

CHAPTER 20.02

ADMINISTRATION AND ENFORCEMENT

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20.02.005 Title 20—Admin & Enforcement—Title citation.

This Title 20 of the Port Orchard Municipal Code shall be known and may be cited as the Port Orchard “land use and development regulatory code “or “land use and development regulations” .

20.02.010 Title 20—Admin & Enforcement—Purpose.

- (1) This title establishes comprehensive land use and development regulations for the city. It is the declared purpose of the city council that these regulations implement the City’s policies adopted in the City’s comprehensive plan in compliance with the Washington State Growth Management Act (GMA) and implement the requirements of the State’s Regulatory Reform Act, which has a primary goal of integrating environmental review with project review. This land use and development regulatory code is to be used as a guide by other governmental agencies when taking action within the city’s urban growth area (UGA).

20.02.015 Title 20—Admin & Enforcement—Authority.

- (1) This title is adopted under the authority of Article XI, Section 11 of the Washington State Constitution.
- (2) The following authority is granted in administering this title:
 - (a) The community development director (“Director”), as the duly authorized representative of the mayor, is charged with the responsibility of carrying out an official interpretation of the provisions of the land use and development regulatory code. The Director shall grant, condition, or deny administrative, temporary use, and building permits and land use and development approvals pursuant to the procedures included in this title. The Director shall serve in an advisory capacity to the council and planning commission in comprehensive planning and zoning matters, development agreements, and proposed amendments to this title. Within this subtitle,

when the Director is identified as responsible for a procedural action, this authorization includes the Director's authorized/designated city representative; further, the action made by the Director or authorized city representative may occur upon consultation with other city staff.

- (b) The city council shall have authority to hold public hearings and make decisions on annexations, comprehensive plan amendments, rezones, development agreements, amendments to the land use and development regulations, and any appeals of decisions made by the hearing examiner as specified in this title;
- (c) The planning commission shall have the authority to make recommendations to the city council whether to grant, condition, or deny applications for comprehensive plan amendments and to review and make recommendations on amendments to the land use and development regulations pursuant to this title.
- (d) The hearing examiner shall have the authority to conduct open record appeal hearings for administrative permits and to grant, condition, or deny applications for project permits except those specifically reserved for city council decision or designated as an administrative review permit. This authority shall include but not be limited to decision making authority for decisions rendered in accordance with Chapter 43.21C RCW and permits for conditional use, preliminary subdivisions, planned residential development districts, variances, shoreline substantial development, shoreline conditional use, shoreline nonconforming use, shoreline variance, and comprehensive sign design plan permits.
- (e) The city engineer shall have the authority to review boundary line adjustments and preliminary site plan/design reviews; and recommend to grant, condition, or deny stormwater permits and land disturbing activity permits.
- (f) The office of the building official is established to administer and enforce building and construction codes.

20.02.020 Title 20—Admin & Enforcement—Conformity required.

- (1) After the effective date of the ordinance codified in this title, no structure shall be erected, reconstructed, altered, enlarged, or relocated, and no building, structure, or premises shall be used in any zone except in compliance with the provisions of this title and then only after securing all required permits and/or land use and development approvals.
- (2) No building permit or land use and development approval in conflict with the provisions of this land use and development regulatory code shall be issued. Structures or uses which do not conform to this title, except legal nonconformance as specified herein and approved variances, are violations subject to the enforcement, penalty, and abatement provisions of this chapter.

20.02.030 Title 20—Admin & Enforcement—Interpretation and rules—Generally.

- (1) Except as provided for otherwise in this title, the Director shall have the authority for interpreting the meaning, words, phrases, and sentences set forth in this title and the determination of how specific situations are regulated by this title.
- (2) If the provisions of this title conflict or overlap one with another, or if a provision of this title conflicts or overlaps with the provision of another ordinance of the city, the most restrictive provision or the provision imposing the highest standard prevails. Should a conflict arise between the provisions of this title or between this title and the laws, regulations, codes, or rules promulgated by other authority having jurisdiction within the city, the most restrictive requirement shall be applied, except when constrained by federal or state law, or where specifically provided otherwise.
- (3) The standards, procedures, and requirements of this title are the minimum necessary to promote the health, safety, and welfare of the residents of the City. The City is free to adopt more rigorous or different standards, procedures, rules, and/or requirements whenever this becomes necessary.
- (4) Regulations, conditions, or procedural requirements that are specific to an individual land use shall supersede regulations, conditions, or procedural requirements of general application.
- (5) All applicable requirements shall govern a use whether or not they are cross-referenced in a text section or land use table. In case of any ambiguity, difference of meaning, or implication between the text and heading, caption, or illustration, the text and tables shall control.
- (6) The word “shall” is mandatory, the word “should” is advisable, and the word “may” is discretionary.

20.02.040 Title 20—Admin & Enforcement—Severability.

If any part, sentence, paragraph, subsection, section, or clause of this subtitle is adjudged unconstitutional, or held invalid, the remainder of the subtitle or the application of the provisions to other persons, property, structures, or circumstances shall not be affected. Whenever any condition or limitation is included in an order authorizing a planned development or any site plan approval, it shall be conclusively presumed that the authorizing officer or body consider such condition or limitation necessary to carry out the spirit and purpose of this subtitle or the requirement of some provision hereof, and to protect the public health, safety, and welfare, and that the officer or body would not have granted the authorization to which the condition or limitation pertains except in the belief that the condition or limitation was lawful.

20.02.050 Title 20—Admin & Enforcement—Use of Standard Industrial Classification (SIC).

- (1) All references to the Standard Industrial Classification (SIC) are to the classification system found in the Standard Industrial Classification Manual, 1987 Edition, prepared by the United States Office of Management and Budget. The SIC is used with modifications to suit the purposes of this title and to

list and define land uses authorized to be located in the various zones.

- (2) The SIC categorizes each land use under a general two-digit major group number, or under a more specific three- or four-digit industry group or industry number. A use shown on a land use table with a two-digit number includes all uses listed in the SIC for that major group. A use shown with a three- or four-digit number includes only the uses listed in the SIC for that industry group or industry, respectively, and the uses so listed are excluded from the respective major group.
- (3) An asterisk (*) in the SIC number column of a land use table means that the SIC definition for the specific land use identified has been replaced by a definition in this title. The definition may include one or more SIC subclassification numbers, or may define the use without reference to the SIC.
- (4) The planning commission shall determine whether a proposed land use not specifically listed in a land use table or specifically included within a SIC classification is allowed in a zone. The planning commission's determination shall be based on whether or not permitting the proposed use in a particular zone is consistent with the purposes of this title and considering the following factors:
 - (a) The physical characteristics of the use and its supporting structures, including but not limited to scope, traffic, and other impacts, and hours of operation;
 - (b) Whether or not the use complements or is compatible with other uses permitted in the zone; and
 - (c) The SIC classification, if any, assigned to the business or other entity that will carry on the primary activities of the proposed use.

20.02.060 Title 20—Admin & Enforcement—Violations—Enforcement—Penalties.

- (1) Violations.
 - (a) It is a violation of this Title 20 POMC for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land, or property within the City of Port Orchard without first obtaining the permits or authorizations required for the use by this Title 20 POMC.
 - (b) It is a violation of this Title 20 POMC for any person to use, construct, locate, demolish, or cause to be used, constructed, located, or demolished any structure, land, or property within the City of Port Orchard in any manner that is not permitted by the terms of any permit or approval issued pursuant to this Title 20 POMC or previous codes, provided that the terms or conditions are explicitly stated on the permit or the approved plans.

- (c) It is a violation of this Title 20 POMC to remove or deface any sign, notice, complaint, or order required by or posted in accordance with this Title 20 POMC.
- (d) It is a violation of this Title 20 POMC to misrepresent any material fact in any application, plans, or other information submitted to obtain any land use, building, or development permit or approval.
- (e) It is a violation of this Title 20 POMC for anyone to fail to comply with the requirements of this Title 20 POMC.
- (f) It is a violation of this Title 20 POMC for any person to construct or use any structure or portion thereof in a manner contrary to a permit or approval term or condition.

(2) Enforcement.

- (a) It shall be the duty of the Director, or his/her duly authorized designee, to enforce this Title 20 POMC. The Director may call upon the code enforcement officer, building official, police, fire, health, public works or other appropriate City departments to assist in enforcement.
- (b) This Title 20 POMC shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.
- (c) It is the intent of this title to place the obligation of complying with its requirements upon the owner, occupier, or other person responsible for the condition of the land and buildings within the scope of this title.
- (d) Upon presentation of proper credentials, the Director or duly authorized representative of the Director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the enforcement duties under this chapter.
- (e) No provision of or term used in this title is intended to impose any duty upon the City or any of its officers or employees which would subject them to damages in a civil action.

(3) Penalties. When the Director determines that a violation of any provision of this title has occurred or is occurring the Director may institute any of the following enforcement actions:

- (a) Subject to the provisions of Chapter 2.64 POMC any business, agency, property owner, and/or other person who violates the standards set forth in this title or the more stringent standards imposed by the city engineer, hearing examiner, planning commission, and/or city council as allowed herein shall be guilty of a civil infraction.

- (b) In addition to any remedy provided for in this title and Chapter 2.64 POMC, the Director may issue a stop work order and/or notice to vacate. Any person removing such sign without the permission of the proper authority shall be guilty of a misdemeanor.

- (c) In addition to any remedy provided for in this title and Chapter 2.64 POMC, the City shall also have the right to abate any violation of this title by seeking injunctive relief in the Kitsap County superior court. The business, agency, property owner, and/or other person responsible for the violations shall be required to pay all the city's legal costs including reasonable attorney's fees accrued in bringing and enforcing such legal action.