, and, in addition, be given to the applicant, any person who requests such notification in writing, any person who the community development director determines would be affected by or interested in such development, and the owner(s) of any/all lot(s) within 300 feet of the site of the proposed development. Additionally, a sign shall be posted on the property at least 10 working days prior to the date of the public hearing by the community development director at a location that can be easily seen by the general public indicating the date, time, and location of the public hearing and the purpose for which the hearing is being held;

F. Contents of permits;

G. Notifications of decisions on applications;

H. Notices of completion and certificates of acknowledgment of compliance;

I. Modification and revocation of permits; and

J. Transfer or assignment of permits. (Ord. 1347-21 § 36; Ord. 1263-17 § 4 (Exh. D); Ord. 1244-16 § 3 (Exh. A))

**16.80.070 Criteria for approval of an application and issuance of a permit.** 

A. Approval Criteria. A development permit under the zoning code shall be granted by the community development director or the hearing examiner; provided, based upon substantial evidence in the record, it is found that the development complies with each of the following criteria:

1. The development is consistent with the goals, policies, requirements, and performance standards of this zoning code and other applicable laws and regulations;
2. The development project as proposed incorporates, to the maximum extent feasible, mitigation measures to substantially lessen or eliminate all adverse environmental impacts of the development; and
3. The applicant has presented certification that the applicant has filed and paid all taxes, penalties and interest, and that the applicant has satisfactorily made agreement to pay the taxes.

B. Applicant Assurances. The issuance of a land use development permit shall also require that the applicant agree in writing to:

1. Comply with and perform to all conditions of approval; and
2. Carry out minimum improvements in accordance with the provisions of this zoning code and all standards of this title.

C. Improvement Guarantees. Contemporaneous with the issuance of a permit, or upon approval of a plat, subdivision or other approval to divide land, to ensure the applicant's compliance with subsection (B) of this section and to guarantee future compliance and performance, the applicant shall:

1. Comply with all conditions of approval and carry out all minimum improvements as required by the city engineer;
2. If acceptable or required by the city engineer, furnish the city with a bond or other security sufficient to secure the estimated cost of construction and installation of all required road and other improvements to the satisfaction of the city engineer and/or council and compliance with the conditions of approval. The amount and time limitation of any bond or other device shall be determined by the council within 30 days of permit issuance or approval. The principal shall complete construction and installation of all improvements and comply with all conditions of approval by the date stated in the security, and in the event that such does not occur, the full amount of the security shall be forfeited to the city. The council may forfeit all or any portion of the security before its expiration date, if the applicant is not making reasonable efforts to complete the work within the term of the security;
3. Furnish a maintenance bond or other security satisfactory to the council securing to the city the successful operation of the improvements and any mitigation as required by the conditions of approval for an appropriate period of time up to two years after completion of improvements, or final plat approval, as the case may be. Upon expiration of the stated period and successful performance of the improvements and mitigation, this maintenance bond shall be released and exonerated.

D. Surety Requirement. Any bond as provided herein shall be assured by two or more sureties acceptable to the city engineer or with a surety company as surety. The city is empowered to enforce such bonds by all appropriate legal and equitable remedies. (Ord. 1347-21 § 37; Ord. 1263-17 § 4 (Exh. D); Ord. 1244-16 § 3 (Exh. A))

#### **16.80.080 Occupancy permit.**

A. No land area shall be occupied or used and no building hereafter erected or altered shall be occupied or used in whole or in part for any purpose whatsoever until an occupancy permit has been issued by the community development director or his/her designee, stating that the premises, building, or other development complies with all provisions of this code; except that in the case of an alteration that does not require vacating the premises or where parts of the premises are finished and ready for occupancy before the completion of the alteration or, in the case of a new structure, before its completion, a conditional occupancy permit may be issued.

B. No change or extension of use or no alteration shall be made in a nonconforming use of a building or land or water area without a building permit having first been issued by the community development

director or his/her designee that such change, extension or alteration is in conformity with the provisions of this code.

C. As-Built Plan Submittals. After completion of all required improvements and prior to final acceptance of said improvements, the subdivider shall submit:

1. To the city as-built drawings reflecting any changes to previously approved construction drawings. No changes in improvements may be made without prior approval of the city council;
2. To the utility superintendent and fire department, two copies of the plat and drawings showing the actual location of all mains, hydrants, valves and other fire improvements;
3. A statement sworn to by the subdivider and his registered engineer that the drawings show the actual location of the improvements required to be shown therein. No occupancy permit shall be issued until any and all required as-built plans have been submitted and approved by the director of community development.

D. Within 10 days from the date that an applicant requests, in writing, that an occupancy permit be issued on his/her development project, the community development director shall render a decision as to whether or not said occupancy permit is to be issued. If the decision is not to issue the occupancy permit, the community development director shall so notify the applicant including the reasons for denial of the permit. If no occupancy permit has been issued within 10 working days of the written request thereof and the community development director has not informed the applicant of approval or denial in writing, it shall be deemed that the community development director approves the request and the applicant may legally occupy the premises. (Ord. 1347-21 § 38; Ord. 1263-17 § 4 (Exh. D); Ord. 1244-16 § 3 (Exh. A))

#### **16.80.100 Calculation of time – Delivery – Notice to parties – Filing with the board of adjustment and the city.**



A. Whenever this title states that an action or notice must be given in a certain number of calendar days, if the last calendar day for the action or notice is a weekend day or a federally recognized holiday, then the last calendar day shall be construed to include the first working day after the weekend or holiday; and the deadline shall be 5:00 p.m. current local time of that first working day.

B. Whenever this title states that an action or notice must be given “within” a period of time from a decision, action or notice, the first calendar day for the counting of the calendar days shall be as follows:

1. If the number of days involved is less than 15 calendar days, the first day shall be:
  - a. If the notice or decision is personally served on the party, then the day after service; and
  - b. If the notice or decision is mailed, then the third day after the date the notice or decision is deposited into the United States mail properly addressed with required postage;
2. If the number of days involved is 15 calendar days or more, the first day shall be:

a. If the notice or decision is personally served on the party, the day after service; and

b. If the notice or decision is mailed, then the day after the notice or decision is deposited into the United States mail properly addressed with required postage.

C. Each decision or notice shall contain a statement concerning rights to contest or appeal the decision or notice and among other information the statement shall state the date of the notice or decision; the date the appeal, contest or appeal period is expected to begin; the last date and time to file an appeal or notice when the party to whom the notice must go is open for business; and the location to file an appeal or notice.

D. In the event the statement specified in subsection (C) of this section contains an error, the party relying on the statement shall be entitled to the longer time. Therefore, if the "last date" in the statement is earlier than the time as calculated under this section, the party shall be entitled to the time provided by this section. But if the "last date" in the statement is later than the date that would be calculated under this section, the party shall be entitled to, and the actual time shall be extended to, the date and time set out in the statement; provided, however, that if the error is in the statement of the year, the correct year shall apply.

E. Whenever this title states that something must be filed with the board of adjustment, filing shall be accomplished by filing with the clerk/treasurer of the city. The date of filing shall be the date of actual delivery to, or receipt of mail by, the city clerk/treasurer. (Ord. 1263-17 § 4 (Exh. D); Ord. 1244-16 § 3 (Exh. A))

#### 17.04.240 Appeals.

A. Any interested person may appeal a threshold determination, adequacy of a final EIS and the conditions or denials of a requested action made by a nonelected city official pursuant to the procedures set forth in this section. No other SEPA appeal shall be allowed. The review process shall provide for no more than one consolidated open record hearing and one closed record hearing appeal. If an open record predecision hearing is provided prior to the decision on a project permit, the process shall not allow a subsequent open record appeal hearing.

B. SEPA appeals shall be governed by the procedures specified in SMC 16.06.060 subsection C.

C. On receipt of a timely written notice of appeal, the community development director shall advise the hearing examiner of the pendency of the appeal and request that a date for considering the appeal be established. The decision of the hearing examiner shall be final and shall not be appealable to the city council.

E. All relevant evidence shall be received during the hearing of the appeal. The procedural determination by the city's responsible official shall carry substantial weight in any appeal proceeding.

F. For any appeal under this section, the city shall provide a record that shall consist of the following:

1. The original application with SEPA documents;
2. Findings and conclusions with approval conditions if any;
3. Testimony under oath; and
4. Written transcript or minutes from the original hearing.

G. The city may require the applicant to provide an electronic transcript.

H. The city shall give official notice whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.