2024 COMPREHENSIVE PLAN &
MUNICIPAL CODE UPDATE
PROJECT
ADIVISORY GROUP

MEETING DATES: June 21, 2023

SUBJECT: Transportation Plan Policies
SMC Titles 3 and 5
2023 Legislative Session Bill Update

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Transportation Plan Policy Review

The Transportation Element provides the framework to guide the growth and development of the City's transportation infrastructure. The Transportation Element implements and is consistent with the land use element of the Comprehensive Plan to ensure that the transportation network is planned to serve existing and future developments. The Element should address the development of a balanced, multi-modal transportation network for the City and also recognizes the regional nature of the transportation network and the need for continuing interagency coordination to improve the system.

The goals and policies of the Transportation Element are required to address the following items pursuant to the Washington State Growth Management Act and the PSRC Vision 2050 in addition to addressing Stanwood's community vision for the transportation system.

- Travel Demand Based on Land Use
- Estimated Traffic Impacts to State-Owned Facilities
- Facility and Service Needs
  - Inventory of Transportation Facilities
  - Level of Service (LOS) Standards
  - Actions to Bring Facilities up to LOS
  - Traffic Forecasts
  - Consistency with Statewide Multi-Modal Plan
- A Multiyear Financing Plan
- Intergovernmental Coordination Efforts
- Demand Management Strategies
- Non-Motorized Access for Pedestrians and Bikes
- Consistency with Transportation Element, 6-year CIP, and 10-year State Investment Plan (RCW 47.05.030)

Attached are the draft Transportation Element Goals and Policies for review and consideration. These goals and policies focused on the following principals:

TG 1:	*Roadway Design and Safety – Ensure safe roadway design*
TG 2:	*Adopt and Maintain Transportation Level of Service (LOS)*
TG 3:	*Provide a Transportation System That Promotes Economic Development and a Healthy Environment*
TG 4:	*Maintenance of Transportation Investments*
TG 5:	*Reduce Miles Travelled Through Design and Planning*
TG 6:	*Hazard Mitigation Planning*
TG 7:	*Regional Coordination*
TG 8:	*Minimizing Impacts on the Environment and Reducing Greenhouse Emissions*
TG 9:	*Financial Planning Policy*
TG 10:	*Prioritizing Equity and Inclusion*

Normally the following goals and policies would have been prepared in bold, underlined and strikeout format to see the differences between the 2015 goals and policies and those proposed for the 2024 plan. Due to the many substantive changes, that format made policies difficult to read. Below are the proposed 2024 goals and policies along with a copy those adopted in 2015. Amendments to the draft policies generally include:

- Consistency with the Puget Sound Regional Council Vision 2050 and regional travel forecasts
- Simplified text into a reader friendly format
- Adopts a Level of Service for pedestrian and bike users
- Addresses changes in State Law:
    - Ensure access for people of all ages
    - Compliance with the Americans with Disabilities Act (ADA)
    - Recognize and prioritize equity and inclusion in the City’s transportation system (New Goals 10)
- Prioritize investment in maintenance and safety improvements
- Includes hazard mitigation planning in transportation systems
- Protect the environment and reduce carbon emissions
- Consider impacts to human health
- Update financial policies

DRAFT 2024 TRANSPORTATION PLAN GOALS AND POLICIES

TG-1 – Continue to develop a transportation system that encourages, supports, and enhances the safe, efficient, and reliable movement of people, vehicles, and goods.

TP 1.1: Route pass-through traffic to collector roads designed and classified for higher volumes of traffic. Use neighborhood traffic control devices to direct traffic appropriately.

TP 1.2: Design local access streets to provide safety for pedestrians, bicycles, and automobiles, and meet the requirements of the Americans with Disabilities Act (ADA).

TP 1.3: The City's transportation system should consist of a grid of through streets, providing a better connection from east to west and north to south.

TP 1.4: Consider adopting a "complete streets" ordinance based on the guidelines established by Smart Growth America and the US Department of Transportation.

TP 1.5: Apply emerging technological solutions to improve the safety and efficiency of the transportation system.

TP 1.6: Identify and implement strategies to ensure the resilience and future security of the transportation system for the efficient movement of emergency responses.

TP 1.7: Adopt lighting standards and use lamps that assure safe and effective illumination at minimum cost and energy use.

TG-2 – Maintain transportation levels of service (LOS) consistent with adopted standards and community needs.

TP 2.1: Ensure adequate transportation facilities are available concurrent with development and maintain levels of service (LOS) that promote mobility for people and goods consistent with adopted standards.

TP 2.2: The City has established the following levels of service (LOS) standards:

1.) For locally owned intersection operations based on methodologies in the latest edition of the Highway Capacity Manual (HCM):

- i. LOS D for traffic signals, roundabouts, and all-way stop controlled intersections.
- ii. LOS E for two-way stop-controlled intersections.

2.) Apply Washington State Department of Transportation's level of service standards to intersections of state highways within the Stanwood area:

- i. LOS D or better within urban areas.
- ii. LOS C or better within rural areas.

3.) Consider adopting a local bicycle and pedestrian level of service that promote the movement of people.

TP 2.3: Reassess as appropriate, level of service standards and other development regulations based on growth and funding levels.

TP 2.4: Work with Snohomish County to coordinate level of service standards for transportation infrastructure and facilities within the City's unincorporated Urban Growth Area for motorized and non-motorized transportation.

TP 2.5: Work with PSRC travel demand forecasts to identify state, regional, and local multimodal transportation system improvements deemed necessary to accommodate growth while improving safety and human health.

TP 2.6: Work cooperatively with Snohomish County and Island County to mitigate transportation impacts of development on Stanwood and adjacent areas.

TG-3 – Provide transportation facilities that promote vibrant commerce, clean air and water, health and recreation.

TP 3.1: Collaborate with regional and state agencies such as the Puget Sound Clean Air Agency and the Washington State Department of Ecology to implement and achieve regional air quality and environmental quality goals.

TP 3.2: Consider adopting Washington State Target Zero strategies as appropriate to Stanwood to reduce traffic-related fatalities and serious injuries.

TP 3.3: Identify and support major transportation hubs and economic development interests, such as ports, airports, and designated freight trucking routes.

TP 3.4: Continue to coordinate freight transportation work with WSDOT, Snohomish County, Port authorities, railroads, and commercial aviation interests.

TP 3.5: Support transportation mobility and access for people of all ages and abilities.

TP 3.6: Transportation plans, improvements, programs, and services shall include an emphasis on social, racial, and income equity, as well as under-served populations.

TP 3.7: Provide safe and accessible travel choices for people with physical mobility challenges and special needs.

TP 3.8: Restrict wide-open, undefined access drives to minimize and consolidate access points to SR-532 and other major city streets.

TP 3.9: Consider impacts to human health and safety (noise, exhaust fumes, vibration, etc.), as well as environment impacts when planning and designing transportation facilities.

TG-4 – Maintain and preserve the utility of prior transportation investments.

TP 4.1: Monitor the operation of the transportation system and identify system maintenance and preservation projects to protect existing investments and ensure a safe and reliable citywide transportation system.

TP 4.2: Reduce capital improvement needs and extend transportation life-cycle costs through investments in maintenance, preservation, and safety to extend the life and utility of prior transportation investments.

TP 4.3: Conduct periodic inspections of transportation infrastructure proactively, mindful of the infrastructure life cycle.

TP 4.4: Maintain the remaining historic brick roads, particularly 270th Street NW, when financially feasible per City Beautification Action Plan and Twin City Mile.

TP 4.5 Update the Transportation Improvement Plan (TIP) annually to reflect current estimated costs and schedules to ensure priority, cost, and timing of projects are accommodated.

TG-5 – Reduce the number of trips made via the single occupant vehicle by encouraging the use of public transit and non-motorized facilities, and through thoughtful zoning practices.

TP 5.1: Encourage land use patterns that facilitate multi-purpose trips and reduce the quantity and length of trips by single-occupancy vehicles in association with Commute Trip Reduction Act goals and policies.

TP 5.2: Work with the Stanwood-Camano Island School District to encourage greater ridership on school buses by collaborating on efficient, inclusive, and effective bus routes.

TP 5.3: Invest in and encourage the use of public transit bus, commuter rail, park and ride, and bicycle and pedestrian facilities connecting local and regional employment and shopping centers.

TP 5.4: Develop a comprehensive network of safe, convenient, and accessible sidewalks and bicycle lanes, trails and/or paths to provide alternative routes to employment centers and shopping areas in alignment with PSRC's Regional Growth Strategy and Regional Transportation Plan.

TP 5.5: Give priority to transportation projects that will contribute to a reduction in vehicle miles traveled per capita, while maintaining economic vitality and sustainability.
TP 5.6: Where feasible, provide sidewalks on both sides of all new and reconstructed public streets.
TP 5.7: Develop a multi-purpose trail and sidewalk system that connects Stanwood's neighborhoods, schools, parks and business districts via a non-motorized transportation network.
TP 5.8: Periodically update city standards with current best practices, resources, and guidelines for the development of non-motorized facilities such as: multi-use paths, bicycle lanes, sidewalks, accessibility, crosswalks, widened roadway shoulders, and landscape buffers.
TP 5.9: Preserve unimproved public rights-of-way when reasonable to create an interconnected network of pedestrian and bicycle trails.
TP 5.10: Support the preservation of railroad rights-of-way for trails when continued rail service is not practical.
TP 5.11: Work with transportation agencies such as Amtrak, Community Transit, Island Transit, and Snow Goose Transit to establish public education programs to encourage public transportation usage.
TP 5.12: Create pedestrian friendly and inviting connections between downtown and uptown Stanwood through the implementation of the City Beautification project, the Twin City Mile revitalization, and potentially a complete streets policy.
TP 5.13: Identify the needs of drivers, public transportation vehicles and patrons, bicyclists, and pedestrians of all ages and abilities in the planning, programming, design, construction, reconstruction, retrofit, operations, and maintenance of the City's transportation system.
TP 5.14: Work with transportation agencies such as Amtrak, Community Transit, Island Transit, and Snow Goose Transit to establish public education programs to encourage public transportation usage.

TG 6 – Coordinate with regional officials on hazard mitigation planning efforts to improve the city's emergency management response and recovery efforts during and after major disasters to save lives, protect community investments, and restore critical transportation assets and services quickly after a disaster.
TP 6.1: Adopt and implement a Hazard Mitigation Plan that advances the resilience of the transportation system by incorporating redundancies, preparing for disasters and other impacts.
TP 6.2: Coordinate with Snohomish County, Island County, and WSDOT to prepare a local and regional response for system recovery for the Hazard Mitigation Plan.

TG 7 – Support the development of a balanced regional transportation system by working cooperatively with federal, state, regional and local agencies to develop the City's transportation system, financing strategy, and land use plan that helps achieve regional mobility goals.
TP 7.1: Coordinate with WSDOT, Island County, and Snohomish County to implement the SR-532 Route Development Plan, including the adoption of an impact fee ordinance addressing immediate and long-term improvements on SR-532.
TP 7.2: Encourage rail providers such as Amtrak or Sound Transit's Sounder to expand passenger rail service to better connect Stanwood to regional centers, such as Everett, Lynnwood or Seattle.
TP 7.3: Partner with WSDOT to implement access management solutions on SR 532 ensuring a coordinated system of traffic flow between traffic signals, restricting left turning

movements, and/or by amending traffic signal timing to allow efficient progression of vehicles, bicycles, and pedestrians.

TP 7.4: Promote a working relationship with regional planning agencies, particularly the Puget Sound Regional Council (PSRC), to assure the Regional Transportation Plans are consistent and complementary to the Stanwood Comprehensive Plan.

TP 7.5: Work with Puget Sound Regional Council (PSRC) to ensure the City's Comprehensive Plan is consistent with the Regional Growth Strategy, including VISION 2050 and the multi-county planning policies, reviewed, and approved by PSRC.

TP 7.6: Work with Island County and Snohomish County to ensure the City's transportation plan is consistent with Island and Snohomish Counties Transportation Element and Six Year Transportation Improvement Plans.

TP 7.7: Integrate and focus transportation system improvements with land use plans to connect local and regional development centers.

TG-8 – Minimize negative environmental impacts for the benefit of the City's natural resources and the reduction of greenhouse gas emissions.

TP 8.1: Reduce greenhouse gas emissions and pollutants from transportation activities through the electrification of the transportation system, use of cleaner fuels and vehicles, and developing of infrastructure needed to support clean fuel vehicles such as electric vehicle chargers.

TP 8.2: Prioritize transportation projects that reduce vehicle miles traveled per capita and maintains economic vitality and sustainability.

TP 8.3: Promote and incentivize transportation trip reduction programs and actions to reduce air pollution and greenhouse gas emission, including but not limited to:

a.) Land use plans and zoning for compact, higher-density, mixed use development to reduce vehicle mile traveled;

b.) Employer-based incentives for ridesharing, vanpooling, flextime, and telecommuting work schedules;

c.) Adopting policies or regulations proportionally reducing traffic impact fees or reduced parking requirements;

c.) Expanding conservation efforts and the use of clean alternative energy sources and vehicles; and

d.) Convert incandescent streetlights to L.E.D.

TP 8.4: Work with local, state, and regional agencies to achieve regional goals to improve air quality, water quality, fish passage, and environmental pollution goals Help by minimizing and mitigating adverse impacts of transportation services on designated critical areas and resource lands.

TP 8.5: The City should consider purchasing hybrid or electric vehicles when purchasing fleet vehicles.

TP 8.6: Establish compact, pedestrian, transit-oriented development, and reductions to greenhouse gas emissions as metrics for prioritizing transportation investments.

TG-9 – Establish a stable, financially sustainable, long term financial foundation for continuously improving the quality, effectiveness, and efficiency of the transportation system.

TP 9.1: Actively pursue grants individually or with other agencies to help fund transportation projects to support the maintenance, operations, and upgrading of the transportation system. Use City revenues to leverage against funding opportunities.

TP 9.2: Pursue and implement transportation financing methods, such as transportation benefit districts or user fees (as allowed by state law per RCW 36.73), to support ongoing maintenance, preservation, and operation of the City's transportation system.

TP 9.3: Ensure that new development pays a proportionate share of the costs of transportation facilities needed to support growth through: traffic impact fees, frontage improvements, local improvement districts, off-site mitigation improvements and other means allowed by State and local laws.
TP 9.4: Partner with WSDOT, Snohomish County, Community Transit, Island Transit, and local agencies to define and fund improvement projects and programs.
TP 9.5: Evaluate project design strategies that can reduce costs of transportation improvements or provide for phasing of improvements to spread the costs over time.
TP 9.6: Periodically review longer range transportation funding options and consider changes in the level of service standard or land use element if sufficient funding is not available. Consider options for alternative funding mechanisms if local fundings is not available for critical/high priority projects.
TP 9.7: Prioritize funding transportation safety improvement projects during the annual adoption process of the Transportation Improvement Plan (TIP) and city budget.
TP 9.8: Develop a 20-year plan that balances transportation improvement needs, costs, and revenues available for all modes to assist in updating the Transportation Impact Fee (TIF) program and the annual adoption of the Six-Year Transportation Improvement Program (TIP).

TG-10 Ensure and prioritize equity, inclusion, and access to opportunities in the development and maintenance of transportation systems. (NEW)
TP 10.1: Consider current and past inequities in infrastructure development when planning and programming new investments using PSRC's Opportunity Index, the Countywide Equity Index, and other regional/state guidance documents. Consider consolidating findings into a transportation equity report.
TP 10.2: Conduct public engagement with marginalized or underrepresented communities to understand multimodal transportation needs and barriers to access.
TP 10.3: Prioritize active transportation and transit investments in historically underserved communities of color and areas with higher concentrations of low-income, non-English speaking, seniors, youth, and disabled populations to improve affordable and convenient access to employment, education, health care, social services, recreation, and culture.
TP 10.4: Mitigate the negative impacts of the transportation system on historically underserved communities when developing plans and programs by incorporating equity and inclusion into the Capital Improvement Plan and Transportation Improvement Plan's proposed infrastructure projects.

Below are the existing 2015 Transportation Plan Goals and Policies.

A. Goals and Policies

The goals and policies provide a framework for decision making related to transportation issues. They will be used in implementing transportation projects and programs, reviewing new land use development applications, and supporting other City planning processes.

TG-1 – Continue to develop a transportation system that encourages, supports, and enhances the safe, efficient and reliable movement of people, vehicles, and goods.

TP-1.1 – Plan improvements to existing street networks to evenly distribute through-traffic to collectors that meet design standards and reduce the amount of through traffic on neighborhood streets that are not classified as collectors.

TP-1.2 – Design roadways, sidewalks, trails, bicycle facilities, and other public circulation improvements to meet safety standards.

TP-1.3 – Design local access streets to provide safety for pedestrians, bicycles, and automobiles, and meet the requirements of the Americans with Disabilities Act (ADA).

TP-1.4 – Use neighborhood traffic control devices where necessary to direct through traffic to streets classified and designed for that purpose.

TP-1.5– Prioritize existing safety hazards during transportation decision making process.

TP-1.6 – Adopt Public Works Development Guidelines and Construction Standards for design of roadways.

TP-1.7 – Develop an integrated road network throughout the city, particularly in downtown and the UGA (as it is annexed).

TP-1.8 – Encourage or require where appropriate a grid of through-streets to create a transportation system with east-west and north-south connections.

TP-1.9 – Work toward completing an integrated street network for automobiles, bicycles, and pedestrians by using complete streets program provisions as a guideline.

TG-2 – Maintain levels of service (LOS) that promote mobility for people and goods consistent with adopted standards.

TP-2.1- Ensure adequate transportation facilities are available concurrent with development.

TP-2.2 - Reassess as appropriate level of service standards and other development regulations based on growth and funding levels.

TP-2.3 - The City has established the following levels of service (LOS) standards for intersection operations based on methodologies in the latest edition of the *Highway Capacity Manual (HCM)*.

i. LOS D for traffic signals, roundabouts, and all-way stop controlled intersections.

ii. LOS E for two-way stop controlled intersections.

TP-2.4- Apply Washington State Department of Transportation's level of service standards to intersections of state highways within the Stanwood area:

i. LOS D or better within urban areas.

ii. LOS C or better within rural areas.

TP-2.5– Work with Snohomish County to coordinate level of service standards for roadways and intersections within the City's unincorporated Urban Growth Area.

TP-2.6 - Consider establishing level of service standards for bicycle, pedestrian and other transportation facilities that promote the movement of people.

TG-3 – Provide transportation facilities that promote vibrant commerce, clean air and water, health and recreation.

TP-3.1 – Help minimize and mitigate adverse impacts of transportation services on designated critical areas, and resource lands.

TP-3.2 – Work with local, state, and regional agencies to achieve regional air quality and environmental pollution goals.

TP-3.3 – Create an inviting and functional connection between east and west Stanwood. roadway.

TP-3.4 – Design intersection areas using landscaping elements, gateway signage and treatments, channelization, and other features to distinguish major intersections within corridors.

TP-3.5 – Establish coordinated gateway and signing programs to establish a sense of community, guide unfamiliar visitors to primary destinations, and revive the downtown area's historic past and original street names.

TG-4 – Maintain, preserve, and extend the life and utility of prior transportation investments.

TP-4.1 – Prioritize essential maintenance, preservation, and safety improvements of the existing transportation system.

TP-4.2 – Maintain and preserve the transportation system mindful of lifecycle costs associated with delayed maintenance.

TP-4.3 – Maintain existing brick roads, particularly 270th Street NW, in brick when financially feasible.

TG-5 – Reduce the number of trips made via the single occupant vehicle.

TP-5.1 – Encourage land use patterns that facilitate multi-purpose trips and reduce the quantity and length of trips by single-occupancy vehicles in association with Commute Trip Reduction Act goals and policies.

TP-5.2 – Encourage use of public transit and bicycle and pedestrian facilities.

TP-5.3 – Work with the School District to encourage ridership on school buses.

TP-5.4 – Encourage commuter rail, bus, park and ride, and bicycle use.

TP-5.5 – Develop a comprehensive network of sidewalks connecting with bicycle trails and paths to provide alternative routes to employment centers and shopping areas in association with the goals and policies of PSRC's Regional Growth Strategy.

TP-5.6 – Where feasible, provide sidewalks and bike lanes on both sides of all new and reconstructed public streets.

TP-5.7 – Develop a trail system to connect Stanwood's business district with other regional trails and centers.

TP-5.8 – Include standards for development of non-motorized facilities in the Public Works Standards. These should include, but are not limited to:

- bicycle parking facilities,
- sidewalks and paths,
- location and accessibility of crosswalks,
- landscaping to buffer facilities from automobile traffic, and
- recreational trails for pedestrians and bicycles.

TP-5.9 – Preserve unimproved public rights-of-way when reasonable to assure they are available in the future for development of an interconnected network of pedestrian and bicycle trails.

TP-5.10 – Support the preservation of railroad rights-of-way for trails when continued rail service is not practical.

TP-5.11 – Adopt building site design criteria such as reduced setback requirements for through easements (short cuts with sidewalks) for pedestrian and bicycle use to provide direct paths to schools, shopping centers, transit facilities, and recreational facilities.

TP-5.12 – Adopt design guidelines for non-motorized facilities for walking and bicycling facilities that include sidewalks, bike lanes, roadway shoulders, and multiuse paths.

TP-5.13 – Implement non-motorized transportation facilities and services consistent with policies and strategies Comprehensive Plan, Road Standards, and Design Review Guidelines.

TP-5.14 – Provide corridors for pedestrian and small watercraft access to the Stillaguamish River.

TG-6 – Apply technological solutions to improve the efficiency of the transportation system

TP-6.1 – Identify and implement strategies for the efficient movement of emergency responses.

TG 7 – Support the development of a balanced regional transportation system and work with federal, state, regional and local agencies to develop the City's transportation system, financing strategy, and land use plan that helps achieve regional mobility goals.

TP-7.1 – Coordinate with WSDOT and with Puget Sound Regional Council (PSRC) to ensure consistency with state and regional transportation plans and requirements.

TP-7.2 – Coordinate with WSDOT, Island County, and Snohomish County to implement the SR-532 Route Development Plan, including the collection of impact fees for improvements on SR-532.

TP-7.3 – Encourage rail providers to expand passenger rail service.

TP-7.4 – Coordinate with WSDOT for long-term and near-term improvements to SR-532 as identified in the Route Development Plan.

TP-7.5 – Support WSDOT with level of service requirements and growth related impacts for SR-532.

TP-7.6 – Work with WSDOT to establish well-orchestrated traffic signal timing plans and a coordinated system of traffic progression between traffic signals on SR-532. Ensure that future traffic signals are designed, operated, and located appropriately to allow efficient progression of vehicle platoons.

TP-7.7 – Restrict wide-open, undefined access drives to comply with City driveway standards. Work to minimize and consolidate access points to SR-532. Encourage shared parking on adjacent properties with credits for complimentary uses.

TP-7.8 – Promote a working relationship with regional planning agencies, particularly the Puget Sound Regional Council (PSRC), to assure regional transportation plans are consistent and complementary to the Stanwood Comprehensive Plan.

TP-7.9 – Work with Puget Sound Regional Council (PSRC) to ensure the City's Comprehensive Plan is consistent with the *Regional Growth Strategy*, including VISION 2040 and the Multicounty Planning Policies, reviewed, and approved by PSRC.

TP-7.10 – Work with Island County and Snohomish County to ensure consistency of transportation plans.

TP-7.11 – Work with transportation agencies to establish public education programs to encourage public transportation usage.

TG-8 – Minimize negative environmental impacts for the benefit of the City's natural resources and the reduction of greenhouse gas emissions.

TP-8.1 – Encourage ride-sharing, van-pooling and the use of flex-time schedules by employees.

TP-8.2 – Support voluntary, employer-based trip reduction programs

TP-8.3 – Encourage telecommuting options with new and existing employers, through project review and incentives, as appropriate.

TP-8.4 – Reduce greenhouse gases by expanding the use of conservation and alternative energy sources and by reducing vehicle miles traveled.

TP-8.5 – Reduce pollutants from transportation activities, including through the use of cleaner fuels and vehicles.

TP-8.6 – Manage street lighting needs by encouraging lighting standards and using lamps that will assure safe and effective illumination at minimum cost and energy use

TP-8.7 – Give priority to transportation projects that will contribute to a reduction in vehicle miles traveled per capita, while maintaining economic vitality and sustainability.

TP-8.8 – Provide safe and convenient access for pedestrians and bicyclists.

TG-9 – Establish a stable, long term financial foundation for continuously improving the quality, effectiveness, and efficiency of the transportation system.

TP-9.1 – Pursue and implement transportation financing methods, such as transportation benefit districts or user fees (as allowed by state law), to support ongoing maintenance, preservation, and operation of the City's transportation system.

TP-9.2 – Ensure that new development pays a proportionate share of the costs of transportation facilities needed to support growth. New development may contribute to the costs of needed improvements through SEPA based mitigation, traffic impact fees, frontage improvements, local improvement districts, and other means allowed by State and local laws.

TP-9.3 – Structure developer impact fees to ensure that new development contributes its fair share of the resources needed to mitigate the impact on transportation facilities, as allowed under State law.

TP-9.4 – Continue to work with Snohomish County and Island County to mitigate transportation impacts of development on Stanwood and vice versa.

TP-9.5 – Continue to develop partnerships with WSDOT, Snohomish County, Community Transit, and local agencies to define and fund improvement projects and programs.

TP-9.6 – Actively pursue grants individually or with other agencies to help fund transportation projects to support the maintenance, operations, and upgrading of the transportation system.

TP-9.7 – Use other City revenues to leverage against other funding opportunities.

TP-9.8 – Evaluate project design strategies that can reduce costs of transportation improvements or provide for phasing of improvements to spread the costs over time.

TP-9.9 – Balance the estimated expenditures in the City's annual Six-Year Transportation

Improvement Program (TIP) with available revenues.

TP-9.10 – Periodically review longer range transportation funding options and consider changes in the level of service standard or land use element if sufficient funding is not available.

Stanwood Municipal Code Update: Titles 3 and 5

The next batch of Municipal Code updates include Title 3 – Revenue and Finance (Exhibit A) and Title 5 – Business Licenses and Regulations (Exhibit B). In addition to amending these Titles, minor amendments will be needed to Title 4 for donations and to the City's Fee Resolution.

The attached Titles are in draft form and are currently being reviewed by staff and the City Attorney. Comments by the Advisory Group will be added to the staff comments and addressed in the second draft of the amendments.

Title 3 – Revenue and Finance:

Title 3 establishes the City's authority to impose and collect taxes and fees creating the revenue source of the city's operational budget. This rewrite of Title 3 does not create any new taxes or fees, but instead reorganizes the Title to group similar topics together thereby improving the flow and readability of the Title. The following chapter topics will be grouped together leaving space between chapter titles to allow room for future code amendments.

- Taxes;
- Fees;
- Fiscal Policy and Claims; and
- Accounting Funds

Other significant changes to Title 3 include:

- Segregation Assessment fees (description and engineering) have been removed and will be added to the City's Fee Resolution.
- Penalties have been updated for consistency with the civil penalties as adopted in Title 13, Civil Enforcement.
- Impact fee provisions have been moved from Title 17, Zoning and consolidated into a single chapter in Title 3. New state laws passed by the Legislature this session will be addressed in a separate ordinance.

Title 5 – Business Licenses and Regulations:

Title 5 adopts the City's business license procedures and requirements. State Law (RCW 35A.82.020) provides cities with the authority require a license for all businesses that operate in city limits. Operation in the city includes those businesses that are physically located in the city and those that engage in business within the city, but their business address is located outside of the city.

State law (RCW 35.90) also requires all cities with general business licensing requirements to adopt a uniform "model ordinance" identifying what types of commercial activity are and are not subject to business licensing requirements. A new definition will be added, but not yet drafted, clarifying what type of actions are not subject to the business license requirements. The provisions of Title 3 are consistent with the state law provisions and generally include:

- Approval process and conditions
- License terms and expiration dates
- Penalties
- Suspension, revocation, and appeals
- Exemptions

In addition to the standard business license provisions, Title 3 includes permitting and licensing of:

- Fireworks Stands
- Special Events
- Merchants with a Fixed Location (Previously Titled Peddlers, Vendors, and Temporary Merchants)
- Sexually Oriented Businesses

The existing Sexually Oriented Businesses chapter contains both licensing and regulatory standards. As regulatory standards should not be located in the business license chapter, no changes to this chapter are proposed at that time but will instead be revised when the Unified Development Code is prepared as part of the municipal code update project.

Title 4 – Administration:
Donations were moved to Title 4 – Administration, with the first batch of code amendments. In the original scoping memo, it was proposed to include "Acceptance of Interest in Real Property" as a new chapter in Title 3. This has been reconsidered and for consistency, it is recommended to move acceptance of real property to the donations chapter, SMC 4.06.

Fee Resolution:
Minor amendments to the fee schedule are necessary to add the segregated assessment fees associated with the formation of Local Improvement Districts. (SMC 3.12.320 and 3.12.330)

2023 Legislative Session Bill Update

This last legislative session ended with several bills that affect planning and zoning. Below is a summary of the bills that will affect the drafting of the Comprehensive Plan and Municipal Code.

HB 1042 – Conversion of existing commercial, mixed-use, and multifamily buildings for residences. Within existing buildings, cities:

- Allow an increase of the allowed density by 50%
- Cannot require additional parking; may retain existing parking
- Cannot require any new permitting requirements
- Apply existing zoning standards: building bulk standards, setbacks, lot coverage
- Cannot apply architectural design standards to existing buildings
- May not regulate location of units except to preserve ground floor commercial space of mixed-use buildings
- Energy code upgrades only apply to portion of the building being remodeled
- Projects cannot be denied due to non-conforming status of building or lots
- Projects are exempt from transportation concurrency requirements

Must incorporate requirements within six months of next comprehensive plan update, and these changes are categorically exempt from SEPA.

HB 1110 – Middle housing & density mandate – Does not apply to Stanwood

HB 1181 – 2023-24 – Response to Climate Change. Adds A Climate Change and Resiliency element to the Comprehensive Plan. Applies to GMA cities over 6,000 population and requires funding by the Legislature

HB 1293 – Streamlining Development Regulations with Design Review. City may only:

- Adopt "Clear and Objective" development regulation governing exterior design standards
- Standards may not materially result in a reduction in density, height, bulk or scale of buildings
- Design review must be consolidated with permit review
- Only one public meeting can be required

HB 1326 –Waiver of utility connection fees.

- Cities may waive utility connection fees for: non-profits; public development authorities; housing authorities; emergency shelter projects; transitional housing projects; permanent supportive housing projects; and/or affordable housing projects
- Fees must be paid out of the general fund, by grants, or other revenue sources
- A waiver program must be adopted by ordinance
- Applies to water, sewer, stormwater, power, gas, or other means of power/heat

HB 1337 – Accessory Dwelling Unit Regulations.

Use and Location

- Up to 2 ADU's are allowed per lot in all residential zones; units may be attached, detached, or a combination of both
- On lots less than 2,000 square feet: cities may only allow 1 ADU along with the principal use
- ADU's can be located on lots with single family residences, duplexes, triplexes, townhomes or other housing units
- Must allow ADU's on any lot that meets the minimum lot size requirement for the principal use
- Existing buildings and accessory structures may be converted to an ADU even if they are non-conforming
- Critical area and buffer regulations apply; may restrict ADU's in floodplain and geologically sensitive areas
- May restrict ADU from being used as a "short term rental" i.e.: AirB&B rental

Size and Development Standards

- May not restrict ADU's to less than 1,000 gross floor area; the 1,000 square feet does not include garages or accessory structures (Stanwood's current code is 900 sf)
- May require ADU's to be connected to sewer
- May not require an owner occupancy requirement in either unit
- Buildings may be up to 24 feet in height
- Setbacks, lot coverage, tree retention, aesthetics cannot be greater than that of the principal unit
- ADU's may be allowed along a lot line adjacent to an alley
- Street improvements may not be required
- Limitations on the number of parking stalls that can be required

Other

- Regulations may not be appealed
- Permitting process must be the same as for single family residences
- Impact fees can only be equal to half of the principal use
- ADU's may be converted to condominiums on existing property
- Cities are not liable for ADU's permitted in conflict with existing CCR's
- After the affective date of the state legislation, CCR's may not restrict ADU's

HB 1695 – Property Surplus. Cities may surplus property at no cost for affordable rental or homeownership projects.

ESSB 5258 – Impact Fee Formula and Short Plat Regulations.

- Impact fee formulas must be amended to reflect a proportionate share for multifamily and condominium units based on square footage, number of bedrooms, or trips generated to produce a proportionally lower impact fee for smaller unit types.

- Short plat regulations must be amended to allow “unit lot” subdivisions allowing the division of a principal lot into separately owned unit lots (smaller lots for townhouses or ADU’s) and creation of a homeowners association.

SB 5290 – Local Project Permit Review Process and Timelines.

Building Permits

- Interior remodels, with not expansion of the footprint, shall not be classified as a project permit and no site plan may be required

Commerce Grants

- Provides a grant program to consolidate local permit processes, including switching to online
- Provides a grant program to cover the cost to review and process permits
- Establishes a working group to review options for licensing and permitting software

Permit Review Process

- Outlines permit completeness, notice, and timelines process, and allowable exemptions and alternative compliance
- Permitting timelines have been established: 65 days for administrative decisions, 100 days for projects with public notice, and 170 days for projects with public hearings
- Exclusions from the timeline includes time for permit corrections by the applicant, temporary suspensions, mutually agreed upon extension, and time to address appeals
- New permitting penalties for not meeting timeframe: refund 10%-20% of permit fee
- After January 1, 2026 cities must adopt additional measures to address permitting procedures such as: expedited review processes; adopt ILA with other jurisdictions to share permitting staff; budget consultant support to help with permit review; hire additional permit staff covered by permit revenues; limit the types of permits that require a public hearing; or other processes to improve permit review times

Other

- Commerce to provide guidance on how to prepare a reasonable fee structure
- Commerce to provide a reporting template

SB 5412 – SEPA Categorical Exemptions. Allows cities to exempt projects from SEPA if a development is equal or lower in density and intensity as allowed by the comprehensive Plan goals and policies. An environmental impact statement may be required on the Comprehensive Plan update.

ESSB 5452 – Use of Impact Fees. Transportation impact fees can be used for public street, roads, and “bicycles and pedestrian facilities” that were designated with multimodal commuting as an intended use.

SB 5536 – Essential Public Facilities. Opioid treatment programs and facilities are considered Essential Public Facilities and may not be prohibited by cities. These include both mobile and fixed-site medication units, recovery residences, harm reduction programs and use disorder treatment facilities. Safe injection sites are not included.

SB 5553 – Temporary Emergency Shelter. Temporary emergency shelters are exempt from building code requirements.

Exhibit A
Stanwood Municipal Code
Title 3 – Revenue and Finance

CITY OF STANWOOD
WASHINGTON

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON, AMENDING STANWOOD MUNICIPAL CODE (SMC) TITLE 3, REVENUE AND FINANCE, AND ESTABLISHING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Stanwood has begun a process to comprehensively update its municipal code to conform to current law and practice; and

WHEREAS, the purpose of this code amendment is to eliminate conflicts, improve clarity and overall function of the municipal code, and reflect current city and best practices; and

WHEREAS, amendments include ______; and

WHEREAS, the City of Stanwood SEPA Responsible Official has reviewed the proposed amendments to the Stanwood Municipal Code, determined that the amendments are categorically exempt from SEPA, and memorialized those conclusions under file number ____; and

WHEREAS, the Stanwood Advisory Group reviewed the ordinance scoping memo and draft ordinance at their ___ and ____ meetings respectively, and has recommended that the City Council adopt the ordinance as presented; and

WHEREAS, the Stanwood Planning Commission reviewed the ordinance scoping memo and draft ordinance at their ___ and ____ meetings respectively and has recommended that the City Council adopt the ordinance as presented; and

WHEREAS, the Stanwood Council Community Development Committee reviewed the ordinance scoping memo and draft ordinance at their ___ and ____ meetings respectively, and has recommended that the City Council adopt the ordinance as presented; and

WHEREAS, the City Council held a public meeting and first reading of the draft code amendment on ____, a second reading on ___, and accepted public comment; and

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

Section 1. Stanwood Municipal Code Title 3, Revenue and Finance, is repealed in its entirety and replaced with the new Title 3, Revenue and Finance, as provided in Exhibit “A” attached to this ordinance and incorporated herein by reference as if set forth in full.

Section 2. References in SMC Chapter 2.14 to SMC Chapter 3.36 are updated to SMC Chapter 3.09.

Section 3. The following chapters are deleted: SMC 17.151 Impact Fees – Transportation, SMC 17.152 Impact Fees – Parks, Open Space and Recreational Facilities, SMC 17.153 Impact Fees – School Facilities, and SMC 17.153A Impact Fees – Fire Facilities.

Section 3. This ordinance contains a re-adoption of existing taxes, and no interruption from existing taxes is intended.

Section 4. Severability. The various parts, sections and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 5. Authority to Make Necessary Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbers, section/subsection numbers and any references thereto.

Section 6. Effective Date. This Ordinance shall take effect five days after its passage and publication as required by law.

PASSED and APPROVED this ____ day of ______________, 2023.

CITY OF STANWOOD:

____
Sid Roberts, Mayor

Attest:

____
Lisa Sokolik, City Clerk

Approved as to Form:

____
Nikki Thompson, City Attorney

Date of Publication: ________________

Effective Date: ____________________

EXHIBIT A

Title 3 Revenue and Finance

This title is a complete rewrite of existing SMC Title 3.

In the scoping memo, we proposed a new chapter governing the Acceptance of Interests in Real Property. Upon further reflection, that chapter makes the most sense in Title 4, rather than Title 3.

In this title, we have tried to strike a balance between keeping existing chapter numbering and reorganization for future expansion. To that end, we have organized the chapters as follows:

- 3.01-3.19 for sections pertaining to taxes.
- 3.20-3.29 for sections pertaining to fees.
- 3.30-3.39 for sections pertaining to fiscal policy, with general policies in 3.30. All accounting funds should be created and listed in their own section of SMC Chapter 3.34 corresponding to the fund number (e.g., fund 103, Street Construction Fund, is described in section 3.16.103) and following the pattern in Chapter 3.34.
- 3.40-3.41 for other sections that don't fit elsewhere, e.g., establishment of the transportation benefit district.

Chapter 3.03 Leasehold Excise Tax

This is existing chapter 3.32, recodified to be near the other tax chapters.

3.03.010 Imposition of tax.

A leasehold excise tax is imposed on and after June 1, 1993 upon the act or privilege of occupying or using publicly owned real or personal property within the city of Stanwood through a "leasehold interest," as defined by Chapter 82.29A RCW. The tax must be paid, collected and remitted to the State Department of Revenue.

3.03.020 Tax rate.

(1) The rate of tax imposed by SMC 3.03.010 is 4% of the taxable rent, as provided in RCW 82.29A.040.

(2) With respect to a product lease, a credit of 33% of the tax produced by the above rate.

3.03.030 Agreement.

The mayor is authorized to execute a contract with the State Department of Revenue for the administration and collection of the tax imposed by RCW 3.03.010; provided, that the city attorney must first approve the form and content of said contract.

3.03.040 Adoption by reference.

The city hereby adopts by reference Chapter 82.29A RCW, Leasehold Excise Tax.

3.03.050 Severability.

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

Chapter 3.04 Sales and Use Tax

This an integration of existing SMC Chapter 3.04, Sales and Use Tax, and existing SMC Chapter 3.06, Additional Sales and Use Tax.

Note there are two sections with two different sales taxes in this chapter because the state law authorizes them in different ways.

3.04.010 Imposition of tax.

Based on existing SMC 3.04.010.

(1) Per RCW 82.14.030(1), a sales or use tax is imposed upon every taxable event occurring within the city.

Next line is based on existing SMC 3.04.020.

(2) The rate of tax imposed by this section is 0.005% of the selling price or value of the article used, as the case may be; except that during such period as there may be in effect a sales or use tax imposed by Snohomish County under RCW 82.14.030(1), the rate of tax imposed by this chapter is 0.00425%.

Next line is based on existing SMC 3.04.050.

(3) The effective date of the tax imposed in this section is January 1, 1971.

3.04.020 Imposition of additional tax.

This section is based on existing SMC 3.06.010-.020.

(1) Per RCW 82.14.030(2), an additional sales or use tax is imposed on every taxable event within the city.

Next line is based on existing SMC 3.06.020.

(2) The rate of tax imposed by this section is 0.005% of the selling price or value of the article used, as the case may be; except that during such period as there may be in effect a sales or use tax imposed by Snohomish County under RCW 82.14.030(2) at a rate equal to or greater than the rate imposed by a city within the county, the county must receive 15% of the city tax; and in the event that the county imposes a sales and use tax under RCW 82.14.030(2) at a rate less than the rate imposed by a city within the county, the county must receive that amount of revenues from the city tax equal to 15%of the rate of tax imposed by the county.

Next line is existing SMC 3.06.040.

(3) The effective date of the tax imposed in this section is July 1, 1982.

3.04.030 Administration.

Based on existing SMC 3.04.030 and 3.06.030.

(1) The tax is imposed upon and collected from those persons from whom the state sales or use tax is collected, pursuant to Chapters 82.08 and 82.12 RCW.

(2) "Taxable event" has the meaning in RCW 82.14.020.

(3) The administration and collection of the tax imposed by this chapter must be in accordance with the provisions of RCW 82.14.050, and the mayor is authorized and directed to execute on behalf of the city contracts with the State Department of Revenue for such collection and administration of the tax.

3.04.040 Inspection of records.

Based on existing SMC 3.04.040.

The city consents to the inspection of such records as are necessary to qualify the city for inspection of records of the Department of Revenue, pursuant to RCW 82.32.330.

Chapter 3.05 Sales and Use Tax for the Transportation Benefit District

This is a new chapter to codify the TBD sales tax approved by the voters in the 2022 election.

3.05.010 Imposition of tax.

Per RCW Chapter 36.73 and RCW 82.14.0455, a sales and use tax in the amount of two-tenths of one percent, having been approved for renewal by the voters of the City of Stanwood Transportation Benefit District in the November 8, 2022, general election, is levied to be collected from all taxable retail sales within the Transportation Benefit District established by SMC Chapter 3.40.

3.05.020 Deposit of proceeds.

Proceeds from the tax established by this chapter must be deposited and expended per SMC 3.05.108.

3.05.030 Expiration and renewal.

Per RCW 82.14.0455, the tax imposed by this chapter expires after a period of 10 years unless renewed with an affirmative vote of the voters voting at an election.

Chapter 3.06 Sales and Use Tax for Affordable Housing

This is a recodification of existing SMC Chapter 3.50, adopted in 2020, to place all tax-related chapters together.

3.06.010 Purpose of tax.

Existing SMC 3.50.010.

The Washington State Legislature recognizes that local governments have been faced with a rising level of homelessness and limited affordable housing. To help address the state housing affordability crisis, the legislature provided to counties and cities the authority to implement a local sales tax to fund affordable or supportive housing.

3.06.015 Imposition of sales and use tax for affordable housing.

Existing SMC 3.50.015.

(1) There is imposed a sales and use tax as authorized by RCW 82.14.540 upon every taxable event, as defined in Chapter 82.14 RCW, occurring within the city of Stanwood.

(2) The tax is imposed upon and collected from those persons from whom the state sales tax or use tax is collected pursuant to Chapters 82.08 and 82.12 RCW.

(3) The rate of the tax imposed by this chapter is the maximum capacity of the sales and use tax (0.0073 percent authorized by RCW 82.14.540) of the selling price or value of the article used.

(4) The tax imposed under this chapter must be deducted from the amount of tax otherwise required to be collected or paid to the Department of Revenue under Chapter 82.08 or 82.12 RCW. The Department of Revenue will perform the collection of such taxes on behalf of the city at no cost.

(5) The Department of Revenue will calculate the maximum amount of tax distributions for the city of Stanwood based on the taxable retail sales in the city, and the tax imposed under this chapter will cease to be distributed to the city for the remainder of any state fiscal year in which the amount of tax exceeds the maximum amount of tax distributions for the city as properly calculated by the Department of Revenue. Distributions to the city of Stanwood that have ceased during a state fiscal year must resume at the beginning of the next state fiscal year.

3.06.020 Applicability of tax.

Existing SMC 3.50.020.

(1) The city may use the moneys collected by the tax imposed under this chapter for the following purposes:

  (a) Acquiring, rehabilitating, or constructing affordable housing, which may include new units of affordable housing within an existing structure or facilities providing supportive housing services under RCW 71.24.385; or

  (b) Providing the operations and maintenance costs of new units of affordable or supportive housing; or

  (c) Providing rental assistance to tenants.

(2) The housing and services provided under this chapter may only be provided to persons whose income is at or below 60 percent of the median income of the city.

3.06.025 Administration and collection.

Existing SMC 3.50.025.

The administration and collection of the tax imposed by this chapter must be in accordance with the provisions of RCW 82.14.540. The mayor, with approval of the city council, is hereby authorized to and directed to execute and sign contracts with the Washington State Department of Revenue that may be necessary to provide for the administration or collection of the tax.

3.06.030 Duration of tax.

Existing SMC 3.50.030.

(1) The tax imposed by the city under this chapter will expire 20 years after the date on which the tax is first imposed.

(2) The finance director must provide notice to the city council and the mayor of the expiration date of the tax each year, beginning three years before the expiration date, and must also promptly notify the city council and the mayor of any changes to the expiration date.

(3) The finance director must report annually to the Washington State Department of Commerce, in accordance with the Department's rules, on the collection and use of the revenue from the tax imposed under this chapter.

3.06.040 Deposit of proceeds.

This is a new section.

It doesn't look like you have a special revenue fund for the proceeds from the affordable housing sales tax. Don't we want that? Need to specify where to put proceeds from the tax and amend SMC 3.34.

Proceeds from the tax established by this chapter must be deposited and expended per SMC 3.34.___.

Chapter 3.07 Brokered Natural Gas Use Tax

No changes to this existing chapter.

3.07.010 Adoption by reference.

RCW 82.14.230 providing for imposition and collection of a use tax on brokered natural gas is hereby adopted as if set forth in full.

3.07.020 Rate.

There is hereby imposed a use tax in the amount of 6% upon brokered natural gas to be paid by the consumer under the provisions of RCW 82.14.230.

Chapter 3.08 Real Estate Excise Tax (REET)

ℹ This chapter has been renamed from "Real Estate Sales Excise Tax" to conform to the language used in the RCW and common parlance.

ℹ No major changes to this existing chapter except that the enumeration of the allowed uses has been deleted and a reference inserted to the statutorily allowed purposes, which change from time to time.

ℹ Deleted 3.08.080 regarding deposit of revenue.

3.08.010 Imposition of tax—REET 1

ℹ Based on existing SMC 3.08.010.

(1) Per RCW 82.46.010, an excise tax of one-quarter of one percent of the selling price is imposed on each sale of real property within the corporate limits of the city of Stanwood.

ℹ The following subsections are based on existing SMC 3.08.080.

(2) Proceeds of taxes imposed in this section must be deposited per SMC 3.34.120 and used by the city as authorized by RCW 82.46.010.

(3) This section does not limit the existing authority of this city to impose special assessments on property specially benefited thereby in the manner prescribed by law.

3.08.015 Imposition of tax—REET 2

ℹ Based on existing SMC 3.08.015.

(1) Per RCW 82.46.035, an additional excise tax of one-quarter of one percent of the selling price is imposed on each sale of real property within the corporate limits of the city of Stanwood.

(2) This tax is in addition to the tax imposed by SMC 3.08.010.

ℹ Based on existing SMC 3.08.080.

(3) Proceeds of taxes imposed in this section must be deposited per SMC 3.34.121 and expended as authorized by RCW 82.46.035.

3.08.020 Taxable events.

ℹ Existing SMC 3.08.020.

Taxes imposed in this chapter must be collected from persons who are taxable by the state under Chapter 82.45 RCW and Chapter 458-61 WAC upon the occurrence of any taxable event within the corporate limits of the city.

3.08.030 Consistency with state tax.

Existing SMC 3.08.030

The taxes imposed in this chapter must comply with all applicable rules, regulation, laws, and court decisions regarding real estate excise taxes as imposed by the state under Chapter 82.45 RCW and Chapter 458-61 WAC. The provisions of those chapters, to the extent they are not inconsistent with this chapter, apply as though fully set forth in this chapter.

3.08.040 Disbursal of tax proceeds.

Existing SMC 3.08.040.

The Snohomish County treasurer must deposit one percent of the proceeds of the excise tax collected, pursuant to SMC 3.08.010, into the Snohomish County current expense fund to defray the costs of collection. No such deduction may be made from the proceeds of the excise tax collected pursuant to SMC 3.08.015.

3.08.050 Seller's obligation.

Existing SMC 3.08.050.

The taxes imposed in this chapter are the obligation of the seller and may be enforced through the action of debt against the seller or in the manner prescribed for the foreclosure of mortgages.

3.08.060 Lien provisions.

Existing SMC 3.08.060.

The taxes imposed in this chapter and any interest or penalties thereon are the specific lien upon each piece of real property sold from the time of sale or until the tax is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages. Resort to one course of enforcement is not an election not to pursue the other.

3.08.070 Notation of payment.

Existing SMC 3.08.070.

The taxes imposed in this chapter must be paid to and collected by the treasurer of the county within which is located the real property which was sold. The county treasurer must act as agent for the city within the county imposing the tax. The county treasurer must cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales. A receipt issued by the county treasurer for the payment of the tax imposed in this chapter is evidence of the satisfaction of the lien imposed in SMC 3.08.060 and may be recorded in the manner prescribed for recording satisfactions or mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax may be accepted by the county auditor for filing or recording until the tax is paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument may not be accepted until suitable notation of this fact is made on the instrument by the county treasurer.

3.08.085 Date payable.

Existing SMC 3.08.085.

The taxes imposed in this chapter become due and payable immediately at the time of sale and, if not so paid within 30 days thereafter, bear interest at the rate of 1% per month from the time of sale until the date of payment.

Chapter 3.09 Lodging Tax

This chapter is based on existing SMC Chapter 3.36. It has been moved here to number all tax chapters together.

Note that the Lodging Tax Advisory Committee has been reorganized by prior ordinance into SMC Chapter 2.14.

3.36.010 Imposition of lodging tax.

Based on existing SMC 3.36.010.

(1) There is hereby created a special excise tax of two percent on the sale of or charge made for the furnishing of lodging that is subject to tax under Chapters 67.28 and 82.08 RCW. This tax is assessed pursuant to the terms of RCW 67.28.180.

(2) The tax imposed under this section applies to the sale of or charge made for the furnishing of lodging by a hotel, motel, rooming house, tourist court, or trailer camp, and the granting of any similar license to use real property as distinguished from the renting or leasing of real property.

(3) It is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same.

3.09.030 Definitions.

Based on existing SMC 3.36.030.

The definitions in RCW 82.08.010 are adopted and apply throughout this chapter unless the context clearly requires otherwise.

3.09.040 Tax deemed in addition to license fee or other taxes.

Based on existing SMC 3.36.040.

The taxes levied by this chapter are in addition to any license fee or any tax imposed or levied under any law or any other ordinance of the city; however, pursuant to Chapter 67.28 RCW, such tax must be deducted from the amount of tax the seller would otherwise be required to collect and to pay to the State Tax Commission under the provisions of Chapter 82.08 RCW.

3.09.050 Deposit of proceeds—Use of funds.

> Based on existing SMC 3.36.040.

Proceeds from the taxes levied by this chapter must be deposited per SMC 3.34.115 and may be used solely for the uses authorized by RCW Chapter 67.28 through the procedures described in that chapter and SMC Chapter 2.14.

3.09.060 Administration and collection.

> Existing SMC 3.36.060.

For the purpose of the taxes levied by this chapter:

(1) The State Department of Revenue is designated as the agent of the city for the purpose of collection and administration;

(2) The administrative provisions contained in RCW 82.08.050 through 82.08.070, and as contained in Chapter 82.32 RCW, apply with respect to the administration and collection by said department;

(3) All rules and regulations adopted by the Department of Revenue for the administration of Chapter 82.08 RCW, are adopted;

(4) The Department of Revenue is authorized to prescribe and utilize such special forms and procedures as the Department may deem necessary and appropriate.

Chapter 3.10 Gambling Tax

> No major changes to this existing chapter.

3.10.010 Definitions.

For the purposes of this chapter the terms used herein have the same meanings as defined in Chapter 9.46 RCW, as the same now exists or may hereafter be amended. Said definitions are hereby incorporated by reference.

3.10.020 Imposition of tax.

> Existing SMC 3.10.020.

(1) There is hereby levied pursuant to RCW 9.46.110 upon all persons, corporations, associations, and organizations authorized to conduct or operate any gambling activity or amusement game within the city, as provided herein, taxes as follows:

   (a) Bingo and/or Raffles. These activities are taxed at a rate of 5% of the gross receipts received therefrom, less the amount paid for as prizes.

   (b) Amusement Games. These activities are taxed at a rate of 2% of the gross revenue therefrom less the amount paid for as prizes.

   (c) Punchboards and/or Pulltabs. These activities are taxed:

      (i) To bona fide charitable or nonprofit organizations at a rate of 5% of gross receipts less prizes;

(ii) To commercial stimulant operators at a rate of 5% of gross receipts.

(d) Social Card Games and/or Any Other Gambling Activity. These activities are taxed at a rate of 5% of the gross receipts therefrom to the extent provided in subsections (2) and (3) of this section.

(2) Provided, that no tax may be imposed on bingo, or amusement games when such activities are conducted by any bona fide charitable or nonprofit organization, which organization has no paid operating or management personnel, and has gross income from bingo, or amusement games, or any combination thereof, not exceeding $5,000 per year, less the amount paid for as prizes. No tax may be imposed on the first $10,000 of net proceeds from raffles conducted by any bona fide charitable or nonprofit organization.

(3) Provided further, that the tax provided for in subsection (1)(d) of this section applies solely to those social card games and/or any other gambling activity, including fund-raising events conducted, held or operated as a commercial stimulant as defined in Chapter 9.46 RCW. Specifically, such tax applies only to such activities conducted in a "public card room" as defined in WAC 230-02-410.

3.10.030 Administration – Collection.

i Based on existing SMC 3.10.030.

The city treasurer must administer and collect the tax levied by this chapter pursuant to rules and regulations as may be adopted by the State Gambling Commission.

3.10.040 Payments – Late penalties and liens.

i Based on existing SMC 3.10.040.

(1) The tax imposed by this chapter is due and payable in quarterly installments, and remittance therefor must accompany each return and be made on or before the 30th day of the month next succeeding the quarterly period in which the tax accrued.

(2) For each payment due, if such payment is not made by the due date thereof, a penalty is added as follows:

(a) First to 17 days delinquency, 10 percent of payment due;

(b) More than 17 days delinquency, 15 percent of payment due;

(c) A copy of all forms submitted to the state must be submitted with the payment to the city.

(3) Taxes imposed under this chapter become a lien upon personal and real property used in the gambling activity in the same manner as provided for under RCW 84.60.010. The lien attaches on the date the tax becomes due and relates back and have priority against real and personal property to the same extent as ad valorem taxes.

3.10.050 Disposition of proceeds.

i Based on existing SMC 3.10.050.

(1) All taxes received under this chapter must be deposited in the current expense fund. Moneys deposited in such fund as a result of the tax imposed by this chapter may be used by the police department for the policing and enforcement of state statutes and city ordinances relating to the control of gambling and such criminal activities as may be incidental to gambling, including vice and drug controls.

(2) For purposes of this chapter, the reasonable and necessary expenses of the city treasurer in administering and providing audit services pursuant hereto are legitimate charges against the gambling tax since such expenses are recognized as being vital to the enforcement of this chapter.

3.10.060 City treasurer's authority.

Based on existing SMC 3.10.050. Updated to treasurer, rather than clerk-treasurer.

The city treasurer must:

(1) Adopt, publish and enforce such rules and regulations consistent with this chapter as are necessary to enable the collection of the tax imposed by this chapter in the unincorporated areas of Snohomish County;

(2) Prescribe and issue the appropriate forms for determination and declaration of the amount of tax to be paid.

3.10.070 Access to records.

Existing SMC 3.10.050.

It is the responsibility of all officers, directors and managers of any organization conducting gambling activities to provide access to such financial records as the city treasurer, chief of police, city attorney, their authorized representatives, or law enforcement representatives of local municipalities may require in order to determine compliance with this chapter.

3.10.080 Washington laws – Applicability.

Existing SMC 3.10.050.

Unnecessary. This section should be understood and could be deleted.

This chapter, and all activities undertaken hereunder are subject to all applicable laws and regulations of the state of Washington.

3.10.090 Violation – Penalty.

Based on existing SMC 3.10.090.

Updated to reflect adoption of SMC Title 13.

Violation of this chapter is a category 1 civil infraction and may be enforced per SMC Title 13.

Chapter 3.11 Utility Tax

> This is a new chapter for Title 3, based on existing SMC Chapter 5.01, which is being repealed by simultaneous adoption of an ordinance re-adopting the entirety of Title 5.
>
> References to clerk-treasurer have been collected to treasurer.
>
> Gender-specific pronouns have been removed.

3.11.010 Generally.

> Based on existing SMC 5.01.010.

There are levied and must be collected utility taxes against the persons on account of the business activities, and in the amounts to be determined by the application of the rates against gross income, as set forth in this chapter.

3.11.020 Definitions.

> Based on existing SMC 5.01.020. “Person” is defined in SMC 1.04.020 so excluded here.

The following definitions apply to the terms when used in this chapter:

“Gross revenue” means revenues received by a utility or business from operations or sales within the city less net uncollectibles. Gross revenue of natural, artificial or mixed gas and electric utilities includes revenues from the use, rental or lease of operating facilities of the utility other than residential-type space and water heating equipment. Gross revenues do not include charges which are passed onto the subscribers by a utility pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this section. Gross revenues of telephone utilities includes 100% of the toll service fees from calls originating in and/or billed to subscribers within the city of Stanwood including revenue from providing access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, telephonic, video, data or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system, including transmission of communication for cellular telephones or other wireless phone service. Gross revenues of cable television utilities include revenues from the one-way transmission of video programming and associated nonvideo signals to subscribers which is provided in connection with video programming.

“Taxpayer” means any person liable for taxes imposed by this chapter.

3.11.030 Businesses and utilities subject to utility tax – Amount.

> Based on existing 5.01.040.

Utility taxes are hereby levied and must be collected on account of business activities in amounts determined by the nature of the business activities, and by the application of rates against gross income, as follows:

(1) Electric. Upon every person engaged in or carrying on the business of selling or furnishing electric light and power within the city of Stanwood, a tax equal to 6% of the total gross revenue from such business during the tax-reporting period;

(2) Gas. Upon every person engaged in or carrying on a business of selling or furnishing gas within the city of Stanwood, a tax equal to 6% of the total gross revenue from such business in the city during the tax-reporting period;

(3) Telephone. Upon every person engaged in or carrying on a telephone business within the city of Stanwood, a tax equal to 6% of the total gross revenue from such business during the tax-reporting period;

(4) Water. Upon every business in the city engaged in selling or furnishing water including for resale or distribution outside of the city, to be levied upon customers of such business:

  (a) A city tax equal to 10.7% of the total gross revenue from such business during the tax-reporting period;

  (b) A state public utility tax at the rate established by RCW 82.16.020, as amended.

(5) Sanitary Sewer. Upon every business in the city engaged in furnishing sanitary sewer services within the city of Stanwood, to be levied upon customers of such business:

  (a) A city tax equal to 6% of the gross revenue from such business during the tax-reporting period;

  (b) A state public utility tax equal to the amount of the public utility tax on sewerage collection incurred by the city under RCW 82.16.020, to be revised annually based on actual preceding year costs and the rate in said section; and

  (c) The business and occupation tax on the amount of sewer service costs that are not related to sewerage collection, to be revised annually based on actual costs, according to the guidance provided by WAC 458-20-251.

(6) Drainage. Upon every business engaged in providing drainage services within the city of Stanwood, to be levied upon customers of such business:

  (a) A city tax equal to 6% of the gross revenue from such business during the tax-reporting period;

  (b) A state business and occupation tax at the rate established by RCW 82.04.290, as said rate adjusts, said rate currently being equal to 1.5% percent of the total gross revenues.

(7) Garbage. Upon every person engaged in or carrying on the business of collection of garbage or solid waste within the city of Stanwood, a tax of 6% of the gross revenue from such business during the tax-reporting period;

(8) Cable Television. Upon every person engaged in or carrying on a cable television business within the city of Stanwood, a tax equal to 3% of the gross revenue from such business in the city during the tax-reporting period.

3.11.040 Exemptions and deductions.

> i Based on existing 5.01.050.

(1) The following amounts are exempt and deducted from the total gross income upon which the tax is computed:

  (a) income derived from transactions in interstate or foreign commerce;

  (b) income derived from business done for the government of the United States, its officers, or agents;

  (c) any amount paid by the taxpayer to the United States, the state, or the city, as excise taxes levied or imposed upon the sale or distribution of property or services;

  (d) bad debts for services incurred, rendered or charged for during the tax-reporting period.

(2) Debts are deemed bad and uncollectible when they have been written off the books of the taxpayer.

3.11.050 Reporting period and payment provisions.

Based on existing 5.01.030.

(1) Utility taxes are due at the end of each monthly tax-reporting period. However, the city treasurer may, in the interest of economy of administration, set quarterly tax-reporting periods for individual taxpayers.

(2) Remittance of utility taxes imposed by this section must be made to the city treasurer on or before the 25^{th} day of the month next succeeding the end of the tax-reporting period.

3.11.060 Sale or transfer of business.

Based on existing 5.01.060.

Upon the sale or transfer during any tax year of a business subject to the utility tax, if the tax has not been paid in full for the year, the purchaser or transferee is responsible for payment for that portion of the year during which the transferee carries on such business.

3.11.070 Taxpayer to keep books and records – Returns to be confidential.

Based on existing 5.01.070.

(1) Each taxpayer taxed upon his gross income must keep and enter in a proper book or set of books or records an accurate accounting of his gross income.

(2) The accounting must always be open to the inspection of the city treasurer to verify the return made by the taxpayer.

(3) The applications, statements or returns made to the city treasurer, pursuant to this chapter, may not be made public, nor may they be subject to inspection of any person except the mayor, city attorney, the city treasurer or his authorized agent, and members of the city council.

3.11.080 Right to audit.

Based on existing 5.01.080.

(1) If a taxpayer fails to make a return, or if the city treasurer is dissatisfied as to the correctness of the statements made in the application or return of any taxpayer, the taxpayer must provide an accounting.

(2) If the taxpayer fails to provide such an accounting, the city treasurer may conduct audit procedures, at the expense of the taxpayer, as necessary to establish or account for the taxable revenue.

3.11.090 Overpayment or underpayment of tax.

Based on existing 5.01.090.

(1) If the city treasurer finds that the tax paid is more than the amount required of a taxpayer, the city treasurer must refund the amount overpaid by a warrant upon the general fund.

(2) If the city treasurer finds that the tax paid is less than required of a taxpayer, the city treasurer must send a statement to the taxpayer showing the balance due, and such taxpayer must pay the amount shown thereon within 10 days after notification.

3.11.100 Late payment penalties.

Based on existing 5.01.100; substantially simplified.

All taxes due under this chapter that are not paid within 15 days of the due date specified in SMC 3.11.050 incur a late payment penalty equal to 5% of the tax.

3.11.110 City treasurer may make rules.

Based on existing 5.01.110.

Changed rulemaking from mandatory to permissive; updated to website from posting in city hall.

(1) The city treasurer may, from time to time, adopt and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions thereof.

(2) Rules promulgated pursuant to this section must be posted in city hall and published on the city website.

(3) It is unlawful to violate or fail to comply with any such rule or regulation.

3.11.120 Violation – Penalty.

Based on existing SMC 5.01.120, which made a violation a "Class B" infraction, which no longer exists post-adoption of the revised SMC Title 13.

(1) A violation of the mandatory requirements of this chapter is a class 1 civil infraction and may be punished by any of the civil enforcement remedies under SMC Title 13.

(2) Officers, directors, and managers of any organization conducting business activities are jointly and severally liable for payments required under this chapter.

Chapter 3.12 Local Improvements

This chapter deletes the fees in existing SMC 3.12.320 and 330, which should instead be included in the City's consolidated fee schedule.

Changed clerk-treasurer to treasurer. Almost no other changes.

This subject could stand further investigation and added cross-references in the City's unified development code. If the City is not currently engaged in LIDs, it could delete this chapter at this time.

There are other mechanisms in state law to accomplish the purpose of LIDs, such as street improvements.

3.12.010 Local improvements.

Local improvements may be performed under the provisions of RCW 35A.43.010 and/or 35A.43.020. (Ord. 874 § 1, 1993).

3.12.280 Segregated assessment – Determination – Collection.

The City treasurer is authorized to collect and receive from any owner or owners of any subdivision or subdivision of any lot, tract or parcel of land, upon which a LID assessment has been or may hereafter be made, such portion of the assessment or assessments levied or to be levied against such lot, tract or parcel of land in the payment of the local improvement as the city engineer must certify to the council and found by the council to be chargeable to such subdivision or subdivisions, in accordance with the requirements and provisions of law and ordinances of the city in force at the time the original charge or assessment was made, together with a similar proportion of any penalties, interest or costs which may have accrued.

3.12.290 Segregated assessment – Collection record, receipt required.

Upon making such collection upon any such subdivision, the treasurer is authorized to note such collection upon the assessment record, give receipt for such certified portion of the assessment as and for the assessment levied upon and due from the subdivision; provided that this section may not authorize segregation of any assessment which has been delinquent for a period of two years or more; or in any case where it appears that such property as segregated, in the discretion of the council, is not sufficient security for the payment of the assessment.

3.12.300 Segregated assessment – Street conformance required.

No segregation of any assessment on unplatted land, or large platted tracts, may be made until a showing has been made by the applicant for segregation that the proposed segregation of property will conform to the system of streets as they exist in adjacent territory. In all such instances, the council must determine such question of fact.

3.12.310 Segregated assessment – Certification.

Whenever on account of the filing of a plat or replat, or on account of a sale or contract to sell, or other proper evidence of a change of ownership of a divided portion of any lot, tract or parcel of land assessed for local improvements, it must appear to be in the best interest of the city to segregate such assessment, the council must make the proper certification as provided for herein upon the written application of the owner of the segregated property, and upon the payment of the fees provided in the city's consolidated fee schedule.

Chapter 3.20 Public Service Fees

> ℹ This chapter replaces existing SMC Chapter 3.30 , and the many sections therein, with new sections to support the City's now-existing Consolidated Fee Schedule. This chapter also integrates existing SMC Chapter 3.31, which has been largely subsumed by the Consolidated Fee Schedule.

3.20.010 Purpose

> ℹ Existing 3.31.010.

The city council finds that in order to avoid any person or particular class of persons being unduly benefited at public expense, and in order to equitably apportion certain administrative costs of the city, made necessary by reason of their employment by the citizens in their legitimate request for public services, it is reasonable and necessary to fix charges therefor, not as a means of revenue, but in order to defray a portion of the city’s costs of such services to the taxpayer.

3.20.040 Consolidated Fee Schedule

(1) The City Council has established a Consolidated Fee Schedule, to be adopted and amended by resolution of the City Council, to set the amount of fees to be charged for city services.

(2) The city reserves the right to charge an amount in excess of the fees on the Consolidated Fee Schedule when the stated fees do not cover the city’s costs.

3.20.060 Payment Processing Fees

> ℹ This section is based on existing SMC 3.30.020.

(1) Payment Methods. The city is authorized to accept payments by credit and debit card for payment of nonutility city-imposed fees, fines, rates and charges. A payer desiring to pay by one of these methods may be required to bear the cost of processing the transaction in an amount to be determined by the finance department. Such determination must be based on the actual cost incurred by the city including handling, collection, discount, disbursing, and accounting for the transaction.

(2) Authorization to Set Limits. The finance director or city administrator is authorized to approve the acceptance of credit cards or debit cards by a city department for the payment of nonutility city imposed fees, fines, rates, and charges. No department may accept credit or debit cards without such approval. The finance director is further authorized to establish appropriate internal control procedures and set any limitations concerning the acceptance of these alternative payment methods on participating departments.

(3) Each fund authorized to use one of the alternative payment methods is responsible for the associated costs. The finance department will establish the accounting system to track associated costs with the use of the alternative payment methods and will charge the costs back to the accepting fund on a monthly basis.

3.20.080 Timely Payment

> ℹ Based on existing 3.31.030(1)-(4).

(1) All permit fees and connection charges attributable by ordinance to any property or parcel are due and payable at time of issuance of the required use and occupancy permit.

(2) Water services in excess of three-quarter-inch must pay a deposit equal to the minimum water service charge, with the balance owing due and payable upon completion of the water service work by the city.

(3) Fees and connection charges for construction or occupancies that are within the city of Stanwood service area but outside the corporate limits of the city of Stanwood and are proposed for connection to city utilities must pay must fees at time of issuance of the relevant building permit.

(4) No required use and occupancy permit or building permit may be issued without payment of all fees and charges due.

3.20.100 Refunds

> ℹ This section is based on existing SMC 3.31.030(5).
>
> ℹ Modified to clearly make the Finance Director authorized and responsible for refunds.

(1) The Finance Director may refund a portion of fees and charges attributable to a property or parcel under the following conditions:

> ℹ Deleted "such fees and charges have been timely paid;"

(a) the construction, occupancy, or development has not been commenced and the applicant has abandoned the proposal;

(b) the applicant has made the request for refund in writing to the Finance Director stating the reasons for the request and surrendered all permits and receipts applicable to the project.

(2) Amount of refund.

(a) For permit application fees for which no permit has been issued, up to 50% of the permit fee may be refunded.

(b) For permit application fees for which a permit has been issued, no refund is allowed.

(c) For connection charges for which no work has been started or commenced and the project has been abandoned, up to the the total amount of fees paid less a 10 percent administrative charge may be refunded.

(d) For connection charges upon which work has commenced, no refund is allowed.

(3) Refunds may also be issued for impact fees, consistent with the procedures in SMC Chapter 3.24.

Chapter 3.24 Impact Fees

ℹ This is a new chapter describing procedures and policies for assessment and payment of impact fees.

ℹ Existing impact fees chapters are in Title 17. Because they are not development regulations (and because applicants do not vest to impact fees), we have moved that content here, consolidated duplicative procedural provisions, and integrated the following chapters into a new single chapter:

- 17.151 Impact Fees – Transportation
- 17.152 Impact Fees – Parks, Open Space and Recreational Facilities
- 17.153 Impact Fees – School Facilities
- 17.153A Impact Fees – Fire Facilities

3.24.010 Authority and Purpose

ℹ The following is new material, to clearly indicate the four limited areas that impact fees are authorized in by state law.

(1) RCW 82.02.050 authorizes the city to impose impact fees on development activity as part of the financing for the cost of financing the following capital facilities owned or operated by government entities: (a) public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities.

ℹ This section is existing SMC 17.151.010.

(2) This chapter is intended to accomplish the following purposes:

(a) To ensure that adequate facilities are available to serve new growth and development;

(b) To promote orderly growth and development by requiring that new development pay a proportionate share of the cost of new transportation facilities needed to serve growth; and

(c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicate fees for the same impact.

3.24.020 Findings

This section is existing SMC 17.151.020 and 17.152.020 and 17.153.010, de-duplicated.

The city council finds and declares that:

(1) New residential and nonresidential development causes increased demands on public roads, streets and other transportation facilities, as well as on parks, open space, and recreational facilities;

(2) Projections indicate that new development will continue and that it will place ever-increasing demands on the city to provide necessary public transportation facilities, as well as necessary public park, open space and recreational facilities;

(3) The Growth Management Act (GMA) amended RCW 58.17.110, the Platting and Subdivision Act, to require that subdivision decisions include written findings that “appropriate provisions are made for...schools and school grounds...;"

(4) Demands for construction of new school facilities will continue through the next decade because of increased population;

(5) Because the Washington State Constitution makes the education of our children the state’s paramount duty, there continues to be a state responsibility for the construction of school facilities;

(6) To the extent that new development places demands on the public facility infrastructure, those demands should be partially financed by shifting a proportionate share of the cost of such new facilities from the public at large to the developments actually creating the demand; and

(7) The imposition of impact fees upon residential and nonresidential development in order to finance specified public facilities, the demand for which is created by such development, is in the best interest of the general welfare of the city and its residents, is equitable, does not impose an unfair burden on such development by forcing developers and builders to pay more than their fair or proportionate share of the cost and is reasonably necessary to provide the necessary public facility infrastructure to serve new development as planned for in the city Comprehensive Plan and the city capital facilities plan;

(8) It is the desire of the city to have new development assessed impact fees in a uniform manner and to have a common formula and administrative process for the levying of this fee to the maximum degree possible.

3.24.030 Definitions

Based on existing SMC 17.151.030 and 17.152.030 and 17.153.020, de-duplicated. Removed paragraph numbers. Substituted incorporated definitions from statute. New term "applicant." Deleted " Development approval authority," which was never used.

(1) The definitions in RCW 82.02.090 are incorporated by reference.

(2) As used in this chapter:

"Applicant" means the person applying for a building permit or other permit that requires calculation of an impact fee.

“Building permit” means the permit required for new construction and additions pursuant to SMC Title 14. The term “building permit” as used herein may not be deemed to include permits required for the remodeling, rehabilitation, or other improvement to an existing structure, or rebuilding a damaged or destroyed structure; provided there is no increase in the applicable unit of measure for nonresidential construction or the number of dwelling units for residential construction.

“Capital facilities plan” means the capital facilities element of the Stanwood Comprehensive Plan. Any reference to the capital facilities plan includes the city of Stanwood's six-year capital improvement program adopted as an amendment to the Comprehensive Plan by the city council.

“Department” means the community development department of the city.

"Development project" _____

"Director" means the City of Stanwood director of community development.

> The following is based on existing SMC Chapter 17.153.020 Definitions. Deleted "Concurrent" or the "concurrency standard," "service area," "state match percentage" which were not used; and "system improvements" which was not different from the definition in RCW 82.02.090; deleted "student generation rate (SGR)" as a separately defined term from the term "student factor," as SGR was not used. Replaced "district" with "school district" in all relevant cases.

(3) With respect to the school component of the impact fee, the following definitions apply:

“Capacity” means the number of students a school site and its school building are designed to accommodate.

“Capital facilities plan” means the capital facilities plan prepared by or for the school district and adopted by reference into the capital facilities element of the city of Stanwood Comprehensive Plan.

“Development” means all subdivisions, short subdivisions, conditional use permits, or building permits for construction of new residential dwelling units. This definition does not include attached or detached accessory dwelling units or “housing for older persons” as defined in Title 46 U.S.C.

“School district” means the Stanwood-Camano School District No. 401.

“Student factor” means the student generation rate (SGR), i.e., the number of students of each grade span (elementary, middle/junior high, high school) that the school district determines is typically generated by dwelling unit types within the school district.

3.24.040 Imposition of impact fees.

> The following is based on existing SMC 17.151.040 and 17.152.040, deduplicated.

(1) An impact fee is imposed upon all new development activity within the city.

(2) The impact fee consists of four components: fire, parks, schools, and transportation.

(3) Each of the impact fee components must be calculated according to the provisions of this chapter.

> The following is based on unnumbered text within existing SMC 17.151.055.

(4) It is hereby declared that such impact fees must:

(a) Only be imposed for system improvements that are reasonably related to new development; and

(b) Not exceed a proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, reasonably related to new development; and

(c) Be used for system improvements that will reasonably benefit new development; and

(d) Not be imposed to make up for deficiencies in any previously constructed system improvements, although may be imposed based upon the formula for calculating the proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, necessitated by new development to be borne by impact fees.

3.24.100 Fee Calculation—Generally

i Based on existing SMC 17.151.090 and 17.152.080, deduplicated.

(1) If the development for which approval is sought contains a mix of residential and nonresidential uses, then the impact fee must be separately calculated for each type of use.

i Existing subsections (2) and (3) assumedly refer to the same process so are combined into one subsection.

i The (existing) authority below should probably be vested in the planning director and offer an appeal process.

(2) The city council may adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances peculiar to specific development activity to ensure that impact fees are imposed fairly. Upon application by the developer of any particular development activity, the city council may consider studies and data submitted by the developer and, if warranted, may adjust the amount of the impact fee. Such adjustment is warranted if:

(a) The public facility improvements would not reasonably benefit the proposed development;

(b) The public facility improvements identified are not reasonably related to the proposed development;

(c) The formula set forth for calculating the impact fee does not accurately reflect the associated impacts generated by the development.

3.24.110 Fee Calculation—Fire Component

i This section is based on existing SMC 17.153A.020.

(1) North County Regional Fire Authority (the "fire district") provides fire service to the city of Stanwood.

(2) No fire impact fee is imposed on development permit applications at this time. If the North County Regional Fire Authority determines that there is a need for a fire impact fee, the following is required to impose a impact fee:

(a) The fire district must adopt a six-year capital improvement plan identifying existing facilities and any deficiencies needing improvements to provide fire service to the city of Stanwood;

(b) The city and fire district must enter into an interlocal agreement on the imposition and processing of fire impact fees; and

(c) This chapter must be updated with the fire impact fee formula along with any associated management and procedural requirements.

3.24.120 Fee Calculation—Parks Component

i The following is based on existing SMC 17.152.060(unnumbered):

(1) Applicability. The parks impact fee component is calculated based on the number and type of residential dwelling units permitted at the time of building permit issuance.

i The following is based on existing SMC 17.152.060(2):

(2) Exemptions.

(a) A credit must be provided for redevelopment sites or subdivisions for the number of residential units existing on the site prior to redevelopment.

(b) The reconstruction, remodeling, or replacement of existing buildings, structures, mobile homes, or manufactured homes, which does not result in any new units.

(c) Conversions of apartment complexes to condominium ownership where no new dwelling units are created.

> The following is based on existing SMC 17.152.050.

(3) Establishment of service areas. The city hereby establishes as the service area for park impact fees all areas in which development may occur that would impact the city's park, open space and recreational system, including all property located within the corporate limits of the city as now existing or may be amended by annexation or any surrounding properties within the city's urban growth area that would normally use city park facilities.

> The following is based on existing SMC 17.152.060(1).

(4) The formula in this section:

(a) is used to calculate the fee schedule, which must be adopted by city council resolution.

(b) must be reviewed and revised periodically to reflect changes in development costs and the adopted capital improvement plan listed in the Comprehensive Plan.

> The following is existing SMC 17.152.070.

(5) The park and recreational facility component of the total development impact fee must be calculated using the following formula:

PIF = C x S x U x AP

(6) In the formula above:

(a) "PIF" means the park and recreational facility component of the total development impact fee.

(b) "C" means the average cost per acre for land appraisal and acquisition plus an average development cost per acre for neighborhood and community parks as identified in the most recent six-year capital improvement plan. The construction cost per acre is then multiplied by the percent of projected new population growth as identified in the Comprehensive Plan. Such cost may be adjusted periodically, but not more often than once every year. Park development costs must be based on actual, recent comparable construction.

(c) "S" means the parks standard of two and one-half acres per 1,000 residents each for neighborhood parks and community parks for a total of five acres per 1,000 people as established in the city comprehensive park and recreational plan.

(d) "P" means 1,000 people.

(e) "U" means the average number of occupants per dwelling unit as provided by the Washington State Office of Financial Management for the city of Stanwood.

(f) "A" means an adjustment of rate portion of anticipated tax revenues resulting from a development that is proportional to system improvements contained in the capital plan facilities. The adjustment for park impacts is determined to be 40 percent, so that "A" equals 60 percent.

3.24.130 Fee Calculation—Schools Component

Existing SMC 17.153.060.

(1) Separate fees must be calculated for single-family and multifamily types of dwelling units. For purposes of this chapter, manufactured housing must be treated as single-family dwellings and duplexes must be treated as multifamily dwellings.

(2) The calculation of school impact fees must be based upon the school district's capital facilities plan, as approved by the city council and adopted by reference into the capital facilities element of the Stanwood Comprehensive Plan.

(3) Establishment of service areas. The city hereby establishes as the service area for school impact fees the geographic area served within the school district boundaries, which includes the entire city limits.

(4) The capital facilities plan must contain the following as a basis for the adoption of school impact fees to be collected by the city:

(a) Inventory of permanent and relocatable classroom facilities;

(b) Student enrollment projections over a six-year period;

(c) Facility needs and planned improvements over a six-year period;

(d) Six-year financing plan; and

(e) Methodology used for the calculation of the fees.

(5) The proposed fee must be calculated based on the following factors as documented in the capital facilities plan:

(a) The costs of site acquisition;

(b) The costs of facility construction or improvements;

(c) The costs of needed portables;

(d) The proportionate share of the above costs attributable to new development;

(e) The costs of previously constructed facilities that serve new development; provided, that the fee is not used to make up for any existing system deficiencies not related to new growth; and

(f) Credits, or other revenues applied, such as user fees, debt service payments, taxes, or other payments earmarked for or proratable to the particular system improvement.

The following (existing) line is problematic (potentially arbitrary, no process defined, potentially contrary to the school district's). Does the city want to retain it?

(6) The impact fee may be discounted by an amount deemed appropriate by the city in order to be consistent with impact fees being required by other jurisdictions.

3.24.140 Fee Calculation—Transportation Component

Based on existing SMC 17.151.055(1):

(1) Applicability. The transportation impact fee component is based on average daily trips as computed in accordance with the most current edition of the Institute of Transportation Engineers' Trip Generation Manual as applied to the city's transportation element of the adopted Comprehensive Plan.

Based on existing SMC 17.151.055(3):

(2) Exemptions:

(a) For redevelopment of a site, a credit must be given for trips generated by the previous use on the site.

Based on existing SMC 17.151.050:

(3) Establishment of service areas. The city hereby establishes as the service area for traffic impact fees all areas in which development may occur that would impact the city's transportation system, including all property located within the corporate limits of the city as now existing or may be amended by annexation or any surrounding properties within the city's urban growth area that would normally use city transportation facilities.

The following is based on existing SMC 17.151.055(2) and to make parallel with the Parks calculation section.

(4) The formula in this section:

(a) is used to calculate the fee schedule, which must be adopted by city council resolution.

(b) must be reviewed and revised periodically to reflect changes in development costs and the adopted capital improvement plan listed in the Comprehensive Plan.

Based on existing SMC 17.151.060.

(5) The transportation component of the total development impact fee must be based on the growth-related transportation projects contained in the adopted six-year capital improvement program as presented in the capital facilities element of the city's Comprehensive Plan.

(6) The transportation component must be calculated based on the total cost of growth-related system improvements divided by the total number of projected trips generated by new development as anticipated in the adopted future land use map (FLUM) for an adopted six-year capital improvement program period, as represented by the following formula:

Actual Cost/Trip = Total cost per six-year growth-related system improvements / Total new trips

(7) The transportation component must be adjusted to provide a fee equal to 66.6 percent of the actual cost of the system improvements necessitated by new development as calculated in subsection (6) of this section.

(8) The transportation component may include system improvement costs previously incurred by the city to the extent that new growth and development will be served by the previously constructed improvements and to the extent not already funded; except that such fees may not be imposed to make up for any existing system deficiencies.

(9) The city must annually review the city's capital facilities plan and transportation projects included in the adopted six-year capital improvement program, and must:

(a) Identify each project in the Comprehensive Plan that is growth-related and the proportion of each such project that is growth-related;

(b) Forecast the total monies available from taxes and other public sources for street improvements over the next six years;

(c) Calculate the amount of impact fees already collected; and

(d) Identify those Comprehensive Plan projects that have been or are being built but whose performance capacity has not been fully utilized.

(10)The following information must be considered in updating the capital improvement program:

(a) The projects in the Comprehensive Plan that are growth related and that should be funded with forecasted public monies and the impact fees already paid;

(b) The projects already built or funded pursuant to this chapter whose performance capacity has not been fully utilized; and

(c) An update of the estimated costs of the projects listed.

(11)After the city council amends the capital improvement program, it may by resolution establish a new impact fee.

(12)Once a growth-related project is placed on the capital improvement program, a fee must be imposed on every development that impacts the project until the project is removed from the list by one of the following means:

(a) The project may be administratively removed by the community development director from the impact fee calculation after it is constructed; or

(b) The council by ordinance may remove the project from the capital improvement program, in which case the fees already collected will be refunded if necessary to ensure that impact fees remain reasonably related to the traffic impacts of development that have paid an impact fee; provided, that a refund is not necessary if the council transfers the fees to the budget of another project that the council determines will mitigate essentially the same traffic impacts.

3.24.150 Fee Calculation—Credits.

Based on existing SMC 17.151.055(4) and SMC 17.151.110 and SMC 17.152.100, deduplicated, as well as SMC 17.153.070. Changed "owner" to "applicant."

Carefully review existing SMC 17.153.070 to ensure that all relevant/necessary concepts are captured here.

(1) The applicant is entitled to a credit against the applicable impact fee component for the value of any dedication of land for, improvements to, or new construction of any system improvements to facilities that are identified in the capital facilities plan and that are required by the city as conditions of approval for the development.

(a) That portion of the open space network and related improvements used as a credit for required open space for a project is not eligible for this credit.

(b) The determination of “value” must be consistent with the assumptions and methodology used by the city in estimating the capital improvement costs.

(c) The amount of such credit must be determined upon recording of a final plat for a subdivision, recording of a short plat, issuance of a building permit, or upon site plan approval, whichever first occurs.

(d) The amount of such credit must be indicated on any final plat recorded for a subdivision and on any recorded short plat. In the event the amount of any credit exceeds the amount of the impact fee due, the city is not required to reimburse the difference to the owner.

Based on existing SMC 17.153.120 (characterizing SEPA mitigation fees as an "exception").

This section should be expanded to encompass all SEPA-mitigated impacts, not just for schools.

(2) SEPA mitigation. An applicant required to pay a fee under RCW 43.21C.060 for system improvements to mitigate school impacts must not be required to pay a school impact fee under this chapter for those same system improvements.

Based on existing SMC 17.151.160 and 17.152.160, deduplicated.

(3) The impact fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the city on the development of land or the issuance of building permits; provided, that any other such city development regulation that would require the developer to undertake dedication or construction of a facility contained within the city capital facilities plan may be imposed only if the developer is given a credit against impact fees as provided in this section.

3.24.160 Fee Calculation—Incentives

Note that the following sections apply only to the transportation component of the impact fee, but could be applied to all components, so they are each listed in this section that applies to all components, and then each individually limited to the transportation component.

The following is based on existing SMC 17.151.055(6).

(1) Commercial Development Incentive. Commercial uses defined in SMC 17.20.040, "C" definitions, are eligible for a 10 percent reduction in the transportation impact fee.

The following is based on existing SMC 17.151.055(7).

(2) Reuse of Existing Structures Incentive. The transportation impact fee component does not apply to commercial projects in the MB-I and MB-II zones that meet the criteria set forth below. This exemption does not apply to new buildings or to new projects that include demolition of the existing building and does not affect the imposition and collection of any other applicable city impact fees, hook-up fees, or application fees.

  (a) The project utilizes an existing building constructed prior to 1980 according to the Snohomish County assessor's database, and requires building permits for remodel, expansion, and/or improvement;

  (b) The original structure must be intact before and after the improvements;

  (c) The total building square footage of the project, following remodel, expansion or improvement, including any new additions and all buildings on the property, is less than 10,000 square feet;

  (d) The valuation of work on the building must exceed 25% of the assessed value of the building according to the Snohomish County assessor's database; and

  (e) The project must include improvement of any adjacent street frontage, including curb, gutter, sidewalks, and street trees to current code and standards, and must include a connecting walkway meeting ADA standards to the main entrance of the building. Any or a portion of these improvements may be waived or modified, if the community development director determines that existing conditions meet the current standards for these improvements.

The following is based on existing SMC 17.151.055(8) and 17.152.060(3), deduplicated.

Note that both sections refer only to reduction of the traffic impact fee, even though 17.152 is the parks chapter. Is that an error?

(3) Historic Single-Family Lot Incentive. Individual single-family zoned lots and parcels created prior to the effective date of Chapter 58.17 RCW on July 1, 1969, are eligible for a 35 percent reduction in the transportation impact fee component on application for a building permit. This incentive is limited to development of one single-family residence per lot or parcel existing prior to July 1, 1969.

The following is based on existing SMC 17.151.055(9) and 17.152.060(4), deduplicated.

Note that both sections refer only to reduction of the traffic impact fee, even though 17.152 is the parks chapter. Is that an error?

This will come up in implementation: do we mean 30% of the 80% MFI at the time a low-income renter signs a lease? What if their income increases or the thresholds decrease?

Do you want to allow an owner to void the LIH covenant if they pay the then-current impact fee? After a certain period of years?

(4) Low-Income Housing Incentive.

Added requirement that form of covenant be acceptable to the Department. The City should use its own template.

(a) The transportation impact fee component may be reduced by 80% if the developer records a covenant, in a form approved by the Department, that prohibits use of the property for any purpose other than for low-income housing.

(b) At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and that if the property is converted to a use other than for low-income housing, the property owner must pay the applicable impact fee in effect at the time of conversion.

(c) The covenant must be recorded with the Snohomish County auditor or recording officer.

(d) For purposes of this section, “low-income housing” means housing with a monthly housing expense that is no greater than 30 percent of 80 percent of the median family income adjusted for family size in Snohomish County as reported by the United States Department of Housing and Urban Development.

3.24.200 Payment—Timing

Based on existing SMC 17.151.100 and 17.152.090, de-duplicated.

Some of these subsections (notably (4)) are confused and should be further reworked.

(1) The impact fees imposed under this chapter may be paid at the time of preliminary plat approval for subdivisions and short subdivisions.

(2) When fees for subdivisions are not paid at preliminary plat approval they are due and payable prior to the issuance of a building permit.

(3) All impact fees must be paid prior to the issuance of a building permit or site plan approval.

(4) When paid the fee paid must be the fee due as of the date of payment.

The following subsection is based on SMC 17.153.040(5), which previously only applied to school impact fees.

Staff please review to ensure you desire to apply these standards to all portions of the impact fee. If so, subsections above may be appropriate for deletion.

(5) Impact fees must be collected as follows:

(a) For single-family and duplex residential subdivisions and short subdivisions hereinafter approved, the per lot impact fee must be a condition of preliminary plat or short plat approval and must be imposed on a per lot basis at the time of final plat approval or building permit application. For new multifamily development hereafter approved, the impact fee must be calculated and imposed at the time of building permit application.

(b) For any other new residential development not necessitating or having been previously granted preliminary plat, short plat or site plan approval, the impact fee must be calculated and imposed at the time of building permit application.

(c) For residential development not necessitating a building permit, the impact fee must be calculated and imposed at the time of site plan application or issuance of a certificate of occupancy.

(d) For mobile home parks, the impact fee must be calculated and imposed at the time of issuance of a building permit application for each unit.

(e) For residential development proposed for existing lots, payment not previously collected is due at the time of building permit application.

3.24.220 Payment—Deferral

Existing SMC 17.151.115 and SMC 17.152.110, de-duplicated.

(1) Per RCW 82.02.050(3), the city hereby establishes a deferral system by which an applicant for a building permit for a single-family detached or attached residence may request a deferral of the full impact fee payment to the time of final inspection.

(2) The city will withhold certification of final inspection until the impact fees have been paid in full.

(3) The term of an impact fee deferral under this section may not exceed 18 months from the date of building permit issuance. If impact fees are not paid by the end of the 18 months, then city must withhold future inspection until such time impact fees are paid in full.

(4) The community development department must allow an applicant to defer payment of the impact fees when, prior to submission of a building permit application for deferment or prior to final inspection for deferment under subsection (1) of this section, the applicant:

(a) Submits a signed and notarized deferred impact fee application and acknowledgement form for the development for which the property owner wishes to defer payment of the impact fees; and

(b) With regard to deferred payment under subsection (1) of this section, records a lien for impact fees against the property in favor of the city in the total amount of all deferred impact fees for the development. The lien for impact fees must:

(i) Be in a form approved by the city attorney;

(ii) Include the legal description, tax account number and address of the property;

(iii) Be signed by all owners of the property, with all signatures as required for a deed, and recorded in the county in which the property is located;

(iv) Be binding on all successors in title after the recordation; and

(v) Be junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

(5) In the event that the impact fees are not paid in accordance with subsection (1) of this section, the city must institute foreclosure proceedings under the process set forth in Chapter 61.12 RCW, except as revised herein. In addition to any unpaid impact fees, the city is entitled to interest on the unpaid impact fees at the rate provided for in RCW 19.52.020 and the reasonable attorney fees and costs incurred by the city in the foreclosure process. Notwithstanding the foregoing, prior to commencement of foreclosure, the city must give not less than 30 days' written notice to the person or entity whose name appears on the assessment rolls of the county assessor as owner of the property and to the site address via certified mail with return receipt requested and regular mail advising of its intent to commence foreclosure proceedings. If the impact fees are paid in full to the city within the 30-day notice period, no attorney fees, costs, or interest will be owed.

(6) In the event that the deferred impact fees are not paid in accordance with this section, and in addition to foreclosure proceedings provided in subsection (5) of this section, the city may initiate any other action(s) legally available to collect such impact fees.

(7) Upon receipt of final payment of all deferred impact fees for the development, the department must execute a separate lien release for the property in a form approved by the city attorney. The property owner, at their expense, is responsible for recording each lien release.

(8) Compliance with the requirements of the deferral option constitutes compliance with the conditions pertaining to the timing of payment of the impact fees.

3.24.240 Payment—Under Protest.

Based on existing SMC 17.153.090.

Expanded some text here to make clear how this operates. Staff should verify this is what was originally intended.

(1) An applicant may pay impact fees under protest.

(2) If the fee is protested:

(a) The city may issue the relevant permit, but must make final resolution of the protest a condition of the permit.

(b) Final occupancy of structures within the development must not be approved until the protest is resolved.

(c) The applicant may appeal the impact fee determination per SMC 3.24.300.

(d) Arbitration may be utilized if agreeable to the city and the applicant. Any costs related to arbitration must be distributed evenly between the city and the applicant.

3.24.300 Appeals

> ℹ Based on existing SMC 17.151.120 and 17.152.120 and 17.153.080, de-duplicated.

(1) Any person aggrieved by the amount of the impact fee calculated and imposed upon a particular development permit application may appeal such determination to the hearing examiner by filing written notice of appeal with the Director within 20 days of the issuance of the determination of the impact fee.

(2) Pending completion of the appeal process as set forth herein, no building permits may be issued for any development activity for which the impact fees about which appeal is being sought were imposed.

(3) Such appeal to the hearing examiner must be conducted in accord with Chapter 17.80 SMC, Permit Review Procedures.

3.24.400 Expenditure—Timing.

> ℹ Based on existing SMC 17.151.140 and 17.152.140, de-duplicated.

(1) Impact fees for system developments may be expended only in conformance with the capital facilities plan.

(2) Per RCW 82.02.070, impact fees must be expended or encumbered within the greater of:

(a) 10 years of collection; or

(b) Such greater time as may be established in written findings documenting extraordinary or compelling reasons for extension beyond 10 years by the city council and the governing body of any district responsible for expenditure of the impact fees.

3.24.500 Refunds.

> ℹ Based on existing SMC 17.151.150 and 17.152.150 and 17.153.110, de-duplicated.
>
> ℹ Incorporated existing SMC 17.153.100(4) requiring documentation by the school board (or fire district).

(1) Per RCW 82.02.080, the current owner of property on which an impact fee has been paid may receive a refund of such fee if the fees are not expended or encumbered consistent with the requirements of SMC 3.24.400.

(2) In determining whether impact fees have been encumbered, impact fees must be considered encumbered on a first-in, first-out basis.

(3) The holder of a development permit may request and must receive a refund, including interest earned on the impact fees, when the building permit for which the impact fee has been paid has lapsed for noncommencement of construction. A partial refund must be provided where the project for which a building permit has been issued has been altered, resulting in a decrease in the amount of the impact fee due.

(4) The current owner likewise may receive a proportionate refund when the public funding of applicable service area projects by the end of such 10-year period has been insufficient to satisfy the ratio of public to private funding for such service area as established in the capital facilities plan. The city must notify potential claimants by first-class mail at the last known address of each claimant.

(5) The request for a refund must be submitted to the city treasurer in writing within one year of the date the right to claim a refund arises or within one year of the date notice is given, whichever is later. Any impact fees that are not expended within these time limitations and for which no application for refund has been made as herein provided must be retained and expended on the indicated capital facilities. Refunds of impact fees under this subsection must include any interest earned on the impact fees.

(6) A developer may request and must receive a refund, including any interest earned on the impact fees, when the developer does not proceed with the development activity and no impact has resulted.

3.24.600 Accounting—Reporting.

> ℹ Based on existing SMC 17.151.130 and 17.152.130 and 17.153.100(1) and (2), de-duplicated.
>
> ℹ Changed where impact fee revenues are deposited, so that each type of impact fee is deposited into its own special revenue fund, as provided in the Funds chapter.

(1) All impact fee revenue must be deposited into funds for each type of impact fee as provided in SMC Chapter 3.34.

(2) All interest must be retained in each fund and expended for the purposes for which the impact fees were imposed.

(3) The city treasurer must provide an annual report on the impact fee funds showing the source and amount of the moneys collected, earned, or received and system improvements that were financed in whole or in part by impact fees.

3.24.620 Administration of School Impact Fees

> ℹ This section based on existing SMC 17.153.050 regarding an interlocal agreement providing for accounts for expenditure of fees.

(1) The school district and the city must, by interlocal agreement, provide for the establishment and maintenance of separate accounts by the city finance director and for the expenditure of fees by the school district in a timely fashion on appropriate capital projects as required by Chapter 82.02 RCW.

(2) The agreement must:

  (a) provide for the keeping of records for each such account whereby collected impact fees can be segregated by type of facility.

  (b) specify the fees the city will charge the school district for the collection of the fees authorized in this chapter.

  (c) provide for the transfer of collected fees from the city to the school district.

> ℹ Next line is based on existing SMC 17.153.110(1)(b).

  (d) require that if impact fee funds are not encumbered, the school district must notify the city, so that the city may timely notify potential refund claimants.

> ℹ Next line is based on existing SMC 17.153.110(2).

  (e) detail a refund process, as required by Chapter 82.02 RCW.

3.24.640 School Concurrency

This section is existing SMC 17.153.030, which is not really about impact fees but rather about concurrency compliance.

Consider moving this section to concurrency chapter in unified development code.

(1) School facilities must be deemed to have adequate capacity for purposes of determining adequate provision of school facilities for approval of any residential development proposal, if the circumstances in subsections (1)(a) and (1)(b), or subsection (1)(c), of this section exist. Additionally, the provisions of subsection (1)(d) of this section must be met in all cases.

(a) The school district has permanent facilities to house the students projected to be coming from the development without exceeding the adopted capacity standards of the school district by more than 10 percent. Permanent facilities will not include those that have been closed for more than two years until any necessary rehabilitation has been completed.

(b) The school district has the land to accommodate the permanent and portable facilities needed to serve the students projected to be coming from the development.

(c) The department certifies that the concurrency standard defined in SMC 17.153.020 has been complied with.

(d) Any school impact fee required by this chapter is paid or is scheduled for payment and is adequately secured.

(2) If capacity standards are or would be exceeded with the construction of a proposed development, the school facilities available to serve the development must be deemed inadequate and the development may not be approved until the impact fee authorized by this chapter is paid; provided, the school district has met all the other provisions of this chapter.

(3) The capacity standards and student factors for the school district must be documented by the capital facilities plan developed by the school district and adopted by reference in the Stanwood Comprehensive Plan.

(4) The adequacy standards of this section apply to all forms of residential development which are subject to review and approval and which would result in the creation of new residential building lots or construction of new dwelling units. Reconstruction or remodeling of existing dwelling units or construction of new accessory dwelling units or commercial structures are not subject to the provisions of this chapter.

The following subsections could remain in this chapter.

(5) Notwithstanding any other provision of this chapter, in the event of any of the following, the city will not impose a school impact fee where:

(a) The school district does not timely provide an updated capital facilities plan to the city for adoption as an element of the city's Comprehensive Plan; or

(b) The capital facilities plan of the school district does not satisfy the required ordinance or statutory criteria for imposition of a school impact fee; or

(c) The capital facilities plan prepared by the school district results in the calculation of the fee at $0.

(6) Provided, however, in no event will any of the events referenced in subsections (5)(a) through (c) of this section be construed as a repeal or waiver of the city's authority to impose school impact fees generally and the occurrence of any of these referenced conditions will act solely as a suspension of the imposition of the

impact fees until the issue(s) in subsections (5)(a) through (c) of this section are cured. Provided further, nothing contained herein may be construed as an intent to refund any school impact fee previously imposed and collected on behalf of the school district by the city.

Chapter 3.30 Fiscal Policy

3.30.010 Consolidated Financial Management Policy

The City Council has established a Consolidated Financial Management Policy, adopted and to be amended by resolution of the City Council, to set the amount of fees to be charged for city services.

Chapter 3.32 Payment of Claims

This chapter is based on existing SMC Chapter 3.20, although it has been retitled.

3.32.010 Warrant and check authority.

Existing SMC 3.20.010.

All warrants and checks must be drawn and signed by any of the following designated officers:

(1) Finance director;

(2) City administrator;

(3) Mayor.

3.20.020 Expenditures and disbursements.

(1) Per RCW 42.24.180, in order to expedite the payment of claims, the auditing officer of the city of Stanwood is authorized to issue warrants or checks in payment of claims, before the city council has acted to approve the claims. The auditing officer must submit to the city council for approval a listing of all such checks or warrants issued in payment of claims at a regularly scheduled public meeting within one month of issuance and must provide for the review of supporting documentation by the city council.

(2) The city council may stipulate that certain kinds or amounts of claims may not be paid before the council has reviewed the supporting documentation and approved the issue of checks or warrants in payment of those claims.

If there are any such types of claims that council intends to not allowed to be paid before approval, they should be listed here.

3.20.030 Disapproval of claims.

The city council must require that if, upon review, some claims are disapproved, the auditing officer and the officer designated to sign the checks or warrants must jointly cause the disapproved claims to be recognized as receivables and pursue collection diligently until the amounts disapproved are collected or until the city council is satisfied and approves the claims.

Chapter 3.34 Funds

This chapter reorganizes existing chapter 3.16 (and moves the chapter to 3.34) to describe each of the city's existing funds, one per section, with a description of the purpose and use of each.

Section numbering from the existing code is not preserved; sections have been numbered to match the fund numbers in the accounting system (except for the General Fund), which is prescribed by the state BARS manual. This is for administrative convenience; there is no directive that requires the fund numbers to match the section numbers.

Existing sections that do not now have corresponding funds in the accounting system are not included in this chapter:

- 3.16.100 Petty cash fund;
- 3.16.245 Ambulance fund;
- 3.16.250 Ambulance reserve fund;
- 3.16.350 Cumulative reserve – Fire apparatus
- 3.16.410 Stanwood Recreational Complex fund.
- 3.16.780 Police revolving cash fund;
- 3.16.790 et seq Drug enforcement fund;
- 3.16.810 BPA energy grant fund;
- 3.16.820 et seq Public works loan fund;
- 3.16.840 et seq Criminal justice fund;
- 3.16.860 Suspense fund.

Because use of these funds could theoretically be audited against the municipal code, staff should carefully review the text in this chapter and ensure it is broad enough to cover the revenues and uses of each fund.

Please verify each of the fund types (e.g., "special revenue fund" or "enterprise fund") is correct.

We could reorder and group these sections as staff desire.

3.34.010 General Provisions

This is a new section.

(1) This chapter creates and describes all the funds in the City's accounting system. Funds are the basis on which the city's accounting system is organized and operated.

The definition of "fund" is from the state BARS manual.

(2) For the purposes of this chapter, a "fund" means a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

Occasionally, state auditors may prescribe changes in the city's accounting system. The next line provides authority to the Finance Director to make those changes, although code changes should be executed concurrently.

(3) Interest, earnings, and other proceeds from each fund must be deposited into the fund.

(4) Notwithstanding the provisions of this Chapter, the Director of Finance has the authority to conform the City's accounting procedures to state law and the state Budgeting, Accounting and Reporting System (BARS) manual.

3.34.020 General Fund

This section is based on existing SMC 3.16.730 et seq.

Unlike the other sections, this section's number does not correspond to the accounting fund number, 001.

(1) The "general fund" is hereby created as the city's general (current expense) fund.

(2) Revenues from property taxes, sales taxes, business licenses, services, and other sources not designated for other funds in the annual budget or by the city council must be deposited into the general fund.

(3) Expenditures of the general fund must be segregated into departments which must be separately budgeted and accounted for within the general fund.

Next line is existing but unnecessary and could be removed.

(4) Departments within the general fund may include legislative, executive, administrative and finance, legal, general services, planning, civil service, police, fire, ambulance, public works, flood control, and others that the city may require in order to segregate the general government of the city into functional classifications.

3.34.101 Street Fund

This is a new section.

(1) The "Street Fund" is created as a special revenue fund.

Need completion of the following templatized sections, or alternatively, a statement of purpose.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.102 Street Impact Fees Fund

This is a new section.

(1) The "Street Impact Fees Fund" is created as a special revenue fund.

(2) Revenues from street impact fees collected per SMC Chapter 3.50 must be deposited into this fund.

(3) Expenditures from this fund must qualify per SMC Chapter 3.50.

3.34.103 Street Construction Fund

This section is based on existing SMC 3.16.770.

More information on the motor vehicle fuel tax is available from CRAB.

(1) The "Street Construction Fund" is created as a special revenue fund.

Staff please confirm that MVFT revenue is deposited in this fund. Note existing 3.16.770 mentions the "arterial street fund." Is that fund 101?

(2) Revenues from the state motor vehicle fuel tax must be deposited into this fund.

(3) Expenditures from this fund will be as determined by the city council for the construction and improvement of city streets.

3.34.104 Park and Trail Improvement Fund

This section is based on existing SMC 3.16.300 et seq. Details on non-lapsing and interest are not included, as they are accounted for in the general provisions.

(1) The "Park and Trail Improvement Fund" is created as a special revenue fund.

(2) The purpose of this fund is to acquire and improve land to be owned by the city and operated as a public park inside or outside the limits of the city.

Confirm next section is still operative and valid.

(3) An item for the cumulative reserve funds may be included in the city's annual budget for the ensuing years, and a tax levy made within the limits and as authorized by law for the item; and the item and levy may be repeated from year to year until, in the judgment of the city council, the amount required for the specified purpose has been raised or accumulated.

3.34.105 Fire Impact Fees

This is a new section.

(1) The "Fire Impact Fees Fund" is created as a special revenue fund.

(2) Revenues from fire impact fees collected per SMC Chapter 3.50 must be deposited into this fund.

(3) Expenditures from this fund must qualify per SMC Chapter 3.50.

3.34.106 Park Impact Fees

This is a new section.

(1) The "Park Impact Fees Fund" is created as a special revenue fund.

(2) Revenues from park impact fees collected per SMC Chapter 3.50 must be deposited into this fund.

(3) Expenditures from this fund must qualify per SMC Chapter 3.50.

3.34.107 Equipment Reserve Fund

This section is based on existing SMC 3.16.950.

Existing subsection (2)(b), transferring funds that existed in 1991, is not included.

(1) The "Equipment Reserve Fund" is created as a special revenue fund.

(2) Revenues for the fund are from interfund transfer from city departments or funds, investment interest of the fund and such revenue as may be authorized by the city council or provided in the city's budget.

(3) Accounts. Contributions and disbursements of departments or funds of the city, to or from this fund, must be maintained in separate accounts, which, with investment interest, accumulate to provide funds required by that department. If the accounts of a department or fund become over-expended, interest at a rate set by the city treasurer must be charged on the deficient balance of the account until reimbursement by the department.

(4) Expenditures. Departments or funds of the city that maintain accounts in this fund may use their account for the acquisition, replacement, or improvement of equipment or facilities needed by their department, subject to approval of the city council.

3.34.108 Transportation Benefit District Fund

This is a new section.

The fund as listed on the accounting system report is the "transportation sales tax fund." Section name could be either, but renamed here for flexibility, because a TBD may also be funded by a car tab fee.

(1) The "Transportation Benefit District Fund" is created as a special revenue fund.

(2) Revenues from the Transportation Benefit District funding sources established in SMC Chapter 3.40 must be deposited into this fund.

(3) Expenditures from this fund must qualify per SMC Chapter 3.40.

3.34.109 Contingency Fund

This section is based on existing SMC 3.16.450 et seq.

(1) The "Contingency Fund" is created as a special revenue fund.

(2) Per RCW 35.33.145, the fund created in this section is to provide monies with which to meet any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting any annual budget, or from which to provide monies for such emergencies lawfully justifying emergency expenditures, or to supply deficiencies in any other fund arising from any cause.

(3) The fund may be supported by a budget appropriation from any tax or other revenue source, not restricted in use by law, or may also be supported by a transfer from other unexpended or decreased funds made available by ordinance.

Updated next line from 1.5 mils.

(4) The total amount of monies in the fund accumulated at any given time may not exceed the equivalent of 37.5 cents per thousand dollars of assessed valuation of property within the city.

(5) Any monies in the "contingency fund" at the end of any fiscal year may not lapse, except upon reappropriation by the council to another fund in the adoption of any subsequent budget.

3.34.110 Building Improvement Fund

This is a new section.

(1) The "Building Improvement Fund" is created as a special revenue fund.

Need completion of the following templatized sections, or alternatively, a statement of purpose.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.115 Tourism Promotion Fund

This is a new section.

(1) The "Tourism Promotion Fund" is created as a special revenue fund.

(2) Revenues from the tax established in SMC Chapter 3.09 must be deposited into the fund.

(3) Expenditures from the fund must qualify per SMC Chapter 3.09.

3.34.120 REET 1 – Capital Improvements

This section is based on existing SMC 3.16.660.

(1) The "REET 1 Fund" is created as a special revenue fund.

(2) Revenues from the first one-quarter percent real estate excise tax provided in SMC Chapter 3.08 must be deposited into the fund.

Note that existing SMC 3.16.660(3) references RCW 35.43.040, but that seems to be incorrect.

(3) Expenditures from the fund must qualify per RCW 82.46.010 and RCW 82.46.015.

3.34.121 REET 2 – Growth Management

This section is based on existing SMC 3.16.900.

(1) The "REET 2 Fund" is created as a special revenue fund.

(2) Revenues from the additional one-quarter percent real estate excise tax provided in SMC Chapter 3.08 must be deposited into the fund.

(3) Expenditures from the fund must qualify per RCW 82.46.035.

3.34.205 Debt Service Fund

This is a new section.

(1) The "Debt Service Fund" is created as a debt service fund.

Need completion of the following templatized sections, or alternatively, a statement of purpose.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.401 Sewer Fund

This is a new section.

(1) The “Sewer Fund” is created as an enterprise fund.

Need completion of the following templatized sections, or alternatively, a statement of purpose.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.403 Sewer Construction Fund

This section is based on existing SMC 3.16.210 et seq.

Note that existing code names the fund the “sanitary sewerage construction reserve fund.”

(1) The "Sewer Construction Fund" is created as an enterprise fund.

Based on existing SMC 3.16.220.

(2) From time to time, upon recommendation of the city treasurer and the concurrence of the city council, sewer revenues in excess of amounts necessary to provide for adequate revenue bond reserves and redemption funds may be transferred to and accumulated, held, invested and reinvested in investments permitted by law to the credit of the fund created in this section.

Existing SMC 3.16.230.

Confirm "sewer bond reserve fund" is correct. Previously the "sewer revenue bond redemption fund."

(3) At any time the city council may deem it to be in the best interests of the city to retire any of the sanitary sewerage revenue bonds in advance of their normal maturity date, the city council may by resolution transfer any or all of the monies in the fund created in this section to the sewer bond reserve fund.

Existing SMC 3.16.240.

(4) Until such time as all of the sanitary sewerage revenue bonds of the city are redeemed, the monies in the this fund may be disbursed only for the purpose in subsection (3) and for constructing such additions, corrections, extensions and other construction of the city's sanitary sewerage system, as allowed by the city council.

Need completion of several of the following templatized sections, or alternatively, a statement of purpose for each fund.

3.34.405 Sewer Plant Investment Fund

This is a new section.

(1) The "Sewer Plant Investment Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.410 Drainage Fund

This is a new section.

(1) The "Drainage Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.411 Drainage Construction Fund

This is a new section.

(1) The "Drainage Construction Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.412 Drainage Plant Investment Fund

This is a new section.

(1) The "Drainage Plant Investment Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.421 Water Fund

ℹ This is a new section.

(1) The "Water Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.422 Water Construction Fund

ℹ This is a new section.

(1) The "Water Construction Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.423 Cedar Home Plant Investment Fund

ℹ This is a new section.

(1) The "Cedar Home Plant Investment Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.424 Water Plant Investment Fund

ℹ This is a new section.

(1) The "Water Plant Investment Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.451 Water Bond Reserve Fund

ℹ This is a new section.

(1) The "Water Bond Reserve Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.452 Sewer Bond Reserve Fund

ℹ This is a new section.

(1) The “Sewer Bond Reserve Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.457 Sewer Equipment Reserve Fund

ℹ This is a new section.

(1) The "Sewer Equipment Reserve Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.458 Drainage Equipment Reserve Fund

ℹ This is a new section.

(1) The "Drainage Equipment Reserve Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.459 Water Equipment Reserve Fund

ℹ This is a new section.

(1) The "Water Equipment Reserve Fund" is created as an enterprise fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

3.34.630 Agency Fund

ℹ This is a new section.

(1) The "Agency Fund" is created as a fiduciary fund.

(2) Revenues from ___ must be deposited into this fund.

(3) Expenditures from the fund must ___.

Chapter 3.36 Interfund Loans

ℹ Based on existing SMC Chapter 3.45.

ℹ Dropped the word "program."

3.36.010 Interfund loans authorized.

(1) The finance director is hereby authorized to make interfund loans as needed to keep the funds of the city solvent.

(2) In conjunction with an interfund loan, the finance director must prepare a planned schedule of repayment of the loan principal plus applicable interest. The monthly rate of interest will be the same monthly rate of interest paid by the Washington State Local Government Investment Pool and must be charged by the lending fund, unless the borrowing fund has no other source of revenue other than the lending fund, or is normally funded by the lending fund. In addition, the borrowing fund must anticipate sufficient revenues to be in a position over the period of the loan to make the specified principal and interest payments.

3.36.020 Report to the city council.

(1) The finance director must include a report within 60 days of any such loans and subsequent repayment to the city council in conjunction with the finance director's financial reports to the city council.

(2) Any city council member may request or the mayor may direct the finance director to make such additional reports as may be necessary to fully inform the city council of any revenue deficit or interfund loan or similar transfer.

3.36.030 Repayment directed.

(1) The finance director is directed and authorized to repay an interfund loan, in whole or in part, when budgeted revenues are received sufficient to cover the projected foreseeable needs of the city for the ensuing month of the budget year.

(2) In the event of doubt regarding the foreseeable needs of the city, the finance director is encouraged to consult with the mayor and finance committee and to bring questions regarding borrowing or repayment to the city council for its advice.

Chapter 3.40 Transportation Benefit District

> This is based on existing SMC Chapter 3.40.

3.40.010 Establishment of transportation benefit district.

> Based on existing SMC 3.40.010.

There is created a transportation benefit district to be known as the Stanwood Transportation Benefit District (the "district") with geographical boundaries congruent with the corporate limits of the city as they currently exist or as exist following future annexations.

3.40.015 Assumption of transportation benefit district.

> Existing SMC 3.40.015.

From and after the effective date of Ordinance 1406 codified in this chapter, the city of Stanwood assumes all of the rights, powers, immunities, functions, and obligations of the Stanwood Transportation Benefit District previously established in this chapter, and the city of Stanwood is hereby vested with each and every right, power, immunity, function, and obligation granted to or possessed by the Stanwood transportation benefit district under Chapter 36.73 RCW, this chapter, and any other applicable law as of the effective date of the ordinance codified in this chapter. The rights, powers, functions, and obligations previously exercised and performed by the governing body of the Stanwood Transportation Benefit District pursuant to SMC 3.40.020 are hereby assumed by and transferred to the city of Stanwood city council.

3.40.020 Governing board.

Based on existing SMC 3.40.020.

(1) The Stanwood city council has the authority to exercise the statutory powers set forth in Chapter 36.73 RCW and this chapter.

(2) The treasurer of the transportation benefit district is the city finance director.

(3) The city must implement the material change policy previously adopted by the Stanwood Transportation Benefit District to address major plan changes that affect project delivery or the ability to finance the plan, pursuant to the requirements set forth in RCW 36.73.160(1).

Does it make more sense to make the responsible party here the Finance Director or Public Works Director?

(4) The city council must issue an annual report per RCW 36.73.160(2).

3.40.030 Authority of the city.

Based on existing SMC 3.40.030.

(1) The city, acting by and through its city council, may authorize a vehicle tax fee of up to $20.00 per vehicle as provided for by RCW 82.80.140. Any expansion of the authorized purposes of the district may be undertaken only after notice, hearing and adoption of an ordinance in accordance with RCW 36.73.050(2)(b) or a vote of the people pursuant to RCW 36.73.065(3).

(2) When authorized by the voters pursuant to the requirements of Chapter 36.73 RCW, other taxes, fees, charges, and tolls or increases in these revenue sources may be assessed for the preservation, maintenance and operations of city streets or other transportation improvements specified in an adopted transportation plan. Additional transportation improvements may be added to the functions of the district upon compliance with the requirements of said chapter.

(3) The city has and may exercise all powers and functions provided by Chapter 36.73 RCW to fulfill the purposes of Chapter 36.73 RCW and this chapter.

3.40.040 Transportation improvements funded.

Based on existing SMC 3.40.040.

(1) The revenues generated by exercise of the powers granted in SMC 3.40.030 and Chapter 36.73 RCW must be used for transportation improvements that preserve, maintain and operate existing infrastructure of the city consistent with the requirements of Chapter 36.73 RCW.

(2) Expenditures of such revenues must preserve, maintain and operate the city's previous investments in transportation infrastructure, reduce the risk of transportation facility failure, improve safety, or reduce congestion. Any change or expansion of these authorized purposes may be undertaken only after notice, hearing and adoption of an authorizing ordinance in accordance with RCW 36.73.050(b)(2) or a vote of the people pursuant to RCW 36.73.065(c).

Exhibit B
Stanwood Municipal Code
Title 5 – Business Licenses and Regulations

CITY OF STANWOOD
WASHINGTON

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON, AMENDING STANWOOD MUNICIPAL CODE (SMC) TITLE 5, BUSINESS LICENSES AND REGULATIONS, AND ESTABLISHING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Stanwood has begun a process to comprehensively update its municipal code to conform to current law and practice; and

WHEREAS, the purpose of this code amendment is to eliminate conflicts, improve clarity and overall function of the municipal code, and reflect current city and best practices; and

WHEREAS, the name of Title 13, Code Enforcement, is being changed to Civil Enforcement to more accurately reflect that Title 13 applies to more than just zoning enforcement issues; and

WHEREAS, amendments include ______; and

WHEREAS, the City of Stanwood SEPA Responsible Official has reviewed the proposed amendments to the Stanwood Municipal Code, determined that the amendments are categorically exempt from SEPA, and memorialized those conclusions under file number ____; and

WHEREAS, the Stanwood Advisory Group reviewed the ordinance scoping memo and draft ordinance at their ___ and ____ meetings respectively, and has recommended that the City Council adopt the ordinance as presented; and

WHEREAS, the Stanwood Planning Commission reviewed the ordinance scoping memo and draft ordinance at their ___ and ____ meetings respectively and has recommended that the City Council adopt the ordinance as presented; and

WHEREAS, the Stanwood Council Community Development Committee reviewed the ordinance scoping memo and draft ordinance at their ___ and ____ meetings respectively, and has recommended that the City Council adopt the ordinance as presented; and

WHEREAS, the City Council held a public meeting and first reading of the draft code amendment on ____, a second reading on ___, and accepted public comment; and

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

Section 1. Stanwood Municipal Code Chapter 5.50, Damages Claims Against the City, is recodified as SMC Chapter 1.50.

Section 2. Stanwood Municipal Code Title 5, Business Licenses and Regulations, is repealed in its entirety and replaced with the new Title 5, Business Licenses and Regulations, as provided in Exhibit “A” attached to this ordinance and incorporated herein by reference as if set forth in full.

Section 3. Severability. The various parts, sections and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 4. Authority to Make Necessary Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s clerical errors, references, ordinance numbers, section/subsection numbers and any references thereto.

Section 5. Effective Date. This Ordinance shall take effect five days after its passage and publication as required by law.

PASSED and APPROVED this ____ day of ______________, 2023.

CITY OF STANWOOD:

____
Sid Roberts, Mayor

Attest:

____
Lisa Sokolik, City Clerk

Approved as to Form:

____
Nikki Thompson, City Attorney

Date of Publication: ________________
Effective Date: ____________________

EXHIBIT A

Title 5 Business Licenses and Regulations

This title is a complete rewrite of existing SMC Title 5.

- Existing Chapter 5.01, Utility Tax, is being recodified into Title 3 through concurrent adoption of an ordinance re-adopting the entirety of Title 3.
- Existing SMC Chapter 5.50, Damage Claims Against the City, is proposed for recodification into SMC Title 1 through the adopting provisions of this ordinance.
- Existing SMC Chapter 5.24, Utility Pole Attachment Permit, is proposed for repeal through this readoption, given that the Legislature through RCW Chapter 80.54 has given the WUTC the authority to articulate rules for pole attachment (which it did through rules adopted in WAC Chapter 480-54 in 2015).

Chapter 5.02 Business Licenses

This chapter is based on existing chapter 5.03.

5.02.010 Applicability.

This chapter applies to:

(1) persons engaging in business within the City of Stanwood; and

(2) business licenses issued by the City of Stanwood, including those issued through the state Master License Service.

5.02.020 Definitions—Generally

This section is based on existing SMC 5.03.010. "Stuffed definitions" in which a substantive rule is contained within the definition, have been removed.

Added a general definition of clerk for the entire title that allows designation of someone other than the clerk.

(1) "Clerk" means the city clerk or such city employee or agent as the city administrator may designate to administer this title.

(2) "Engaging in business" has the meaning found in SMC 5.02.030.

(3) "Person" includes the terms company, corporation, individual, owner, partnership, proprietorship and sole proprietorship and shall mean any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, joint venture, club, business trust, association, society, or group of individuals acting as a unit, whether mutual, cooperative, fraternal, religious, profit, nonprofit, or otherwise.

5.02.030 Definition—"Engaging in Business"

RCW 35.90.080 requires the city to use the model ordinance, developed by the Association of Washington Cities, to describe what constitutes "engaging in business." This definition is from the June 2018 definition. This section should not be modified.

(1) The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

(2) This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the City without having to pay a business license fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1). If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

(3) Without being all-inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

(a) Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.

(b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.

(c) Soliciting sales.

(d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

(e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

(f) Installing, constructing, or supervising installation or construction of, real or tangible personal property.

(g) Soliciting, negotiating, or approving franchise, license, or other similar agreements.

(h) Collecting current or delinquent accounts.

(i) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

(j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

(k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

(l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

(m) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

(n) Investigating, resolving, or otherwise assisting in resolving customer complaints.

(o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

(p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

(4) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license.

(a) Meeting with suppliers of goods and services as a customer.

(b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

(c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

(d) Renting tangible or intangible property as a customer when the property is not used in the City.

(e) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

(f) Conducting advertising through the mail.

(g) Soliciting sales by phone from a location outside the City.

(5) A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (4).

(6) The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the license fee under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

5.02.040 Business License—When Required—Penalty for Violation.

> RCW 35.90.060 allows the city to require a business license only of those persons or entities that are "engaging in business" within the city.

(1) All entities "engaging in business" as defined in SMC 5.03.030 within the City of Stanwood require a city business license.

> The next subsection is based on existing SMC 5.03.025 and portions of existing SMC 5.03.030.

(a) A subcontractor engaging in business within the City of Stanwood must obtain a city business license. The license of a general contractor does not satisfy the licensing requirements for a subcontractor.

> The following subsections are based on existing SMC 5.03.030.

(b) If business is transacted by one person at two or more separate locations within the city, each business location requires a separate license.

(c) If more than one business is conducted or operated on a single premises, a separate license is required for each business.

State law requires the City to adopt the AWC model ordinance "uniform minimum licensing threshold," and allows the city to either exempt businesses outside the city that are below the minimum licensing threshold from obtaining a business license entirely, or may require them to obtain a fee-free license. The City adopted the first option in 2018 in SMC 5.03.027.

The minimum threshold is $2000 annual business, but the City may set it higher.

If the City changes the threshold option or amount, it must notify WA DOR Business Licensing Services. BLS requires a 75-day notice of changes to business licenses.

(2) Exemption for businesses located outside the city.

(a) Any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than $2,000 and who does not maintain a place of business within the city is exempt from the general business license requirements in this chapter.

(b) Such a business is not exempt from the regulatory special permits requirements of this title.

Next subsection is based on existing SMC 5.03.030(6).

(3) A business license is not transferable.

(a) No licensee may allow another person to operate a business under or display the license issued to their business, nor may another person operate under or display the license issued to another business.

(b) A person who acquires an existing business must apply for a city business license before commencing business within the city with that business.

(c) A licensee must report a change of location of the business to the Master License Service, in coordination with the city clerk.

(d) A change of the location of a business requires approval by the city before business may commence at the new location, and may require submitting a new master application and payment of fees.

The following two subsections are based on existing SMC 5.03.030(7)-(8).

(4) A city business license does not convey the City's permission to conduct a prohibited activity or other violation. The city may not be held liable for the actions of any licensed business by virtue of having issued a license to conduct business.

(5) An applicant or licensee must permit reasonable inspections of the business premises by governmental authorities for the purpose of enforcing the provisions of this chapter.

This following line is based on existing SMC 5.03.090.

(6) A violation of this section is a misdemeanor and may also be enforced pursuant to SMC Title 13.

5.02.050 Application and Renewal

> ℹ This section is based on existing SMC 5.03.030(1)-(2).

(1) An application for a city business license or renewal must be filed via a master application through the State Department of Licensing's Master License Service.

   (a) An application may only be for a single city business license. Each license requires a separate application.

   (b) The applicant must pay the filing fee described in the City's Consolidated Fee Schedule and any State Master License Service's handling fees.

(2) A business may not start operation within the city prior to city approval of its city business license.

5.02.060 Application Fees

> ℹ This section is based on existing SMC 5.03.050. Deleted references to SMC 3.30.080 and .090, which are being repealed and have been subordinated by the City's Consolidated Fee Schedule.

(1) The fee for the business license required by this chapter is established by resolution of the city council. The fee may be pro-rated as necessary to conform to SMC 5.03.080.

(2) The business license fee is in addition to any license fee or tax imposed or levied under any law or other ordinance or resolution of the city except as otherwise expressly provided.

> The following is existing language. Does the city mean to exempt these activities from the business license application fee, or from the licensing requirement altogether?

(3) The following are exempt from payment of the city business license fee:

   (a) Nonprofit and not-for-profit activities and fundraising sales carried on by a corporation registered as a nonprofit with the Secretary of State's Office;

   (b) Garage sales, lawn sales, rummage sales, or any other similar casual sale of tangible personal property conducted on an infrequent basis not to exceed three times per each calendar year and not to exceed two consecutive days at one time;

   (c) Persons selling personal property or providing a service pursuant to an order or process of a court of competent jurisdiction;

   (d) Persons acting in accordance with their powers and duties as public officials.

5.02.070 Review of Application—Approval or Denial

> ℹ Next line based on existing SMC 5.03.030(3).

(1) The clerk must, when appropriate, refer applications to the planning department, the police department, or other governmental agencies for their review.

(2) The clerk must approve an application for a business license that complies with this chapter and other provisions of the Stanwood Municipal Code.

The next line is based on a portion of existing SMC 5.03.080(2).

(3) If the Clerk denies an application, the Clerk must, by certified mail, give written notice to the applicant of the denial of their license. The notice must include a summary of the information considered by the clerk, the reason(s) for the action, and the opportunity for appeal provided by SMC 5.02.110.

5.02.080 License Expiration

Based on existing SMC 5.03.070.

Each city business license must include an expiration date as determined by the Master License Service in coordination with the city. The city license may be prorated to coordinate with the expiration date assigned by the State Master License Service.

5.02.090 Penalty for Late Application or Renewal

This section is based on existing SMC 5.03.060.

(1) Licenses must be renewed annually on or before the expiration date, or expiration of any prorated period. Failure to renew a business license by the license expiration date may result in the assessment of a late renewal penalty, and may lead to the revocation of the city license.

(2) Revocation of a license due to nonrenewal requires reapplication for the city license, and approval by the city before the revoked business may continue operation within the city.

5.02.100 License Suspension or Revocation

This section is based on existing SMC 5.03.080(1).

(1) The Clerk may suspend or revoke a business license when the licensee or any of its officers, directors, agents, owners, or employees fails or have failed to:

  (a) maintain the licensed premises or business activity in compliance with applicable health, building, fire, zoning (including legal nonconforming uses) or safety laws, ordinances, or regulations;

  (b) comply with the requirements of this chapter. Any suspension shall remain in effect until the conditions causing the suspension are cured and reasonable measures are taken to ensure that those conditions will not recur; or

  (c) renew a business license within 120 days after the expiration date of the license.

The next line is based on a portion of existing SMC 5.03.080(2).

(2) The Clerk must, by certified mail, give written notice to the license-holder of the suspension or revocation of their license. The notice must include a summary of the complaints, objections, and information considered by the clerk; the effective date of the suspension or revocation; the reason(s) for the action; and the opportunity for appeal provided by SMC 5.02.110.

5.02.110 Appeals

This section is based on existing SMC 5.03.080(2). Separated from suspension/revocation because it also applies to appeal of denials of initial applications.

(1) Notice mailed to the mailing address on the application or most recent renewal shall be deemed received three days after mailing.

(2) The applicant or license-holder may appeal the clerk's decision to the city hearing examiner by:

(a) filing written notice of appeal to the Clerk within seven calendar days; and

(b) paying the appropriate fee.

5.03.120 Penalty for violation.

This section is based on existing SMC 5.03.090.

Existing code provides for a misdemeanor penalty. Does the City want to revise to a civil infraction?

Violation of any requirement of this chapter not otherwise specified is a Class 1 civil infraction and may also be enforced pursuant to SMC Title 13.

Chapter 5.04 Fireworks

This chapter is based on existing SMC Chapter 5.04.

Existing SMC 5.04.050 and SMC 5.04.060 is proposed for deletion as part of the Title 9 update.

5.04.010 Purpose.

Existing SMC 5.04.010.

It is the intent of this chapter to provide a procedure for the granting of licenses, and the possession, sale, and discharge of fireworks.

5.04.020 Applicability

This is a new section.

This Chapter applies to:

(1) licenses for the public display of fireworks;

(2) licenses for the sale of consumer fireworks.

5.04.030 State law adopted.

> ℹ Existing SMC 5.04.020.

Chapter 70.77 RCW pertaining to fireworks is adopted by this chapter by reference as though stated in its entirety in this chapter.

5.04.040 Public Display of Fireworks—License Required.

> ℹ Based on existing SMC 5.04.030, with additional provisions to describe application process.

(1) A license is required for the public display of fireworks per RCW 70.77.

(2) An application for a license for the public display of fireworks must conform to the requirements of RCW 70.77 and be submitted to the clerk prior to June 1.

(3) Per RCW 70.77.280, after investigation and report by the fire marshal, a license for a public display of fireworks may be issued by the city council if the application demonstrates compliance with the standards of Chapter 70.77 RCW.

5.04.050 Fireworks Stand—License Required.

> ℹ Based on existing SMC 5.04.030.

A license is required for the public display of fireworks, or the sale of consumer fireworks, consistent with SMC Chapter 9.42.

5.04.070 Fireworks Stand License—Who May Apply.

> ℹ Existing SMC 5.04.070. Title has changed to delete "insurance prerequisite," which was not contained within this section.

A fireworks license may be issued only to such applicants who meet the following qualifications:

(1) Nonprofit, charitable, religious, or eleemosynary corporations, organized and existing primarily for veteran, patriotic, religious, charitable, or civic betterment purposes; and

(2) The corporation or association has its principal and permanent meeting place in the city, and has been organized and established in the city for a period of at least one year prior to the date application is made for a fireworks license.

5.04.080 Fireworks Stand License—Application—Insurance required.

> ℹ Based on existing SMC 5.04.080. Adjusted timelines and insurance minimums to refer to statute. Deleted requirement to apply by June 1 of each year.

(1) Application for a license:

  (a) Must be made in writing on forms provided by the city;

  (b) Must be accompanied by the license fee as established by resolution;

  (c) Must set forth the proposed location of the fireworks stand applied for.

(2) An application must be processed by the City consistent with the timelines in RCW 70.77.270(1).

(3) If an applicant is not granted a license, the application fee must be refunded.

(4) An application for a license must be rejected unless the fireworks stand is covered by a liability insurance policy consistent with RCW 70.77.270.

5.04.090 Fireworks Stand License Renewal – Preference.

Existing SMC 5.04.090.

Applicants for renewal of license must be given preference over applicants for license by persons not previously licensed, provided that if the holder of the license fails to make application for renewal by the third Monday in April, the preference must be forfeited.

5.04.100 Fireworks Stand License—Number.

Existing SMC 5.04.100.

No one organization may receive more than one license for fireworks sales during any one calendar year. The maximum number of licenses which may be issued pursuant to this chapter during any one calendar year must not exceed one license for each 1,500 residents of the city, or fraction thereof, according to the last official census. Once the maximum number of licenses for the year have been approved, the city will no longer accept fireworks license applications.

5.04.110 Fireworks Stand—Operation.

Existing SMC 5.04.110.

No person other than the licensee organization may operate the stand for which the license is issued, or share or otherwise participate in the benefits of the operation of such stand.

5.04.120 Fireworks Stand—Requirements.

Existing SMC 5.04.120. Updates to conform section to style guide.

All retail sales of "safe and sane" fireworks are permitted only from within a temporary fireworks stand, and the sale from any other building or structure is prohibited. Temporary stands are subject to WAC 212-17-185 through 212-17-21519 and the following provisions:

(1) No fireworks stand may be located within 25 feet of any other building, nor within 100 feet of any gasoline station;

(2) A fireworks stand need not comply with the provisions of the building code of the city but must be erected under the supervision of the fire chief, who may require that those stands be constructed in a manner and place to ensure the safety of attendants and patrons.

(3) A fireworks stand must maintain approved fire extinguishers at all times;

(4) A fireworks stand must have at least two exits;

(5) A fireworks stand must not be located closer than 600 feet to another fireworks stand;

(6) All weeds and combustible material must be cleared from the location of a fireworks stand, including a distance of at least 20 feet surrounding the stand;

(7) Signs reading “No Fireworks Discharge Within 100 Feet” in letters at least two inches high, with a principal stroke of not less than one-half inch, on contrasting background, must be conspicuously posted on all four sides of the stand;

(8) Signs reading “No smoking within 20 feet” in letters at least two inches high, with principal stroke of not less than one-half inch, on a contrasting background, must be conspicuously posted on all four sides of the stand;

(9) A fireworks stand may be operated by adults only.

(10) No fireworks may be left unattended in a stand.

(11) All unsold stock, accompanying litter, and the fireworks stand itself must be removed from the location and the city by 12:00 noon on July 6th of each year for the July 4th selling season and by 12:00 noon on January 3rd for the New Year’s selling season.

5.04.130 Violations—Penalties and Revocation

Existing SMC 5.04.130.

(1) Violation of any provision of this chapter is subject to the penalties of Chapter 70.77 RCW.

New material below.

(2) The clerk may revoke a license of a fireworks stand for non-compliance with the rules in this chapter or the rules in SMC 9.42.020 regarding purchase and sales of fireworks or for sales of fireworks other than consumer fireworks.

Chapter 5.06 Special Events

5.06.010 Purpose

Can staff articulate a purpose for the regulations in this chapter? This may change if the scope of applicability changes.

5.06.020 Applicability

Note city attorney's comment to expand applicability to private property, which would be accomplished through a change in the definition if that is desired.

(1) This chapter applies only to "special events" as defined in SMC 5.06.030.

The following is based on existing SMC 5.06.025:

(2) This chapter specifically exempts the following:

   (a) parades, athletic events or other special events that conducted in full by the city of Stanwood;

   (b) funeral procession by a licensed mortuary;

   (c) temporary sales conducted by businesses, such as holiday sales, grand opening sales, sidewalk sales, or anniversary sales;

(d) garage sales, rummage sales, lemonade stands, and car washes outside of the right-of-way;

(e) lawful picketing/demonstrating in public places protected by the First and Fourteenth Amendments to the United States Constitution.

5.06.030 Definitions

> Based on existing SMC 5.06.010.
>
> Existing definition of "special event" used "and/or," which is never recommended. Reworded for clarity. Deleted "uncommon impact on a public place" for vagueness. Replaced "reasonably expected to require the provision of public services" with the language from existing section 5.06.020.

The following definitions apply to the terms used in this chapter:

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

“Event organizer” means the person or entity that is sponsoring or organizing a special event.

“Special event” means any temporary or ongoing activity that:

(a) occurs on public property;

(b) affects the ordinary use of public streets, rights-of-way, sidewalks, traffic and other public places;

(c) that in the opinion of the City Administrator is reasonably expected to cause or result in a gathering of more than 75 people or is reasonably likely to require city personnel for road closures, traffic control, crowd control, or other safety and logistical support including prevention of dangerous, unlawful or impermissible uses or protection of the safety of persons and property around the event.

> Deleted "The proposed event requires the event organizer to obtain a use permit from two or more city departments."

5.06.040 Permit required.

> Based on existing SMC 5.06.020; deleted thresholds for permit requirement that are duplicated in the definition of "special event."

It is unlawful for any person to hold or conduct any special event as defined in 5.06.030 in the city without a permit issued per this chapter.

5.06.050 Permit application.

> Based on existing SMC 5.06.030. Fee payment moved from 5 days prior to event to time of application.

(1) An application for a special event permit must:

(a) be made on forms available from the community development department;

(b) be completed and submitted to the community development director (“director”) or designee no later than 60 days prior to the proposed event;

(c) include the application fee.

(2) A waiver of the deadline in subsection (1)(b) may be granted by the director upon a showing of good cause. The director must consider an application that is filed after the filing deadline if there is sufficient time to

process and investigate the application and obtain police and other city services for the event. Good cause can be demonstrated by the applicant showing that the circumstances that gave rise to the permit application did not reasonably allow the participants to file within the time prescribed, or that the event is related to the exercise of rights under the First and Fourteenth Amendments of the United States Constitution.

(3) The application must include the following:

(a) Purpose of the special event; name, address and telephone number of the sponsoring organization and/or individual(s);

(b) Proposed date of event, location and hours of operation, schedule of events, and estimated attendance;

(c) Special facility requirements and city assistance required; and

(d) Sanitation Requirements:

(i) Adequate waste disposal facilities must be identified and information demonstrating how facilities will be obtained must be provided.

(ii) Adequate restroom and washroom facilities must be identified and information demonstrating how facilities will be arranged for or obtained by the applicant, subject to the Snohomish health district's review and certification process, must be provided.

(4) Permits and/or approvals/coordination from other public agencies (e.g., Community Transit, Department of Transportation) when required must be submitted prior to the issuance of the permit.

(5) Five days prior to the event, a complete list of concessionaires operating any booths must be submitted.

(6) The city may require other information deemed reasonably necessary to determine that the permit meets the requirements of this chapter.

Note that the (existing) language below may not be sufficient to determine applicability of this provision.

(7) When an event will be an exercise of rights protected by the First and Fourteenth Amendments to the United States Constitution, the application shall be processed promptly, without charging a fee or imposing terms or conditions that infringe upon constitutional freedoms, and in a manner that respects the liberty of applicants and the public.

5.06.060 Application for city contribution.

Based on existing SMC 5.06.035.

(1) An application for city contribution towards a special event must:

(a) be made on forms available from the community development department;

(b) be completed and submitted to the community development director ("director") or designee no later than 60 days prior to the proposed event.

(2) The application must include the information required in SMC 5.06.050 and must include cost estimates for any needed city services.

(3) A waiver of application deadline for requests for city contribution may be granted by the Director on the same basis as in SMC 5.06.050(2).

(4) An application for city contribution may only be approved by the city council. City share of the cost of the event may be determined by the city council at their discretion.

(5) Criteria for Approval of City Contribution. To approve an application for city contribution, the City Council must make the following findings:

(a) the event contributes to the marketing of the city;

(b) the event will attract the general public into the downtown or uptown commercial areas and will be conducted in a way that creates potential for additional retail or service business transactions that contribute to the city's tax base;

(c) the event provides recreation benefit to the general public;

(d) the event promotes the general public welfare.

(6) As part of the city contribution, the City may allow, in its sole discretion, the city of Stanwood logo or text indicating the city role on signage, posters, and other advertising materials for the event.

5.06.070 Departmental analysis.

> ℹ Existing SMC 5.06.060.

(1) The Director must send copies of special event permit applications to all pertinent city departments for review and determination of services required.

(2) The applicant is required to coordinate with the Stanwood police department and public works department to employ police officers for security and traffic control as determined by the departmental analysis.

(3) The cost of city services (e.g., police, public works employees, etc.) for special events will be estimated prior to the event. Additional costs incurred will be evaluated following the completion of the event. The city may in its discretion require a cash deposit for such costs as a condition of permit approval prior to issuance of a special event permit.

(4) If city sponsorship is requested, the city financial contribution to the event must be determined as part of the departmental analysis. The city may at its discretion provide for the full or partial cost of police and public works services for city-sponsored special events.

5.06.080 Approval—Criteria.

> ℹ Based on existing SMC 5.06.040.

(1) After receipt of the comments of affected city departments on the application, permits issued under this chapter may be issued by the Director, except for permits requesting city contribution or public road closure which must be approved by the city council.

(2) Administrative Approval/Denial by Director. A permit may be issued by the Director only if all of the following criteria and conditions for issuance are met:

(a) Adequate plans for parking exist to meet the need generated by the proposed special event;

(b) The proposed special event or proposed use of the street will not intrude onto or over any portion of a public right-of-way open to vehicle or pedestrian travel in such a manner as to create a likelihood of endangering property or public safety;

(c) The proposed event will not unreasonably cause unreasonable impacts to other activities such as events or construction on the date(s) requested;

(d) The proposed event location has not been unreasonably impacted by the number of other events in a one-year period;

(e) City personnel and resources are available to assist with the event as deemed necessary by the community development director, chief of police, and the public works director;

(f) Such other and further conditions as the director deems necessary to reasonably ensure that the proposed special event does not in any way create a likelihood of endangering public safety, including, but not limited to, those who may participate or be spectators.

(3) Approval by City Council. A permit subject to approval by the City Council may be issued only if all of the following criteria and conditions for issuance are met:

(a) Items (2)(a) through (f) listed above;

Seems to me that all of the criteria for both sets of approval criteria are the same, and could be condensed.

(b) In the case of special events such as fun runs, marathons, etc., or in the case of any street use which requires the closure of any public street or walkway, the proposed event or use will not require closure for a period longer than that established by the city council.

(4) The Director must notify the City Council all special event approvals made by staff.

(5) Notice of special events that require city council approval must be posted at the event site. The applicant is responsible for posting the event in a format approved by the Director a minimum of 10 days prior to the city council meeting at which the special event will be considered for action. When an event involves street closures, the beginning and end of the closure route and any intersecting streets must be posted.

5.06.090 Approval—Conditions.

Based on existing SMC 5.06.075.

(1) The Director may condition the issuance of a special event permit by imposing reasonable requirements concerning the time, place and manner of the event, and such requirements as are necessary to protect public safety, to protect the rights of persons and property, and to address traffic control.

(2) The following conditions apply to all special event permits:

(a) The applicant may not alter the time, place and manner of the event proposed on the event application;

(b) Conditions concerning the area of assembly and disbanding of an event occurring along the route;

(c) Conditions concerning accommodation of pedestrians or vehicular traffic, including restricting the event to only a portion of the street or right-of-way;

(d) Compliance with any other applicable federal, state or local laws and regulations.

(3) Conditions on a special event permit that does not involve activities protected by the First and Fourteenth Amendments of the United States Constitution include but are not limited to:

(a) Requirements for the use of traffic cones or barricades;

(b) Requirements for the provision of first aid or sanitary facilities;

(c) Requirements for use of event monitors and providing notice of permit conditions to event participants;

(d) Restrictions on the number and type of vehicles, animals or structures at the event, and the inspections and approval of floats, structures, and decorated vehicles for fire safety;

(e) Compliance with animal protection laws;

(f) Requirements for use of garbage containers, cleanup, and restoration of city property;

(g) Restrictions on the use of amplified sound and compliance with noise laws;

(h) Notice to residents and/or businesses regarding any activity which would require a street closure;

(i) Restrictions on the sale and/or consumption of alcohol;

(j) Elimination of an activity which cannot be mitigated to a point as to ensure public safety and welfare, or which causes undue liability to the city;

> ℹ The next line is modified to clarify overtime may be required.

(k) Requirements regarding the use of city personnel and equipment, including any requirement for the event sponsor to pay for staff overtime;

> ℹ The next line is based on existing SMC 5.06.033:

(l) Compliance of event signage with Chapter 17.110 SMC, Sign Standards.

5.06.100 Denial—Criteria.

> ℹ Based on existing SMC 5.06.080.

An application for a special event permit may be denied for any of the following reasons:

(1) The event will disrupt traffic within the city of Stanwood beyond practical solution;

(2) The event will protrude into the public space open to vehicle or pedestrian travel in such a manner as to create a likelihood of endangering the public;

(3) The event will interfere with access to emergency services;

(4) The location or time of the special event will cause undue hardship or excessive noise levels to adjacent businesses or residents;

(5) The event will require the diversion of so many city employees that it would unreasonably affect other city services;

(6) The application contains incomplete or false information;

(7) The applicant fails to provide proof of insurance;

(8) The applicant fails to obtain local, county, state, or federal permits as required.

5.06.110 Site restoration.

> ℹ Existing SMC 5.06.065.

(1) Cleanup. The permittee is required to clean all permitted public properties and the right-of-way of rubbish and debris, returning it to its pre-event condition. If the permittee fails to clean up such refuse, the cleanup will be arranged by the city and the costs charged to the permittee. The city may in its discretion require a cash cleanup deposit.

(2) Damage to City Property. The city reserves the right to charge the event permittee the replacement cost for any documented damage to city property occurring during a special event. The city may in its discretion require a cash damage deposit.

5.06.120 Insurance required.

Existing SMC 5.06.070.

(1) The applicant for a special event that does not involve the exercise of rights protected by the First and Fourteenth Amendments to the United States Constitution is required to obtain and present evidence of comprehensive liability insurance (i.e., a certificate of insurance) naming the city of Stanwood as an additional insured for use of streets, public rights-of-way and publicly owned property such as parks.

(2) The insurance policy must be written on an occurrence basis and must provide a minimum of $1,000,000 for individual incidents, $2,000,000 aggregate, per event, against all claims arising from permits issued pursuant to this chapter.

(3) The insurance policy period must be for a period not less than 24 hours prior to the event and extending for a period not less than 24 hours following completion of the event.

(4) In circumstances posing a significantly high risk of liability, the city may, in its discretion, increase the minimum insurance requirements, and in circumstances posing a significantly low risk of liability, the city may in its discretion reduce the minimum insurance requirements.

5.06.130 Revocation of special event permit.

Based on existing SMC 5.06.090.

Staff please verify if we want city administrator revoking in (1) and director revoking in (3).

(1) Any special event permit issued pursuant to this chapter may be revoked by the city administrator if the city administrator in consultation with the mayor determines that any of the following apply:

 (a) That the special event cannot be conducted without violating the provisions of this chapter and/or the conditions of the special event permit;

 (b) The special event is being conducted in violation of the provisions of this chapter and/or any condition of the special event permit;

 (c) The special event poses a threat to the public health or safety;

 (d) Conditions such as severe weather or other circumstances beyond the control of the city or the permittee have created or are likely to create conditions detrimental to the health and safety of the public or the event participants;

 (e) The permittee has failed to obtain any other permit required by the city or pursuant to other local, state or federal law;

 (f) The special event permit was issued in error or contrary to applicable law;

 (g) The permittee has not paid all applicable city fees when due;

 (h) The participants in the special event are engaged in illegal activities;

 (i) The applicant fails to comply with conditions of the permit determined by city staff during departmental analysis.

(2) Except as otherwise provided in this section, revocation of a special event permit must be in writing, must describe the reasons for the revocation and must be mailed, electronically transmitted, or hand-delivered to the permittee.

(3) If there is an emergency requiring immediate revocation of a special event permit, the director may verbally notify the permittee of the revocation and the reasons for the revocation.

5.06.140 Appeal.

> ℹ Based on existing SMC 5.06.100

(1) An applicant may appeal any administrative denial or revocation of a special event permit to the city council. Any such appeal must:

  (a) be in writing;

  (b) specify the grounds for the appeal; and

  (c) must be submitted to the city clerk within seven calendar days of the issuance of the permit denial or revocation.

(2) An applicant may appeal the city council's denial of a special event permit to appeal Snohomish County superior court. Any such appeal must be made within 21 calendar days of the permit denial.

(3) No appeal is available for City denial of an application for city contribution under SMC 5.06.060.

5.06.150 Violation – Penalty.

> ℹ Based on existing SMC 5.06.110.

(1) It is unlawful to sponsor, conduct, or operate a special event contrary to this chapter or contrary to the conditions of a special event permit, or for any participant in a special event to willfully and knowingly violate a condition of the special event permit.

(2) Violation of this chapter is a Class 1 civil infraction and may also be enforced pursuant to SMC Title 13.

Chapter 5.08 Merchants without a Fixed Location

> ℹ This is a heavy rewrite of existing SMC Chapter 5.08 titled "Peddlers, Vendors and Temporary Merchants" to provide substantive rules for such vendors without the requirement for an additional permit (other than a city business license).

> Staff please verify that the new title of the chapter makes sense for the intended purpose.

5.08.010 Purpose

> ℹ New material.

The purpose of this chapter is to regulate vendors and other merchants without a fixed location that desire to operate in the City of Stanwood.

5.08.020 Applicability

This section is a new organization of applicability rules from the existing chapter.

(1) This chapter applies to merchants without a fixed location, such as door-to-door sales people, food trucks or other mobile or vehicle-based vending of merchandise, or temporary concessionaires.

The following subsections are based on the exclusions in existing SMC 5.08.010 definition of "temporary merchant" or "concessionaire."

Staff please verify that these exclusions are intended.

(2) This chapter does not apply to:

(a) merchants who operate within the City less than 1 day per year;

(b) public officers selling property under authority of law and to persons selling property under court order;

The next line is based on existing SMC 5.08.020(9):

(c) special events, which are regulated by Chapter 5.06 SMC, but may apply to vendors operating at special events;

The next line is based on existing SMC 5.08.030(8):

(d) any farmer, gardener, or other person, who sells, delivers, or peddles any fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats, or any farm produce or edibles raised, caught, produced, or manufactured by such person;

The following exclusion is based on the exclusions in existing SMC 5.08.010 definition of " Vending of food from a mobile unit."

(e) deliveries of meals on wheels and food basket or hot food delivery, by churches or other not-for-profit charitable organizations, to the elderly, sick or physically challenged;

Next line captures "newspapers," which was excluded from existing definition of peddler, and pizza deliveries, which was excluded from definition of "vending of food from a mobile unit."

(f) deliveries of other services or merchandise arranged at a location not otherwise subject to this chapter, including delivery of newspapers and food pursuant to orders taken at an established place of business.

5.08.030 Definitions.

Based on existing SMC 5.08.010. Deleted "peddler" as duplicative of "temporary merchant." Deleted "solicitor for profit," which was unused. Amended "vending of food from a mobile unit" to be broader than just food.

The following definitions apply to the terms used in this chapter:

"Temporary merchant" or "temporary concessionaire" means any person who sells, or offers for no charge, any goods, wares, merchandise, food or anything of value, from a location other than a permanent building they own or lease, including any person, either as agent or principal, who carries goods, wares, merchandise or food of whatever nature or description from house to house, building to building or upon any street, highway or public place within the city for the purpose of selling such goods, wares or merchandise or solicits orders for the same.

"Permanent building" means a structure constructed on a permanent foundation, and hooked up to city water, sewer, and drainage, that have restrooms and washing areas.

"Solicit" and "solicitation" mean the request, directly or indirectly, for money, credit, property, financial assistance or other thing of value on the plea or representation that such will be used for a charitable purpose as hereafter defined. "Solicit" and "solicitation" includes the following methods of requests, collections or receipts:

(a) Any oral or written request;

(b) The sale of, offer or attempt to sell any change, coupon, device, tag, emblem, ticket, book, card, magazine, membership, merchandise, subscription, advertising space or other thing in connection with which an appeal is made for a charitable purpose or any statement is made that the whole or any part of the proceeds from such sale will be donated to or will go to a charitable purpose.

"Vendor from a mobile unit" means a business that sells merchandise from a mobile unit traveling city streets for the purpose of selling merchandise.

5.08.040 Business License Required

> ℹ This section supplants the separate license requirement in existing SMC 5.08.020.

(1) Per SMC Chapter 5.02, a City business license is required for any business to which this chapter applies.

(2) An application for such a business license must include:

> ℹ The following is based on existing SMC 5.08.020(4) and (6):

- (a) a brief description of the nature and method of the business, and goods to be sold, or services solicited or provided;
- (b) if a vehicle is to be used, a description of the vehicle, the name of the person or company to whom the vehicle is registered, and the vehicle license number or other means of identification;

> ℹ Next line based on existing SMC 5.08.070(2).

- (c) if a business intends to conduct business for more than one day at any one location, a site plan of the business location and such other plans or drawings as the city may require for approval.

5.08.050 General Requirements

(1) Businesses to which this chapter applies must comply with the following:

> ℹ Next line based on existing SMC 5.08.070(1). Note difficulty for strict compliance for door-to-door salesmen.

- (a) No person may conduct business under this chapter on private property without written permission from the property owner.

Next sections are based on existing SMC 5.08.080:

(b) The site of the business operation must be kept clean and orderly at all times and the business must provide a refuse container if their activities generates refuse.

(c) If located on a sidewalk, a minimum usable and unimpaired sidewalk clearance of five feet must be maintained by any street vendor.

(d) If located on a street, the operation must be oriented to the pedestrians on the sidewalk and not the vehicular traffic, if such exposure would interfere with the traffic flow.

(e) The business must comply with all parking requirements as listed in Chapter 17.105 SMC.

(f) The business must comply with all city, county, state and federal regulations regarding food handling.

(g) The business must comply with all applicable requirements of SMC Title 17, Zoning.

The next line is based on existing SMC 5.08.030(6):

Are businesses actually complying with this requirement? Including product liability coverage?

(h) The business must obtain and retain a minimum of $500,000 public liability and property damage insurance, which must include product liability coverage, naming the city as an additional insured.

The next line is based on existing SMC 5.08.080(3):

(2) The city reserves the right to limit the number of mobile vending sites allowed in any given area.

5.08.060 Additional Requirement for Mobile Vendors

Based on existing SMC 5.08.040:

A vendor from a mobile unit:

(1) may not place advertising on the street or sidewalk (all advertising must be on the mobile unit);

(2) may not use radios or any other sound devices to attract public attention except in accordance with Chapter 9.50 SMC;

(3) must provide, for public use, receptacles of adequate size on said unit for the deposit of refuse and recyclables;

(4) must be 200 feet from a similar existing and stationary business.

5.08.070 Location Restrictions

The next subsections are based on existing SMC 5.08.080(6-7):

(1) Businesses to which this chapter applies are prohibited in the following locations:

(a) within the SR-532 right-of-way;

(b) parks, unless approved as part of a special event permit or as allowed in SMC Title 17, Zoning;

(c) any other location prohibited by SMC Title 17, Zoning.

Next line is based on existing definition of "temporary merchant."

(2) A temporary merchant may only operate up to 15 days per calendar year from a single location, except from a permanent building they own or lease.

5.08.080 Business License—Revocation

Based on existing SMC 5.08.060; this catch-all makes it unnecessary to list the various reasons for revocation in the existing section.

The business license for a business to which this chapter applies may be revoked per SMC 5.02.100 for any failure to comply with the requirements of this chapter.

5.08.090 Responsibilities.

Based on existing SMC 5.08.090.

The issuance of a business license for a business regulated by this chapter does not relieve the licensee from securing any other license(s) required by state, federal, county or city law.

5.08.100 Penalty for violation.

Revision of existing SMC 5.08.100.

Violation of this chapter is a misdemeanor and may also be enforced pursuant to SMC Title 13.

Chapter 5.12 Taxicabs

Ride-share companies such as Uber and Lyft are now regulated by ESHB 2076 (2022), notably RCW Chapter 46.72B, which preempts local regulation of such “transportation network companies and drivers.”

This revision deletes the requirement for a local taxi license, relying instead on city business licensing and the state’s licensing scheme in RCW Chapter 46.72. A taxicab operator will therefore need to obtain a taxicab license from the state rather than the city.

5.12.010 Purpose

The purpose of this chapter is to clarify applicability of business licenses to taxicabs. It is not the purpose of this chapter to supplant the state licensing requirement in RCW 46.72.020.

5.12.020 Applicability

This chapter applies to taxicabs and other for-hire cars per RCW 81.72, but not transportation network companies and drivers that are regulated by RCW 46.72B.

5.12.030 State and Local Licenses Required.

(1) To operate taxicab in the City of Stanwood, the following licenses are required:

(a) a state taxicab license per RCW 46.72.020; and

(b) a City of Stanwood business license.

(2) To obtain a city business license, a taxicab operator must comply with all of the following:

(a) be at least 21 years of age;

(b) be duly licensed to drive a motor vehicle for hire under the laws of the state of Washington;

(c) only operate as a taxicab a vehicle in safe condition for use as such;

(d) fully comply with the requirements of RCW Chapter 46.72.

5.12.040 Business License—Revocation

The business license for a taxicab may be revoked per SMC 5.02.100 for any failure to comply with the requirements of this chapter.

Chapter 5.20 Cable System Regulations

> This chapter is existing SMC Chapter 5.20 with only a few changes to conform the chapter to the style guide.

5.20.010 Short title.

This chapter constitutes the “cable system regulations” of the city of Stanwood and may be referred to as such.

5.20.020 Definitions.

For the purposes of this chapter, the following words, terms, phrases, and their derivations have the meanings given herein:

“Affiliate,” when used in connection with the franchisee, means any person who owns or controls, is owned or controlled by, or is under common ownership or control with the franchisee.

“Applicant” means any person or entity that applies for an initial franchise.

“Cable Act” means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as any of them may be amended.

“Cable service” means the one-way transmission to subscribers of video programming or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“Cable system” means any facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (d) an open video system that complies with federal statutes; or (e) any facilities of any electric utility used solely for operating its electric utility system.

"Channel" means a portion of the frequency band capable of carrying a video programming service or combination of video programming services whether by analog or digital signal.

"Franchise" means an agreement that authorizes a person or entity to construct, operate, maintain or reconstruct a cable system. Upon the written acceptance by a franchisee, the agreement constitutes a contract between the city and franchisee.

"Franchisee" means the person, firm, corporation or entity to whom or which a franchise, as hereinabove defined, is granted by the city council under this chapter and the lawful successor, transferee or assignee of said person, firm, corporation or entity.

"Right-of-way" or "rights-of-way" means all of the following which have been dedicated or otherwise conveyed to the public or are hereafter dedicated or conveyed to the public whether in fee or as a right-of-way and maintained under public authority or by others and are located within the city: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property and areas.

"Subscriber" means any person who or which elects to subscribe to, for any purpose, cable service provided by a franchisee by means of or in connection with the cable system and whose premises are physically wired and lawfully activated to receive cable service from franchisee's cable system.

5.20.030 Franchise grant.

(1) It is unlawful to engage in or commence construction, operation, or maintenance of a cable system in the city without a franchise issued under this chapter.

(2) The city council may, by ordinance, issue a nonexclusive franchise to construct, operate, and maintain a cable system within all or any portion of the city to any person or entity, whether operating under an existing franchise or not, who applies for authority to furnish cable service which complies with the terms and conditions of this chapter; provided that such person or entity also agrees to comply with all of the provisions of the franchise.

(3) This authority may not be deemed to require the grant of a franchise to any particular person or entity.

(4) The city council may restrict the number of franchisees if it determines such a restriction would be in the public interest.

5.20.040 Franchise purposes.

A franchise granted by the city under the provisions of this chapter must:

(1) Permit the franchisee to engage in the business of operating a cable system and providing cable service within the city;

(2) Permit the franchisee to erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cable lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of the cable system in, on, over, under, upon, along and across rights-of-way within the city;

(3) Permit the franchisee to maintain and operate said cable system for the origination, reception, transmission, amplification and distribution of cable television signals and for the delivery of cable service; and

(4) Set forth the obligations of the franchisee under the franchise.

5.20.050 Nonexclusive franchise.

Any franchise granted pursuant to this chapter:

(1) is nonexclusive;

(2) must not preclude the city from granting other or future franchises or permits;

(3) must not preclude the city from using any rights-of-way or other public properties and may not affect its jurisdiction over them or any part of them, or limit the full power of the city to make all necessary changes, as the city in its sole discretion decides, including the dedication, establishment, maintenance and improvements of all rights-of-way and thoroughfares and other public properties of any type.

5.20.060 Application.

(1) An applicant for an initial franchise must submit to the city a written application in a format provided by the city, at the time and place specified by the city for accepting applications, and accompanied by the designated application fee. An application fee as set by resolution or as set forth in the city's adopted fee schedule must accompany the application to cover costs associated with processing the application, including, without limitation, costs of administrative review, financial, legal, and technical evaluation of the applicant, the costs of consultants, notice and publication requirements, and document preparation expenses. In the event such costs exceed the application fee, the applicant must pay the difference to the city within 30 days following receipt of an itemized statement of such costs. Conversely, if such costs are less than the application fee, the city must refund the difference to the applicant.

(2) Application – Contents. An application for an initial franchise for a cable system must contain, at a minimum:

  (a) A statement as to the proposed franchise and information relating to the characteristics and location of the proposed system;

  (b) A resume of prior history of the applicant, including the expertise of the applicant in the cable system field;

  (c) Information demonstrating the applicant's legal, technical and financial ability to construct and operate the proposed system;

  (d) A list of the partners, general and limited, of the applicant, if a partnership, members, if a limited liability company, or the percentage of stock owned or controlled by each stockholder having a five percent or greater interest, if a corporation;

  (e) A list of officers, directors and key employees of the applicant, together with a description of the background of all such persons;

  (f) The names and addresses of any parent entity or subsidiary of the applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant;

  (g) A proposed construction and service schedule;

  (h) Any other reasonable information that the city may request.

(3) The city must be allowed the opportunity to ask relevant follow-up questions and obtain further information from whatever source. A refusal by an applicant to cooperate or provide requested information is sufficient grounds for the city acting through its community development director or designee to deny an application.

(4) Consideration of Initial Franchise.

  (a) Upon receipt of an application for an initial franchise and after obtaining any additional information the city in its sole discretion deems appropriate from any source, a public hearing must be scheduled to allow public comment. At the public hearing, the city council may receive public comment regarding the following:

    (i) Public Benefit. Whether the public will benefit from granting a franchise to the applicant;

(ii) Qualifications. Whether the applicant appears to have adequate legal, financial, and technical qualifications and capabilities to build, operate and maintain a cable system in the city;

(iii) No Conflicting Interests. Whether the applicant has any conflicting interests, either financial or commercial, that will be contrary to the interests of the city;

(iv) Compliance with the Franchise and Local Laws. Whether the applicant will comply with all of the terms and conditions placed upon a franchisee by the franchise, this chapter, and other applicable local laws and regulations;

(v) Compliance with Other Requirements. Whether the applicant will comply with all relevant federal and state laws and regulations pertaining to the construction, operation, and maintenance of the cable system.

(5) Within 60 days after the close of the hearing, the city council must decide whether to grant a franchise and on what conditions. The city council's decision must be based upon the application, any additional information submitted by the applicant or obtained by the city from any source, and public comments. The city council may grant one or more franchises, or may decline to grant any franchise. Any final action must be taken in accordance with the requirements of RCW 35A.47.040.

(6) The means, methods and processes for franchise renewal or franchise transfer must be set out in the franchise agreement subject to any applicable requirements of federal or state law.

5.20.070 Pole or conduit agreements – Regulatory permits – Right-of-way permits.

No franchise relieves the franchisee of any of its obligations to obtain:

(1) pole or conduit agreements from any department of the city, any utility company, or from others maintaining facilities in the rights-of-way;

(2) building or similar regulatory permits or approvals;

(3) a right-of-way permit for construction within rights-of-way where applicable.

5.20.080 Other authorizations – Franchise.

Franchisee must comply with and obtain, at its own expense, all permits, licenses, and other authorizations required by federal, state, and local laws, rules, regulations and applicable resolutions and ordinances which are now existing or hereafter lawfully adopted. The provisions of this chapter do not limit or restrict the terms, conditions, or provisions the city may require in a franchise.

5.20.090 Rules and regulations of the city.

In addition to the inherent powers of the city to regulate and control any franchise it issues, the authority granted to it by the Cable Act, and those powers expressly reserved by the city, or agreed to and provided for in a franchise, the right and power is reserved by the city to promulgate such additional rules and regulations as it may find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of a franchise and this chapter, and as permitted by applicable state and federal law.

5.20.100 Applicability.

The provisions of this chapter apply to all franchisees and cable systems to the greatest extent permissible under applicable law.

5.20.110 Severability.

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

Chapter 5.32 Sexually Oriented Businesses

- This chapter is existing SMC Chapter 5.32 without modification except for cross-references (where noted).
- This chapter contains a mix of zoning/development rules and non-development rules. Ideally, development code should all be contained within the proposed new unified development code title, which also could apply within the UGA, and non-development regulatory measures should be located here in Title 5 (and cannot be applied outside the city limits). Because the new unified development code title will be one of the last titles that the City adopts as part of this project, we propose only changes to correct cross-references in this chapter at this time, and queue the remainder of the chapter for a full rewrite concomitant with the unified development code, which would retain the substantive regulations in Title 5, but move the zoning overlay to Title 17.
- Existing SMC 5.32.270 regarding the duration of time of a suspension or a license, cross-referencing to 13.01.030(8), is deleted as unnecessary.

5.32.010 Purpose and intent.

It is the purpose of this chapter to regulate sexually oriented businesses and related activities to promote health, safety, morals, and general welfare of the citizens of the city of Stanwood, and to establish reasonable and uniform regulations to prevent the deleterious location of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the State or Federal Constitutions, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials. (Ord. 930, 1996).

5.32.020 Definitions.

For the purposes of this chapter certain terms and words are defined as follows:

(1) “Sexually oriented businesses” mean those businesses defined as follows:

(a) “Adult arcade” means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are used to show films, motion pictures, video cassettes, slides, or other photographic or computer generated reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(b) “Adult bookstore”, “adult novelty store”, or “adult video store” means a commercial establishment which has as a significant or substantial portion of its stock-in-trade or a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale or rental for any form of consideration, of any one or more of the following:

(i) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; or

(ii) An establishment may have other principal business purposes that do not involve the offering for sale or rental of materials depicting or describing "specified sexual activities" or "specified anatomical areas", and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities;

(iii) Video stores that sell and/or rent only video tapes or other photographic or computer generated reproductions, and associated equipment shall come within this definition if 20 percent or more of its stock-in-trade or revenues comes from the rental or sale of video tapes or other photographic reproductions or associated equipment which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(c) "Adult cabaret" means a nightclub, bar, restaurant, or similar commercial establishment, whether or not alcoholic beverages are served, which features: i) persons who appear nude or semi-nude; ii) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or iii) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(d) "Adult motel" means a hotel, motel, or similar commercial establishment which has the primary function of:

(i) Offering accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; and

(ii) Offering a sleeping room for rent for a period of time that is less than 20 hours; or

(iii) Allowing a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 20 hours.

(e) "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions characterized by the depiction or description of "specified anatomical areas" or "specified sexual activities" are regularly shown for any form of consideration.

(f) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities."

(g) "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(h) "Nude or semi-nude model studio" mean any place where a person, who appears nude or semi-nude or displays "specified anatomical areas", is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

(i) "City" means the city of Stanwood, Washington.

(j) "Clerk" means the city clerk, or designee.

(k) "Employee" means any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any business offering adult entertainment, adult theater, or adult use establishments, whether or not such person is paid compensation by the operator of said business.

(l) “Entertainer” means any person who provides sexually oriented entertainment in an adult cabaret whether or not an employee of the operator and whether or not a fee is charged or accepted for such entertainment.

(m) “Manager” means any person who manages, directs, administers, or is in charge of, the affairs and/or the conduct of an adult cabaret.

(n) “Escort” means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(o) “Establishment” means and includes any of the following:

(i) The opening or commencement of any sexually oriented business as a new business; or

(ii) The conversion of an existing business, whether or not a sexually oriented businesses, to any sexually oriented businesses defined herein;

(iii) The addition of any of the sexually oriented businesses defined herein to any other existing sexually oriented business; or

(iv) The relocation of any such sexually oriented business.

(p) “Nude or state of nudity” means the appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast.

(q) “Operator” means and includes the owner, permit holder, custodian, manager, operator, or person in charge of any permitted or licensed premises.

(r) “Permitted and/or licensed premises” means any premises that requires a license and/or permit and that is classified as a sexually oriented business.

(s) “Permittee and/or licensee” shall mean a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

(t) “Person” means any individual, firm, joint venture, copartnership, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver or any other group or combination acting as a unit.

(u) “Semi-nude” means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

(v) “Sexually oriented business” means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, sexual encounter establishment, semi-nude model studio, escort agency, or adult motel.

(w) “Specified anatomical areas” mean and include any of the following:

(i) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of areolae; or

(ii) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(x) “Specified criminal acts” mean any conviction or acts which are sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business, including but not limited to, distribution of obscenity or material harmful to minors, prostitution or pandering.

(y) “Specified sexual activities” mean and include any of the following:

(i) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; or

(ii) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or

(iii) Masturbation, actual or simulated; or

(iv) Human genitals in a state of sexual stimulation, arousal or tumescence; or

(v) Excretory functions as part of or in connection with any of the activities set forth in subsections (y)(i) through (iv) of this section.

(z) "Sexually oriented entertainment" means a live performance at an adult cabaret which is characterized by the performer's exposure of "specified anatomical areas."

(aa) "Transfer of ownership or control of a sexually oriented business" means and includes any of the following:

(i) The sale, lease or sublease of the business; or

(ii) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(iii) The establishment of a trust, gift or other similar legal devise which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

(bb) "Youth-oriented business or activity" means a business utilizing a permanent building or facility where children under the age of 18 years are invited onto the business premises in conjunction with such business activity and at least 50 percent of the business revenue is generated from their patronage. (Ord. 930, 1996).

5.32.030 Sexually oriented business overlay zone created.

There is hereby created a sexually oriented business overlay zone within such geographical areas of the city as are identified on the official city zoning map of the city. The boundaries of such sexually oriented business overlay zone are further identified and depicted on Exhibit A1, attached to the ordinance codified in this chapter and by this reference incorporated herein. Sexually oriented businesses as defined herein may only locate within the sexually oriented businesses overlay zone above described; provided, however, even within such zone a sexually oriented business shall not locate within a distance of 100 feet of an existing youth-oriented business or activity; within 100 feet of any residential zone or any single or multiple family use; within 100 feet of any public park; within 100 feet of any church or other religious facilities or institution including public or private schools. Such distance shall be measured in a straight line from the nearest property line of the existing youth-oriented business to the nearest property line of the site upon which the proposed sexually oriented business proposes to locate. (Ord. 930, 1996).

1 Code reviser's note: Exhibit A is on file in the clerk's office.

5.32.040 Prohibition.

For the reasons stated in the recitals and SMC 5.32.010, a person shall not use any property or premises for a sexually oriented business within the city of Stanwood except within the sexually oriented business overlay zone established by this chapter, and then only subject to all regulations and conditions enumerated herein. (Ord. 930, 1996).

5.32.050 Regulated uses.

The following sexually oriented businesses are subject to the provisions of SMC 5.32.030 and all other regulations contained in this chapter:

(1) Adult arcade;

(2) Adult bookstore, adult novelty store, or adult video store;

(3) Adult cabaret;

(4) Adult motion picture;

(5) Adult theater;

(6) Nude/semi-nude model studio;

(7) Escort agency;

(8) Adult motel/hotel. (Ord. 930, 1996).

5.32.060 Sexually oriented business permit required.

(1) No sexually oriented business shall be permitted to operate without a valid sexually oriented business permit, issued by the city for the particular type of business. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business without said permit.

(2) The city clerk or his/her designee is responsible for granting, denying, revoking, renewing, suspending, and canceling sexually oriented business permits and licenses. The planning director or his/her designee are responsible for ascertaining whether a proposed sexually oriented business for which a permit and/or license is being applied for complies with all requirements enumerated herein and all other applicable zoning laws and/or regulations now in effect or as amended or enacted subsequent to the effective date of the ordinance codified in this chapter.

(3) An application for a sexually oriented business permit shall be made on a form provided by the city. Any person desiring to operate a sexually oriented business shall file with the city clerk an original and two copies of a sworn permit application on the application form supplied by the city.

(4) The completed application shall contain the following information and shall be accompanied by the following documents:

(a) If the applicant is:

(i) An individual, he/she shall state their legal name and any aliases or previous married names and submit satisfactory proof that he/she is at least 18 years of age;

(ii) A partnership, the partnership shall state its complete name, and the names of all partners, and include their dates of birth, and partnership agreement, if applicable;

(iii) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of Washington, the names and capacity of all officers, directors and shareholders, the name of the registered corporate agent, and the address of the registered office for service of process;

(iv) As a part of the application process, every officer, director, or shareholder, as defined above, shall provide the city clerk with an affidavit attesting to their identity and relationship to the corporation.

(b) Whether the applicant or any other individuals listed pursuant to subsections (4)(a)(ii) and (iii) above within a two-year period immediately preceding the date of the application has been convicted of a specified criminal act and, if so, the specified criminal act involved, the date of conviction, and the place of conviction.

(c) Whether the applicant or any of the other individuals listed pursuant to this chapter has had a previous permit or license under this chapter or other similar ordinances from another city or county denied, suspended, or revoked, including the name and location of the sexually oriented business for which the permit or license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.

(d) Whether the applicant or any other individual listed pursuant to this chapter holds any other permits and/or licenses under this chapter, et seq., or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other permitted businesses.

(e) The single classification of permit for which the applicant is filing.

(f) The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

(g) The applicant's mailing address and residential address.

(h) Two two-inch by two-inch black and white photographs of the applicant(s), including all shareholders/partners, taken within six months of the date of the application, showing only the full face of the applicant(s). The photographs shall be provided at the applicant's expense. The license, when issued, shall have affixed to it one such photograph of the applicant.

(i) The applicant(s) including all shareholders/partners, shall provide driver's license number, social security number, and or his/her state or federally issued tax identification number.

(j) Each application shall be accompanied by a complete set of fingerprints of each person required to be included in the application, including all shareholders/partners as defined above, utilizing fingerprint forms as prescribed by the chief of police. Application shall be made for annual permit before January 1st of each year.

(k) In the case of an adult cabaret, a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(l) Applicants for a permit and/or license under this chapter shall have a continuing duty to promptly supplement application information required in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within 30 days from the date of such change by supplementing the application on file with the city clerk or his/her designee, shall be grounds for suspension of a permit and/or license.

(m) In the event the city clerk or his/her designee determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business permit or license, he/she shall promptly notify the applicant of such fact and allow the applicant 10 days to properly complete the application. (The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.)

(n) The applicant must be qualified according to the provisions of this chapter, must have a current city business license, and the premises must be inspected and found to be in compliance with health, fire, and building codes of the city.

(o) The applicant shall be required to pay a nonrefundable application fee as listed in SMC 3.30.110 at the time of filing an application under this chapter. Note: this is a processing fee. License fees shall also be required in the event the application is approved.

(p) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business permit.

(q) The application form for licenses and permits issued under this chapter shall contain a provision providing that under penalty of perjury the applicant verifies that the information contained therein is true to the best of their knowledge. (Ord. 930, 1996).

5.32.070 Investigation and application.

(1) Upon receipt of an application properly filed with the city clerk and upon payment of the nonrefundable application fee, the city clerk or his/her designee shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to other city departments or other agencies responsible for enforcement of health, fire, and building codes and laws. Each department or agency shall promptly conduct an investigation of the applicant's application and the proposed sexually oriented business.

Said investigation shall be completed within 60 working days of receipt of the application by the city clerk or his/her designee. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its recommendation as to approval or disapproval of the application, date it, sign it, and in the event it recommends disapproval, state the specific reasons therefor citing applicable laws or regulations.

(2) A department or agency shall recommend disapproval of an application if it finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the city. After its indication of approval or disapproval, each department or agency shall immediately return the photocopy of the application to the city clerk or his/her designee. (Ord. 930, 1996).

5.32.080 Issuance of permit.

(1) The city clerk or his/her designee shall grant or deny an application for a permit within 60 days from the date of its proper filing. Upon the expiration of the sixtieth day, unless the applicant requests and is granted a reasonable extension of time, the applicant shall be permitted to begin operating the business for which the permit is sought, unless and until the city or its designee notifies the applicant of a denial of the application and states the reason(s) for that denial.

(2) Grant of Application for Permit.

(a) The city clerk or his/her designee shall grant the application unless one or more of the criteria set forth in subsection (2)(C) below (Denial of Application for Permit) is present.

(b) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at any time.

(c) Denial of Application for Permit. The city clerk or his/her designee shall deny the application for any of the following reasons:

(i) An applicant is under 18 years of age.

(ii) An applicant is overdue on his/her payment to the city of taxes, fees, fines, or penalties assessed against him/her or imposed upon him/her in relation to a sexually oriented business.

(iii) An applicant has failed to provide information required by this chapter or permit application for the issuance of the permit or has falsely answered a question or request for information on the application form.

(iv) The applicant has failed to comply with any provision or requirement of this chapter. (Ord. 930, 1996).

5.32.090 Licenses required for sexually oriented business – Fees.

i Updated to reference the City's consolidated fee schedule.

(1) No sexually oriented business shall be operated or maintained in the city of Stanwood unless the owner or operator has obtained a sexually oriented business permit as set forth above, and the applicable licenses from the city clerk. For adult cabarets the required license shall be the adult cabaret license set forth in subsection (2) below. It is unlawful for any entertainer, employee, or operator to knowingly work in or about or knowingly perform any service directly related to the operation of an unlicensed adult cabaret business.

(2) The annual fee for an adult cabaret business license shall be as noted in the City's consolidated fee schedule. This amount shall be used for the cost of administration of this chapter.

(3) The annual license fee for all other sexually oriented businesses described in SMC 5.32.050 shall be as noted in the City's consolidated fee schedule. This amount shall be used for the cost of administration of this chapter.

(4) The above referenced licenses expires annually on December 31st and must be renewed by January 1st.

(5) In cases where the license becomes effective on a date other than January 1st, the license fee shall be prorated on a quarterly basis. The cost thereof shall be computed by prorating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

(6) The applicant must be 18 years of age or older. (Ord. 930, 1996).

5.32.100 License for managers and entertainers of adult cabarets required – Fee.

(1) No person shall work as a manager or entertainer at an adult cabaret without having first obtained an entertainer's or manager's license from the city clerk. Each such applicant shall not be required to obtain a sexually oriented business permit, but shall complete an application containing the information identified in SMC 5.32.060(4) and the same procedures shall be followed as set forth in SMC 5.32.070 and 5.32.080. A nonrefundable processing fee as noted in the City's consolidated fee schedule shall accompany the application.

(2) The annual fee for such a license shall be as noted in SMC 3.30.110. This amount shall be used for the cost of administration of this chapter.

(3) This license expires annually on December 31st and must be renewed by January 1st.

(4) In cases where the license becomes effective on a date other than January 1st, the license fee shall be prorated on a quarterly basis. The cost thereof shall be computed by prorating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

(5) The applicant must be 18 years of age or older. (Ord. 930, 1996).

5.32.110 Licenses for models and escorts.

No person shall work as a model at a nude or semi-nude model studio or as an escort as defined herein without having first obtained a model or escort license from the city clerk.

(1) Each such applicant shall not be required to obtain a sexually oriented business permit, but shall complete an application containing the information identified in SMC 5.32.060(4) and the same procedures shall be followed as set forth in SMC 5.32.070 and 5.32.080. A nonrefundable processing fee as noted in the City's consolidated fee schedule shall accompany the application.

(2) The annual fee for such a license shall be as noted in the City's consolidated fee schedule. This amount shall be used for the cost of administration of this chapter.

(3) This license expires annually on December 31st and must be renewed by January 1st.

(4) In cases where the license becomes effective on a date other than January 1st, the license fee shall be prorated on a quarterly basis. The cost thereof shall be computed by prorating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

(5) The applicant must be 18 years of age or older. (Ord. 930, 1996).

5.32.120 Due date for license fees.

All licenses required by this chapter must be issued and the applicable fees paid to the city clerk at least 14 calendar days before commencing work at a sexually oriented business. The sexually oriented business permit required by SMC 5.32.060 must only be renewed based on changed circumstances as set forth in SMC 5.32.060(4)(l). (Ord. 930, 1996).

5.32.130 Manager on premises.

(1) A licensed manager shall be on duty at an adult cabaret business premises at all times.

(2) The licensed manager on duty shall not be an entertainer.

(3) It shall be the responsibility of the manager to verify that any entertainer who works or appears within the premises possesses a current and valid entertainer's license posted in the manner required by this chapter. (Ord. 930, 1996).

5.32.140 License nontransferable.

No license or permit issued pursuant to this chapter shall be transferable. (Ord. 930, 1996).

5.32.150 License – Posting and display.

(1) Every entertainer shall post his or her license in his or her work area so that it is readily available for public inspection.

(2) Every person, corporation, partnership, or association licensed under this chapter shall display its license in a prominent place within the establishment. In the case of adult cabarets, the name of the manager on duty shall be prominently posted during business hours. (Ord. 930, 1996).

5.32.160 Specifications – Adult cabarets.

(1) Separation of Sexually Oriented Adult Entertainment Performance Area. The portion of the adult cabaret premises in which sexually oriented adult entertainment is performed shall be a stage or platform that is separated from all patron seating areas in the following ways:

(a) Be at least 24 inches in elevation above; and

(b) Be separated by a distance of at least 10 feet; and

(c) Have a continuous railing at least three feet in height, extending from the floor, and located at least 10 feet from all points of the sexually oriented adult entertainment performance area.

(2) Lighting. Sufficient lighting shall be provided and equally distributed in and about the parts of the premises which are open to and used by patrons so that all objects are plainly visible at all times, and so that on any part of the premises which are open to and used by patrons a program, menu, or list printed in eight point type will be readable.

(3) Submittal of Plans. Building plans showing conformance with the requirements of this chapter shall be included with any application for an adult cabaret business license. (Ord. 930, 1996).

5.32.170 Standards of conduct and operation applicable to adult cabarets.

(1) Standards for Patrons, Employees and Entertainers. The following standards of conduct must be adhered to by patrons, entertainers and/or employees of adult cabarets at all times:

(a) No employee or entertainer shall appear nude or semi-nude on any part of the premises open to view of members of the public, except on or in the entertainment performance area described in SMC 5.32.160(1).

(b) No patron or customer shall go into or upon the adult entertainment performance area described in SMC 5.32.160(1) while sexually oriented entertainment is being performed.

(c) No member of the public or employee or entertainer shall allow, encourage, or knowingly permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus, pubic area, or genitals of any other person.

(d) No member of the public or employee or entertainer shall allow, encourage, or permit physical contact between an employee or entertainer and any member of the public, which contact is intended to arouse or excite sexual desires.

(e) No employee or entertainer shall perform acts of or acts which simulate:

(i) Sexual intercourse, masturbation, bestiality, sodomy, oral copulation, flagellation, or any sexual acts which are prohibited by law; or

(ii) The touching, caressing, or fondling of the breasts, buttocks, pubic area, or genitals.

(f) No employee or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection.

(g) No entertainer of an adult cabaret shall be visible from any public place outside the premises during the actual or apparent hours of his or her employment or performance on the premises.

(h) No entertainer employed or otherwise working at an adult cabaret shall solicit, demand, accept, or receive any gratuity or other payment from a patron, customer, or member of the public.

(i) No customer or patron of an adult cabaret shall give or otherwise provide an entertainer with a gratuity or other payment.

(j) Signs in lettering at least three-quarters inch high shall be conspicuously displayed in the public area of the establishment stating the following:

THIS ADULT CABARET IS REGULATED BY THE CITY OF STANWOOD. ENTERTAINERS ARE:

(i) Not permitted to engage in any type of sexual conduct;

(ii) Not permitted to appear nude or semi-nude, except on stage;

(iii) Not permitted to dance or model where patrons are congregated;

(iv) Not permitted to solicit, demand, accept, or receive any gratuity or other payment from a patron.

(2) Standards for Owner or Operator of Adult Cabarets. At any adult cabaret where live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities” are provided the following are required:

(a) Admission must be restricted to persons of the age of 18 years or more; and

(b) Sufficient lighting shall be provided and equally distributed in and about the parts of the premises which are open to and used by patrons so that all objects are plainly visible at all times, and so that on any part of the premises which are open to and used by patrons a program, menu, or list printed in eight point type will be readable. (Ord. 930, 1996).

5.32.180 Regulations applicable to adult arcades.

All adult bookstores, adult novelty stores, or adult video stores having facilities for customer’s viewing of depictions of human nudity and/or sexual conduct of any nature, including depictions of specified sexual activities, shall comply with the following regulations:

(1) The viewing areas within the sexually oriented viewing booth premises shall be visible from a continuous main aisle and shall not be obscured by any curtain, door, wall or other enclosure. As used in this chapter “viewing area” means the area where a patron or customer would ordinarily be positioned while watching a film, video or other viewing device.

(2) The licensee shall not permit any doors to public areas on the premises to be locked during business hours in compliance with the applicable provision of the city of Stanwood Building Code, Uniform Fire Code, and National Fire Protection Association Code.

(3) A sexually oriented adult viewing booth operator must, at all times when the premises are open or when any member of the public is permitted to enter and remain there, maintain sufficient lighting to provide equally distributed illumination about all parts of the premises which are open to and used by patrons so that objects

are plainly visible at all times, and so that on any part of the premises which are open to and used by patrons a program, menu, or list printed in eight point type will be readable.

(4) The licensee shall not permit more than one person to occupy a sexually oriented adult arcade station or viewing booth at any time and public notices to this effect shall at all times be conspicuously posted and maintained on the sexually oriented adult arcade premises.

(5) There must be at least one employee on duty and situated in the public room adjacent to the sexually oriented adult arcade stations or viewing booths at all times that any patron, member, or customer is present inside the premises.

(6) There must be permanently posted and maintained in at least two conspicuous locations on the interior of every sexually oriented adult arcade premises a sign stating substantially the following:

Occupancy of any station or viewing booth is at all times limited to one person. There may be no acts of lewd or obscene conduct in the stations or viewing booths or on the premises. Violators are subject to criminal prosecution.

Each sign must be conspicuously posted and not screened from the patron's view. The letters must be on a contrasting background and shall be no smaller than three-quarters inch in height.

(7) The premises must be equipped with overhead lighting fixtures of sufficient intensity to maintain sufficient lighting that provides equally distributed illumination about all parts of the premises which are open to and used by patrons so that objects are plainly visible at all times, and so that on any part of the premises which are open to and used by patrons a program, menu, or list printed in eight point type can be read.

(8) Doors to areas on the premises which are available for use by persons other than the owner, manager, operator or their agents or employees may not be locked during business hours.

(9) The unobstructed view into the sexually oriented adult arcade viewing booths or stations from the adjacent public room by direct line of sight must remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times.

(10) No patron, member, or customer is permitted access to any area of the premises which has been designated as an area in which patrons, members or customers will not be permitted.

(11) No sexually oriented adult arcade viewing booth or station may be occupied by more than one person at any time.

(12) There may be no acts of lewd or obscene conduct in the sexually oriented adult arcade stations or viewing booths or on the premises.

(13) No person may operate or maintain any warning system or device, of any nature or kind, for the purpose of warning or aiding and abetting the warning of patrons, members, customers or any other persons occupying sexually oriented adult arcade stations or viewing booths located on the premises that police officers or city health, fire, licensing or building inspectors are approaching or have entered the premises.

(14) No person under the age of 18 years of age may be on or within a sexually oriented adult arcade booth premises whether as a patron, member, customer, agent, employee or independent contractor.

(15) Premises. Restrooms may not contain video reproduction equipment.

(16) Steps Risers. No steps or risers are allowed in any sexually oriented adult arcade viewing booth or station.

(17) Seating. No sexually oriented adult arcade station or viewing booth shall have more than one stool type seat. In order to prevent obscuring the occupant of a sexually oriented adult arcade station or viewing booth from view, no stool for seating within a sexually oriented adult arcade station or viewing booth shall have any seatback or sides. The seat cannot be positioned behind the doorway so that the occupant sits with his or her back to the door.

(18) Ventilation and Other Holes. All ventilation devices between the sexually oriented adult arcade viewing booths must be covered by a permanently affixed ventilation cover. Ventilation holes may only be located one foot from the top of the viewing booth walls or one foot from the bottom of the viewing booth walls. There may not be any other holes or openings between the viewing booths. (Ord. 930, 1996).

5.32.190 Regulations applicable to video stores not qualifying as sexually oriented businesses.

Video stores that sell or otherwise distribute films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas, and less than 20 percent of their stock-in-trade or revenues comes from the rental or sale of such items shall be subject to the following regulations:

(1) All such items as are described above shall be physically segregated and closed off from other portions of the store such that these items are not visible and/or accessible from other portions of the store.

(2) No advertising for such items shall be posted or otherwise visible, except where such items are authorized for display.

(3) Signs readable at a distance of 20 feet shall be posted at the entrance to the area where such items are displayed stating that persons under the age of 18 are not allowed access to the area where such items are displayed.

(4) The manager or attendant shall take reasonable steps to monitor the area where such items are displayed to insure that persons under 18 years of age do not access the age-restricted area.

(5) Rental or sale of obscene material (as defined by state law) or material harmful to minors (as defined by state law) to persons under 18 years of age is prohibited.

(6) Employees of such video stores shall check identification of persons appearing to be 18 or under to insure that such items are not rented or sold to persons under the age of 18. (Ord. 930, 1996).

5.32.200 Exemptions.

It is a defense to prosecution under this chapter that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated by:

(1) A proprietary school, licensed by the state of Washington; a college, junior college, or university supported entirely or partly by taxation;

(2) A private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(3) The modeling of clothing or lingerie in a full-service restaurant where no consideration is charged, whether directly or indirectly, and specified anatomical areas are not exposed by the model. (Ord. 930, 1996).

5.32.210 License – Name of business and place of business.

No person granted a permit and/or license pursuant to this chapter shall operate a sexually oriented business under a name not specified in his/her license, nor shall he/she conduct business under any designation or at a location not specified in his/her permit and/or license. (Ord. 930, 1996).

5.32.220 Inspections.

(1) All books and records required to be kept pursuant to this chapter shall be open to inspection by the police chief of the city of Stanwood during the hours when the licensed premises is open for business upon two days' written notice to the licensee. The purpose of such inspection shall be to determine if the books and records meet the requirements of this chapter.

(2) The licensed premises shall be (as an implied condition of receiving a sexually oriented business permit and/or license) open to inspection by the police chief during the hours when the sexually oriented business premises is open for business. The purpose of such inspection shall be to determine if the licensed premises is operated in accordance with the requirements of this chapter. It is hereby expressly declared that unannounced inspections are necessary to insure compliance with this chapter. (Ord. 930, 1996).

5.32.230 Hours of operation.

It is unlawful for any sexually oriented business premises, except adult motels, to be conducted, operated, or otherwise open to the public between the hours of 2:00 a.m. and 11:30 a.m. (Ord. 930, 1996).

5.32.240 Record-keeping requirements.

(1) Within 30 days following each calendar quarter, each sexually oriented business licensee shall file with the city clerk a verified report showing the licensee's gross receipts and amounts paid to entertainers, models, or escorts, if applicable, for the preceding calendar year.

(2) Each sexually oriented business licensee shall maintain and retain for a period of two years beyond the last date of employment, the full name, date of birth, address, age and driver's license number of all persons employed or otherwise retained as entertainers, models, and escorts by the licensee. (Ord. 930, 1996).

5.32.250 Procedure for appealing a license/permit denial.

(1) When the city clerk refuses to grant a license or permit, he/she shall notify the applicant in writing of the same, describing the reasons therefor, and shall inform the applicant of his right to appeal to the city council within 10 days of the date of the written notice by filing a written notice of appeal with the city clerk containing a statement of the specific reasons for the appeal and a statement of the relief requested.

(2) Within 10 days of receiving a timely appeal, the city clerk shall forward the administrative record of the licensing decision to the city council.

(3) Once the applicant has appealed the city clerk's decision, the city council shall review the administrative record at the next regularly scheduled meeting for which proper notice can be given. Written notice of the date and time of the scheduled meeting will be given to the applicant by the city clerk-treasurer by mailing the same, postage prepaid, to the applicant at the address shown on the license or permit application.

(4) The applicant and city clerk or his/her representative shall be given an opportunity to argue the merits of the appeal before the city council. Oral argument by each party shall not exceed 20 minutes and shall be limited to the administrative record before the council. New evidence shall not be presented by the parties or accepted by the council.

(5) The city council shall uphold the city clerk's decision unless it finds the decision is not supported by substantial evidence in the administrative record. The applicant shall bear the burden of proof.

(6) The city council shall issue a written decision within 10 days of hearing the appeal. The council may uphold the city clerk's decision and deny the permit, overrule the city clerk's decision and grant the permit, or remand the matter to the city clerk for further review and action. The city clerk shall complete further action or review within 30 days of receiving the remand.

(7) Appeal to the city council shall constitute final administrative review. (Ord. 930, 1996).

5.32.260 Suspension or revocation of license or permit procedures – Appeal.

Updated to reflect changes to SMC Title 13.

License suspension and/or revocation and appeal therefrom shall be done in accordance with SMC 13.01.030(8). (Ord. 1112 § 2, 2001; Ord. 930, 1996).

5.32.280 Adult bookstores not incorporating arcade uses.

Adult bookstores, adult novelty stores, or adult video stores not including or incorporating into the business conduct those activities described in the definition of "adult arcade," may locate or continue to operate within commercial zones of the city, as well as the sexually oriented business overlay zone; provided, however, such businesses locating within a commercial zone shall be subject to the following additional requirements: No building or structure used for an adult bookstore, adult novelty store, or adult video store as defined herein shall locate closer than 1,200 feet from any other building or structure used for such purpose, nor shall such a business locate within 600 feet of an existing church or school building, as measured in all compass directions from the exterior wall of the existing building to the closest property line of the subject building. (Ord. 930, 1996).

5.32.290 Building facade.

All sexually oriented business building facades, exteriors, and exits must be indistinguishable from surrounding buildings. Illustrations depicting partially or totally nude males and/or females shall not be posted or painted on any exterior wall of a building used for a sexually oriented business, or on any door or apparatus attached to such building. (Ord. 930, 1996).

5.32.300 Signs.

Signs shall be permitted as allowed in accordance with Chapter 17.110 SMC. (Ord. 930, 1996).

5.32.310 Parking and lighting regulations.

On-site parking shall be required and regulated in accordance with Chapter 17.105 SMC, and in addition shall meet the following requirements:

(1) All on-site parking areas and premises entries of sexually oriented businesses shall be illuminated from dusk until one hour past closing hours of operation with a lighting system that will provide adequate illumination and visibility on the parking surface and/or walkways. An on-premises exterior lighting plan shall be presented to the city building department for approval prior to the operation of any sexually oriented business.

(2) All parking must be visible from the fronting street. Access to the exterior rear of the building shall be denied to any persons other than employees and public officials during the performance of their respective duties and tasks by means of fencing as approved by the city building department. (Ord. 930, 1996).

5.32.320 Number of permitted uses per structure.

There shall be no more than one sexually oriented business operating in the same building, structure, or portion thereof. In addition there shall be no other nonsexually oriented business operating in the same building, structure, or portion thereof in which a sexually oriented business is currently operating. (Ord. 930, 1996).

5.32.330 Severability.

If any portion of this chapter as now or hereafter amended, or its application to any person or circumstance is held invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision, or part thereof not adjudged to be invalid or unconstitutional, and its application to other persons or circumstances shall not be affected. Any ordinance or regulation in conflict with this chapter is hereby repealed. (Ord. 930, 1996).

5.32.340 Limitation of liability.

None of the provisions of this chapter are intended to create a cause of action or provide the basis for a claim against the city, its officials, or employees for the performance or the failure to perform a duty or obligation running to a specific individual or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public. (Ord. 930, 1996).

5.32.350 Penalties for violation.

Updated to reflect changes in proposed amendments to Title 13.

Violation of this chapter is a Class 1 civil infraction and may also be enforced pursuant to SMC Title 13.

5.32.360 Public nuisance – Injunctions.

Any sexually oriented businesses in violation of this chapter shall be deemed a public nuisance, which, in addition to all other remedies, may be abated by injunctive relief. (Ord. 930, 1996).

5.32.370 Moral nuisances.

Chapter 7.48 RCW pertaining to moral nuisances is hereby adopted by reference. (Ord. 930, 1996).

5.32.380 Effective date.

The ordinance codified in this chapter shall be in full force and effect five days after its passage and publication as provided by law. (Ord. 930, 1996).