

Town Planning Commission Regular Meeting

Monday, November 14, 2022 - 7:00 PM Town Hall/Virtual 4030 95th Ave NE. Yarrow Point, WA. 98004

Commission Chairperson: Carl Hellings

Commissioners: Chuck Hirsch, David Feller, Jeffrey Shiu, Lee Sims

Town Planner: SBN Planning

Town Attorneys: Scott Missall and Emily Miner

Deputy Clerk: Austen Wilcox

Meeting Participation

Members of the public may participate in person at Town Hall or by phone/online. Town Hall has limited seating available, up to 15 public members. Individuals who call in remotely who wish to speak live should register their request with the Deputy Clerk at 425-454-6994 or email depclerk@yarrowpointwa.gov and leave a message before 4:30 PM on the day of the Planning Commission meeting. Wait for the Deputy Clerk to call on you before making your comment. If you dial in via telephone, please unmute yourself by dialing *6 when it is your turn to speak. Speakers will be allotted 3 minutes for comments. Please state your name (and address if you wish.) You will be asked to stop when you reach the 3-minute limit.

Join on computer, mobile app, or phone

1-253-215-8782

Meeting ID: 814 6079 4238#

https://us02web.zoom.us/j/81460794238

CALL TO ORDER: Commission Chairperson, Carl Hellings

PLEDGE OF ALLEGIANCE

ROLL CALL: Commissioners, Chuck Hirsch, David Feller, Jeffrey Shiu, Lee Sims

1. APPROVAL OF/AMENDMENTS TO AGENDA

2. STAFF REPORTS

3. APPEARANCES/PUBLIC COMMENT

Members of the public may speak concerning items that either are or are not on the agenda. The Planning Commission takes these matters under advisement. Please state your name (and address if you wish) and limit comments to 3 minutes. If you call in via telephone, please unmute yourself by dialing *6 when it is your turn to speak. Comments via email may be submitted to depclerk@yarrowpointwa.gov or regular mail to: Town of Yarrow Point, 4030 95th Ave NE, Yarrow Point, WA 98004.

4. MINUTES (3 minutes)

October 17, 2022 special Planning Commission meeting

REGULAR BUSINESS

- 5. AB 22-15 Hedge Code Discussion
- 6. AB 22-16 Review of HB 1220 and Example Ordinances
- 7. AB 22-17 Comprehensive Plan Status Update
- 8. <u>APPEARANCES/PUBLIC COMMENT</u>
- 9. ADJOURNMENT

TOWN OF YARROW POINT PLANNING COMMISSION REGULAR MEETING MINUTES October 17, 2022

The following is a condensation of the proceedings and is not a verbatim transcript.

CALL TO ORDER:

Commission Chairman Carl Hellings called the meeting to order at 7:02 p.m.

PRESENT:

Chairman: Carl Hellings

Commissioners: Chuck Hirsch

Jeffrey Shiu

David Feller – Absent

Lee Sims

Staff: Austen Wilcox – Deputy Clerk

Emily Miner – Town Deputy Attorney Stacia Schroeder – Town Engineer Aleksandr Romanenko – SBN Planning

James Eager – SBN Planning Drey Avila – SBN Planning

Guests: Carl Scandella – Councilmember

Scott Penner – Resident Robert Afzal - Resident

APPROVAL OF AGENDA

<u>MOTION:</u> Motion by Chairman Hellings seconded by Commissioner Hirsch to approve the amended agenda.

VOTE: 4 For, 0 Against. Motion carried.

STAFF REPORTS:

Deputy Clerk Wilcox gave a report of the October 17 regular Council meeting.

MINUTES:

• July 25, 2022 Special Meeting

MOTION: Motion by Commissioner Hirsch seconded by Commissioner Sims

to approve the July 25, 2022 special meeting minutes as amended.

VOTE: 4 For, 0 Against. Motion carried.

APPEARANCES:

Resident Scott Penner discussed the proposed hedge code. He discussed neighbor correspondence for hedge mitigation issues and shared his opinions for enforcement and definition.

Resident Robert Afzal discussed a row of Leland Cypress on his neighbor's property that have turned into trees and the hazards they cause to his property.

REGULAR BUSINESS:

PCAB 22-10 – Introduction of New Town Planner

Aleksandr Romanenko introduced his firm SBN Planning including partners James Eager and Drey Avila.

PCAB 22-11 – Tree Code Amendment Discussion

The Planning Commission has explored various noticing requirements to ensure that future property owners are on notice of the need to comply with YPMC Chapter 20.22 requirements for removal of mitigation trees. Potential noticing options discussed included requiring placement of a notice on title, requiring a notarized document from the buyer confirming their compliance with the code, and requiring a warranty bond for the three-year survival period requirement for mitigation trees. Planning Commission's expressed preference at the July meeting was for a notice requirement in conjunction with a warranty bond.

Staff have prepared draft code amendments to YPMC 20.22 to reflect Planning Commission's direction. Attorney Emily Miner discussed the draft code as presented.

- Performance and warranty bonds
- Administrative procedures for tree permit review
- Fines
- Fees
- Mitigation trees

Commissioner Shiu left the meeting under PCAB 22-11 prior to the following motion.

<u>MOTION:</u> Motion by Chairman Hellings seconded by Commissioner Sims to recommend approval to Council of the proposed revisions from the Planning Commission as presented to the private property tree code.

VOTE: 3 For, 0 Against. Motion carried.

PCAB 22-12 – Hedge Code Discussion As discussed during prior Planning Commission meetings, there are ambiguities in the definition of the Town's Hedge Code that make it difficult to enforce hedge code regulations. The definition of "hedge" is also problematic because it includes the word "tree" which creates a conflict with the private property tree code at Chapter 22.02 YPMC. These ambiguities in the code create challenges for enforcement, as illustrated by the Town Building Official's presentation during the May Planning Commission meeting.

In response to this discussion, staff have prepared a draft code with hedge regulations and a voluntary dispute resolution process for the Planning Commission's consideration. Comments are left in the draft code to assist in guiding the Planning Commission's review. The Planning Commission discussed:

Definition of a hedge

- Views
- Enforcement
- Examples of current hedge complaints
- Neighborly hedge conflict mitigation
- Examples of hedge codes from other jurisdictions

PCAB 22-13 – Introduction to Comprehensive Plan Update

As part of the Growth Management Act Comprehensive Plan Update, the Town Planners at SBN Planning have developed a high-level preliminary schedule highlighting the commission's potential involvement. The Town Planners view potential for up to six Agenda Bills at Yarrow Point Planning Commission meetings, at a minimum. Only one of these is required by RCW 36.70A: the final approval of the Comprehensive Plan update. The five proposed agenda bills can be included at the commission's discretion, as well as any additional items from the Comprehensive Plan Update process which the commission would like to discuss.

The Town Planners are executing a grant for \$100K from Department of Commerce.

PCAB 22-14 – HB 1220 Discussion

In July 2021, Engrossed Second Substitute House Bill 1220 ("Bill") went into effect. This bill eliminates zoning barriers related to the provision of transitional housing, permanent supportive housing, emergency shelters, and emergency housing. While there is no requirement for any ordinance from the Town of Yarrow Point in response to the Bill, nearby jurisdictions such as Medina and Bellevue have discussed and passed related ordinances.

To offer background on the Bill, its impact on the Town, and how to accommodate this impact, staff have provided an article from the Municipal Research and Services Center of Washington (MRSC) to serve as a foundation for this discussion.

The Planning Commission discussed how HB 1220 could pertain to Yarrow Point.

APPEARANCES:

Councilmember Carl Scandella shared his appreciation for the Planning Commission's work on the tree and hedge codes.

ADJOURNMENT:

MOTION: Motion by Commissioner Hirsch seconded by Commissioner Hellings	s to
adjourn the meeting at 8:37 p.m.	

<u>VOTE:</u> 3 For, 0 Against, 0 Abstain. Motion carried.

APPROVED:	ATTEST:
Carl Hellings, Chairman	Austen Wilcox, Deputy Clerk

Business of The Town Planning Commission Town of Yarrow Point, WA

Hedge Code Amendments	Proposed Planning Commission Action: Discussion Only

Presented by:	Planner – Aleksandr Romanenko
Exhibits:	Draft Private Hedge Code YPMC 20.XX Sample codes from:

Background:

As discussed during prior Planning Commission meetings, there are ambiguities in the definition of the Town's Hedge Code that make it difficult to enforce hedge code regulations.

Chapter 17.08 YPMC states that a "hedge exist whenever a row of two or more trees, shrubs, or other plants constitute a barrier in excess of six linear feet and establish a boundary, or hinder free passage of humans or animals on the surface of the ground, or screen or obscure vision, or baffle sound." YPMC 17.12.030 then prohibits hedges in the setback from exceeding 6 feet in height.

The definition of "hedge" is also problematic because it includes the word "tree" which creates a conflict with the private property tree code at Chapter 22.02 YPMC.

These ambiguities in the code create challenges for enforcement, as illustrated by the Town Building Official's presentation during the May Planning Commission meeting. Mr. Wilcox noted that it is difficult to enforce the code because of how flexible the hedge definition is. He further noted that during his ten plus years working in Yarrow Point, he has mediated 40-50 hedge complaints and in only one case did the offending hedge owner reduce the hedge height to the code mandated 6 feet. In all other cases, the parties agreed to a negotiated hedge height taller than 6 feet.

Discussion:

Governmental regulations are based on ensuring the public's health, safety, and welfare. From this perspective, the Town has no public policy reason to regulate hedges between private properties. Hedges between private properties do not infringe on the sight lines for safe travel, nor damage public streets and sidewalks, nor cause harm to utility lines – in short, they do not impact the public sphere. Thus, there is little to justify governmental regulation of such hedges.

During the October meeting, Planning Commission determined that the next step is to create a clear and concise definition for "Hedge" and directed the Town Planner to do so.

In response to this discussion, staff have prepared a definition of "Hedge" to be discussed and have prepared a "Private Hedge Code" chapter which incorporates the newly proposed hedge definition based on previous feedback for context, review, and further discussion.

Recommended Action:

Discuss definition for "Hedge" Discuss draft code "General Requirements" Establish next steps for hedge code development.

DRAFT

Yarrow Point Municipal Code

CHAPTER 20.XX. Private Hedge Code

Hedge Definition:

C. "Hedge" means a row of plants, grasses, trees, or shrubs, planted or growing in (1) a dense and continuous line which is 10 feet in length or longer and that (2) forms a physical and/or visual barrier with an average height in excess of 3 feet.

Commented [AR2]: This height is intended to include all plantings which may be considered a hedge, but to exclude general landscaping.

Commented [AR1]: This Definition has been Pulled out of the typical code formatting for convenience and discussion

purposes.

20.xx.010 Purpose and Intent.

This chapter is enacted to provide a voluntary mechanism for the fair resolution of disputes involving the height of hedges. It shall not be construed to provide rights beyond those entitled under Washington law. The Town has no right nor obligation to enforce any of the provisions of this chapter.

- A. Among the features that contribute to the attractiveness and livability of the Town of Yarrow Point are its hedges and landscaping, both native and introduced.
- B. Hedges and landscaping provide a wide variety of psychological and tangible benefits for both residents and visitors to the Town.
- C. With appropriate safeguards requiring consideration of all the factors set forth herein, affected property owners can be given relief without infringing upon the rights of the hedge owners.
- D. It is in the interest of the public welfare, health and safety to establish standards for the resolution of hedge code violation claims and to establish a structure for resolution of such claims.
- E. When a hedge dispute arises, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other traditional means. Those disputes which are not resolved through such means may be resolved by following the procedures established herein.

20.xx.020 Definitions.

- A. "Complainant" means a complaining property owner in the Town of Yarrow Point who alleges that hedge(s) located on the property of an immediately adjacent neighbor are not compliant with this chapter.
- B. "Owner" means any individual, firm, partnership, corporation, trust or other legal entity owning property in the Town of Yarrow Point.
- C. "Hedge" means a row of plants, grasses, trees, or shrubs, planted or growing in (1) a dense and continuous line which is 10 feet in length or longer and that (2) forms a physical and/or visual barrier with an average height in excess of 3 feet.
- E. "Hedge owner" means the owner of the real property on which a hedge is located.

20.XX.030 General Requirements

- A. A hedge located within a setback shall be maintained to a height no greater than XX Feet
 - 1. Hedge height shall be measured from existing grade, immediately adjacent to the hedge
- B. A hedge located outside of a setback shall be maintained to a height no greater than **XX** Feet
 - 1. Hedge height shall be measured from existing grade, immediately adjacent to the hedge
- C. Removal or modification of a hedge comprised in part or in it's entirety of significant trees as defined in YPMC 20.22.020 (H), shall also be required to comply with YPMC 20.22 where applicable.
- D. New Hedges located within the setback shall not be comprised of the following plant species:
 - Leyland Cypress
- E. New Hedges located outside the setback shall not be comprised of the following plant species:
 - Levland Cypress

20.XX.040 Town guidelines concerning restorative action

No complainant shall be entitled to seek restorative action unless the complainant can demonstrate that the hedge does not meet YPMC 20.XX.030.

20.XX.050 Objective criteria to govern.

In determining whether relief may be granted, the objective criteria set forth in this chapter shall govern. No party shall be entitled to an unobstructed view.

20.XX.060 Methods of relief.

Methods of relief that may be granted include pruning, thinning, windowing, topping, or removal of the hedge.

20.XX.070 Limitations on relief.

20.XX.080 Process for resolution of obstruction disputes.

- A. The following process shall be used in the resolution hedge code violations:
 - Initial reconciliation. A complainant who believes that hedge growth on the property of an immediately adjoining neighbor does not meet the general requirements of this chapter. Notification should, if possible, be accompanied by a personal discussion to enable the complainant and hedge owner to attempt to reach a mutually agreeable solution.
 - 2. Mediation. If the initial reconciliation attempt fails, the complainant shall propose mediation as a timely means to settle the obstruction dispute.
- B. Acceptance of mediation by the hedge owner shall be voluntary, but the hedge owner shall have no more than 30 days from service of notice to either accept or reject the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within 10 days.
- C. It is recommended that the services of a professionally trained mediator be employed. Mediation may be arranged through the Seattle-King County Alternate Dispute Resolution Center.
- D. The mediation meeting may be informal. The mediation process may include the hearing of the viewpoints of lay or expert witnesses and shall include a site visit to the properties of the complainant and the hedge owner. The parties are encouraged to contact immediate neighbors and solicit input. The mediator shall consider the purposes and policies set forth in this chapter in

Commented [AR3]: This has previously been 6', but 8' or higher may also be considered given existing conditions, and desired outcomes

Commented [AR4]: Additional Provisions to broaden or narrow the specific requirements may be added or discussed.

Commented [AR5]: If hedge height is regulated outside of a setback on a property, allowable height could regulated so that hedges further towards the center of the property may be higher than those towards the outside. Included for Discussion

Commented [AR6]: These general requirements are included for discussion

attempting to help resolve the dispute. The mediator shall not have the power to issue binding orders for restorative action, but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for binding arbitration or litigation.

20.XX.090 Hedge claim preparation.

- A. In the event that the initial reconciliation process fails, and mediation either is declined by the hedge owner or fails, the complainant must prepare a hedge claim and provide a copy to the hedge owner in order to pursue either binding arbitration or litigation as set forth in this chapter. A hedge claim shall consist of all of the following:
 - A description of the nature and extent of the alleged violation, including pertinent and corroborating physical evidence. Evidence may include, but is not limited to, digital photographs, photographic prints, negatives or slides.
 - 2. Evidence of the date of property acquisition by the complainant.
 - 3. The location of the hedge alleged to cause the violation, the address of the property upon which the hedge is located, and name of hedge owner.
 - 4. Evidence of the failure of initial reconciliation to resolve the dispute. The complainant must provide evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, email correspondence with both parties responses, copies of and receipts for certified or registered mail correspondence.
 - Evidence that mediation has been attempted and has failed, or has been declined by the hedge owner.
 - 6. The specific restorative actions proposed by the complainant to resolve the violation

20.XX.100 Binding arbitration.

- A. In those cases where the initial reconciliation process fails and where mediation is declined by the hedge owner or has failed, the complainant must offer in writing to submit the dispute to binding arbitration, and the hedge owner may elect binding arbitration.
- B. The hedge owner shall have 30 days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within 21 days, and shall indicate such agreement in writing.
- C. The arbitrator shall use the provisions of this chapter to reach a fair resolution of the dispute and shall submit a complete written report to the complainant and the tree owner. The report shall include the arbitrator's findings with respect to YPMC 19.06.050(A) and (B), a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. A copy of the arbitrator's report shall be filed with the Town clerk. The decision of the arbitrator is binding on the parties. Any decision of the arbitrator may be enforced by civil action, as provided by law.

20.XX.110 Litigation.

- A. In those cases where binding arbitration is declined by the hedge owner, then civil action may be pursued by the complainant for resolution of the view or sunlight obstruction dispute under the provisions and guidelines set forth in this chapter.
- B. The complainant must state in the lawsuit that mediation and arbitration were offered and not accepted. A copy of any final resolution of the litigation shall be filed with the Town clerk.

20.XX.120 Apportionment of costs.

- A. Mediation and arbitration. The complainant and hedge owner shall each pay 50 percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate costs.
- B. Restorative action. The costs of restorative action shall be determined by mutual agreement or through mediation, arbitration, court decision or settlement.

20.XX.130 Limitation.

This chapter shall not be construed to affect obligations imposed by easement, covenants or agreements.

20.XX.140. Application.

- A. This chapter shall not apply to hedges located on property owned by the Town (not including rights-of-way). Individuals who are adversely affected by trees located on property owned by the Town may approach the Town for requested relief.
- B. This chapter shall not apply to trees located within Town rights-of-way which trees shall continue to be subject to the requirements of Chapter 12.26 YPMC.

Chapter 18.35

FENCES, WALLS AND HEDGES

Sections:	
18.35.010	General.
18.35.020	Definitions.
18.35.030	Design and ornamental features.
18.35.040	Findings – Hedges.
18.35.041	Rights established.
18.35.042	Process for resolution of obstruction disputes
18.35.043	Hedge claim preparation.
18.35.044	Binding arbitration.
18.35.045	Litigation.
18.35.046	Apportionment of costs.
18.35.047	Limitation.
18.35.048	Application.
18.35.050	Variance and appeal procedures.

18.35.010 General.

- (1) In the R-5 and single-family zones, fences and walls shall not be more than four feet in height in the front yard setback nor more than six feet in height in the side or rear yard setbacks, as measured from the top of the fence or wall to the lowest original grade.
- (2) At a road intersection, no sight obstruction is permitted within 10 feet from the intersection. Obstructions such as fences and hedges located over 10 feet and up to 20 feet from the intersection shall not be more than 42 inches in height. (See Fig. 1, Sight Distance Triangle).
- (3) For R-5 and single-family lots fronting on First Avenue South, the front yard fence and wall height maximum may be increased to six feet to provide noise attenuation, privacy and protection; provided, that the provisions of subsection (2) of this section regarding restrictions on fence and hedge height at intersections shall apply.
- (4) A fence permit shall be required for any fence or wall over six feet in height. Height shall be measured from the top of the fence or wall to the lowest original grade.
- (5) A fence permit shall be required for any fence or wall within an environmentally sensitive area or its buffer.
- (6) No fence, wall or hedge shall be located in a public right-of-way.
- (7) No fence, wall or hedge shall be allowed where it creates a hazard or obstruction to users of the road, sidewalk or nearby property.
- (8) Where a retaining wall protects a cut below the natural grade and is located on the line separating lots or parcels, the retaining wall may be topped by a fence or wall of the same height that would otherwise be permitted at the location if no retaining wall existed.
- (9) Where a retaining wall contains a fill, the height of the wall retaining the fill shall be included within the permissible height of a fence, except a protective fence not more than 42 inches in height may be erected at the top of the retaining wall. Any portion of a protective fence over 72 inches above the base of the fill at the retaining wall shall be an openwork fence as defined in NPMC 18.35.030.
- (10) Fence, hedge or screening requirements adopted as part of Chapter 18.100 NPMC, Design Standards and Guidelines, covering the RM-1800, RM-2400 and commercial zoning districts shall be followed where there is a conflict between this chapter and the design standards.

20 feet 10 feet

Fig. 1 Sight Distance Triangle¹

(Ord. 888 § 2 (Exh. A), 2012; Ord. 752 § 1, 2005).

18.35.020 Definitions.

"Complainant" means a complaining property owner in the city of Normandy Park who alleges that a hedge located on the adjacent property of another is causing an unreasonable obstruction of preexisting views or sunlight.

"Hedge" means a row of closely planted trees, shrubs or grasses forming a fence, screen or boundary.

"Hedge owner" means the record owner of the real property on which a hedge is located.

"Owner" means any individual, firm, partnership, corporation, trust or other legal entity owning property in the city of Normandy Park.

"Primary living or entertaining area" means an area located on the lot. The determination of primary living or entertaining area is to be made on a case-by-case basis.

"Substantial obstruction of sunlight" means the loss of a substantial portion of direct or indirect sunlight in a primary living or entertaining area or in a significant portion of the complainant's real property.

"View" means an actual or potential vista. (Ord. 790 § 1, 2007; Ord. 752 § 1, 2005).

18.35.030 Design and ornamental features.

- (1) Fences, both new and rebuilt, should be made of material such as masonry, ornamental metal, wood, or some combination thereof. The use of chain link fencing is prohibited in a front yard unless it is fully screened from view by year-round vegetation or is vinyl-coated with a neutral color (i.e., green, black, brown).
- (2) Notwithstanding any required permits, the following may be constructed without a variance:
 - (a) A trellis added to the top of a fence up to two additional feet higher than the allowed height, but not more than a height of eight feet.
 - (b) An arbor to a maximum height of nine feet over a gate, walkway or entrance.
 - (c) Decorative or ornamental features such as, but not limited to, columns, posts or other vertical focal points, spaced no less than eight feet apart, up to two additional feet higher than the allowed height to a maximum height of eight feet.
 - (d) An openwork name sign over a driveway.
- (3) For purposes of regulation under this chapter, a trellis shall be considered to be a fence, subject to the same height limitations and permit requirements. A trellis that has a horizontal element wider than 36 inches measured perpendicular to the fence or trellis shall be considered an arbor, subject to an arbor's siting requirements. (Ord. 752 § 1, 2005).

18.35.040 Findings – Hedges.

This section is enacted in recognition of the importance of views and sunlight to properties within the city of Normandy Park and to provide a fair and structured mechanism for resolving hedge disputes relating to views and sunlight. This chapter is based upon the following findings which are adopted by the city council of Normandy Park.

- (1) It is in the interest of the public welfare, health and safety to establish standards for the resolution of view and sun obstruction claims and to establish a structure for resolution of such claims which will provide a reasonable balance between the values of hedge ownership and view and sunlight related values.
- (2) When a view or sunlight obstruction dispute arises, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other traditional means. Those disputes which are not resolved through such means may be resolved by following the procedures established herein.
- (3) It is the intent of the city that the provisions of this chapter receive thoughtful and reasonable application. It is not the intent of the city to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of the provisions of this chapter. (Ord. 790 § 2, 2007; Ord. 752 § 1, 2005).

18.35.041 Rights established.

Hedges, or other plantings having a barrier, screen or partition nature, shall not be more than 10 feet in height when located within 10 feet of any adjacent owner's property line; provided, that no hedge more than 10 feet in height and within 10 feet of the property line shall create a nuisance or safety hazard, or unreasonably interfere with access to sunlight and/or views enjoyed by the complainant. The provisions of NPMC 18.35.010(2) regarding restrictions on fence and hedge height at intersections shall apply.

A person shall have the right to preserve and seek restoration of views or sunlight which existed at any time since they purchased, when such views or sunlight are from the primary living or entertainment area and have subsequently been unreasonably obstructed by the hedge.

In order to establish such rights pursuant to this chapter, the person must follow the process established in this chapter. In addition to the rights described in this section, private parties have the right to seek remedial action for imminent danger caused by trees. (Ord. 790 § 3, 2007).

18.35.042 Process for resolution of obstruction disputes.

The following process shall be used in the resolution of view and sunlight obstruction disputes:

- (1) Initial Reconciliation. A complainant who believes that hedge growth on the property of another has caused unreasonable obstruction of views or sunlight from a primary living or entertaining area shall notify the hedge owner in writing of such concerns. Notification should, if possible, be accompanied by a personal discussion to enable the complainant and hedge owner to attempt to reach a mutually agreeable solution.
- (2) Mediation. If the initial reconciliation attempt fails, the complainant shall propose mediation as a timely means to settle the obstruction dispute. Acceptance of mediation by the hedge owner shall be voluntary, but the hedge owner shall have no more than 30 days from service of notice to either accept or reject the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within 10 days. It is recommended that the services of a professionally trained mediator be employed. Mediation may be arranged through the Seattle-King County Alternate Dispute Resolution Center. The mediation meeting may be informal. The mediation process may include the hearing of the viewpoints of lay or expert witnesses and shall include a site visit to the properties of the complainant and the hedge owner. The parties are encouraged to contact immediate neighbors and solicit input. The mediator shall consider the purposes and policies set forth in this chapter in attempting to help resolve the dispute. The mediator shall not have the power to issue binding orders for restorative action, but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for binding arbitration or litigation. (Ord. 790 § 4, 2007).

18.35.043 Hedge claim preparation.

(1) In the event that the initial reconciliation process fails, and mediation either is declined by the hedge owner or fails, the complainant must prepare a hedge claim and provide a copy to the hedge owner in order to pursue either binding arbitration or litigation under the authority established by this chapter.

- (2) A hedge claim shall consist of all of the following:
 - (a) A description of the nature and extent of the alleged obstruction, including pertinent and corroborating physical evidence. Evidence may include, but is not limited to, photographic prints, negatives or slides. Evidence of the date of property acquisition by the complainant must be included;
 - (b) The location of all hedges alleged to cause the obstruction, the address of the property upon which the hedges are located, and the present hedge owner's name and address;
 - (c) Evidence of the failure of initial reconciliation to resolve the dispute. The complainant must provide evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence;
 - (d) Evidence that mediation has been attempted and has failed, or has been declined by the hedge owner;
 - (e) The specific restorative actions proposed by the complainant to resolve the unreasonable obstruction. (Ord. 790 § 5, 2007).

18.35.044 Binding arbitration.

In those cases where the initial reconciliation process fails and where mediation is declined by the hedge owner or has failed, the complainant must offer in writing to submit the dispute to binding arbitration, and the hedge owner may elect binding arbitration. The hedge owner shall have 30 days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within 21 days, and shall indicate such agreement in writing.

The arbitrator shall use the provisions of this chapter to reach a fair resolution of the dispute and shall submit a complete written report to the complainant and the hedge owner. The report shall include the arbitrator's findings with respect to NPMC 18.35.042(1) and (2), a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. Any decision of the arbitrator may be enforced by civil action by either party. A copy of the arbitrator's report shall be filed with the city clerk. (Ord. 790 § 6, 2007).

18.35.045 Litigation.

In those cases where binding arbitration is declined by the hedge owner, then civil action may be pursued by the complainant for resolution of the view or sunlight obstruction from the hedge under the provisions and guidelines set forth in this chapter. The complainant must state in the lawsuit that mediation and arbitration were offered and not accepted. A copy of any final resolution of the litigation shall be filed with the city clerk. (Ord. 790 § 7, 2007).

18.35.046 Apportionment of costs.

- (1) Mediation and Arbitration. The complainant and hedge owner shall each pay 50 percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate costs.
- (2) Restorative Action. The costs of restorative action shall be determined by mutual agreement or through mediation, arbitration, court decision or settlement. (Ord. 790 § 8, 2007).

18.35.047 Limitation.

This chapter shall not be construed to affect obligations imposed by easements, covenants or agreements. (Ord. 790 § 9, 2007).

18.35.048 Application.

- (1) This chapter shall not apply to hedges located on property owned by the city (not including rights-of-way). Individuals who are adversely affected by hedges located on property owned by the city may approach the city for requested relief. The potential for obstruction of views or substantial obstruction of sunlight shall be considered by the city when planting hedges on property owned by the city.
- (2) This chapter shall not apply to hedges located within city rights-of-way. (Ord. 790 § 10, 2007).

18.35.050 Variance and appeal procedures.

- (1) The city manager or designee may grant a variance from the height restrictions of this chapter for special needs such as, but not limited to, game courts or protective requirements; provided, that:
 - (a) The owner or representative of the owner shall submit a detailed plan and written presentation of reasons why the height restriction should be allowed to be exceeded;
 - (b) The city shall send, at the applicant's expense, the request and its accompanying documents to all property owners in the surrounding area, as defined in subsection (6) of this section; and
 - (c) There is no written objection to the requested variance.
- (2) The city manager or designee may conduct research to determine the need for a variance and any impacts on the surrounding area, and may request the advice of a consultant, whose services shall be payable by petitioner.
- (3) If there is an objection in writing which cannot be resolved by agreement, the hearing examiner shall conduct a public hearing, with proper legal notice of the hearing to all property owners in the surrounding area as provided in Chapter 18.150 NPMC.
- (4) The hearing examiner shall base his or her determination solely on the information furnished by the petitioner, the objector(s) and the city manager or designee, and shall not grant the variance unless the hearing examiner finds that the requested variance is reasonably required and will not unreasonably interfere with the rights of the objecting property owners.
- (5) Any party aggrieved by a decision of the hearing examiner may appeal the decision to the King County superior court, following the procedure given in Chapter 18.150 NPMC.
- (6) For the purposes of this variance procedure, the owners of surrounding properties shall be those owning properties adjacent to petitioner's property, those across the street from any proposed fence and those within 100 feet of the proposed fence.
- (7) The appellant shall pay in accordance with the appeals fee schedule established by resolution of the city council. (Ord. 924 § 2(K), 2015; Ord. 833 § 9, 2009; Ord. 752 § 1, 2005).

¹ Code reviser's note: In Fig. 1, the vertical measurement of "20 feet" was added editorially at the request of the city.

21.02.390 Hedge.

"Hedge" means a row of closely planted shrubs or trees forming a boundary or barrier. (Ord. 2020 § 2, 1994; Ord. 190 Art. IV § 408, 1964)

Chapter 21.10

FENCE, HEDGE AND VISION OBSTRUCTION REGULATIONS

Sections:	
21.10.050	Purpose.
21.10.100	Fence and hedge standards.
21.10.200	Electric fences.
21.10.300	Barbed wire fences.
21.10.400	Vision obstruction by signs along public streets
21.10.900	Exceptions.

21.10.050 Purpose.

The purpose of this chapter is to provide regulations for fences, hedges, and other partially or totally vision obscuring installations to assure that desirable objectives of providing privacy, security, and screening of certain uses from streets and less intense uses can be met while minimizing undesirable obstruction of views, light, air, and motorists' and pedestrians' vision. It is recognized that along streets these goals may conflict. Fences along streets provide privacy and security, but long expanses of such fencing generally are undesirable due to the visual monotony and restricted vistas such expanses create. Moreover, fencing needs along streets differ between front yards, which are traditionally open and unobscured and contain vehicular access to streets, and side and rear yards, where family activities more often take place and thus require more privacy. Therefore, it is further stated that exceptions to the regulations of this chapter to allow site-screening fences in front yards are strongly discouraged and that where these regulations allow a continuous expanse of site-screening fencing along side and/or rear property lines abutting a street, the adverse aesthetic impacts of such fencing should be mitigated. (Ord. 2020 § 6, 1994; Ord. 1473 § 1, 1985; Ord. 1257 § 1, 1982)

21.10.100 Fence and hedge standards.

The following regulations shall apply to all fences, hedges, and other vision-obscuring structures:

- A. Height and Composition of Fences and Hedges, and General Standards.
 - 1. Vision-Obscuring Fences and Hedges. "Vision-obscuring fences and hedges" shall mean solid or partially open fences and hedges more than three feet in height, but not exceeding six feet in height or eight feet in height with an attached adornment (i.e., arbor, trellis, or other decorative features attached on the top of a fence) in residential-zoned areas and not exceeding eight feet in height in commercial-zoned areas. Maximum height shall be measured from the elevation of the ground adjacent to the fence or hedge on the higher side.
 - 2. Non-Vision-Obscuring Fences and Hedges. "Non-vision-obscuring fences and hedges" shall include solid or partially open fences and hedges not exceeding three feet in height, and open fences not exceeding six feet in height or eight feet in height with an attached adornment in residential zones and eight feet in height in commercial zones. "Open fences" shall mean those fences consisting of open chain link, widely spaced board rails or other materials which provide adequate driver visibility through the fence. Rail fences shall consist of horizontal rails not more than four inches wide and at least one foot between rail edges. Deviation from horizontal rails and from these dimensions may be allowed, providing the applicant can demonstrate to the satisfaction of the appropriate city officials that such deviation will provide at least as much visibility through the fence. Maximum height shall be measured from the elevation of the ground adjacent to the fence on the higher side; however, within sight distance triangles (see subsections (B)(1)(b) and (B)(1)(c) of this section) maximum height of solid or partially open fences and hedges not exceeding three feet shall be measured from the elevation of the street adjacent to such sight distance triangle.

- 3. Maintenance. All fences and hedges shall be maintained in a condition of repair so as not to be dangerous to human life or a danger to the property.
- 4. Conflicting Limitations. Where the limitations of this chapter conflict with site-screening or fencing required by this or other city ordinances, requirements relating to the site-screening and other required fences shall apply, subject only to adequate provisions for driver visibility.
- 5. Continuous Fencing Along Streets. Where continuous fencing along a street between intersections is allowed due to the length and/or number of side and/or rear lot lines abutting that street, landscaping shall be required between the fence and the property line in order to mitigate the adverse aesthetic impacts of such fencing. Where such landscaping is required, the fence may be built along the property line except for offset sections to contain the landscaping.

Such landscaping shall consist of ornamental landscaping of low plantings and high plantings. The minimum height of trees shall be eight feet for evergreen trees and 10 feet for all other species. Trees shall be spaced a maximum of 25 feet on center with branches eliminated to a height of six feet where necessary to prevent vision obstruction. Low evergreen plantings or a mixture of low evergreen and deciduous plantings with a maximum height of 30 inches, in bark or decorative rock, shall be provided so as to achieve 50 percent groundcover within two years.

B. Location of Fences and Hedges.

- 1. Residential Zones. Non-vision-obscuring fences and hedges may be located on any portion of a residential-zoned lot. Vision-obscuring fences and hedges may be located on portions of a residential-zoned lot other than the following:
 - a. Within 15 feet of the front lot line.
 - b. Within a triangular area at street intersections. Such "intersection sight distance triangle" is defined as having two sides of 30 feet, measured along the property lines from the property corner at the street intersection, and a third side connecting the ends of the two aforementioned sides.
 - c. Within a triangular area adjacent on one side to a street, and on a second side to a property having frontage on and requiring access from that street. Such "driveway sight distance triangle" is defined as having two sides of 15 feet measured along the property lines from the property corner common to the subject and adjacent property, and a third side connecting the end points on the two aforementioned sides. If any adjacent lot is undeveloped, it shall be construed as having access from all adjacent streets until the direction of access has been established, either by development or by waiver of right of direct access as per RCW 58.17.165.
 - d. However, fences, walls and hedges between three and six feet in height or fences up to eight feet in height with an attached adornment that comply with applicable design guidelines may be located in any portion of a multiple-family residential-zoned lot as long as they are not located within intersection and driveway sight distance triangles, do not obstruct driver and pedestrian visibility, comply with applicable Lynnwood Citywide Design Guidelines, as adopted by reference in LMC 21.25.145(B)(3), and are approved through project design review (Chapter 21.25 LMC).
- 2. Commercial Zones. In commercial zones, vision-obscuring or non-vision-obscuring fences or hedges up to eight feet in height may be located on side and rear property lines and within side and rear yards, but not nearer to any public street than a point equal to the closest part of any building thereon to that street.

However, fences, walls and hedges up to six feet high that comply with applicable design guidelines may be located in any portion of a commercial-zoned lot as long as they are not located within intersection and driveway sight distance triangles, do not obstruct driver and pedestrian visibility, comply with applicable Lynnwood Citywide Design Guidelines, as adopted by reference in LMC 21.25.145(B)(3), and are approved through project design review (Chapter 21.25 LMC).

- C. Referrals to Hearing Examiner. Any fence or wall approved through project design review (Chapter 21.25 LMC) does not have to be approved by the hearing examiner. The hearing examiner may review applications for fence permits in the following situations:
 - 1. Appeal. As an appeal of an administrative determination when:
 - a. An applicant proposes a fence which he/she believes meets the stated purpose of this section, but does not strictly conform to the regulations;
 - b. City staff believes that a proposed fence, while meeting regulations, may still obstruct visibility to such an extent that hazardous conditions would exist; or
 - c. There is a disagreement between staff and an applicant regarding interpretation of the fence and hedge regulations.

In such cases, the hearing examiner may stipulate standards for fence composition, height, and location.

2. Variance. As a variance, when an applicant believes the regulations of this chapter cause hardship. (Ord. 3192 § 5, 2016; Ord. 2388 § 6, 2001; Ord. 2020 § 6, 1994; Ord. 1582 § 1, 1987; Ord. 1473 §§ 1, 2, 1985; Ord. 1257 §§ 1, 2, 1982; Ord. 849 § 1, 1976; Ord. 686 § 1, 1973; Ord. 615 § 2, 1971; Ord. 190 Art. X § 10.1, 1964)

21.10.200 Electric fences.

Electric fences are permitted provided they comply with the requirements in this section.

An electric fence using an interrupted flow of current at intervals of about one second on and two seconds off shall be limited to 2,000 volts at 17 milliamperes current. All electric fences shall be posted with permanent signs a minimum of 36 square inches in area at intervals of 100 feet, stating that the fence is electrified. Electric fences manufactured by an established and reputable company and sold as a complete assembled unit carrying a written guarantee that complies with the requirements of this paragraph can be installed by an owner if the controlling elements of the installation carry a "U.L. Approved" seal. (Ord. 2020 § 6, 1994; Ord. 190 Art. X § 10.2, 1964)

21.10.300 Barbed wire fences.

No fences incorporating barbed wire are permitted except that barbed wire may be used on top of a six-foot high solid or chain link fence surrounding a public utility, an industrial plant site or a whole property, or barbed wire may be used when the fence is not a property line fence. (Ord. 2020 § 6, 1994; Ord. 190 Art. X § 10.3, 1964)

21.10.400 Vision obstruction by signs along public streets.

The legal setback for signs shall comply with the sign regulations of Chapter 21.16 LMC. This limitation does not apply to signs established or required by a public agency to service a public purpose. (Ord. 2310 § 29, 2000)

21.10.900 Exceptions.

The director may allow fences that do not conform to the regulations of this title at the following situations if the director finds that such fences are needed to protect the public health and safety:

- A. Outdoor recreation establishments or park and recreation facilities; or
- B. To prohibit illegal dumping.

As part of approving fences under this section, the director may impose conditions or limitations on fences allowed under this section in order to insure that such fences conform with the purpose and intent of this chapter and this title. (Ord. 2295 § 15, 2000)

CHAPTER 14.08. TREES—VIEW AND SUNLIGHT OBSTRUCTION

14.08.010. Purpose and findings.

This chapter is enacted to provide a voluntary mechanism for the resolution of disputes involving preserving and enhancing views and access to sunlight between Medina neighbors. It should not be construed to provide rights beyond those entitled under Washington law. The city has no right or obligation to enforce any of the provisions in MMC 14.08.030 through 14.08.150. This chapter is enacted in recognition of the importance of views and sunlight to properties within the City of Medina and to provide a fair and structured mechanism for resolving disputes relating to views and sunlight. The Medina comprehensive plan recognizes the importance of views and access to sunlight as well as the importance of preservation of trees and other vegetation. This chapter is based upon the following findings which are adopted by the city council of Medina following extensive study and public input from multiple public hearings.

- A. Among the features that contribute to the attractiveness and livability of the City of Medina are its trees, both native and introduced, and the views obtained from a variety of elevations throughout the city.
- B. Trees, whether growing singly, in clusters or in woodland settings, provide a wide variety of psychological and tangible benefits for both residents and visitors. Trees contribute to the natural environment by modifying temperatures and winds, replenishing oxygen to the atmosphere and water to the soil, controlling soil erosion, and providing wildlife habitat. Trees contribute to the visual environment by providing scale, color, silhouette and mass, by creating visual screens and buffers to separate structures, and by promoting individual privacy. Trees contribute to the economic environment of the city by stabilizing property values and reducing the need for surface drainage systems. Trees contribute to the cultural environment by becoming living landmarks of the city's history and providing a critical element of nature in the midst of urban development.
- C. Views also produce a variety of significant and tangible benefits for both residents and visitors to the city. Views contribute to the economic environment by substantially enhancing property values. Views contribute to the visual environment by providing inspiring panoramic vistas. Views of attractive subjects with significant horizontal expanse add substantial value to real property. Such views are considered significant in adding to the value of real property by the King County assessor. Access to plentiful sunlight enhances livability and promotes the general welfare of the entire community.
- D. Trees, views and access to sunlight and the benefits to be derived from each may come into conflict.

 Tree planting locations and species selections may produce both intended beneficial effects on the property where they are planted, and unintended deleterious effects on neighboring properties. Trees may block light, cause the growth of moss, harbor plant disease, retard the growth of grass and interfere with the enjoyment of views and sunlight, leading to the lessening of property values.
- E. With appropriate safeguards requiring consideration of all the factors set forth herein, affected property owners requesting view or sunlight access improvement can be given substantial relief without infringing upon the rights of the owners of properties containing trees.
- F. It is in the interest of the public welfare, health and safety to establish standards for the resolution of view and sun obstruction claims and to establish a structure for resolution of such claims which will provide a reasonable balance between the values of tree ownership and view and sunlight related values.
- G. When a view or sunlight obstruction dispute arises, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other traditional

- means. Those disputes which are not resolved through such means may be resolved by following the procedures established herein.
- H. It is the intent of the city that the provisions of this chapter receive thoughtful and reasonable application. It is not the intent of the city to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of the provisions of this chapter.

(Code 1988 § 18.16.010; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 1, 2007)

14.08.020. Definitions.

The definitions contained in Chapter 16.12 MMC shall apply to this chapter except that the definitions of this section shall apply in the case of any conflict with the definitions in Chapter 16.12 MMC.

- A. *Complainant* means a complaining property owner in the City of Medina who alleges that trees located on the property of another are causing an unreasonable obstruction of preexisting views or sunlight.
- B. *Owner* means any individual, firm, partnership, corporation, trust or other legal entity owning property in the City of Medina.
- C. Tree means a woody perennial plant which usually, but not necessarily, has a single trunk and a height of 15 feet or more, or has a diameter of five inches measured one foot above the root crown; references herein to "tree" shall include the plural. "Tree" shall also include any plant material or shrubbery planted or growing in a dense continuous line 20 feet in length or longer so as to form a thicket or naturally grown fence with an average height in excess of eight feet.
- D. Historic tree means any tree whose age precedes the incorporation of Medina in 1955.
- E. Tree owner means the record owner of the real property on which a tree is located.
- F. View means an actual or potential vista.
- G. Significant view means an actual or potential vista observable from within a primary living or entertaining area of a residence which has a significant horizontal expanse and which includes a vista of the surface of Lake Washington, the opposite shore of Lake Washington, Mercer Island, a bridge, the Olympic or Cascade Mountains, Mount Rainier, the golf course or the skylines of Seattle or Bellevue.
- H. Substantial deprivation of sunlight means the loss of a substantial portion of direct or indirect sunlight in a primary living or entertaining area or in a significant portion of the complainant's real property.
- I. Primary living or entertaining area means an area located between the exterior walls of a residence from which a view is observed most often by the occupants relative to other portions of the residence. The determination of primary living or entertaining area is to be made on a case-by-case basis.
- J. Dense screening means trees which are planted or growing closely together which combine to block views or obstruct access to sunlight.
- K. Objective evaluation means an evaluation based upon the values assigned to tree ownership, views and access to sunlight by reasonable persons in the community as opposed to the views of individual parties.
- L. Windowing means a form of thinning by which openings or "windows" are created to restore views or sunlight.

(Code 1988 § 18.16.020; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 2, 2007)

14.08.030. Rights established.

A person shall have the right to use the processes set forth in this chapter and to seek to preserve and restore views or sunlight which existed at any time since he or she purchased or occupied a property, when such views or sunlight are from the primary living or entertainment area and have subsequently been unreasonably obstructed by the growth of trees.

In addition to the rights described in this section, private parties have the right to seek remedial action for imminent danger caused by trees.

All persons are advised that trees which are located within public rights-of-way are governed by Chapter 16.52 MMC and that properties undergoing development are subject to the tree preservation and landscaping requirements of Chapter 16.52 MMC.

(Code 1988 § 18.16.030; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 3, 2007)

14.08.040. Unreasonable obstruction—Nuisance.

The unreasonable obstruction of views or sunlight by planting, uncontrolled growth or maintenance of trees satisfying the minimum requirements for relief in MMC 14.08.050(A) constitutes a private nuisance subject to redress as provided in this chapter. If a person shall plant, maintain or permit to grow any tree which unreasonably obstructs the view from or sunlight reaching the primary living or entertainment area of any other parcel of property within the City of Medina as set forth in MMC 14.08.050, then a complainant shall have the rights set forth in this chapter.

(Code 1988 § 18.16.040; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 4, 2007)

14.08.050. City guidelines concerning restorative action.

- A. *Minimum requirements*. No complainant shall be entitled to seek restorative action unless the complainant meets one of the following minimum criteria:
 - 1. If the application is based on loss of view: that the claimant has a significant view as defined herein or has had a significant view at some time since purchasing the property; that the tree alleged to be interfering with a significant view is located within 300 feet of the exterior wall of a primary living or entertaining area from which the significant view could be seen; and that more than 60 percent of the horizontal expanse of that portion of the view which is seen over the property of the tree owner is obscured by trees or structures located on the tree owner's property.
 - If the application is based on interference with access to sunlight: that the claimant suffers from a
 substantial deprivation of access to sunlight which had existed at some time subsequent to purchasing
 the property; and that the tree allegedly causing the substantial deprivation of sunlight is located
 within 50 feet of the complainant's property line.
- B. Additional elements for consideration. No claimant shall be entitled to seek restorative action unless the claimant's view or access to sunlight is unreasonably obstructed based upon an objective evaluation. In determining whether view or access to sunlight is unreasonably obstructed, the following guidelines, if relevant, shall be considered:
 - The extent of the alleged view obstruction, expressed as percentage of the total view, and calculated by means of a survey or by photographs or both;

- 2. The extent to which one or more of the unique view features described in MMC 14.08.020(G) are obstructed:
- 3. The extent to which the tree causes shade, reducing access to sunlight;
- 4. The extent to which the tree provides benefits to the tree owner or others including but not limited to visual screening, wildlife habitat, soil stability (as measured by soil structure, degree of slope and extent of root system), energy conservation and/or climate control;
- 5. The extent to which the tree affects neighboring vegetation;
- 6. The visual quality of the tree, including but not limited to species characteristics, size, form, texture, color, vigor, location and other tree factors, including such items as indigenous tree species, specimen tree quality and rare tree species;
- 7. The extent to which the provisions of Chapter 16.50 MMC, Critical Areas, and of Chapter 16.52 MMC, Tree Management Code, may be inconsistent with any portion of the relief requested;
- 8. The extent to which the proposed action may have an adverse affect on the health or stability of other trees.

(Code 1988 § 18.16.050; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 5, 2007)

14.08.060. Objective criteria to govern.

In determining whether relief may be granted, the objective criteria set forth in this chapter shall govern. No party shall be entitled to an unobstructed view.

(Code 1988 § 18.16.060; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 6, 2007)

14.08.070. Methods of relief.

Methods of relief that may be granted include pruning, thinning, windowing, topping, or removal of the tree. (Code 1988 § 18.16.070; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 7, 2007)

14.08.080. Limitations on relief.

Any relief which may be granted shall be limited by the following standards:

- A. No relief shall be granted unless the relief will substantially improve a significant view or access to sunlight.
- B. Only the least invasive procedure which would grant reasonable relief can be required.
- C. Removal will not be required unless pruning or topping would not provide adequate relief.
- D. If removal or topping are required, on the request of the tree owner, the tree shall be replaced at the complainant's expense. The replacement tree shall be chosen by the tree owner from a list of trees established by the city which will not cause a reoccurrence of the unreasonable obstruction.
- E. If one or more methods of relief would provide reasonable relief to the complainant, the reasonable desires of the tree owner shall govern.

(Code 1988 § 18.16.080; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 8, 2007)

14.08.090. Limitations on pruning.

All pruning ordered to be performed will conform to the following limitations:

- A. No more than one-third of the tree canopy shall be removed during any growing season.
- B. If the tree canopy is raised, removal of the lower branches shall not exceed 25 percent of the total tree canopy.
- C. In pruning to reduce the height of a tree, all cuts shall be made to strong laterals or to the parent limb. Whenever possible, limbs shall be cut back to laterals that are at least one-third the size of the parent limb.
- D. Pruning shall be evenly distributed throughout a tree's canopy.
- E. When appropriate based on the genus of the tree, pruning shall be performed only during the horticulturally approved times.
- F. In addition to the standards set forth herein, pruning shall comply with guidelines for pruning established by the National Arborist Association.

(Code 1988 § 18.16.090; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 9, 2007)

14.08.100. Process for resolution of obstruction disputes.

The following process shall be used in the resolution of view and sunlight obstruction disputes:

- A. Initial reconciliation. A complainant who believes that tree growth on the property of another has caused unreasonable obstruction of views or sunlight from a primary living or entertaining area shall notify the tree owner in writing of such concerns. Notification should, if possible, be accompanied by a personal discussion to enable the complainant and tree owner to attempt to reach a mutually agreeable solution.
- B. *Mediation*. If the initial reconciliation attempt fails, the complainant shall propose mediation as a timely means to settle the obstruction dispute.

Acceptance of mediation by the tree owner shall be voluntary, but the tree owner shall have no more than 30 days from service of notice to either accept or reject the offer of mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within 10 days.

It is recommended that the services of a professionally trained mediator be employed. Mediation may be arranged through the Seattle-King County Alternate Dispute Resolution Center.

The mediation meeting may be informal. The mediation process may include the hearing of the viewpoints of lay or expert witnesses and shall include a site visit to the properties of the complainant and the tree owner. The parties are encouraged to contact immediate neighbors and solicit input. The mediator shall consider the purposes and policies set forth in this chapter in attempting to help resolve the dispute. The mediator shall not have the power to issue binding orders for restorative action, but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for binding arbitration or litigation.

(Code 1988 § 18.16.100; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 10, 2007)

14.08.110. Tree claim preparation.

In the event that the initial reconciliation process fails, and mediation either is declined by the tree owner or fails, the complainant must prepare a tree claim and provide a copy to the tree owner in order to pursue either binding arbitration or litigation as set forth in this chapter. A tree claim shall consist of all of the following:

- A. A description of the nature and extent of the alleged obstruction, including pertinent and corroborating physical evidence. Evidence may include, but is not limited to, photographic prints, negatives or slides. Evidence of the date of property acquisition by the complainant must be included.
- B. The location of all trees alleged to cause the obstruction, the address of the property upon which the trees are located, name and address.
- C. Evidence of the failure of initial reconciliation to resolve the dispute. The complainant must provide evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence.
- D. Evidence that mediation has been attempted and has failed, or has been declined by the tree owner.
- E. The specific restorative actions proposed by the complainant to resolve the unreasonable obstruction.

(Code 1988 § 18.16.110; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 11, 2007)

14.08.120. Binding arbitration.

In those cases where the initial reconciliation process fails and where mediation is declined by the tree owner or has failed, the complainant must offer in writing to submit the dispute to binding arbitration, and the tree owner may elect binding arbitration.

The tree owner shall have 30 days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within 21 days, and shall indicate such agreement in writing.

The arbitrator shall use the provisions of this chapter to reach a fair resolution of the dispute and shall submit a complete written report to the complainant and the tree owner. The report shall include the arbitrator's findings with respect to MMC 14.08.050(A) and (B), a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. A copy of the arbitrator's report shall be filed with the city clerk. The decision of the arbitrator is binding on the parties. Any decision of the arbitrator may be enforced by civil action, as provided by law.

(Code 1988 § 18.16.120; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 12, 2007)

14.08.130. Litigation.

In those cases where binding arbitration is declined by the tree owner, then civil action may be pursued by the complainant for resolution of the view or sunlight obstruction dispute under the provisions and guidelines set forth in this chapter.

The complainant must state in the lawsuit that mediation and arbitration were offered and not accepted. A copy of any final resolution of the litigation shall be filed with the city clerk.

(Code 1988 § 18.16.130; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 13, 2007)

14.08.140. Apportionment of costs.

- A. *Mediation and arbitration.* The complainant and tree owner shall each pay 50 percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate costs.
- B. *Restorative action*. The costs of restorative action shall be determined by mutual agreement or through mediation, arbitration, court decision or settlement.

(Code 1988 § 18.16.140; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 14, 2007)

14.08.150. Limitation.

This chapter shall not be construed to affect obligations imposed by easement, covenants or agreements.

(Code 1988 § 18.16.150; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 15, 2007)

14.08.160. Application.

- A. This chapter shall not apply to trees located on property owned by the city (not including rights-of-way). Individuals who are adversely affected by trees located on property owned by the city may approach the city park board for requested relief. The potential for obstruction of views or substantial obstruction of sunlight shall be considered by the city when planting trees on property owned by the city.
- B. This chapter shall not apply to trees located within city rights-of-way which trees shall continue to be subject to the requirements of Chapter 16.52 MMC.
- C. This chapter shall not apply to historic trees.

(Code 1988 § 18.16.160; Ord. No. 958 § 1 (Exh. A), 2018; Ord. No. 816 § 16, 2007)

95.10 Definitions

The following definitions shall apply throughout this chapter unless the context clearly indicates otherwise. Definitions that apply throughout this code are also located in Chapter 5 KZC.

- 1. Arborist Report Written review and recommendations, submitted by a qualified professional arborist for the purpose of meeting the requirements set forth in this chapter.
- 2. Caliper The industry standard for trunk measurement of nursery stock, applicable to required replacement trees. Caliper shall be measured six inches above the ground.
- 3. Critical Root Zone (CRZ) –The area encircling the trunk of a tree equal to one foot radius for every inch of DBH. Example: a 24-inch DBH tree has a 24-foot radius CRZ measured from the face of the trunk.
- 4. Crown The area of a tree containing leaf- or needle-bearing branches.
- 5. Diameter at Breast Height (DBH) The diameter or thickness of a tree trunk measured at 4.5 feet above average grade. For trees with multiple trunks at 4.5 feet height, only trunks three inches DBH or greater shall be included. Where a tree splits into several trunks close to ground level, the DBH for the tree is the square root of the sum of the DBH for each individual stem squared (example with three trunks: DBH = square root [(stem1)² + (stem2)² + (stem3)²]). If a tree has been removed and only the stump remains that is below 4.5 feet tall, the size of the tree shall be the diameter of the top of the stump.
- 6. Dripline The distance from the tree trunk that is equal to the furthest extent of the tree's crown. For trees with asymmetrical crowns, the dripline shall be measured in all four cardinal directions (north, south, east, west).
- 7. Impact A condition or activity that adversely affects any part of a tree, including, but not limited to, the trunk, branches, or CRZ.
- 8. Inner Critical Root Zone (Inner CRZ) An area half the distance of the CRZ that, when impacted, may compromise the structural integrity of the tree. Example: a 24-inch DBH tree has a 12-foot radius inner critical root zone measured from the face of the trunk.
- 9. Prohibited Plant List A list of trees and vegetation published by the Planning and Building Department that are invasive, noxious, or inappropriate species for retention or replacement trees.
- 10. Qualified Professional Arborist An individual with relevant education and training in arboriculture or urban forestry, having two or more of the following credentials:
 - · International Society of Arboriculture (ISA) Certified Arborist;
 - Tree Risk Assessor Qualification (TRAQ) as established by the ISA (or equivalent);
 - · American Society of Consulting Arborists (ASCA) registered Consulting Arborist;
 - Society of American Foresters (SAF) Certified Forester for Forest Management Plans;
 - · Board Certified Master Arborist as established by the ISA.

A qualified professional arborist must have the TRAQ or equivalent qualification for the submittal of tree risk assessment reports related to hazard tree removal. For tree retention associated with a <u>development permit</u>, a qualified professional arborist must have, in addition to the above credentials, a minimum of three years' experience working directly with the protection of trees during construction and have experience with ascertaining tree survival after construction. A qualified

professional arborist must also be able to prescribe appropriate measures for the preservation of trees during land development.

- 11. Pruning The practice of selectively removing branches (or roots) from a tree or other plant, using approved practices, to achieve a specified objective. Pruning that does not follow best management practices in the ANSI A300 Pruning Standards and results in more than 25 percent removal during a pruning event is not an acceptable practice.
- 12. Significantly Wooded Site For a forest stewardship plan, a subject property that has numerous trees with crowns that, when outlined in aerial imagery, cover at least 40 percent of the total area of the property.
- 13. Site Disturbance Any development, construction, or related operation that could alter the subject property, including, but not limited to, soil compaction; tree or tree stump removal; road, <u>driveway</u>, or building construction; installation of utilities; or grading.
- 14. Topping Indiscriminate cuts made between branches that leave a stub, used to reduce the height or crown size of an established tree. Topping is not an acceptable practice pursuant to <u>best management practices</u> in the ANSI A300 Pruning Standards.
- 15. Tree Protection Zone (TPZ) A defined area within and including an outer boundary, as determined by a qualified professional arborist, in which certain activities are prohibited or restricted to prevent or minimize potential impacts from construction or development, applicable to individual trees or groups of tree trunks, roots and soil. TPZ is measured in feet from the face of the trunk and may be determined using critical root zone, dripline, exploratory root excavations or other methodologies. The TPZ is variable depending on species, age and health of the tree, soil conditions and proposed construction. TPZ denotes the location of tree protection fencing.
- 16. Tree Removal The removal of a tree, through either direct or indirect actions, including but not limited to: (1) clearing, damaging, girdling, or poisoning, in each case, resulting in an unhealthy or dead tree; (2) topping that results in the removal of more than 25 percent of the live crown; or (3) damage to roots or trunk that is likely to destroy the tree's structural integrity.
- 17. Trees A tree or a group of trees may fall under one of the following definitions for purposes of this chapter:
 - a. Grove A group of three or more viable regulated trees with overlapping or touching crowns that are located on a proposed development site; one of which is located in a required yard.
 - b. Hazard Tree A tree/tree part assessed by a qualified professional arborist as having an extreme or high overall risk rating using the ISA Tree Risk Assessment Qualification (TRAQ) method in its most current form, as applied in KZC 95.25, that meets all the following criteria:
 - 1) A tree with a combination of structural defects and/or disease which makes it subject to a high probability of failure;
 - 2) Is in proximity to moderate to high-frequency occupied targets, <u>persons</u> or property that can be damaged by tree failure; and
 - 3) The hazard condition of the tree cannot be lessened with reasonable and proper arboricultural practices nor can the target be removed.
 - c. Hedge Trees Five or more trees of the same <u>species</u> with overlapping or touching crowns that are in fair or poor condition; have been planted and maintained in a linear formation at maximum eight-foot spacing, typically to function as a screen or barrier.
 - d. Landmark Tree A regulated tree with a minimum 26-inch DBH.

- e. Nuisance Tree A tree that meets either of the following criteria:
 - 1) Is causing obvious physical damage to private or public structures, including, but not limited to, a: sidewalk, curb, road, driveway, parking lot, building foundation, or roof; or
 - 2) Has sustained damage from past maintenance practices or from naturally occurring events such as wind, ice or snow-loading.

The problems associated with a nuisance tree must be such that they cannot be corrected by reasonable practices, including, but not limited to: pruning of the crown or roots of the tree, bracing, cabling to reconstruct a healthy crown.

- f. Public Tree A tree located in parks, within maintained or unmaintained public rights-of-way, in a stormwater facility, or on other property owned by the City.
- g. Regulated Tree A tree that is at least six inches DBH that is not listed on the Prohibited Plant List.
- h. Retention Value The <u>Planning Official</u>'s designation of a tree based on information provided by a qualified professional arborist that is one of the following:
 - 1) High any of the following trees:
 - a) Grove.
 - b) Landmark tree.
 - c) A viable tree with any portion of the trunk located in a required yard, land use buffer, and/or common open space.
 - 2) Moderate A viable tree that is not a high retention value tree.
- i. Street Tree A public tree located within the public <u>right-of-way</u>; provided, that if the trunk of the tree straddles the boundary line of the public <u>right-of-way</u> and the abutting property, it shall be on the abutting property and subject to the provisions of this chapter.
- j. Viable Tree A regulated tree on proposed development sites that fits the viable criteria in Table 95.30.2 based on the tree condition ratings pursuant to KZC 95.30. A tree that is not viable is also a tree in an area where removal is unavoidable due to the anticipated development activity after having applied the provisions in this chapter.
- 18. Wildlife Snag The remaining trunk of a tree that is intentionally reduced in height and usually stripped of its branches with the intent of providing habitat.
- Windfirm A condition of a tree in which it withstands average peak local wind speeds and gusts.

(Ord. 4786 § 1, 2022)













Review of HB-1220 and Example Ordinances	Proposed Planning Commission Action: Discussion Only

Presented by:	SBN Planning – Town Planner
Exhibits:	A. Medina Code Example – Ord.1008 B. Normandy Park Code Example – Ord.1041

Background:

In October, the Planning Commission discussed Engrossed Second Substitute House Bill 1220 ("Bill"). The Bill eliminates zoning barriers related to the provision of transitional housing, permanent supportive housing, emergency shelters, and emergency housing. At the October meeting, the Commission directed the Town Planner to put together examples of ordinances that regulate the impact of the Bill in other towns. There is no requirement for the Town to enact any ordinance in response to the bill, but nearby jurisdictions such as Medina and Normandy Park have adopted related ordinances.

Any ordinance passed by the Town cannot prohibit the aforementioned types of housing per the standards set by the Bill. The provision in the Bill requiring accommodation of emergency supportive housing and emergency shelters in zones that allow hotels does not apply to the Town as it lacks hotel zoning. However, other provisions require the accommodation of transitional and permanent supportive housing in any zones in which residential dwelling units are allowed. In general, permanent supportive housing is meant to be a permanent form of housing for those facing homelessness. In contrast, transitional housing provides temporary accommodation for those looking to progress from homelessness to permanent supportive housing.

As mentioned in the October Planning Commission meeting, it is unlikely that any Yarrow Point homes or developable lands would be purchased for one of these facilities due to market conditions. The most likely scenario is if a homeowner donates their Yarrow Point home for transitional or permanent supportive housing as a philanthropic endeavor.

Discussion:

Based on the Bill, the Town can choose to regulate the facilities it must accommodate. The Bill states that "(r)easonable occupancy, spacing, and intensity of use requirements may be imposed by ordinance...to protect public health and safety." Medina Ordinance 1008 (Exhibit A) highlights how some of these regulations could take shape in Yarrow Point. Yarrow Point's Town Attorney has cautioned that some limitations and buffer

requirements in Medina's code may be problematic given Yarrow Point's size. These requirements may not meet the "reasonable" standard set by the bill.

The Town Attorney also expressed concerns about how the regulations may be adopted given the ongoing developments to the requirements of ESSHB 1220. Commerce still needs to release the number of facilities each jurisdiction must plan for, and upon releasing these numbers, any permanent regulation may have to change. Normandy Park Ordinance 1041 (Exhibit B) demonstrates an approach using an interim regulation, which could provide the Town with more flexibility moving forward as Commerce updates the requirements related to the Bill.

Recommended Action:

Discuss possible code amendments and direct staff on next steps.

Exhibit A

Ordinance No. 1008

MEDINA CITY COUNCIL

AN ORDINANCE OF THE CITY OF MEDINA, WASHINGTON, AMENDING PORTIONS OF TITLE 16 OF THE MEDINA MUNICIPAL CODE INCLUDING MMC CHAPTERS 16.12, 16.21, AND 16.31 TO IMPLEMENT E2SHB 1220 AND ALLOW PERMANENT SUPPORTIVE HOUSING AND TRANSITIONAL HOUSING FACILITIES IN ALL LAND USE DISTRICTS WHERE RESIDENTIAL DWELLINGS ARE ALLOWED AND MAKING OTHER RELATED CHANGES FOR CONFORMANCE AND CONSISTENCY WITH STATE LAW; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in 2021, the Washington State Legislature enacted Engrossed Second Substitute House Bill 1220 (E2SHB 1220, effective July 25, 2021), which requires Washington municipalities, including the City of Medina, to (1) implement, allow and regulate the development and operation of permanent supportive housing and transitional housing facilities in all land use districts where residential dwellings are allowed; and (2) to plan for and accommodate various affordable, supportive, transitional and other housing types in the next Comprehensive Plan update to the extent applicable in the municipality's zoning classifications; and

WHEREAS, the purpose of this Ordinance is to address the first topic above—development and operation of permanent supportive housing and transitional housing facilities in each of the City's zone districts where residential dwellings are allowed; and

WHEREAS, the City of Medina allows residential dwellings in each of the City's zoning districts; and

WHEREAS, existing Comprehensive Plan Goal H-G2 directs the City to explore affordable housing opportunities; and

WHEREAS, the Medina Planning Commission reviewed and evaluated proposed amendments to the Medina Municipal Code (MMC or Code) that would implement, allow and regulate the development and operation of permanent supportive housing and transitional housing in the City's residential land use districts; and

WHEREAS, the City published a legal notice in the Seattle Times on November 22, 2021 for a virtual public hearing before the Planning Commission to solicit and receive public testimony regarding the proposed amendments; and

WHEREAS, the Planning Commission duly held a public hearing on December 14, 2021 for that purpose; and

WHEREAS, after considering staff recommendations, hearing public comment and reviewing the record, the Planning Commission voted to recommend approval of proposed amendments to the City Council for review in 2022; and

Ordinance No.1008 Page 1 of 16 WHEREAS, the City provided a Notice of Intent to Adopt code amendments required by E2SHB 1220 to the Washington State Department of Commerce (Commerce) in accordance with RCW 36.70A.106 and MMC 16.81.070 on December 17, 2021; and

WHEREAS, a State Environmental Policy Act (SEPA) environmental checklist was prepared for the proposed amendments and a Determination of Non-Significance (DNS) was issued thereon on December 20, 2021; and

WHEREAS, the City Council duly held two public meetings to consider and review the proposed amendments; and

WHEREAS, the City published a legal notice in the Seattle Times on February 17, 2022 for a virtual public hearing on March 14, 2022 before the Medina City Council to solicit and receive additional public testimony regarding the Planning Commission's recommendation on the proposed amendments and additional changes and amendments thereto; and

WHEREAS, the City Council has considered and reviewed the proposed amendments, City Staff recommendations, and public testimony, and hereby finds that the amendments reflected and set forth herein are consistent with the requirements of E2SHB 1220 and the Medina Comprehensive Plan, will enhance the public health, safety and welfare, and will advance the public interest; and

WHEREAS, the City Council therefore desires to amend the existing MMC sections and chapters as set forth in this Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MEDINA, WASHINGTON, DOES ORDAIN AS FOLLOWS:

<u>Section 1.</u> Findings. The City Council adopts the foregoing recitals as its findings and conclusions concerning the matters described therein, also intending thereby to provide a record of the facts, issues, and process involved in this consideration.

<u>Section 2.</u> Amendment to MMC Section 16.12.170. Section 16.12.170 of the Medina Municipal Code is amended to read as follows:

16.12.170 "P" definitions.

"Parcel." See definition of "lot."

"Park, public" means a natural, landscaped, or developed area, which may or may not contain structures, that is provided by a unit of government to meet the active or passive, outdoor or indoor, recreational needs of people.

"Parking area" means any area designed and/or used for parking vehicles and other motorized transportation.

"Parking space" means an area which is improved, maintained and used for the sole purpose of temporarily accommodating a motor vehicle that is not in use.

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"Parties of record" means:

- 1. The applicant and any appellant;
- 2. The property owner, if different than the applicant;
- 3. The city;
- 4. Any person or public agency who individually submitted written comments to the city prior to the closing of the comment period provided in a legal notice;
- 5. Any person or public agency who individually submitted written comments for or testified at a predecision hearing;
- 6. Any person or public agency who submitted to the city a written request to specifically receive the notice of decision or to be included as a party of record prior to the closing of an open-record predecision hearing.
- 7. A party of record does not include a person who has only signed a petition. (See MMC 16.80.160.)

"Patio" means a hard surfaced area of the ground beyond a building designed, established and/or installed to provide for outdoor living, cooking and recreation, some sides of which are open and which may or may not have a permanent overhead covering.

"Penthouse, stair and elevator" means an enclosed structure on or above the roof of any part of a building, which is designed or used for ingress and egress by means of stairs or an elevator.

"Permanent supportive housing" means one or more subsidized, leased dwelling units with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW.

"Permeable interlocking concrete pavements (PICP)" means a type of permeable pavement made with manufactured modular concrete paving units. Pavements constructed with these pavers create joints that are filled with permeable aggregates and installed on an open-graded bedding course to allow water to infiltrate.

"Permeable pavement" means a low impact development best management practice consisting of paving material which is designed to allow passage of water through the pavement section. It often includes an aggregate base that provides structural support and acts as a stormwater reservoir.

Ordinance No.1008 Page 3 of 16 "Permit fee" means a payment of money imposed upon development as a condition of application for or approval of development to cover the costs of processing applications, inspecting and reviewing plans or other information required to be submitted for purpose of evaluating an application, or inspecting or monitoring development activity.

"Person" means, as used in this title, any individual, partnership, association, corporation, unit of government or any other legal entity.

"Personal wireless service facilities" means the same as that phrase is given meaning pursuant to 47 U.S.C. 332(c)(7)(C)(ii).

"Personal wireless services" means the same as that phrase is given meaning pursuant to 47 U.S.C. 332(c)(7)(C)(i).

"Pervious concrete" means a type of permeable pavement made with a rigid pavement similar to conventional concrete with the fine material reduced to form voids between the aggregate and allow water to infiltrate.

"Planned land use development (PLUD)" means the provisions for varying zoning requirements adopted by Ordinance No. 213 and repealed by Ordinance No. 435.

"Plantable area, right-of-way" means the pervious surface portion of the city's street rights-of-way located between the street surface edge and the adjoining property line. The plantable area also includes the area of any planting strip between the existing sidewalk or pathway and the edge of the street. The plantable area excludes the sidewalk and driveways.

"Planting bed boxes, raised" means a series of walls fit closely together, without a cover, each wall one foot wide or less, used to frame soils elevated above the finished grade for growing plants and built of timber, stone, brick, concrete and similar types of framing materials.

"Plat" means a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys, or other divisions and dedications.

"Plat certificate" means a title report or subdivision guarantee that is prepared by a title company for the property contained in a proposed short subdivision, subdivision or binding site plan, to include, as a minimum, all owners of record, easements and encumbrances affecting said property.

"Plat, final" means the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and Chapter 58.17 RCW.

"Plat, preliminary" means a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision or short subdivision.

"Plat, short" means the map or representation of a short subdivision.

Ordinance No.1008 Page 4 of 16 "Ponds" means areas of open water fed by springs, or fed by natural and enhanced drainage ways, which are so intrinsically associated with a wetland, stream or natural watercourse as to merit protection under the provisions of this chapter.

"Porch" means a structure abutting a main wall of a building having a roof, but with walls that are generally open and unenclosed and with direct access to or from a building. An uncovered porch is similar to an uncovered deck, but provides main access to or from a building. (See "deck" and "veranda.")

"Porous asphalt" means a type of permeable pavement made with a flexible pavement similar to standard asphalt that uses a bituminous binder with the fine material reduced to form voids between the aggregate and allow water to infiltrate.

"Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having fewer impacts to critical areas.

"Premises" means the same as the definition in MMC 8.04.010(D).

"Priority habitat" means habitat type or elements with unique or significant value to one or more species as classified by the Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element (WAC 173-26-020(28)).

"Profit" means the value difference in what a building or structure is worth as a result of improvements made to the building or structure, and the cost of replacement of the building or structure. For the purpose of this chapter "profit" shall be an estimate.

"Project permit" or "project permit application" means any land use or environmental permit or license required from the city for a project action, including but not limited to building permits, subdivisions, conditional/special uses, shoreline permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan, tree removal permits, and right-of-way permits, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations.

"Property line" means the legal boundary of a parcel of land.

"Property line, front" means, unless otherwise set forth in this title, the property line contiguous with the street right-of-way.

"Property line, rear" means, unless otherwise set forth in this title, any property line other than the front property line which is parallel to the front property line or within 45 degrees of being parallel to the front property line.

"Property line, side" means any property line that is not a front or rear property line.

"Pruning" means the selective removal of branches and/or trunks following ANSI standards for safety, health, structure, shape, and aesthetics. This definition includes trimming. Except where approved by the city arborist to reduce a hazard, pruning shall be consistent with one of the following methods:

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- 1. Clean: Cleaning a tree shall consist of pruning to remove one or more nonbeneficial parts: dead, diseased, and/or broken branches;
- 2. Raise: Selective pruning to provide vertical clearance;
- 3. Reduce: Selective pruning to decrease the height and/or spread of a tree and shall not reduce the foliage crown by more than 25 percent annually (this method is employed to minimize risk of failure, balance the canopy, height and spread reduction, utility clearance or to improve tree aesthetics); or
- 4. Thin: Selective pruning to reduce the density of small live branches typically in the 10 to 15 percent range of the foliage crown, but not exceeding 25 percent annually.

"Pruning, hazard" means removing hazardous branches throughout a canopy, or in a clearly specified area of the canopy where safety considerations are paramount. Such branches may be broken, exceedingly weighted, or cracked.

"Public meeting" means an informal meeting, hearing, workshop, or other public gathering of persons to obtain comments from the public or other agencies on a proposed project permit prior to the city's decision. A public meeting does not include an open-record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the city's project permit application file.

"Public safety use" means police, fire and similar emergency services provided by a public entity.

<u>Section 3.</u> Amendment to MMC Section 16.12.210. Section 16.12.210 of the Medina Municipal Code is amended to read as follows:

16.12.210 "T" definitions.

"Target," when used for assessing hazard trees, means people, property or activities that could be injured, damaged, or disrupted by a tree.

"Target, likelihood of impact" means the chance of a target being impacted by a failed part of a tree. The likelihood of impacting a target can be categorized as follows:

- 1. Very low: the chance of the failed tree or branch impacting the specific target is remote;
- 2. Low: it is not likely that the failed tree or branch will impact the target;
- 3. Medium: the failed tree or branch may or may not impact the target, with nearly equal likelihood; or
- 4. High: the failed tree or branch will most likely impact the target.

In evaluating the likelihood of impacting a target, the occupancy rate of the target and any factors that could affect the failed tree as it falls towards the target shall be used in determining the likelihood of impact.

"Temporary public facility" means a land use and/or facilities owned, operated, and maintained temporarily by a city government agency, a public or nonprofit school, or religious organization.

Ordinance No.1008 Page 6 of 16 "Terrace" means a level platform or shelf of earth supported on one or more faces by a wall, bank of turf, stable inclined grades, or the like.

"Title report" means the written analysis of the status of title to real property, including a property description, names of titleholders and how title is held (joint tenancy, etc.), encumbrances (mortgages, liens, deeds of trusts, recorded judgments), and real property taxes due.

"Tract" means an extended area of land reserved exclusively for a special use such as open space, surface water retention, utilities, or access. Tracts reserved for a special use are not considered building sites.

"Transitional housing" means one or more dwelling units owned, operated, or managed by a nonprofit organization or governmental entity in which supportive services are provided to individuals and families that were formerly homeless, with the intent to stabilize them and move them to permanent housing within a period of not more than twenty-four months, or longer if the program is limited to tenants within a specified age range or the program is intended for tenants in need of time to complete and transition from educational or training or service programs.

"Treasurer, county" means the person defined in Chapter 36.40 RCW, or the office of the person assigned such duties under the King County Charter.

"Treatment best management practice" means a facility designed to remove pollutants contained in stormwater. Some methods of pollutant removal include sedimentation/settling, filtration, plant uptake, and bacterial decomposition. Treatment BMPs include, but are not limited to: vegetated filter strips, oil and water separators, biofiltration swales, and linear sand filters. Further information can be found in the stormwater manual adopted under MMC 13.06.020.

"Tree" means a self-supporting woody perennial plant, excluding a bush or shrub.

"Tree, dead" means a tree that is no longer alive, has been removed beyond repair, or is in an advanced state of decline (where an insufficient amount of live tissue, green leaves, limbs or branches exists to sustain life) and has been determined to be in such a state by a certified arborist during a nondormant or other natural stage of the tree that would minimize the likelihood that the tree would be mistakenly identified as being in such a dead state.

"Tree, hedge" means a row of smaller trees planted close together and growing in a dense continuous line 20 feet in length or longer that form a thicket barrier.

"Tree protection zone" means area identified by the director in which no soil disturbances are permitted and activities are restricted.

"Tree, right-of-way" means a tree with at least two-thirds of its trunk diameter on public right-of-way.

"Tree risk" means the combination of the likelihood of an event and the severity of the potential consequences. In the context of trees, risk is the likelihood of a conflict or tree failure occurring and affecting a target and the severity of the associated consequences: personal injury, property damage, or disruption of activities. Risk is evaluated by categorizing or quantifying both the likelihood (probability) of occurrence and the severity of the consequences.

"Tree species" means group of trees that resemble each other closely and interbreed freely.

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"Tree topping" means an inappropriate technique to reduce tree size that cuts through a stem more than two years old at an indiscriminate location.

"Truck gardening" means the same as "market gardens," which is the small-scale production of fruits, vegetables and flowers, frequently sold directly to consumers.

<u>Section 4.</u> Amendment to MMC Section 16.21.030. Section 16.21.030 of the Medina Municipal Code is amended to read as follows:

16.21.030 Use table.

Table 16.21.030 establishes those uses which are permitted, those uses subject to specific development standards, and those uses requiring special approval and that are prohibited within each zoning district.

Table 16.21.030: Land Use Table

Uses	R-16 Zone	R-20 Zone	R-30 Zone	SR-30 Zone	NA Zone	Public Zone
Res	sidential	Uses				
Accessory Dwelling Units	Р	Р	Р	Р	Р	Р
Accessory Recreational Facilities	Α	Α	Α	Α	Α	Α
Accessory Recreational Facilities – Minor	L	L	L	L	L	L
Accessory Uses – On-Site	Р	Р	Р	Р	Р	Р
Accessory Uses – Off-Site	L	L	L	L	L	L
Adult Family Home	L	L	L	L	L	L
Detached, Single-Family Dwelling	Р	Р	Р	Р	Р	Р
Family Day Care Home	L	L	L	L	L	L
Manufactured Home	L	L	L	L	L	L
Permanent Supportive Housing	<u>L</u>	<u>L</u>	L	<u>L</u>	<u>L</u>	<u>L</u>
Transitional Housing	<u>L</u>	<u>L</u>	L	<u>L</u>	<u>L</u>	<u>L</u>
Nonr	esidenti	al Uses				
Automobile Service Station					L	
Automobile Mechanical Repair					L	
Commercial Horticulture/Truck Gardening/Agriculture, Excluding the Raising of Animals				L		
Clubhouse – Public/Private		SU				SU
Golf Course		SU				SU

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Uses	R-16 Zone	R-20 Zone	R-30 Zone	SR-30 Zone	NA Zone	Public Zone	
Historical Use	Н				Н		
Home Business	L	L	L	L	Р	Р	
Public ar	ıd Institu	tional Us	ses				
City Government Facilities						CU	
Post Office						SU	
Public Safety						CU	
Public Park	Р	Р	Р	Р	Р	Р	
Electrical Power and Utility Substation	SU	SU	SU	SU	SU	SU	
Accessory Recreational Facilities – Public	Р	Р	Р	Р	Р	Р	
Religious Facility	SU	SU	SU	SU	SU	SU	
School – Public/Private (Preschool to Grade 12)						SU	
Temporary City Government Facilities	L	L	L	L	Р	Р	
Wireless Communication Facilities	SU	SU		SU	SU	SU	
Shoreline Uses							
See Chapter 16.62 MMC for a list of uses	within the	e shorelir	ne jurisdio	ction.			
*See MMC 16.21.020 for explanation of "F	P," "L," "A	," "SU," "	CU," and	"H."			

<u>Section 5.</u> <u>Amendment to MMC Chapter 16.31.</u> Chapter 16.31 of the Medina Municipal Code is amended to add new Section 16.31.060 and read as follows:

Chapter 16.31

LIMITED USES

Sections:	
16.31.010	Home business.
16.31.020	Adult family homes and family day care homes.
16.31.030	Manufactured homes and trailers.
16.31.040	Automobile-related service uses.
16.31.050	Commercial horticulture, truck gardening, and agriculture uses.
16 31 060	Permanent supportive housing and transitional housing facilities

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16.31.010. Home business.

- A. Permissive use. A home business is permitted within a single-family dwelling provided it meets all the standards and requirements of this section. Home business is defined in MMC 16.12.090. Activities not able to meet all the standards and requirements of this section may be performed in non-residential zone districts of the city if otherwise allowed under the MMC.
- B. Standards. Every home business shall meet the following standards:
 - 1. The home business shall be clearly incidental and secondary to the use and function of the single-family dwelling as a residence.
 - 2. All external indications of or impacts from a home business shall be compatible with the residential character and nature of the neighborhood.
 - The home business shall not cause or result in material changes in neighborhood safety, traffic, number or frequency of vehicle trips, parking demand or parking requirements.
 - 4. The following are prohibited in connection with a home business: signs; noise; smoke or odors detectible outside the dwelling; retail trade; pickup and delivery; external structure modifications; and exterior lighting.
- C. Requirements. Every home business shall meet the following requirements:
 - 1. The home business shall be located and operated wholly within the single-family dwelling.
 - 2. No more than one person may be employed who is not a family member residing in the residence.
 - Any employee, client(s) and family members shall use off-street parking exclusively.
 - 4. Not more than two vehicles owned or operated by an employee and/or a client shall be parked on the premises at any time.
 - 5. All required local, regional, state, and federal permits and licenses shall have been obtained and shall be current and valid.
 - 6. All required permits and authorizations for the dwelling structure and other attributes of the property and premises shall have been issued by the city and be in current compliance with the Medina Municipal Code.
- D. *Exclusions*. The following activities are not allowed as a home business:
 - 1. Storage, receipt or transfer of equipment, materials, and commodities.
 - 2. Stables, kennels, or husbandry of animals; any activities involving any exotic animal or farm animal; activities that are not permitted by MMC chapter 6.04.
 - 3. Agriculture farming and sales activities.
 - 4. Vehicle repair, automobile detailing or automotive servicing activities.
 - 5. Production or storage of any hazardous waste or substance.
 - 6. Any nonconforming use, however or whenever established.

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- 7. Any activity that is prohibited by the Medina Municipal Code.
- E. *Enforcement*. Pursuant to MMC 16.10.040 and 16.10.050, the director shall apply the provisions of this section to the activities of a home business whenever necessary or appropriate to determine whether the home business meets the requirements and standards of the Medina Municipal Code, and shall issue findings and a decision thereon.

16.31.020. Adult family homes and family day care homes.

- A. Adult family homes are a permitted use in any zone allowing a single-family dwelling provided the adult family home complies with underlying zoning requirements and the requirements set forth in Chapter 70.128 RCW.
- B. Family day care homes are a permitted use in any zone allowing a single-family dwelling provided they have obtained a permit for operation from the city. Permits shall be issued by the city, at no cost, upon proof that the family day care home has obtained all necessary licenses and approvals from the state to operate such a facility.

16.31.030. Manufactured homes and trailers.

- A. Manufactured homes are permitted pursuant to RCW 35A.21.312 provided:
 - 1. At the time of installation, the manufactured home is new;
 - The manufactured home is placed upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;
 - 3. The manufactured home shall comply with all zoning requirements such as structural coverage, lot area, setbacks, and height;
 - 4. The manufactured home is thermally equivalent to the State Energy Code; and
 - 5. The manufactured home meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.
- B. Trailers for temporary occupancy. The owner of a parcel of land where no single-family dwelling is situated may occupy one trailer as a temporary dwelling during the construction of a new dwelling thereon provided:
 - A valid building permit for construction of a single-family dwelling has been issued and a good faith effort is being made to start construction of said dwelling immediately, and work is pursued with diligence;
 - 2. The trailer is located in a manner so as to not in any way impede egress or ingress to people traveling over joint roads or easements to other properties:
 - 3. All city and state regulations relating to sanitation, garbage and trash disposal, water and other utilities are met to the satisfaction of the city;
 - 4. A temporary use permit is issued pursuant to MMC 16.70.060; and
 - 5. The trailer does not reduce the number of parking spaces below three required for construction vehicles.

Ordinance No.1008 Page 11 of 16 C. Construction trailers erected during the construction phase of a project are allowed provided the trailer is removed prior to the completion of the project. Construction trailers may be located within zoning setback areas provided they are screened from abutting properties; however, they are not allowed within shoreline setback areas.

16.31.040. Automobile-related service uses.

This section establishes the development criteria that apply to automobile-related service uses, including accessory uses.

- A. The minimum setbacks for buildings and structures shall be as follows:
 - 1. From front property lines: 30 feet;
 - 2. From rear property lines: 30 feet;
 - 3. From side property lines: 15 feet, except where the lot abuts a residentially zoned property, then the minimum setback shall be 30 feet.
- B. Requirements for parking.
 - 1. Minimum off-street parking shall be provided as follows:
 - a. One space for each employee on duty at any time; plus
 - b. One space for each 1,000 square feet of the gross floor area of the principal building; and
 - c. Six spaces for vehicle storage, which may be covered or uncovered;
 - 2. At least one additional off-street parking space per building shall be provided and designated as a load/unload area;
 - 3. Design standards for parking spaces:
 - a. Spaces may be covered or uncovered;
 - b. Minimum 250 square feet of surface area per parking space;
 - c. Spaces shall be improved with an all-weather surface such as asphalt or concrete, but not gravel, and shall include facilities for surface water runoff;
 - d. Spaces shall be arranged and marked in a manner that does not impede access to the lot:
 - e. For parking design requirements, refer to Chapter 16.39 MMC, Parking.
- C. Minimum landscaping and screening requirements.
 - Where the automobile-related service use abuts along residentially zoned property, either a six-foot in height fence, or solid landscape screening pursuant to MMC 16.30.070 shall be installed such that the service is concealed year-round from the abutting residential lots;
 - 2. Where the automobile-related service use abuts public street right-of-way, the following shall apply:
 - a. At least 30 percent of the frontage abutting the street shall be vegetated with plantings including shrubs and undergrowth plantings; and
 - b. Frontage plantings shall comprise a minimum of 60 percent native vegetation, or well-adapted drought-tolerant vegetation where site conditions are appropriate for establishment and long-term survival; and
 - c. The height of the vegetation shall be maintained in a manner that does not obscure clear views for traffic safety.
- D. Access requirements.

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- Access to an automobile-related services use shall be restricted to marked driveways at locations approved by the city engineer as appropriate to ensure safe and efficient traffic movement;
- 2. Driveway entrances shall not exceed 35 feet in width for each 60 feet of street frontage.
- E. Allowances for signage shall be pursuant to MMC 16.30.020.
- F. Automobile storage is allowed; provided, that:
 - 1. The use is accessory to a principal automobile-related service use on the same lot;
 - 2. The number of motor vehicles parked on the property shall be limited to what can be accommodated under cover or in marked off-street parking, or loading spaces;
 - 3. No motor vehicle shall be parked that is:
 - a. Exposed in a partly disassembled or significantly damaged condition;
 - b. Exposed for more than 30 days unless the exposure time is interrupted by periods of at least ten consecutive days; and
 - c. Parked, including trailers, for display to sell, rent, or as a prize.
- G. Operation and displays shall meet the following requirements:
 - 1. All operation and displays, including those of merchandise, shall be within an approved structure, except those directly required to dispense gasoline, water, air, and motor oil;
 - 2. No accumulation of tires or other automotive materials outside approved structures is permitted; and
 - 3. Trade-inducing prizes shall be deemed merchandise.

16.31.050. Commercial horticulture, truck gardening, and agriculture uses.

This section establishes the development criteria that apply to commercial horticulture, truck gardening and agriculture uses, including accessory uses.

- A. Structures may include, but are not limited to, such uses as hot houses, greenhouses, storage sheds, heating plants, and similar accessory uses associated with horticulture, truck gardening, and agriculture uses.
- B. Agriculture uses shall exclude farm animals and exotic animals, and shall exclude using, keeping, harboring, breeding, raising or farming any animals, and shall exclude farming of marijuana including the growth of marijuana in a residential medical marijuana cooperative as described in RCW 69.51A.250 and defined in MMC 20.12.140, notwithstanding any state license or other recognition pursuant to RCW Title 69.
- C. Commercial horticulture, truck gardening, and agriculture uses shall exclude marijuana uses, as defined in MMC 16.12.140.
- D. Any retail sales activity arising out of the commercial horticulture, truck gardening and agriculture uses shall be limited to the sale of products, in season, grown upon the property.

16.31.060 Permanent supportive and transitional housing facilities.

Permanent supportive and transitional housing facilities are permitted uses in any zoning district allowing a single-family dwelling subject to the following criteria:

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- A. The number of permanent supportive and transitional housing facilities allowed on any given lot shall be no more than the number of standard dwelling units that would be allowed under MMC 16.21.060.
- B. Permanent supportive and transitional housing facilities are limited to a maximum of six (6) residents at any one time, plus up to four resident staff.
- C. Permanent supportive and transitional housing facilities must be a 24-hour-per-day facility where rooms or units are assigned to specific residents for the duration of their stay. Transitional housing facilities shall require a minimum length stay of 72-hours.
- D. On-site services such as laundry, hygiene, meals, case management, and social programs are limited to the assigned residents and shall not be available for drop in or other use by non-residents.
- E. No permanent supportive housing or transitional housing facility may be located within half a mile of another property that contains a permanent supportive housing or transitional housing facility, calculated as a radius from the property lines of the site.
- F. Prior to the start of operation for a permanent supportive housing or transitional housing facility, an occupancy agreement shall be submitted to the City meeting the following requirements. The City shall review and determine that the occupancy agreement meets the following requirements to the City's satisfaction before approving the occupancy agreement.
 - 1. <u>Property owners and/or facility operators shall use and enforce the occupancy agreement</u> approved by the City.
 - 2. The occupancy agreement shall include but is not limited to the following:
 - a. Names and contact information for onsite staff. The facility operator shall notify the City of each staff change(s) within seventy-two (72) hours.
 - b. Description of the services to be provided onsite.
 - c. <u>Description of the staffing plan including the following:</u>
 - i. Number, function, and general schedule of staff supporting residents and operations
 - ii. Staff certification requirements
 - iii. Staff training programs
 - iv. Staff to resident ratios
 - v. Roles and responsibilities of all staff

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- vi. The name and contact information for at least one organization member located off-site.
- d. Rules and/or code of conduct describing resident expectations and consequences for failing to comply. At minimum, the code of conduct shall be consistent with state law prohibitions and restrictions concerning the following:
 - i. Possession and use of illegal drugs onsite
 - ii. Threatening or unsafe behavior
 - iii. Possession and use of weapons
- e. A fire safety plan reviewed and approved by the Bellevue Fire Department confirming fire department access.
- f. A safety and security plan reviewed and approved by the Medina Police Department including protocols for response to the facility and to facility residents throughout the City. The safety and security plan shall establish a maximum number of permitted Medina Police Department response calls to the facility. Any Medina Police Department call(s) to the facility exceeding the maximum threshold established in the safety and security plan shall be considered a violation of this chapter and the facility operator will be fined in accordance with MMC 1.12.110.
- g. A plan for avoiding potential impacts on nearby residences including a proposed mitigation approach (for example, a *Good Neighbor Agreement Plan*) that addresses items such as noise, smoking areas, parking, security procedures, and litter.
- h. Description of eligibility for residency and resident referral process.

<u>Section 6.</u> Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener and clerical errors, references, ordinance numbering, section/subsection numbering and any references thereto.

<u>Section 7</u>. <u>Severability</u>. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

<u>Section 8.</u> <u>Effective Date.</u> This Ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after such publication.

APPROVED BY THE CITY COUNCIL OF THE CITY OF MEDINA ON THE 14^{TH} DAY OF MARCH, 2022 AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THE 14^{TH} DAY OF MARCH, 2022.

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	Jessica Rossman, Mayor
Approved as to form: Ogden Murphy Wallace, PLLC	Attest:
Scott M. Missall, City Attorney	Aimee Kellerman, City Clerk
PUBLISHED: EFFECTIVE DATE: ORDINANCE NO.:	

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Exhibit B

CITY OF NORMANDY PARK, WASHINGTON ORDINANCE NO. 1041

AN ORDINANCE OF THE CITY OF NORMANDY PARK, WASHINGTON, ADOPTING INTERIM DEVELOPMENT REGULATIONS AND OFFICIAL CONTROLS PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.389 NORMANDY PARK MUNICIPAL CODE (NPMC) CHAPTER 18.08, 18.44, 18.22, AND 18.10.060 TO COMPLY WITH STATE LEGISLATION IN E2SHB 1220 REGARDING CODE PROVISIONS FOR NEWLY-LEGISLATED SUPPORTIVE HOUSING TYPES; ESTABLISHING 6 MONTHS AS THE EFFECTIVE PERIOD; DIRECTING A PUBLIC HEARING TO BE HELD ON THE INTERIM DEVELOPMENT REGULATIONS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in 2021, the State Legislature enacted E2SHB 1220 in order to promote affordable housing options in local jurisdictions; and

WHEREAS, E2SHB 1220 was meant to encourage code cities to take active steps to accommodate transitional housing, emergency shelters, and similar homelessness-related facilities through local planning and changes to local development regulations; and

WHEREAS, the legislation requires that transitional and permanent supportive types of housing not be prohibited in any zones in which residential dwelling units or hotels are allowed, and that emergency housing and emergency shelter uses not be prohibited in any zones in which hotels are allowed; and

WHEREAS, the proposed amendments are considered under an interim ordinance designation so as to anticipate the assignment of calculations by the Department of Commerce (forthcoming) regarding Normandy Park's anticipated capacity for each of the supportive housing types; and

WHEREAS, the Normandy Park City Council studied the mandate, heard presentations from state legislators, and directed the Planning Commission to engage in this docket work program for Type V NPMC amendments; and

WHEREAS, planning for and accommodating housing affordable to all economic segments of the population of this state is a planning goal established by the Growth Management Act; and

WHEREAS, the SEPA responsible official reviewed this proposed non-project action and determined that the proposed text code amendments are within the scope of the environmental checklist; and

WHEREAS, the text code amendments proposed by this ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (hereinafter "SEPA") by the responsible official, and the applicable SEPA comment period has concluded; and

WHEREAS, in accordance with the requirement set forth in RCW 36.70A.106, this ordinance and associated exhibits were submitted to the Washington State Department of Commerce on May 4, 2022 with a request for Notice of Intent to Adopt Amendments; and

WHEREAS, the Washington State Department of Commerce provided acknowledgement of receiving the City-submitted request for Notice of Intent to Adopt Amendments and related documents on May 5, 2022; and

WHEREAS, on July 6, August 10 and September 14, 2021, the City of Normandy Park City Council heard presentations and directed to the Planning Commission this work program; and

WHEREAS, on September 16, October 28, November 18, 2021, and on January 20, February 17, March 17, and April 17, 2022, the City of Normandy Park Planning Commission engaged in study and development of code amendments under this this work program, including a special February 17, 2022 workshop inviting homeless population service providers to discussions with Commissioners; and

WHEREAS, notice of the May 19, 2022 Public Hearing before the City Of Normandy Park Planning Commission was given to the public pursuant to law and published on May 5, 2022; and

WHEREAS, on May 19, 2022 the Planning Commission held a public hearing on Ordinance No. 1041 and made a recommendation to the City Council that they adopt the interim development regulations as proposed; and

WHEREAS, the City Council desires to adopt these interim development regulations revising the Normandy Park Municipal Code (NPMC) Chapters 18.08, 18.44, 18.22, and 18.10.060 as set forth herein to comply with state legislation in E2SHB 1220 regarding code provisions for newly-legislated supportive housing types.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORMANDY PARK, WASHINGTON ORDAINS AS FOLLOWS:

<u>Section 1. Findings of Fact</u>. The above recitals, set forth as "WHEREAS" clauses, are hereby adopted as findings of fact justifying the interim development regulations adopted by this Ordinance.

<u>Section 2. Amend to NPMC Section 18.08.050</u>. Normandy Park Municipal Code Section 18.08.050 is hereby amended by the addition of the following new terms:

"Emergency housing" is defined pursuant to RCW 36.70A.030(9), as it currently exists or is hereafter amended.

"Emergency shelter" is defined pursuant to RCW 36.70A.030(10), as it currently exists

or is hereafter amended.

<u>Section 3. Amendment to NPMC Section 18.08.160.</u> Normandy Park Municipal Code Section 18.08.160 is hereby amended by the addition of the following new term:

"Permanent supportive housing" means one or more subsidized, leased dwelling units with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW.

<u>Section 4. Amendment to NPMC Section 18.08.200.</u> Normandy Park Municipal Code Section 18.08.200 is hereby amended by the addition of the following new term:

"Transitional housing" means one or more dwelling units owned, operated, or managed by a nonprofit organization or governmental entity in which supportive services are provided to individuals and families that were formerly homeless, with the intent to stabilize them and move them to permanent housing within a period of not more than twenty-four months, or longer if the program is limited to tenants within a specified range or the program is intended for tenants in need of time to complete and transition from educational or training or service programs.

<u>Section 5. Amendment to NPMC Section 18.10.060.</u> Normandy Park Municipal Code Section 18.10.060 is hereby amended to read as follows:

Chart 18.10.060											
		ZONING DISTRICTS									
LAND USE	R-20	R-15	R-12.5	R-7.2	R-5	RM- 2400	RM- 1800	MU	NC		
Accessory building/uses		F	D ₂		P¹	P³		P ⁵	P ⁴		
Beauty and barber shop								Р	Р		
Bed and breakfast		C) 6								
Business office								Р	Р		
Churches and places of assembly		C) 8		P ⁷	F) 9				

		Chart	18.10.0	060					
				ZONIN	IG DIS	TRICTS			
LAND USE	R-20	R-15	R-12.5	R-7.2	R-5	RM- 2400	RM- 1800	MU	NC
Cocktail lounge									Р
Day care center		C	10			Р	P11	Р	Р
Dry cleaning establishment									Р
Dwelling unit – cottage style housing	P ²¹							P ²¹	
Dwelling unit – multiple, more than four						F	Þ	Р	P ¹²
Dwelling unit – single-family		F) 13						
Dwelling unit – two to four per structure					P14	F	o	Р	Р
Enhanced services facility							C ²⁴		
Financial institution								Р	Р
Food store									Р
Governmental office building		F) 13		P14				Р
Greenhouse and nursery, commercial									Р
Health club/spa									Р
Home occupation	P ₂₂				P ²²	P ²²			
Hotel and motel									Р
Laboratory and other research facility								Р	Р
Laundromat									Р
Library		F) 13		P ¹⁴				
Lumber yard									Р

	_	Chart	18.10.0	060					
	ZONING DISTRICTS								
LAND USE	R-20	R-15	R-12.5	R-7.2	R-5	RM- 2400	RM- 1800	MU	NC
Medical or dental clinic								Р	Р
Microbrewery pub									Р
Museum/gallery		F	D 13		P14			Р	Р
Organization, fraternal/social		C	15						Р
Outdoor farmers' market									Р
Package liquor store									Р
Park, municipal		F) 13		P14				
Permanent Supportive Housing ²⁵		9	<u>C</u>		<u>C</u>	9	<u>2</u>	<u>C</u>	<u>C</u>
Personal wireless service facility	P/C ¹⁶				P/C ¹⁶	P/C ¹⁶		P/C ¹⁶	P/C ¹⁶
Preschool facility		C) 17			Р	11	Р	
Private club		C) 15						Р
Professional office or studio								Р	Р
Restaurant/cafe								P ¹⁸	Р
Retail trade shop and store								P ¹⁸	Р
Retirement home, rest home, nursing home, convalescent home, and congregate care facility						F	D.	Р	
School, private		C) 17						
School, public		C) 17						
Service station									Р
Sports facility, private									Р

Chart 18.10.060										
		ZONING DISTRICTS								
LAND USE	R-20	R-15	R-12.5	R-7.2	R-5	RM- 2400	RM- 1800	MU	NC	
Transitional Housing ²⁵		<u> </u>	2		<u>P</u>	<u>P</u>		<u>P</u>	<u>P</u>	
Temporary homeless encampment		<u>P23</u>				<u>P</u> 23		<u>P23</u>	<u>P23</u>	
Emergency Shelter ²⁶ Emergency Housing ²⁶									<u>C</u>	
Theater, film/play									Р	
Utility substation		C	20							

¹ See NPMC 18.28.030.

- ⁴ Accessory uses, such as repair service relating to sales in the primary permitted use, and private swimming pools, are permitted.
- ⁵ Accessory uses and buildings relating to the primary permitted use, and private swimming pools, are permitted.
- ⁶ See NPMC <u>18.32.050(2)</u>.
- ⁷ See NPMC 18.28.070.
- 8 See NPMC <u>18.32.050(1)</u>.
- ⁹ See NPMC <u>18.15.050</u>.
- ¹⁰ See NPMC <u>18.32.050</u>(4).
- ¹¹ See NPMC 18.15.040(1)(a).
- ¹² Street level uses fronting directly onto First Avenue South may not be multifamily dwelling units.
- ¹³ See NPMC <u>18.32.020</u>.
- ¹⁴ See NPMC 18.28.020.
- ¹⁵ See NPMC 18.32.050(3).
- ¹⁶ See Chapters <u>18.42</u>, <u>4.08</u> and <u>4.09</u> NPMC. Small wireless facilities are permitted outright in every zone unless referred for review as an administrative use pursuant to Chapter <u>4.09</u> NPMC.
- ¹⁷ See NPMC <u>18.32.050(4)</u> through <u>18.32.050(8)</u>.
- ¹⁸ Permitted on the ground floor of multi-story, mixed use buildings. Individual businesses are limited to 2,500 square feet in gross floor area.
- ¹⁹ Repealed by Ord. 815.

² See NPMC <u>18.32.032</u> through <u>18.32.040</u>.

³ See NPMC <u>18.15.040</u>(4).

Chart 18.10.060									
		ZONING DISTRICTS							
LANDUCE	D 20	D 45	D 40 5	D 7 2	D.5	RM-	RM-	DALL.	NC
LAND USE	R-20	K-15	R-12.5	R-7.2	K-5	2400 1800	MU	NC	

- ²⁰ See NPMC <u>18.32.050(9)</u>
- ²¹ See Chapter 18.52 NPMC
- ²² See Chapter 18.200 NPMC, Home Occupations
- ²³ See Chapter <u>18.110</u> NPMC, Temporary Homeless Encampments
- ²⁴ See Chapter <u>18.33</u> NPMC, Enhanced Services Facilities
- 25 See Chapter 18.44.090 NPMC, Permanent Supportive and Transitional Housing Requirements
- ²⁶ See Chapter 18.44.100 NPMC, Emergency Shelter and Emergency Housing Requirements

<u>Section 6. Amendment to NPMC Chapter 18.44</u>. Normandy Park Municipal Code Chapter 18.44 is hereby amended by the addition of two new sections, as follows:

18.44.090 Permanent Supportive and Transitional Housing Requirements

<u>Permanent supportive and transitional housing facilities are permitted uses in any zoning district</u> allowing single-family dwelling subject to the following criteria:

- A. Permanent supportive and transitional housing facilities are limited to the general capacity of the facility but in no case more than a maximum of 10 persons at any one time.
- B. Permanent supportive and transitional housing facilities must be a 24-hour-per-day facility, that is ADA-compliant, where rooms or units are assigned to specific residents for the duration of their stay and attached-unit buildings must have structure entrances with individual units only accessible through interior corridors.
- C. On-site services such as laundry, hygiene, meals, case management, and social programs are limited to the assigned residents and shall not be available for drop in or other use by non-residents.
- D. No permanent supportive housing or transitional housing facility may be located within a mile of another property that contains a permanent supportive housing, transitional housing facility, emergency shelter, or emergency housing, calculated as a radius from the property lines of the site.
- E. Permanent supportive and transitional housing facilities shall be located within a half mile walking distance of a bus transit stop.
- F. Permanent supportive and transitional housing facility operators shall obtain a City of Normandy Park business license pursuant to NPMC Chapter 4.02.

- G. Permanent supportive housing facility operators shall obtain a conditional use permit pursuant to NPMC Chapter 18.22.
- H. Provision of quarterly reports to the City Manager on how permitted facilities are meeting performance metrics. Metrics can include but are not limited to placement of residents into permanent housing or other treatment programs.
- I. Prior to the start of operation for a permanent supportive housing or transitional housing facility, an occupancy agreement shall be submitted to the City meeting the following requirements. The City shall review and determine that the occupancy agreement meets the following requirements to the City's satisfaction before approving the occupancy agreement.
 - 1. Property owners and/or facility operators shall use and enforce the occupancy agreement approved by the City.
 - 2. The occupancy agreement shall include but is not limited to the following:
 - a. Names and contact information for onsite staff. The facility operator shall notify the City of each staff change(s) within seventy-two (72) hours.
 - b. <u>Description of the services to be provided onsite.</u>
 - c. Description of the staffing plan including the following:
 - i. Number, function, and general schedule of staff supporting residents and operations
 - ii. Staff certification requirements
 - iii. Staff training programs
 - iv. Staff to resident ratios
 - v. Roles and responsibilities of all staff
 - vi. The name and contact information for at least one organization member located off-site.
 - d. Rules and/or code of conduct describing resident expectations and consequences for failing to comply. At minimum, the code of conduct shall be consistent with state law prohibitions and restrictions concerning the following:
 - i. Possession and use of illegal drugs onsite
 - ii. Threatening or unsafe behavior

- iii. Possession and use of weapons
- e. A fire safety plan reviewed and approved by the King County Fire District No. 2 confirming fire department access.
- f. A safety and security plan reviewed and approved by the Normandy Park Police Department including protocols for response to the facility and to facility residents throughout the City. The safety and security plan shall establish a maximum number of permitted Normandy Park Police Department response calls to the facility. Any Normandy Park Police Department call(s) to the facility exceeding the maximum threshold established in the safety and security plan shall be considered a violation of this chapter and the facility operator's Normandy Park business license may be revoked.
- g. A plan for avoiding potential impacts on nearby residences including a proposed mitigation approach (for example, a *Good Neighbor Agreement Plan*) that addresses items such as noise, smoking areas, parking, security procedures, and litter.
- h. Description of eligibility for residency and resident referral process.

18.44.100 Emergency Shelters and Emergency Housing Requirements.

Emergency shelters and emergency housing facilities are permitted uses in any zoning district allowing hotels subject to the following criteria:

- A. Emergency shelters and emergency housing facilities are limited to the general capacity of the facility but in no case more than a maximum of 10 persons at any one time.
- B. Emergency shelters and emergency housing facilities must be a 24-hour-per-day facility, that is ADA-compliant, where rooms or units are assigned to specific residents for the duration of their stay and attached-unit buildings must have structure entrances with individual units only accessible through interior corridors.
- C. On-site services such as laundry, hygiene, meals, case management, and social programs are limited to the assigned residents and shall not be available for drop in or other use by non-residents.
- D. No emergency shelters and emergency housing facility may be located within a one and half miles of another property that contains an emergency shelter, or emergency housing, calculated as a radius from the property lines of the site.
- E. Emergency shelters and emergency housing facilities shall be located within a half mile walking distance of a bus transit stop.

- F. Emergency shelter and emergency housing facility operators shall obtain a City of Normandy Park business license pursuant to NPMC Chapter 4.02.
- G. Emergency shelters and emergency housing facility operators shall obtain a conditional use permit pursuant to NPMC Chapter 18.22.
- H. Provision of quarterly reports to the City Manager on how permitted facilities are meeting performance metrics. Metrics can include but are not limited to placement of residents into permanent housing or other treatment programs.
- I. Prior to the start of operation for an emergency shelter and emergency housing facility, an occupancy agreement shall be submitted to the City meeting the requirements established in NPMC 18.44.090(I). The City shall review and determine that the occupancy agreement meets the following requirements to the City's satisfaction before approving the occupancy agreement.

<u>Section 7. NPMC Chapter 18.22</u>. Normandy Park Municipal Code Chapter 18.22 is hereby amended by the addition of a new section, as follows:

18.22.036 Additional Requirements for Emergency Shelters, Emergency Housing, and Permanent Supportive Housing.

Applications for conditional use permits for these uses shall be processed in accordance with the standard procedures and requirements for conditional use permits, as outlined in this chapter and must demonstrate compliance with the applicable requirements established in NPMC 18.44.090 and 18.44.100.

Section 8. Duration of Interim Controls. This interim ordinance shall be in effect for six (6) months, commencing on the date of adoption and ending six months after date of adoption, unless extended or unless a final ordinance is adopted amend mending the Normandy Park Municipal Code and rescinding the interim controls before December 14, 2022.

Section 9. <u>Public Hearing</u>. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing to accept public testimony on this interim ordinance within sixty (60) days of its adoption. Following the public hearing, the City Council may adopt additional findings.

Section 10. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

<u>Section 11. Transmittal to Department</u>. Pursuant to RCW 36.70A.106 and RCW 86.16.041, this Ordinance shall be transmitted to the Washington State Department of Commerce as required by law and to the Washington State Department of Ecology for review.

<u>Section 12. Corrections</u>. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of

scrivener/clerical errors, references, ordinance numbering, and section and/or subsection numbers for the purposes of codification and any other references thereto.

<u>Section 13. Effective Date.</u> This Ordinance shall be effective five days after publication as provided by law.

	L OF THE CITY OF NORMANDY PARK,
WASHINGTON, AT A REGULAR MEETING	G THEREOF THIS DAY OF
2022.	
	CITY OF NORMANDY PARK
ATTEST/AUTHENTICATED	Sue-Ann Hohimer, Mayor
Brooks Wall, City Clerk	
Brooks wan, City Cicik	
APPROVED AS TO FORM:	
Kari Sand, City Attorney	
Ogden Murphy Wallace, PLLC	

<u>Vote</u>	Hohimer	West	Bishoff	Sipes-	McEvoy	Thompson	Zimmerman
				Marvin			
Ayes:							
Nays:							
Abstentions:							
Absent:							

Passed by the City Counci	1:
Date of Publication:	

Business of The Town Planning Commission Town of Yarrow Point, WA

Agenda Bill 22-17 November 14, 2022

Comprehensive Plan Status Update		Proposed Planning Commission Action: Discuss
Presented by:	SBN Planning – Town Planner	
Exhibits:		

Summary:

The SBN Planning team has reviewed the relevant Periodic Update and Critical Areas Ordinance checklists and Yarrow Points' relevant plans and municipal code. After a thorough review of the Town's Comprehensive Plan, these checklists include requirements for relevant sections of the Stormwater Management Plan, Shoreline Master Program, and Municipal Code. While Yarrow Points' planning documents are compliant with some parts of the checklists, there are sections of the checklists which have been updated significantly since 2015 and will require more considered updates to the plan.

Based on the results from these checklists, the SBN team is revising the comprehensive plan working schedule that was developed as part of the Growth Management Grant application. The team still plans on a public engagement launch in Q1 of 2023, and expects the bulk of the work to finish by July 2024. This schedule will allow plenty of time for the administrative and legislative reviews to occur before the December 2024 deadline. It is likely that this process will also include minor updates to Yarrow Point's Municipal Code and Shoreline Master Program, alongside the major updates to the Comprehensive Plan.

The team is still waiting on the final paperwork and execution of Growth Management Update Grant from Washington's Department of Commerce. Our regional assistance planner has assured us this is a formality and the delay is due to the increased volume of grant applications near the time Yarrow Point applied. The SBN team have followed up with the Department of Commerce but have not received a reply as of writing.

Recommended Action:

Discuss