



**City of Port Orchard Council Meeting Agenda**  
**February 19, 2019**  
**5:30 p.m.**

**Mayor:**

Rob Putaansuu  
Administrative Official

**Councilmembers:**

Bek Ashby (Mayor Pro-Tempore)

**Chair:** ED/Tourism/LT Committee

**Staff:** Development Director

Finance Committee

KRCC / PSRC TransPol / KRCC TransPol

KRCC PlanPol-alt / PRTPO

Shawn Cucciardi

Finance Committee

Land Use Committee

PSRC EDD-alt

Fred Chang

Utilities Committee

Sewer Advisory Committee (SAC)

**Staff:** Public Works Director

Jay Rosapepe

ED/Tourism/LT Committee

Utilities Committee

**Chair:** Lodging Tax Committee

Sewer Advisory Committee (SAC)

KRCC-alt / KRCC TransPol-alt

Kitsap Transit-alt

John Clauson

**Chair:** Finance Committee

**Staff:** Finance Director

Kitsap Public Health District-alt

KEDA/KADA-alt

Cindy Lucarelli

**Chair:** Utilities and SAC Committee

**Staff:** Public Works Director

**Chair:** Chimes and Lights Committee

**Staff:** City Clerk

KEDA/KADA

Scott Diener

**Chair:** Land Use Committee

**Staff:** Development Director

ED/Tourism/LT Committee

**Department Directors:**

Nicholas Bond, AICP

Development Director

Mark Dorsey, P.E.

Director of Public Works/City Engineer

Tim Drury

Municipal Court Judge

Noah Crocker, M.B.A.

Finance Director

Geoffrey Marti

Police Chief

Brandy Rinearson, MMC, CPRO

City Clerk

**Contact us:**

216 Prospect Street  
Port Orchard, WA 98366  
(360) 876-4407

**1. CALL TO ORDER**

**A. Pledge of Allegiance**

**B. EXECUTIVE SESSION:** Pursuant to RCW 42.30.110(1)(i), the City Council will hold a 30-minute executive session to discuss a potential litigation matter.

**2. APPROVAL OF AGENDA**

**3. CITIZENS COMMENTS**

*(Please limit your comments to **3 minutes** for items listed on the Agenda and that are not for a Public Hearing. When recognized by the Mayor, please state your name for the official record)*

**4. CONSENT AGENDA**

*(Approval of Consent Agenda passes all routine items listed below, which have been distributed to each Councilmember for reading and study. Consent Agenda items are not considered separately unless a Councilmember so requests. In the event of such a request, the item is returned to Business Items.)*

**A. Approval of Checks, Payroll, and Electronic Payments**

**B. Approval of the January 15, 2019, Council Work Study Meeting Minutes  
**Page 3****

**5. PRESENTATION**

**6. PUBLIC HEARING**

**7. BUSINESS ITEMS**

**A. Adoption of an Ordinance Approving a Contract with the Washington State Department of Ecology for the Marina Pump Station Rebuild Project-CWSRF Loan Agreement (Dorsey) **Page 9****

**B. Adoption of an Ordinance Approving a Contract with the State Department of Ecology for the Port Orchard Downtown Basin Stormwater Plan (Dorsey) **Page 53****

**C. Adoption of a Resolution Approving a Contract with Robinson Noble, Inc. for the 2019 Hydrogeological Services and Procurement Procedure Documentation (Dorsey) **Page 99****

**D. Adoption of a Resolution Approving a Contract with Transportation Solutions, Inc. for the Transportation Impact Fee Study and Traffic Model Calibration (Bond) **Page 121****

**E. Approval to Allow the Placement of Public Art on Utility Equipment in the Right-of-Way (Bond) **Page 149****

**F. Approval of the January 22, 2019, Council Meeting Minutes **Page 155****

**8. DISCUSSION ITEMS – NO ACTION WILL BE TAKEN**

**A. Snow Report (Dorsey) **Page 161****

- B. [2019 Zoning Code and Zoning Map Update \(Bond\)](#) **Page 165**
- C. [Proposed Street Cut Moratorium \(POMC 12.04 and 20.24 Proposed Amendments\)](#) (Dorsey) **Page 451**
- D. [Discussion Regarding the Adoption of an Ordinance, Thereby Creating New Chapter 12.34, New Sections 13.04 and 13.06, Adopting the 2019 Public Works Engineering Standards and Specifications \(PWESS\) and Repealing Resolution No. 006-14](#) (Dorsey) **Page 459**

**9. REPORTS OF COUNCIL COMMITTEES**

**10. REPORT OF MAYOR**

**11. REPORT OF DEPARTMENT HEADS**

**12. CITIZEN COMMENTS**

*(Please limit your comments to **3 minutes** for any items not up for Public Hearing. When recognized by the Mayor, please state your name for the official record)*

**13. ADJOURNMENT**

<b>COMMITTEE MEETINGS</b>	<b>Date &amp; Time</b>	<b>Location</b>
Finance	February 19, 2019; 5:00pm	City Hall
Economic Development and Tourism	March 11, 2019; 9:30am	City Hall
Utilities	February 27, 2019; 9:30am	City Hall
Sewer Advisory	April 17, 2019; 6:30pm	SKWRF*
Land Use	February 25, 2019; 9:30am	DCD**
Lodging Tax Advisory	TBD	City Hall
Festival of Chimes & Lights	February 27, 2019; 3:30pm	City Hall
Outside Agency Committees	Varies	Varies

\*South Kitsap Water Reclamation Facility – 1165 Beach Drive (Beach Drive and Olney)

\*\*720 Prospect Street, Port Orchard

**CITY COUNCIL GOOD OF THE ORDER**



**City of Port Orchard  
Council Meeting Minutes  
Work Study Session Meeting of January 15, 2019**

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**CALL TO ORDER AND ROLL CALL**

Mayor Robert Putaansuu called the meeting to order at 6:30 p.m.

Roll call was taken by the City Clerk as follows:

Mayor Pro-Tem Ashby	Present
Councilmember Chang	Present
Councilmember Clauson	Present
Councilmember Cucciardi	Present
Councilmember Diener	Present
Councilmember Lucarelli	Present
Councilmember Rosapepe	Present
Mayor Putaansuu	Present

Staff present: Finance Director Crocker, Community Development Director Bond, City Attorney Cates, City Clerk Rinearson and Office Assistant Whisenant were also present.

**Pledge of Allegiance**

**Mayor Putaansuu** led the audience and Council in the Pledge of Allegiance.

**1. Adoption of an Ordinance Adopting Revisions to Port Orchard Municipal Code Chapter 3.48 Multifamily Property Tax Exemption [Continued from December 18, 2018, Council meeting]- With Possible Action**

Mayor Putaansuu stated that the fire department will not be attending the meeting. However, the fire department does understand what the city is trying to accomplish and the potential impacts.

Community Development Director Bond represented the motion still on the floor considering the draft ordinance from the December 18<sup>th</sup> Council Meeting. Concerns have been expressed by the fire department and Councilmembers. During the recent Land Use Committee meeting, it was decided that the exemption needs to be looked at deeper and consider potential concerns. Asked how the council wishes to proceed; by either acting on the draft ordinance tonight or to take a more comprehensive look.

Staff and Councilmembers discussed the basis of affordable housing as configured in tax abatement, and the difference between the data collected by Department of Housing and Urban Development

(HUD) and the Census. The Census data shows that the immediate Port Orchard area has a lower median income than the county. A possible suggestion would be for the Council to look at shifting the percentage of median income to be more in Port Orchard's demographic.

Councilmember Ashby discussed the data between HUD and the Census. Also, identified the other topics discussed at Land Use Committee was the original intent for the tax abatement and developing criteria.

Mayor Putaansuu stated that the decision is to develop criteria it will have to take a back-seat, as code revisions are going for review to the Planning Commission later this month.

Councilmembers expressed the prioritization of the code revisions, but also the importance on quickly moving forward with the tax abatement revisions. The original intent was identified to encourage development in certain areas.

Mayor, Council and staff discussed the change in the length of time for the tax abatement, interest from potential future developer in another location within the Sedgwick area, development versus redevelopment, economic and other agency impacts.

Community Development Director Bond expressed a possible land evaluation increase per acre to be a requirement within the future revisions.

**MOTION:** By Councilmember Cucciardi, seconded by Councilmember Rosapepe, to approve an ordinance adopting revisions to Chapter 3.48 of the Port Orchard Municipal Code as presented at the December 18, 2018 City Council Meeting.

It was stated that no public testimony was set for this meeting, as it was previously given at the December 18, 2018, City Council Meeting.

Mayor Putaansuu stated that staff is to readdress this Spring and remove the 12-year timeline and adjust income percentages.

Councilmember Chang expressed his concern with setting a precedent.

Community Development Director Bond suggested that Council consider not to accept any additional requests until the topic has finished being reviewed.

Councilmembers discussed moving forward with not accepting additional requests and reviewing again in the distant future to identify the impacts of this new Sedgwick project.

**The motion passed. Councilmembers Chang and Ashby voted no.**



**(Ordinance No. 003-19)**

Mayor Putaansuu clarified that other locations are not being considered until a new process and procedure is adopted.

**Council Direction:** Direction was given to staff that no other locations will be considered until a new process and procedure is adopted.

**2. Plastic Bag Reduction**

Mayor Putaansuu stated that he heard from Lobbyist Josh that the Plastic Bag Bill is going before legislation tomorrow.

Councilmember Ashby expressed the efforts put forth through the Economic Development and Tourism Committee, Townhall, and outreach to other local jurisdictions. Didn't want to provide a recommendation this evening since the bill is being presented through the Legislature tomorrow, and if the State moves forward then would be compatible. Will bring to next work study to have the language for adoption, based off the State.

**Council Direction:** Will be reviewed at next Economic Development and Tourism Committee and then bring forward at the February Work Study.

**OTHER DISCUSSION:**

Mayor Putaansuu inquired about the current status of small cells, since the Federal Government has taken under advisement.

City Attorney Cates has discussed with the attorney hired to work on this topic. Stating some additional concerns, so they are making sure to address the concerns before finalizing the ordinance.

**3. Utility Late Fees and Penalties**

Mayor Putaansuu informed of the request for waiving utility late fees and penalties. Research completed by Finance Director Crocker determined that the city's insurance company suggesting revising the code to address the request.

Finance Director Crocker, Mayor, Councilmembers, and staff discussed the proposed conditional requirements identified on requesting a waiver, application of penalties, payment arrangements, and the authority for approval to be given to the Finance Director.

Mayor Putaansuu explained process of shut off and timeframes.

**Council Direction:** Staff is to bring the ordinance to the next Council Meeting for adoption.

#### **4. Countywide Planning Policies**

Community Development Director Bond is seeking direction from the Council on the City's position and direction regarding the regional strategy in the Countywide Planning Policies that is currently under review with Kitsap Regional Coordinating Council (KRCC), through the Land Use Technical Advisory Committee (LUTAC).

Explanation of how prioritization for funding is determined through the specific criteria identified.

Councilmembers, Mayor and staff discussed the different levels of criteria for the different areas in question with the proposed changes to define the requirements and terminology, so that it is uniformed for all involved.

Mayor Putaansuu confirmed that all the Council was in agreeance with moving forward on the changes.

Different funding outlets were discussed outside of Puget Sound Regional Council (PSRC), such as rural funding that is determined through Peninsula Regional Transportation Planning Organization (Peninsula RPTO) and other sources as well.

Other involved areas' positions were briefly discussed.

**Council Direction:** Staff is to continue to advocate to prioritize investments in support of our centers and based on the hierarchy that exists, as well as identifying as many county-wide centers as possible.

#### **5. Kitsap County McCormick Woods Traffic Impact Fees**

Mayor Putaansuu informed the Council that Kitsap County has collected traffic impact fees for McCormick Woods which remains unspent, and that based on the agreement the money should be transferred to the City, which it has not. The City is wanting to move forward by proposing to send Kitsap County a bill, and if that is not met then a follow up letter will be sent by the City's Land Use Attorney.

**Council Direction:** Staff is to move forward.

#### **6. Police Chief Recruitment Process**

Mayor Putaansuu informed of the Police Chief's retirement in the next few months, stated that recruitment process costs were identified in budget and a contract had been signed that is within

the budget allowance. The process for recruitment was explained and discussed. The salary range was suggested to be reviewed and stated that council action would need to be taken to make the adjustment.

Discussion between Councilmembers and Mayor on salary ranges, with including benefits, were determined in the proposed adjustment.

**Council Direction:** Staff was directed to move forward.

**OTHER ITEMS DISCUSSED:**

Councilmembers and Mayor discussed the derelict boat ordinance. Mayor Putaansuu identified that it is a complicated process and the police department is trying to work on a simpler process, emphasizing to not discourage recreational use.

Mayor Putaansuu stated that he will be out of town for the AWC Mayor's Exchange, so Councilmember Ashby will be Mayor Pro-Tem for the next council meeting. Identified need for a quorum, as Councilmember Cucciardi will also be out.

Mayor Putaansuu gave updates on; the Rockwell Pocket Park Bid and McCormick Woods Village Park Closure.

It was determined to move Land Use Committee to the forth Monday of the month going forward.

Councilmember Clauson extended invitation to tour tiny homes in West Seattle.

Mayor Putaansuu updated on the overall tornado costs, and Small Business Association on site with resources available. Also, updated on presentation given at the Chamber of Commerce and Bay Street Pedestrian Pathway.

**ADJOURNMENT**

The meeting adjourned at 8:08 p.m. No other action was taken. Audio/Visual was successful.

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Brandy Rinearson, MMC, City Clerk

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Robert Putaansuu, Mayor

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**City of Port Orchard**

216 Prospect Street, Port Orchard, WA 98366

(360) 876-4407 • FAX (360) 895-9029

**Agenda Staff Report**

Agenda Item No.:	<u>Business Item 7A</u>	Meeting Date:	<u>February 19, 2019</u>
Subject:	<u>Adoption of an Ordinance Approving a</u>	Prepared by:	<u>Mark Dorsey, P.E.</u>
	<u>Contract with the Washington State</u>		<u>Public Works Director</u>
	<u>Department of Ecology for the Marina</u>	Atty Routing No.:	<u>115-18</u>
	<u>Pump Station Rebuild Project-CWSRF</u>	Atty Review Date:	<u>February 5, 2019</u>
	<u>Loan Agreement</u>		

**Summary:** The City of Port Orchard has successfully applied for and received a Clean Water State Revolving Fund (CWSRF) loan from the Department of Ecology for the Marina Pump Station Rebuild Project. The general terms of the Loan are as follows:

- Loan Amount: \$4,100,000
- City Share: N/A
- Loan Term: 20-years
- Interest Rate: 2.0% (incl. admin charge)
- Effective Date: 7/1/2018
- Expiration Date: May 31, 2023

The Loan (Ecology Agreement No. WQC-2019-PoOrPW-00025) is a Revenue Secure Lien Obligation of the City, payable solely from the net revenue of the City’s Sanitary Sewer System. The Marina Pump Station Engineering Report was completed by BHC in September 2017 and will be utilized by RH2 for the 30% Design and Permit Coordination Phase of the Project and the pending Final Ad Ready Design (Consultant to be Determined), as currently funded within the 2019-2020 Budget.

**Relationship to Comprehensive Plan:** Chapter 7 – Utilities.

**Recommendation:** Staff recommends that the City Council adopt an ordinance approving a contract with the State Department of Ecology, thereby accepting a Clean Water State Revolving Fund (CWSRF) loan from the Department of Ecology for the Marina Pump Station Rebuild Project in the amount of \$4,100,000.00.

**Motion for Consideration:** I move to adopt an ordinance approving a contract with the State Department of Ecology, thereby accepting a Clean Water State Revolving Fund (CWSRF) loan from the Department of Ecology for the Marina Pump Station Rebuild Project in the amount of \$4,100,000.00.

**Fiscal Impact:** Loan repayment schedule to be developed.

**Alternative:** Refuse loan.

**Attachment:** Ordinance and Ecology Agreement No. WQC-2019-PoOrPW-00025.

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, ACCEPTING TERMS AND CONDITIONS ASSOCIATED WITH DEPARTMENT OF ECOLOGY (ECOLOGY) CWSRF LOAN AGREEMENT NO. WQC-2019-PoOrPW-00025, THEREBY APPROVING CONTRACT NO C011-19 WITH ECOLOGY FOR THE MARINA PUMP STATION REBUILD PROJECT; PROVIDING FOR SEVERABILITY AND PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, in 2017, the City's Public Works Department applied for State Fiscal Year 2019 (SFY19) funding through the Department of Ecology's Clean Water State Revolving Fund (CWSRF) for the Marina Pump Station Rebuild Project (MPSRP); and

**WHEREAS**, on December 12, 2017, West Sound Utility District (WSUD) provided the City with a letter of support for the MPSRP; and

**WHEREAS**, on January 19, 2018, Ecology notified the City that the City's MPSRP Application was determined to be eligible to compete for funding and that the Project was ranked adequately to receive funding; and

**WHEREAS**, on December 13, 2018 the City received the Draft Loan Agreement for the Project (WQC-2019-PoOrPW-00025) and provided comments back to Ecology; and

**WHEREAS**, the City Council has determined it to be in the best interests of the City to enter into Contract No. C011-10 with Ecology for the MPSRP; now, therefore,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**SECTION 1.** Contract No. C011-10 with the Department of Ecology for the Marina Pump Station Rebuild Project is hereby approved and the City agrees to be bound by the terms and conditions thereof in their entirety.

**SECTION 2. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**SECTION 3. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**SECTION 4. Effective Date.** This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 19<sup>th</sup> day of February 2019.

\_\_\_\_\_  
Robert Putaansuu, Mayor

ATTEST:

SPONSOR:

\_\_\_\_\_  
Brandy Rinearson, MMC, City Clerk

\_\_\_\_\_  
Cindy Lucarelli, Councilmember

APPROVED AS TO FORM:

\_\_\_\_\_  
Sharon Cates, City Attorney

PUBLISHED:

EFFECTIVE DATE:





**Agreement No. WQC-2019-PoOrPW-00025**

**WATER QUALITY COMBINED FINANCIAL ASSISTANCE 2019 AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

**AND**

**CITY OF PORT ORCHARD**

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and City of Port Orchard, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

**GENERAL INFORMATION**

Project Title:	Marina Pump Station
Total Cost:	\$4,100,000.00
Total Eligible Cost:	\$4,100,000.00
Ecology Share:	\$4,100,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2018
The Expiration Date of this Agreement is no later than:	05/31/2023
Project Type:	Wastewater Facility

Project Short Description:

This project includes the design and construction of improvements to the Marina Pump Station. These improvements will prevent a catastrophic sea wall failure and increase capacity and reliability by replacing mechanical and electrical equipment. This project will protect water quality and the health and safety of the citizens around the Sinclair Inlet.

Project Long Description:

This project includes the design and construction of improvements to the Marina Pump Station. These improvements will prevent a catastrophic sea wall failure and increase capacity and reliability by replacing mechanical and electrical equipment. This project will protect water quality and the health and safety of the citizens around the Sinclair Inlet.

The Marina Pump Station (MPS) is the most critical pump station in the City of Port Orchard. All of the raw sewage from the City’s collection system is pumped through this station to the South Kitsap Water Reclamation

Facility (SKWRF). The seawall protecting the Controls Building is failing as evidenced by soil erosion behind the wall. This places the Controls Building at risk to earthquakes, tsunamis, and other causes of seawall failure. According to the Kitsap Multi Hazard Mitigation Plan, the site is located within 1 mile of a fault which runs through Bremerton.

If the seawall and/or building were to fail, the controls and generator set would no longer be operational, which will require emergency pumping systems to be put in place to prevent raw sewage from overflowing into Sinclair Inlet and the surrounding parking lot in downtown Port Orchard. Based on the size of the pumps and lack of bypass facilities, obtaining, delivering, and installing temporary emergency pumping systems would take some time before becoming operational, and raw sewage will overflow until that time. In the case of an earthquake or tsunami, availability of temporary pumping facilities, pumps, and pump controls will likely be very limited. The raw sewage overflowing into Sinclair Inlet and downtown Port Orchard will have a negative impact on health, safety, and water quality.

The MPS is also nearing its capacity during peak hour conditions. The MPS has two smaller duty pumps and two high flow pumps to accommodate future peak hour flows. The generator set is no longer manufactured and spare parts are difficult to obtain. The fuel tank for the generator does not have secondary containment.

This project will replace the failing seawall, seismically retrofit and modify the Controls Building to accommodate a new generator set with secondary fuel containment, replace an aging generator set, install a bypass for temporary pumping facilities, reroute some influent piping for better bypass capabilities, remove an existing overflow into Sinclair Inlet, replace high flow pumps with higher capacity pumps, replace other mechanical equipment as necessary, and replace electrical, instrumentation, and controls equipment.

Overall Goal:

The goal of this project is to protect the health and safety of the residents of the City of Port Orchard and the water quality of Sinclair Inlet from a catastrophic failure of the sea wall protecting the Marina Pump Station and to increase the reliability and capacity of the pump station.

**RECIPIENT INFORMATION**

Organization Name: City of Port Orchard

Federal Tax ID: 91-6001487

DUNS Number: 081932790

Mailing Address: 216 Prospect Street  
Port Orchard, WA 98366

Physical Address: 216 Prospect Street  
Port Orchard, Washington 98366

**Contacts**

<b>Project Manager</b>	Thomas Hunter Utility Manager  216 Prospect Street Port Orchard, Washington 98366 Email: thunter@cityofportorchard.us Phone: (360) 876-4991
<b>Billing Contact</b>	Heidi Draper Accounting Assistant III  216 Prospect Street Port Orchard, Washington 98366 Email: hdraper@cityofportorchard.us Phone: (360) 874-5523
<b>Authorized Signatory</b>	Robert B Putaansuu Mayor  216 Prospect Street Port Orchard, Washington 98366 Email: rputaansuu@cityofportorchard.us Phone: (360) 876-4991

**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
Water Quality  
PO BOX 47600  
Olympia, WA 98504-7600

Physical Address: Water Quality  
300 Desmond Drive SE  
Lacey, WA 98503

**Contacts**

<b>Project Manager</b>	Kevin Leung  3190 - 160th Ave SE Bellevue, Washington 98008-5452 Email: kleu461@ecy.wa.gov Phone: (425) 649-7207
<b>Financial Manager</b>	Sean Mellon  PO Box 47600 Olympia, Washington 98504-7600 Email: smel461@ecy.wa.gov Phone: (360) 407-6570

**AUTHORIZING SIGNATURES**

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

IN WITNESS WHEREOF: the parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Washington State  
Department of Ecology

City of Port Orchard

By: \_\_\_\_\_

By: \_\_\_\_\_

Heather R. Bartlett  
Water Quality  
Program Manager  
Date

Robert B Putaansuu  
May  
Date

Template Approved to Form by  
Attorney General's Office

**SCOPE OF WORK**

Task Number: 1 **Task Cost: \$60,000.00**

Task Title: Project Administration/Management

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

C. The RECIPIENT shall manage the project. Efforts include, but are not limited to: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY's grant or loan administrative requirements.

Task Expected Outcome:

- \* Timely and complete submittal of requests for reimbursement, quarterly progress reports, and RECIPIENT closeout report.
- \* Properly maintained project documentation

Recipient Task Coordinator: Thomas Hunter

**Project Administration/Management**

**Deliverables**

Number	Description	Due Date
1.1	Quarterly Progress Reports	
1.2	Recipient Closeout Report	
1.3	Project Outcome Summary Report	

## SCOPE OF WORK

Task Number: 2 **Task Cost: \$580,000.00**

Task Title: Permitting and Final Design

### Task Description:

A. The RECIPIENT will obtain necessary permits required for the project.

B. The RECIPIENT will procure engineering services in accordance with state law. The RECIPIENT must include ECOLOGY's specification insert in the contract documents for design. The RECIPIENT must submit all contracts for engineering services before ECOLOGY shall provide reimbursement for work performed under this task .

C. The RECIPIENT will design the Marina Pump Station . Plans and specifications developed by the RECIPIENT shall be consistent with the requirements of Chapter 173-240 WAC. Elements of the design will include:

1. New lift station pumps
2. Associated piping and electrical work
3. Replacement of the failing sea wall
4. New generator.

D. The plans and specifications, construction contract documents, and addenda will be approved by the RECIPIENT prior to submittal for ECOLOGY review. All construction plans submitted to ECOLOGY for review and approval will be reduced to no larger than 11" x 17" in size. All reduced drawings shall be completely legible. The project manager may request plans be submitted in either PDF or AutoCAD electronic format, and specifications in a searchable PDF or Microsoft Word electronic file. A current construction cost estimate will be submitted along with each plan/specification submittal. The project manager may request a spreadsheet of the costs in electronic file format.

E. The RECIPIENT will complete the facility design within one year after the execution of this AGREEMENT.

F. Investment Grade Efficiency Audit. The RECIPIENT will procure a third party analysis of potential energy and water efficiency measures for incorporation into the design of any wastewater facilities. The analysis will identify potential efficiency measures, provide cost estimates, and evaluate their cost effectiveness. If the RECIPIENT has obtained either a preliminary or investment grade energy audit of the utility in the last 5 years, documentation of that audit can be submitted instead.

G. The RECIPIENT's construction management staff will provide a constructability review and quality assurance check of the project drawing and specification package, and general requirements of the construction bid documents at the 60 percent and 90 percent stages.

### Task Goal Statement:

Project permitted and designed to ECOLOGY approved specification.

### Task Expected Outcome:

All necessary permits obtained and project designed to ECOLOGY approved specification.

Recipient Task Coordinator: Thomas Hunter

**Permitting and Final Design**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
2.1	Executed contracts for engineering services and affidavit of publication	
2.2	Documentation of the RECIPIENT's process for procuring engineering services	
2.3	Two copies of the final design with detailed cost estimate and specifications	
2.4	Investment Grade Efficiency Audit documentation	



## SCOPE OF WORK

Task Number: 3 **Task Cost: \$570,000.00**

Task Title: Construction Management

### Task Description:

A. The RECIPIENT will provide adequate and competent construction management and inspection for the Project. This may involve procuring the professional services. If professional services are procured, the RECIPIENT will procure them in accordance with state law. The RECIPIENT will include ECOLOGY's specification insert in the contract documents. The RECIPIENT must submit all contracts for construction management services before ECOLOGY will provide reimbursement for work performed under this task.

B. The RECIPIENT will develop a detailed Construction Quality Assurance Plan (WAC 173-240-075) and submit it to ECOLOGY for approval. This plan must describe the activities which the RECIPIENT will undertake to achieve adequate and competent oversight of all construction work.

C. The RECIPIENT will provide a plan of interim operation for the facility while under construction.

D. The RECIPIENT will ensure construction progresses according to a timely schedule developed to meet completion dates indicated in the construction contract. The RECIPIENT will revise or update the schedule whenever major changes occur and resubmit to ECOLOGY. In the absence of any major changes, the RECIPIENT will describe progress of the construction in the quarterly progress reports.

E. Upon completion of this construction, the RECIPIENT will submit the Declaration of Construction Completion form to ECOLOGY in accordance with WAC 173-240-090 and a set of "as-built" plans of the construction contract i.e., record construction drawings which reflect changes, modifications, or other revisions made to the project during construction. The form, when signed by a professional engineer, indicates that the project was completed in accordance with the plans and specifications and major change orders approved by ECOLOGY, and is accurately shown on the as-built plans.

F. The RECIPIENT will prepare an Operations and Maintenance (O&M) manual for the marina pump station.

### Task Goal Statement:

To manage construction of the project to ensure a project that is built in accordance with Ecology approved specifications.

### Task Expected Outcome:

Project constructed in accordance with Ecology approved specifications.

**Recipient Task Coordinator:** Thomas Hunter

**Construction Management**

**Deliverables**

Number	Description	Due Date
3.1	Executed contract for construction management services	
3.2	Documentation of the RECIPIENT's process for procuring engineering services	
3.3	Construction Quality Assurance Plan	
3.4	Plan of interim operation of the facility while under construction	
3.5	Declaration of Construction Completion	
3.6	"As-built" plans	
3.7	Operation and Maintenance Manual	

## SCOPE OF WORK

Task Number: 4 **Task Cost: \$2,890,000.00**

Task Title: Project Construction

### Task Description:

A. The RECIPIENT will include ECOLOGY's specification insert in the bid documents. The RECIPIENT will execute a contract with the low responsive responsible bidder to construct the PROJECT. The RECIPIENT shall submit Bid Tabs, the Notice of Award, and a copy of the executed contract before ECOLOGY shall provide reimbursement for work performed under this task.

B. The RECIPIENT will complete construction of the Marina Pump Station in accordance with the plans and specifications. Elements of the construction project will include:

1. New lift station pumps
2. Associated piping and electrical work
3. Replacement of the failing sea wall
4. New generator.

C. The RECIPIENT will conduct a pre-construction conference and invite ECOLOGY staff.

D. As a condition of receiving this funding, the RECIPIENT will prepare an asset management program (fiscal sustainability plan). The RECIPIENT will certify that a plan that contains at least the minimum required elements listed above has been developed and is being implemented. The plan must include the following elements

1. An inventory of critical assets that belong to the utility.
2. An evaluation of the condition and performance of the critical assets.
3. A plan to maintain, repair, and replace the critical assets and to fund those activities.
4. A process to evaluate and implement water and energy conservation efforts as part of the plan.

### Task Goal Statement:

To have the project constructed in accordance with ECOLOGY approved plans and specifications.

### Task Expected Outcome:

Project constructed in accordance with ECOLOGY approved plans and specifications.

Recipient Task Coordinator: Thomas Hunter

**Project Construction**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
4.1	Copy of the advertisement for bids with affidavit of publication	
4.2	Minutes of the pre-construction meeting	
4.3	Declaration of Construction completion (paper copy) and one electronic copy of the Record Drawings	
4.4	Investment Grade Efficiency Audit documentation	
4.5	Certification that the Financial Sustainability Plan has been developed and is being implemented	

**SCOPE OF WORK**

Task Number: 5 **Task Cost: \$0.00**

Task Title: Change Orders

Task Description:

A. The RECIPIENT will negotiate all change orders to the construction contract necessary for successful completion of the project.

B. The RECIPIENT will submit the change orders to ECOLOGY for approval. Change orders that are a significant deviation from the approved plans/specifications must be submitted for approval, prior to execution. All other change orders must be submitted within 30 days after execution.

Task Goal Statement:

To have all change orders reviewed and approved by ECOLOGY prior to requesting reimbursement.

Task Expected Outcome:

All change orders reviewed and approved by ECOLOGY prior to reimbursement.

Recipient Task Coordinator: Thomas Hunter

**Change Orders**

**Deliverables**

Number	Description	Due Date
5.1	Change order justifications if needed	
5.2	Executed change orders with backup documentation and professional engineer seal and signature	



<b>SRF Standard Loan</b>	<b>Task Total</b>
Project Administration/Management	\$ 60,000.00
Permitting and Final Design	\$ 580,000.00
Project Construction	\$ 2,890,000.00
Construction Management	\$ 570,000.00
Change Orders	\$ 0.00

**Total: \$ 4,100,000.00**

**Funding Distribution Summary**

**Recipient / Ecology Share**

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
SRF Standard Loan	0.00 %	\$ 0.00	\$ 4,100,000.00	\$ 4,100,000.00
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 4,100,000.00</b>	<b>\$ 4,100,000.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

**SECTION 1: DEFINITIONS**

Unless otherwise provided, the following terms will have the respective meanings for all purposes of this agreement:

“Administration Charge” means a charge established in accordance with Chapter 90.50A RCW and Chapter 173-98 WAC, to be used to pay Ecology’s cost to administer the State Revolving Fund by placing a percentage of the interest earned in an Administrative Charge Account.

“Administrative Requirements” means the effective edition of ECOLOGY's Administrative Requirements for Recipients of Ecology Grants and Loans at the signing of this agreement.

“Annual Debt Service” for any calendar year means for any applicable bonds or loans including the loan, all interest plus all principal due on such bonds or loans in such year.

“Average Annual Debt Service” means, at the time of calculation, the sum of the Annual Debt Service for the remaining years of the loan to the last scheduled maturity of the loan divided by the number of those years.

“Acquisition” means the purchase or receipt of a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

“Centennial Clean Water Program” means the state program funded from various state sources.

“Contract Documents” means the contract between the RECIPIENT and the construction contractor for construction of the project.

“Cost Effective Analysis” means a comparison of the relative cost-efficiencies of two or more potential ways of solving a water quality problem as described in Chapter 173-98-730 WAC.

“Defeasance” or “Defeasance” means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

“Effective Date” means the earliest date on which eligible costs may be incurred.

“Effective Interest Rate” means the total interest rate established by Ecology that includes the Administrative Charge.

“Estimated Loan Amount” means the initial amount of funds loaned to the RECIPIENT.

“Estimated Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Estimated Loan Amount.

“Equivalency” means projects designated by ECOLOGY to meet additional federal requirements.

“Expiration Date” means the latest date on which eligible costs may be incurred.

“Final Accrued Interest” means the interest accrued beginning with the first disbursement of funds to the RECIPIENT through such time as the loan is officially closed out and a final loan repayment schedule is issued.

“Final Loan Amount” means all principal of and interest on the loan from the Project Start Date through the Project



**Completion Date.**

“Final Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Final Loan Amount.

“Forgivable Principal” means the portion of a loan that is not required to be paid back by the borrower.

“General Obligation Debt” means an obligation of the RECIPIENT secured by annual ad valorem taxes levied by the RECIPIENT and by the full faith, credit, and resources of the RECIPIENT.

“General Obligation Payable from Special Assessments Debt” means an obligation of the RECIPIENT secured by a valid general obligation of the Recipient payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

“Gross Revenue” means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) Utility Local Improvement Districts (ULID) Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any investments in a trust, Defeasance, or escrow fund created to Defeasance or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

“Guidelines” means the ECOLOGY’s Funding Guidelines that correlate to the State Fiscal Year in which the project is funded.

“Initiation of Operation Date” means the actual date the Water Pollution Control Facility financed with proceeds of the loan begins to operate for its intended purpose.

“Loan” means the Washington State Water Pollution Control Revolving Fund Loan or Centennial Clean Water Fund (Centennial) Loan made pursuant to this loan agreement.

“Loan Amount” means either an Estimated Loan Amount or a Final Loan Amount, as applicable.

“Loan Fund” means the special fund created by the RECIPIENT for the repayment of the principal of and interest on the loan.

“Loan Security” means the mechanism by which the RECIPIENT pledges to repay the loan.

“Loan Term” means the repayment period of the loan.

“Maintenance and Operation Expense” means all reasonable expenses incurred by the RECIPIENT in causing the Utility to be operated and maintained in good repair, working order, and condition including payments to other parties, but will not include any depreciation or RECIPIENT levied taxes or payments to the RECIPIENT in lieu of taxes.

“Net Revenue” means the Gross Revenue less the Maintenance and Operation Expense.

“Original Engineer’s Estimate” means the engineer’s estimate of construction costs included with bid documents.

“Principal and Interest Account” means, for a loan that constitutes Revenue-Secured Debt, the account created in the loan fund to be first used to repay the principal of and interest on the loan.

“Project” means the project described in this agreement.

“Project Completion Date” means the date specified in the agreement on which the Scope of Work will be fully completed. This term is only used in loan agreements.

“Project Schedule” means that schedule for the project specified in the agreement.

“Revenue-Secured Debt” means an obligation of the RECIPIENT secured by a pledge of the revenue of a utility and one not a general obligation of the RECIPIENT.

“Reserve Account” means, for a loan that constitutes a Revenue Secured Debt and if specifically identified as a term and condition of the funding agreement, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.

“Risk-Based Determination” means an approach to sub-recipient monitoring and oversight based on risk factors associated to a RECIPIENT or project.

“Scope of Work” means the tasks and activities constituting the project.

“Section 319” means the section of the Clean Water Act that provides funding to address nonpoint sources of water pollution.

“Senior Lien Obligations” means all revenue bonds and other obligations of the RECIPIENT outstanding on the date of execution of this loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this loan agreement having a claim or lien on the Gross Revenue of the Utility prior and superior to the claim or lien of the loan, subject only to Maintenance and Operation Expense.

“State Water Pollution Control Revolving Fund (Revolving Fund)” means the water pollution control revolving fund established by Chapter 90.50A.020 RCW.

“Termination Date” means the effective date of ECOLOGY’s termination of the agreement.

“Termination Payment Date” means the date on which the RECIPIENT is required to repay to ECOLOGY any outstanding balance of the loan and all accrued interest.

“Total Eligible Project Cost” means the sum of all costs associated with a water quality project that have been determined to be eligible for ECOLOGY grant or loan funding, including any required recipient match.

“Total Project Cost” means the sum of all costs associated with a water quality project, including costs that are not eligible for ECOLOGY grant or loan funding.

“ULID” means any utility local improvement district of the RECIPIENT created for the acquisition or construction of additions to and extensions and betterments of the Utility.

“ULID Assessments” means all assessments levied and collected in any ULID. Such assessments are pledged to be paid into the Loan Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments will include principal installments and any interest or penalties which may be due.

“Utility” means the sewer system, stormwater system, or the combined water and sewer system of the RECIPIENT, the Net Revenue of which is pledged to pay and secure the loan.

## SECTION 2: THE FOLLOWING CONDITIONS APPLY TO ALL RECIPIENTS OF WATER QUALITY COMBINED FINANCIAL ASSISTANCE FUNDING.

The Water Quality Financial Assistance Funding Guidelines are included in this agreement by reference and are available on ECOLOGY’s Water Quality Program website.

A. Architectural and Engineering Services: The RECIPIENT certifies by signing this agreement that the requirements of Chapter 39.80 RCW, “Contracts for Architectural and Engineering Services,” have been, or shall be, met in procuring qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final architectural/engineering services contract and submit a copy of the contract to ECOLOGY.

B. Acquisition: The following provisions shall be in force only if the project described in this agreement is an acquisition project:

a. Evidence of Land Value and Title. The RECIPIENT shall submit documentation of the cost of the property rights and the type of ownership interest that has been acquired.

b. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased with funding assistance provided through this agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the agreement before final payment.

c. Conveyance of Rights to the State of Washington. Upon purchase of real property rights (both fee simple and lesser interests), the RECIPIENT shall execute the document necessary to convey certain rights and responsibilities to ECOLOGY, on behalf of the State of Washington. The documents required will depend on the project type, the real property rights being acquired, and whether or not those rights are being acquired in perpetuity (see options below). The RECIPIENT shall use language provided by ECOLOGY, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to ECOLOGY.

Documentation Options:

1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. RECIPIENTS shall use this document

when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the RECIPIENT has acquired a perpetual easement for public purposes. The RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the deed of right.

2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to ECOLOGY. The RECIPIENT shall use this document when an easement or lease is being acquired for water quality and habitat conservation. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.

3. Easements and Leases. The RECIPIENT may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; therefore, the RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the easement or lease.

d. Real Property Acquisition and Relocation Assistance.

1. Federal Acquisition Policies. See Section 4 of this agreement for requirements specific to Section 319 and SRF funded projects.

2. State Acquisition Policies. When state funds are part of this agreement, the RECIPIENT agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.

3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the RECIPIENT agrees to provide any housing and relocation assistance required.

e. Hazardous Substances.

1. Certification. The RECIPIENT shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(10), and certify:

- i. No hazardous substances were found on the site, or
- ii. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site is deemed "clean."

2. Responsibility. Nothing in this provision alters the RECIPIENT's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.

3. Hold Harmless. The RECIPIENT will defend, protect and hold harmless ECOLOGY and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the RECIPIENT is acquiring.

f. Restriction On Conversion Of Real Property And/Or Facilities To Other Uses

The RECIPIENT shall not at any time convert any real property (including any interest therein) or facility acquired, developed, maintained, renovated, and/or restored pursuant to this agreement to uses other than those purposes for which funds were approved without prior approval of ECOLOGY. For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

C. Best Management Practices (BMP) Implementation: If the RECIPIENT installs BMPs that are not approved by ECOLOGY prior to installation, the RECIPIENT assumes the risk that part or all of the reimbursement for that activity may be delayed or ineligible. For more details regarding BMP Implementation, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY's Water Quality Program funding website.

D. Electronic Fund Transfers: The RECIPIENT must register as a statewide vendor in order to receive payment reimbursement. Washington State's Department of Enterprise Services (DES) issues all payments. DES maintains a central vendor file for Washington State agency use to process vendor payments. The RECIPIENT can complete the

registration process online at:

<http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. This registration process allows the RECIPIENT to sign up for direct deposit payments, also known as electronic fund transfers (EFT). If the RECIPIENT has questions about the vendor registration process or setting up direct deposit payments contact DES Payee Help Desk at (360) 407-8180 or [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.wa.gov).

E. Equipment Purchase: Equipment purchases over \$5,000 and not included in the scope of work or the Ecology approved construction plans and specifications, must be pre-approved by ECOLOGY's project manager before purchase. All equipment purchases over \$5,000 and not included in a contract for work being completed on the funded project, must also be reported on the Equipment Purchase Report in EAGL.

F. Funding Recognition: The RECIPIENT must inform the public about ECOLOGY or any EPA (see Section 3.B for Section 319 funded or Section 5.E for SRF funded projects) funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from ECOLOGY's Financial Manager upon request.

G. Growth Management Planning: The RECIPIENT certifies by signing this agreement that it is in compliance with the requirements of Chapter 36.70A RCW, "Growth Management Planning by Selected Counties and Cities." If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT shall notify ECOLOGY in writing of this change within 30 days.

H. Interlocal: The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements necessary for the project are, or shall be, consistent with the terms of this agreement and Chapter 39.34 RCW, "Interlocal Cooperation Act." The RECIPIENT shall submit a copy of each interlocal agreement necessary for the project to ECOLOGY upon request.

I. Lobbying and Litigation: Costs incurred for the purposes of lobbying or litigation are not eligible for funding under this agreement.

J. Post Project Assessment Survey: The RECIPIENT agrees to participate in a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project approximately three years after project completion. A representative from ECOLOGY's Water Quality Program may contact the RECIPIENT to request this data. ECOLOGY may also conduct site interviews and inspections, and may otherwise evaluate the project, as part of this assessment.

K. Project Status Evaluation: ECOLOGY may evaluate the status of this project 18 months from the effective date of this agreement. ECOLOGY's Project Manager and Financial Manager will meet with the RECIPIENT to review spending trends, completion of outcome measures, and overall project administration and performance. If the RECIPIENT fails to make satisfactory progress toward achieving project outcomes, ECOLOGY may change the scope of work, reduce grant funds, or increase oversight measures.

L. Technical Assistance: Technical assistance for agriculture activities provided under the terms of this agreement shall be consistent with the current U.S. Natural Resource Conservation Service ("NRCS") Field Office Technical Guide for Washington State and specific requirements outlined in the Water Quality Funding Guidelines. Technical assistance, proposed practices, or project designs that do not meet these standards may be eligible if approved in writing by ECOLOGY.

### SECTION 3: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND CENTENNIAL CLEAN WATER FUNDED PROJECTS BEING USED TO MATCH SECTION 319 FUNDS.

The RECIPIENT must submit the following documents to ECOLOGY before this agreement is signed by ECOLOGY:

1. Federal Funding Accountability and Transparency Act (FFATA) Form, available on the Water Quality Program website.
2. "Section 319 Initial Data Reporting" form in EAGL.

A. Data Reporting: The RECIPIENT must complete the "Section 319 Initial Data Reporting" form in EAGL before

this agreement can be signed by Ecology. This form is used to gather general information about the project for EPA.

**B. Funding Recognition and Outreach:** In addition to Section 2.F of these Terms and Conditions, the RECIPIENT shall provide signage that informs the public that the project is funded by EPA. The signage shall contain the EPA logo and follow usage requirements available at <http://www2.epa.gov/stylebook/using-epa-seal-and-logo>. To obtain the appropriate EPA logo or seal graphic file, the RECIPIENT may send a request to their Ecology Financial Manager. To increase public awareness of projects serving communities where English is not the predominant language, RECIPIENTS are encouraged to provide their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable. The RECIPIENT shall use the following paragraph in all reports, documents, and signage developed under this agreement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency under an assistance agreement to the Washington State Department of Ecology. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the mention of trade names or commercial products constitute endorsement or recommendation for use.”

**C. Load Reduction Reporting:** The RECIPIENT shall complete the “Section 319 Annual Load Reduction Reporting” form in EAGL by January 15 of each year and at project close-out. ECOLOGY may hold reimbursements until the RECIPIENT has completed the form. This form is used to gather information on best management practices (BMPs) installed and associated pollutant load reductions that were funded as a part of this project.

**D. Time Extension:** The RECIPIENT may request a one-time extension for up to 12 months. However, the time extension cannot exceed the time limitation established in EPA’s assistance agreement. In the event a time extension is requested and approved by ECOLOGY, the RECIPIENT must complete all eligible work performed under this agreement by the expiration date.

#### SECTION 4: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

**A. Accounting Standards:** The RECIPIENT shall maintain accurate records and accounts for the project (PROJECT Records) in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets or in accordance with the standards in Chapter 43.09.200 RCW “Local Government Accounting – Uniform System of Accounting”.

**B. Acquisitions:** Section 319 and SRF Equivalency project RECIPIENTS shall comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)-Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.

**C. Audit Requirements:** In accordance with 2 CFR 200.501(a), the RECIPIENT agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year. The RECIPIENT must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse’s Internet Data Entry System available at: <https://harvester.census.gov/fac/collect/ddeindex.html>. For complete information on how to accomplish the single audit submission, go to the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>.

**D. Archaeological Resources and Historic Properties (Section 106):** The RECIPIENT shall comply with the additional requirements under section 106 of the National Historic Preservation Act (NHPA, 36 CFR 800).

**E. Data Universal Numbering System (DUNS) and Central Contractor Registration (CCR) Requirements:** RECIPIENTS shall have a DUNS number. Unless exempted from this requirement under 2 CFR 25.110, the RECIPIENT must ensure that their organization’s information in the System for Award Management (SAM),

<https://www.sam.gov>, is kept current through project closeout. This requires that the RECIPIENT reviews and updates the information at least annually after the initial registration, and more frequently if information changes.

F. Disadvantaged Business Enterprise (DBE): General Compliance, 40 CFR, Part 33. The RECIPIENT agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises (MBE/WBE) 40CFR, Part 33 in procurement under this agreement.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C. The RECIPIENT agrees to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under this agreement. Records documenting compliance with the following six good faith efforts shall be retained:

- 1) Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government RECIPIENTS, this shall include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- 2) Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- 3) Consider, in the contracting process, whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State, and Local Government RECIPIENTS, this shall include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- 4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6) If the prime contractor awards subcontracts, require the prime contractor to take the five good faith efforts steps in paragraphs 1 through 5 above.

The RECIPIENT agrees to submit ECOLOGY's Contractor Participation Report Form D with each payment request. Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

Non-discrimination Provision. The RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this agreement. The RECIPIENT shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the RECIPIENT to carry out these requirements is a material breach of this agreement which may result in the termination of this contract or other legally available remedies.

This does not preclude the RECIPIENT from enacting broader nondiscrimination protections.

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including but not limited to, Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the RECIPIENT's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this agreement may be rescinded, canceled, or terminated in whole or in part and the RECIPIENT may be declared ineligible for further funding from ECOLOGY. The RECIPIENT shall, however, be given a reasonable time in which to cure this noncompliance.

The RECIPIENT shall include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services pertaining to this agreement.

"The Contractor will not discriminate on the basis of race, color, national origin or sex in the performance of this

Contract. The Contractor will carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract or other legally available remedies.”

Bidder List, 40 CFR, Section 33.501(b) and (c). The RECIPIENT agrees to create and maintain a bidders list. The bidders list shall include the following information for all firms that bid or quote on prime contracts, or bid or quote subcontracts, including both MBE/WBEs and non-MBE/WBEs.

1. Entity's name with point of contact
2. Entity's mailing address, telephone number, and e-mail address
3. The procurement on which the entity bid or quoted, and when
4. Entity's status as an MBE/WBE or non-MBE/WBE

G. Electronic and information Technology (EIT) Accessibility: RECIPIENTs shall ensure that loan funds provided under this agreement for costs in the development or purchase of EIT systems or products provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology as per Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7. Systems or products funded under this agreement must be designed to meet the diverse needs of users without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology.

H. Hotel-Motel Fire Safety Act: The RECIPIENT shall ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (15 USC 2225a, PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act. Pursuant to 15 USC 2225a.

I. Trafficking In Persons: The RECIPIENT and RECIPIENT employees that are private entities shall not engage in forms of trafficking in persons during the period of time this agreement is effective. This includes, but is not limited to, the procurement of a commercial sex act or forced labor. The RECIPIENT shall notify ECOLOGY immediately of any information received from any source alleging a violation under this provision.

#### SECTION 5: THE FOLLOWING CONDITIONS APPLY TO STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

The RECIPIENT must submit the following documents/forms to ECOLOGY before this agreement is signed by ECOLOGY:

1. Financial Capability Assessment Documentation
2. Opinion of RECIPIENT's Legal Council
3. Authorizing Ordinance or Resolution
4. Federal Funding Accountability and Transparency Act (FFATA) Form
5. CWSRF Federal Reporting Information form available in EAGL
6. Fiscal Sustainability Plan Certification Form (only required if the project includes construction of a wastewater or stormwater facility construction)
7. Cost and Effectiveness Analysis Certification Form

A. Alteration and Eligibility of Project: During the term of this agreement, the RECIPIENT (1) shall not materially alter the design or structural character of the project without the prior written approval of ECOLOGY and (2) shall take no action which would adversely affect the eligibility of the project as defined by applicable funding program rules and state statutes, or which would cause a violation of any covenant, condition, or provision herein.

B. American Iron and Steel (Buy American): This loan provision applies to projects for the construction, alteration, maintenance, or repair of a “treatment works” as defined in the Federal Water Pollution Control Act (33 USC 1381 et

seq.) The RECIPIENT shall ensure that all iron and steel products used in the project are produced in the United States. Iron and Steel products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The RECIPIENT may request waiver from this requirement from the Administrator of the Environmental Protection Agency. The RECIPIENT must coordinate all waiver requests through ECOLOGY. This provision does not apply if the engineering plans and specifications for the project were approved by ECOLOGY prior to January 17, 2014. ECOLOGY reserves the right to request documentation of RECIPIENT'S compliance with this provision.

C. Authority of RECIPIENT: This agreement is authorized by the Constitution and laws of the state of Washington, including the RECIPIENT'S authority, and by the RECIPIENT pursuant to the authorizing ordinance or resolution. The RECIPIENT shall submit a copy of the authorizing ordinance or resolution to the ECOLOGY Financial Manager before this agreement shall be signed by ECOLOGY.

D. Equivalency Projects: (For designated equivalency projects only)

1. The RECIPIENT must procure architectural and engineering services in accordance with the federal requirements in Chapter 11 of Title 40, U.S.C. (see

[www.gpo.gov/fdsys/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleI-chap11.pdf](http://www.gpo.gov/fdsys/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleI-chap11.pdf)).

E. Fiscal Sustainability Plan Certification: The RECIPIENT shall submit a completed Fiscal Sustainability Plan Certification before this agreement is signed by ECOLOGY. The Fiscal Sustainability Plan Certification is available from the ECOLOGY Financial Manager or on the Water Quality Program website.

F. Funding Recognition and Outreach: In addition to Section 2.F of these Terms and Conditions, the RECIPIENT agrees to comply with the EPA SRF Signage Guidance in order to enhance public awareness of EPA assistance agreements nationwide. The signage guidance can be found at:

<http://www.ecy.wa.gov/programs/wq/funding/FundPrgms/CWSRF/SignageGuidanceJune2015.pdf>.

G. Insurance: The RECIPIENT shall at all times carry fire and extended insurance coverage, public liability, and property damage, and such other forms of insurance with responsible insurers and policies payable to the RECIPIENT on such of the buildings, equipment, works, plants, facilities, and properties of the Utility as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, and against such claims for damages as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, or it shall self-insure or participate in an insurance pool or pools with reserves adequate, in the reasonable judgment of the RECIPIENT, to protect it against loss.

H. Litigation Authority: No litigation is now pending, or to the RECIPIENT'S knowledge, threatened, seeking to restrain, or enjoin:

- (i) the execution of this agreement; or
- (ii) the fixing or collection of the revenues, rates, and charges or the formation of the ULID and the levy and collection of ULID Assessments therein pledged to pay the principal of and interest on the loan (for revenue secured lien obligations); or
- (iii) the levy and collection of the taxes pledged to pay the principal of and interest on the loan (for general obligation-secured loans and general obligation payable from special-assessment-secured loans); or
- (iv) in any manner questioning the proceedings and authority under which the agreement, the loan, or the project are authorized. Neither the corporate existence, or boundaries of the RECIPIENT nor the title of its present officers to their respective offices is being contested. No authority or proceeding for the execution of this agreement has been repealed, revoked, or rescinded.

I. Loan Interest Rate and Terms: This loan agreement shall remain in effect until the date of final repayment of the loan, unless terminated earlier according to the provisions herein.

When the Project Completion Date has occurred, ECOLOGY and the RECIPIENT shall execute an amendment to this loan agreement which details the final loan amount (Final Loan Amount), and ECOLOGY shall prepare a final loan repayment schedule. The Final Loan Amount shall be the combined total of actual disbursements made on the loan



and all accrued interest to the computation date.

The Estimated Loan Amount and the Final Loan Amount (in either case, as applicable, a "Loan Amount") shall bear interest based on the interest rate identified in this agreement as the "Effective Interest Rate," per annum, calculated on the basis of a 365 day year. Interest on the Estimated Loan Amount shall accrue from and be compounded monthly based on the date that each payment is mailed to the RECIPIENT. The Final Loan Amount shall be repaid in equal installments, semiannually, over the term of this loan "Loan Term" as outlined in this agreement.

#### J. Loan Repayment:

##### Sources of Loan Repayment

1. Nature of RECIPIENT's Obligation. The obligation of the RECIPIENT to repay the loan from the sources identified below and to perform and observe all other agreements and obligations on its part, contained herein, shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind. To secure the repayment of the loan from ECOLOGY, the RECIPIENT agrees to comply with all of the covenants, agreements, and attachments contained herein.

2. For General Obligation. This loan is a General Obligation Debt of the RECIPIENT.

3. For General Obligation Payable from Special Assessments. This loan is a General Obligation Debt of the RECIPIENT payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

4. For Revenue-Secured: Lien Position. This loan is a Revenue-Secured Debt of the RECIPIENT's Utility. This loan shall constitute a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon such Net Revenue of any Senior Lien Obligations.

In addition, if this loan is also secured by Utility Local Improvement Districts (ULID) Assessments, this loan shall constitute a lien upon ULID Assessments in the ULID prior and superior to any other charges whatsoever.

5. Other Sources of Repayment. The RECIPIENT may repay any portion of the loan from any funds legally available to it.

6. Defeasance of the Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT shall not be entitled to, and shall not affect, an economic Defeasance of the loan. The RECIPIENT shall not advance refund the loan.

If the RECIPIENT defeases or advance refunds the loan, it shall be required to use the proceeds thereof immediately upon their receipt, together with other available RECIPIENT funds, to repay both of the following:

(i) The Loan Amount with interest

(ii) Any other obligations of the RECIPIENT to ECOLOGY under this agreement, unless in its sole discretion ECOLOGY finds that repayment from those additional sources would not be in the public interest.

Failure to repay the Loan Amount plus interest within the time specified in ECOLOGY's notice to make such repayment shall incur Late Charges and shall be treated as a Loan Default.

7. Refinancing or Early Repayment of the Project. So long as ECOLOGY shall hold this loan, the RECIPIENT shall give ECOLOGY thirty days written notice if the RECIPIENT intends to refinance or make early repayment of the loan.

##### Method and Conditions on Repayments

1. Semiannual Payments. Notwithstanding any other provision of this agreement, the first semiannual payment of principal and interest on this loan shall be due and payable no later than one year after the project completion date or initiation of operation date, whichever comes first.

Thereafter, equal payments shall be due every six months.

If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington State agencies, the payment shall be due on the next business day for Washington State agencies.

Payments shall be mailed to:

Department of Ecology  
Cashiering Unit

P.O. Box 47611  
Olympia WA 98504-7611

In lieu of mailing payments, electronic fund transfers can be arranged by working with ECOLOGY's Financial Manager.

No change to the amount of the semiannual principal and interest payments shall be made without a mutually signed amendment to this agreement. The RECIPIENT shall continue to make semiannual payments based on this agreement until the amendment is effective, at which time the RECIPIENT's payments shall be made pursuant to the amended agreement.

2. Late Charges. If any amount of the Final Loan Amount or any other amount owed to ECOLOGY pursuant to this agreement remains unpaid after it becomes due and payable, ECOLOGY may assess a late charge. The late charge shall be one percent per month on the past due amount starting on the date the debt becomes past due and until it is paid in full.

3. Repayment Limitations. Repayment of the loan is subject to the following additional limitations, among others: those on defeasance, refinancing and advance refunding, termination, and default and recovery of payments.

4. Prepayment of Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT may prepay the entire unpaid principal balance of and accrued interest on the loan or any portion of the remaining unpaid principal balance of the Loan Amount. Any prepayments on the loan shall be applied first to any accrued interest due and then to the outstanding principal balance of the Loan Amount. If the RECIPIENT elects to prepay the entire remaining unpaid balance and accrued interest, the RECIPIENT shall first contact ECOLOGY's Revenue/Receivable Manager of the Fiscal Office.

#### K. Loan Security

Due Regard: For loans secured with a Revenue Obligation: The RECIPIENT shall exercise due regard for Maintenance and Operation Expense and the debt service requirements of the Senior Lien Obligations and any other outstanding obligations pledging the Gross Revenue of the Utility, and it has not obligated itself to set aside and pay into the loan Fund a greater amount of the Gross Revenue of the Utility than, in its judgment, shall be available over and above such Maintenance and Operation Expense and those debt service requirements.

Where collecting adequate gross utility revenue requires connecting additional users, the RECIPIENT shall require the sewer system connections necessary to meet debt obligations and expected operation and maintenance expenses.

Levy and Collection of Taxes (if used to secure the repayment of the loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors on all of the taxable property within the boundaries of the RECIPIENT in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the principal of and interest on the loan, and the full faith, credit and resources of the RECIPIENT are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

Not an Excess Indebtedness: For loans secured with a general obligation pledge or a general obligation pledge on special assessments: The RECIPIENT agrees that this agreement and the loan to be made do not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations.

Pledge of Net Revenue and ULID Assessments in the ULID (if used to secure the repayment of this loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges the Net Revenue of the Utility, including applicable ULID Assessments in the ULID, to pay when due the principal of and interest on the loan.

Utility Local Improvement District (ULID) Assessment Collection (if used to secure the repayment of the loan): All ULID Assessments in the ULID shall be paid into the Loan Fund and used to pay the principal of and interest on the loan.

L. Maintenance and Operation of a Funded Utility: The RECIPIENT shall, at all times, maintain and keep the funded Utility in good repair, working order, and condition.

M. Opinion of RECIPIENT's Legal Counsel: The RECIPIENT must submit an "Opinion of Legal Counsel to the

RECIPIENT” to ECOLOGY before this agreement will be signed. ECOLOGY will provide the form.

**N. Prevailing Wage (Davis-Bacon Act):** The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out, in whole or in part, with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

The RECIPIENT shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation). These wage determinations shall be incorporated into solicitations and any subsequent contracts. The RECIPIENT shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and sub contracts in excess of \$2,000. The RECIPIENT shall maintain records sufficient to document compliance with the Davis-Bacon Act, and make such records available for review upon request.

The RECIPIENT also agrees, by signing this agreement, to comply with State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable. Compliance may include the determination whether the project involves “public work” and inclusion of the applicable prevailing wage rates in the bid specifications and contracts. The RECIPIENT agrees to maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and make such records available for review upon request.

**O. Progress Reports:** RECIPIENTS funded with State Revolving Fund Loan or Forgivable Principal shall include the following verification statement in the “General Comments” text box of each progress report.

“We verify that we are in compliance with all the requirements as outlined in our funding agreement(s) with the Department of Ecology. This includes but is not limited to:

- The Davis-Bacon Act, 29 CFR (If applicable)
- Washington State Prevailing Wage Rate, Chapter 39.12 RCW (Pertaining to all recipients)
- The Disadvantaged Business Enterprise (DBE), 40 CFR, Part 33”

**P. Representations and Warranties:** The RECIPIENT represents and warrants to ECOLOGY as follows:

**Application: Material Information.** All information and materials submitted by the RECIPIENT to ECOLOGY in connection with its loan application were, when made, and are, as of the date the RECIPIENT signs this agreement, true and correct. There is no material adverse information relating to the RECIPIENT, the project, the loan, or this agreement known to the RECIPIENT, which has not been disclosed in writing to ECOLOGY.

**Existence; Authority.** It is a duly formed and legally existing municipal corporation or political subdivision of the state of Washington or a federally recognized Indian Tribe. It has full corporate power and authority to execute, deliver, and perform all of its obligations under this agreement and to undertake the project identified herein.

**Certification.** Each payment request shall constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this loan agreement remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the project or to repay the principal of or interest on the loan, have occurred since the date of this loan agreement. Any changes in the RECIPIENT’s financial condition shall be disclosed in writing to ECOLOGY by the RECIPIENT in its request for payment.

**Q. Sale or Disposition of Funded Utility:** The RECIPIENT shall not sell, transfer, or otherwise dispose of any of the works, plant, properties, facilities, or other part of the funded Utility or any real or personal property comprising a part of the funded Utility unless:

1. The facilities or property transferred are not material to the operation of the funded Utility, or have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the funded Utility or are no longer necessary, material, or useful to the operation of the funded Utility; or
2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three percent of the total assets of the funded Utility; or

3. The RECIPIENT receives from the transferee an amount equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the funded Utility from the portion of the funded Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.

4. Expressed written agreement by the DEPARTMENT.

The proceeds of any transfer under this paragraph must be used (1) to redeem promptly, or irrevocably set aside for the redemption of, Senior Lien Obligations and to redeem promptly the loan, and (2) to provide for part of the cost of additions to and betterments and extensions of the Utility.

R. Sewer-Use Ordinance or Resolution for Funded Wastewater Facility Projects: If not already in existence, the RECIPIENT shall adopt and shall enforce a sewer-use ordinance or resolution. Such ordinance or resolution shall be submitted to ECOLOGY upon request.

The sewer use ordinance must include provisions to:

- 1) Prohibit the introduction of toxic or hazardous wastes into the RECIPIENT's sewer system.
- 2) Prohibit inflow of stormwater into separated sewer systems.
- 3) Require that new sewers and connections be properly designed and constructed.

S. Termination and Default:

Termination and Default Events

1. For Insufficient ECOLOGY or RECIPIENT Funds. ECOLOGY may terminate this loan agreement for insufficient ECOLOGY or RECIPIENT funds.
2. For Failure to Commence Work. ECOLOGY may terminate this loan agreement for failure of the RECIPIENT to commence project work.
3. Past Due Payments. The RECIPIENT shall be in default of its obligations under this loan agreement when any loan repayment becomes 60 days past due.
4. Other Cause. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all of its obligations under this loan agreement. The RECIPIENT shall be in default of its obligations under this loan agreement if, in the opinion of ECOLOGY, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this loan agreement.

Procedures for Termination. If this loan agreement is terminated prior to project completion, ECOLOGY shall provide to the RECIPIENT a written notice of termination at least five working days prior to the effective date of termination (the "Termination Date"). The written notice of termination by the ECOLOGY shall specify the Termination Date and, when applicable, the date by which the RECIPIENT must repay any outstanding balance of the loan and all accrued interest (the "Termination Payment Date").

Termination and Default Remedies

No Further Payments. On and after the Termination Date, or in the event of a default event, ECOLOGY may, at its sole discretion, withdraw the loan and make no further payments under this agreement.

Repayment Demand. In response to an ECOLOGY initiated termination event, or in response to a loan default event, ECOLOGY may at its sole discretion demand that the RECIPIENT repay the outstanding balance of the Loan Amount and all accrued interest.

Interest after Repayment Demand. From the time that ECOLOGY demands repayment of funds, amounts owed by the RECIPIENT to ECOLOGY shall accrue additional interest at the rate of one percent per month, or fraction thereof.

Accelerate Repayments. In the event of a default, ECOLOGY may, in its sole discretion, declare the principal of and interest on the loan immediately due and payable, subject to the prior lien and charge of any outstanding Senior Lien Obligation upon the Net Revenue. That is, the loan is not subject to acceleration so long as any Senior Lien Obligations are outstanding. Repayments not made immediately upon such acceleration will incur Late Charges.

Late Charges. All amounts due to ECOLOGY and not paid by the RECIPIENT by the Termination Payment Date or after acceleration following a default event, as applicable, shall incur late charges.

Agreement No: WQC-2019-PoOrPW-00025  
 Project Title: Marina Pump Station  
 Recipient Name: City of Port Orchard

**Intercept State Funds.** In the event of a default event and in accordance with Chapter 90.50A.060 RCW, "Defaults," any state funds otherwise due to the RECIPIENT may, at ECOLOGY's sole discretion, be withheld and applied to the repayment of the loan.

**Property to ECOLOGY.** In the event of a default event and at the option of ECOLOGY, any personal property (equipment) acquired under this agreement may, in ECOLOGY's sole discretion, become ECOLOGY's property. In that circumstance, ECOLOGY shall reduce the RECIPIENT's liability to repay money by an amount reflecting the fair value of such property.

**Documents and Materials.** If this agreement is terminated, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT shall, at the option of ECOLOGY, become ECOLOGY property. The RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

**Collection and Enforcement Actions.** In the event of a default event, the state of Washington reserves the right to take any actions it deems necessary to collect the amounts due, or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this agreement.

**Fees and Expenses.** In any action to enforce the provisions of this agreement, reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of legal staff) shall be awarded to the prevailing party as that term is defined in Chapter 4.84.330 RCW.

**Damages.** Notwithstanding ECOLOGY's exercise of any or all of the termination or default remedies provided in this agreement, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or the state of Washington because of any breach of this agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

**T. User-Charge System for Funded Utilities:** The RECIPIENT certifies that it has the legal authority to establish and implement a user-charge system and shall adopt a system of user-charges to assure that each user of the funded utility shall pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the project. The user-charge system will include provisions for a connection charge.

In addition, the RECIPIENT shall regularly evaluate the user-charge system, at least annually, to ensure the system provides adequate revenues necessary to operate and maintain the funded utility, to establish reserves to pay for replacement, and to repay the loan.

## **GENERAL FEDERAL CONDITIONS**

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

### **A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.

Agreement No: WQC-2019-PoOrPW-00025  
Project Title: Marina Pump Station  
Recipient Name: City of Port Orchard

You may contact ECOLOGY for assistance in obtaining a copy of those regulations.

4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

**B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:**

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.frs.gov](http://www.frs.gov) <http://www.frs.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.frs.gov](http://www.frs.gov) <http://www.frs.gov>.

## GENERAL TERMS AND CONDITIONS

### Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 1/22/2018 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

##### 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

##### 3. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
- Make the IDP readily available to anyone working at the project site.
- Discuss the IDP with staff and contractors working at the project site.
- Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
  - Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:

- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

#### 4. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

#### 5. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

#### 6. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.wa.gov).
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

#### 7. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.



ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### 8. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

#### 9. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

#### 10. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

#### 11. ENVIRONMENTAL DATA STANDARDS

- a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact

the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at: <http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 12. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

## 13. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

## 14. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

## 15. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

## 16. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified

minority and women's businesses.

d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

#### 17. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; and (f) the General Terms and Conditions.

#### 18. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

#### 19. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

#### 20. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to

Agreement No: WQC-2019-PoOrPW-00025  
 Project Title: Marina Pump Station  
 Recipient Name: City of Port Orchard

authorize others to use the same for federal, state, or local government purposes.

b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.

2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 21. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.
- d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of

this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder. RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

## 22. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

## 23. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

## 24. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

## 25. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

## 26. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, and 100% post-consumer recycled paper.

For more suggestions visit ECOLOGY's web page: Green Purchasing, ,  
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 27. TERMINATION

### a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the

RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement. Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or in part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the recipient/contractor through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the recipient/contractor. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work

completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

**28. THIRD PARTY BENEFICIARY**

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

**29. WAIVER**

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.







**City of Port Orchard**

216 Prospect Street, Port Orchard, WA 98366  
(360) 876-4407 • FAX (360) 895-9029

**Agenda Staff Report**

Agenda Item No.:	<u>Business Item 7B</u>	Meeting Date:	<u>February 19, 2019</u>
Subject:	<u>Adoption of an Ordinance Approving a Contract with the State Department of Ecology for the Port Orchard Downtown Basin Stormwater Plan</u>	Prepared by:	<u>Mark Dorsey, P.E. Public Works Director</u>
		Atty Routing No.:	<u>005-19</u>
		Atty Review Date:	<u>February 5, 2019</u>

**Summary:** Pursuant to the Terms and Conditions contained within Washington State Department of Ecology ('Ecology') Grant Agreement WQC-2018-PoOrPW-00206 for the City of Port Orchard Downtown Basin Stormwater Plan, the City of Port Orchard has been awarded a no-match \$216,840.00 grant. This grant funding award will be used to: 1) provide project administration; 2) provide a data review/gap analysis; 3) develop a stormwater basin model; and 4) develop a Downtown stormwater basin Plan. The Effective Term of the Agreement is July 1, 2018 through June 30, 2021. This activity will be coordinated with the Marina Pump Station Improvement Plan and the proposed redevelopment plans within the Downtown area.

**Relationship to Comprehensive Plan:** Chapter 7 – Utilities.

**Recommendation:** Staff recommends that the City Council adopt an Ordinance, thereby authorizing the Mayor to execute a Contract, being Agreement WQC-2018-PoOrPW-00206 with the Washington State Department of Ecology, in the amount of \$216,840.00 in funding for the City of Port Orchard Downtown Basin Stormwater Plan.

**Motion for Consideration:** I move to adopt an ordinance, thereby authorizing the Mayor to execute a Contract, being Agreement WQC-2018-PoOrPW-00206 with the Washington State Department of Ecology, in the amount of \$216,840.00 in funding for the City of Port Orchard Downtown Basin Stormwater Plan.

**Fiscal Impact:** Project funding will be allocated within the approved 2019-2020 Biennial Budget via budget amendment.

**Alternative:** Do not accept award.

**Attachment:** Ordinance and Ecology Agreement WQC-2018-PoOrPW-00206.

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ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, ACCEPTING TERMS AND CONDITIONS ASSOCIATED WITH DEPARTMENT OF ECOLOGY (ECOLOGY) GRANT AGREEMENT NO. WQC-2018-PoOrPW-00206, THEREBY APPROVING CONTRACT NO. C016-19 WITH ECOLOGY FOR THE PORT ORCHARD DOWNTOWN BASIN STORMWATER PLAN; PROVIDING FOR SEVERABILITY AND PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, on October 21, 2016, the City's Public Works Department applied for Stormwater Financial Assistance Program (SFAP) funding through the Department of Ecology's Environmental Legacy Stewardship Account (ELSA) for the Port Orchard Downtown Basin Stormwater Plan (DBSP); and

**WHEREAS**, on February 23, 2018 Ecology notified the City that the SFAP Application was successful and that the City would be receiving grant funding for FY 2018-2021; and

**WHEREAS**, on September 25, 2018 the City received the Draft Agreement for the Project (WQC-2018-PoOrPW-00206) and provided comments back to Ecology; and

**WHEREAS**, on February 6, 2019, the City received the Final Agreement for the Project; and

**WHEREAS**, the City Council has determined it to be in the best interests of the City to enter into Contract No. C016-19 with Ecology for the DBSP; now, therefore,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**SECTION 1.** Contract No. C016-19 with the Department of Ecology for the Downtown Basin Stormwater Plan is hereby approved and the City agrees to be bound by the terms and conditions thereof in their entirety.

**SECTION 2. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**SECTION 3. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**SECTION 4. Effective Date.** This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 19<sup>th</sup> day of February 2019.

\_\_\_\_\_  
Robert Putaansuu, Mayor

ATTEST:

SPONSOR:

\_\_\_\_\_  
Brandy Rinearson, MMC, City Clerk

\_\_\_\_\_  
Cindy Lucarelli, Councilmember

APPROVED AS TO FORM:

\_\_\_\_\_  
Sharon Cates, City Attorney

PUBLISHED:

EFFECTIVE DATE:



## Agreement No. WQC-2018-PoOrPW-00206

### WATER QUALITY COMBINED FINANCIAL ASSISTANCE AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF PORT ORCHARD PUBLIC WORKS DEPT.

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and City of Port Orchard Public Works Dept., hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

#### GENERAL INFORMATION

Project Title:	Port Orchard Downtown Basin Stormwater Plan
Total Cost:	\$216,840.00
Total Eligible Cost:	\$216,840.00
Ecology Share:	\$216,840.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2018
The Expiration Date of this Agreement is no later than:	06/30/2021
Project Type:	Stormwater Facility

#### Project Short Description:

This project will develop a Downtown Basin Stormwater Plan for the City of Port Orchard. This project will provide a roadmap for implementing water quality treatment for total suspended solids (TSS) and will also reduce flows to Sinclair Inlet by increasing stormwater treatment, infiltration and/or providing stormwater detention. Additional benefits of this project include modernizing infrastructure and flow control in nearshore areas.

#### Project Long Description:

This project will develop a Downtown Basin Stormwater Plan to improve stormwater quality for Port Orchard’s downtown and shoreline areas. Port Orchard’s downtown basins drain approximately 74 acres of existing mixed development to Sinclair Inlet. The Plan will guide the investment in structural and non-structural best management practices (BMPs) to improve stormwater water quality draining from Port Orchard’s older developed commercial and residential areas. These areas currently lack any permanent runoff collection, conveyance, or treatment measures. The Plan will identify prioritized stormwater capital improvement projects

and stormwater-related activities that most efficiently provide flow control within the downtown basin and improve the long-term water quality of Sinclair Inlet.

The RECIPIENT will inventory stormwater management constraints and opportunities in the basin, analyze water quality data, use modeling tools to assess current water quality and flows at the downtown outfalls, and determine the most cost-effective alternative(s) to address the water quality deficiencies. Any essential data gaps in terms of stormwater infrastructure or water quality will be addressed. Plan sections will include an existing conditions assessment, plan objectives, basin opportunities and constraints, facility and activity alternatives, funding alternatives, alternatives evaluation, and plan recommendations and implementation.

Overall Goal:

This project will help protect and restore water quality in Washington state by reducing stormwater impacts from existing infrastructure and development.

**RECIPIENT INFORMATION**

Organization Name: City of Port Orchard Public Works Dept.

Federal Tax ID: 91-6001487

DUNS Number: 081932790

Mailing Address: 216 Prospect Street  
 Port Orchard, WA 98366

Physical Address: 216 Prospect Street  
 Port Orchard, Washington 98366

**Contacts**

<p><b>Project Manager</b></p>	<p>Zack Holt          Stormwater Program Manager</p> <p>216 Prospect St.          Port Orchard, Washington 98366          Email: zholt@cityofportorchard.us          Phone: (360) 876-4991</p>
<p><b>Billing Contact</b></p>	<p>Heidi Draper          Accounting Assistant III</p> <p>216 Prospect Street          Port Orchard, Washington 98366          Email: hdraper@cityofportorchard.us          Phone: (360) 874-5523</p>
<p><b>Authorized Signatory</b></p>	<p>Zack B Holt          Stormwater Program Manager</p> <p>216 Prospect St.          Port Orchard, Washington 98366          Email: zholt@cityofportorchard.us          Phone: (360) 876-4991</p>

**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
 Water Quality  
 PO BOX 47600  
 Olympia, WA 98504-7600

Physical Address: Water Quality  
 300 Desmond Drive SE  
 Lacey, WA 98503

**Contacts**

<b>Project Manager</b>	<p>Denise Di Santo</p> <p>3190 - 160th Ave SE          Bellevue, Washington 98008-5452          Email: ddis461@ecy.wa.gov          Phone: (425) 649-7025</p>
<b>Financial Manager</b>	<p>Sarah Zehner          Water Quality Financial Manager</p> <p>PO Box 47600          Olympia, Washington 98504-7600          Email: szeh461@ecy.wa.gov          Phone: (360) 407-7196</p>
<b>Technical Advisor</b>	<p>Amanda Heye</p> <p>PO Box 47600          Olympia, Washington 98504-7600          Email: ahey461@ecy.wa.gov          Phone: (360) 407-6457</p>



**AUTHORIZING SIGNATURES**

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

IN WITNESS WHEREOF: the parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Washington State  
Department of Ecology

City of Port Orchard Public Works Dept.

By:

By:

Heather R. Bartlett  
Water Quality  
Program Manager

Date

Zack B Holt  
Stormwater Program Manager

Date

Template Approved to Form by  
Attorney General's Office

Robert Putaansuu

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Mayor of Port Orchard

Date

Brandy Rinearson

---

City Clerk

Date

**SCOPE OF WORK**

Task Number: 1 **Task Cost: \$9,840.00**

Task Title: Project Administration/Management

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

C. The RECIPIENT shall manage the project. Efforts include, but are not limited to: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY's grant or loan administrative requirements.

Task Expected Outcome:

- \* Timely and complete submittal of requests for reimbursement, quarterly progress reports, and RECIPIENT closeout report.
- \* Properly maintained project documentation

Recipient Task Coordinator: Andrea Archer-Parsons, P.E.

**Project Administration/Management**

**Deliverables**

Number	Description	Due Date
1.1	Quarterly Progress Reports	
1.2	Recipient Closeout Report	
1.3	Project Outcome Summary Report	

**SCOPE OF WORK**

Task Number: 2 **Task Cost: \$36,500.00**

Task Title: Data Review, Gap Analysis, Field Investigation

Task Description:

The RECIPIENT shall ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

- A. The RECIPIENT will complete a data and information review and gap analysis.
- B. The RECIPIENT will complete supportive field investigation as determined necessary from the gap analysis to complete the data gap field inventory.

Task Goal Statement:

The RECIPIENT will complete all data review and data gap analysis and supporting field investigation tasks and respond to ECOLOGY comments in a timely manner. The RECIPIENT will compile existing data and fill data gaps needed to develop the analytical tools and models (GIS, water quality, and hydrologic/hydraulic) that will be used during alternative development and assessment work completed under subsequent tasks.

Task Expected Outcome:

The project will complete a preliminary characterization of the existing stormwater infrastructure and identify opportunities/constraints for stormwater activities and projects, fill key data gaps regarding the City’s existing stormwater system infrastructure, and ensure high quality is data used in the water quality and hydraulic models being developed.

Recipient Task Coordinator: Zack Holt

**Data Review, Gap Analysis, Field Investigation**

**Deliverables**

Number	Description	Due Date
2.1	Draft of Existing Conditions Technical Memorandum. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.2	Responses to Existing Conditions Technical Memorandum ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.3	Data Gap Field Inventory Map or Informational Tool in GIS format. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.4	Responses to Data Gap Field Inventory ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	

## SCOPE OF WORK

Task Number: 3 **Task Cost: \$42,000.00**

Task Title: Model Development and Application

### Task Description:

- A. The RECIPIENT will provide hydraulic model development and application for this project.
- B. The RECIPIENT will provide water quality model development and application for this project.
- C. The RECIPIENT will submit a QAPP to ECOLOGY for review and acceptance prior to modeling. The QAPP must include how the RECIPIENT will develop and apply the models to quantify the magnitude of flow and pollutant loading.
- D. Upon completion of hydraulic and water quality modeling runs, the RECIPIENT will provide to ECOLOGY:
  1. GIS compatible project area in Shapefile, Geodatabase file, or ECOLOGY-Approved Equivalent. The project area will include features to show treatment facilities and contributing areas.
  2. A technical memorandum to accompany the GIS file with explanation of the completed analysis.

### Task Goal Statement:

The RECIPIENT will develop water quality and hydraulic models and complete model runs to quantify the magnitude of pollutant loading and flows/water surface elevations at points of interest in the downtown basin. The RECIPIENT will communicate with ECOLOGY in a timely fashion and provide ECOLOGY with all requested project documentation.

### Task Expected Outcome:

The project will develop and use water quality and hydraulic models to determine the most effective infrastructure investments to improve water quality and alleviate localized flooding through flow control in the downtown stormwater basin. The model will be developed and used in accordance with the completed QAPP and outlined methodology.

Agreement No: WQC-2018-PoOrPW-00206  
 Project Title: Port Orchard Downtown Basin Stormwater Plan  
 Recipient Name: City of Port Orchard Public Works Dept

Recipient Task Coordinator: Zack Holt

**Model Development and Application**

**Deliverables**

Number	Description	Due Date
3.1	Modeling Quality Assurance Plan. Submit to ECOLOGY for review and acceptance. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.2	Responses to Modeling Quality Assurance Plan ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.3	Hydraulic Model (SWMM) and technical memorandum. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.4	Responses to Hydraulic Model (SWMM) and technical memorandum. ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.5	Water quality model (spreadsheet) and technical memorandum. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.6	Responses to water quality model and technical memorandum ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.7	Project Area Shapefile, Geodatabase file, or ECOLOGY-approved Equivalent. The project area will include features for treatment facilities and contributing areas. Upload to EAGL and notify ECOLOGY when upload is complete.	

## SCOPE OF WORK

Task Number: 4 **Task Cost: \$128,500.00**

Task Title: Downtown Basin Stormwater Plan

### Task Description:

A. The RECIPIENT will complete the draft and final Downtown Basin Stormwater Plan. At a minimum the plan will include the following elements or their equivalent:

1. Executive Summary
2. Introduction/Background
3. Existing Conditions Assessment
4. Technical Memorandum for model development
5. Stormwater Management Options (SMO) List and Metrics Matrix
6. Description of Stakeholder Engagement
7. Final Priority SMO List
8. Schedule for Implementation
9. Estimation of Yearly Budget Needs and Identification of Funding Sources
10. Description of Adaptive Management and Plan Update Process

B. Present Plan to appropriate decision makers and stakeholders.

### Task Goal Statement:

The RECIPIENT will completion of the Downtown Basin Stormwater Plan in accordance with ECOLOGY-accepted plans and specifications.

### Task Expected Outcome:

The project will provide a completed Downtown Basin Stormwater Plan that will provide a roadmap for implementing water quality BMPs and activities to improve stormwater quality entering Sinclair Inlet and water quality benefits including flow control and reductions in total suspended solids (TSS).

Recipient Task Coordinator: Zack Holt

**Downtown Basin Stormwater Plan**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
4.1	Draft Downtown Basin Stormwater Plan. Upload to EAGL and notify ECOLOGY when upload is complete.	
4.2	Responses to Draft Downtown Basin Stormwater Plan ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
4.3	Final Downtown Basin Stormwater Plan uploaded to EAGL. Upload to EAGL and notify ECOLOGY when upload is complete.	
4.4	Responses to Final Downtown Basin Stormwater Plan ECOLOGY comments. Upload to EAGL and notify ECOLOGY when upload is complete.	



**BUDGET**

**Funding Distribution EG190320**

**NOTE:** The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.

Funding Title: SFAP Green Retrofit Incentive Funding Type: Grant  
 Funding Effective Date: 07/01/2018 Funding Expiration Date: 06/30/2021

Funding Source:

Title: SFAP-SFY18  
 Type: State  
 Funding Source %: 100%  
 Description: Environmental Legacy Stewardship Account (ELSA) - State

Approved Indirect Costs Rate: Approved State Indirect Rate: 0%  
 Recipient Match %: 0%  
 InKind Interlocal Allowed: No  
 InKind Other Allowed: No  
 Is this Funding Distribution used to match a federal grant? No

SFAP Green Retrofit Incentive	Task Total
Project Administration/Management	\$ 9,840.00
Data Review, Gap Analysis, Field Investigation	\$ 36,500.00
Model Development and Application	\$ 42,000.00
Downtown Basin Stormwater Plan	\$ 128,500.00

**Total: \$ 216,840.00**

**Funding Distribution Summary**

**Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
SFAP Green Retrofit Incentive	0.00 %	\$ 0.00	\$ 216,840.00	\$ 216,840.00
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 216,840.00</b>	<b>\$ 216,840.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

**SECTION 1: DEFINITIONS**

Unless otherwise provided, the following terms will have the respective meanings for all purposes of this agreement:

“Administration Charge” means a charge established in accordance with Chapter 90.50A RCW and Chapter 173-98 WAC, to be used to pay Ecology’s cost to administer the State Revolving Fund by placing a percentage of the interest earned in an Administrative Charge Account.

“Administrative Requirements” means the effective edition of ECOLOGY's Administrative Requirements for Recipients of Ecology Grants and Loans at the signing of this agreement.

“Annual Debt Service” for any calendar year means for any applicable bonds or loans including the loan, all interest plus all principal due on such bonds or loans in such year.

“Average Annual Debt Service” means, at the time of calculation, the sum of the Annual Debt Service for the remaining years of the loan to the last scheduled maturity of the loan divided by the number of those years.

“Acquisition” means the purchase or receipt of a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

“Centennial Clean Water Program” means the state program funded from various state sources.

“Contract Documents” means the contract between the RECIPIENT and the construction contractor for construction of the project.

“Cost Effective Analysis” means a comparison of the relative cost-efficiencies of two or more potential ways of solving a water quality problem as described in Chapter 173-98-730 WAC.

“Defease” or “Defeasance” means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

“Effective Date” means the earliest date on which eligible costs may be incurred.

“Effective Interest Rate” means the total interest rate established by Ecology that includes the Administrative Charge.

“Estimated Loan Amount” means the initial amount of funds loaned to the RECIPIENT.

“Estimated Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Estimated Loan Amount.

“Equivalency” means projects designated by ECOLOGY to meet additional federal requirements.

“Expiration Date” means the latest date on which eligible costs may be incurred.

“Final Accrued Interest” means the interest accrued beginning with the first disbursement of funds to the RECIPIENT through such time as the loan is officially closed out and a final loan repayment schedule is issued.

“Final Loan Amount” means all principal of and interest on the loan from the Project Start Date through the Project Completion Date.

“Final Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Final Loan Amount.

“Forgivable Principal” means the portion of a loan that is not required to be paid back by the borrower.

“General Obligation Debt” means an obligation of the RECIPIENT secured by annual ad valorem taxes levied by the RECIPIENT and by the full faith, credit, and resources of the RECIPIENT.

“General Obligation Payable from Special Assessments Debt” means an obligation of the RECIPIENT secured by a valid general obligation of the Recipient payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

“Gross Revenue” means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) Utility Local Improvement Districts (ULID) Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any investments in a trust, Defeasance, or escrow fund created to Defeasance or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

“Guidelines” means the ECOLOGY's Funding Guidelines that that correlate to the State Fiscal Year in which the project is funded.

“Initiation of Operation Date” means the actual date the Water Pollution Control Facility financed with proceeds of the loan begins to operate for its intended purpose.

“Loan” means the Washington State Water Pollution Control Revolving Fund Loan or Centennial Clean Water Fund (Centennial) Loan made pursuant to this loan agreement.

“Loan Amount” means either an Estimated Loan Amount or a Final Loan Amount, as applicable.

“Loan Fund” means the special fund created by the RECIPIENT for the repayment of the principal of and interest on the loan.

“Loan Security” means the mechanism by which the RECIPIENT pledges to repay the loan.

“Loan Term” means the repayment period of the loan.

“Maintenance and Operation Expense” means all reasonable expenses incurred by the RECIPIENT in causing the Utility to be operated and maintained in good repair, working order, and condition including payments to other parties, but will not include any depreciation or RECIPIENT levied taxes or payments to the RECIPIENT in lieu of taxes.

“Net Revenue” means the Gross Revenue less the Maintenance and Operation Expense.

“Original Engineer’s Estimate” means the engineer’s estimate of construction costs included with bid documents.

“Principal and Interest Account” means, for a loan that constitutes Revenue-Secured Debt, the account created in the loan fund to be first used to repay the principal of and interest on the loan.

“Project” means the project described in this agreement.

“Project Completion Date” means the date specified in the agreement on which the Scope of Work will be fully completed. This term is only used in loan agreements.

“Project Schedule” means that schedule for the project specified in the agreement.

“Revenue-Secured Debt” means an obligation of the RECIPIENT secured by a pledge of the revenue of a utility and one not a general obligation of the RECIPIENT.

“Reserve Account” means, for a loan that constitutes a Revenue Secured Debt and if specifically identified as a term and condition of the funding agreement, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.

“Risk-Based Determination” means an approach to sub-recipient monitoring and oversight based on risk factors associated to a RECIPIENT or project.

“Scope of Work” means the tasks and activities constituting the project.

“Section 319” means the section of the Clean Water Act that provides funding to address nonpoint sources of water pollution.

“Senior Lien Obligations” means all revenue bonds and other obligations of the RECIPIENT outstanding on the date of execution of this loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or

issued after the date of execution of this loan agreement having a claim or lien on the Gross Revenue of the Utility prior and superior to the claim or lien of the loan, subject only to Maintenance and Operation Expense.

“State Water Pollution Control Revolving Fund (Revolving Fund)” means the water pollution control revolving fund established by Chapter 90.50A.020 RCW.

“Termination Date” means the effective date of ECOLOGY’s termination of the agreement.

“Termination Payment Date” means the date on which the RECIPIENT is required to repay to ECOLOGY any outstanding balance of the loan and all accrued interest.

“Total Eligible Project Cost” means the sum of all costs associated with a water quality project that have been determined to be eligible for ECOLOGY grant or loan funding, including any required recipient match.

“Total Project Cost” means the sum of all costs associated with a water quality project, including costs that are not eligible for ECOLOGY grant or loan funding.

“ULID” means any utility local improvement district of the RECIPIENT created for the acquisition or construction of additions to and extensions and betterments of the Utility.

“ULID Assessments” means all assessments levied and collected in any ULID. Such assessments are pledged to be paid into the Loan Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments will include principal installments and any interest or penalties which may be due.

“Utility” means the sewer system, stormwater system, or the combined water and sewer system of the RECIPIENT, the Net Revenue of which is pledged to pay and secure the loan.

## SECTION 2: THE FOLLOWING CONDITIONS APPLY TO ALL RECIPIENTS OF WATER QUALITY COMBINED FINANCIAL ASSISTANCE FUNDING.

The Water Quality Financial Assistance Funding Guidelines are included in this agreement by reference and are available on ECOLOGY’s Water Quality Program website.

**A. Architectural and Engineering Services:** The RECIPIENT certifies by signing this agreement that the requirements of Chapter 39.80 RCW, “Contracts for Architectural and Engineering Services,” have been, or shall be, met in procuring qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final architectural/engineering services contract and submit a copy of the contract to ECOLOGY.

**B. Acquisition:** The following provisions shall be in force only if the project described in this agreement is an acquisition project:

a. **Evidence of Land Value and Title.** The RECIPIENT shall submit documentation of the cost of the property rights and the type of ownership interest that has been acquired.

b. **Legal Description of Real Property Rights Acquired.** The legal description of the real property rights purchased

with funding assistance provided through this agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the agreement before final payment.

c. Conveyance of Rights to the State of Washington. Upon purchase of real property rights (both fee simple and lesser interests), the RECIPIENT shall execute the document necessary to convey certain rights and responsibilities to ECOLOGY, on behalf of the State of Washington. The documents required will depend on the project type, the real property rights being acquired, and whether or not those rights are being acquired in perpetuity (see options below). The RECIPIENT shall use language provided by ECOLOGY, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to ECOLOGY.

Documentation Options:

1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. RECIPIENTS shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the RECIPIENT has acquired a perpetual easement for public purposes. The RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the deed of right.

2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to ECOLOGY. The RECIPIENT shall use this document when an easement or lease is being acquired for water quality and habitat conservation. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.

3. Easements and Leases. The RECIPIENT may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; therefore, the RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the easement or lease.

d. Real Property Acquisition and Relocation Assistance.

1. Federal Acquisition Policies. See Section 4 of this agreement for requirements specific to Section 319 and SRF funded projects.

2. State Acquisition Policies. When state funds are part of this agreement, the RECIPIENT agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.

3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the RECIPIENT agrees to provide any housing and relocation assistance required.

e. Hazardous Substances.

1. Certification. The RECIPIENT shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(10), and certify:

i. No hazardous substances were found on the site, or

ii. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site is deemed "clean."

2. Responsibility. Nothing in this provision alters the RECIPIENT's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.

3. Hold Harmless. The RECIPIENT will defend, protect and hold harmless ECOLOGY and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the RECIPIENT is acquiring.

f. Restriction On Conversion Of Real Property And/Or Facilities To Other Uses

The RECIPIENT shall not at any time convert any real property (including any interest therein) or facility acquired, developed, maintained, renovated, and/or restored pursuant to this agreement to uses other than those purposes for which funds were approved without prior approval of ECOLOGY. For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

C. Best Management Practices (BMP) Implementation: If the RECIPIENT installs BMPs that are not approved by ECOLOGY prior to installation, the RECIPIENT assumes the risk that part or all of the reimbursement for that activity may be delayed or ineligible. For more details regarding BMP Implementation, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY's Water Quality Program funding website.

D. Electronic Fund Transfers: The RECIPIENT must register as a statewide vendor in order to receive payment reimbursement. Washington State's Department of Enterprise Services (DES) issues all payments. DES maintains a central vendor file for Washington State agency use to process vendor payments. The RECIPIENT can complete the registration process online at:

<http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. This registration process allows the RECIPIENT to sign up for direct deposit payments, also known as electronic fund transfers (EFT). If the RECIPIENT has questions about the vendor registration process or setting up direct deposit payments contact DES Payee Help Desk at (360) 407-8180 or [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.wa.gov).

E. Equipment Purchase: Equipment purchases over \$5,000 and not included in the scope of work or the Ecology approved construction plans and specifications, must be pre-approved by ECOLOGY's project manager before purchase. All equipment purchases over \$5,000 and not included in a contract for work being completed on the funded project, must also be reported on the Equipment Purchase Report in EAGL.

F. Funding Recognition: The RECIPIENT must inform the public about ECOLOGY or any EPA (see Section 3.B for Section 319 funded or Section 5.E for SRF funded projects) funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from ECOLOGY's Financial Manager upon request.

Agreement No: WQC-2018-PoOrPW-00206  
Project Title: Port Orchard Downtown Basin Stormwater Plan  
Recipient Name: City of Port Orchard Public Works Dept.

G. Growth Management Planning: The RECIPIENT certifies by signing this agreement that it is in compliance with the requirements of Chapter 36.70A RCW, "Growth Management Planning by Selected Counties and Cities." If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT shall notify ECOLOGY in writing of this change within 30 days.

H. Interlocal: The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements necessary for the project are, or shall be, consistent with the terms of this agreement and Chapter 39.34 RCW, "Interlocal Cooperation Act." The RECIPIENT shall submit a copy of each interlocal agreement necessary for the project to ECOLOGY upon request.

I. Lobbying and Litigation: Costs incurred for the purposes of lobbying or litigation are not eligible for funding under this agreement.

J. Post Project Assessment Survey: The RECIPIENT agrees to participate in a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project approximately three years after project completion. A representative from ECOLOGY's Water Quality Program may contact the RECIPIENT to request this data. ECOLOGY may also conduct site interviews and inspections, and may otherwise evaluate the project, as part of this assessment.

K. Project Status Evaluation: ECOLOGY may evaluate the status of this project 18 months from the effective date of this agreement. ECOLOGY's Project Manager and Financial Manager will meet with the RECIPIENT to review spending trends, completion of outcome measures, and overall project administration and performance. If the RECIPIENT fails to make satisfactory progress toward achieving project outcomes, ECOLOGY may change the scope of work, reduce grant funds, or increase oversight measures.

L. Technical Assistance: Technical assistance for agriculture activities provided under the terms of this agreement shall be consistent with the current U.S. Natural Resource Conservation Service ("NRCS") Field Office Technical Guide for Washington State and specific requirements outlined in the Water Quality Funding Guidelines. Technical assistance, proposed practices, or project designs that do not meet these standards may be eligible if approved in writing by ECOLOGY.

### SECTION 3: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND CENTENNIAL CLEAN WATER FUNDED PROJECTS BEING USED TO MATCH SECTION 319 FUNDS.

The RECIPIENT must submit the following documents to ECOLOGY before this agreement is signed by ECOLOGY:

1. Federal Funding Accountability and Transparency Act (FFATA) Form, available on the Water Quality Program website.
2. "Section 319 Initial Data Reporting" form in EAGL.

A. Data Reporting: The RECIPIENT must complete the "Section 319 Initial Data Reporting" form in EAGL before this agreement can be signed by Ecology. This form is used to gather general information about the project for EPA.

B. Funding Recognition and Outreach: In addition to Section 2.F of these Terms and Conditions, the RECIPIENT shall provide signage that informs the public that the project is funded by EPA. The signage shall contain the EPA



logo and follow usage requirements available at <http://www2.epa.gov/stylebook/using-epa-seal-and-logo>. To obtain the appropriate EPA logo or seal graphic file, the RECIPIENT may send a request to their Ecology Financial Manager.

To increase public awareness of projects serving communities where English is not the predominant language, RECIPIENTS are encouraged to provide their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

The RECIPIENT shall use the following paragraph in all reports, documents, and signage developed under this agreement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency under an assistance agreement to the Washington State Department of Ecology. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the mention of trade names or commercial products constitute endorsement or recommendation for use.”

C. Load Reduction Reporting: The RECIPIENT shall complete the “Section 319 Annual Load Reduction Reporting” form in EAGL by January 15 of each year and at project close-out. ECOLOGY may hold reimbursements until the RECIPIENT has completed the form. This form is used to gather information on best management practices (BMPs) installed and associated pollutant load reductions that were funded as a part of this project.

D. Time Extension: The RECIPIENT may request a one-time extension for up to 12 months. However, the time extension cannot exceed the time limitation established in EPA’s assistance agreement. In the event a time extension is requested and approved by ECOLOGY, the RECIPIENT must complete all eligible work performed under this agreement by the expiration date.

#### SECTION 4: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

A. Accounting Standards: The RECIPIENT shall maintain accurate records and accounts for the project (PROJECT Records) in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets or in accordance with the standards in Chapter 43.09.200 RCW “Local Government Accounting – Uniform System of Accounting”.

B. Acquisitions: Section 319 and SRF Equivalency project RECIPIENTS shall comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)-Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.

C. Audit Requirements: In accordance with 2 CFR 200.501(a), the RECIPIENT agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year. The RECIPIENT must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse’s Internet Data Entry System available at: <https://harvester.census.gov/fac/collect/ddeindex.html>. For complete information on how to accomplish the single

audit submission, go to the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>.

D. Archaeological Resources and Historic Properties (Section 106): The RECIPIENT shall comply with the additional requirements under section 106 of the National Historic Preservation Act (NHPA, 36 CFR 800).

E. Data Universal Numbering System (DUNS) and Central Contractor Registration (CCR) Requirements: RECIPIENTs shall have a DUNS number. Unless exempted from this requirement under 2 CFR 25.110, the RECIPIENT must ensure that their organization's information in the System for Award Management (SAM), <https://www.sam.gov>, is kept current through project closeout. This requires that the RECIPIENT reviews and updates the information at least annually after the initial registration, and more frequently if information changes.

F. Disadvantaged Business Enterprise (DBE): General Compliance, 40 CFR, Part 33. The RECIPIENT agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises (MBE/WBE) 40CFR, Part 33 in procurement under this agreement.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C. The RECIPIENT agrees to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under this agreement. Records documenting compliance with the following six good faith efforts shall be retained:

- 1) Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government RECIPIENTs, this shall include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- 2) Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- 3) Consider, in the contracting process, whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State, and Local Government RECIPIENTs, this shall include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- 4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6) If the prime contractor awards subcontracts, require the prime contractor to take the five good faith efforts steps in paragraphs 1 through 5 above.

The RECIPIENT agrees to submit ECOLOGY's Contractor Participation Report Form D with each payment request.

Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract

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administration provisions of 40 CFR, Section 33.302.

**Non-discrimination Provision.** The RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this agreement. The RECIPIENT shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the RECIPIENT to carry out these requirements is a material breach of this agreement which may result in the termination of this contract or other legally available remedies.

This does not preclude the RECIPIENT from enacting broader nondiscrimination protections.

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including but not limited to, Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the RECIPIENT's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this agreement may be rescinded, canceled, or terminated in whole or in part and the RECIPIENT may be declared ineligible for further funding from ECOLOGY. The RECIPIENT shall, however, be given a reasonable time in which to cure this noncompliance.

The RECIPIENT shall include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services pertaining to this agreement.

"The Contractor will not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract or other legally available remedies."

**Bidder List, 40 CFR, Section 33.501(b) and (c).** The RECIPIENT agrees to create and maintain a bidders list. The bidders list shall include the following information for all firms that bid or quote on prime contracts, or bid or quote subcontracts, including both MBE/WBEs and non-MBE/WBEs.

1. Entity's name with point of contact
2. Entity's mailing address, telephone number, and e-mail address
3. The procurement on which the entity bid or quoted, and when
4. Entity's status as an MBE/WBE or non-MBE/WBE

**G. Electronic and information Technology (EIT) Accessibility:** RECIPIENTs shall ensure that loan funds provided under this agreement for costs in the development or purchase of EIT systems or products provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology as per Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7. Systems or products funded under this agreement must be designed to meet the diverse needs of users without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology.

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H. Hotel-Motel Fire Safety Act: The RECIPIENT shall ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (15 USC 2225a, PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act. Pursuant to 15 USC 2225a.

I. Trafficking In Persons: The RECIPIENT and RECIPIENT employees that are private entities shall not engage in forms of trafficking in persons during the period of time this agreement is effective. This includes, but is not limited to, the procurement of a commercial sex act or forced labor. The RECIPIENT shall notify ECOLOGY immediately of any information received from any source alleging a violation under this provision.

#### SECTION 5: THE FOLLOWING CONDITIONS APPLY TO STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

The RECIPIENT must submit the following documents/forms to ECOLOGY before this agreement is signed by ECOLOGY:

1. Financial Capability Assessment Documentation
2. Opinion of RECIPIENT's Legal Council
3. Authorizing Ordinance or Resolution
4. Federal Funding Accountability and Transparency Act (FFATA) Form
5. CWSRF Federal Reporting Information form available in EAGL
6. Fiscal Sustainability Plan Certification Form (only required if the project includes construction of a wastewater or stormwater facility construction)
7. Cost and Effectiveness Analysis Certification Form

A. Alteration and Eligibility of Project: During the term of this agreement, the RECIPIENT (1) shall not materially alter the design or structural character of the project without the prior written approval of ECOLOGY and (2) shall take no action which would adversely affect the eligibility of the project as defined by applicable funding program rules and state statutes, or which would cause a violation of any covenant, condition, or provision herein.

B. American Iron and Steel (Buy American): This loan provision applies to projects for the construction, alteration, maintenance, or repair of a "treatment works" as defined in the Federal Water Pollution Control Act (33 USC 1381 et seq.) The RECIPIENT shall ensure that all iron and steel products used in the project are produced in the United States. Iron and Steel products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The RECIPIENT may request waiver from this requirement from the Administrator of the Environmental Protection Agency. The RECIPIENT must coordinate all waiver requests through ECOLOGY. This provision does not apply if the engineering plans and specifications for the project were approved by ECOLOGY prior to January 17, 2014. ECOLOGY reserves the right to request documentation of RECIPIENT'S compliance with this provision.

C. Authority of RECIPIENT: This agreement is authorized by the Constitution and laws of the state of Washington, including the RECIPIENT's authority, and by the RECIPIENT pursuant to the authorizing ordinance or resolution. The RECIPIENT shall submit a copy of the authorizing ordinance or resolution to the ECOLOGY Financial Manager

before this agreement shall be signed by ECOLOGY.

D. Equivalency Projects: (For designated equivalency projects only)

1. The RECIPIENT must procure architectural and engineering services in accordance with the federal requirements in Chapter 11 of Title 40, U.S.C. (see [www.gpo.gov/fdsys/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleI-chap11.pdf](http://www.gpo.gov/fdsys/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleI-chap11.pdf)).

E. Fiscal Sustainability Plan Certification: The RECIPIENT shall submit a completed Fiscal Sustainability Plan Certification before this agreement is signed by ECOLOGY. The Fiscal Sustainability Plan Certification is available from the ECOLOGY Financial Manager or on the Water Quality Program website.

F. Funding Recognition and Outreach: In addition to Section 2.F of these Terms and Conditions, the

RECIPIENT agrees to comply with the EPA SRF Signage Guidance in order to enhance public awareness of EPA assistance agreements nationwide. The signage guidance can be found at:  
<http://www.ecy.wa.gov/programs/wq/funding/FundPrgms/CWSRF/SignageGuidanceJune2015.pdf>.

G. Insurance: The RECIPIENT shall at all times carry fire and extended insurance coverage, public liability, and property damage, and such other forms of insurance with responsible insurers and policies payable to the RECIPIENT on such of the buildings, equipment, works, plants, facilities, and properties of the Utility as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, and against such claims for damages as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, or it shall self-insure or participate in an insurance pool or pools with reserves adequate, in the reasonable judgment of the RECIPIENT, to protect it against loss.

H. Litigation Authority: No litigation is now pending, or to the RECIPIENT's knowledge, threatened, seeking to restrain, or enjoin:

- (i) the execution of this agreement; or
- (ii) the fixing or collection of the revenues, rates, and charges or the formation of the ULID and the levy and collection of ULID Assessments therein pledged to pay the principal of and interest on the loan (for revenue secured lien obligations); or
- (iii) the levy and collection of the taxes pledged to pay the principal of and interest on the loan (for general obligation-secured loans and general obligation payable from special-assessment-secured loans); or
- (iv) in any manner questioning the proceedings and authority under which the agreement, the loan, or the project are authorized. Neither the corporate existence, or boundaries of the RECIPIENT nor the title of its present officers to their respective offices is being contested. No authority or proceeding for the execution of this agreement has been repealed, revoked, or rescinded.

I. Loan Interest Rate and Terms: This loan agreement shall remain in effect until the date of final repayment of the loan, unless terminated earlier according to the provisions herein.

When the Project Completion Date has occurred, ECOLOGY and the RECIPIENT shall execute an amendment to this

loan agreement which details the final loan amount (Final Loan Amount), and ECOLOGY shall prepare a final loan repayment schedule. The Final Loan Amount shall be the combined total of actual disbursements made on the loan and all accrued interest to the computation date.

The Estimated Loan Amount and the Final Loan Amount (in either case, as applicable, a "Loan Amount") shall bear interest based on the interest rate identified in this agreement as the "Effective Interest Rate," per annum, calculated on the basis of a 365 day year. Interest on the Estimated Loan Amount shall accrue from and be compounded monthly based on the date that each payment is mailed to the RECIPIENT. The Final Loan Amount shall be repaid in equal installments, semiannually, over the term of this loan "Loan Term" as outlined in this agreement.

#### J. Loan Repayment:

##### Sources of Loan Repayment

1. Nature of RECIPIENT's Obligation. The obligation of the RECIPIENT to repay the loan from the sources identified below and to perform and observe all other agreements and obligations on its part, contained herein, shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind. To secure the repayment of the loan from ECOLOGY, the RECIPIENT agrees to comply with all of the covenants, agreements, and attachments contained herein.

2. For General Obligation. This loan is a General Obligation Debt of the RECIPIENT.

3. For General Obligation Payable from Special Assessments. This loan is a General Obligation Debt of the RECIPIENT payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

4. For Revenue-Secured: Lien Position. This loan is a Revenue-Secured Debt of the RECIPIENT's Utility. This loan shall constitute a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon such Net Revenue of any Senior Lien Obligations.

In addition, if this loan is also secured by Utility Local Improvement Districts (ULID) Assessments, this loan shall constitute a lien upon ULID Assessments in the ULID prior and superior to any other charges whatsoever.

5. Other Sources of Repayment. The RECIPIENT may repay any portion of the loan from any funds legally available to it.

6. Defeasance of the Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT shall not be entitled to, and shall not affect, an economic Defeasance of the loan. The RECIPIENT shall not advance refund the loan.

If the RECIPIENT defeases or advance refunds the loan, it shall be required to use the proceeds thereof immediately upon their receipt, together with other available RECIPIENT funds, to repay both of the following:

(i) The Loan Amount with interest

(ii) Any other obligations of the RECIPIENT to ECOLOGY under this agreement, unless in its sole discretion ECOLOGY finds that repayment from those additional sources would not be in the public interest.

Failure to repay the Loan Amount plus interest within the time specified in ECOLOGY's notice to make such repayment shall incur Late Charges and shall be treated as a Loan Default.

7. Refinancing or Early Repayment of the Project. So long as ECOLOGY shall hold this loan, the RECIPIENT shall give ECOLOGY thirty days written notice if the RECIPIENT intends to refinance or make early repayment of the loan.

#### Method and Conditions on Repayments

1. Semiannual Payments. Notwithstanding any other provision of this agreement, the first semiannual payment of principal and interest on this loan shall be due and payable no later than one year after the project completion date or initiation of operation date, whichever comes first.

Thereafter, equal payments shall be due every six months.

If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington State agencies, the payment shall be due on the next business day for Washington State agencies.

Payments shall be mailed to:

Department of Ecology  
Cashiering Unit  
P.O. Box 47611  
Olympia WA 98504-7611

In lieu of mailing payments, electronic fund transfers can be arranged by working with ECOLOGY's Financial Manager.

No change to the amount of the semiannual principal and interest payments shall be made without a mutually signed amendment to this agreement. The RECIPIENT shall continue to make semiannual payments based on this agreement until the amendment is effective, at which time the RECIPIENT's payments shall be made pursuant to the amended agreement.

2. Late Charges. If any amount of the Final Loan Amount or any other amount owed to ECOLOGY pursuant to this agreement remains unpaid after it becomes due and payable, ECOLOGY may assess a late charge. The late charge shall be one percent per month on the past due amount starting on the date the debt becomes past due and until it is paid in full.

3. Repayment Limitations. Repayment of the loan is subject to the following additional limitations, among others: those on defeasance, refinancing and advance refunding, termination, and default and recovery of payments.

4. Prepayment of Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT may prepay the entire unpaid principal balance of and accrued interest on the loan or any portion of the remaining unpaid principal balance of the Loan Amount. Any prepayments on the loan shall be applied first to any accrued interest due and then to the outstanding principal balance of the Loan Amount. If the RECIPIENT elects to prepay the entire remaining unpaid balance and accrued interest, the RECIPIENT shall first contact ECOLOGY's Revenue/Receivable Manager of the

Fiscal Office.

#### K. Loan Security

**Due Regard:** For loans secured with a Revenue Obligation: The RECIPIENT shall exercise due regard for Maintenance and Operation Expense and the debt service requirements of the Senior Lien Obligations and any other outstanding obligations pledging the Gross Revenue of the Utility, and it has not obligated itself to set aside and pay into the loan Fund a greater amount of the Gross Revenue of the Utility than, in its judgment, shall be available over and above such Maintenance and Operation Expense and those debt service requirements.

Where collecting adequate gross utility revenue requires connecting additional users, the RECIPIENT shall require the sewer system connections necessary to meet debt obligations and expected operation and maintenance expenses.

**Levy and Collection of Taxes (if used to secure the repayment of the loan):** For so long as the loan is outstanding, the RECIPIENT irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors on all of the taxable property within the boundaries of the RECIPIENT in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the principal of and interest on the loan, and the full faith, credit and resources of the RECIPIENT are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

**Not an Excess Indebtedness:** For loans secured with a general obligation pledge or a general obligation pledge on special assessments: The RECIPIENT agrees that this agreement and the loan to be made do not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations.

**Pledge of Net Revenue and ULID Assessments in the ULID (if used to secure the repayment of this loan):** For so long as the loan is outstanding, the RECIPIENT irrevocably pledges the Net Revenue of the Utility, including applicable ULID Assessments in the ULID, to pay when due the principal of and interest on the loan.

**Utility Local Improvement District (ULID) Assessment Collection (if used to secure the repayment of the loan):** All ULID Assessments in the ULID shall be paid into the Loan Fund and used to pay the principal of and interest on the loan.

**L. Maintenance and Operation of a Funded Utility:** The RECIPIENT shall, at all times, maintain and keep the funded Utility in good repair, working order, and condition.

**M. Opinion of RECIPIENT's Legal Counsel:** The RECIPIENT must submit an "Opinion of Legal Counsel to the RECIPIENT" to ECOLOGY before this agreement will be signed. ECOLOGY will provide the form.

**N. Prevailing Wage (Davis-Bacon Act):** The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out, in whole or in part, with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

The RECIPIENT shall obtain the wage determination for the area in which the project is located prior to issuing



requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation). These wage determinations shall be incorporated into solicitations and any subsequent contracts. The RECIPIENT shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and sub contracts in excess of \$2,000. The RECIPIENT shall maintain records sufficient to document compliance with the Davis-Bacon Act, and make such records available for review upon request.

The RECIPIENT also agrees, by signing this agreement, to comply with State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable. Compliance may include the determination whether the project involves “public work” and inclusion of the applicable prevailing wage rates in the bid specifications and contracts. The RECIPIENT agrees to maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and make such records available for review upon request.

O. Progress Reports: RECIPIENTS funded with State Revolving Fund Loan or Forgivable Principal shall include the following verification statement in the “General Comments” text box of each progress report.

“We verify that we are in compliance with all the requirements as outlined in our funding agreement(s) with the Department of Ecology. This includes but is not limited to:

- The Davis-Bacon Act, 29 CFR (If applicable)
- Washington State Prevailing Wage Rate, Chapter 39.12 RCW (Pertaining to all recipients)
- The Disadvantaged Business Enterprise (DBE), 40 CFR, Part 33”

P. Representations and Warranties: The RECIPIENT represents and warrants to ECOLOGY as follows:

Application: Material Information. All information and materials submitted by the RECIPIENT to ECOLOGY in connection with its loan application were, when made, and are, as of the date the RECIPIENT signs this agreement, true and correct. There is no material adverse information relating to the RECIPIENT, the project, the loan, or this agreement known to the RECIPIENT, which has not been disclosed in writing to ECOLOGY.

Existence; Authority. It is a duly formed and legally existing municipal corporation or political subdivision of the state of Washington or a federally recognized Indian Tribe. It has full corporate power and authority to execute, deliver, and perform all of its obligations under this agreement and to undertake the project identified herein.

Certification. Each payment request shall constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this loan agreement remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the project or to repay the principal of or interest on the loan, have occurred since the date of this loan agreement. Any changes in the RECIPIENT’s financial condition shall be disclosed in writing to ECOLOGY by the RECIPIENT in its request for payment.

Q. Sale or Disposition of Funded Utility: The RECIPIENT shall not sell, transfer, or otherwise dispose of any of the works, plant, properties, facilities, or other part of the funded Utility or any real or personal property comprising a part of the funded Utility unless:

1. The facilities or property transferred are not material to the operation of the funded Utility, or have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the funded Utility or are no longer necessary, material, or useful to the operation of the funded Utility; or

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2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three percent of the total assets of the funded Utility; or

3. The RECIPIENT receives from the transferee an amount equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the funded Utility from the portion of the funded Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.

4. Expressed written agreement by the DEPARTMENT.

The proceeds of any transfer under this paragraph must be used (1) to redeem promptly, or irrevocably set aside for the redemption of, Senior Lien Obligations and to redeem promptly the loan, and (2) to provide for part of the cost of additions to and betterments and extensions of the Utility.

R. Sewer-Use Ordinance or Resolution for Funded Wastewater Facility Projects: If not already in existence, the RECIPIENT shall adopt and shall enforce a sewer-use ordinance or resolution. Such ordinance or resolution shall be submitted to ECOLOGY upon request.

The sewer use ordinance must include provisions to:

- 1) Prohibit the introduction of toxic or hazardous wastes into the RECIPIENT's sewer system.
- 2) Prohibit inflow of stormwater into separated sewer systems.
- 3) Require that new sewers and connections be properly designed and constructed.

S. Termination and Default:

Termination and Default Events

1. For Insufficient ECOLOGY or RECIPIENT Funds. ECOLOGY may terminate this loan agreement for insufficient ECOLOGY or RECIPIENT funds.

2. For Failure to Commence Work. ECOLOGY may terminate this loan agreement for failure of the RECIPIENT to commence project work.

3. Past Due Payments. The RECIPIENT shall be in default of its obligations under this loan agreement when any loan repayment becomes 60 days past due.

4. Other Cause. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all of its obligations under this loan agreement. The RECIPIENT shall be in default of its obligations under this loan agreement if, in the opinion of ECOLOGY, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this loan agreement.

Procedures for Termination. If this loan agreement is terminated prior to project completion, ECOLOGY shall provide

to the RECIPIENT a written notice of termination at least five working days prior to the effective date of termination (the "Termination Date"). The written notice of termination by the ECOLOGY shall specify the Termination Date and, when applicable, the date by which the RECIPIENT must repay any outstanding balance of the loan and all accrued interest (the "Termination Payment Date").

#### Termination and Default Remedies

**No Further Payments.** On and after the Termination Date, or in the event of a default event, ECOLOGY may, at its sole discretion, withdraw the loan and make no further payments under this agreement.

**Repayment Demand.** In response to an ECOLOGY initiated termination event, or in response to a loan default event, ECOLOGY may at its sole discretion demand that the RECIPIENT repay the outstanding balance of the Loan Amount and all accrued interest.

**Interest after Repayment Demand.** From the time that ECOLOGY demands repayment of funds, amounts owed by the RECIPIENT to ECOLOGY shall accrue additional interest at the rate of one percent per month, or fraction thereof.

**Accelerate Repayments.** In the event of a default, ECOLOGY may, in its sole discretion, declare the principal of and interest on the loan immediately due and payable, subject to the prior lien and charge of any outstanding Senior Lien Obligation upon the Net Revenue. That is, the loan is not subject to acceleration so long as any Senior Lien Obligations are outstanding. Repayments not made immediately upon such acceleration will incur Late Charges.

**Late Charges.** All amounts due to ECOLOGY and not paid by the RECIPIENT by the Termination Payment Date or after acceleration following a default event, as applicable, shall incur late charges.

**Intercept State Funds.** In the event of a default event and in accordance with Chapter 90.50A.060 RCW, "Defaults," any state funds otherwise due to the RECIPIENT may, at ECOLOGY's sole discretion, be withheld and applied to the repayment of the loan.

**Property to ECOLOGY.** In the event of a default event and at the option of ECOLOGY, any personal property (equipment) acquired under this agreement may, in ECOLOGY's sole discretion, become ECOLOGY's property. In that circumstance, ECOLOGY shall reduce the RECIPIENT's liability to repay money by an amount reflecting the fair value of such property.

**Documents and Materials.** If this agreement is terminated, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT shall, at the option of ECOLOGY, become ECOLOGY property. The RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

**Collection and Enforcement Actions.** In the event of a default event, the state of Washington reserves the right to take any actions it deems necessary to collect the amounts due, or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this agreement.

**Fees and Expenses.** In any action to enforce the provisions of this agreement, reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of legal staff) shall be awarded to the prevailing party as that term is defined in Chapter 4.84.330 RCW.

Damages. Notwithstanding ECOLOGY's exercise of any or all of the termination or default remedies provided in this agreement, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or the state of Washington because of any breach of this agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

T. User-Charge System for Funded Utilities: The RECIPIENT certifies that it has the legal authority to establish and implement a user-charge system and shall adopt a system of user-charges to assure that each user of the funded utility shall pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the project. The user-charge system will include provisions for a connection charge.

In addition, the RECIPIENT shall regularly evaluate the user-charge system, at least annually, to ensure the system provides adequate revenues necessary to operate and maintain the funded utility, to establish reserves to pay for replacement, and to repay the loan.

### **GENERAL FEDERAL CONDITIONS**

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

#### **A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for

reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

**B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:**

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.frs.gov](http://www.frs.gov) <http://www.frs.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

For more details on FFATA requirements, see [www.frs.gov](http://www.frs.gov) <http://www.frs.gov>.

## GENERAL TERMS AND CONDITIONS

### Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 1/22/2018 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

##### 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

##### 3. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
- Make the IDP readily available to anyone working at the project site.
- Discuss the IDP with staff and contractors working at the project site.
- Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
  - Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:

- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

#### 4. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

#### 5. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

#### 6. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@watech.wa.gov](mailto:payeehelpdesk@watech.wa.gov).
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

#### 7. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### 8. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

#### 9. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

#### 10. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

#### 11. ENVIRONMENTAL DATA STANDARDS

- a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact



the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.

- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).

- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at: <http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 12. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

## 13. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

## 14. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

## 15. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

## 16. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.

- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified

minority and women's businesses.

d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

#### 17. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; and (f) the General Terms and Conditions.

#### 18. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

#### 19. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

#### 20. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to

Agreement No: WQC-2018-PoOrPW-00206  
 Project Title: Port Orchard Downtown Basin Stormwater Plan  
 Recipient Name: City of Port Orchard Public Works Dept.

authorize others to use the same for federal, state, or local government purposes.

- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
  1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
  2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 21. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.
- d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of

this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder. RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

## 22. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

## 23. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

## 24. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

## 25. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

## 26. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, and 100% post-consumer recycled paper.

For more suggestions visit ECOLOGY's web page: Green Purchasing, ,  
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 27. TERMINATION

### a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the

Agreement No: WQC-2018-PoOrPW-00206  
Project Title: Port Orchard Downtown Basin Stormwater Plan  
Recipient Name: City of Port Orchard Public Works Dept.

RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement. Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or in part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the recipient/contractor through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the recipient/contractor. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work

completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

**28. THIRD PARTY BENEFICIARY**

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

**29. WAIVER**

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.



**City of Port Orchard**

216 Prospect Street, Port Orchard, WA 98366  
(360) 876-4407 • FAX (360) 895-9029

**Agenda Staff Report**

Agenda Item No.:	<u>Business Item 7C</u>	Meeting Date:	<u>February 19, 2019</u>
Subject:	<u>Adoption of a Resolution Approving a</u>	Prepared by:	<u>Mark Dorsey, P.E.</u>
	<u>Contact with Robinson Noble, Inc. for the</u>		<u>Public Works Director</u>
	<u>2019 Hydrogeological Services and</u>	Atty Routing No.:	<u>N/A</u>
	<u>Procurement Procedure Documentation</u>	Atty Review Date:	<u>N/A</u>

**Summary:** On January 29, 2019, the City’s Public Works Department selected three (3) qualified firms from the City’s current Professional Services Roster (see Exhibit A of Resolution No. 008-19 attached) for the Main Category; Environmental Consulting and Sub-Category; Hydrology. Staff then scored each Statement of Qualification (SOQ) and selected Robinson Noble, Inc. as being the most qualified professional services engineering firm for the Project. On February 5, 2019, the City received a Fee Proposal from Robinson Noble, Inc. in the amount of \$136,000.00 for the 2019 Hydrogeological Services as needed for the continuation of the City’s Water Rights Amendments.

**Recommendation:** Staff recommends that the City Council adopt a resolution, thereby approving a contract with Robinson Noble, Inc. in the amount not to exceed \$136,000.00 for the 2019 Hydrogeological Services and documenting the Professional Services procurement procedures pursuant to RCW 39.80.

**Relationship to Comprehensive Plan:** Chapter 7 – Utilities.

**Motion for Consideration:** I move to adopt a resolution, thereby approving a contract with Robinson Noble, Inc. in the amount not to exceed \$136,000.00 for the 2019 Hydrogeological Services and documenting the Professional Services procurement procedures pursuant to RCW 39.80.

**Fiscal Impact:** As this necessary task, associated with the continuation of the City’s Water Rights Amendment process was unbudgeted, it is proposed that the necessary funding come from Water Capital Fund No. 413.

**Alternatives:** Do not approve.

**Attachments:** Resolution, Contract and Proposal.

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**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING CONTRACT NO. C022-19 WITH ROBINSON NOBLE, INC. FOR THE 2019 HYDROGEOLOGICAL SERVICES NEEDED FOR THE CONTINUATION OF THE CITY'S WATER RIGHTS AMENDMENT PROCESS AND DOCUMENTING ARCHITECTURAL & ENGINEERING SERVICES PROCUREMENT PROCEDURES.**

**WHEREAS**, pursuant to RCW 39.80, the City of Port Orchard's Public Works Department annually publishes the general Request for Qualifications (RFQ) for professional engineering, surveying, architecture, structural design and related services for the Professional Services Roster; and

**WHEREAS**, on June 3, 2013 the City of Port Orchard transitioned to the MRSC Consultant Roster database, but still publishes annually the general Request for Qualifications (RFQ) for the Professional Services Roster; and

**WHEREAS**, on January 29, 2019 the City of Port Orchard's Public Works Department selected three (3) qualified firms from the City's current Professional Services Roster (Exhibit A attached) for the Main Category; Environmental Consulting and Sub-Category; Hydrology; and

**WHEREAS**, the City's Public Works Department then scored and selected Robinson Noble, Inc., being determined as the most qualified professional services engineering firm; and

**WHEREAS**, the City's Public Works Department then worked with Robinson Noble Inc. on a viable project scope and budget; and

**WHEREAS**, the Port Orchard City Council, at the 2015 recommendation of the State Auditor's Office, wishes to document their consultant selection process as described above for this particular contract by Resolution; now, therefore,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**THAT:** The City Council approves Contract No. C022-19 with Robinson Noble, Inc. for the 2019 Hydrogeological Services and adopts the "Whereas" statements contained herein, as findings in support of the City's consultant selection procurement procedures.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage on this 19<sup>th</sup> day of February 2019.

\_\_\_\_\_  
Robert Putaansuu, Mayor

ATTEST:

\_\_\_\_\_  
Brandy Rinearson, MMC, City Clerk

## CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 12<sup>th</sup> day of February 2019, by and between the City of Port Orchard, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF PORT ORCHARD, WASHINGTON (hereinafter the "CITY")  
216 Prospect Street  
Port Orchard, Washington 98366

Contact: Mayor Robert Putaansuu                      Phone: 360.876.4407    Fax: 360.895.9029

And Robinson Noble, Inc. a corporation, organized under the laws of the State of Washington, doing business at:

Robinson Noble, Inc.    (hereinafter the "CONSULTANT")  
2105 South C Street  
Tacoma, WA 98402

Contact: Joseph E. Becker, LHG, PG, RPG              Phone: 253.475.7711  
President

for professional services in connection with the following Project:

*2019 Hydrogeological Services*

### TERMS AND CONDITIONS

#### 1. Services by Consultant.

A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

#### 2. Schedule of Work.

A. Consultant shall perform the services described in the Scope of Work in accordance with the Tasks identified within Exhibit "A" and the Terms of this Agreement. If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

B. Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

3. **Terms.** This Agreement shall commence on **February 12, 2019** (“Commencement Date”) and shall terminate **December 31, 2019** unless extended or terminated in writing as provided herein. **Additionally, the City reserves the right to offer two one-year extensions prior to contract expiration to retain the selected company’s services.**

4. **Compensation.**

LUMP SUM. Compensation for these services shall be a Lump Sum of \$\_\_\_\_\_.

**TIME AND MATERIALS NOT TO EXCEED.** Compensation for these services shall not exceed **\$136,000.00** without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit “B.”

TIME AND MATERIALS. Compensation for these services shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit “\_\_\_\_\_.”

OTHER. \_\_\_\_\_

5. **Payment.**

A. Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors, including, but not limited to, the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant’s business, pursuant to Revised Code of Washington (RCW) 51.08.195, as required by law, to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties, which is subject to Title 51 RCW, Industrial Insurance.

E. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

6. **Discrimination and Compliance with Laws**

A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin,

*City of Port Orchard and Robinson Noble, Inc.  
Public Works Project No. PW2019-002  
Professional Service Agreement Contract No. C022-19*

marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state and municipal laws, rules and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

C. Consultant shall obtain a City of Port Orchard business license prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

**7. Relationship of Parties.** The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

## **8. Suspension and Termination of Agreement**

A. Termination without cause. This Agreement may be terminated by the City at any time for public convenience, for the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors.

B. Termination with cause. The Agreement may be terminated upon the default of the Consultant and the failure of the Consultant to cure such default within a reasonable time after receiving written notice of the default.

C. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of

cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

2. *Default.* If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

D. Suspension. The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

E. Notice of Termination or Suspension. If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

**9. Standard of Care.** Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

**10. Ownership of Work Product.**

A. All data, materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to City. Any reuse or modification of such documents, reports or other material or work of the Consultant for purposes other than those intended by the Consultant in its scope of services shall be at the City's risk and without liability to the Consultant.

B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise. The Consultant is permitted to disclose any such information to the extent required by law, subpoena or other court order.

**11. Work Performed at the Consultant's Risk.** The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

**12. Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including reasonable attorneys' fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries or damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is Subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

**13. Insurance.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Employer's Liability each accident \$1,000,000, Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease – Policy Limit \$1,000,000.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorse to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

**14. Assigning or Subcontracting.** Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

**15. Notice.** Any notices required to be given by the City to Consultant or by Consultant to the City shall be in writing and delivered to the parties at the following addresses:

Robert Putaansuu  
Mayor  
216 Prospect Street  
Port Orchard, WA 98366

Phone: 360.876.4407  
Fax: 360.895.9029

CONSULTANT  
Joseph E. Becker, LHG, PG, RPG  
Robinson Noble, Inc.  
2105 South C Street  
Tacoma, WA 98402

Phone: 253.475.7711

**16. Resolution of Disputes and Governing Law.**

A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor, who shall determine the term or provision's true intent or meaning. The Mayor shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor's determination in a reasonable time, or if the Consultant does not agree with the Mayor's decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in Kitsap County Superior Court, Kitsap County, Washington.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

**17. General Provisions.**

A. Non-waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

B. Modification. No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or



unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF PORT ORCHARD,  
WASHINGTON

CONSULTANT

By: \_\_\_\_\_  
Robert Putaansuu  
Mayor

By: \_\_\_\_\_

Name: Joseph E. Becker, LHG, PG, RPG

Title: President

Date: \_\_\_\_\_

Date: February 6, 2019

Attest:

By: \_\_\_\_\_  
Brandy Rinearson, CMC  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Sharon Cates  
City Attorney

~~EXHIBIT~~ A



ROBINSON  
NOBLE

February 5, 2019

Mr. Thomas Hunter  
Utility Manager  
City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366

Subject: Robinson Noble 2019 pilot project scope of work and cost estimate

Dear Thomas,

On our recent call, it was suggested that I provide you with a scope of work and cost estimate to conduct hydrogeologic services directed toward the pilot project and water right processing. Ideally, this scope will be used for a contract between the City and Robinson Noble.

As you know, considerable work needs to be accomplished on the City's project this year, with schedules driven by the Foster task force's legislated deadlines. As you also know, the exact work to be accomplished will require future input from Ecology and other stakeholders as the project progresses. The following scope is based on our current understanding of scheduling and the nature of the work. I've broken down the scope into two general tasks: 1) completing the modeling and providing a hydrogeologic impact report; and 2) providing CRA services, including writing the draft Report of Examinations for the two pending new applications and six change applications.

#### **Task 1: Modeling and Hydrogeologic Impact Report**

Based on Tom Pors' work plan and timeline, as well as our recent conversation, I developed the following modeling and reporting scope, which includes several subtasks as described below.

**Subtask 1A: Steady-state Modeling.** Initially, the previous steady-state modeling simulation needs to be updated with return flows. In addition, a second simulation will be made looking at the effect of adding shallow aquifer recharge (SAR) of treated effluent in the McCormick West area. It is my understanding that BHC can provide the required information for incorporating return flows in the next several days. With the information from BHC, the revised steady-state modeling can be accomplished within the next several weeks. To incorporate the secondary simulation with SAR in McCormick West, the potential locations of SAR will need to be established. As the potential for SAR is still in the feasibility phase, general locations should be sufficient if the exact locations are not known.

**Subtask 1B: Stream Record Analysis.** In order to prioritize timing of potential mitigation, as well as examine the relationship between critical periods of natural streamflow and any projected impacts to stream flow, an analysis of the hydrographs of the potentially impacted streams needs to be made. We will examine and analyze existing stream gage records available from Kitsap PUD and the USGS for each of the potentially impacted streams. Results will be provided in the Task 1 report.

**Subtask 1C: Transient Modeling.** Transient modeling will allow timing of impacts to be defined. However, based on the provisions of the preliminary permits for Wells 12 and 13, transient modeling is to occur following consultation with Ecology and the Tribes. Therefore, the initial work under this subtask will be to define a specific transient modeling work plan, discuss it with the team, and then present it to the Tribe and Ecology for comment and input. At this point, I expect the transient modeling to consist of two sets of model simulations, one to cover the new and change applications for Well 12 and the other to cover the new and change applications for Well 13. Initially, the model will be run with long time steps (one year or more) to get a general idea about the timing of impacts at the streams. Following simulations can include shorter time steps (probably month-long steps) to help describe seasonal effects. The well production will be ramped up in the transient simulations based on population and demand projections provided by BHC. Initially, the simulations will be run without SAR in the McCormick West area; later simulations will include the SAR if it is still being contemplated at the time of the model runs.

**Subtask 1D: Hydrogeology and Impact Report.** The deliverable for Task 1 will be a report or technical memorandum describing the hydrogeology of the area, the stream hydrographic analysis, the modeling procedures and results, and a summary of projected impacts to area streams. The report will be written so that it is easily incorporated into a later draft Reports of Examination for the various water right applications.

**Subtask 1E: Project Management and Meetings.** Task 1 includes a number of meetings including meetings between the team members, planning meetings with the Tribe and Ecology, and a transient modeling meeting with the Tribe and Ecology. Included in this subtask is project management work completed this month to date.

### **Task 1 Schedule**

Based on our recent call and Tom Pors' draft timeline, I've made a tentative schedule for Task 1.

Subtask 1A: Steady-state Modeling	February 5 – February 22
Subtask 1B: Stream Record Analysis	February 5 – February 28
Subtask 1C: Transient Modeling	February 25 – March 29
Subtask 1D: Hydrogeology and Impact Report	February 25 – April 5
Subtask 1E: Project Management and Meetings	February 5 – April 5

### **Task 2: Water Right Processing**

We presume the pending new and change applications can be processed through a streamlined Cost Reimbursement Agreement (CRA) with Robinson Noble acting as the consultant conducting all work, including drafting the Reports of Examination (ROEs). If this is not the case, and Ecology requires a different consultant, we assume that Robinson Noble will conduct the work up to the drafting of the ROEs, providing a technical memorandum that can be used in drafting the ROEs. The work is divided into six subtasks.

**Subtask 2A: Tier 1 Avoidance Analysis.** The ROEs will need to address the three tiers of analysis described in pilot project legislation. The first tier is avoidance. For this subtask, Robinson Noble will adapt an avoidance analysis provided by BHC and Tom Pors for use in the ROEs.

**Subtask 2B: Tier 2 Minimization Analysis.** The second tier is minimization analysis. Guidance is still needed for Ecology as to what they want to see for this analysis, so the scope of the subtask might change. Currently, we envision this analysis to be an examination of the lack of in-kind water available for mitigation as well as descriptions of project design and phasing of proposed in-stream mitigation elements. We expect this work to be completed in close concert with Tom Pors.

**Subtask 2C: Tier 3 Compensation Analysis.** The third tier is compensation analysis. This includes conducting a net ecological benefit (NEB) analysis. Again, guidance is needed from Ecology as to the form and level of detail in the NEB analysis, so the scope of this subtask may be modified. The subtask also involves two rounds of consultation with the Tribe and the Washington Department of Fish and Wildlife (WDFW) – an initial round to get the Tribe and WDFW’s comments on benefits of proposed creek and habitat improvements and a second round for comment on the draft NEB analysis. Much of the work on the NEB analysis will be completed by a Subconsultant to Robinson Noble.

ESA Associates (ESA) would be a well-qualified choice to perform the NEB analysis. ESA is an environmental consulting company specializing in permitting and compliance, environmental planning, and ecosystem restoration and mitigation. Robinson Noble has worked with ESA many times in the past. ESA is very familiar with the area, as they produced the Blackjack Creek Watershed Assessment and Protection and Restoration Plan (December 2017) for the Suquamish Tribe.

**Subtask 2D: Monitoring, Reporting, Compliance, and Assurance.** This subtask will involve designing monitoring, reporting, compliance, and assurance conditions for the ROEs. We will work together with Tom Pors, and in consultation with Ecology, to identify compatible conditions for inclusion as provisions in the ROEs.

**Subtask 2E: Draft Reports of Examination.** Robinson Noble will write draft ROEs for the two new and six change applications that are pending. The results of Task 1 and Subtasks 2A – 2D will be incorporated into the draft ROEs. We presume that preliminary drafts may be submitted to the Tribe for comment. Following possible incorporation of Tribal comments, the drafts will be delivered to Ecology. Ecology’s comments will be worked into final drafts for posting on Ecology’s website.

**Subtask 2F: Project Management, Meetings, and other Assistance.** Based on today’s conference call, we assume there will be at least three in-person meetings between the team as the project progresses. This task also includes project management following the end of Task 1 and any assistance of Robinson Noble with other parts of the process not specified in Tasks 1 and 2.

### Task 2 Schedule

Based on today's conference call and Tom Pors' draft timeline, I've made a tentative schedule for Task 2.

Subtask 2A: Tier 1 Avoidance Analysis	February – March
Subtask 2B: Tier 2 Minimization Analysis	March – April
Subtask 2C: Tier 3 Compensation Analysis	April – June
Subtask 2D: Monitoring, Reporting, etc.	June – July
Subtask 2E: Draft Reports of Examination	August – October
Subtask 2F: PM, Meetings, Other Assistance	March – October

### Estimated Cost

It is expected that the exact nature of the required work will evolve as the project progresses and with input from the Tribe, WDFW, and Ecology. Therefore, the following cost estimate is truly an estimate and could be higher or lower depending upon how the project progresses.

Based on our understanding of the project and the conditions outlined in this scope, we estimate the cost of our services, as described above, to be \$43,600 for Task 1 and \$92,500 for Task 2, for a total of \$136,000. If transient modeling is removed from the Task 1 scope following consultation with Ecology and the Tribe, the estimated Task 1 cost will be reduced by \$13,400. The Task 2 cost includes an estimated \$34,000 for an environmental habitat subconsultant (as the definition of the NEB analysis is unknown at this time, this portion of the estimate is highly variable). Robinson Noble works on a time-and-expense basis according to the attached General Fee Schedule. This estimate will remain valid for 90 days from the date of this scope.

I hope this scope of work and cost estimate is adequate for your needs. Please contact us if we can provide additional information or modify the scope of work to better assist the City. Should this scope and cost estimate be acceptable, please send me a contract for review.

If you have questions or need additional information, please contact me. Thank you for the opportunity to continue being of service to the City.

Sincerely,  
Robinson Noble, Inc.



Joseph E. Becker, LHG  
Principal Hydrogeologist



**General Fee Schedule**

**January 1, 2019**

Professional Positions		Fee per Hour
Principal Engineer, Hydrogeologist or Environmental Scientist		\$187
Associate Engineer, Hydrogeologist or Environmental Scientist		\$171
Senior Engineer, Hydrogeologist or Environmental Scientist		\$146
Senior Project Engineer, Hydrogeologist or Environmental Scientist		\$126
Project Engineer, Hydrogeologist or Environmental Scientist		\$113
Staff Engineer, Hydrogeologist or Environmental Scientist		\$102
Senior Field Staff		\$93
Field Staff		\$80
Legal Support/Expert Witness Services/Testimony		150% of above rates
Support Positions		
Senior GIS/CAD Specialist		\$95
Senior Technician		\$95
Senior Administrator		\$83
GIS/CAD Specialist		\$83
Technician		\$83
Administrator		\$72
Clerical Support		\$72
Other Fees and Costs		
<b>Subcontracts/ Management Fee</b>	Professional services	15%
	Outside laboratory services	15%
	Construction subcontracts	15%
<b>Other Costs</b>	Travel (auto)	\$0.64/mile
	Travel (other)	Cost +10%
	Per diem	Prevailing State rate +10%
	Other direct expenses	Cost +10%
	Field and laboratory testing/equipment rental	See following pages

This fee schedule is subject to change according to contract or Professional Services Agreement conditions.



**Environmental Equipment Rental and Consumable Schedule  
January 1, 2019**

<u>Equipment</u>	<u>Unit</u>	<u>Rate</u>
Water Level Transducer and Data Logger	Per day	\$50
Field Laptop Computer	Per day	\$40
Electronic Water Level Sounder	Per day	\$30
Electronic Interface Probe	Per day	\$75
DC Operated Peristaltic Pump	Per day	\$45
2-inch Gasoline-powered Centrifugal Pump (includes hoses)	Per day	\$100
2-inch Submersible Pump + Controller	Per day	\$350
Generator & Fuel	Per day	\$70
Low-Flow Bladder Pump	Per day	\$175
Photoionization Detector	Per day	\$75
Combustible Gas Indicator	Per day	\$65
GPS	Per day	\$20
Water Quality Meter	Per day	\$200
Teflon Water Bailer	Per day	\$30
Soil Sampling Equipment (manual)	Per day	\$25
Mechanical Sieve Sample Equipment	Flat fee per project	\$50
Survey Gear (laser level & rod)	Per day	\$85
pH Field Meter (soils)	Per day	\$50
Soil Vapor Extraction System	Per month	\$750
Digital Camera	Per day	\$10
Hand Auger	Per day	\$50
Other Equipment	Negotiated	Negotiated
<b><u>Consumable Items:</u></b>		
Polyethylene Purge/Sampling Tubing	Each 10 feet	\$2.50
DC Submersible Purge Pump (Single stage)	Per pump	List price + 10%
DC Submersible Purge Pump (Dual Stage)	Per pump	List price + 10%
Silicone Peristaltic Pump Head Tubing	Each foot	\$4.00
Bladders for Low-Flow Bladder Pump	Each	\$5.00
Water Sample Bailer	Each	\$10
Bailer Rope/String	Each 10 feet	\$1.00
Personal Protection Equipment	Per day per person	\$50

This fee schedule is subject to change according to contract or Professional Services Agreement conditions.



**Geotechnical Field and Laboratory Testing Schedule  
January 1, 2019**

<u>Test</u>		<u>Fee</u>
Portable Nuclear Density Gauge	Per Hour	\$5.00
Slope Inclinometer	Per day	\$250
Direct Shear	Point	\$200
Moisture-Density Relationship Curves:	Each	1 pt \$120
	Each	Multiple pts \$225
Sieve Analyses (Gradations-Wet Sieve) Bulk Sieve (if gravelly or >10lb)	Each	\$150
	Add	\$70
200 Wash	Each	\$80
Hydrometer Analysis	Each	\$175
Falling Head Permeability	Each	\$165
Atterberg Limits (Liquid Limit and Plastic Limit)	Each	\$220
Moisture Content	Each	\$12
Dynamic Cone Penetrometer Points	Day	\$225
	Each	\$20
Resistivity 4-point Gauge	Day	\$300
Hand Auger	Per day	\$50
Consolidation Test Incremental Loading (9 loads, 0.125 TSF to 32 TSF, 4 unloads)		\$550
		\$50/each additional load
Shelby Tube Extrusion/Sample Description		\$40
Single-Ring Infiltrometer	Per day	\$50

This fee schedule is subject to change according to contract or Professional Services Agreement conditions.

Public Agency Name:	City of Port Orchard
Roster Type:	Consultant Roster
Date:	01/29/2019
Time:	08:50 am
Main Category:	Environmental Consulting
Sub-Category:	Hydrogeology

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Adopt A Stream Foundation

Akana

Apex Companies, LLC

Apex Engineering

Aptum Inc.

Aspect Consulting, LLC

Associated Earth Sciences, Inc.

Associated Environmental Group LLC

ATC Group Services, LLC

Bergeson-Boese & Associates, Inc. dba BB&A Environmental

Blue Marine, LLC

Brown and Caldwell

Cardno

Cascadia Consulting Group

Coho Water Resources

CRETE Consulting Inc

Dalton, Olmsted & Fuglevand, Inc.

Delphis Technical Support and Solutions, LLC

DH Environmental, Inc.

EA Engineering, Science, and Technology, Inc., PBC

EHS-International, Inc.

Jacobs Engineering Group Inc.

JECB

Jerome W. Morrisette & Associates Inc., P.S.

Kane Environmental, Inc.

Kennedy/Jenks Consultants

Key Environmental Solutions, LLC.

Kindred Hydro, Inc.

Kleinfelder

KPG

Landau Associates

Land Development Consultants, Inc.

Marine Surveys & Assessments

Maul Foster & Alongi, Inc.

Migizi Group, Inc.

Mott MacDonald

Northwest Groundwater Services, LLC

Pacific Groundwater Group

Pacific Surveying and Engineering Services

Parametrix

PBS Engineering and Environmental Inc.

Perteet Inc.

PND Engineers, Inc.

RH2 Engineering, Inc

Robinson Noble, Inc.

Schemmer Consulting Group PLLC

SCJ Alliance

SCS Engineers

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**City of Port Orchard**

216 Prospect Street, Port Orchard, WA 98366  
(360) 876-4407 • FAX (360) 895-9029

**Agenda Staff Report**

Agenda Item No.: Business Item 7D  
Subject: Adoption of a Resolution Approving a  
Contract with Transportation Solutions,  
Inc. for the Transportation Impact Fee  
Study and Traffic Model Calibration

Meeting Date: February 19, 2019  
Prepared by: Nick Bond  
Development Director  
Atty Routing No: N/A  
Atty Review Date: N/A

**Summary:** In 2015, the City adopted traffic impact fees and a traffic impact fee study to determine how traffic impact fees were to be calculated. The adopted study recommended that the City Council review and update the study every three years to ensure that the study would remain defensible.

In November 2018, City staff reviewed its consultant roster and prepared a request for proposals for personal services. Three firms were selected from the roster, including Fehr and Peers, Transpo Group USA, and Transportation Solutions Inc, An RFP was provided to these firms on November 30, 2018, requesting that proposals be submitted on December 17, 2018. Only one firm, Transportation Solutions, Inc. responded. Staff reviewed their proposal and determined that they were qualified to perform the work.

When negotiating the contract, City staff identified a need to also recalibrate the City’s transportation model which was previously developed by TSI. This model will provide more accurate information on growth’s share of traffic impact fee project costs, will inform the City and County’s work on developing a South Kitsap Transportation Implementation Strategy, and will inform ongoing renegotiations of the development agreements with McCormick Woods.

A professional services contract for updating the transportation impact fee study and to calibrate the transportation model has been prepared for this project and is not to exceed \$25,000. This scope includes both the traffic impact fee calculation and study and work to calibrate the city’s transportation model. The City’s DCD planning department budget included \$15,000 for the TIF Study update and \$15,000 for miscellaneous professional services. This would deplete most of the funds allocated for miscellaneous professional services in the DCD budget.

**Recommendation:** Staff recommends adoption of a resolution approving the proposed personal services with TSI for the transportation impact fee study update and traffic model calibration.

**Relationship to Comprehensive Plan:** Transportation impact fees are a critical part of funding the implementation of the City’s transportation element of the comprehensive plan. Amendments to the comprehensive plan necessitate periodic updates to the city’s adopted traffic impact fee rate study. A well calibrated transportation model is critical to administering the city’s concurrency management system and for ensuring that level of service standards as found in the comprehensive plan are maintained.

**Motion for Consideration:** “I move to adopt a resolution approving a contract with Transportation Solutions, Inc. for the City’s Transportation Impact Fee Rate Study Update and transportation model calibration.”

**Fiscal Impact:** The contract amount is not to exceed \$25,000.

**Alternatives:** Consider hiring a transportation engineer as an employee of the city to perform the tasks described in the City’s concurrency and impact fee ordinances. Perform a new selection process to see if additional firms respond to the RFP. Amend the scope of services.

**Attachments:** Resolution; Exhibit A Personal Services Agreement; Exhibit B Scope of Work; Exhibit C Fee Estimate; Exhibit D consultant list, Exhibit E a copy of the request for proposals.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING A PERSONAL SERVICES CONTRACT WITH TRANSPORTATION SOLUTIONS, INC TO UPDATE THE CITY'S TRAFFIC IMPACT FEE STUDY AND TRANSPORTATION MODEL CALIBRATION.**

**WHEREAS**, the City of Port Orchard is required to maintain and update its traffic impact fee calculation rate pursuant to Chapters 20.180 and 20.182 of the Port Orchard Municipal Code; and

**WHEREAS**, the traffic impact fee calculations require transportation engineering expertise beyond that which is possessed by the City; and

**WHEREAS**, the city maintains a transportation model that provides critical information related to calculating traffic impact fee rates; and

**WHEREAS**, the City solicited personal services proposals for this work by sending requests for proposals to three firms selected from its MRSC consultant roster (see exhibit D attached hereto); and

**WHEREAS**, on November 30, 2018, the attached RFP (Exhibit E) was sent to Fehr and Peers, Transpo Group USA, Inc., and Transportation Solutions, Inc. with a response deadline of December 17, 2018; and

**WHEREAS**, Transportation Solutions Inc. ("TSI") was the only consultant to respond to this request for proposals; and

**WHEREAS**, the proposal submitted by TSI demonstrates that TSI is qualified to complete the requested work; and

**WHEREAS**, the City wishes to use the services of TSI to update the traffic impact fee calculations and to calibrate its transportation model, since TSI exclusively developed the City's transportation model, transportation plan and traffic impact fee, and has extensive familiarity with the City's traffic modeling requirements and procedures; now, therefore,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**THAT:** The Mayor is authorized to execute the personal services contract (attached hereto as Exhibits A, B and C) between the City and Transportation Services, Inc., attached hereto, in an amount not to exceed \$25,000.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 19<sup>th</sup> day of February 2019.

---

Robert Putaansuu, Mayor

ATTEST:

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Brandy Rinearson, MMC, City Clerk



**CITY OF PORT ORCHARD PERSONAL SERVICES AGREEMENT**

THIS Agreement is made effective as of the 12<sup>th</sup> day of February 2019, by and between the City of Port Orchard, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF PORT ORCHARD, WASHINGTON (hereinafter the "CITY")  
216 Prospect Street  
Port Orchard, Washington 98366

Contact: Mayor Robert Putaansuu Phone: 360.876.4407 Fax: 360.895.9029

and Transportation Solutions, Inc., a corporation, organized under the laws of the State of Washington, doing business at:

8250 165<sup>th</sup> Ave NE #100 (hereinafter the "CONSULTANT")  
Redmond, WA 98052

Contact: Victor Salemann Phone: 425-883-4134 Email: victors@tsinw.com

for personal services in connection with the following Project:

***Transportation Impact Fee Update and Transportation Model Calibration***

**TERMS AND CONDITIONS**

**1. Services by Consultant.**

A. The Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "B." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

**2. Schedule of Work.**

A. The Consultant shall perform the services described in the Scope of Work in accordance with the tasks identified within Exhibit "B" and the terms of this Agreement. If delays beyond the Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

B. The Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

**3. Terms.** This Agreement shall commence on February 13, 2019 ("Commencement Date") and shall terminate on December 31, 2019, unless extended or terminated in writing as provided

City of Port Orchard and \_\_\_\_\_  
Public Works Project No. \_\_\_\_\_

Personal Services Agreement Contract No. \_\_\_\_\_

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herein. **The City reserves the right to offer two (2) one-year extensions prior to contract expiration to retain the selected company's services.**

**4. Compensation.**

- LUMP SUM. Compensation for these services shall be a Lump Sum of \$ \_\_\_\_\_.
- TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$25,000.00 without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "C."
- TIME AND MATERIALS. Compensation for these services shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "\_\_\_\_\_."
- OTHER. \_\_\_\_\_

**5. Payment.**

A. The Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within thirty (30) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. The Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors, including, but not limited to, the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to Revised Code of Washington (RCW) 51.08.195, as required by law, to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties, which is subject to Title 51 RCW, Industrial Insurance.

E. If the services rendered do not meet the requirements of the Agreement, the Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

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**6. Discrimination and Compliance with Laws**

A. The Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state and municipal laws, rules and regulations that are now effective or become applicable within the term(s) of this Agreement to the Consultant's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

C. The Consultant shall obtain a City of Port Orchard business license prior to commencing work pursuant to a written Notice to Proceed.

D. Violation of this Paragraph 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

**7. Relationship of Parties.** The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including but not limited to compensation, insurance, and unemployment insurance, are available from the City to the employees, agents, representatives or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

**8. Suspension and Termination of Agreement**

A. Termination without cause. This Agreement may be terminated by the City at any time for public convenience, for the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors.

B. Termination with cause. This Agreement may be terminated upon the default of the Consultant and the failure of the Consultant to cure such default within a reasonable time after receiving written notice of the default.

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C. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to the City, and the Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. The Consultant shall not be entitled to any reallocation of cost, profit or overhead. The Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. The Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

2. *Default.* If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained, by the City by reason of such default.

D. Suspension. The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

E. Notice of Termination or Suspension. If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to the Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

9. **Standard of Care.** The Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by the Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

10. **Ownership of Work Product.**

A. All data, materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of the City, shall be forwarded to the City at its request and may be used by the City as it sees fit. Upon termination of this Agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to City. Any reuse or modification of such documents, reports or other material or work of the Consultant for purposes other than those intended by the Consultant in its scope of services under this Agreement shall be at the City's risk.

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B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in the Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise. The Consultant is permitted to disclose any such information only to the extent required by law, subpoena or other court order.

**11. Work Performed at the Consultant's Risk.** The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents and sub-consultants in the performance of the work hereunder, and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

**12. Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries or damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

**13. Insurance.** The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

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2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Workers' Compensation Employer's Liability each accident \$1,000,000, Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease – Policy Limit \$1,000,000.
4. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.

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- 4. If any coverage is written on a “claims made” basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

**14. Assigning or Subcontracting.** The Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

**15. Notice.** Any notices required to be given by the City to the Consultant or by the Consultant to the City shall be in writing and delivered to the parties at the following addresses:

<p>CITY          Robert Putaansuu          Mayor          216 Prospect Street          Port Orchard, WA 98366</p> <p>Phone: 360.876.4407          Fax: 360.895.9029</p>	<p>CONSULTANT          Victor Salemann          Transportation Solutions, Inc.          8250 165<sup>th</sup> Ave NE, Suite 100          Redmond, WA 98052</p> <p>Phone: 425-883-4134          Fax: 425-867-0898</p>
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**16. Resolution of Disputes and Governing Law.**

A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor, who shall determine the term or provision’s true intent or meaning. The Mayor shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor’s determination in a reasonable time, or if the Consultant does not agree with the Mayor’s decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in Kitsap County Superior Court, Kitsap County, Washington.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys’ fees from the other party.

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*City of Port Orchard and \_\_\_\_\_*  
*Public Works Project No. \_\_\_\_\_*  
*Personal Services Agreement Contract No. \_\_\_\_\_*

**17. General Provisions.**

A. Non-waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

B. Modification. No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF PORT ORCHARD,  
WASHINGTON

CONSULTANT

By: \_\_\_\_\_  
Robert Putaansuu, Mayor

By:  \_\_\_\_\_

Name: Victor Salemann

ATTEST/AUTHENTICATE:

Title: President

By: \_\_\_\_\_  
Brandy Rinearson, MMC  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Sharon Cates, City Attorney

City of Port Orchard and \_\_\_\_\_  
Public Works Project No. \_\_\_\_\_  
Personal Services Agreement Contract No. \_\_\_\_\_



**Exhibit B**  
**Scope of Work and Fee Estimate**  
**City of Port Orchard**  
**Traffic Model Recalibration and Traffic Impact Fee Update**

**Task 1. 2019 Traffic Model Recalibration and Update**

**Task 1.01 Project administration and quality control. (Budget \$700)**

Prepare regular status reports and project cost invoices; perform ongoing quality control.

**Task 1.02 Collect traffic data. (Budget \$350)**

Manage traffic data collection and review resulting data. TC2 will be used as a data collection vendor. Data collection will focus on PM peak period (4-6 PM) operations at up to 25 intersections citywide. Supplemental traffic count data along the SW Old Clifton Road corridor will be obtained from Transpo Group as part of the SW Old Clifton Road corridor analysis.

**Task 1.03 Update existing conditions (2019) intersection operations model. (Budget \$650)**

Using the 2015 intersection operations (Synchro) model as a baseline, a 2019 PM peak hour Synchro model will be developed for all intersections for which counts are obtained in Task 2. Identify 2019 intersection Level of Service (LOS) deficiencies based on Port Orchard LOS policy.

**Task 1.04 Updated existing conditions (2019) travel demand model. (Budget \$650)**

Using the 2015 travel demand (Visum) model as a baseline, a 2019 PM peak hour Visum model will be developed and calibrated according to best practices described in NCHRP Report 765 and according to FHWA guidance.

**Task 1.05 Confirm pipeline developments. (Budget \$250)**

Confirm the locations, land use types, quantities, and PM peak hour trip generation forecasts (as available) for pipeline developments identified by City staff. Develop PM peak hour trip generation forecasts for developments for which trip generation forecasts are not available.

**Task 1.06 Update pipeline (2025) travel demand model. (Budget \$1,000)**

Update citywide pipeline travel demand model with pipeline developments identified in Task 5. Update external trip growth based on recent historical growth trends along SR 16.

**Task 1.07 Update pipeline (2025) intersection operations model. (Budget \$500)**

Update citywide pipeline Synchro model with updated travel demand forecasts generated in Task 6. Identify 2025 intersection LOS deficiencies based on Port Orchard LOS policy.

**Task 1.08 Confirm 2039 land use growth forecast. (Budget \$250)**

Confirm 2039 land use growth allocations and locations based on PSRC Vision 2040 documentation and proposed citywide zoning changes. TSI will work with City staff to determine locations of anticipated residential and employment growth.

**Task 1.09 Update long-range (2039) travel demand model. (Budget \$650)**

Update long-range travel demand model to reflect land use forecasts identified in Task 8.

**Task 1.10 Update long-range (2039) intersection operations model. (Budget \$400)**

Update citywide pipeline Synchro model with updated travel demand forecasts generated in Task 9. Identify 2039 intersection LOS deficiencies based on Port Orchard LOS policy.

**Task 1.11 Summarize findings in memorandum. (Budget \$1,100)**

Document traffic modeling methods, assumptions, and findings in a memorandum to City staff. Identify existing and future intersection LOS deficiencies based on Port Orchard LOS policy. All traffic count files and traffic model files will be provided to the City.

## **Task 2. Transportation Impact Fee Update**

### **Task 2.01 Budget \$2,500**

Meet with City Staff and elected officials to determine if any additional projects should be included in the Traffic Impact Fee Rate Study calculation or if the fee calculation approach should be amended.

- One Preparatory Meeting with Staff
- One Workshop Meeting with Elected Officials
- One Follow Up Meeting with Staff

### **Task 2.02 Budget \$8,000**

Update the 2015 Traffic Impact Fee Rate Study and Appendix A Fee Schedule, Appendix B Comparison of TIF Base Rates.

- Update Project List
- Update Project Estimates
- Update Growth Share of Project Costs
- Update Rate Study
- Update Rate Tables
- Update Fee Comparison Table

### **Task 2.03 Budget \$4,500**

Provide technical support through the update and adoption process.

- Respond to Comments/Questions from Staff/Elected Officials
- Prepare PowerPoint Presentation for Public Hearing
- One Council Meeting/Public Hearing with Elected Officials

**Total Contract Value not to exceed \$25,000 without written approval.**

### **Schedule**

Complete the project within 120 days of contract award (estimated contract award date 1/22/19)



8250 - 165th Avenue NE  
 Suite 100  
 Redmond, WA 98052-6628  
 T 425-883-4134  
 F 425-867-0898  
 www.tsinw.com

Exhibit C to Resolution \_\_\_\_\_ and  
 Contract \_\_\_\_\_

**Transportation Solutions, Inc.**

**2019  
 HOURLY BILLING RATES**

<b>Name</b>	<b>Title</b>	<b>Hourly Labor Billing Rate</b>
Victor L. Salemann	Principal	\$235.00
Jeff S. Elekes	Director	\$215.00
David D. Markley	Principal	\$235.00
Andrew L. Bratlien	Sr. Tr. Engineer	\$168.50
Michelle L. Mach	Sr. Tr. Engineer	\$168.50
Jeffrey P.K. Hee	Sr. Tr. Engineer	\$168.50
Phil McDonald	Sr. Engineering Tech	\$120.00
Jennifer Salemann	Planner I	\$98.00
Jill Berberich	Project Administrator	\$115.00
Staff	Engineering Technician	\$ 60-95

**EXPENSES**

Reimbursable Expenses	Direct Cost no Markup
Sub-consultant invoices	Direct Cost no Markup

Billing rates are subject to change.

Public Agency Name: City of Port Orchard  
Roster Type: Consultant Roster  
Date: 11/29/2018  
Time: 09:56 am  
Main Category: Design and Planning, Engineering Services, Financial Services  
Sub-Category: Traffic Counts/Data Collection, Traffic Operations Simulation Modeling, Travel Demand Modeling, Transit Planning and Design (including High Capita Transit), Transportation/Traffic, Rate Studies, Transportation Finance

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3 Square Blocks

AEI Williams Group Co. DBA: AEIWG Co.

AHBL, Inc.

Akana

Alta Planning + Design

Apex Engineering

Applied Pavement Technology, Inc.

Art Anderson Associates

Barney & Worth, Inc.

BergerABAM

BERK Consulting, Inc.

Blue Marine, LLC

Braaksma Engineering Inc.

Bright Engineering, INc.

Brown and Caldwell

BST Associates

Business Street

Century West Engineering

Collins Engineers, Inc.

Columbia Telecommunications Corporation

Community Attributes Inc.

Confluence Environmental Company

Conservation Technix, Inc.  
Contract Land Staff, LLC  
COWI North America Inc.  
CPD Solutions  
CPH Consultants  
CTS Engineers  
David Evans and Associates, Inc.  
Davido Consulting Group, Inc.  
DCI Engineers  
DGK Inc. dba Widener & Associates  
DKS Associates  
DN Traffic Consultants  
DOWL LLC, D.B.A. DOWL  
Duncanson Company, Inc.  
EA Engineering, Science, and Technology, Inc., PBC  
Earth Economics  
ECONorthwest  
ECO Resource Group  
Eco Resource Management Systems Inc.  
EES Consulting, Inc.  
Elliott Bay Design Group  
ELM  
EN Engineering LLC  
Entitlement and Engineering Solutions, Inc.  
Epic Land Solutions, Inc.  
Exeltech Consulting, Inc.  
Facility Contractors Inc.  
FCS GROUP  
Fehr & Peers

GeoDesign, Inc.  
GeoEngineers Inc.  
GHD Inc.  
Gibson Traffic Consultants, Inc.  
GMG Consultants  
Golder Associates Inc.  
Gravis Technologies, Inc.  
Gray and Osborne, Inc.  
Gridics  
Harmsen & Associates, Inc.  
Harper Houf Peterson Righellis Inc.  
Harris & Associates  
HDR Engineering, Inc.  
Heartland LLC  
Heath & Associates, Inc.  
Herrera Environmental Consultants, Inc.  
Hill International, Inc.  
HMA Engineering  
Huitt-Zollars, Inc.  
HWA GeoSciences Inc.  
ICF Jones & Stokes, Inc.  
IDAX  
J.A. Brennan Associates, PLLC  
Jacobs Engineering Group Inc.  
Jimale Technical Services  
Johnston Architects LLC  
JP Morgan  
JR MILLER & ASSOCIATES INC  
Katy Isaksen & Associates

KBA, Inc.

Keller Associates, Inc.

Kidder Mathews

Kindred Hydro, Inc.

King Technologics, PLLC

KPFF Consulting Engineers

KPG

Leland Consulting Group, Inc.

LMN Architects

Lochner (H.W. Lochner)

Loving Engineering & Consulting, P.S. Inc.

MacKay Sposito

Mackenzie

MacLearnsberry, Inc.

Manceps, Inc.

Merritt Arch PLLC

MICHAEL F. WNEK, PE., PS

Moffatt & Nichol

Morrison-Maierle, Inc.

Murraysmith

Nelson Nygaard

Northwest Water Systems

Osborn Consulting Inc

Otak, Inc.

PACE Engineers, Inc.

Pacific Surveying & Engineering Services, Inc. PSE

Parametrix

Parsons Transportation Group Inc.

Pavement Services, Inc.



PBS Engineering and Environmental Inc.

Peninsula Financial Consulting

Performance Plane LLC

Perteet Inc.

PH Consulting LLC

ProjectCorps

PRR

Reichhardt & Ebe Engineering, Inc.

Reid Middleton, Inc.

RH2 Engineering, Inc

RHC Engineering Inc.

SAFEbuilt

SCE, Inc.

SCJ Alliance

SCS Engineers

Seahurst Electric, Inc.

Shiels Oblatz Johnsen, Inc.

Sitts & Hill Engineers, Inc.

Skillings Connolly, Inc.

Sound Municipal Consultants

Soundwest Engineering Associates, Inc.

Stantec

Studio Cascade, Inc.

T-O Engineers

TCA Architecture Planning, Inc

Terracon Consultants, Inc.

Terra Verde Environmental Consulting

TerraVista NW, LLC

Tetra Tech, Inc.

The Beckett Group

The Greenbusch Group, Inc.

The Planning Studio LLC

TMK Consulting Inc.

Toole Design Group LLC

Traffic Count Consultants, Inc (TC2inc)

Traffic Data Gathering

Transpo Group

Transportation Engineering Northwest, LLC

Transportation Solutions, Inc.

TranTech Engineering, LLC

Tres West Engineers

V+M Structural Design, Inc.

VIA Architecture

Victoria S. Byerly, P.S.

Walker Consultants

WHPacific, Inc.

Wilson Engineering, LLC

WSP (formerly WSP | Parsons Brinckerhoff)

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**CITY OF PORT ORCHARD PUBLIC WORKS DEPARTMENT  
REQUEST FOR Proposals (RFP) – Personal Services**

**Transportation Impact Fee Rate Study Update**

**November 30, 2018**

**INTRODUCTION**

The City of Port Orchard Public Works Department, hereinafter referred to as the City, is inviting proposals from three (3) selected consulting firms on the City's 2018 MRSC Consultant Roster to prepare an update to the City's Traffic Impact Fee Rate Study.

The following subjects are discussed in this Request for Proposals.

- I. Background
- II. Scope of Services
- III. Required Insurance
- IV. Proposal Format and Content
- V. Evaluation Criteria and Selection Process
- VI. Submittal

**I. Background:**

The City needs expertise in preparing an update to its traffic impact fee rate calculation. The City first adopted a traffic impact fee in 2015 based on a traffic impact fee rate study prepared at that time. Included in that report was a recommendation that the rate study and fee calculation be updated every 3 years after adoption. The City seeks to update its impact fee rate study and fee calculation to consider recent changes to the City's transportation plan and changes in construction costs and project estimates. The project will require coordination with City staff and elected officials as well as support through the review and adoption process. The project budget is \$15,000.

**II. Scope of Services:**

- Meet with City Staff and elected officials to determine if any addition projects should be included in the Traffic Impact Fee Rate Study calculation or if the fee calculation approach should be amended.
- Update the 2015 Traffic Impact Fee Rate Study and Appendix A Fee Schedule, Appendix B Comparison of TIF Base Rates.
- Provide technical support through the update and adoption process.
- Complete the project within 120 days of contract award (estimated contract award date 1/22/19)

**III. Required Insurance:**

The Consultant shall procure, and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Employer's Liability each accident \$1,000,000, Employer's Liability Disease each employee \$1,000,000, and Employer's Liability Disease – Policy Limit \$1,000,000.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorse to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

- E. Verification of Coverage  
Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

**IV. Proposal Format and Content:**

Proposals which do not address the items in this section will be considered incomplete and will be deemed non-responsive by the City.

- A. Letter of Transmittal

- B. Narrative

- 1. Provide brief resumes of the "Principal in Charge" and the key technical personnel to be assigned to this project. Discuss the experience of these persons and relate their experience to this project. Include what portion of this contract would be assigned to each person. (maximum 3 pages)

- 2. Discuss your resources, qualifications, experience, and ability to meet the time constraints of the proposed work. (maximum 3 pages)

- C. References

Provide names and telephone numbers of at least three references willing to attest to your firm's ability to complete this project on time and within budget. (maximum 1 page)

- D. Provide a proposed project cost and budget. (maximum 1 page)

- E. Confirmation of Business Organization

On the last page of the proposal, the proposer shall identify the business organization under which it operates (form provided in RFP). Partnerships and joint ventures will list each member's name, address, and business license, tax ID, telephone and fax numbers on a separate sheet of paper attached to the proposal.

**V. Evaluation Criteria and Selection Process**

The basis of award will be to the respondent receiving the most points based on the following criteria:

- A. Proposed project cost. (MAXIMUM 40 POINTS AVAILABLE)
- B. Qualifications of the consultant and firm. (MAXIMUM 15 POINTS AVAILABLE)
- C. Previous project experience on similar projects. (MAXIMUM 15 POINTS AVAILABLE)

- D. Knowledge of City’s transportation plan, transportation issues, and impact fee rate study. (MAXIMUM 15 POINTS AVAILABLE)
- E. Previous municipal work experience. (MAXIMUM 5 POINTS AVAILABLE)
- F. Capability of performing work and meeting required timelines. (MAXIMUM 5 POINTS AVAILABLE)
- G. Response of references. (MAXIMUM 5 POINTS AVAILABLE)

**VI. Submittal**

**Two copies of the proposal (one .pdf copy for email submittals) are due to the City of Port Orchard Department of Public Works Office prior to 2:00 p.m. on Monday, December 17, 2018.** Proposals may be hand-delivered, mailed, delivered by courier or e-mailed.

Submittal Address: City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366  
Attention: Public Works Department  
(360) 876-4991  
(360) 876-4980 fax  
Email: [publicworks@cityofportorchard.us](mailto:publicworks@cityofportorchard.us)  
Subject: **Transportation Impact Fee Rate Study Update**

All proposals should be clearly marked on the outside of the envelope with the subject line **“Transportation Impact Fee Rate Study Update.”**

Any copies should be duplex printed, and not use plastic or non-recyclable covers or bindings.

Inquiries regarding the RFP can be directed to Mark Dorsey, P.E., Public Works Director/City Engineer, at the address and phone number noted above.

Before receiving an award, the successful proposer will be required to provide the City of Port Orchard with copies of their current State of Washington and City of Port Orchard business licenses and Certificates of Insurance.

A committee of individuals to be selected by the City of Port Orchard Public Works Department will perform evaluation of the proposals. The proposals will be scored and ranked based on the selection committee’s evaluation. In the event of close scoring, a shortlist interview may be performed. The firm with the highest cumulative score will be invited to enter into contract negotiations. If an agreement cannot be reached, the second highest proposer may be contacted for negotiations. The City reserves the right to award the contract to the highest ranked firm without further discussions.

It is anticipated that contract approval will occur on January 22, 2018.

**QUALIFICATIONS**

**CITY OF PORT ORCHARD, WASHINGTON**

**Transportation Impact Fee Study Update 2018**

Identification of Business Organization:

The firm, by checking the applicable box, represents that it operates as:

a corporation incorporated under the laws of the State of Washington

an individual doing business as \_\_\_\_\_

a partnership (identify all partners on a separate page, attached)

a joint venture (identify all joint ventures on a separate page, attached)

other (please specify) \_\_\_\_\_

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
City of Port Orchard Business License #

\_\_\_\_\_  
Address of Proposer

\_\_\_\_\_  
Tax ID #

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Facsimile Number

\_\_\_\_\_  
Signature Name and Title (Print)

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**City of Port Orchard**

216 Prospect Street, Port Orchard, WA 98366  
(360) 876-4407 • FAX (360) 895-9029

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**Agenda Staff Report**

Agenda Item No.: Business Item 7E  
Subject: Approval to Allow the Placement of Public  
Art on Utility Equipment in the Right-of-  
Way

Meeting Date: February 19, 2019  
Prepared by: Nick Bond  
Development Director  
Atty Routing No: N/A  
Atty Review Date: N/A

**Summary:** The City received a request from Julie Benson to install a graphic wrap on two electrical boxes located within the right of way near Bay Street and Sidney. The graphics that are proposed are shown in the attached email. The City reached out to WSDOT to see if this would be allowed and WSDOT granted approval pending the submittal of a general permit application to allow the installation. Council is asked to consider whether this public art display should be allowed.

**Recommendation:** Staff recommends that the City Council make a motion to authorize the placement of public art as proposed in the attached documents, contingent on the city obtaining a WSDOT General Permit and on adherence to any conditions of that permit.

**Relationship to Comprehensive Plan:** N/A

**Motion for Consideration:** "I move to authorize the placement of public art as proposed, contingent on the City obtaining a WSDOT General Permit and on adherence to any permit conditions."

**Fiscal Impact:** A WSDOT General Permits as a \$2.50 application fee.

**Alternatives:** Do not approve the placement of public art as proposed.

**Attachments:** Email showing the public art proposal.

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**From:** [Severson, Dale](#)  
**To:** [Mark Dorsey](#)  
**Cc:** [Nick Bond](#); [Kim, Steve](#); [Newman, Jim](#); [Herland, Perry](#); [Heusman, Jonathan](#); [Nick Bond](#); [Rob Putaansuu](#)  
**Subject:** RE: SR 166 Public Art proposal for WSDOT Signal Controller Cabinet  
**Date:** Wednesday, February 6, 2019 7:15:11 AM  
**Attachments:** [image004.png](#)  
[image005.png](#)

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Hi Mark,

Just to clarify are the pictures you're considering the two shown below? Or is that just an example?

Dale



Sidney Street, Port Orchard, WA



Sidney & Bay Street, Port Orchard, WA



Port Orchard, 1920



Washington State Flower

**From:** Mark Dorsey <[mdorsey@cityofportorchard.us](mailto:mdorsey@cityofportorchard.us)>  
**Sent:** Tuesday, February 5, 2019 6:24 PM  
**To:** Severson, Dale <[SeversD@wsdot.wa.gov](mailto:SeversD@wsdot.wa.gov)>



Sidney Street, Port Orchard, WA



Sidney & Bay Street, Port Orchard, WA



Port Orchard, 1920



Washington State Flower  
Coastal Rhododendron

**Cc:** Keri Sallee <[kSallee@cityofportorchard.us](mailto:kSallee@cityofportorchard.us)>

**Subject:** FW: Public Art proposal for WDOT

I know we discussed this previously, but did we ever determined how to process these requests? I think the proposal is solid and complete. If Dale at WSDOT is good with this, I think it could go straight to Council. Thoughts?

Nick

**From:** Julie Benson <[jmbenson2001@yahoo.com](mailto:jmbenson2001@yahoo.com)>

**Sent:** Monday, January 28, 2019 4:50 PM

**To:** Nick Bond <[nbond@cityofportorchard.us](mailto:nbond@cityofportorchard.us)>

**Subject:** Public Art proposal for WDOT

Hi Nick,

Please review this public art proposal for WDOT regarding traffic box on Sidney Street Port Orchard.

Let me know if you have any questions or suggestions for changes

Thanks much

Julie Benson

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**City of Port Orchard  
Council Meeting Minutes  
Regular Meeting of January 22, 2019**

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**1. CALL TO ORDER AND ROLL CALL**

Mayor Pro-Tem Ashby called the meeting to order at 6:30 p.m.

Roll call was taken by the City Clerk as follows:

Mayor Pro-Tem Ashby	Present
Councilmember Chang	Present
Councilmember Clauson	Present
Councilmember Cucciardi	Absent
Councilmember Diener	Present
Councilmember Lucarelli	Present
Councilmember Rosapepe	Present
Mayor Putaansuu	Absent

Staff present: Public Works Director Dorsey, Finance Director Crocker, City Attorney Cates, HR Coordinator Howard, City Clerk Rinearson, and Deputy City Clerk Floyd.

**A. PLEDGE OF ALLEGIANCE**

**Mayor Pro-Tem Ashby** led the audience and Council in the Pledge of Allegiance.

**2. APPROVAL OF AGENDA**

**MOTION:** By Councilmember Rosapepe, seconded by Councilmember Clauson, recommends approval of the agenda with an added item that after number 6, public hearing, and between the business items, to add a collective bargaining.

**The motion carried.**

**MOTION:** By Councilmember Clauson, seconded by Councilmember Diener, to approve the agenda as amended.

**The motion carried.**

**3. CITIZENS COMMENTS**

There were no citizen comments.

**4. CONSENT AGENDA**

- A. Approval of Check Nos. 76020 through 76057 totaling \$832,945.06; and Bi-Weekly Payroll including Check Nos. 148114 through 148116 totaling \$295,730.19.
- B. Excusal of Councilmember Cucciardi Due to Business Obligations

**MOTION:** By Councilmember Clauson, seconded by Councilmember Lucarelli, to approve the consent agenda as presented.

**The motion carried.**

**5. PRESENTATION**

There were no presentations.

**6. PUBLIC HEARING**

There were no public hearings.

**NEW ITEM:** Collective Bargaining Session pursuant to RCW 42.30.140.

**7. BUSINESS ITEMS**

- A. Adoption of an Ordinance Ratifying the Collective Bargaining Agreement with Teamsters Local No. 589 Representing the Police Support Staff Employees**

**MOTION:** By Councilmember Clauson, seconded by Councilmember Diener, to adopt an Ordinance ratifying the terms of the Collective Bargaining Agreement with the Teamsters Local 589 representing the Police Support Staff Employees' bargaining unit and authorize the Mayor to execute the same.

**The motion carried.**  
**(Ordinance No. 004-19)**

- B. Adoption of an Ordinance to Waive Utility Late Fees and Penalties and to Make Alternative Utility Payment Arrangements**

**MOTION:** By Councilmember Lucarelli, seconded by Councilmember Clauson, to adopt an ordinance delegating authority to the Finance director to waive utility late fees, penalties, and/or disconnection charges, and to make alternative utility payment arrangements in accordance with the listed criteria, as presented.

**The motion carried.**



**(Ordinance No. 005-19)**

**C. Adoption of a Resolution Approving the Revised Salary for the Recruitment of a New Police Chief**

HR Coordinator Howard and Mayor Pro-Tem Ashby explained proposed changes to language in the resolution and motion.

**MOTION:** By Councilmember Chang, seconded by Councilmember Clauson, to adopt a resolution, approving the revised top salary increase to \$155,000 for the recruitment of a new Police Chief, thereon, as presented.

**The motion carried.  
(Resolution No. 004-19)**

**D. Adoption of a Resolution Approving an Interlocal Agreement with the Port of Bremerton for Human Resources Services**

**MOTION:** By Councilmember Diener, seconded by Councilmember Lucarelli, to adopt a resolution authorizing the Mayor to execute an interlocal agreement between the Port of Bremerton and the City of Port Orchard for temporary human resource services.

**The motion carried.  
(Resolution No. 005-19)**

**E. Adoption of a Resolution Approving a Contract with Neptune Marine LLC for the Rockwell Pocket Park Improvement Project and Document Procurement Procedures**

**MOTION:** By Councilmember Lucarelli, seconded by Councilmember Clauson, to adopt a resolution, thereby approving Contract No. C008-19 with Neptune Marine LLC in an amount not to exceed \$412,848.67 (applicable taxes included) for the Rockwell Pocket Park Improvement Project.

**The motion carried.  
(Resolution No. 006-19)**

**F. Approval of the January 8, 2019, Council Meeting Minutes**

**MOTION:** By Councilmember Diener, seconded by Councilmember Chang, to approve the minutes as presented.

**The motion carried. Councilmember Clauson abstained.**

## **8. REPORTS OF COUNCIL COMMITTEES**

After a brief discussion, Finance Director Crocker noted he will verify if the Finance Committee will be meeting on February 19<sup>th</sup>.

Mayor Pro-Tem Ashy reported the Economic Development and Tourism Committee is scheduled to meet February 11<sup>th</sup>. She also spoke to the status of the single use plastic bag ordinance.

Councilmember Lucarelli reported on the January 14<sup>th</sup> Chimes & Lights committee meeting. The next meeting is scheduled for February 27<sup>th</sup>. She reported the Utilities Committee is also scheduled for February 27<sup>th</sup>. She reported on the January 16<sup>th</sup> Sewer Advisory Committee meeting with the next meeting scheduled for April 17<sup>th</sup> at the South Kitsap Water Reclamation Facility SKWRF.

Councilmember Diener reported the Land Use Committee is scheduled to meet January 28<sup>th</sup>.

Councilmember Rosapepe reported on the Kitsap Transit meeting held today.

## **9. REPORT OF MAYOR**

There was no report of the Mayor.

## **10. REPORT OF DEPARTMENT HEADS**

Public Works Director Dorsey reported on the Rockwell Pocket Park; McCormick Village Park; Well No. 9; and the Tremont Widening Project.

HR Coordinator reported on the Office Assistant II position which closes on Friday and gave a report on the current recruitment process for police and public works positions.

City Clerk Rinearson said she received texts from CHI Franciscan regarding the Tremont Widening Project which helps notify people about the traffic delays and detours.

## **11. CITIZENS COMMENTS**

**Gerry Harmon** finds it upsetting that things get started in government and there is no reevaluation as to why it got started. She voiced her concerns with the \$0.10 cents per bag proposal.

## **12. EXECUTIVE SESSION**

There was no executive session.

**13. ADJOURNMENT**

The meeting adjourned at 7:29 p.m. No other action was taken. Audio/Visual was successful.

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Brandy Rinearson, MMC, City Clerk

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Mayor Pro-Tem Bek Ashby

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## City of Port Orchard Work Study Session Executive Summary

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**Issue Title:** Snow Report  
**Meeting Date:** February 19, 2019  
**Time Required:** 15 Minutes  
**Attendees:** Mark R. Dorsey, P.E, Public Works Director/City Engineer

**Action Requested At This Meeting:** Discussion regarding the February 2019 winter storms.

**Background/Issue:** Several storms impacted Port Orchard in February. This is a discussion of the overview of events associated with the storms and the City's involvement.

**Alternatives:** Do not discuss.

**Recommendation:** Staff recommends discussing the issue.

**Relationship to Comprehensive Plan:** N/A

**Attachments:** Memo – Snowmageddon 2019 and Snow Routes Map.

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**CITY OF PORT ORCHARD**  
**Public Works Director**

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**MEMORANDUM**

TO: Rob Putaansuu - Mayor

FROM: Mark R. Dorsey, P.E. - Public Works Director/City Engineer

DATE: February 15, 2019

RE: Snowmageddon 2019

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As requested, here is a brief overview of events associated with the recent weather event;

- **Friday (2/8/2019) thru Tuesday (2/12/2019):**
  - Leading up to the weather event, PW crews had been applying brine solution over previous winter months to help aid in snow removal. PW crews transitioned into two 12-hour shifts with (5) staff each shift, focusing on Priority 1, 2 and 3 streets per the Snow Route Map (attached.) Approximately 43 lanes miles of Priority 1, 14 lane miles of Priority 2 and 20 lane miles of Priority 3 lane miles were addressed.
- **Wednesday (2/13/2019):**
  - Crews were able to transition to plowing/sanding efforts on remaining Priority 3 roads and residential streets.
- **Thursday (2/14/2019):**
  - Until needed in the future, crews transitioned back to one 8-hour shift to catch up on day-to-day activities, tree removal and the continued plowing/sanding/brine work on residential streets.
- **Financial Impact:**
  - The Finance Department is tracking both PW crew time and materials against 002-5-542-66-00 (Snow & Ice) and City Hall Closure (Administrative Leave) for non-essential personnel.

0 650 1,300 2,600 3,900 5,200 Feet


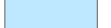


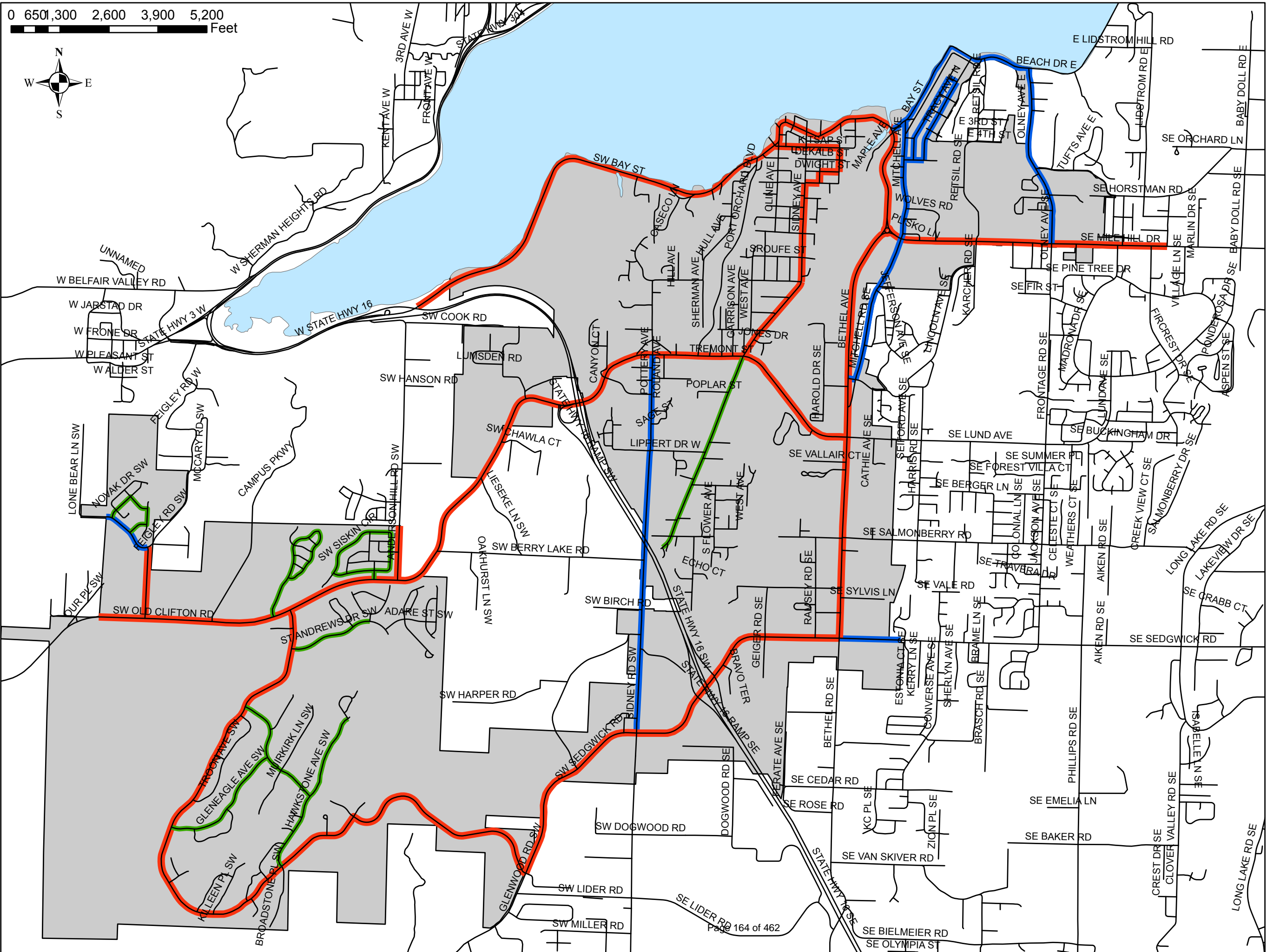
### City of Port Orchard Public Works Department

### 2012-2013 Snow Routes

#### Priority

-  1
-  2
-  3

-  City Limits
-  Sinclair Inlet



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Updated 10/07/11





## City of Port Orchard Work Study Session Executive Summary

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**Issue Title:** 2019 Zoning Code and Zoning Map Update

**Meeting Date:** February 19, 2019

**Time Required:** 20 Minutes

**Attendees:** Nick Bond, Community Development Director

**Action Requested at this Meeting:** Provide feedback and direction to staff on the draft updated Zoning Code and Zoning Map.

**Background/Issue:** Since May 2018, the Department of Community Development and the Planning Commission have been working on a full update of the City’s Zoning Code and Zoning Map to further implement the comprehensive plan. The Planning Commission held a final public hearing on February 5, 2019, and several positive citizen comments were received. There was no testimony in opposition of the proposed code changes provided during the public hearings or comment periods. The Commission then voted to recommend approval of the draft Zoning Code and Zoning Map with minor revisions proposed by staff.

The update includes a number of new chapters to be added to Title 20 of the Port Orchard Municipal Code (POMC). There are also proposed changes to existing City zoning regulations, including repeal of Section 20.02.050 (Use of Standard Industrial Classification Codes); repeal of Chapters 20.34 and 20.46 (Zoning Districts and Designated Land Uses); revisions to Chapter 20.12 (Definitions); adoption of a new Section 20.06.025 (legislative code amendments); and repeal of interim Ordinance 015-18 (self-storage facilities).

The most notable change to the Zoning Code is the change from a traditional “density-based” code, which relies on numerical minimum and maximum units per acre to regulate residential housing development, to a “form-based” code. A form-based zoning code establishes building types, the development of which must comply with numerical standards for setbacks, height, lot coverage, parking and landscaping on the parcel to be developed, but which are not subject to minimum/maximum density requirements. The new Zoning Code also seeks to provide greater flexibility within neighborhoods for mixed residential and commercial development where appropriate, and to encourage auto-oriented commercial uses to locate along major commercial and commuter corridors. Additional information on specific topics within the Zoning Code is provided in an attached memorandum.

The zoning code development and adoption process began in May 2018 with the adoption of development of a public participation program. Since then, the zoning code has been discussed and reviewed in more than 17 public meetings of the Planning Commission, Land Use Committee, or City Council. The City conducted public outreach through a monthlong online survey, through meetings with stakeholder groups, and in two public hearings before the Planning Commission. Through the development and review process for the zoning code, the City has provided for early and continuous public participation.

**Alternatives:** Direct staff to prepare revisions to the draft code; place the draft code on a future regular council meeting agenda; do not move forward with the proposed revisions.

**Relationship to Comprehensive Plan:** Per RCW 36.70A.040(3), the City is required to adopt development regulations, including zoning requirements, that are consistent with and implement the City's Comprehensive Plan. The "whereas" statements in the attached ordinance identifies specific goals and policies of the comprehensive plan which are supported by the proposed revisions to the zoning code.

**Recommendations:** Review and discuss the draft Zoning Code and Zoning Map, and provide direction to staff.

**Attachments:** Ordinance; Zoning Code (complete and in order of codification in this packet, will be reorganized into Exhibits 1, 2, and 3 in final packet prior to adoption); Zoning Map (Exhibit 4).

## ORDINANCE NO. XX-19

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, RELATING TO LAND USE AND ZONING; REPEALING CERTAIN SECTIONS OF THE PORT ORCHARD MUNICIPAL CODE; REPEALING INTERIM ORDINANCE 015-18; REPEALING ORDINANCE 019-17; REVISING CHAPTERS IN TITLE 20 OF THE PORT ORCHARD MUNICIPAL CODE; ADOPTING NEW CHAPTERS IN TITLE 20 OF THE PORT ORCHARD MUNICIPAL CODE; ADOPTING A REVISED ZONING MAP; PROVIDING FOR SEVERABILITY, CORRECTIONS, AND PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, Title 20 (Unified Development Code) of the Port Orchard Municipal Code was adopted on June 13, 2017 (Ordinance 019-17); and

**WHEREAS**, the City Council desires to update and revise the Zoning Code regulations of the Unified Development Code and to adopt a corresponding updated Zoning Map and to ensure that these revisions are consistent with other sections of Title 20, and

**WHEREAS**, the revisions to the draft Zoning Code have been reviewed and discussed in at least 17 public meetings starting on May 1, 2018 before the Planning Commission, Land Use Committee, and City Council.

**WHEREAS**, staff have presented revisions and new chapters of the Zoning Code and an updated Zoning Map to the City Council; and

**WHEREAS**, on April 24, 2018, the City Council adopted interim self-storage regulations which have been addressed in the updated Zoning Code (Ordinance 015-18); and

**WHEREAS**, between June 26, 2018 and July 30, 2018, the City conducted a survey of residents and stakeholders seeking public input on possible zoning changes; and

**WHEREAS**, on July 12, 2018, the City provided the Department of Commerce with the required 60-day notice of the City's intent to amend the Zoning Code and Zoning Map; and

**WHEREAS**, on August 7, 2018, the City's Planning Commission held a public hearing on several draft chapters of the amended Zoning Code; and

**WHEREAS**, on October 12, 2018, the City issued a SEPA Determination of Non-Significance, and no comments or appeals were received; and

**WHEREAS**, on January 23, 2019, notification was sent to Port Orchard property owners whose properties would have a significant change in the comprehensive plan designations and zoning classifications of their properties based on the amended Zoning Map; and

**WHEREAS**, on February 5, 2019, the City’s Planning Commission held a public hearing on the full draft of the amended Zoning Code and Zoning Map; and

**WHEREAS**, on February 5, 2019, the Planning Commission voted unanimously to recommend approval of the Zoning Code and Zoning Map update as presented with minor revisions; and

**WHEREAS**, the adoption of the Zoning Code update requires the repeal of POMC Chapters 20.30, 20.34 and 20.46, and Section 20.02.050; and

**WHEREAS**, the City has received public comments on the proposed Zoning Code update, and these comments were logged and provided to the Planning Commission and City Council for review; and

**WHEREAS**, the City Council wishes to adopt zoning classifications and development regulations that encourage affordable housing, promote sustainable development, provide necessary urban services, and support economic growth and development, consistent with the City of Port Orchard’s mandate to protect the welfare of its citizens; and

**WHEREAS**, the proposed Zoning Code update implements numerous comprehensive plan goals and policies including:

Goals:

- LU Goal 6: Reduce congestion and greenhouse gas emissions, promote public health, reduce auto dependency, and increase multimodal transportation opportunities for accessing retail services, health care services, and places of employment.
- TR Goal 21: Promote environmentally sensitive and “green” transportation solutions.
- Policies:LU-1: Ensure that land use and zoning regulations maintain and enhance existing single-family residential neighborhoods, while encouraging that new development provides a mixed range of housing types.
- LU-3: Update and establish building and site design standards that support an attractive and functional built environment in all areas of the City.
- LU-5: Ensure land use and development regulations enable a supply of housing units within the city and adjacent UGA that will accommodate forecasted population growth. Ensure land use and development regulations enable a supply of commercial retail and office space within the city and adjacent UGA that will accommodate forecasted employment growth.
- LU-6: Ensure adequate land is available for light industrial and commercial uses, including high technology, medical, and office uses, in appropriate areas to diversify Port Orchard’s economic base and provide for the community’s changing needs.
- LU-15: Evaluate a range of incentives to encourage compact development to preserve open space throughout the city, possibly to include density credits, incentive zoning, and transfer of development rights.

- LU-20: Ensure orderly development, concurrency of infrastructure provision, and protection of environmentally sensitive areas through an effective and predictable permitting process.
- LU-25: Incorporate the following principles in planning for commercial areas:
  - Create lively and attractive places at a human scale.
  - Support a mix of retail, office, and residential uses in multistory structures.
  - Create transitions between commercial areas and surrounding residential neighborhoods.
    - Protect residential areas from excessive noise, exterior lighting, glare, visual nuisances, and other conditions that detract from the quality of the living environment.
    - Encourage multi-modal transportation options, especially during peak traffic periods.
    - Promote an intensity and density of land uses sufficient to support effective transit and pedestrian activity.
    - Promote a street pattern that provides through connections, pedestrian and vehicular access.
      - Establish urban and architectural design standards that support an attractive and functional pedestrian environment, such as block size limits and requiring street-facing windows and doors.
      - Encourage pedestrian travel to and within commercial areas by providing:
        - Safe and attractive walkways.
        - Close groupings of land uses.
        - Parking lot design that provides safe walking routes and pedestrian connections between adjacent properties.
        - Off-street surface parking to the backs or sides of buildings to maximize pedestrian access from the sidewalk(s).
- LU-26: Require adequate transitions between different land uses to mitigate potential negative impacts of noise, light, and air pollution.
- LU-27: Require new development to provide connections to and through-access for existing and planned trails and roads. Explore strategies to encourage existing development to provide the same as part of a city- and region-wide trail and open space network.
- LU-28: In conjunction with the proposed Centers strategy, enhance downtown Port Orchard's role as the center of the South Kitsap region, reflecting the following principles in development standards and land use plans:
  - Encourage land uses that support transit centers and promote pedestrian activity.
  - Promote a mix of uses, including retail, office, and housing.
  - Encourage uses that will provide both daytime and evening activities.
  - Support civic, cultural, and entertainment activities.
  - Provide sufficient public open space and recreational opportunities.
  - Enhance, and provide access to, the waterfront.
  - Develop enhanced design guidelines and design review requirements that promote attractive, pedestrian-scale development and redevelopment within the City's historic downtown area.

- HS-2: Support the development of a variety of housing types, including apartments, townhomes, mixed-use (residential and other uses) and live-work development, small-lot and zero lot line single-family homes, and manufactured homes, as well as traditional single-family homes, through innovative planning, efficient and effective administration of land and building codes, and, where available, applicable financial assistance.
- HS-4: Adopt zoning and development regulations that will have the effect of minimizing housing costs and maximizing housing options.
- HS-10: Encourage the development of vertical multi-family housing above ground floor commercial uses within centers of local importance.
- HS-16: Consider increasing maximum housing densities and implementing minimum housing densities in appropriate areas.
- HS-19: Consider commercial building design standards that establish and protect neighborhood character.
- HS-25: Encourage energy efficient housing types that conserve non-renewable energy and help minimize impact on air quality and climate.
- ED-6: The City shall encourage residential and commercial growth in mixed-use local centers where job opportunities and a diverse mix of retail and office activities are concentrated.
- ED-18: The City shall allow traditional home occupations as permitted by local regulations, including live-work units.
- ED-27: The City shall, through changes to the land use code, encourage mixed use developments within centers of local importance that will enhance the visual, economic, and environmental quality of these areas and improve the transition between commercial and residential districts.
- ED-28: The City shall require pedestrian orientation for non-residential uses and office or residential uses above ground floor retail uses within centers of local importance.
- ED-29: The City shall encourage the redevelopment of strip commercial areas through changes to the land use code, landscaping code, and signage code.
- TR-3: Require new development and redevelopment to incorporate transit, pedestrian and other non-motorized transportation improvements, including bus shelters and/or pullouts, sidewalks, pathways, crosswalks, and bicycle lanes.
- TR-11: Require developers to provide on-site and off-site road, safety, and other transportation improvements where necessary to serve the needs of the proposed developments and mitigate the impacts of their development on the surrounding neighborhoods.
- TR-58: Set minimum bicycle parking quantities and secure bicycle parking and storage standards for private development.
- TR-81: Develop design guidelines and standards for street wise landscaping, sidewalks, and maintenance within new developments.

**WHEREAS**, on February 19, 2019, the City Council reviewed the Zoning Code and Zoning Map update at its regularly scheduled meeting; and

**WHEREAS**, the City Council finds that the amendments to the Zoning Code and Zoning Map:

- Implement the 2018 Port Orchard Comprehensive Plan;
- Ensure that sensitive natural resources and critical areas are protected;
- Encourage urban development within the City of Port Orchard consistent with the Growth Management Act, the Countywide Planning Policies, and the Regional Growth Strategy;
- Encourage economically sound, fiscally sustainable, orderly, and compatible land development practices in accordance with the Comprehensive Plan;
- Will promote housing type diversity and affordability;
- Will ensure high quality attractive development;
- Support increased mixing of uses within developments and neighborhoods as a strategy for reducing traffic, increasing walkability, and providing alternatives to single occupant vehicle travel;
- Support the revitalization of downtown Port Orchard while protecting views;
- Maintains property rights and preservation of property values;
- Ensure an adequate supply of self-service storage facilities to serve the needs of Port Orchard residents;
- Ensure an adequate supply of fueling stations to serve the needs of Port Orchard residents;
- Protect the rural lands surrounding Port Orchard by allowing rural development rights to be transferred into the City;
- Provide a process to allow accessory dwelling units, as a source of affordable housing and income for city residents;
- Ensure public health and safety by requiring neighborhood connectivity in new residential subdivisions;
- Encourage bicycling by ensuring the availability of bicycle parking;
- Provide parking and charging infrastructure in support of electric vehicles;
- Take actions in support of reducing greenhouse gas emissions;
- Ensure that appropriate landscape buffers are provided between different land uses that may be incompatible;
- Protect and preserve significant trees and ensure a healthy future forest canopy in Port Orchard; and

**WHEREAS**, the City Council desires to repeal the above referenced chapters of the POMC, and to adopt the Zoning Code update as presented;

**NOW, THEREFORE**, THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1. Findings.** The City Council hereby adopts the above recitals as findings in support of this ordinance.

**Section 2. POMC Chapters Repealed.** Chapters 20.30, 20.34 and 20.46 of the Port Orchard Municipal Code are hereby repealed in their entirety.

**Section 3. POMC Section Repealed.** Section 20.02.050 of the Port Orchard Municipal Code is hereby repealed in its entirety.

**Section 4. POMC New Chapters Adopted.** The new chapters of POMC Title 20 – Unified Development Code, Chapters 20.30 , 20.31, 20.32, 20.33, 20.34, 20.35, 20.36, 20.37, 20.39, 20.40, 20.41, 20.68 and 20.129, attached as Exhibit 1 hereto and incorporated fully herein by this reference, are hereby adopted in their entirety.

**Section 5. POMC Chapters Amended.** The amended chapters of POMC Title 20 – Unified Development Code, Chapters 20.06, 20.12, 20.22, 20.38, 20.54, 20.58, 20.100, 20.122, 20.124, 20.128 and 20.139, attached as Exhibit 2 hereto and incorporated fully herein by this reference, are hereby adopted in their entirety.

**Section 6. POMC Sections Amended.** The amended sections of POMC Title 20 – Unified Development Code, Sections 20.127.020 and 20.127.340, attached as Exhibit 3 hereto and incorporated fully herein by this reference, are hereby adopted in their entirety.

**Section 7. Interim Ordinance Repeal.** Ordinance 015-18 is hereby repealed in its entirety.

**Section 8. Ordinance Repealed.** Ordinance 019-17 is hereby repealed in its entirety.

**Section 9. Revised Zoning Map Adopted.** The revised Zoning Map, attached as Exhibit 4 hereto and incorporated fully herein by this reference, is hereby adopted.

**Section 10. Severability.** Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid by a court, board, or tribunal of competent jurisdiction, for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 11. Corrections.** Upon the approval of the City Attorney, the City Clerk is authorized to make any necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

**Section 12. Effective Date; Publication.** This ordinance shall take effect and be in full force and effect five days after publication, as provided by law. An approved summary of this ordinance consisting of the title shall be published in the official newspaper of the City.

**PASSED BY THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON**, at a regular meeting thereof this **\*\*th day of \*\***, 2019, and SIGNED by the Mayor and attested by the Clerk in authentication of such passage this **\*\*th day of \*\***, 2019.

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Robert Putaansuu, Mayor



ATTEST:

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Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM ONLY:

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Sharon Cates, City Attorney

**EXHIBITS: Exhibit 1 – New Chapters of the POMC**

**Exhibit 2 – Amended Chapters of the POMC**

**Exhibit 3 – Amended Sections 20.127.020 and 20.127.340**

**Exhibit 4 – Amended Zoning Map**

**Chapter 20.06  
CODE AMENDMENTS**

**Sections:**

**20.06.025 Legislative zoning map amendments.**

**20.06.025 Legislative zoning map amendments.** For the purposes of Title 20, the city's zoning map shall be considered a development regulation. However, individual parcels or small groups of parcels shall not be rezoned through the process described in POMC 20.06, except in cases where a mapping error has occurred. Instead, the site-specific rezone process described in chapter 20.42 shall be used for these proposals. Changes to the zoning map affecting large areas of the city may be initiated through the process in chapter 20.06, provided that such changes are found to be consistent with the city's Comprehensive Plan and/or are part of an effort to implement the city's Comprehensive Plan.

## **Chapter 20.12 DEFINITIONS**

The definitions in this chapter shall apply to Title 20 unless a specific definition is set forth in a subsequent section, chapter, or subtitle in which case that definition shall apply but be limited to that section, chapter, or subtitle as specified therein.

“Accessible electric vehicle charging station” means an electric vehicle charging station where the battery charging station equipment is located within accessible reach of a barrier-free access aisle (minimum 44-inch width) and the electric vehicle.

“Accessory dwelling unit” means a separate, complete dwelling unit attached to or contained within the structure of the primary use or a detached single-family residential dwelling unit (accessory apartment), or contained within a separate structure that is accessory to the primary use or detached single-family dwelling unit (backyard cottage) on the premises.

“Adequate public facilities” means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums. (WAC 365-196-210(3).)

“Aggrieved person” means:

- (1) The applicant and the owner of property to which the land use decision is directed; or
- (2) Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
  - (a) The land use decision has prejudiced or is likely to prejudice that person;
  - (b) That person’s asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;
  - (c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and
  - (d) The petitioner has exhausted his or her administrative remedies to the extent required by law.

“Agricultural processing” means preparing harvested crops or products of animal or poultry husbandry for marketing, transportation or further processing.

“Agricultural products” means items resulting from the practice of agriculture, including crops such as flowers, fruits, vegetables, grains, seed, feed, and plants, or animal products such as eggs, milk, and meat, or animal byproducts such as fertilizer.

“Alley” means a public or private access way, either unimproved or improved, which provides a secondary means of vehicular access to abutting property. Alley width shall be considered the distance between the alley right-of-way lines.

“Alteration” means:

- (1) A change or rearrangement of the structural parts or exit facilities, or an enlargement by extending the sides or increasing the height or depth, or the moving from one location to another.

“Animal – Small” means animals, other than livestock or animals considered predatory or wild, which are kept outside a dwelling unit all or part of the time. Animals considered predatory or wild shall be considered small animals when they are taken into captivity for the purposes of breeding, domestication, training, hunting or exhibition.

“Appeal” means to seek review of a decision or determination from a higher authority. An appeal may be from a staff decision or determination to the examiner; or from an examiner decision to the city council; or from a city council decision to the superior court or other court of competent jurisdiction; however, some permit processes follow different appeal procedures, which procedures are set forth in the corresponding chapter.

“Applicant” means the owner of land proposed for land development or use or its representative who shall have express written authority to act on behalf of the owner. Written consent shall be required from the legal owner of the property.

“Arborist” means an individual trained in the art and science of planting, caring for, and maintaining individual trees, and who is currently certified by the International Society of Arboriculture.

“Available public facilities” means that public facilities are in place, or a financial commitment has been made to provide the facilities concurrent with development. For the purposes of transportation facilities, “concurrent with development” means that the improvements or strategies are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six years. (RCW 36.70A.070 (6)(b).)

“Awning” means an architectural projection for a building that is wholly supported by the building to which it is attached and comprised of a lightweight rigid skeleton structure over which a covering is attached.

“Battery charging station” means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by Chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

“Battery electric vehicle (BEV)” means any vehicle that operates exclusively on electrical energy from an off-board source that is stored in the vehicle’s batteries, and produces zero tailpipe emissions or pollution when stationary or operating.

“Biologist” means a person who has a minimum of a bachelor of science degree in biological sciences or a related field from an accredited college or university and two or more years of experience; or a person who has five or more years of experience as a practicing biologist.

“Binding site plan” means a drawing to scale which: (a) identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters identified in chapter 20.94 herein; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the decision-maker with authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

“Block” is a group of lots, tracts or parcels within well-defined and fixed boundaries.

“Board” means the design review board (DRB), which reviews development applications in the downtown overlay district and makes recommendations to the development director or designee. Also see Chapter 2.76 POMC.

“Bond” means a form of security provided by a bonding company in an amount and form satisfactory to the city attorney, intended to ensure that required improvements are installed and/or maintained, and/or to otherwise guarantee compliance with applicable provisions of this Title.

“Boundary line adjustment” means a division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site or division nor create any lot, tract, parcel, site or division which contains insufficient area and dimensions to meet minimum requirements for width and area for a buildable lot pursuant to this Title.

“Brushing” means an allowed practice of removing ground cover, shrubs and vegetation not defined as a tree to create better visibility on a site for purposes of public safety, surveying or marketing.

“Buffer” means a nonclearing native vegetation area which is intended to protect the functions and values of critical areas.

“Building” means any structure used or intended for supporting or sheltering any use or occupancy.

“Building area” means the area included within the surrounding interior walls of a building or portion thereof, exclusive of courts.

“Building envelope” means the area of a lot that delineates the limits of where a building may be placed on the lot.

“Building façade” means that portion of any exterior elevation of a building extending from the grade of the building to the top of the parapet wall or eaves for the entire width of the building elevation.

“Building height” means, except when otherwise specified in this code, the vertical distance from grade plane to the average height of the highest roof surface.

“Building official” means the city employee designated as the building official, or the consultant to the city who has been designated by contract as the building official.

“Building permit” means the permit required for new construction and additions pursuant to the city’s adopted building code. The term “building permit,” as used herein, shall not be deemed to include: permits required for temporary dwellings; or permits required for remodeling, rehabilitation, or other improvements 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 number of dwelling units (for residential construction) resulting therefrom.

“Building site” means the physical portion of the real property upon which the structures are situated within one lot, and which portion of the lot satisfies the applicable zoning code standards for physical placement, lot coverage, construction of structures, critical areas buffers and setbacks, and all other location and dimensional requirements for the structures.

“Business or occupation of outdoor advertising” shall mean the business of renting or selling space by the owner of any billboard or outdoor advertising structure to any other party for valuable consideration.

“Caliper” means the diameter of a tree trunk, applied only to new or replacement nursery-grown trees, measured six inches above the ground for up to and including four-inch caliper size trees and 12 inches above the ground for larger size trees.

“Campground” means an area of land on which accommodations for temporary occupancy, such as tents or recreational vehicles without hook-up facilities, are permitted and which is used primarily for recreational purposes on an extended basis over a season or year-round and/or as a commercial activity.

“Capital facilities” means the facilities or improvements included in a capital facilities plan.

“Capital facilities plan” means the capital facilities plan element of the city’s comprehensive plan adopted pursuant to Chapter 36.70A RCW, and any amendments to the plan, which may include by reference a capital facilities plan of the school district within the city.

“Charging level” means the standardized indicators of electrical force, or voltage, at which an electric vehicle’s battery is recharged. Levels 1, 2, and 3 are defined by the electrical output, per the following specifications:

- (1) Level 1. Voltage including the range from zero through 120.
- (2) Level 2. Voltage is greater than 120 and includes 240.
- (3) Level 3. Voltage is greater than 240 and is considered fast or rapid charging.

“City” means the City of Port Orchard, Washington.

“City clerk” means the city employee appointed to that position in accordance with the provisions of POMC Title 2.

“City Council” means the city council of the City of Port Orchard, Washington.

“City engineer” means the city employee appointed to that position in accordance with the provisions of POMC Title 2.

“Clearing” or “land clearing,” for purposes of this chapter, means the direct and indirect removal of trees, including topping and limbing, and the destruction, disturbance or removal of other vegetation from any public or private undeveloped, partially developed, or developed lot, public lands, public right-of-way, or utility easement by physical, chemical, or other means. This shall also include any destructive or inappropriate activity applied to a tree or other vegetation that will result in its death or effectively destroy the functionality. “Clearing” shall not include landscape maintenance, brushing, or pruning consistent with accepted horticultural practices which does not impair the health, survival or function of trees or other vegetation. Any proposed activities within a critical area or buffer requires compliance with POMC 20.162.

“Closed record appeal” means an administrative appeal that is heard by the Hearing Examiner. See POMC 2.76.150.

“Closed record appeal hearing” means a hearing held pursuant to POMC 2.76.150.

“Closed record public hearing” means a public hearing before the city council following an open record hearing, in which no new evidence is considered or allowed. Oral argument shall be permitted in favor or against the recommendation of the hearing examiner; however, such oral arguments shall be strictly limited in accordance with this provision.

“Commission” means the planning commission of the city of Port Orchard, Washington.

“Common ownership” means ownership by the same person, corporation, firm, entity, partnership or unincorporated association, or ownership by different corporations, firms, partnerships, entities or unincorporated associations, in which a stockbroker, partner or associate, or a member of his family owns an interest in each corporation, firm, partnership, entity or unincorporated association.

“Community residential facility (CRF)” means living quarters meeting applicable federal and state standards that function as a single housekeeping unit and provide supportive services for a group of individuals comprising more than a family (eight or more individuals excluding staff), including but not limited to counseling, rehabilitation, and medical supervision, including drug and alcohol detoxification but excluding prisoner release participants.

“Community residential facility (CRF) – Prisoner release” means living quarters meeting applicable federal and state standards that function as a single housekeeping unit and provide supportive services for a group of individuals comprising more than a family (eight or more individuals excluding staff), including but not limited to counseling, rehabilitation, and medical supervision, excluding drug and alcohol detoxification, specifically for prisoner release participants and programs such as halfway houses.

“Comprehensive plan” or “Comprehensive land use plan” means the plan adopted in chapter 20.03 of the Port Orchard Municipal Code, pursuant to Chapter 36.70A RCW.

“Concurrency” or “concurrent with development” means that adequate public facilities are available when the impacts of development occur, or within a specified time thereafter. This definition includes the concept of “adequate public facilities” as defined above. For the purposes of transportation facilities, concurrent with development means that strategies or improvements are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six years. (RCW 36.70A.070(6)(b).)

“Consistency” means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

“Construction – New” means structures for which the start of construction commenced on or after the effective date of the ordinance codified in this title and preceding ordinances.

“Council”: See “City Council”.

“Courtyard” means a space, open and unobstructed to the sky, located at or about grade level on a lot and bounded on three or more sides by the walls of a building.



“Coverage – Site” means the percentage of the area of a lot or site that is built upon or covered over with impervious materials.

“Critical areas” means any of those areas in the city which are subject to natural hazards or those lands with features which support unique, fragile, or valuable natural resources, including fish, wildlife, and other organisms and their habitat and such resources which in their natural state carry, hold or purify water.

“Critical areas” means those areas identified as:

- (1) Wetlands;
- (2) Areas with a critical recharging effect on aquifers used for potable water;
- (3) Fish and wildlife habitat conservation areas;
- (4) Geologically hazardous areas; and
- (5) Frequently flooded areas.

“Critical facilities” means those facilities necessary to protect the public health, safety and welfare. These facilities include but are not limited to schools, hospitals, police stations, fire departments and other emergency response facilities, and nursing homes. Critical facilities also include sites of hazardous material storage or production.

“Critical root zone” means the area where the tree’s roots are located and is the area surrounding a tree measured at a radial distance from the trunk equal to one foot for every one-inch diameter of tree.

“Cul-de-sac” means a road closed at one end by a circular area of sufficient size for turning large emergency response vehicles.

“DBH” means diameter at breast height. DBH is a tree’s diameter in inches at four and one-half feet above the ground at the lowest point surrounding the trunk, and is used to measure existing trees on a site. On multi-stemmed or multi-trunked trees, the diameter shall be the diameter equivalent to the sum of trunk areas measured at DBH.

“Dedication” means the deliberate appropriation of land or rights in land by its owner for any general and public use, reserving to himself or herself no other rights than such as are compatible with the full exercise and enjoyment of the public use to which the property has been devoted. The intention to dedicate shall be evidenced by deed, or other instrument of conveyance, or by dedication on a duly filed and recorded plat (or short plat). Dedications by Short Plat may require City Council acceptance.

“Density” means:

- (1) “Density (gross)” means the acreage of a lot or parcel multiplied by the stated permitted allowed units per acre.
- (2) “Density (net)” means the acreage of a lot or parcel minus critical areas multiplied by the density credits as described in POMC 20.122.040.

“Department” means the City of Port Orchard, Washington Department of Community Development or its successor agency, unless otherwise specified.

“Designated accessible space” means an accessible parking space required by WAC 51-50-005 and designated for the exclusive use of parking vehicles with a State Disabled Parking Permit.

“Design review board” or “Board” means the advisory board that makes design recommendations to the city council on downtown overlay district applications; see POMC 20.38.228.

“Detention facilities” means stormwater facilities designed to store runoff while gradually releasing it at a predetermined controlled rate. “Detention facilities” shall include all appurtenances associated with their designed functions, maintenance and security.

“Developer” means the person or entity that owns or has development control over property for which development activity is proposed.

“Development activity” or “development” means any construction or expansion of a building, structure, or use; any change in the use of a building or structure; or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the city. (RCW 82.02.090(1)).

“Development agreement” means the agreements authorized in RCW 36.70B.170.

“Development approval” means any written authorization from the city that authorizes the commencement of a development activity.

“Development approval authority” means the city official or tribunal having code authority to approve a development.

“Development site” means the legal boundaries of the parcel or parcels of land for which an applicant has or should have applied for authority from the City to carry out a development activity.

“Director” or “development director” means the Community Development Director of the City of Port Orchard or his or her duly authorized designee, or as otherwise indicated in this title.

“Dock” means a floating or fixed platform used as a landing place for marine transport or for recreational purposes and attached to the shore or a fixed pier by a loosely coupled ramp.

“Domestic water system” means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of the development.

“Downtown marquee” means the marquee located at the 700 and 800 blocks of Bay Street and adjacent streets and which was constructed with funds from LID No. 65.

“Drip line” of a tree means an imaginary line on the ground created by the horizontal projection of the foliage at its greatest circumference.

“ Dwelling unit” means one or more rooms designed for occupancy by a person or family for living and sleeping purposes, containing kitchen facilities, lavatory, and closet, and rooms with internal

accessibility, for use solely by the dwelling's occupant, including but not limited to bachelor, efficiency, and studio apartments, and modular and manufactured homes.

"Easement" means a right granted by the owner of land to another party for specific limited use of that land.

"Electric scooters and motorcycles" means any two-wheel vehicle that operates exclusively on electrical energy from an off-board source that is stored in the vehicle's batteries and produces zero emissions or pollution when stationary or operating.

"Electric vehicle" means any vehicle that operates, either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on-board for motive purpose. "Electric vehicle" includes: (1) a battery electric vehicle; (2) a plug-in hybrid electric vehicle; (3) a neighborhood electric vehicle; and (4) a medium-speed electric vehicle.

"Electric vehicle charging station" means a public or private parking space that is served by battery charging station equipment and that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery or other energy storage device in an electric vehicle. An electric vehicle charging station equipped with Level 1 or Level 2 charging equipment is permitted outright as an accessory use to any principal use.

"Electric vehicle charging station – Restricted" means an electric vehicle charging station that is: (1) privately owned and restricted access (e.g., single-family home, executive parking, designated employee parking); or (2) publicly owned and restricted (e.g., fleet parking with no access to the general public).

"Electric vehicle charging station – Public" means an electric vehicle charging station that is: (1) publicly owned and publicly available (e.g., park and ride parking, public library parking lot, on-street parking); or (2) privately owned and publicly available (e.g., shopping center parking, nonreserved parking in multifamily parking lots).

"Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

"Electric vehicle parking space" means any marked parking space that identifies the use to be exclusively for the parking of an electric vehicle due to the presence of electric vehicle charging equipment.

"Enhancement" means an action or actions performed to improve the condition of an existing degraded critical area (e.g., wetlands or streams) such that the functions or values are of a higher quality; provided, that this activity does not significantly degrade another existing function or value.

"Equipment – Heavy" means high-capacity mechanical devices for moving earth or other materials, and mobile power units including, but not limited to:

- (1) Carryalls;
- (2) Graders;
- (3) Loading and unloading devices;
- (4) Cranes;
- (5) Drag lines;

- (6) Trench diggers;
- (7) Tractors;
- (8) Augers;
- (9) Bulldozers;
- (10) Concrete mixers and conveyers;
- (11) Harvesters;
- (12) Combines; or
- (13) Other major agricultural equipment and similar devices operated by mechanical power as distinguished from manpower.

“Equipment – Light” means such construction machinery as chainsaws, wheelbarrows, posthole diggers and all handheld tools.

“Erosion” means the process whereby the land surface is worn away by the action of water, wind, ice or other geologic agents, by processes such as gravitational creep or events such as landslides caused by natural or manmade impacts.

“Escrow” means a deposit of cash with the City or escrow agent, pursuant to a written agreement, in order to secure the promise to perform some act.

“Evergreen” means a plant species with foliage that persists and remains green year-round.

“Examiner”: See “Hearing examiner”.

“External buffer” means a naturally vegetated area or vegetated area along the exterior boundaries of an entire development processed in accordance with a subdivision application, which is landscaped and maintained as open space in order to eliminate or minimize conflicts between such development and adjacent land uses.

“Façade” means the entire building front or street wall face, including grade, to the top of the parapet or eaves and the entire width of the building elevation.

“Family” means any number of persons related by blood, marriage or legal adoption and including foster children and exchange students living together as a single housekeeping unit. “Family” also means the following when living together as a single, not-for-profit housekeeping unit:

- (1) A group of not more than four related and unrelated adults and their related minor children, but not to exceed a total of eight related and unrelated persons; or
- (2) Not more than eight disabled persons, whether adults or minors, living together in a consensual residential living arrangement, but not to exceed a total of eight persons; or
- (3) State licensed adult family homes as defined by RCW 70.128.010; or
- (4) State licensed foster family homes and group care facilities as defined in RCW 74.15.020.

For the purposes of this definition, an adult is a person eighteen years of age or older, and a minor child is a person under the age of eighteen years.

“Fee” or “filing fee” means the fee for filing an application, as said fee is established annually by resolution of the city council. Unless otherwise indicated, all fees must be paid at the time the application is submitted to the city.

“Fence” means a barrier for the purpose of enclosing space or separating lots, composed of: wood, metal or concrete posts connected by boards, rails, panels, wire, mesh, masonry, or concrete, excluding retaining walls.

“Financial commitment” means those sources of public or private funds or combinations thereof that have been identified as sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

“Final plat”: See “Plat – Final plat”.

“Floor – Ground” means the ground floor of a building defined as the three-dimensional interior building space which sits immediately above the basement, crawl space, or floor slab and below the ceiling or joists supporting a roof or second floor and which is nearest in floor elevation to the lowest street elevation located adjacent to the parcel on which the building is located. This includes any loft space.

“Floor – Lowest” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this code.

“Floor – Second” means the second floor defined as the three-dimensional interior building space which sits above the ground floor and which is not a loft.

“Forest land” means land devoted primarily to growing and harvesting forest and timber products and designated as a forest production district.

“Forest practice” means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, or removing forest biomass, including but not limited to:

- (1) Activities in and over typed water;
- (2) Road and trail construction;
- (3) Harvesting, final and intermediate;
- (4) Precommercial thinning;
- (5) Reforestation;
- (6) Fertilization;
- (7) Prevention and suppression of diseases and insects;
- (8) Salvage of trees; and
- (9) Brush control.

“Forest practice” does not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

“Geologist” means a person who has a bachelor of science degree in geologic sciences from an accredited college or university and has a minimum of four years’ experience in soil or slope evaluation under the direct supervision of a practicing geologist or licensed geotechnical engineer.

“Geotechnical engineer” means a practicing geotechnical/civil engineer licensed as a professional civil engineer with the state of Washington, with professional training and experience in geotechnical engineering, including at least four years’ professional experience in evaluating geologically hazardous areas.

“Golf facility” means a recreational facility, under public or private ownership, designed and developed for uses including, but not limited to:

- (1) Golf course;
- (2) Driving range;
- (3) Pro shops;
- (4) Caddyshack buildings;
- (5) Restaurants;
- (6) Office and meeting rooms; and
- (7) Related storage facilities.

“Grade Plane” means a reference plane representing the average of the finished ground level adjoining the building at its exterior walls. Under conditions where the finished ground level slopes significantly away from the exterior walls, that reference plane is established by the lowest points of elevation of the finished surface of the ground within an area between the building and lot line, or where the lot line is more than 6 feet (1829 mm) from the building, between the building and a line 6 feet (1829 mm) from the building.

“Grading” means any excavating, filling, grubbing, recontouring or removal of earth materials on the surface layer, or any combination thereof.

“Grazing area” means any open land area used to pasture livestock in which forage is maintained at an average height of three inches over 80 percent of the area.

“Ground cover” means any living plant material normally terrestrial, growing low to the ground, or other small trees less than four inches at DBH and not defined as a tree, all of which are intended to stabilize soils and protect against erosion.

“Group home: senior citizen assisted”: See “Dwelling unit – group: senior citizen assisted”.

“Growth Management Act – GMA” means the Washington State Growth Management Act (GMA), Chapter 17, Law of 1990, First Extended Session, Chapter 36.70A RCW et seq., and Chapter 32 Laws of 1991, First Special Session, RCW 82.02.050 et seq., as now in existence or hereafter amended.

“Grubbing” means the removal of vegetative matter from underground, such as sod, stumps, roots, buried logs, or other debris, and shall include the incidental removal of topsoil to a depth not exceeding 12 inches.

“Hard surface” means an impervious surface, a permeable pavement, or a vegetated roof.

“Healthy soil” means soil that is of good quality, with the capacity to sustain plant, animal, and human life by providing nutrients, air and water space to infiltrate, pollutant absorption and filtering, and habitat.

“Hearing examiner” means a person appointed to hear or review certain land use decisions pursuant to Article XI, Section 11 of the Washington State Constitution, Chapters 35.63 and 58.17 RCW, and Chapter 2.76 POMC.

“High intensity non-residential use” means manufacturing/industrial (POMC 20.36) land uses and any commercial or mixed use (POMC 20.35), civic or institutional (POMC 20.37.010), or public facilities (20.37.030) land use with over 120,000 square feet gross floor area.

“Hospital” means an establishment primarily engaged in providing diagnostic services, extensive medical treatment including surgical services, and other hospital services, as well as continuous nursing services. A hospital has an organized medical staff, inpatient beds, and equipment and facilities to provide complete health care. “Hospital” does not include convalescent homes.

“Impact” means any additional demand and need for public facilities or services that is reasonably related to the proposed development.

“Impact fee” means the amount of money determined necessary by the city or the school district and imposed upon new development activity as a condition of development approval or permitting to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates the additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities and that is used for facilities that reasonably benefit the new development. “Impact fee” does not include a reasonable permit or application fee. (RCW 82.02.090(3)).

“Impervious surface” means a non-vegetated or compacted surface area that either prevents or retards the entry of water into the soil mantle as it entered under natural conditions preexistent to development, or a non-vegetated or compacted surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions preexistent to development. Common impervious surfaces include, but are not limited to, roof tops, concrete or asphalt paving, paved walkways, patios, compacted gravel, driveways, parking lots and storage areas, packed earthen materials, and oiled, macadam, or other surfaces which similarly impede the natural infiltration of surface water.

“Landscape architect” means an individual currently licensed by the State of Washington as a landscape architect.

“Landscaping” means an area devoted to or developed and maintained predominantly with native or non-native plant materials, including lawn, groundcover, trees, shrubs, and other plant materials; and

also including accessory decorative outdoor landscape elements such as ornamental pools, fountains, paved or decorated surfaces (excluding driveways, parking, loading, or storage areas), and sculptural elements.

“Landslide” means episodic down-slope movement of a mass of soil or rock, including snow avalanches.

“Level of service” means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need.

“Livestock” means grazing animals kept either in open fields or structures for training, boarding, home use, sales, or breeding, and production, including but not limited to cattle, riding and draft horses, hogs, sheep, and goats.

“Loading space” means a space for the temporary parking of a vehicle while loading or unloading cargo or passengers.

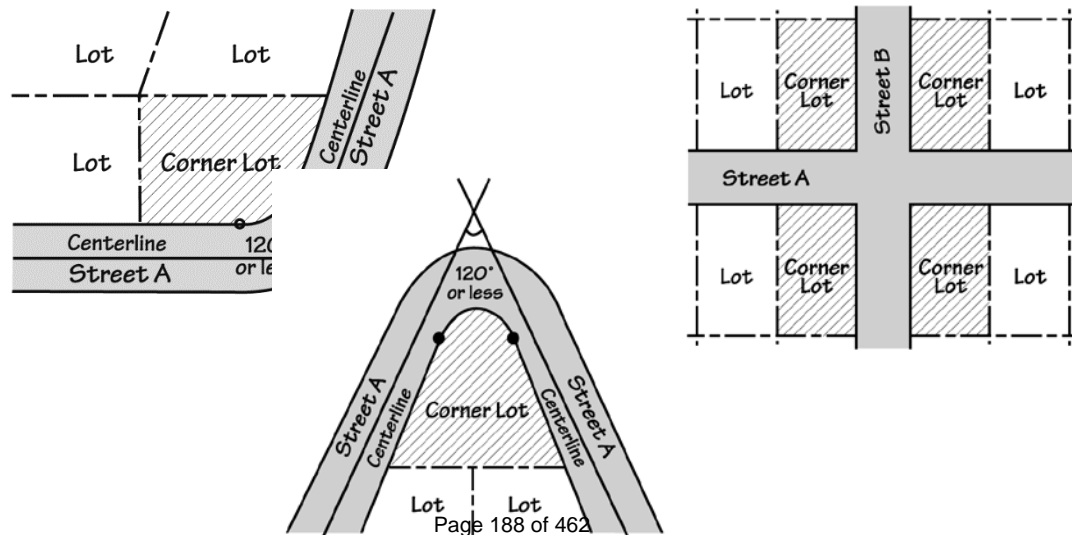
“Loft” means an upper interior space of a building, typically consisting of an open unpartitioned floor area that is accessible from the ground floor and that is below the second floor or roof.

“Long Subdivision”: See “Subdivision”.

“Lot” means a fractional part of legally divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels. For purposes of this code, adjoining lots under common ownership, which were created without subdivision or short subdivision approval from applicable city or county governments, shall be considered as one lot and subject to the regulations contained herein. The terms of this section shall apply regardless of whether the individual adjoining lot meets current zoning requirements.

“Lot – Corner lot” means a lot that has frontage on more than one intersecting street. A street that curves with angles of 120 degrees or less, measured from the center line of the street, is considered two intersecting streets for the purpose of evaluating whether a lot is a corner lot. See Figures below.

### Corner Lots





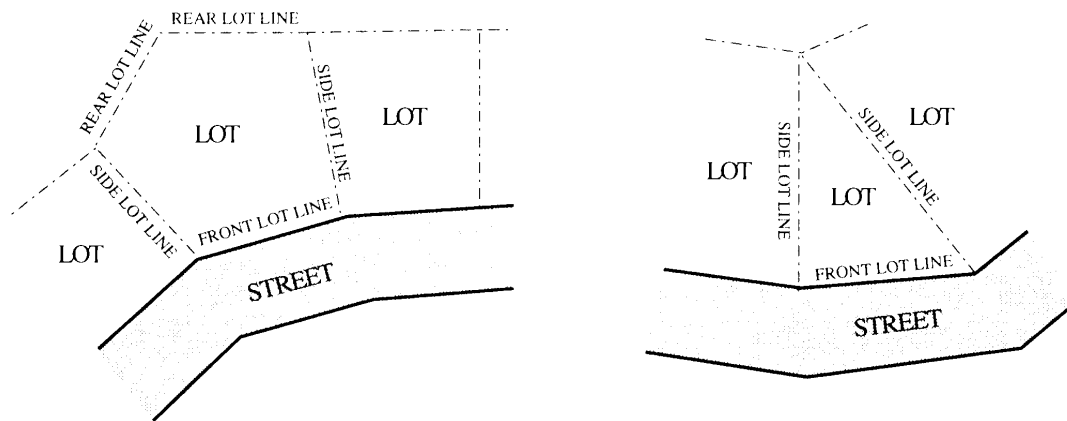
“Flag lot” means an irregular lot with two distinct parts:

- (1) The flag, which is the only building site; and is located behind another lot; and
- (2) The pole, which connects the flag to the street; provides the only street frontage for the lot; and at any point is less than the minimum lot width for the zone.

“Lot – Interior lot” means a lot that has frontage on one street only.

“Lot – Irregular lot” means a lot that is shaped so that application of setback requirements is difficult. Examples include a lot with a shape that is not close to rectangular, or a lot with no readily identifiable rear lot line, or a flag lot.

### Lot Lines on Irregular Lots



“Lot – Through” means a lot having frontage on two parallel or approximately parallel streets.

“Lot area – Minimum” means the minimum or smallest amount of total lot area in a single ownership, expressed in square feet, necessary to satisfy the physical development standards defined in this code.

“Lot lines” means:

- (1) “Lot front line” means a lot line at which vehicular access is off of a public right-of-way, private street, access easement or tract;
- (2) “Lot rear line” means a lot line which is opposite and most distant from the lot front line. For the purpose of establishing the lot rear line of a triangular or trapezoidal lot, or of a lot the rear line of which is formed by two or more lines, the following shall apply:
  - (a) For a triangular- or gore-shaped lot, a line 10 feet in length within the lot and farthest removed from the lot front line and at right angles to the line comprising the depth of such lot shall be used as the lot rear line;
  - (b) In the case of a trapezoidal lot, the rear line of which is not parallel to the front line, the lot rear line shall be deemed to be a line at right angles to the line comprising the depth of such lot and drawn through a point bisecting the recorded lot rear line;
- (3) “Lot side line” means any lot boundary line that is not a lot front line or a lot rear line.

“Lot line – Interior” means a lot line that delineates property boundaries along those portions of the property which do not abut a street.

“Lot line interior – Zero” means the elimination of one side setback so that a side building line can be constructed on the lot line. Zero lot lines must be designated on a plat.

“Low impact development (LID)” means a stormwater and land management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

“Low impact development best management practices (LID BMPs)” means distributed stormwater management practices integrated into a project design that emphasize pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration. LID BMPs include, but are not limited to, bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated roofs, minimum excavation foundations, and water re-use.

“Low impact development principles” means land management strategies that emphasize conservation, use of onsite natural features, and site planning to minimize impervious surfaces, native vegetation loss, and stormwater runoff.

“Low intensity non-residential use” means a small scale commercial or mixed use (POMC 20.35), civic or institutional (POMC 20.37.010), or public facilities (20.37.030) land use which does not have outdoor storage along the site edge requiring a landscape buffer per POMC 20.128.070, and which has less than 25,000 square feet gross floor area.

“Manufactured home”: See “Dwelling unit – manufactured home”.

“Marijuana” has the meaning established pursuant to RCW 69.50.101, as currently adopted or hereafter amended.

“Marijuana business” or “marijuana businesses” means and incorporates all marijuana uses licensed by the Washington State Liquor and Cannabis Board, including, but not limited to, marijuana producers, marijuana processors, marijuana retailers, and marijuana retail outlets, each as separately defined herein.

“Marijuana infused products” has the meaning established pursuant to RCW 69.50.101, as currently adopted or hereafter amended.

“Marijuana processor” has the meaning established pursuant to RCW 69.50.101, as currently adopted or hereafter amended.

“Marijuana producer” has the meaning established pursuant to RCW 69.50.101, as currently adopted or hereafter amended.

“Marijuana retail outlet” has the meaning established pursuant to RCW 69.50.101, as currently adopted or hereafter amended, and shall also include marijuana retailers with a medical marijuana endorsement, as defined herein.

“Marijuana retailer” has the meaning established pursuant to RCW 69.50.101, as currently adopted or hereafter amended.

“Marijuana retailer with a medical marijuana endorsement” has the meaning established pursuant to RCW 69.51A.010, as currently adopted or hereafter amended.

“Marquee”: See “Downtown Marquee”.

“Material error” means substantive information upon which a permit decision is based that is submitted in error or is omitted at the time of permit application.

“Maximum Lot Coverage” means the maximum percentage in area of a lot that may have a hard surface constructed thereon.

“May” means optional and permissive, and does not impose a requirement.

“Medical marijuana cooperative” means a cooperative established and registered with the Washington State Liquor and Cannabis Board pursuant to 69.51A RCW, and that may produce and process marijuana for the medical use of its members pursuant to the regulations under RCW 69.51A.250, as currently adopted or hereafter amended.

“Medium-speed electric vehicle” means a self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than 25 miles per hour but not more than 35 miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 CFR 571.500.

“Metes and bounds” means a description of real property which starts at a known point of beginning and describes the bearings and distances of the lines forming the boundaries of the property, and is completed when the description returns to the point of beginning.

“Mid-block connection” means a thoroughfare connecting two sides of a residential block, usually located near the middle of said block and intended for pedestrian and bicycle use.

“Mitigation” or “mitigate” means any action which avoids any negative or adverse impact, or which ameliorates any such impact.

“Mobile Home”: See “Dwelling unit – mobile home”.

“Mobile home – Park” means a tract of land developed with individual sites and facilities to accommodate two or more mobile homes.

“Model home” means a dwelling unit used initially for display purposes, which typifies the type of units that will be constructed in the subdivision and which will not be permanently occupied during its use as a model.

“Moderate intensity non-residential use” means any commercial or mixed use (POMC 20.35), civic or institutional (POMC 20.37.010), or public facilities (20.37.030) land use featuring at least 25,000 square

feet gross floor area or featuring outdoor storage along the site edge requiring a landscape buffer per POMC 20.128.070.

“Modification – Major” means a major alteration of a site plan that includes any one of the following:

- (1) Any enlargement of proposed building(s).
- (2) Any site relocation of proposed building(s).
- (3) Any change in exterior design.
- (4) Any modification that creates new traffic circulation patterns.

“Modular home”: See “Dwelling unit – modular home”.

“Must” means the same as “shall” herein, and is mandatory and imposes a requirement.

“Native vegetation” means plant species that are indigenous and naturalized to the city’s region and which can be expected to naturally occur on a site. Native vegetation does not include noxious weeds.

“Neighborhood electric vehicle” (or a low speed electric vehicle) means a self-propelled, electrically powered four-wheeled motor vehicle whose speed attainable in one mile is more than 20 miles per hour and not more than 25 miles per hour and conforms to federal regulations under 49 CFR 571.500.

“New evidence” means any and all evidence that is submitted or received after the date the examiner, or city council as the case may be, closes the official record. The official record is closed at the end of the hearing, unless the examiner specifically allows the official record to remain open for a time certain.

“Nonelectric vehicle” means any motor vehicle that does not meet the definition of “electric vehicle.”

“Noxious weed” means any plant which when established is highly destructive, competitive, or difficult to control by cultural or chemical practices (see Chapter 17.10 RCW). The state noxious weed list in Chapter 16-750 WAC is the officially adopted list of noxious weeds by the noxious weed control board and recognized by Port Orchard.

“Official file” means:

- (1) All materials accepted by the examiner, or the city council as the case may be, for purposes of the hearing, or created during the hearing, including but not limited to:
  - (a) All application materials submitted by the applicant;
  - (b) The staff report for the hearing;
  - (c) All written comments received by the city prior to the hearing, or received into the official record during the hearing;
  - (d) The list of persons who signed in to the public hearing indicating a desire to testify, or who wish to be notified of a decision or recommendation on the matter;
  - (e) The electronic recording of the hearing on the matter, or a transcript of the electronic hearing on the matter, certified under oath to be a transcript of the electronic recording of the hearing on the matter;
  - (f) The recommendation or decision of the examiner.
- (2) If a decision of the examiner is appealed to the council, the following will also be included in the official file:
  - (a) The letter or notice of appeal;
  - (b) The staff report on the appeal;

(c) Any legal motions, briefs or other written appeal documents submitted by a party of record.  
(3) If the decision of the council is appealed to superior court, the following will also be included in the official file:

- (a) The electronic recording of the appeal to council and minutes of the same, or a transcript of the electronic hearing on the matter, certified under oath to be a true and correct transcript of the electronic recording of the hearing on the appeal;
- (b) The decision of the council.

“Official plans” means the comprehensive plan, these development regulations, and other documents adopted by the city council of the city of Port Orchard.

“Official record” means the written and oral information, exhibits, reports, testimony and other evidence submitted in a timely manner and accepted by the examiner, or the city council, if applicable. An electronic recording or transcript certified as a true and correct transcript of an electronic recording of the hearing is a part of the official record.

“Off-site” means any premises not located within the area of the property proposed for a development or use activity, whether or not in the common ownership of the applicant.

“Open record hearing” means a hearing, conducted by a single hearing body or officer authorized by the City to conduct such hearings, that creates the City’s record through testimony and submission of evidence and information, under procedures prescribed by the hearing body or officer.

“Open space” means a portion of land, excluding building sites and parking areas, which is designated and maintained as an area for leisure, recreation and other activities normally carried on outdoors. Open space may include greenbelt and recreational areas.

“Ordinances” means legislative enactments of a city or county.

“Owner” means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property, if the contract is recorded. (RCW 82.02.090(4).)

“Parapet” means that portion of a building wall that extends above the roof of the building.

“Park” means a site designed or developed for recreational use by the public, including but not limited to: indoor facilities, such as gymnasiums, swimming pools, or activity centers; and outdoor facilities, such as playfields, courts, playgrounds, fishing and boating access areas, or picnicking and other group activity areas, and areas and trails for hikers, equestrians, or bicyclists.

“Parking lot aisle” means that portion of the off-street parking area used exclusively for the maneuvering and circulation of motor vehicles and in which parking is prohibited.

“Parking space” means an area accessible to vehicles, improved, maintained, and used for the sole purpose of parking a motor vehicle.

“Parking space – Off-street” means a space on private property with access to a public street or alley used to park a motor vehicle.

“Party” or “party of record” means the applicant, the property owner of the property for which a land use application has been filed, and any person who has submitted written comments or testified as part of the official record of a land use action.

“Pavement width” means the actual paved surface measured from edge to edge of a street or alley road surface.

“Peak hour” means the hour during the morning or afternoon when the most critical level of service occurs for a particular roadway or intersection.

“Permit” or “Project permit” means any land use or environmental permit or license required from the City, including, but not limited to: building permits, land disturbing activity permits, subdivisions, binding site plans, conditional use permits, variances, shoreline substantial development permits, site development permits, temporary use permits, permits or approvals required by critical areas regulations, and site-specific rezones.

“Permit – Temporary use” means a permit to allow a use for a limited duration and/or frequency.

“Person” means any individual, organization, society, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, governmental agency, public or private utility, cooperative, interstate body or other legal entity.

“Pervious surface” means a surface material that allows stormwater to infiltrate into the ground. Examples include, but are not limited to, lawn, landscape, pasture, native vegetation area, and permeable pavements.

“Place of worship” means a place where religious services are conducted, and including accessory uses in the primary or accessory buildings, such as religious education, reading rooms, assembly rooms, and residences for nuns and clergy.

“Planning commission” means the City of Port Orchard, Washington planning commission.

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

“Plat – Final plat” means the final drawing of the subdivision and dedication prepared for filing of record with the County auditor, and containing all elements and requirements set forth in Chapter 58.17 RCW and Chapter 20.90 of this Title.

“Plat – Long plat” means the map or representation of a long subdivision, showing thereon the subdivision of a tract or parcel of land with lots, blocks, streets, and alleys or other subdivisions, easements and dedications as authorized by Chapter 58.17 RCW and in Title 20 Subtitle V.

“Plat – Preliminary plat” means a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks and other elements of a subdivision consistent with the requirements of this title. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision of five (5) or more lots.

“Plat – Short plat” means the map or representation of a short subdivision.

“Plat certificate” means a title report by a title insurance company certifying the ownership, deed restrictions, covenants, etc., of the land being subdivided.

“Plug-in hybrid electric vehicle (PHEV)” means an electric vehicle that: (1) contains an internal combustion engine and also allows power to be delivered to drive wheels by an electric motor; (2) charges its battery primarily by connecting to the grid or other off-board electrical source; (3) may additionally be able to sustain battery charge using an on-board internal-combustion-driven generator; and (4) has the ability to travel powered by electricity.

“Port Orchard” means the City of Port Orchard, Washington.

“Preliminary plat”: See “Plat – Preliminary Plat”.

“Private” means solely or primarily for the use of residents or occupants of the premises, e.g., a noncommercial garage used solely by residents or their guests is a private garage.

“Private street” means a privately owned right-of-way which provides access for up to ten (10) residential units and meets the requirements of the City’s Public Works Standards.

“Project improvements” means site improvements and facilities that are planned and designed to provide service for a particular development and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the city council shall be considered a project improvement. (RCW 82.02.090(5)).

“Project permit” or “project permit application” means any land use or environmental approval required from the city for a project action, including but not limited to building permits, subdivisions, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by POMC Title 20, critical areas and natural resources, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this land use regulatory code.

“Property owner”: See “Owner”.

“Protected area” means all land where no construction activity, tree removal, vegetation removal, or soil compaction is allowed and includes the critical root zone of those trees to be preserved.

“Pruning” means cutting back of limbs larger than one and one-half inches in diameter.

“Public agency” means any agency, political subdivision, or unit of local government of this state, including but not limited to municipal corporations, special purpose districts, counties, and local service districts; any agency of the state of Washington, the United States or any state thereof; or any Indian tribe recognized as such by the federal government.

“Public agency yard” means a facility for open or enclosed storage, repair, and maintenance of vehicles, equipment, or related materials, excluding document storage.

“Public facilities” means facilities which are owned, operated and maintained by a public agency.

“Public right-of-way” means any road, alley, street, avenue, arterial, bridge, highway, or other publicly owned ground or place used or reserved for the free passage of vehicular and/or pedestrian traffic or other services, including utilities.

“Public Street”: See “Public Right of Way”.

“Rapid charging station” means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels and that meets or exceeds any standards, codes, and regulations set forth by Chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

“Reasonable use” has the meaning established by the most recent applicable state or federal court decision.

“Recreational vehicle (RV)” means a vehicle designed primarily for recreational camping, travel or seasonal use, which has its own motive power or is mounted on or towed by another vehicle, including but not limited to: travel trailer, folding camping trailer, park trailer, truck camper, motor home, and multi-use vehicle.

“Recreational vehicle parks” means the use of land upon which two or more recreational vehicle sites, including hookup facilities, are located for occupancy by the general public of recreational vehicles as temporary living quarters for recreation or vacation purposes.

“Recyclable material” means a nontoxic, recoverable substance that can be reprocessed for the manufacture of new products.

“Regional utility corridor” means a right-of-way tract or easement which contains transmission lines or pipelines for utility companies, excluding distribution lines contained within street rights-of-way or lines serving individual lots or developments.

“Reserve strip” means a strip of land dedicated or created in fee for the purpose of controlling the access to streets or other public rights-of-way from adjoining property.

“Resident” means a person who occupies a residential dwelling within the city of Port Orchard on an ongoing and continual basis, and who actually lives within the home, as distinguished from a visitor or transient.

“Restoration” means the actions to return a stream, wetland or other critical area to a state in which its stability, functions, and values approach its unaltered state as closely as possible.

“Retention facilities” means drainage facilities designed to store runoff for gradual release by evaporation, plant transpiration, or infiltration into the soil. Retention facilities shall include all such drainage facilities designed so that none of the runoff entering the facility will be discharged as surface



water. Retention facilities shall include all appurtenances associated with their designed function, maintenance, and security.

“Right-of-way” or “ROW” means a strip of land platted, dedicated, condemned or established by prescription, or otherwise legally established, for the use of pedestrians, vehicles or utilities.

“Sale or lease” means any immediate or future transfer of ownership, or any possessory interest in land, including contract of sale, lease, devise, intestate succession, or other transfer of an interest in a subdivision or part thereof, whether by metes and bounds or lot and block description.

“Sanitary sewer systems” means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any water borne waste, whether domestic in origin or a combination of domestic, commercial or industrial waste.

“School district” means South Kitsap School District No. 402.

“Seasonal decoration” means temporary decorations for holidays which do not fall under the definition of a sign. Decorations, which fall under the definition of a sign, must conform to all provisions of the sign code.

“Senior” means a person aged 55 or older.

“School” means an institution primarily for academic instruction, public, private or parochial, and accredited by the state Department of Education.

“School bus base” means an establishment for the storage, dispatch, repair, and maintenance of coaches and other vehicles of a school transit system.

“School district support facility” means uses (excluding schools and bus bases) that are required for the operation of a school district, including centralized kitchens, and maintenance or storage facilities.

“Sensitive Area”: See “Critical Area”.

“SEPA responsible official” means the development director, or such other person as the development director has designated in writing to serve as the SEPA responsible official.

“Setback” means the minimum required distance between a structure or portion thereof and a lot line of the lot on which it is located, or another line as described in a particular section of this Title. See POMC 20.40.020 for additional information.

“Shall” means the same as “must” herein, and is mandatory and imposes a requirement.

“Shoreline jurisdiction” means the area extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplains areas landward 200 feet for such floodways, and all wetlands associated with streams, lakes and tidal waters.

“Shoreline master program” means the shoreline master program for the City of Port Orchard, and the use regulations, together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.

“Short plat”: See “Plat – Short Plat”.

“Short subdivision” means the division or re-division of land into four (4) or fewer lots, tracts, parcels or divisions for the purpose of sale or lease.

“Should” means strongly advisable, unless the context clearly indicates otherwise.

“Site area – Minimum” means the minimum or smallest amount of total site area in a single ownership expressed in acres necessary to support development consistent with the zoning district provisions of this code.

“Soil amendments” means materials added to soil to improve its physical or chemical properties. Unlike fertilizers, the exact ingredients and chemical composition of soil amendments vary among different sources. Examples could include compost, lime, gypsum, and clay. Soil amendments can be used to improve the permeability and water retention characteristics of soil.

“Specified sexual activities” means human genitalia in a state of sexual stimulation or arousal; acts of human masturbation; sexual intercourse or sodomy; erotic fondling, touching or display of human genitalia, pubic region, buttock, or female breast; peep shows, topless dancing, and nude dancing.

“State” means the state of Washington.

“Stream” has the meaning established pursuant to Chapter 90.58 RCW as currently adopted or hereafter amended.

“Street” (including the words “Avenue,” “Boulevard,” “Circle,” “Court,” “Drive,” “Lane,” “Loop,” “Parkway,” “Place,” “Road,” “Spur,” “Terrace,” and “Way”) means:

(1) Any public way, either unimproved or improved, which affords the principal means of access to abutting properties. A street width shall be considered the distance between its right-of-way lines.

(2) A public or recorded private thoroughfare providing the main pedestrian and vehicular access through neighborhoods and communities and to abutting property.

“Street block” means a group of lots or properties on the same side of a street between two street intersections or a street intersection and a dead end.

“Street frontage” means the portion of a lot property line that abuts a public right-of-way.

“Street standards” means the City of Port Orchard “Public Works Engineering Standards and Specifications” (PWESS) for streets as adopted by ordinance of the Port Orchard City Council.

“Structure” means anything permanently constructed, walled, and roofed, including a gas or liquid storage tank that is principally in or on the ground, or over the water, excluding fences less than six feet.

“Subdivider” means any person, firm or corporation who subdivides or develops any land deemed to be a subdivision.

“Subdivision” means the division or re-division of land into five (5) or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease, or transfer of ownership, and includes all re-subdivision of land.

“Substantial development or improvement” means:

(1) Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(a) Before the improvement repair is started; or

(b) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

(2) The term does not, however, include either:

(a) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

(b) Any alteration of a structure listed on the National Register of Historical Places or a State Inventory of Historical Places.

“Survey monument” or “monument” means the physical structure, along with any references or accessories thereto, used to mark the location of a land boundary survey corner, geodetic control point, or local control point.

“Surveyor” means a registered professional land surveyor licensed to practice surveying in the state of Washington.

“System improvements” means public facilities that are included in the city’s capital facilities plan and are designed to provide service to areas within the city and community at large, in contrast to project or on-site improvements. (RCW 82.02.090(9).)

“Testamentary” means given or bequeathed by a will.

“Trails” means manmade pathways designed and intended for use by nonmotorized transportation modes, including walking, biking, horseback riding, and/or recreational uses.

“Tract” means a nonbuildable or buildable unit of land created by a subdivision, short subdivision, deed, or other instrument recorded with the appropriate county recorder. Tracts are usually held in common by the owners of an organization, such as a homeowners’ association, for common benefit and are not in every instance required to meet minimum lot size and dimensional requirements of the applicable zone.

“Transportation facilities” means capital facilities related to air, water or land transportation.

“Transportation level of service standards” means a measure which describes the operational condition of the travel stream and acceptable adequacy requirements, as identified in the City’s comprehensive plan (as required by RCW 36.70A.070(6)(b)).

“Transportation system management (TSM)” means low cost projects that can be implemented in a short time frame designed to increase the efficiency of existing transportation facilities. This also includes transit and/or ride-sharing measures to decrease single-occupancy vehicle trips.

“Tree” means any woody plant characterized by one main stem or trunk and many branches, or multi-stemmed trunks which have a diameter individually or cumulatively of four inches DBH or larger.

“Tree enhancement plan” means a plan prepared by a certified arborist, licensed landscape architect, or certified forester and required of all commercial or industrial properties greater than two acres in size when any tree removal or tree clearing takes place. The tree enhancement plan shall combine tree preservation of existing trees to the extent feasible, along with tree replacement and replanting equal to at least 15 percent of the number of significant trees existing on the site prior to any tree removal. The tree enhancement plan shall incorporate trees in as many areas as feasible, such as tree tracts, boundary trees, perimeter landscaping, parking lot landscaping, street and driveway trees, façade landscaping, or other viable stands of trees, considering the type of commercial or industrial development.

“Tree inventory” means a detailed list of all trees of four inches DBH or larger, located on a site for which a tree permit is required, and which is prepared by a certified arborist, licensed landscape architect, certified forester, or other qualified tree professional. A tree inventory shall be included on a site plan drawn to scale, and provide the number, size, approximate height, specific location, and tree species of all trees of four inches DBH or larger, with a summary of all significant trees in sufficient detail for the City to review.

“Tree owner” means the owner of the real property where 51 percent or more of the diameter of the trunk of the tree at ground level is located.

“Tree topping” means the severe cutting back of limbs to stubs larger than three inches in diameter within the tree’s crown to such a degree so as to remove the normal canopy and disfigure the tree.

“Tree, vegetation and soil protection area (TVSPA)” means a separate tract of land, which may or may not be deeded as such, specifically set aside for the preservation of healthy soil and the preservation or planting of existing and/or native vegetation and trees. Stormwater retention/detention facilities, critical area buffers and other common areas may be considered TVSPA if they currently, or are improved to an extent where they can, support healthy soils and the growth of native vegetation and trees. The purpose of these areas (for preserving healthy soils, preserving and/or planting native vegetation and trees) is stated on the face of the plat when applicable.

“Ultimate roadway section” means a designation that the maximum roadway or intersection capacity has been reached and further right-of-way acquisition and/or improvements are not feasible to increase peak hour vehicle capacity.

“Understory” means the low layer of plants forming an underbrush or underwood.

“Use – Principal” means the primary use for a lot, structure, or building or the major portion thereof, as designated or actually used.

“Use – Secondary” means an incidental or accessory use for which a lot, structure or building is designated or employed in conjunction with, but not subordinate to, its primary use.

“Utilities” or “public utilities” means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services and water, and for the disposal of sewage.

“Vacation rental” means a self-contained single-family residence including condominiums, apartments and detached residences that may be rented by groups or individuals. Not to be confused with hotels/motels or bed and breakfast facilities.

“Vegetation” means any and all organic plant life growing at, below or above the soil surface.

“Wall frontage” means the length of an outside building wall on a public right-of-way.

“Wall plane” means the flat vertical surface on a building façade, which may include doors, windows, openings, or other incidental recessions that do not extend through to the roofline.

“Wastewater treatment facility” means a plant for collection, decontamination, and disposal of sewage, including residential, industrial, and agricultural liquid wastes, and including any physical improvement within the scope of the definition of “water pollution control facility” set forth in WAC 173-90-015(4) as amended.

“Waterwise plant” means a plant that requires regular water while being established. However, once established, it will need less water than most traditional plants, but will not necessarily withstand periods of drought.

“Wetland” or “wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

## Chapter 20.22

### PERMITTING AND DEVELOPMENT APPROVAL – PERMIT PROCESS TYPES

**Sections:**

- 20.22.010**     **Classification.**
- 20.22.020**     **Determination of types – Table.**
- 20.22.030**     **Type I (administrative decision, judicial appeal).**
- 20.22.040**     **Type II (administrative decision, hearing examiner appeal).**
- 20.22.050**     **Type III (hearing examiner decision, judicial appeal).**
- 20.22.060**     **Type IV (city council decision, judicial appeal).**
- 20.22.070**     **Type V (legislative actions).**

**20.22.010 Classification.**

The review and approval of land use and development permit applications shall be classified as either Type I, II, III, IV, or V based on who makes the decision, the amount of discretion exercised by the decision maker, the level of impact associated with the decision, the amount and type of public input sought, and the type of appeal opportunity. The types of decisions are set forth in this chapter. The application procedures identified in this chapter shall be pursuant to Chapter 20.24 POMC.

**20.22.020 Determination of types – Table.**

(1) Determination of Proper Decision Type. The director shall determine the proper review procedure for all land use and development permit applications and actions. If there is a question as to the appropriate type of process, the director shall resolve it in favor of the higher process type number.

(2) Optional Consolidated Permit Processing. An application that involves two or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or processed individually under each of the procedures identified by the code. The applicant may determine whether the application shall be processed collectively or individually. If the application is processed under the individual procedures option, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure. If the individual procedure option is chosen, the applicant will be eligible for any fee reduction contained in the current fee schedule.

**Table 20.22.020 – Permit Review Type Classifications**

<b>Type I Director Decision Judicial Appeal</b>	<b>Type II Director Decision HE Appeal</b>	<b>Type III HE Decision Judicial Appeal</b>	<b>Type IV City Council Decision Judicial Appeal</b>	<b>Type V City Council Decision GMHB Appeal</b>
Building Permit <sup>1</sup> (Subtitle X of this title) Binding Site Plan, Final (Chapter 20.94 POMC)	Short Plat, Preliminary, Alteration of Preliminary, Alteration of Final, Vacation of Final	Preliminary Plat, Preliminary Plat Major Modifications, Alteration of Final, Vacation of Final	Final Plat (Chapter 20.90 POMC) Site-Specific Rezone without Comprehensive Plan Amendment	Development Agreement (Chapter 20.26 POMC) Comprehensive Plan Amendment –

<b>Type I Director Decision Judicial Appeal</b>	<b>Type II Director Decision HE Appeal</b>	<b>Type III HE Decision Judicial Appeal</b>	<b>Type IV City Council Decision Judicial Appeal</b>	<b>Type V City Council Decision GMHB Appeal</b>
Preliminary Plat – Minor Modifications (Chapter 20.88 POMC) Land Disturbing Activity Permit (Chapter 20.140 POMC and POMC 20.150.100) Boundary Line Adjustment (Chapter 20.84 POMC) Code Interpretation (Chapter 20.10 POMC) Legal Nonconforming Permit (Chapter 20.54 POMC) Short Plat, Final (Chapter 20.86 POMC) Sign Permit (if SEPA not required) (Chapter 20.132 POMC)	(Chapters 20.86 and 20.96 POMC) Temporary Use Permit (Chapter 20.58 POMC) Binding Site Plan – Preliminary, Alteration of Preliminary, Alteration of Final, Vacation of Final (Chapter 20.94 POMC) Stormwater Drainage Permit (Chapter 20.150 POMC) Sign Permit (if SEPA required) (Chapter 20.132 POMC) Shoreline Substantial Development Permit, Administrative (Chapter 20.164 POMC)	(Chapters 20.88 and 20.96 POMC) Variance (Chapter 20.28 POMC) Conditional Use Permit (Chapter 20.50 POMC) Shoreline Substantial Development Permit, Conditional Use Permit, and Nonadministrative Variance (Chapter 20.164 POMC) Planned Residential Developments Comprehensive Sign Design Plan Permits Final Plat – Alteration or Vacation (Chapter 20.96 POMC) View Protection Overlay District (VPOD) Variance (POMC 20.38.713)	(Chapter 20.42 POMC)	Land Use Map Amendment, Text Amendment (Chapter 20.04 POMC) Legislative Zoning Map Amendment (Chapter 20.06 POMC) POMC Title 20 Code Amendment (Chapter 20.06 POMC) Annexations
Sign Variance (Chapter 20.132 POMC) Shoreline Permit Exemption (Chapter 20.164 POMC) Temporary Use Permit, Extension (Chapter 20.58 POMC)	Variance – Administrative (Chapter 20.28 POMC)			

Untyped review and decision actions: preapplication meeting (Chapter 20.24 POMC), design review board review and recommendation (POMC 20.38.228), tax exemption for multifamily development (Chapter 3.48 POMC),

capacity reservation certificate (Chapter 20.180 POMC), public works design variation, right-of-way permit (Chapter 12.04 POMC), street use permit (Chapter 12.24 POMC), water/sewer connection permit (Chapter 13.04 POMC).

<sup>1</sup> If a building permit application does not require SEPA review, no public notice is required. If a building permit application requires SEPA review, public notice shall be provided consistent with the requirements for Type II applications pursuant to Chapter 20.25 POMC.

**20.22.030 Type I (administrative decision, judicial appeal).**

(1) General. Type I applications are defined pursuant to POMC 20.22.020. All Type I actions must meet all applicable requirements of the POMC in addition to the requirements specified in this subtitle.

(2) Preapplication Conference. Type I applications do not require a preapplication conference.

(3) Notice of Application. Type I applications do not require a notice of application, unless environmental review is required under SEPA pursuant to Chapter 20.160 POMC.

(4) Review of Application.

(a) The director shall commence permit review pursuant to Chapter 20.24 POMC. The director shall determine which city departments are responsible for reviewing or commenting on an application and shall ensure the affected departments receive a copy of the application, or appropriate parts of the application.

(b) Following a determination of technical completeness and determination of consistency pursuant to POMC 20.24.090, the director shall approve, deny, or approve with conditions all Type I applications. Conditions may be imposed directly on the plans (red-lining) or through other documentation reflected on the plans to ensure the requirements of city codes and regulations are met without going through another correction cycle before permit issuance.

(5) Decision.

(a) Unless a permit type has been excluded from the 120-day permit decision timeline established in POMC 20;24.100, pursuant to RCW 36.70B.140, all Type I applications are subject to the maximum 120-day timeline, but in most cases review may be complete within a much shorter time period. If no correction cycles are required, review should be complete within approximately 30 calendar days from the date of technical completeness. Correction cycles will extend review time in proportion to the time the city must wait for an applicant to submit additional or corrected information.

(b) The decision of the director may be reflected on the plans or permit itself or may be documented in a written report or letter of approval.

(6) Notice of Decision. Public notice of a Type I decision is not required. The applicant shall be notified in writing or by email that the permit is ready to issue or the application is approved.

(7) Administrative Appeal. There is no administrative appeal of a Type I decision except for decisions that are appealable to the building board of appeals in accordance with this title and the International Codes as adopted by the city.



(8) Judicial Appeal. A Type I decision not appealable to the building board of appeals may be appealed directly to superior court.

**20.22.040 Type II (administrative decision, hearing examiner appeal).**

(1) General. Type II applications are defined pursuant to POMC 20.22.020. All Type II applications must meet all applicable requirements of the POMC in addition to the requirements specified below.

(2) Preapplication Conference. Type II actions are required to participate in a preapplication conference pursuant to POMC 20.24.010. A limited preapplication conference may be allowed for projects that do not require substantial review by other departments such as variances and design review without SEPA or street improvement requirements.

(3) Notice of Application. Type II applications require a notice of application pursuant to Chapter 20.25 POMC.

(4) Review of Application.

(a) The director shall commence permit review pursuant to Chapter 20.24 POMC. The director shall determine which city departments are responsible for reviewing or commenting on an application and shall ensure the affected departments receive a copy of the application, or appropriate parts of the application.

(b) Following a determination of technical completeness and determination of consistency pursuant to POMC 20.24.090, the director shall approve, approve with conditions, or deny all Type II applications. Conditions may be imposed directly on the plans (red-lining), through other documentation reflected on the plans, or in a written staff report or other decision document, to ensure the requirements of city codes and regulations are met without going through another correction cycle before permit issuance.

(5) Public Hearing. No public hearing is required for Type II decisions.

(6) Decision. Type II decisions are subject to the maximum 120-day timeline requirement pursuant to POMC 20.24.100. A decision for a Type II action shall be made in writing by the director and shall include the following information:

- (a) A description of the proposal and a listing of permits or approvals included in the application;
- (b) A statement of the applicable criteria and standards in this code and other applicable law;
- (c) A statement of background information and facts relied upon by the department which show the application does or does not comply with the approval criteria;
- (d) A summary of public comment received and how the department or applicant responded to the public comments or concerns; and
- (e) The decision to deny or approve the application and, if approved, any conditions of approval necessary to ensure the proposed development will comply with applicable law.

(7) Notice of Decision. Public notice of a Type II decision shall be provided pursuant to POMC 20.24.100. Notice of a short plat or binding site plan shall be provided in the same manner as notice of application as set forth in Chapter 20.25 POMC.

(8) Administrative Appeal. A Type II decision, except for shoreline substantial development permits and shoreline variances, may be appealed to the hearing examiner within 14 calendar days of the notice of decision. A decision on a shoreline substantial development permit or shoreline variance may be appealed to the State Shorelines Hearings Board pursuant to Chapter 20.164 POMC. Shoreline appeal procedures and information are available from the department or from the State Department of Ecology. Administrative appeals of director decisions to the hearing examiner are to be made on forms provided by the city and shall include the following information:

- (a) A brief statement regarding how the appellant is significantly affected by or interested in the matter appealed;
- (b) A specific clear and comprehensible statement of the appellant's issues on appeal, noting appellant's specific exceptions and objections to the decision or action being appealed;
- (c) The specific relief requested, such as reversal or modification; and
- (d) Signature, address, and phone and fax number of the appellant, and name and address of appellant's designated representative, if any.

(9) Judicial Appeal. The decision of the hearing examiner on a Type II appeal may be appealed to superior court.

**20.22.050 Type III (hearing examiner decision, judicial appeal).**

(1) General. Type III applications are defined pursuant to POMC 20.22.020. All Type III applications must meet all applicable requirements of the POMC in addition to the requirements specified below.

(2) Preapplication Conference. Type III applications are required to have a preapplication conference pursuant to POMC 20.24.010.

(3) Notice of Application. Type III applications require a notice of application pursuant to Chapter 20.25 POMC.

(4) Review of Application.

(a) The director shall commence permit review pursuant to Chapter 20.24 POMC. The director shall determine which city departments are responsible for reviewing or commenting on an application and shall ensure the affected departments receive a copy of the application or appropriate parts of the application.

(b) Following a determination of technical completeness and determination of consistency pursuant to POMC 20.24.090, the director shall prepare a written recommendation to the hearing examiner. The director's recommendation shall provide a description of the proposal, a listing of the permits or approvals included in the application, a statement of the criteria and standards applicable to the proposal, and a review of the background information and facts relied upon by the director for the recommendation. The recommendation shall enumerate any conditions needed to ensure the application meets each of the applicable decision criteria.

(c) If a director recommendation is not available to the hearing examiner as provided in this section, the hearing examiner may reschedule or continue the hearing upon his or her own motion or upon

the motion of a party, or the hearing examiner may decide the matter without the recommendation.

(d) The director's recommendation, and any additional staff reports, shall be consistent with RCW 36.70B.060(5).

(5) Public Hearing. A Type III action requires an open record hearing before the hearing examiner.

(a) At least 14 calendar days before the date of the hearing, public notice of the hearing shall be provided consistent with the requirements of POMC 20.25.050.

(b) The director's recommendation shall be made available on the date the hearing notice is issued.

(c) SEPA appeals for Type III decisions may be consolidated with a public hearing as provided for in POMC 20.160.240(5).

(d) The burden of proof shall be on the applicant to demonstrate that the proposal conforms to applicable codes and standards; except that for any SEPA DNS appeal, the burden of proof is on the appellant.

(e) The public hearing shall be conducted pursuant to the hearing examiner's adopted rules and procedures and shall be recorded on audio or audiovisual tape. The hearing examiner may remand an application to staff at his or her discretion to allow staff to administratively address an issue or irregularity with the application or the processing thereof.

(6) Decision.

(a) A written decision for a Type III action shall be issued by the hearing examiner within 14 calendar days after the date the record closes, unless the applicant has consented in writing to an extension of this time period. The hearing examiner's decision shall include the following information:

(i) A description of the proposal and a listing of permits or approvals included in the application;

(ii) A statement of the applicable criteria and standards in the municipal code and other applicable law;

(iii) A statement of background information and facts relied upon by the hearing examiner which show the application does or does not comply with the approval criteria and standards;

(iv) A summary of public testimony and public comment received and how the department or the applicant responded to the public testimony and public comments; and

(v) The decision to deny or approve the application and, if approved, any conditions of approval necessary to ensure the proposed development will comply with applicable law.

(b) Notice of Decision. Public notice of a Type III decision shall be provided pursuant to POMC 20.24.100.

(7) Reconsideration.

(a) The hearing examiner may reconsider a Type III decision if a written request for such administrative appeal is filed by a party of record within 14 calendar days of the date of the notice of decision. Grounds for requesting reconsideration shall be limited to the following:

(i) The decision or conditions of approval are not supported by facts in the record;

(ii) The decision contains an error of law;

(iii) There is newly discovered evidence potentially material to the decision which could not reasonably have been produced prior to the open record pre-decision hearing; or

(iv) The applicant proposes changes to the proposal in response to deficiencies identified in the decision.

(b) Any request for reconsideration shall be mailed to all parties of record on the same day as the request is mailed or delivered to the hearing examiner.

(c) A request for reconsideration shall stop the running of the judicial appeal period on a Type III decision for seven calendar days. During this time period, the hearing examiner shall decide whether reconsideration is appropriate. If the hearing examiner decides to reconsider the decision, the judicial appeal period will be placed on hold until the reconsideration process is complete and a new decision is issued. If the hearing examiner decides to reconsider a decision, all parties of record shall be notified.

(d) The hearing examiner shall, by order, set a schedule for other parties of record to respond in writing to the reconsideration request and shall issue a decision no later than 14 calendar days following the due date for submittal of written responses. A new judicial appeal period shall commence from the date of the hearing examiner's decision on reconsideration.

(8) Judicial Appeal. Type III decisions, except shoreline conditional use permits and any associated shoreline permits, may be appealed to superior court. Shoreline decisions are appealable to the State Shorelines Hearings Board.

**20.22.060 Type IV (city council decision, judicial appeal).**

(1) General. Type IV applications are defined pursuant to POMC 20.22.020. All Type IV applications must meet all applicable requirements of the POMC in addition to the requirements specified below.

(2) Preapplication Conference. Type IV applications are required to have a preapplication conference pursuant to POMC 20.24.010.

(3) Notice of Application. Type IV applications require a notice of application pursuant to Chapter 20.25 POMC.

(4) Review of Application.

(a) The director shall commence review of the permit application pursuant to Chapter 20.24 POMC. The director shall determine which city departments are responsible for reviewing or commenting on an application and shall ensure the affected departments receive a copy of the application or appropriate parts of the application.

(b) Following a determination of technical completeness and determination of consistency pursuant to POMC 20.24.090, the director shall prepare a written recommendation to the hearing body. The director's recommendation shall provide a description of the proposal, a listing of the permits or approvals included in the application, a statement of the criteria and standards applicable to the proposal, and a review of the background information and facts relied upon by the director for the recommendation. The recommendation shall enumerate any conditions needed to ensure the application meets each of the applicable decision criteria.

(c) If a SEPA determination of nonsignificance (DNS) is issued for the proposal, the DNS will be issued in conjunction with the director's recommendation to the hearing body.

(d) Within 14 calendar days of holding a public hearing, the hearing body shall issue a recommendation on the application to the city council.

(5) Public Hearing. A Type IV action requires an open record hearing for a recommendation before either the hearing examiner or planning commission, pursuant to the requirements of the individual permit application requirements.

(a) At least 14 calendar days before the date of the hearing, public notice of the hearing shall be provided consistent with the requirements of POMC 20.25.050.

(b) The director's recommendation shall be made available on the date the hearing notice is issued.

(c) SEPA appeals for Type IV decisions may be consolidated with a public hearing as provided for in POMC 20.160.240(5). The burden of proof shall be on the applicant to demonstrate that the proposal conforms to applicable codes and standards; except that for any SEPA DNS appeal, the burden of proof is on the appellant.

(d) The public hearing shall be conducted pursuant to the hearing body's adopted rules and procedures and shall be recorded on audio or audiovisual tape.

(6) Decision. Following receipt of a recommendation from the hearing body, the city council shall approve, approve with conditions, or deny a Type IV application by ordinance.

(7) Administrative Appeal. There is no administrative appeal of Type IV decisions.

(8) Judicial Appeal. A Type IV decision may be appealed to superior court.

#### **20.22.070 Type V (legislative actions).**

(1) General.

(a) Type V actions are defined pursuant to POMC 20.22.020. All Type V proposals are legislative actions, but not all legislative actions are Type V decisions. Legislative actions involve the creation, amendment, or implementation of policy or law by ordinance. In contrast to other types of actions, legislative actions apply to large geographic areas and are of interest to many property owners and citizens.

(b) Type V actions are not subject to the application procedures in Chapter 20.24 POMC, unless otherwise specified.

(2) Public Hearing.

(a) The planning commission shall hold a public hearing and make recommendations to the city council on Type V actions. A notice for the public hearing shall be provided pursuant to POMC 20.25.050.

(b) The city council may hold a public hearing on Type V actions prior to passage of an ordinance or entry of a decision.

(c) The planning commission and/or city council may require more than one public hearing for Type V actions.

(d) Notice of a public hearing shall be provided to the public at least 14 calendar days prior to the hearing by publishing notice as provided for in POMC 20.25.050. In addition to publishing notice and posting notice at City Hall, at least 14 calendar days prior to the hearing the city shall mail notice of the public hearing to the applicant, relevant government agencies, and other interested parties who have requested in writing to be notified of the hearing. If the legislative action is for a comprehensive plan amendment, notice of the public hearing shall also be posted and mailed pursuant to Chapter 20.04 POMC. The city may also provide optional methods of public notice as provided in Chapter 20.25 POMC.

(3) Review. Review of Type V actions shall be pursuant to the applicable POMC chapter for each action.

(4) Decision. The city council shall issue a final decision on all Type V actions by passage of an ordinance.

(5) Appeals. A Type V decision may be appealed to the Growth Management Hearings Board pursuant to the regulations set forth in RCW 36.70A.290.

(6) Legislative Enactments Not Restricted. Nothing in this section, chapter, or Chapter 20.24 POMC shall limit the authority of the city council to make changes to the city's comprehensive plan, as part of a regular revision process, or to make changes to the city's municipal code.

## Chapter 20.30

### INTRODUCTION TO ZONING, LAND USES, AND BUILDING TYPES

#### Sections:

#### 20.30.010 Purpose

#### 20.30.020 Application

#### 20.30.010 Purpose.

- (1) This subtitle is adopted for the purpose of guiding development in accordance with the Port Orchard Comprehensive Plan and to protect, promote, and improve the public health, safety, and general welfare.
- (2) This subtitle is enacted to exercise the full range of authority under Washington law to establish standards to regulate and restrict the:
  - (a) Height, number of stories, size, construction, reconstruction, alteration, repair, or use of buildings and structures;
  - (b) Percentage of lot occupancy, size of courts, yards, and open spaces;
  - (c) Dimensions of lots and density of development; and
  - (d) Location and use of buildings and structures.
- (3) This subtitle is enacted for the following purposes:
  - (a) To ensure that important environmental features are protected;
  - (b) To encourage the urban development within the City of Port Orchard consistent with the Growth Management Act, the Countywide Planning Policies, and the Regional Growth Strategy;
  - (c) To protect life and property in areas subject to natural hazards and disasters;
  - (d) To protect fish, wildlife, and recreation resources;
  - (e) To avoid undue water and air pollution;
  - (f) To provide standards for the subdivision of land in addition to those listed in Subtitle V of this Title;
  - (g) To encourage economically sound, fiscally sustainable, orderly, and compatible land development practices in accordance with the comprehensive plan;
  - (h) To ensure that adequate public facilities and services are provided to Port Orchard residents at a reasonable cost;
  - (i) To ensure that development on land is commensurate with the physical characteristics of the land; and
  - (j) To assure the provision of needed open spaces and public facility sites.
- (4) This Subtitle is intended to provide a mechanism for achieving the following goals:
  - (a) Mix of land uses;
  - (b) Compact building design;
  - (c) Creating a range of housing opportunities and choices;
  - (d) Creating walkable neighborhoods;
  - (e) Fostering distinctive, attractive communities with a strong sense of place;
  - (f) Preserving open spaces and natural beauty;
  - (g) Providing a variety of transportation choices; and
  - (h) Making development decisions predictable, fair, and cost effective.

### **20.30.020 Application**

- (1) Territorial Application. This Subtitle applies to all land, uses, buildings and structures within Port Orchard located above (landward of) the ordinary high water mark (OHWM) of the shoreline, as defined in the city's shoreline master program (Chapter 20.164). Land located below the OHWM does not have a zoning designation, and use of such land is subject to the regulations of the city's shoreline master program.
- (2) General Application. In their interpretation and application, the provisions of this subtitle are the minimum requirements necessary to meet the purpose and intent of these regulations.
- (3) Required Conformance. All buildings, structures or land, in whole or in part, must be used or occupied in accordance with this subtitle.
- (4) Control over less restrictive laws and regulations. If any condition or requirement imposed by this subtitle is more restrictive than a condition or requirement imposed by any other law, rule or regulation of any kind, the more restrictive condition or requirement governs.
- (5) Conflict. If any condition or requirement imposed by this subtitle contains an actual, implied, or apparent conflict, the more restrictive condition or requirement controls.
- (6) References to Other Laws. Whenever a provision of this subtitle refers to any other part of the Port Orchard Municipal Code or to any other law, the reference applies to any subsequent amendment of that law.
- (7) Text and Graphics. Illustrations and photographs are included in this Subtitle to illustrate the intent and requirement of the text. In cases of a conflict between the text and illustrations, photos, and graphics, the text controls.



## Chapter 20.31

### ZONES AND ZONING MAP

#### Sections:

- 20.31.010 Zones established.**
- 20.31.020 Boundary questions.**
- 20.31.021 Interpretation – Right-of-way.**
- 20.31.030 Changes.**
- 20.31.040 Annexed land.**

#### **20.31.010 Zones established.**

(1) The following zones are hereby established:

- (a) Greenbelt (GB)
- (b) Residential 1 (R1)
- (c) Residential 2 (R2)
- (d) Residential 3 (R3)
- (e) Residential 4 (R5)
- (f) Residential 5 (R5)
- (g) Residential 6 (R6)
- (h) Residential Mixed-Use (RMU)
- (i) Neighborhood Mixed-Use (NMU)
- (j) Commercial Mixed-Use (CMU)
- (k) Business Professional Mixed-Use (BPMU)
- (l) Downtown Mixed-Use (DMU)
- (m) (Downtown) Gateway Mixed-Use (GMU)
- (n) Commercial Corridor (CC)
- (o) Commercial Heavy (CH)
- (p) Industrial Flex (IF)
- (q) Light Industrial (LI)
- (r) Heavy Industrial (HI)
- (s) Civic Institutional (CI)
- (t) Parks and Recreation (PR)
- (u) Public Facilities (PF)

(2) The following Overlay Districts are hereby established:

- (a) View Protection Overlay District (VPOD)
- (b) Downtown Height Overlay District (DHOD)
- (c) Self-Storage Overlay District (SSOD)

(3) The location and boundaries of the various zones are shown on the city's adopted zoning map and are codified in this title and made a part of this title. Overlay District Boundaries may be shown on the City's adopted zoning map, may be codified elsewhere in this code, or be adopted as a standalone map. Changes in the boundaries of the zones or overlay districts, including application or amendment or interim zoning, shall be made by ordinance adopting or amending the zoning map or alternatively in the case of an overlay district, by amending the standalone overlay district map or code section.

- (4) Maps may be kept electronically in a Geographic Information System (GIS). Copies published online or electronically do not constitute originals. Map originals must be kept on file with the Port Orchard City Clerk and must indicate the date of the adoption and most recent amendment.

**20.31.020 Boundary questions.**

Where uncertainty exists as to the boundaries of any zone or overlay district, the following rules of construction, listed in priority order, shall apply:

- (1) Where boundaries are indicated as following approximate lot lines, the actual lot lines shall be considered the boundaries.
- (2) Where boundaries are indicated as following lines of ordinary high water, or government meander lines, the lines shall be considered to be actual boundaries. If these lines should change, the boundaries shall be considered to move with them.
- (3) If none of the rules of interpretation described in the above subsections apply, then the zoning boundary shall be determined by map scaling.

**20.31.030 Interpretation – Right-of-way.**

- (1) Except when such areas are specifically designated on the zoning map as being classified in one of the zones provided in this title, land contained in rights-of-way for streets or alleys shall be considered unclassified.
- (2) Within street or alley rights-of-way, uses shall be limited to street purposes as defined by law.
- (3) Where such right-of-way is vacated, the vacated area shall have the zone classification of the adjoining property with which it is first merged.

**20.31.040 Changes.**

No change shall be made to a zoning map except by authority of an amending ordinance. Any changes made otherwise shall be in violation of this title.

**20.31.050 Annexed land.**

- (1) The City's Comprehensive Plan has predesignated land use and zoning designations for all areas of the Port Orchard Urban Growth Area as shown on the Land Use Map in the Comprehensive Plan and on the City's adopted zoning map. Upon annexation, these predesignated land use and zoning designations shall apply unless the City Council designates some other zoning designation in the annexation ordinance.
- (2) Any lot subdivided under authority of the county and recognized by the county as a buildable lot will, upon annexation to the city, be considered a buildable lot, even though it may be smaller than the city zoning requires for that vicinity and zone.

## Chapter 20.32

### BUILDING TYPES

#### Sections:

**20.32.005 Purpose.**

**20.32.010 Building Type Descriptions.**

**20.32.020 Detached House.**

**20.32.030 Backyard Cottage.**

**20.32.040 Cottage Court.**

**20.32.050 Duplex: Side by Side.**

**20.32.060 Duplex: Back to Back.**

**20.32.070 Attached House.**

**20.32.080 Four Plex.**

**20.32.090 Townhouse.**

**20.32.100 Apartment.**

**20.32.110 Live Work.**

**20.32.120 Shopfront House.**

**20.32.130 Single Story Shopfront.**

**20.32.140 Mixed Use Shopfront.**

**20.32.150 General Building.**

#### **20.32.005 Purpose.**

The purpose of this chapter is to differentiate building types and provide standards for the construction of different building types to ensure a high quality public realm.

#### **20.32.006 Applicability.**

No new building may be erected within the City of Port Orchard except in conformance with this chapter.

#### **20.32.007 Exceptions.**

Mechanical equipment buildings associated with public utilities, such as well houses or sewer lift stations, shall be exempt from the standards in this chapter. This chapter shall not apply in the Light Industrial or Heavy Industrial zones (POMC 20.36).

#### **20.32.010 Building Type Descriptions.**

##### (1) Detached House.

- a. A building type that accommodates one dwelling unit on an individual lot with yards on all sides. A new manufactured home shall be considered a detached house for the purposes of this Title. "New manufactured home" means any manufactured home required to be titled under Title 46 RCW, which has not been previously titled to a retail purchaser, and is not a "used mobile home" as defined in RCW 82.45.032(2). A new manufactured home shall be treated as a detached house for the purposes of this Title.



b. Zones where permitted: R1, R2, R3, R6, NMU, BPMU, GB

(2) Backyard Cottage.

a. A small self-contained accessory dwelling located on the same lot as a detached house but physically separated.



b. Zones where permitted: R1, R2, R3, R6, NMU, BPMU, GB

(3) Cottage Court.

a. A building type that accommodates 5 to 12 detached dwelling units organized around an internal shared courtyard.



b. Zones where permitted: R1, R2, R3, R6, NMU, BPMU

(4) Duplex: Side by Side.

a. A building type that accommodates two dwelling units on an individual lot separated vertically side by side that share a common wall.



b. Zones where permitted: R2, R3, NMU, BPMU

(5) Duplex: Back to Back.

- a. A building type that accommodates two dwelling units on an individual lot separated vertically with one unit located directly behind the other unit that share a common wall.



- b. Zones where permitted: R2, R3, NMU, BPMU

(6) Attached House.

- a. A building type that accommodates two attached dwelling units located on two separate lots that share a common wall along a lot line.



- b. Zones where permitted: R2, R3, NMU, BPMU

(7) Four-Plex.

- a. A building type that accommodates 3 to 4 dwelling units vertically or horizontally integrated.



- b. Zones where permitted: R3, R4, R5, NMU

(8) Townhouse.

- a. A building type that accommodates 3 or more dwelling units where each unit is separated vertically by a common side wall and located on its own lot. Units cannot be vertically mixed. A subdivision or short subdivision may be required to construct townhouse units.



- b. Zones where permitted: R2 (2-3 dwelling unit buildings only), R3, R4, R5, NMU, CMU, GMU, BPMU

(9) Apartment.

- a. A building type that accommodates 5 or more dwelling units vertically and horizontally integrated.



- b. Zones where permitted: R3, R4, R5, NMU, CMU, GMU

(10) Live Work.

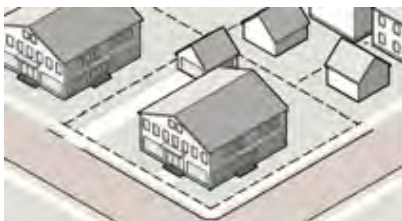
- a. A building type that accommodates 3 or more units. Units allow for residential and nonresidential uses in the same physical space. Units may be vertically or horizontally mixed.



- b. Zones where permitted: RMU, NMU, CMU, GMU, DMU, IF, CC

(11) Shopfront House.

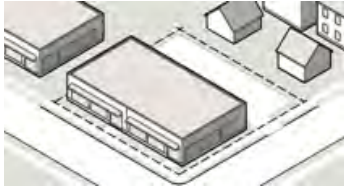
- a. A building type that typically accommodates ground floor retail, office or commercial uses with upper-story residential or office uses at a scale that complements the existing residential character of the area.



- b. Zones where permitted: NMU, CMU, RMU, GMU, CC, BPMU

(12) Single-Story Shopfront

- a. A single-story building type that typically accommodates retail or commercial uses.



- b. Zones where permitted: CMU, CC, CH, DMU, GMU

(13) Mixed Use Shopfront.

- a. A building type that typically accommodates ground floor retail, office or commercial uses with upper-story residential or office uses



- b. Zones where permitted: BPMU, CMU, DMU, CC

(14) General Building.

- a. A building type that typically accommodates ground floor retail, office, or commercial uses with upper-story residential or office uses.



- b. Zones where permitted: BPMU, CMU, GMU, CC, CH, IF, IL, IH, CI, PR, PF

(15) Manufactured or Mobile Home Park.

- a. A cluster of manufactured or mobile homes configured such that more than one mobile home is located on a lot, parcel, or tract. A manufactured or mobile home Park typically features land or un-subdivided lots leased or rented by the manufactured or mobile home owner.
- b. Zones where permitted: None. New manufactured or mobile home parks are not permitted. Existing legal nonconforming manufactured or mobile home parks may be maintained and the homes therein may be replaced.

(16) Accessory Building:

- a. An accessory building is any building of which the form and use are subordinate in both purpose and size, incidental to and customarily associated with a permitted principal building and use located on the same lot.

**20.32.015 Building Type Zoning Matrix.**

(1) Building Type Zoning Matrix Key:

- (a) Permitted Building Type (P). Indicates a building type is permitted in the zone.
- (b) Building Type not Permitted (--). Indicates a building type is not permitted in the zone.

Building Type	R1	R2	R3	R4	R5	R6	GB	RMU	NMU	CMU	DMU	GMU	BPMU	CC	CH	IF	LI	HI	CI	PR	PF
Detached House	P	P	P	--	--	P	P	--	P	--	--	--	P	--	--	--	--	--	--	--	--
Backyard Cottage	P	P	P	--	--	P	P	--	P	--	--	--	P	--	--	--	--	--	--	--	--
Cottage Court	P	P	P	--	--	P	--	--	P	--	--	--	--	--	--	--	--	--	--	--	--
Duplex: Side by Side	--	P	P	--	--	--	--	--	P	--	--	--	P	--	--	--	--	--	--	--	--
Duplex: Back to Back	--	P	P	--	--	--	--	--	P	--	--	--	P	--	--	--	--	--	--	--	--
Attached House	--	P	P	--	--	--	--	--	P	--	--	--	P	--	--	--	--	--	--	--	--
Four-Plex	--	--	P	P	P	--	--	--	P	--	--	--	--	--	--	--	--	--	--	--	--
Townhouse	--	P*	P	P	P	--	--	P	--	P	--	P	P	--	--	--	--	--	--	--	--
Apartment	--	--	P	P	P	--	--	--	P	P	--	P	--	--	--	--	--	--	--	--	--
Live-Work	--	--	--	--	--	--	--	P	P	P	P	P	P	P	--	P	--	--	--	--	--
Shopfront House	--	--	--	--	--	--	--	--	P	P	P	P	P	P	--	--	--	--	--	--	--
Single-Story Shopfront	--	--	--	--	--	--	--	--	--	P	P	P	--	P	P	--	--	--	--	--	--
Mixed-Use Shopfront	--	--	--	--	--	--	--	--	--	P	P	P	P	P	--	--	--	--	--	--	--
General Building	--	--	--	--	--	--	--	--	--	P	--	P	P	P	P	P	P	P	P	P	P
Manufactured or Mobile Home Park	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Accessory Building	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

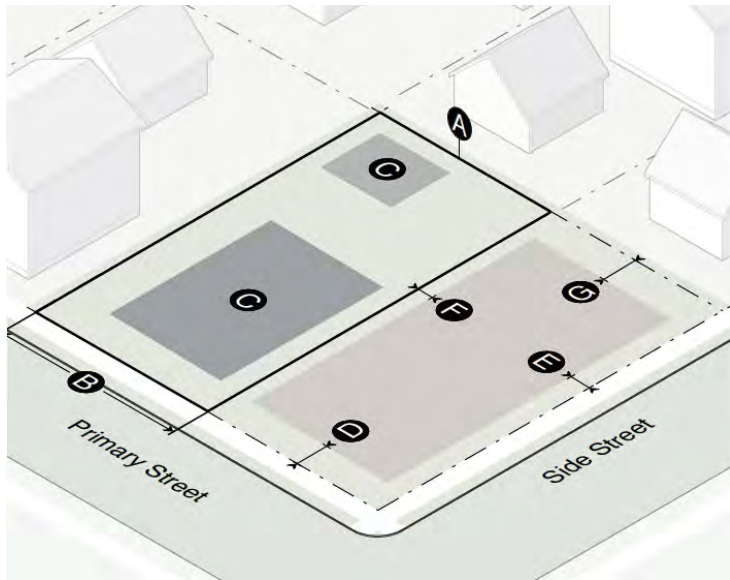
\* See restriction in POMC 20.32.090.



**20.32.020 Detached House.**



- (1) Definition: A building type that accommodates one dwelling unit on an individual lot with yards on all sides.
- (2) Districts where allowed: GB, R1, R2, R3, R6, NMU, BPMU
- (3) Lot and Placement:



- a. Minimum/Maximum Lot Area: Set by District.
  - b. Minimum Lot Width. Set by District.
  - c. Maximum Lot Coverage: Set by District.
  - d. Building and Structure Setback from Primary Street lot line: Set by District.
  - e. Building and Structure Setback from Side Street lot line: Set by District.
  - f. Building and Structure Setback from Side Interior lot line: Set by District.
  - g. Building and Structure Setback from Rear lot line: Set by District
- (4) Maximum dwelling units per lot: 1 Primary, 1 Accessory
- (5) Build to Zone (BTZ)
- a. Building Façade in primary street BTZ: Does not apply.
  - b. Building façade in secondary street BTZ: Does not apply.
- (6) Height and Form:



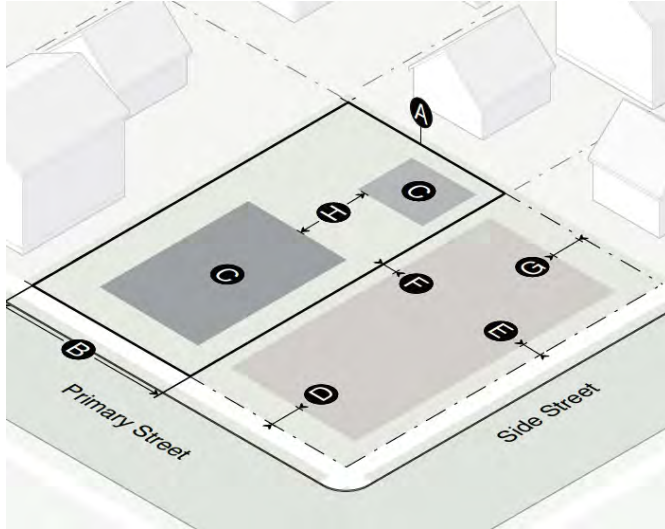
- a. Maximum Principal Building Height: 3 stories / 35 feet max
- b. Accessory Structure: 24 feet max
- c. Minimum Ground Floor Elevation: 2 Feet Minimum
- d. Pedestrian Access:
  - i. Entrance facing primary street: Required.
- e. Building Elements Allowed:
  - i. Balcony. See section 20.122.030
  - ii. Porch. See section 20.122.060
  - iii. Stoop. See section 20.122.070
- f. Parking Location:
  - i. Front/corner yard restrictions: See 20.122.070
  - ii. Garage door restrictions: See 20.122.070

**20.32.030 Backyard Cottage**





- (1) Definition: A small self-contained accessory dwelling located on the same lot as a detached house but physically separated, for use as a complete, independent living facility, with provisions for cooking, sanitation and sleeping.
- (2) Districts where allowed: R1, R2, R3, R6, NMU, RMU, BPMU, GB
- (3) Lot and Placement:



- a. Minimum/Maximum Lot Area: Set by District.
  - b. Minimum Lot Width: Set by District.
  - c. Maximum Lot Coverage: Set by District.
  - d. Building and Structure Setback from Primary Street lot line: Set by District.
  - e. Building and Structure Setback from Side Street lot line: Set by District.
  - f. Building and Structure Setback from Side Interior lot line: Set by District.
  - g. Building and Structure Setback from Rear lot line: Set by District
  - h. Minimum Building separation: 10'
  - i. Maximum Size: A backyard cottage shall not exceed 40 percent of the total square footage of the primary dwelling/detached house (excluding any garage area and other non-living areas such as workshops or greenhouses), or 1,000 square feet, whichever is less.
- (4) Max dwelling units per lot: 1 backyard cottage may be permitted as an accessory use to 1 detached house or manufactured home on a lot. Backyard cottages are not permitted in manufactured or mobile home parks.
  - (5) Build to Zone (BTZ)
    - a. Building Façade in primary street BTZ: Does not apply.
    - b. Building façade in secondary street BTZ: Does not apply.
  - (6) Height and Form:



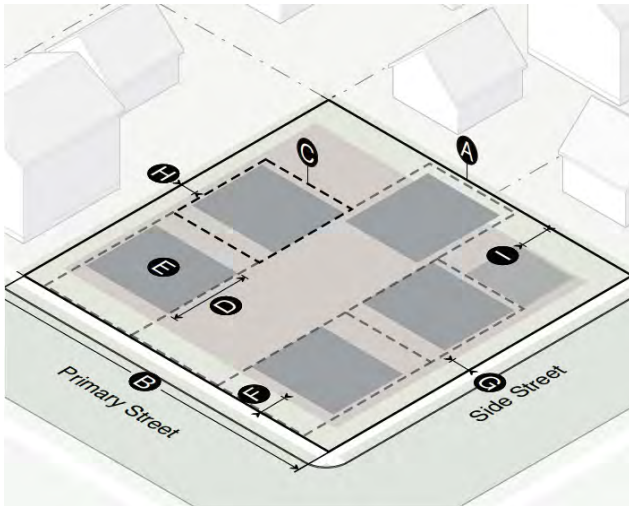
- a. Maximum Accessory Structure Height: 24 Feet
- b. Minimum Ground Floor Elevation: 2 Feet Minimum
- c. Pedestrian Access:
  - i. Entrance facing primary street: Does not apply.
- d. Building Elements Allowed:
  - i. Balcony. Does not apply.
  - ii. Porch. Does not apply.
  - iii. Stoop. Does not apply.
- e. Parking Location:
  - i. Front/corner yard restrictions: Does not apply.
  - ii. Garage door restrictions: See Chapter 20.139 of this Title.
  - iii. Additional on-site parking required: See Chapter 20.68 of this Title.

#### 20.32.040 Cottage Court.





- (1) Definition: A building type that accommodates 5 to 12 detached dwelling units on individual lots organized around an internal shared courtyard. Cottage courts require an approved subdivision or short subdivision (depending on the total number of lots proposed).
- (2) Districts where allowed: R1, R2, R3, R6, RMU, NMU
- (3) Lot and Placement:



- a. Minimum Site Area: 22,500 square feet
- b. Minimum Site Width and Depth: 150'
- c. Minimum Lot Area: 1,200 square feet
- d. Minimum Lot Width: 20'
- e. Maximum Principal Building Footprint: 1,200 square feet
- f. Building and Structure Setback from Primary Street lot line: Set by District.
- g. Building and Structure Setback from Side Street lot line: Set by District.
- h. Building and Structure Setback from Side Interior lot line: Set by District.

- i. Building and Structure Setback from Rear lot line: Set by District
- (4) Maximum Dwelling Units allowed per site: 5-12
- (5) Additional site area required per dwelling unit beyond 5: 4,500 square feet
- (6) Maximum Lot Coverage: Does not apply
- (7) Build to Zone (BTZ)
  - a. Building Façade in primary street BTZ: Does not apply.
  - b. Building façade in secondary street BTZ: Does not apply.
- (8) Height and Form:



- a. Maximum Principal Building Height: 1.5 stories / 24 feet max
- b. Maximum Building Wall Plate Height: 18 feet
- c. Maximum Accessory Structure Height: 18 feet
- d. Minimum Ground Floor Elevation: 2 feet
- e. Courtyard Area:
  - i. Minimum Area: 3,000 square feet
  - ii. Additional Minimum Courtyard Area per dwelling unit beyond 5 units: 600 square foot minimum.
  - iii. Courtyard cannot be parked or driven on, except for emergency access and as permitted for temporary events.
- f. Minimum Courtyard Width:
  - i. 40 feet
- g. Building Elements Allowed:
  - i. Balcony. See section 20.122.030
  - ii. Porch. See section 20.122.060
  - iii. Stoop. See section 20.122.070
- h. Parking Location:
  - i. Front/corner yard restrictions: Not allowed.

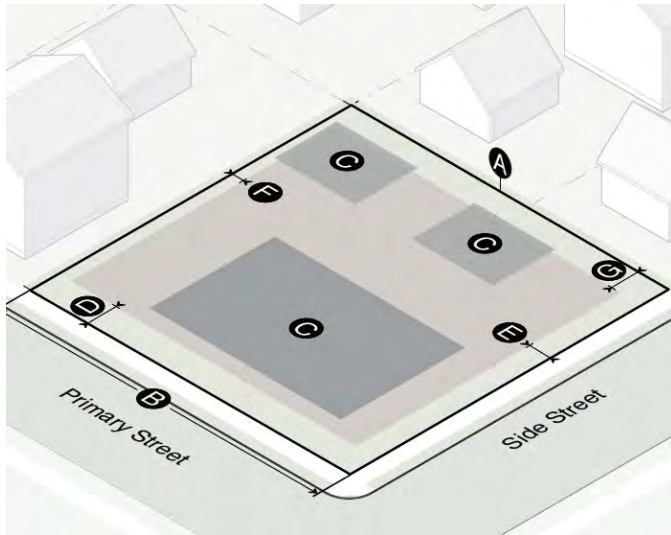


**20.32.050 Duplex: Side by Side.**

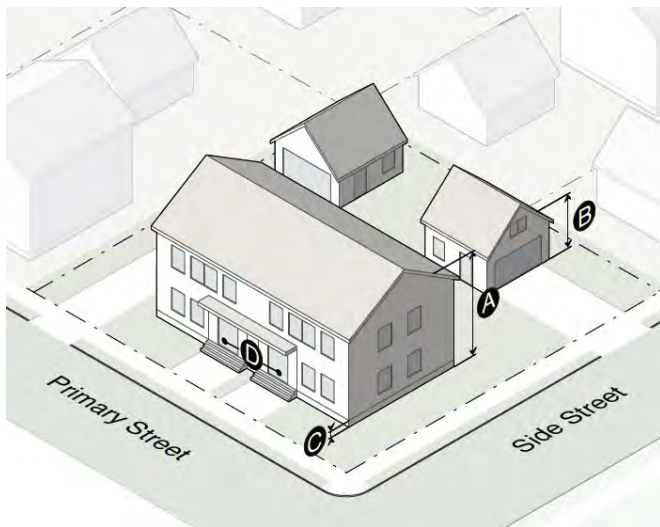


- (1) Definition: A building type that accommodates two dwelling units on an individual lot separated vertically side by side that share a common wall.
- (2) Districts where allowed: R2, R3, NMU, BPMU
- (3) Lot and Placement:





- a. Minimum Lot Area: Set by district.
  - b. Minimum Lot Width: Set by district.
  - c. Maximum Lot Coverage: Set by District
  - d. Primary Street Setback: Set by District.
  - e. Side Street Setback: Set by District.
  - f. Side Interior Setback: Set by District.
  - g. Rear Setback: Set by District
- (4) Dwellings allowed per lot: 2 min, 2 max
- (5) Build to Zone (BTZ)
- a. Building Façade in primary street BTZ: Does not apply.
  - b. Building façade in secondary street BTZ: Does not apply.
- (6) Height and Form:



- a. Maximum Principal Building Height: 3 stories / 35 feet
- b. Maximum Accessory Structure Height: 24' feet

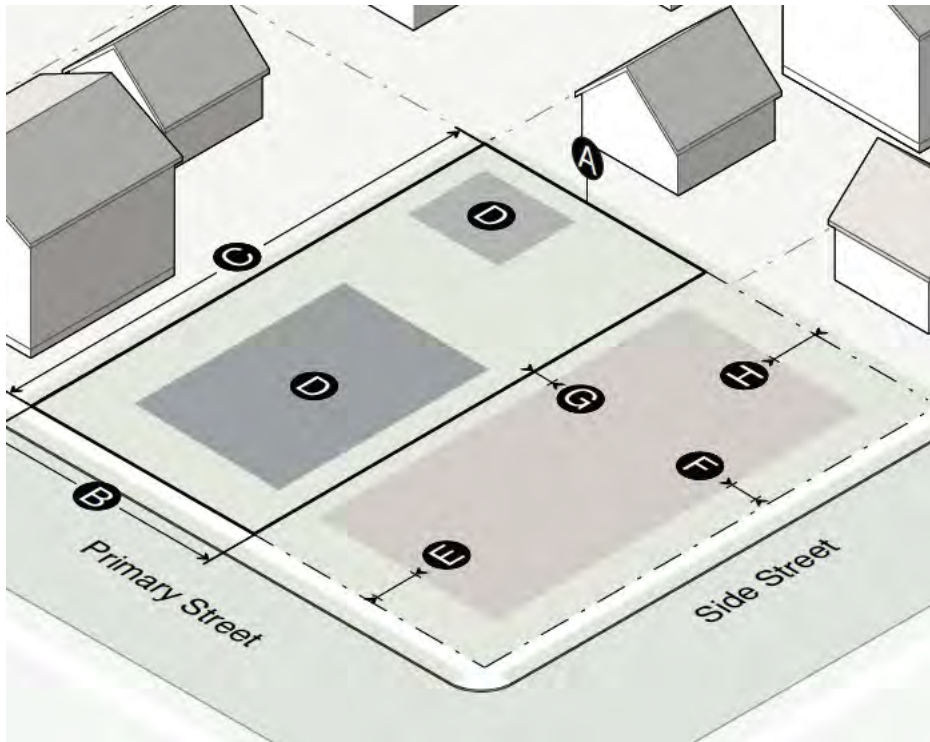
- c. Minimum Ground Floor Elevation: 2 feet Minimum
- d. Pedestrian Access:
  - i. Entrance facing primary street: Required.
- e. Building Elements Allowed:
  - i. Balcony. See section 20.122.030
  - ii. Porch. See section 20.122.060
  - iii. Stoop. See section 20.122.070
- f. Parking Location:
  - i. Front/corner yard restrictions: See 20.32.070
  - ii. Garage door restrictions: See 20.32.070
- g. Maximum Garage Door Width for garage bays facing primary street: 10 feet.

**20.32.060 Duplex: Back to Back.**





- (1) Definition: A building type that accommodates two dwelling units on an individual lot separated vertically with one unit located directly behind the other unit that share a common wall.
- (2) Districts where allowed: R2, R3, NMU, BPMU
- (3) Lot and Placement:



- a. Minimum Lot Area: Set by District
- b. Minimum Lot Width: Set by District
- c. Maximum Lot Coverage: Set by District
- d. Primary Street Setback: Set by District.
- e. Side Street Setback: Set by District.
- f. Side Interior Setback: Set by District.



- g. Rear Setback: Set by District
- (4) Dwellings allowed per lot: 2 min, 2 max
- (5) Build to Zone (BTZ)
  - a. Building Façade in primary street BTZ: Does not apply.
  - b. Building façade in secondary street BTZ: Does not apply.
- (6) Height and Form:

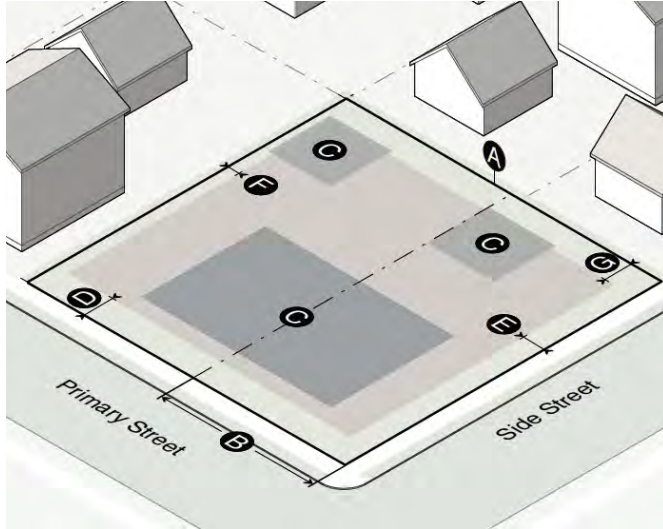


- a. Maximum Principal Building Height: 3 stories / 35 feet Max
- b. Maximum Accessory Structure Height: 24 feet Max
- c. Minimum Ground Floor Elevation: 2 feet Minimum
- d. Pedestrian Access:
  - i. Entrance facing primary street: Required.
- e. Building Elements Allowed:
  - i. Balcony. See section 20.32.070
  - ii. Porch. See section 20.32.070
  - iii. Stoop. See section 20.32.070
- f. Parking Location:
  - i. Front/corner yard restrictions: See 20.32.070
  - ii. Garage door restrictions: See 20.32.070

POMC 20.32.070 Attached House

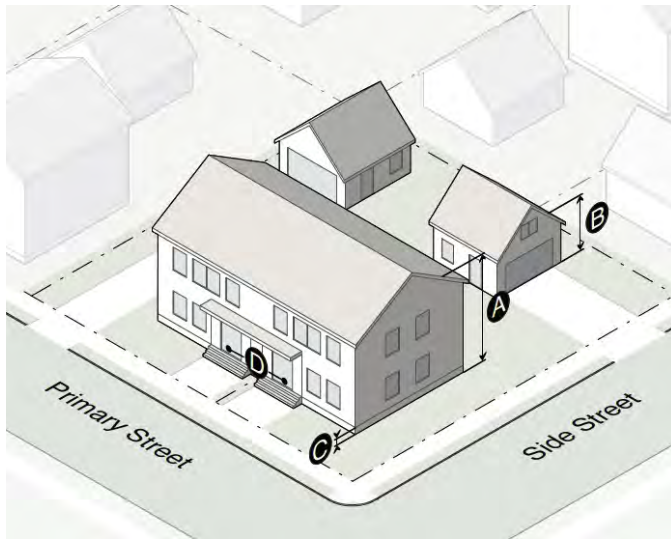


- (1) Definition: A building type that accommodates two attached dwelling units located on two separate lots that share a common wall along a lot line. An attached house may require a subdivision or short subdivision.
- (2) Districts where allowed: R2, R3, NMU, BPMU
- (3) Lot and Placement:



- a. Minimum Lot Area: Set by District
  - b. Minimum Lot Width: Set by District
  - c. Maximum Lot Coverage: Set by District
  - d. Primary Street Setback: Set by District.
  - e. Side Street Setback: Set by District.
  - f. Side Interior Setback: Set by District.
  - g. Rear Setback: Set by District
- (4) Dwellings allowed per lot: 1 min, 1 max
  - (5) Build to Zone (BTZ)
    - a. Building Façade in primary street BTZ: Does not apply.
    - b. Building façade in secondary street BTZ: Does not apply.
  - (6) Height and Form:





- a. Maximum Principal Building Height: 3 stories / 35 feet
- b. Maximum Accessory Structure Height: 24 feet
- c. Minimum Ground Floor Elevation: 2 feet Minimum
- d. Pedestrian Access:
  - i. Entrance facing primary street: Required.
- e. Building Elements Allowed:
  - i. Balcony. See section 20.32.070
  - ii. Porch. See section 20.32.070
  - iii. Stoop. See section 20.32.070
- f. Parking Location:
  - i. Front/corner yard restrictions: See 20.32.070
  - ii. Garage door restrictions: See 20.32.070

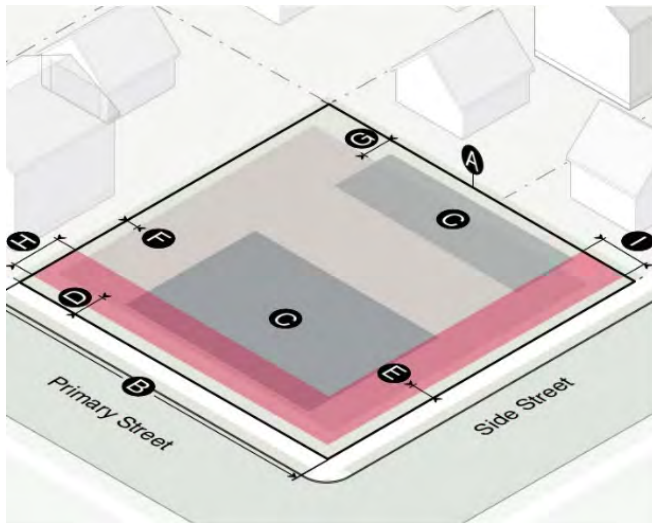
**20.32.080 Four-Plex.**





- (1) Definition: A building type that accommodates 3-4 dwelling units vertically or horizontally integrated.
- (2) Districts where allowed: R3, R4, R5, NMU
- (3) Lot and Placement:





- a. Minimum Lot Area: 7,000 square feet
  - b. Minimum Lot Width: 65'
  - c. Maximum Lot Coverage: Set by District
  - d. Primary Street Setback: Set by District.
  - e. Side Street Setback: Set by District.
  - f. Side Interior Setback: Set by District.
  - g. Rear Setback: Set by District
- (4) Dwellings allowed per lot: Minimum 3, Maximum 4
- (5) Build to Zone (BTZ)
- a. Building Façade in primary street BTZ: Set by District.
  - b. Building façade in secondary street BTZ: Set by District.

(6) Height and Form:



- a. Maximum Principal Building Height: 3 stories / 35 feet
- b. Maximum Accessory Structure Height: 24 feet
- c. Minimum Ground Floor Elevation: 2 feet
- d. Minimum Ground Floor Transparency: 20%

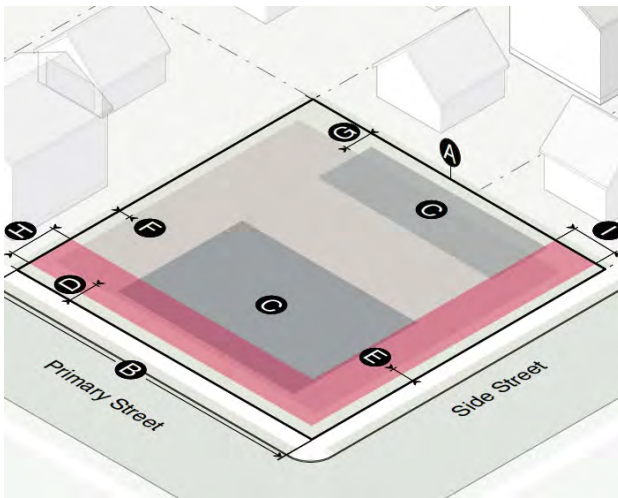
- e. Minimum Upper Floor Transparency: 20%
- f. Maximum Blank Wall Area: 35'
- g. Pedestrian Access:
  - i. Entrance facing primary street: Required.
- h. Building Elements Allowed:
  - i. Awning/canopy. See Section 20.32.160
  - ii. Balcony. See section 20.32.070
  - iii. Porch. See section 20.32.070
  - iv. Stoop. See section 20.32.070
- i. Parking Location:
  - i. Front/corner yard restrictions: Parking Not allowed in front/corner yards.
  - ii. Garage Door Restrictions: See section 20.32.170.

**20.32.090 Townhouse**





- (1) Definition: A building type that accommodates 2 or more dwelling units where each unit is separated vertically by a common side wall and located on its own lot. Units cannot be vertically mixed. A subdivision or short subdivision may be required to construct townhome units.
- (2) Districts where allowed: R2 (3-4 unit residential attached only), R3, R4, R5, RMU, CMU, GMU, BPMU
- (3) Lot and Placement:



- a. Minimum Site Area: 5,000 SF Min
  - b. Minimum Site Width: 70'
  - c. Minimum Lot Area: Set by district.
  - d. Minimum Lot Width Set by district.
  - e. Maximum Lot Coverage: Set by District
  - f. Primary Street Setback: Set by District.
  - g. Side Street Setback: Set by District.
  - h. Side Interior Setback: Set by District.
  - i. Rear Setback: Set by District
- (4) Dwellings allowed per site/lot: 1 min, no max

(5) Build to Zone (BTZ)

- a. Building Façade in primary street BTZ: Set by District
- b. Building façade in secondary street BTZ: Set by District

(6) Height and Form:



- a. Maximum Principal Building Height: 3 stories / 35 feet Max
- b. Accessory Structure: 24 feet Max
- c. Minimum Ground Floor Elevation: 2 feet Minimum
- d. Unit Width: 20 foot Min
- e. Number of Units Permitted in a row: 6 max
- f. Transparency ground story: 20% minimum
- g. Transparency upper story: 20% minimum
- h. Blank wall area: 35 feet max.
- i. Pedestrian Access:
  - i. Entrance facing primary street: Required.
- j. Building Elements Allowed:
  - i. Awning/canopy: See section 20.32.170
  - ii. Balcony. See section 20.32.170
  - iii. Porch. See section 20.32.170
  - iv. Stoop. See section 20.32.170
- k. Parking Location:
  - i. Front/corner yard restrictions: Not allowed in front/corner yards.
  - ii. Garage door restrictions: See section 20.32.170.

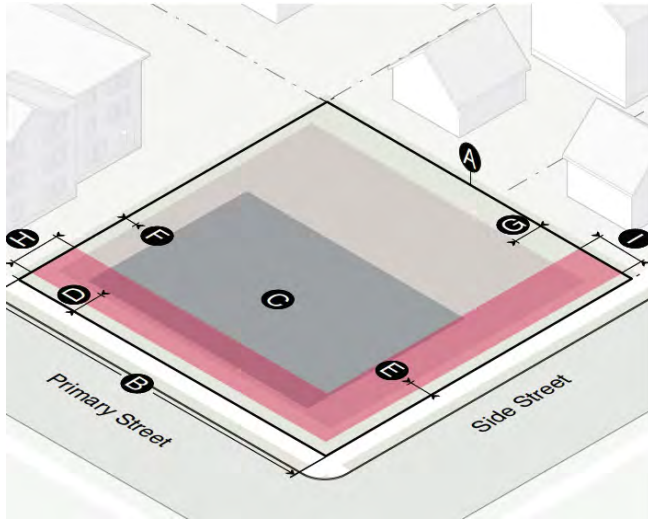


**20.32.100 Apartment.**



(1) Definition: A building type that accommodates 5 or more dwelling units vertically and horizontally integrated.

- (2) Districts where allowed: R3, R4, R5, NMU, GMU, CMU,
- (3) Lot and Placement:



- a. Minimum Lot Area: Set by District
  - b. Minimum Lot Width: Set by District
  - c. Maximum Lot Coverage: Set by District
  - d. Primary Street Setback: Set by District.
  - e. Side Street Setback: Set by District.
  - f. Side Interior Setback: Set by District.
  - g. Rear Setback: Set by District
- (4) Dwellings allowed per lot: 5 min, no max
  - (5) Build to Zone (BTZ)
    - a. Building Façade in primary street BTZ: Set by district.
    - b. Building façade in secondary street BTZ: Set by district.
  - (6) Height and Form:



- a. Maximum building and structure height: Set by district
- b. Minimum Ground Floor Elevation: 2 feet Minimum
- c. Maximum building length:
- d. Minimum ground story transparency: 20%
- e. Minimum upper story transparency: 20%
- f. Maximum blank wall area: 35'
- g. Pedestrian Access:
  - i. Entrance facing primary street: Required.
  - ii. Entrance spacing along primary street: 100' max.
- h. Building Elements Allowed:
  - i. Awning/canopy: See section 20.32.170
  - ii. Balcony. See section 20.32.170
  - iii. Forecourt: See section 20.32.170
  - iv. Porch. See section 20.32.170
  - v. Stoop. See section 20.32.170
- i. Parking Location:
  - i. Front/corner yard restrictions: Not allowed.

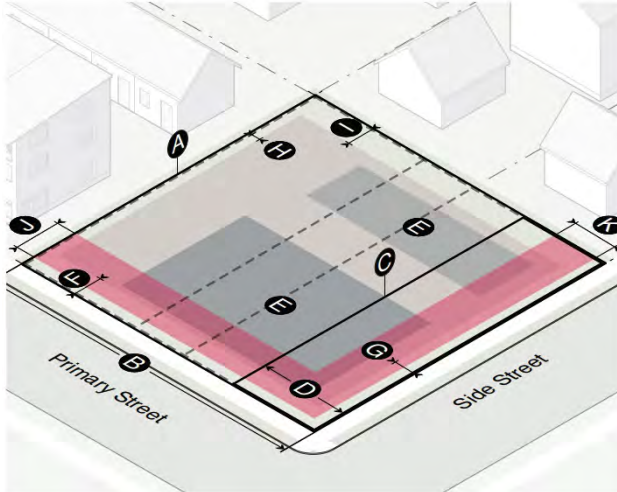
**20.32.110 Live Work.**





- (1) Definition: A building type that accommodates 3 or more units. Units allow for residential and nonresidential uses in the same physical space. Units may be vertically or horizontally mixed.
- (2) Districts where allowed: RMU, NMU, BPMU, CMU, GMU, DMU, IF, CC
- (3) Lot and Placement:





- a. Minimum Site Area: 4,000 square feet
  - b. Minimum Site Width: 55 feet
  - c. Minimum Lot size: Set by District.
  - d. Minimum Lot Width: 16 feet Min
  - e. Maximum Lot Coverage: Set by District
  - f. Primary Street Setback: Set by District.
  - g. Side Street Setback: Set by District.
  - h. Side Interior Setback: Set by District.
  - i. Rear Setback: Set by District
- (4) Units per lot: 1 min / no max
- (5) Build to Zone (BTZ)
- a. Building Façade in primary street BTZ: Set by District.
  - b. Building façade in secondary street BTZ: Set by District.
- (6) Height and Form:



- a. Maximum Building and Structure Height: 3 stories / 35 feet
- b. Minimum Ground Story Height: 12 feet

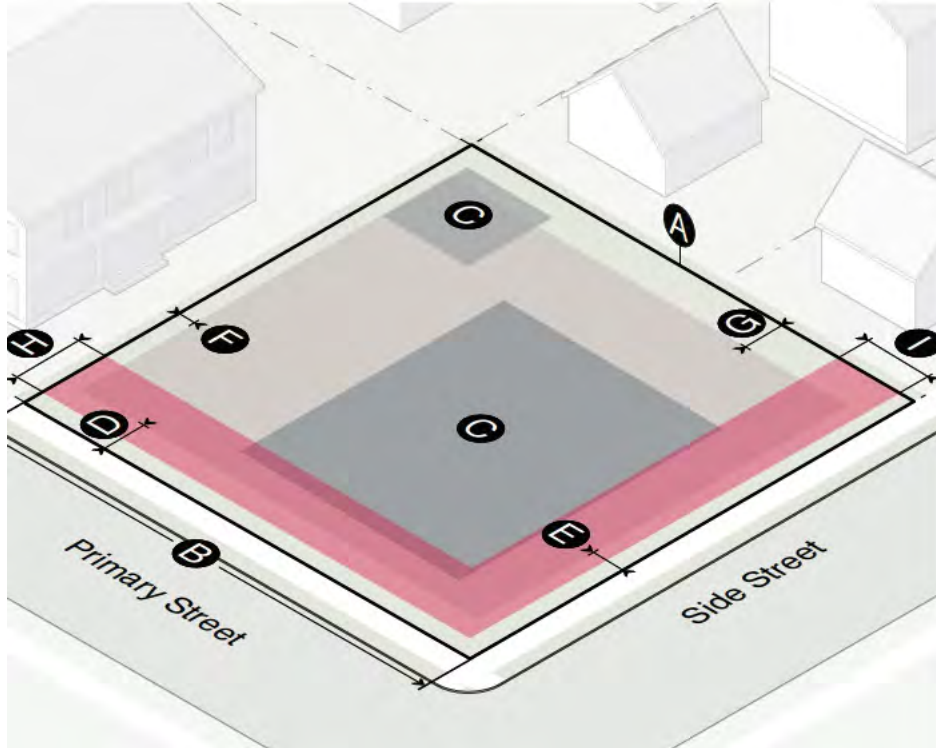
- c. Minimum Ground Floor Elevation: 2 feet
- d. Unit Width: 15 feet Min / 30 feet Max
- e. Number of Units Permitted in a Row: 6
- f. Minimum ground story transparency: 20%
- g. Minimum upper story transparency: 20%
- h. Maximum blank wall area: 35 feet
- i. Pedestrian Access:
  - i. Entrance facing primary street: Required.
- j. Building Elements Allowed:
  - i. Awning/Canopy: See 20.32.170
  - ii. Balcony. See section 20.32.170
  - iii. Porch. See section 20.32.170
  - iv. Stoop. See section 20.32.170
- k. Parking Location:
  - i. Front/corner yard restrictions: See 20.32.170
  - ii. Garage Door Restrictions: See section 20.32.170

**20.32.120 Shopfront House.**





- (1) Definition: A building type that typically accommodates ground floor retail, office or commercial uses with upper-story residential or office uses at a scale that complements the existing residential character of the area.
- (2) Districts where allowed: NMU, CMU, RMU, GMU, CC, BPMU
- (3) Lot and Placement:



- a. Minimum Lot Area: Set by District
  - b. Minimum Lot Width: Set by District
  - c. Maximum Lot Coverage: Set by District
  - d. Primary Street Setback: Set by District.
  - e. Side Street Setback: Set by District.
  - f. Side Interior Setback: Set by District.
  - g. Rear Setback: Set by District
- (4) Dwellings allowed per lot: 2 min, 2 max
- (5) Build to Zone (BTZ):
- a. Building Façade in primary street BTZ: Set by District
  - b. Building façade in secondary street BTZ: Set by District.





(6) Height and Form:

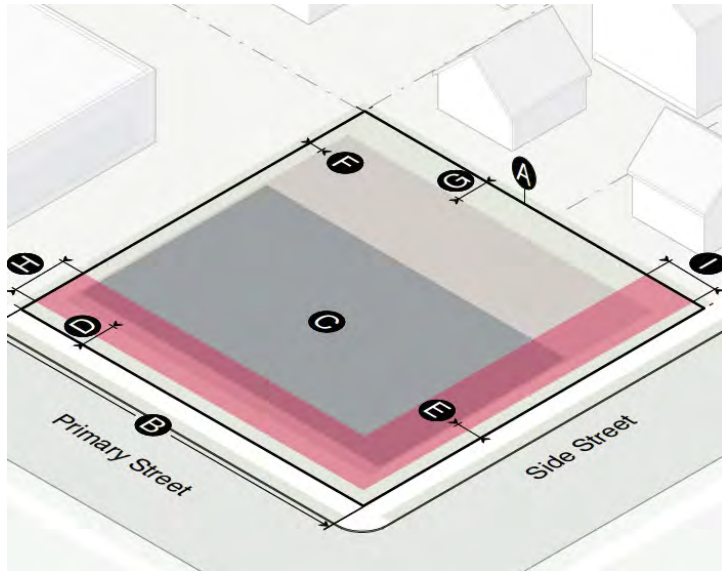
- a. Maximum Principal Building Height: 3 stories / 35 feet
- b. Minimum Ground Story Height: 10 feet
- c. Maximum Building Length: 50 feet
- d. Maximum Building depth: 75 feet
- e. Minimum ground story transparency: 40%
- f. Minimum upper story transparency: 20%
- g. Pedestrian Access:
  - i. Entrance facing primary street: Required.
- h. Building Elements Allowed:
  - i. Awning/canopy: See 20.32.170
  - ii. Balcony. See section 20.32.170
  - iii. Porch. See section 20.32.170
  - iv. Stoop. See section 20.32.170
- i. Parking Location:
  - i. Front/corner yard restrictions: Not allowed.
  - ii. Garage door restrictions: See 20.32.170.

20.32.130 Single Story Shopfront

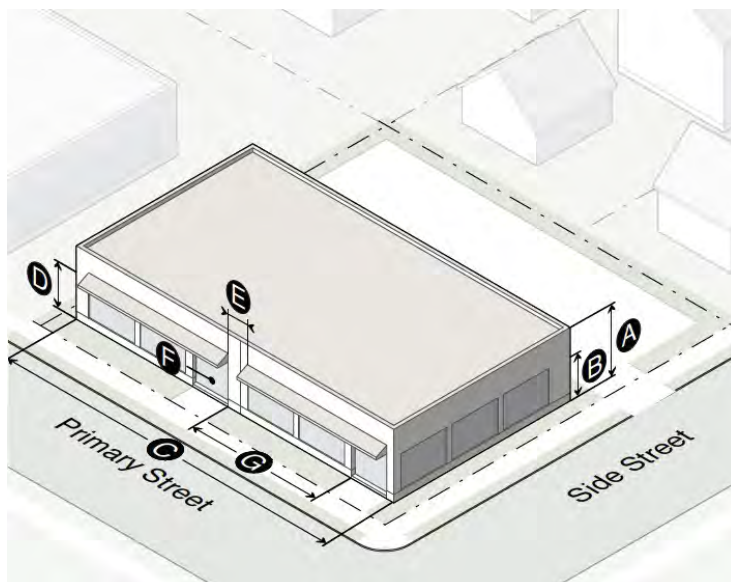


(1) Definition: A single story building type that typically accommodates retail or commercial uses.

- (2) Districts where allowed: CMU, CC, CH, DMU, GMU
- (3) Lot and Placement:



- a. Minimum Lot Area: Set by District
  - b. Minimum Lot Width: Set by District
  - c. Maximum Lot Coverage: Set by District
  - d. Primary Street Setback: Set by District.
  - e. Side Street Setback: Set by District.
  - f. Side Interior Setback: Set by District.
  - g. Rear Setback: Set by District
- (4) Build to Zone (BTZ):
    - a. Building Façade in primary street BTZ: Set by district.
    - b. Building façade in secondary street BTZ: set by district.
  - (5) Height and Form:





- a. Maximum Principal Building Height: 1 stories / 24 feet
- b. Minimum ground story height: 12 feet
- c. Maximum building length: 150 feet
- d. Ground story transparency:
  - i. Ground Story: 60% min
  - ii. Ground Story w/building footprint 20,000 square feet or more: 30% min
- e. Maximum Blank Wall Width:
  - i. Building footprint less than 20,000 square feet: 25 feet max width
  - ii. Building footprint 20,000 square feet or more: 75 feet max width
- f. Pedestrian Access - Entrance facing primary street: Required.
- g. Entrance spacing along primary street:
  - i. 75' max
  - ii. Building footprint of 20,000 sf or more: 125 feet max
- h. Building Elements Allowed:
  - i. Balcony. See section 20.32.170
  - ii. Forecourt. See section 20.32.170
  - iii. Gallery. See section 20.32.170
- i. Parking Location:
  - i. Front/corner yard restrictions: Set by district.

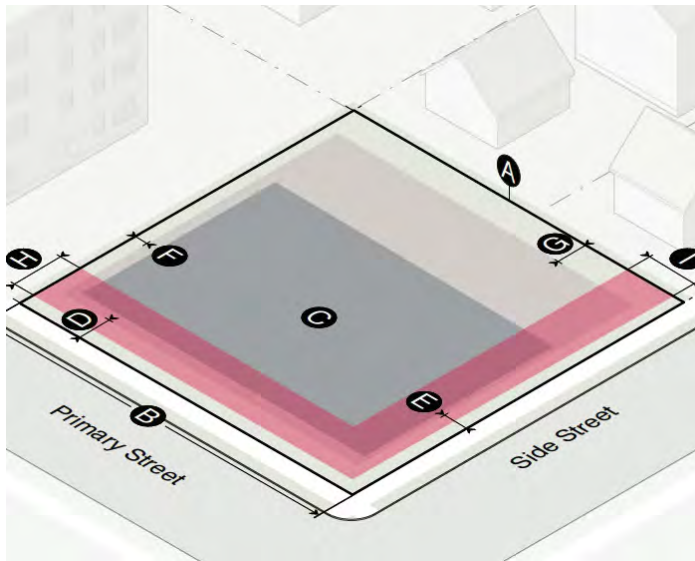
**20.32.140 Mixed Use Shopfront.**







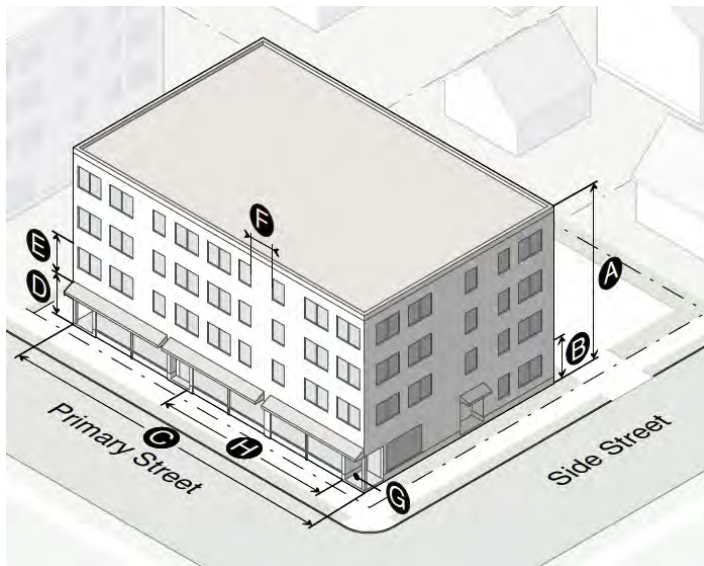
- (1) Definition: A building type that typically accommodates ground floor retail, office or commercial uses with upper-story residential or office uses
- (2) Districts where allowed: BPMU, CMU, DMU, GMU, CC
- (3) Lot and Placement:



- a. Minimum Lot Area: Set by District
- b. Minimum Lot Width: Set by District
- c. Maximum Lot Coverage: Set by District
- d. Primary Street Setback: Set by District.
- e. Side Street Setback: Set by District.
- f. Side Interior Setback: Set by District.
- g. Rear Setback: Set by District
- h. Build to Zone (BTZ) - Building Façade in primary street BTZ: Set by district.
- i. Build to Zone (BTZ) - Building façade in secondary street BTZ: Set by district.

(4) Dwellings allowed per lot: No Limit

(5) Height and Form:



- a. Maximum Building and Structure Height: Set by District
- b. Minimum ground story height: 12 feet
- c. Maximum building length: 120 feet

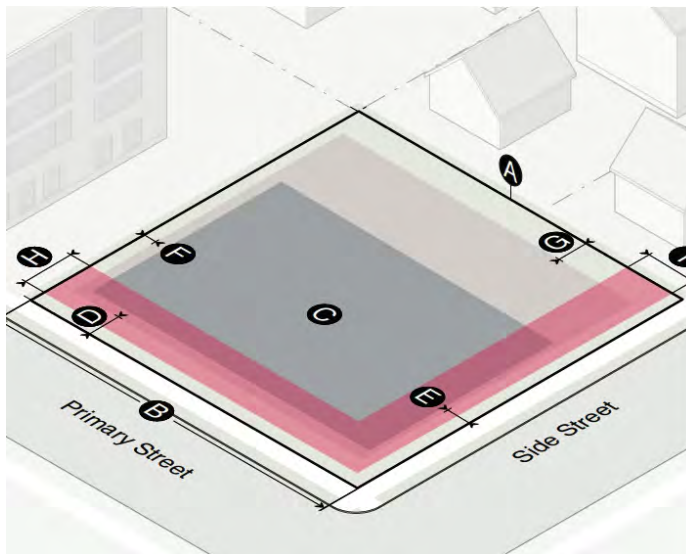
- d. Minimum ground story transparency: 60%
- e. Minimum upper story transparency: 20%
- f. Blank wall area: 25 feet max
- g. Pedestrian Access - Entrance facing primary street: Required.
- h. Entrance spacing along primary street: 75 feet max
- i. Building Elements Allowed:
  - i. Awning/Canopy. See section 20.32.170
  - ii. Forecourt. See section 20.32.170
  - iii. Gallery. See section 20.32.170
- j. Parking Location: Set by District

**20.32.150 General Building**





- (1) Definition: A building type that accommodates commercial, office, agricultural, or industrial uses.
- (2) Districts where allowed: BPMU, CMU, GMU, CC, CH, IF, IL, IH, CI, PR, PF
- (3) Lot and Placement:



- a. Minimum Lot Area: Set by District
  - b. Minimum Lot Width: Set by District
  - c. Maximum Lot Coverage: Set by District
  - d. Primary Street Setback: Set by District.
  - e. Side Street Setback: Set by District.
  - f. Side Interior Setback: Set by District.
  - g. Rear Setback: Set by District
  - h. Build to Zone (BTZ) - Building Façade in primary street BTZ: set by district.
  - i. Build to Zone (BTZ) - Building façade in secondary street BTZ: set by district.
- (4) Dwellings allowed per lot: Not Permitted



(5) Height and Form:



- a. Maximum Building and structure Height: Set by district
- b. Minimum Ground Story Height: 10 feet
- c. Maximum building length: 120 feet
- d. Minimum ground story transparency: 40%
- e. Minimum upper story transparency: 20%
- f. Maximum blank wall area: 50 feet
- g. Pedestrian Access - Entrance facing primary street: Required.
- h. Pedestrian Access – Entrance Spacing along Primary Street 125 feet max.
- k. Building Elements Allowed:
  - iv. Awning/Canopy. See section 20.32.170
  - v. Forecourt. See section 20.32.170
  - vi. Gallery. See section 20.32.170
- i. Parking Location: Set by district.

**Chapter 20.33**

**GREENBELT DISTRICT**

**Sections:**

**20.36.010 Greenbelt.**

(1) Intent.

The Greenbelt district is intended to protect sensitive natural resources and critical areas. Residential development not exceeding 1 single-family residential unit per 2 acres, and certain other compatible land uses, are allowed to supplement the protection of these resources in exchange for preserving open space.

(2) Building Types Allowed. The following building types are allowed:

- (a) Detached single-family house
- (b) Backyard Cottage
- (c) General Building



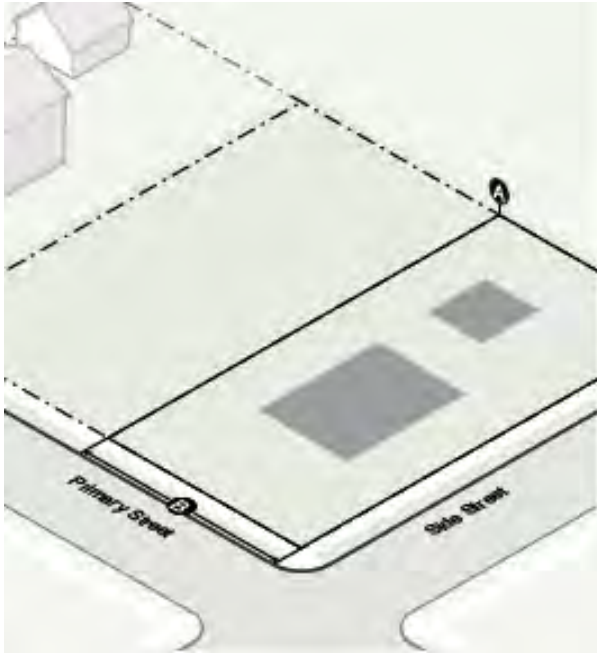
**Greenbelt Buildings**

(3) Lot Dimensions:

Gross Density: 1 unit/2 acres maximum

	Area <b>(A)</b>	Width <b>(B)</b>
Detached house	2 acres min	No Minimum

(4) Maximum hard surface coverage is 15%.

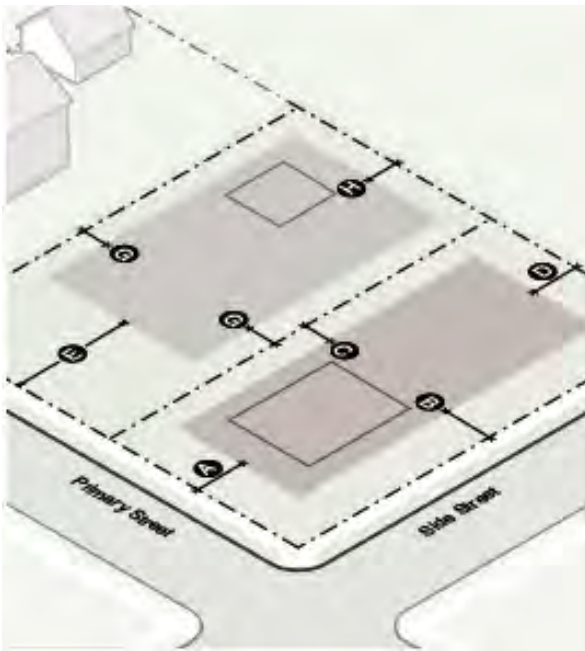


**Greenbelt Lot Dimensions**

(5) Building Placement.

Principal Building Setbacks:

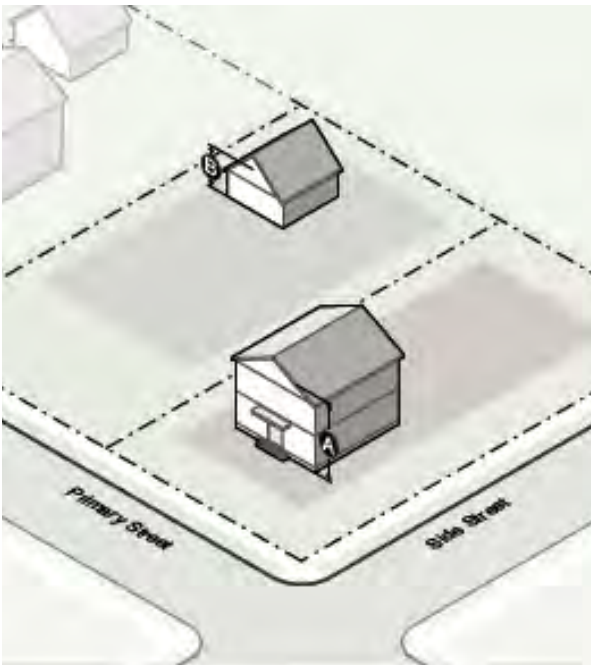
- |                    |           |     |
|--------------------|-----------|-----|
| (a) Primary street | 15 ft min | (A) |
| (b) Side street    | 10 ft min | (B) |
| (c) Side interior  | 5 ft min  | (C) |
| (d) Rear           | 10 ft min | (D) |



**Greenbelt Building Placement**

(6) Building Height:

Principal building	3 stories/35 ft max	<b>(A)</b>
Accessory structure	24 ft max	<b>(B)</b>



**Greenbelt Building Height**



**CHAPTER 20.34**  
**RESIDENTIAL DISTRICTS**

**Sections:**

- 20.34.010 Residential 1 (R1)**
- 20.34.020 Residential 2 (R2)**
- 20.34.030 Residential 3 (R3)**
- 20.34.040 Residential 4 (R4)**
- 20.34.050 Residential 5 (R5)**
- 20.34.060 Residential 6 (R6)**

**20.34.010 Residential 1 (R1)**

(1) Intent. The R1 district is intended to accommodate single-family detached houses with a minimum lot size of 1,200 - 6,000 square feet. R1 may be applied in areas designated as Residential Low or Residential Medium in the Port Orchard Comprehensive Plan. Uses and building types that would substantially interfere with the single family residential nature of the district are not allowed.

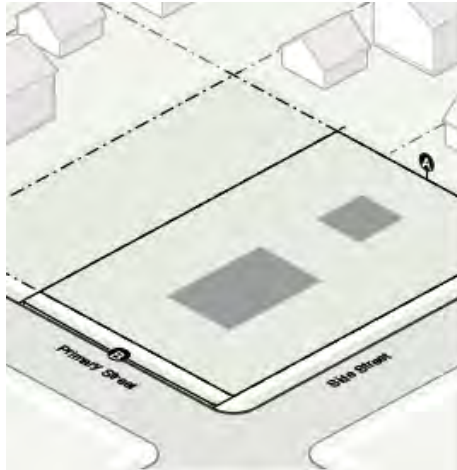
(2) Building Types Allowed. The allowed building types in the R1 zone are as follows:

- (a) Detached house (POMC 20.32.020)
- (b) Backyard Cottage (detached ADU) (POMC 20.32.030)
- (c) Accessory Buildings (POMC 20.32.010 (16))
- (d) Cottage Court (POMC 20.32.040)



**R1 Building Types**

(3) Lot Dimensions.



(a) Minimum lot size:

- i. Lots that take vehicular access from primary street: 6,000 square feet.
- ii. Lots that do not take vehicular access from primary street (lots with vehicular access from alley): 5,000 square feet.
- iii. Cottage Court: 1,200 square feet (See POMC 20.32.040).

(b) Minimum lot width: 50 feet.

(4) Maximum hard surface coverage is 50%.

(5) Principal Building Setbacks.

(a) Primary Street: 10 feet minimum or average front setback (See POMC 20.40.020)

(b) Side Street: 10 feet minimum

(c) Side Interior: 5 feet minimum

(d) Rear: 10 feet minimum

(6) Accessory Structure Setbacks.

(a) Primary Street: 40 feet minimum

(b) Side Street: 10 feet minimum

(c) Side Interior: 5 feet minimum

(d) Rear: 3 feet minimum (Rear setback for an accessory structure abutting an alley may be reduced to 2 feet)

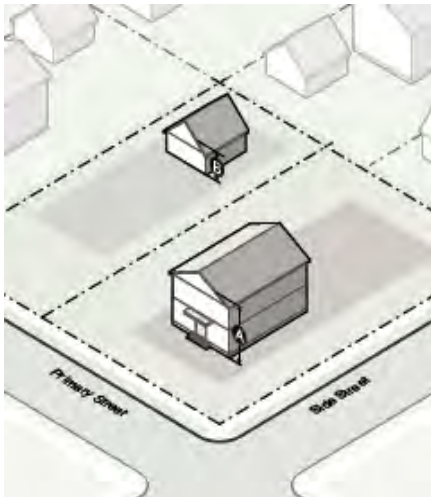


### R1 Building Placement

(7) Building height.

(a) Principal building: 3 stories/35 ft max

(b) Accessory structure: 24 ft max



### R1 Building Height

## 20.34.020 Residential 2 (R2)

(1) Intent. The R2 district is primarily intended to accommodate detached house, duplex, and townhouse development with a minimum lot size that varies based on building type. The R2 district is intended to implement the residential medium density Comprehensive Plan designation. Additional building types that are allowed include backyard cottage (detached accessory dwelling unit), cottage court, duplex and attached house. Uses that would substantially interfere with the residential nature of the district are not allowed.

(2) Building Types Allowed. The allowed building types in the R2 zone are as follows:

(a) Detached house (POMC 20.32.020)

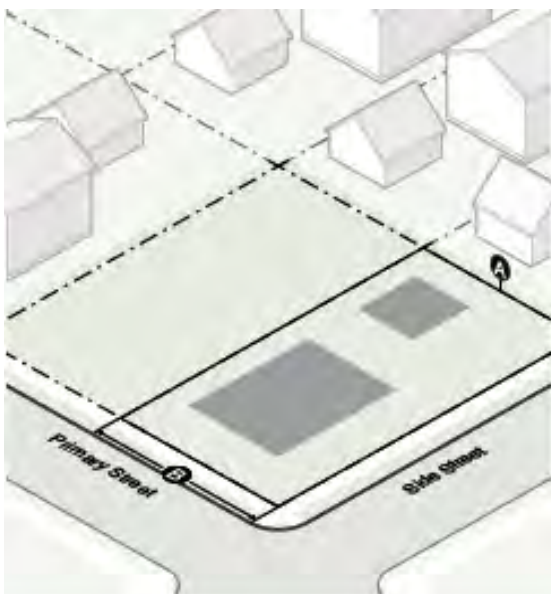
(b) Backyard Cottage (detached ADU) (POMC 20.32.030)

- (c) Cottage Court (POMC 20.32.040)
- (d) Duplex: Side by Side (POMC 20.32.050)
- (e) Duplex: Back to Back (POMC 20.32.060)
- (f) Attached House (POMC 20.32.070)
- (g) Townhouse (POMC 20.32.090) (3-4 units townhouse buildings only)
- (h) Accessory Buildings (POMC 20.32.010 (16))



**R2 Building Types**

(3) Lot Dimensions.



## R2 Lot Dimensions

### (a) Minimum Lot Size by building type:

- i. Detached house (POMC 20.32.020):
  - (A) Lots that take vehicular access from primary street: 5,000 square feet
  - (B) Lots that do not take vehicular access from primary street (lots with vehicular access from alley): 3,000 square feet
- ii. Backyard Cottage (detached ADU) (POMC 20.32.030): Not Applicable.
- iii. Cottage Court (POMC 20.32.040): 1,200 square feet
- iv. Duplex: Side by Side (POMC 20.32.050): 5,000 square feet
- v. Duplex: Back to Back (POMC 20.32.060): 5,000 square feet
- vi. Attached House (POMC 20.32.070): 2,500 square feet
- vii. Townhouse (POMC20.32.090): 2,000 square feet

### (b) Minimum Lot Width:

- i. Detached house (POMC 20.32.020):
  - A. Lots that take vehicular access from primary street: 50 feet
  - B. Lots that do not take vehicular access from primary street: 30 feet
- ii. Backyard Cottage (detached ADU) (POMC 20.32.030): Not Applicable
- iii. Cottage Court (POMC 20.32.040): 20 feet
- iv. Duplex: side by side (POMC 20.32.050):
  - A. Lots that take vehicular access from primary street: 60 feet
  - B. Lots that do not take vehicular access from primary street: 40 feet
- v. Duplex: back to back (POMC 20.32.060): 40 feet
- vi. Attached House (POMC 20.32.070):
  - A. Lots that take vehicular access from primary street: 30 feet
  - B. Lots that do not take vehicular access from primary street: 20 feet
- vii. Townhouse (POMC 20.32.090):
  - A. Lots that take vehicular access from primary street: 30 feet
  - B. Lots that do not take vehicular access from primary street: 20 feet
- viii.

(4) Maximum hard surface coverage is 70%.

### (5) Principal Building Setbacks.

(a) Primary Street: 10 feet minimum or average front setback (See POMC 20.40.020)

(b) Side Street: 10 feet minimum

(c) Side Interior: 5 feet minimum (Except attached housing types with dwellings on individual lots such as townhouses or attached houses which do not require a side interior setback.)

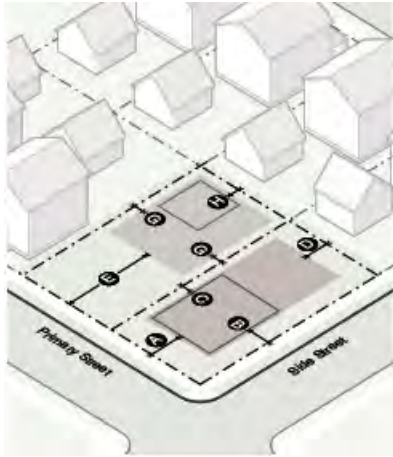
(d) Rear: 10 feet minimum (Rear setback for an accessory structure abutting an alley may be reduced to 2 feet)

### (6) Accessory Structure Setbacks.

(a) Primary Street: 40 feet minimum

(b) Side Street: 10 feet minimum

- (c) Side Interior: 5 feet minimum (Except attached housing types with dwellings on individual lots such as townhouses or attached houses which do not require a side interior setback.)
- (d) Rear: 10 feet minimum (Rear setback for an accessory structure abutting an alley may be reduced to 2 feet)



**R2 Building Placement**

(7) Building height.

Principal building	3 stories/35 ft max	(A)
Accessory structure	24 ft max	(B)



**R2 Building Height**

**20.34.030 Residential 3 (R3)**

(1) Intent. The R3 district is intended to accommodate a variety of residential options limited to 3 stories in height. The R3 zone should be applied in areas designated as residential medium density in the Port Orchard Comprehensive Plan. Uses that would substantially interfere with the residential nature of the district are not allowed.

(2) Building Types Allowed. The allowed building types in the R3 zone are as follows:



- (a) Detached house (POMC 20.32.020)
- (b) Backyard Cottage (detached ADU) (POMC 20.32.030)
- (c) Cottage Court (POMC 20.32.040)
- (d) Duplex: Side by Side (POMC 20.32.050)
- (e) Duplex: Back to Back (POMC 20.32.060)
- (f) Attached House (POMC 20.32.070)
- (g) Four-plex (POMC 20.32.080)
- (h) Townhouse (POMC 20.32.090)
- (i) Apartment (POMC 20.32.100)
- (j) Accessory Buildings (POMC 20.32.010 (16))



**R3 Building Types**

(3) Lot Dimensions.

(a) Minimum Lot Size by building type:

- i. Detached house (POMC 20.32.020):
  - A. Lots that take vehicular access from primary street with 3 or more side by side enclosed parking stalls (3-car garage): 5,000 square feet
  - B. Lots that take vehicular access from primary street with 2 side by side enclosed parking stalls (2-car garage): 4,000 square feet
  - C. Lots that take vehicular access from primary street with 1 side by side enclosed parking stall (1-car garage or tandem configuration 2-car garage): 2,800 square feet
  - D. Lots that do not take vehicular access from primary street (lots with access from alley): 2,400 square feet
- ii. Backyard Cottage (detached ADU) (POMC 20.32.030): Not Applicable.
- iii. Cottage Court (POMC 20.32.040): 1,200 square feet
- iv. Duplex: Side by Side (POMC 20.32.050): 5,000 square feet
- v. Duplex: Back to Back (POMC 20.32.060): 5,000 square feet

- vi. Attached House (POMC 20.32.070): 2,000 square feet
  - vii. Four-plex: 7,000 square feet
  - viii. Townhouse (POMC 20.32.090): 800 square feet
  - ix. Apartment (POMC 20.32.100): 10,000 square feet
- (b) Minimum Lot Width:
- i. Detached house (POMC 20.32.020):
    - A. Lots that take vehicular access from primary street: 36 feet
    - B. Lots that do not take vehicular access from primary street: 26 feet
  - ii. Backyard Cottage (detached ADU) (POMC 20.32.030): Not Applicable
  - iii. Cottage Court (POMC 20.32.040): 20 feet
  - iv. Duplex: Side by Side (POMC 20.32.050):
    - A. Lots that take vehicular access from primary street: 60 feet
    - B. Lots that do not take vehicular access from primary street: 40 feet
  - v. Duplex: Back to Back (POMC 20.32.060): 40 feet
  - vi. Attached House (POMC 20.32.070):
    - A. Lots that take vehicular access from primary street: 30 feet
    - B. Lots that do not take vehicular access from primary street: 20 feet
  - vii. Four-plex (POMC 20.32.080): 60 feet
  - viii. Townhouse:
    - A. Lots that take vehicular access from primary street: 30 feet
    - B. Lots that do not take vehicular access from primary street: 16 feet
  - ix. Apartment: 80 feet



**R3 Lot Dimensions**

- (4) Maximum hard surface coverage is 80%.
- (5) Principal Building Setbacks.
  - (a) Primary Street: 10 feet minimum or average front setback (See POMC 20.40.020)
  - (b) Side Street: 10 feet minimum
  - (c) Side Interior: 5 feet minimum (Except attached housing types with dwellings on individual lots such as townhouses or attached houses which do not require a side interior setback.)



(d) Rear: 10 feet minimum

(6) Accessory Structure Setbacks.

(a) Primary Street: 40 feet minimum

(b) Side Street: 10 feet minimum

(c) Side Interior: 5 feet minimum

(d) Rear: 10 feet minimum (Rear setback for an accessory structure abutting an alley may be reduced to 2 feet)



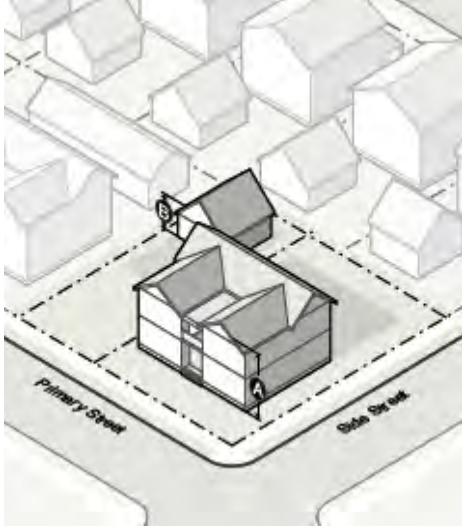
### R3 Building Placement

(7) Building height.

Principal building      3 stories/35 ft max      (A)

Note: If a property is located within an area designated by the City as a receiving site for the transfer of development rights, additional height for apartment buildings may be allowed. Refer to Chapter 20.41, Transfer of Development Rights, for additional information.

Accessory structure      24 ft max      (B)



### **R3 Building Height**

### **Residential 4 (R4)**

(1) Intent. The R4 district is intended to accommodate a variety of multifamily residential options at heights of 45 feet or less. Uses that would substantially interfere with the residential nature of the district are not allowed.

(2) Building Types Allowed. The allowed building types in the R4 zone are as follows:

- (a) Cottage Court (POMC 20.32.040)
- (b) Four-plex (POMC 20.32.080)
- (c) Townhouse (POMC 20.32.090)
- (d) Apartment (POMC 20.32.100)
- (e) Accessory Buildings (POMC 20.32.010 (16))



#### **R4 Building Types**

#### **(3) Lot Dimensions.**

##### **(a) Minimum Lot Size by building type:**

- i. Cottage Court (POMC 20.32.040): 1,200 square feet
- ii. Four-plex: 7,000 square feet
- iii. Townhouse (POMC 20.32.090): 800 square feet
- iv. Apartment (POMC 20.32.100): 10,000 square feet

##### **(b) Minimum Lot Width:**

- i. Cottage Court (POMC 20.32.040): 20 feet
- ii. Four-plex (POMC 20.32.080): 60 feet
- iii. Townhouse:
  - A. Lots that take vehicular access from primary street: 30 feet
  - B. Lots that do not take vehicular access from primary street: 16 feet
- iv. Apartment: 80 feet



### R4 Lot Dimensions

(4) Maximum hard surface coverage is: 80%.

(5) Building Setbacks.

(a) Primary Street: 10feet minimum or average front setback (See POMC 20.40.020)

(b) Side Street: 10 feet minimum

(c) Side Interior: 5 feet minimum (Except attached housing types with dwellings on individual lots such as townhouses which do not require a side interior setback.)

(d) Rear: 10 feet minimum (4 feet minimum where abutting an alley).

(6) Build-to-Zone (BTZ).

(a) Building façade in primary street: 60% min BTZ (% of lot width)

(b) Building façade in side street: 30% min BTZ (% of lot width)



### R4 Building Placement

(7) Building height:

- (a) All buildings and structures: 4 stories/45 feet maximum

Note: If a property is located within an area designated by the City as a receiving site for the transfer of development rights, additional height for apartment buildings may be allowed. Refer to Chapter 20.41, Transfer of Development Rights, for additional information.



**R4 Building Height**

**Residential 5 (R5)**

(1) Intent. The R5 district is intended to accommodate a variety of multifamily residential options at heights of 55 feet or less. Uses that would substantially interfere with the residential nature of the district are not allowed.

(2) Building Types Allowed. The allowed building types in the R5 zone are as follows:

- (a) Cottage Court (POMC 20.32.040)
- (b) Four-plex (POMC 20.32.080)
- (c) Townhouse (POMC 20.32.090)
- (d) Apartment (POMC 20.32.100)
- (e) Accessory Buildings (POMC 20.32.010 (16))



### R5 Building Types

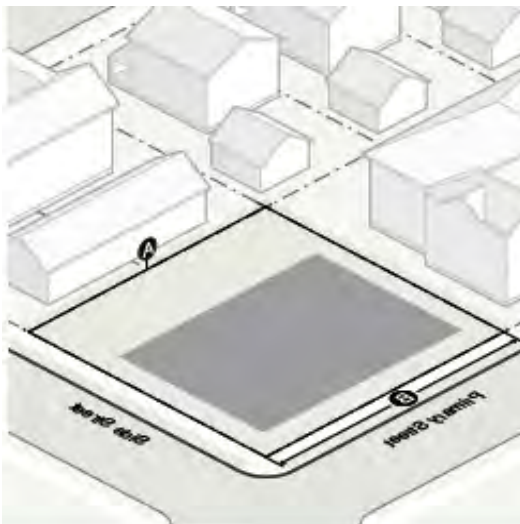
#### (3) Lot Dimensions.

##### (a) Minimum Lot Size by building type:

- i. Cottage Court (POMC 20.32.040): 1,200 square feet
- ii. Four-plex: 7,000 square feet
- iii. Townhouse (POMC 20.32.090): 1,000 square feet
- iv. Apartment (POMC 20.32.100): 10,000 square feet

##### (b) Minimum Lot Width:

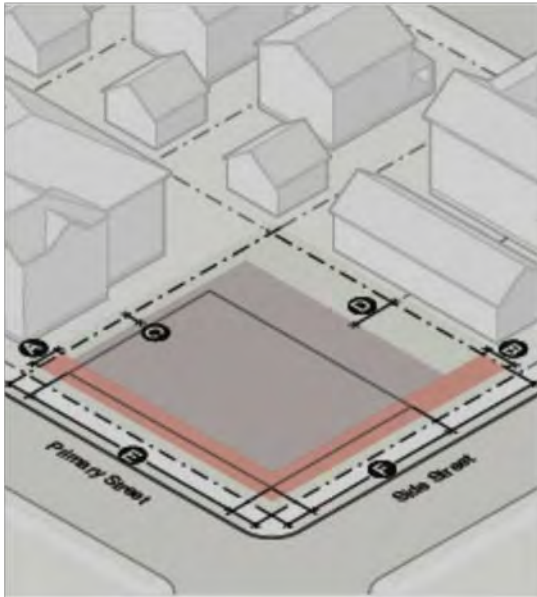
- v. Cottage Court (POMC 20.32.040): 20 feet
- vi. Four-plex (POMC 20.32.080): 60 feet
- vii. Townhouse:
  - i. Lots that take vehicular access from primary street: 30 feet
  - ii. Lots that do not take vehicular access from primary street: 16 feet
- viii. Apartment: 80 feet





## R5 Lot Dimensions

- (4) Maximum hard surface coverage is 80%.
- (5) Principal Building Setbacks.
  - (a) Primary Street: 10 feet minimum or average front setback (See POMC 20.40.020)
  - (b) Side Street: 10 feet minimum
  - (c) Side Interior: 5 feet minimum (Except attached housing types with dwellings on individual lots such as townhouses which do not require a side interior setback.)
  - (d) Rear: 10 feet minimum (4 feet minimum where abutting an alley).
- (6) Build-to-Zone (BTZ).
  - (a) Building façade in primary street: 60% min BTZ (% of lot width)
  - (b) Building façade in side street: 30% min BTZ (% of lot width)



## R5 Building Placement

- (7) Building height.
    - (a) All buildings and structures: 5 stories/55 feet maximum
- Note: If a property is located within an area designated by the City as a receiving site for the transfer of development rights, additional height for apartment buildings may be allowed. Refer to Chapter 20.41, Transfer of Development Rights, for additional information.



**R5 Building Height**

**20.34.020 Residential 6 (R6)**

(1) Intent. The R6 district is primarily intended to accommodate detached house development with a minimum lot size that varies based on building type. The R6 district is intended to implement the residential medium density Comprehensive Plan designation in selected parts of the McCormick Woods master planning area. Additional building types that are allowed include backyard cottage (detached accessory dwelling unit), cottage court, duplex and attached house. Uses that would substantially interfere with the residential nature of the district are not allowed.

(2) Building Types Allowed. The allowed building types in the R6 zone are as follows:

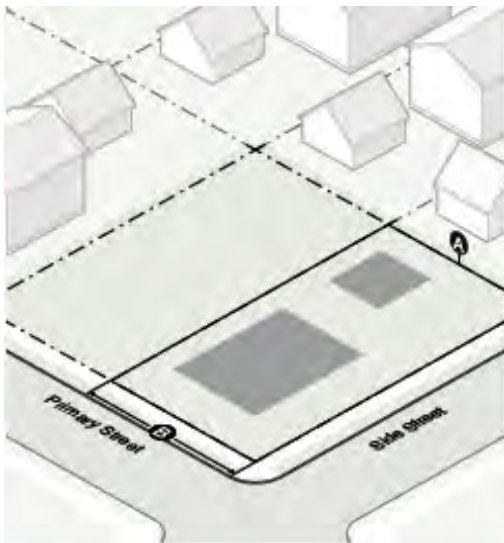
- (a) Detached house (POMC 20.32.020)
- (b) Backyard Cottage (detached ADU) (POMC 20.32.030)
- (c) Cottage Court (POMC 20.32.040)
- (d) Duplex: Side by Side (POMC 20.32.050)
- (e) Duplex: Back to Back (POMC 20.32.060)
- (f) Attached House (POMC 20.32.070)
- (g) Accessory Buildings (POMC 20.32.010 (16))





### R6 Building Types

(3) Lot Dimensions.



### R6 Lot Dimensions

(a) Minimum Lot Size by building type:

- i. Detached house (POMC 20.32.020): 4,000 square feet
- ii. Backyard Cottage (detached ADU) (POMC 20.32.030): Not Applicable.
- iii. Duplex: Side by Side (POMC 20.32.050): 5,000 square feet
- iv. Duplex: Back to Back (POMC 20.32.060): 5,000 square feet  
Attached House (POMC 20.32.070): 2,500 square feet

(b) Minimum Lot Width:

- i. Detached house (POMC 20.32.020): 40 feet
- ii. Backyard Cottage (detached ADU) (POMC 20.32.030): Not Applicable
- iii. Duplex: side by side (POMC 20.32.050):
  - A. Lots that take vehicular access from primary street: 60 feet
  - B. Lots that do not take vehicular access from primary street: 40 feet
- ix. Duplex: back to back (POMC 20.32.060): 40 feet
- x. Attached House (POMC 20.32.070):
  - A. Lots that take vehicular access from primary street: 30 feet
  - B. Lots that do not take vehicular access from primary street: 20 feet

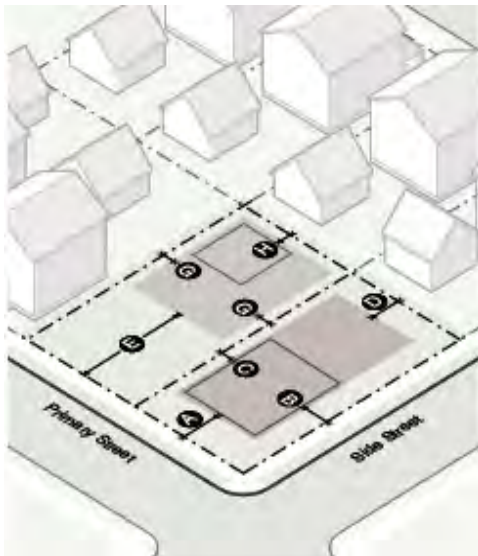
(4) Maximum hard surface coverage is 75%.

(5) Principal Building Setbacks.

- (a) Primary Street: 10 feet minimum or average front setback (See POMC 20.40)
- (b) Side Street: 10 feet minimum
- (c) Side Interior: 5 feet minimum
- (d) Rear: 10 feet minimum (Rear setback for an accessory structure abutting an alley may be reduced to 2 feet)

(6) Accessory Structure Setbacks.

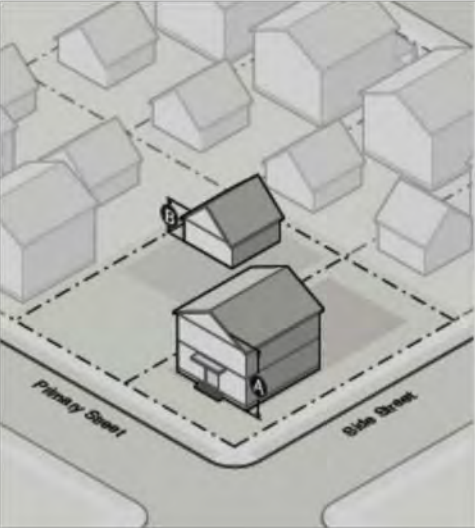
- (a) Primary Street: 40 feet minimum
- (b) Side Street: 10 feet minimum
- (c) Side Interior: 5 feet minimum
- (d) Rear: 10 feet minimum (Rear setback for an accessory structure abutting an alley may be reduced to 2 feet)



**R6 Building Placement**

(7) Building height.

- (a) Principal building: 3 stories/35 ft max
- (b) Accessory structure: 24 ft max



**R6 Building Height**

## CHAPTER 20.35

### COMMERCIAL AND MIXED-USE DISTRICTS

#### Sections:

- 20.35.010 Residential Mixed Use (RMU).
- 20.35.020 Neighborhood Mixed Use (NMU).
- 20.35.025 Business Professional Mixed Use (BPMU).
- 20.35.030 Commercial Mixed Use (CMU).
- 20.35.040 Downtown Mixed Use (DMU).
- 20.35.050 Gateway Mixed Use (GMU).
- 20.35.060 Commercial Corridor (CC).
- 20.35.070 Commercial Heavy (CH).
- 20.35.080 Industrial Flex (IF).

#### 20.35.010 Residential Mixed Use (RMU).

(1) Intent. The RMU district is intended to accommodate working and living in close proximity to one another, including in the same physical space. Building type options include townhouse and live-work. The RMU zone should be applied in areas where the existing or proposed land use pattern promotes live-work uses and in areas designated as Commercial in the Port Orchard Comprehensive Plan. This designation may also be applied in areas designated residential high density in the comprehensive plan provided that the area abuts areas designated commercial and residential high density such that the application of the RMU district acts as a transitional zoning district. Uses that would substantially interfere with the live-work nature of the district are not allowed.

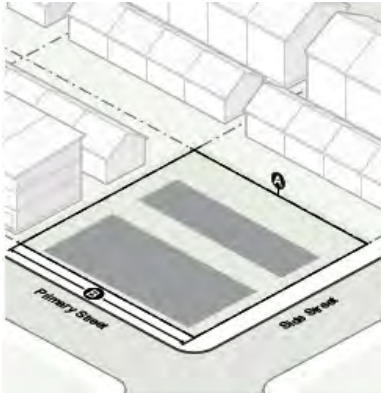
(2) Building Types Allowed. The allowed building types in the RMU zone as follows:

- (a) Townhouse (POMC 20.32.020)
- (b) Live Work (POMC 20.32.110)
- (c) Shopfront House (POMC 20.32.120)



RMU Building Types

(3) Lot Dimensions:



**RMU Zone Lot Dimensions**

(a) Minimum lot size:

- i. Townhouse: 1,000 square ft.
- ii. Live Work: 1,000 square ft
- iii. Shopfront House: 6,000 square ft

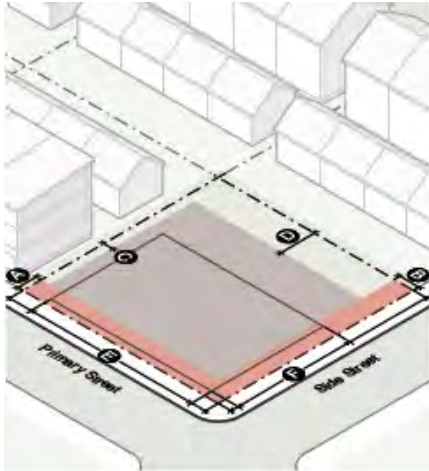
(b) Minimum lot width:

- i. Townhouse:
  - A. Lots that take vehicular access from primary street: 30 feet
  - B. Lots that do not take vehicular access from primary street: 16 feet
- ii. Live Work: 16 feet
- iii. Shopfront House: 60 feet

(4) Maximum hard surface coverage is 90%.

(5) Building Setbacks:

- (a) Primary Street: 0 ft min/10 ft maximum
- (b) Side Street: 0 ft min/10 ft max
- (c) Side Interior: 0 or 5 ft min
- (d) Rear: 10 ft (4 ft if abutting an alley)



**RMU Building Setback and Build to Zone**

(6) Build to Zone:

- (a) Building Facing Primary Street: 70% minimum (% of lot width)
- (b) Building Facing Side Street: 35% minimum (% of lot width)

(7) Building Height:

- (a) 3 stories/35 ft max



**RMU Zone Building Height**

**20.35.020 Neighborhood Mixed Use (NMU)**

(1) Intent. The NMU district is intended to accommodate neighborhood-oriented commercial facilities. The intent of the district is to provide small-scale service establishments close to residential uses, and to ensure that buildings and uses are compatible with the character of nearby neighborhoods. Building type options include: detached house, duplex, backyard cottage, four-plex, townhouse, and shopfront house. NMU zones should be applied in areas where the existing or proposed land use pattern has commercial activity close to established residential areas and may be applied in areas designated commercial in the comprehensive plan.

(2) Building Types Allowed. The allowed building types for the NMU zone are as follows:

- (a) Detached house (20.32.020)

- (b) Duplex (20.32.040-050)
- (c) Backyard Cottage (Detached Accessory dwelling unit) (20.32.030)
- (d) Four-plex (POMC 20.32.080)
- (e) Townhouse (POMC 20.32.090)
- (f) Shopfront house (20.32.120)
- (g) Accessory Buildings (POMC 20.32.010 (16))



**NMU Building Types**

(3) Lot Dimensions:

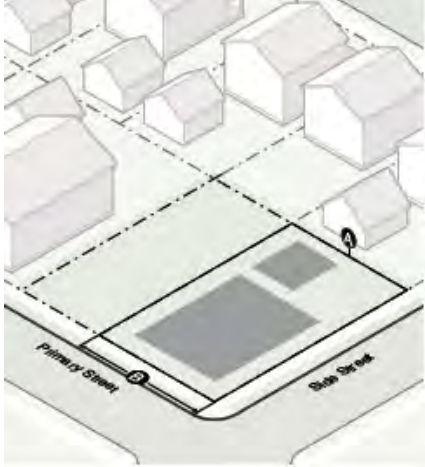
(a) Minimum Lot Size by building type:

- i. Detached House: 3,500 square feet
- ii. Duplex (all types): 7,000 square feet
- iii. Backyard Cottage: 7,000
- iv. Four-plex: 7,000 square feet
- v. Townhouse: 800 square feet
- vi. Shopfront House: 7,000 square feet
- vii. Accessory Building: N/A

(b) Minimum Lot Width:

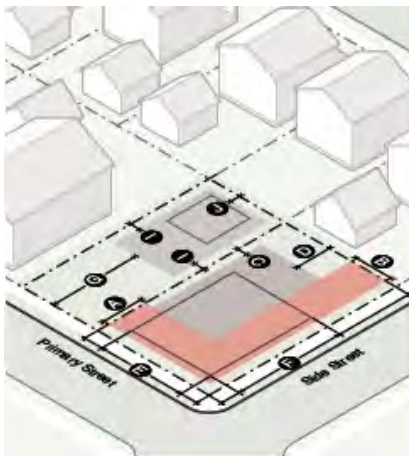
- i. Detached House: 60 feet
- ii. Duplex (all types): 60 Feet.
- iii. Backyard Cottage: N/A
- iv. Four-plex: 60 feet
- v. Townhouse:
  - A. Lots that take vehicular access from primary street: 30 feet
  - B. Lots that do not take vehicular access from primary street: 16 feet
- vi. Shopfront House: 65 feet





**NMU Lot Dimensions**

- (4) Maximum hard surface coverage is 70%.
- (5) Principal Building Setbacks:
  - (a) Primary Street: 10 ft minimum/30 ft maximum
  - (b) Side Street: 10 ft minimum/30 ft maximum
  - (c) Side Interior: 5 ft minimum
  - (d) Rear: 10 ft minimum
- (6) Build to Zone:
  - (a) Building façade in primary street: 50% minimum (% of lot width)
  - (b) Building façade in side street: 25% (% of lot width)
- (7) Accessory Structure Setbacks:
  - (a) Primary Street: 40 ft minimum
  - (b) Side Street: 10 ft minimum
  - (c) Side Interior: 5 ft minimum
  - (d) Rear: 3 ft (Rear if abutting an alley: 4 ft)



**NMU Building Placement**

- (8) Building Height:



- (a) Principal Building Height: 3 stories/35 ft max
- (b) Accessory Building Height: 2 stories/24 ft max



NMU Building Height

### 20.35.025 Business Professional Mixed Use (BPMU)

(1) Intent. The BPMU district is intended to accommodate mixed use development as well as a mix of uses that are oriented around the existing areas of medical, business professional, and residential uses and structures. Development in this zone is sought at a scale appropriate for uses ranging from single family detached to large medical buildings with larger buildings to be designed to be more compatible with smaller structures. Building type options include: detached house, duplex, backyard cottage, live work, shopfront house, mixed use shopfront, and general building. BPMU zones should be applied in areas in the vicinity of the Tremont medical facilities and near downtown Port Orchard and the Kitsap County Campus on properties designated as Commercial in the comprehensive plan.

(2) Building Types Allowed. The allowed building types for the BPMU zone are as follows:

- (a) Detached house (20.32.020)
- (b) Duplex (20.32.040-050)
- (c) Backyard Cottage (Detached Accessory dwelling unit) (20.32.030)
- (d) Attached House (POMC 20.32.070)
- (e) Live Work (POMC 20.32.110)
- (f) Shopfront House (POMC 20.32.120)
- (g) Mixed-Use Shopfront (POMC 20.32.140)
- (h) General Building (POMC 20.32.150)
- (i) Accessory Buildings (POMC 20.32.010 (16))



**NMU Building Types**

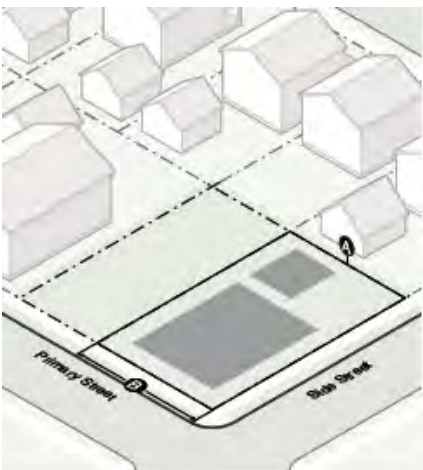
**(3) Lot Dimensions:**

**(a) Minimum Lot Size by building type:**

- i. Detached House: 3,000 square feet
- ii. Duplex: 6,000 square feet
- iii. Backyard Cottage: 6,000 square feet
- iv. Attached House: 3,500 square feet
- v. Live Work: 1,000 square feet
- vi. Shopfront House: 6,000 square feet
- vii. Mixed-Use Shopfront: 10,000 square feet
- viii. General Building: 10,000 square feet

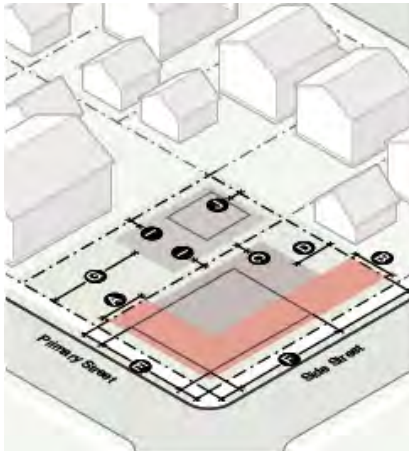
**(b) Minimum Lot Width:**

- i. Detached House: 60 feet
- ii. Duplex: 60 feet Backyard Cottage: N/A
- iii. Attached House: 30 feet
- iv. Live Work: 16 feet
- v. Shopfront House: 60 feet
- vi. Mixed Use Shopfront: 80 feet
- vii. General Building: 100 feet



**BPMU Lot Dimensions**

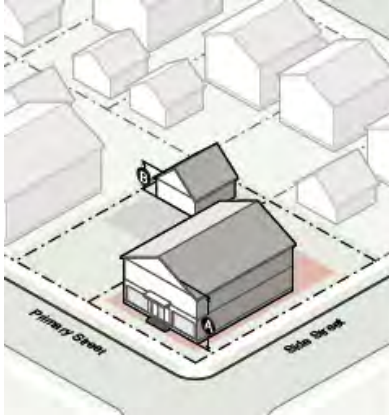
- (4) Maximum hard surface coverage is 75%.
- (5) Principal Building Setbacks:
  - (a) Primary Street: 10 ft minimum/30 ft maximum
  - (b) Side Street: 10 ft minimum/30 ft maximum
  - (c) Side Interior: 5 ft minimum
  - (d) Rear: 10 ft minimum
- (6) Build to Zone:
  - (a) Building façade in primary street: 50% minimum (% of lot width)
  - (b) Building façade in side street: 25% (% of lot width)
- (7) Accessory Structure Setbacks:
  - (a) Primary Street: 40 ft minimum
  - (b) Side Street: 10 ft minimum
  - (c) Side Interior: 5 ft minimum
  - (d) Rear: 20 ft (Rear if abutting an alley: 4 ft)



**NMU Building Placement**

- (7) Building Height:
  - (a) Principal Building Height (except detached house, duplex, attached house): 3 stories/40 ft max

(b) Accessory Building Height: 2 stories/24 ft max



**NMU Building Height**

### **20.35.030 Commercial Mixed-Use (CMU).**

(1) Intent. The Commercial Mixed-Use district is intended to accommodate a broader range of residential and non-residential activity than Neighborhood Mixed Use. To promote walkability and compatibility, auto-oriented uses are restricted. Building type options include: townhouse, apartment, live-work, shopfront house, single-story shopfront, mixed-use shopfront and general building. Commercial Mixed Use should be applied in areas where the existing or proposed land use pattern promotes mixed use and pedestrian-oriented activity and may be applied in areas designated commercial in the comprehensive plan.

(2) Building Types Allowed. The allowed building types are as follows:

- (a) Townhouse
- (b) Apartment
- (c) Live-work unit
- (d) Shopfront house
- (e) Single-story shopfront
- (f) Mixed use shopfront
- (g) General building



**CMU Building Types**

(3) Lot Dimensions:

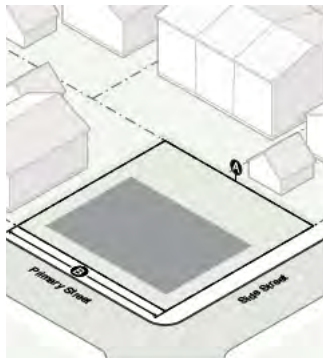
(a) Minimum Lot Size by building type:

- i. Townhouse: 800 square feet
- ii. Apartment: 5,000 square feet
- iii. Live-work Unit: 1,000 square feet
- iv. Shopfront House: 5,000 square feet
- v. Single-story shopfront: 5,000 square feet
- vi. Mixed-use shopfront: 5,000 square feet
- vii. General Building: 5,000 square feet

(b) Minimum Lot Width:

- i. Townhouse: 16 feet
- ii. Apartment: 50 feet
- iii. Live-work Unit: See POMC 20.32.110 (3) (d).
- iv. Shopfront House: 50 feet
- v. Single-story shop front: 50 feet
- vi. Mixed-use shopfront: 50 feet
- vii. General Building: 50 feet

(4) Maximum hard surface coverage is 80%.



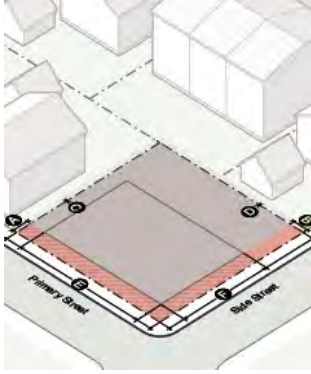
**CMU Lot Dimensions**

(5) Principal Building Setbacks:

- (a) Primary Street: 0 ft minimum / 10 ft maximum
- (b) Side Street: 0 ft minimum / 10 ft maximum
- (c) Side Interior: 0 ft minimum
- (d) Rear: 20 ft minimum (Rear if abutting an alley: 4 ft minimum)

(6) Build to Zone:

- (a) Building façade in primary street: 70% minimum (% of lot width)
- (b) Building façade in side street: 30% minimum (% of lot width)

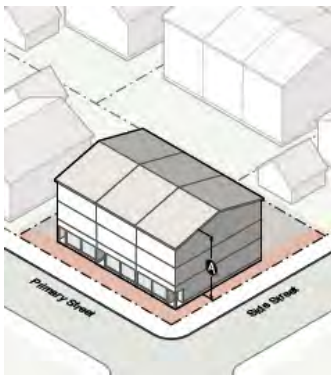


**CMU Building Placement**

(7) Parking location. Parking shall be allowed as followed except where another standard is specified in POMC 20.127:

- (a) Front Yard: Not Allowed
- (b) Corner Yard: Not Allowed
- (c) Side Yard: Allowed
- (d) Rear Yard: Allowed

(8) Building Height: All buildings and structures: 3.5 stories/ 40 ft maximum.



**CMU Building Height**

**20.35.040 Downtown Mixed Use (DMU).**

(1) Intent. The Downtown Mixed-Use district is intended to provide for mixed use, pedestrian-oriented development in downtown. To promote walkability and to encourage street-level retail activity, auto-oriented uses and ground-floor residential uses are restricted. Building type options include live-work, single-story shopfront and mixed-use shopfront. Downtown Mixed Use should be applied in areas where the existing or proposed land use pattern promotes the highest levels of pedestrian and mixed-use activity in the community and may be applied in areas designated commercial in the comprehensive plan.

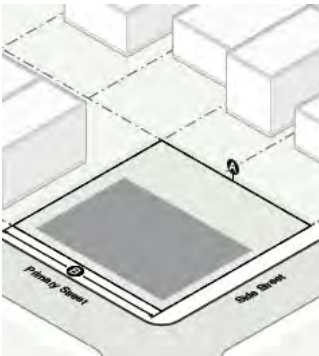
(2) Building Types Allowed. The allowed building types are as follows:

- (a) Live-work unit
- (b) Single-story shopfront
- (c) Mixed-use shopfront



**DMU Building Types**

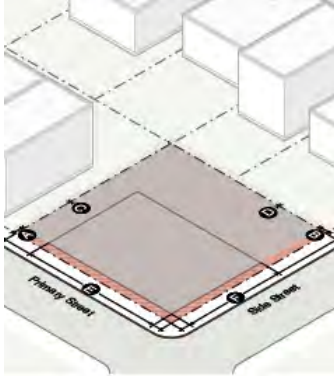
- (3) Lot Dimensions:
  - (a) There are no minimum or maximum lot sizes in the DMU district.
  - (b) There is no minimum lot width in the DMU district.



**DMU Lot Dimensions**

- (4) Maximum hard surface coverage is 100%.
- (5) Principal Building Setbacks:
  - (a) Primary Street: Not applicable
  - (b) Side Street: Not applicable
  - (c) Side Interior: Not applicable
  - (d) Rear: not applicable
- (6) Build to Zone:
  - (a) Building façade in primary street: 80% minimum (% of lot width)
  - (b) Building façade in side street: 40% minimum (% of lot width)





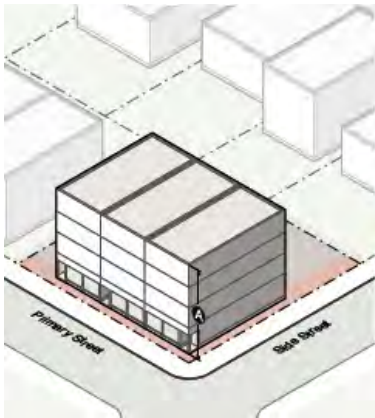
**DMU Building Placement**

(7) Parking location. Parking shall be allowed as followed except where another standard is specified in POMC 20.127:

- (a) Front Yard: Not Allowed
- (b) Corner Yard: Not Allowed
- (c) Side Yard: Allowed
- Rear Yard: Allowed

(8) Building Height:

(a) Maximum Height: 3 stories/38 feet unless an alternative maximum building height is specified pursuant to the Downtown Height Overlay District (POMC 20.38.600-670).



**DMU Building Height**

**20.35.050 Gateway Mixed Use**

(1) Intent. The Gateway Mixed Use district is intended to provide transitional districts in the east and west gateways to downtown Port Orchard. The district allows both mixed use, pedestrian-oriented development such as what is allowed in the GMU district along with other moderately more auto-dependent uses. Building type options include townhouse, apartment, live-work, shopfront house, single-story shopfront, mixed-use shopfront, and general buildings. Gateway Mixed Use should be applied to the east and west of downtown and may be applied in areas designated commercial in the comprehensive plan.

(2) Building Types Allowed. The allowed building types are as follows:

- (a) Townhouse



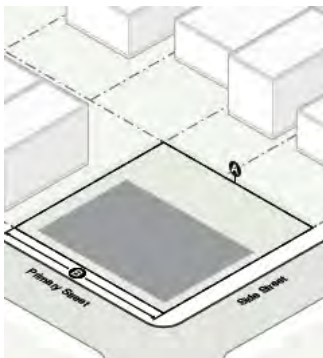
- (b) Apartment
- (c) Live-work unit
- (d) Shopfront house
- (e) Single-story shopfront
- (f) Mixed-use shopfront
- (g) General Building



**GMU Building Types**

(3) Lot Dimensions:

- (c) There are no minimum or maximum lot sizes in the GMU district.
- (d) There is no minimum lot width in the GMU district.



**GMU Lot Dimensions**

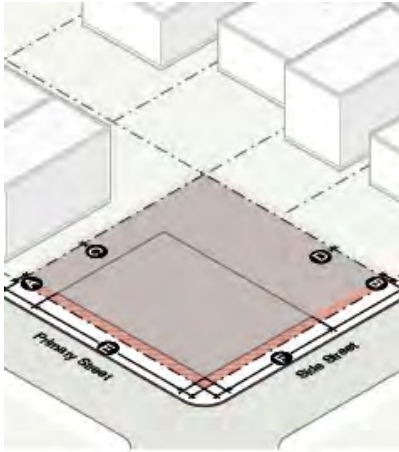
(4) The maximum hard surface coverage is 90%.

(5) Principal Building Setbacks:

- (a) Primary Street: Not applicable
- (b) Side Street: Not applicable
- (c) Side Interior: Not applicable
- (d) Rear: not applicable

(6) Build to Zone:

- (a) Building façade in primary street: 80% minimum (% of lot width)
- (b) Building façade in side street: 40% minimum (% of lot width)



**GMU Building Placement**

(7) Parking location. Parking shall be allowed as followed except where another standard is specified in POMC 20.127:

- (a) Front Yard: Not Allowed
- (b) Corner Yard: Not Allowed
- (c) Side Yard: Allowed
- Rear Yard: Allowed

(8) Building Height:

- (a) Maximum Height: 3 stories/38 feet unless an alternative maximum building height is specified pursuant to the Downtown Height Overlay District (POMC 20.38.600-670).



**GMU Building Height**

**20.35.060 Commercial Corridor (CC)**

(1) Intent. The Commercial Corridor district is intended to serve as a commercial gateway and to take advantage of proximity to major roadways. Therefore, the quality and aesthetics of new development is very important. Building type options include live-work units, shopfront house, single-story shopfront,

mixed-use shopfront and general building. The Commercial Corridor district should be applied along commercial corridors that serve as entrances to downtown or other pedestrian-oriented activity areas.

(2) Building Types Allowed. The allowed building types are as follows:

- (a) Live-work unit
- (b) Shopfront house
- (c) Single-story shopfront
- (d) Mixed-use shopfront
- (e) General building

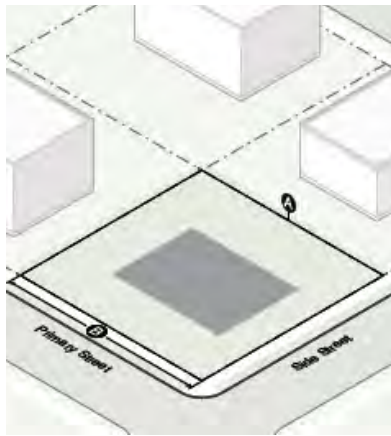


**CC Building Types**

(3) Lot Dimensions:

- (a) Minimum Lot Size by building type:
  - i. Live Work Unit: 1,000 square ft
  - ii. Shopfront House: 5,000 square ft
  - iii. Single Story Shopfront: 5,000 square ft
  - iv. Mixed use shopfront: 5,000 square ft
  - v. General building: 5,000 square ft
- (b) Minimum Lot Width:
  - i. Live Work Unit: 25 ft
  - ii. Shopfront House: 50 ft
  - iii. Single Story Shopfront: 50 ft
  - iv. Mixed use shopfront: 50 ft
  - v. General building: 50 ft

(4) Maximum hard surface coverage is 70%.



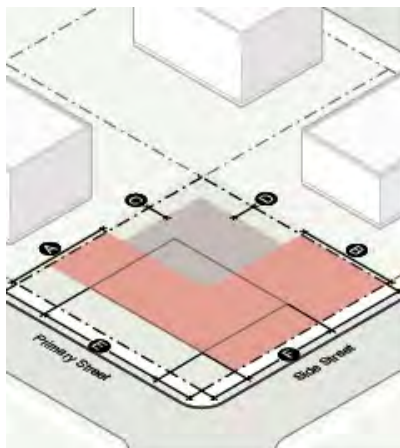
**CC Lot Dimensions**

(5) Principal Building Setbacks:

- (a) Primary Street: 15 ft minimum / 50 ft maximum
- (b) Side Street: 0 ft minimum / 50 ft maximum
- (c) Side Interior: 10 ft minimum
- (d) Rear: 10 ft minimum

(6) Build to Zone:

- (a) Building façade in primary street: 50% minimum (% of lot width)
- (b) Building façade in side street: 25% minimum (% of lot width)



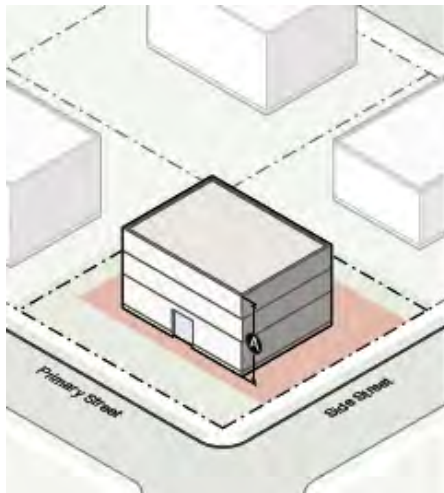
**CC Building Placement**

(7) Parking location. Parking shall be allowed as followed except where another standard is specified in POMC 20.127:

- (a) Front Yard: Not Allowed
- (b) Corner Yard: Not Allowed
- (c) Side Yard: Allowed
- (d) Rear Yard: Allowed

(8) Building Height:

- (a) All buildings and structures: 3 stories/ 35 ft maximum



**CC Building Height**

**20.35.070 Commercial Heavy (CH)**

(1) Intent. Commercial Heavy is intended for auto-oriented and heavy commercial uses. To help ensure compatibility, residential uses are not allowed. Building type options include single-story shopfront and general building. The Commercial Heavy district should be applied in areas where the existing or proposed land use pattern contains a variety of auto-oriented and heavy commercial uses and in areas designated as Commercial in the Comprehensive Plan.

- (2) Building Types Allowed. The allowed building types are as follows:
- (a) Single-story shopfront
  - (b) General building

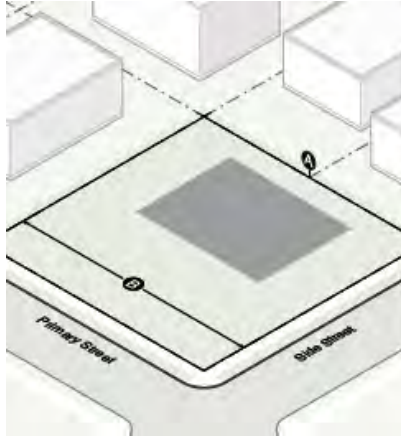


**CH Building Types**

- (3) Lot Dimensions:
- (a) Minimum Lot Size by building type:
    - i. Single Story Shopfront: 7,000 square ft
    - ii. General building: 7,000 square ft
  - (b) Minimum Lot Width:

- i. Single Story Shopfront: 70 ft
- ii. General building: 70 ft

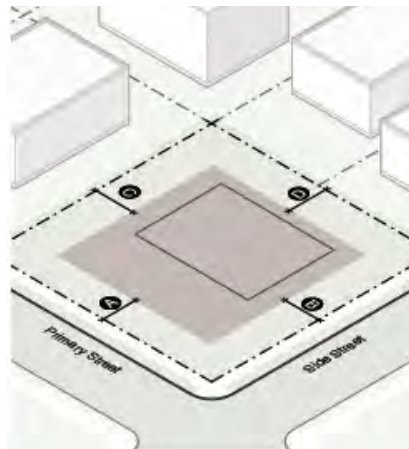
(4) Maximum hard surface coverage is 70%.



**CH Lot Dimensions**

(5) Principal Building Setbacks:

- (a) Primary Street: 20 ft minimum (from planned ROW acquisition area)
- (b) Side Street: 20 ft minimum / 50 ft maximum
- (c) Side Interior: 20 ft minimum
- (d) Rear: 20 ft minimum

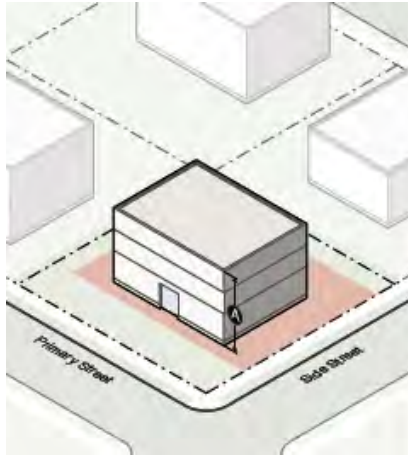


**CH Building Placement**

(7) Parking location. Parking shall be allowed as followed except where another standard is specified in POMC 20.127:

- |                 |         |
|-----------------|---------|
| (a) Front yard  | Allowed |
| (b) Corner yard | Allowed |
| (c) Side yard   | Allowed |
| (d) Rear yard   | Allowed |

- (8) Building Height:  
(a) All buildings and structures: 3 stories/ 35 ft maximum



CH Building Height

### 20.35.080 Industrial Flex.

(1) Intent. IF is intended to accommodate a variety of light industrial, commercial and residential uses. To help ensure that land is reserved for employment purposes, residential uses are limited to the upper stories. Building type options include live-work, single-story shopfront, mixed use shopfront and general building. IX should be applied in industrial areas where commercial and residential uses are also desired, or where such pattern is desired in the future and in areas where designated as Commercial in the Comprehensive Plan.

- (2) Building Types Allowed. The allowed building types are as follows:
- (a) Live-work unit
  - (b) Shopfront house
  - (c) Single-story shopfront
  - (d) Mixed use building
  - (e) General building



IF Building Types



(3) Lot Dimensions:

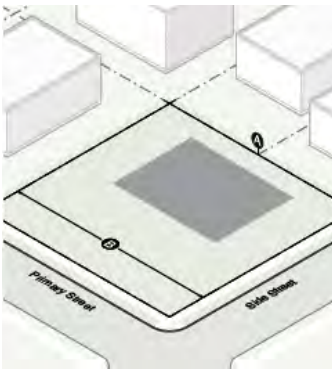
(a) Minimum Lot Size by building type:

- i. Live Work Unit: 1,000 square ft
- ii. Shopfront House: 5,000 square ft
- iii. Single-story shopfront: 5,000 square ft
- iv. Mixed-use shopfront:
- v. General building: 7,000 square ft

(b) Minimum Lot Width:

- i. Live Work Unit: 25 ft
- ii. Shopfront House: 50 ft
- iii. Single-story shopfront: 50 ft
- iv. Mixed-use shopfront: 50 ft
- v. General building: 50 ft

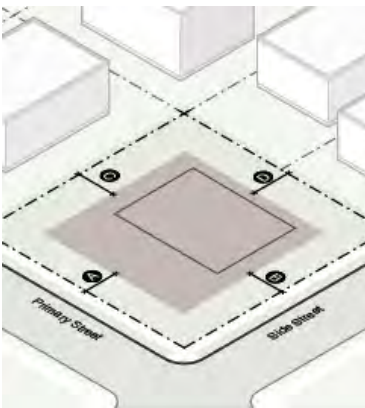
(4) Maximum hard surface coverage is 70%.



**IF Lot Dimensions**

(5) Principal Building Setbacks:

- (a) Primary Street: 5 ft minimum
- (b) Side Street: 5 ft minimum
- (c) Side Interior: 10 ft minimum
- (d) Rear: 10 ft minimum



**IF Building Placement**

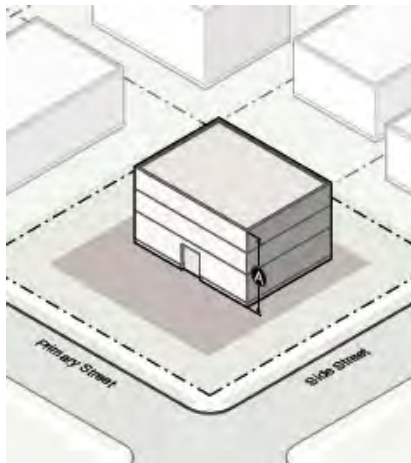


(6) Parking location. Parking shall be allowed as followed except where another standard is specified in POMC 20.127:

- (a) Front yard: Allowed
- (b) Corner yard: Allowed
- (c) Side yard: Allowed
- (d) Rear yard: Allowed

(7) Building Height:

- (a) All buildings and structures: 3 stories/ 35 ft maximum



**IF Building Height**

## Chapter 20.36

### INDUSTRIAL DISTRICTS

#### Sections:

- 20.36.010**      **Light Industrial (LI)**
- 20.36.020**      **Heavy Industrial (HI)**
- 20.36.010**      **Light Industrial (LI)**

#### (1) Intent.

The Light Industrial district is intended to accommodate manufacturing and light industrial uses in order to promote economic viability, encourage employment growth, and limit the encroachment of non-industrial development within established industrial areas. Development should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or commercial uses. The Light Industrial designation should be applied in established light industrial or manufacturing areas or where such land use pattern is desired in the future and in areas designated Industrial in the Comprehensive Plan.

(2) Building Types Allowed. Building types (POMC 20.32) are not applicable in the Light Industrial district.

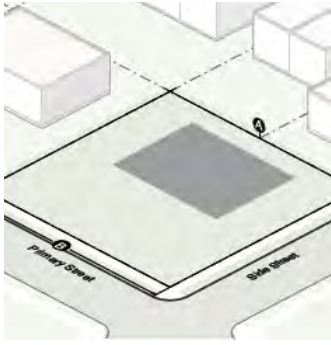


**Light Industrial Buildings**

#### (3) Lot Dimensions:

- (a) Minimum Lot Size by building type: 7,000 square ft
- (b) Minimum Lot Width: 70 ft

(4) Maximum hard surface coverage is 70%.



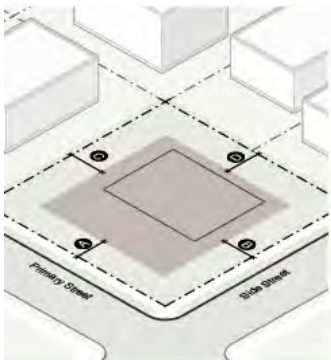
**Light Industrial Lot Dimensions**

(5) Principal Building Setbacks:

- (a) Primary Street: 20 ft minimum
- (b) Side Street: 10 ft minimum
- (c) Side Interior: 10 ft minimum
- (d) Rear: 10 ft minimum

(6) Parking location. Parking shall be allowed as followed except where another standard is specified in POMC 20.124):

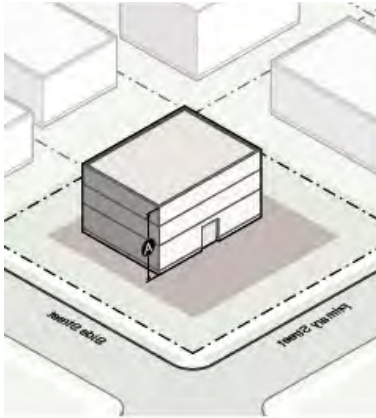
- (a) Front yard: Allowed
- (b) Corner yard: Allowed
- (c) Side yard: Allowed
- (d) Rear yard: Allowed



**Light Industrial Building Placement**

(7) Building Height:

- (a) All buildings and structures: 3 stories/ 35 ft maximum



**Light Industrial Building Height**

### **20.36.020 Heavy Industrial. (HI)**

(1) Intent.

The Heavy Industrial district is intended to accommodate a broad range of high-impact manufacturing or industrial uses that by their nature create a nuisance, and that are not properly associated with or are not compatible with nearby residential or commercial uses. The Heavy Industrial designation should be applied in established heavy industrial areas or where such land use pattern is desired in the future and in areas designated as Industrial in the Comprehensive Plan.

(2) Building Types Allowed. Building types (POMC 20.32) are not applicable in the Heavy Industrial district.

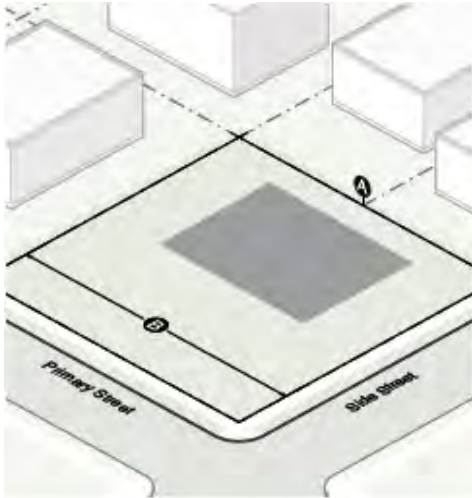


**Heavy Industrial Buildings**

(3) Lot Dimensions:

- (a) Minimum Lot Size by building type: 7,000 square ft
- (b) Minimum Lot Width: 70 ft

(4) Maximum hard surface coverage is 70%.



**Heavy Industrial Lot Dimensions**

(5) Principal Building Setbacks:

- (a) Primary Street: 20 ft minimum
- (b) Side Street: 10 ft minimum
- (c) Side Interior: 10 ft minimum
- (d) Rear: 10 ft minimum

(6) Parking location. Parking shall be allowed as followed except where another standard is specified in POMC 20.127:

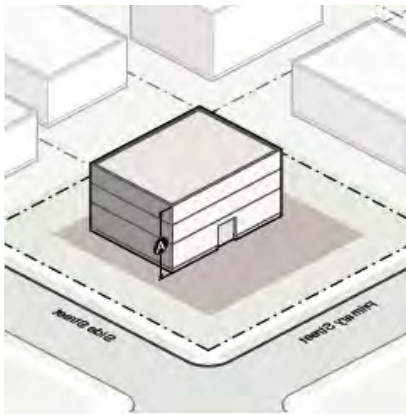
- (a) Front yard: Allowed
- (b) Corner yard: Allowed
- (c) Side yard: Allowed
- (d) Rear yard: Allowed



**Heavy Industrial Building Placement**

(7) Building Height:

- (a) All buildings and structures: 3 stories/ 35 ft maximum



**Heavy Industrial Building Height**

## Chapter 20.37

### CIVIC AND OPEN SPACE DISTRICTS

**Sections:**

<b>20.37.010</b>	<b>Civic and Institutional (CI)</b>
<b>20.37.020</b>	<b>Parks and Recreation (PR)</b>
<b>20.37.030</b>	<b>Public Facilities (PF)</b>
<b>20.37.010</b>	<b>Civic and Institutional (CI)</b>

(1) Intent.

The Civic and Institutional district is intended to protect for civic uses that serve the surrounding neighborhoods or produce intense civic activities that do not readily assimilate into other zoning districts. Activities may include, but are not limited to, religious facilities, fraternal organizations, and schools. The Civic and Institutional district intends to provide for compliance with the Religious Land Use and Institutionalized Persons Act (RLUIPA). The Civic and Institutional district may be applied in any area of the City regardless of Comprehensive Plan designation.

(2) Building Types Allowed. Building types are not applicable in the Civic and Institutional district.

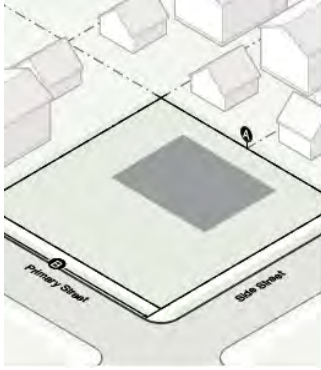


**Civic and Institutional Buildings**

(3) Lot Dimensions:

- (a) Minimum Lot Size by building type: 7,000 square ft
- (b) Minimum Lot Width: 70 ft

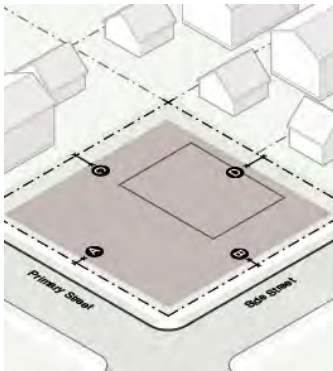
(4) Maximum hard surface coverage is 70%.



**Civic and Institutional Lot Dimensions**

(5) Principal Building Setbacks:

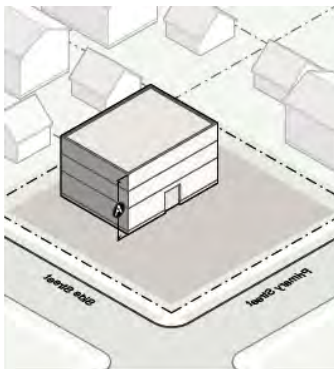
- (a) Primary Street: 15 ft minimum (may be reduced on designated storefront and mixed designation streets POMC 20.127)
- (b) Side Street: 10 ft minimum (may be reduced on designated storefront and mixed designation streets POMC 20.127)
- (c) Side Interior: 10 ft minimum
- (d) Rear: 10 ft minimum



**Civic and Institutional Building Placement**

(6) Building Height:

- (a) All buildings and structures: 3 stories/ 55 ft maximum



**Civic and Institutional Building Height**



**20.37.020 Parks and Recreation (PR)**

(1) Intent. The Parks and Recreation district is intended to create, preserve and enhance park land to meet the active and recreational needs of residents. The Parks and Recreation district is intended to provide for both improved and unimproved park land. Activities may include, but are not limited to, structures or other active, player-oriented facilities such as playgrounds, recreational fields, ballfield, sport courts, dog parks, and associated accessory facilities such as parking areas and restrooms. The Parks and Recreation district is also intended to accommodate buildings of a public nature such as community and recreation centers. The Parks and Recreation District may be applied in any area of the City regardless of Comprehensive Plan designation.

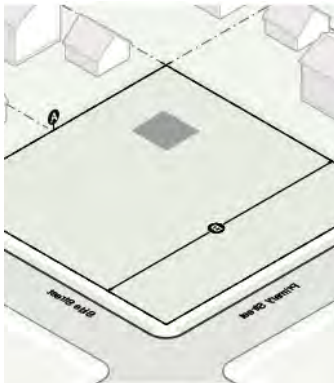
(2) Building Types Allowed. Building types are not applicable in the Parks and Recreation district.



**Parks and Recreation Buildings**

(3) Lot Dimensions:

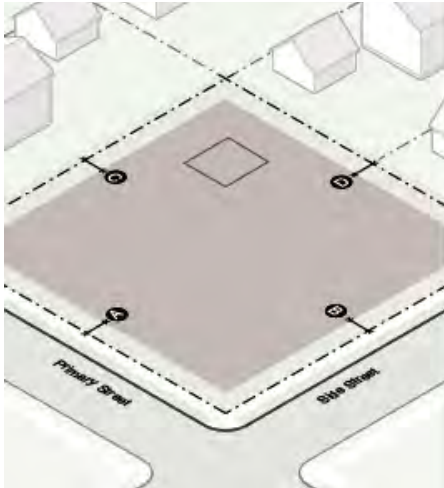
- (a) There shall be no minimum lot size within the Parks and Recreation District.
- (b) There shall be no minimum lot width within the Parks and Recreation District.



**Parks and Recreation Lot Dimensions**

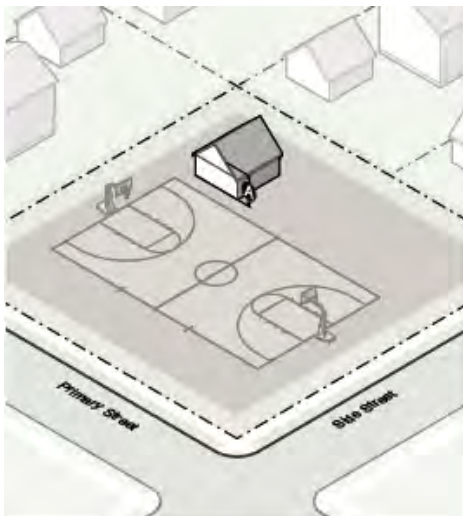
(4) Building Setbacks:

- a. Primary Street: 10 ft minimum
- b. Side street: 10 ft minimum
- c. Side interior: 10 ft minimum
- d. Rear: 10 ft minimum



**Parks and Recreation Building Placement**

- (5) Building Height:
  - (a) All buildings and structures: 35 ft maximum



**Parks and Recreation Building Height**

**20.37.030 Public Facilities (PF)**

(1) Intent.

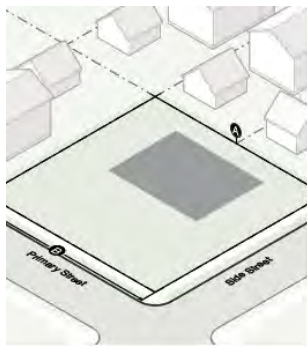
The Public Facilities district is intended to provide for public facility uses that serve the city and which may not readily assimilate into other zoning districts. The Public Facilities district may be applied in any area of the City regardless of Comprehensive Plan designation. The Public Facilities district intends to accommodate buildings of a public nature such as police, fire or EMS stations and government offices.

(2) Building Types Allowed. Building types are not applicable in the Public Facilities district.

(3) Lot Dimensions:

- (a) Minimum Lot Size by building type: 7,000 square ft
- (b) Minimum Lot Width: 70 ft

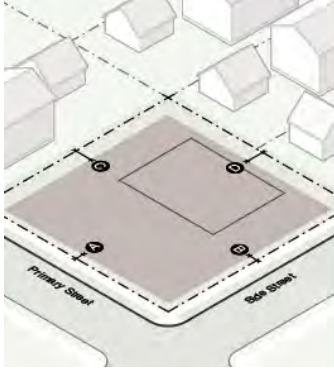
(4) Maximum hard surface coverage is 95%.



**Civic and Institutional Lot Dimensions**

(5) Principal Building Setbacks (from ground level up to 40 feet):

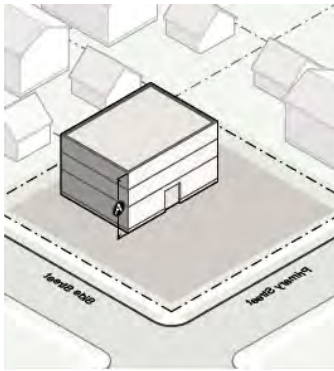
- (a) Primary Street: 10 ft minimum (may be reduced on designated storefront and mixed designation streets POMC 20.127)
- (b) Side Street: 10 ft minimum (may be reduced on designated storefront and mixed designation streets POMC 20.127)
- (c) Side Interior:
  - i. Side Interior abutting non-residential: 5 ft minimum
  - ii. Side Interior abutting residential: 20 ft minimum
- (d) Rear:
  - i. Abutting non-residential: 5 ft minimum
  - ii. Rear abutting residential: 20 ft minimum



**Civic and Institutional Building Placement**

(6) Building Height:

- (a) All buildings and structures: 5 stories/ 85 ft maximum (it is recognized that public buildings may have higher per story heights than other building types hence the 85-foot height limit).



**Civic and Institutional Building Height**

## Chapter 20.38

### OVERLAY DISTRICTS

#### Sections:

**20.38.600 Downtown Height Overlay District (DHOD)**

**20.38.610 DHOD Intent**

**20.38.620 DHOD Applicability**

**20.38.630 DHOD Conflicts**

**20.38.640 DHOD Height Limits**

**20.38.650 DHOD Height Measurement**

**20.38.660 DHOD Variances**

**20.38.670 DHOD Map Amendments**

**20.38.700 Self Storage Overlay District (SSOD)**

**20.38.710 SSOD Intent**

**20.38.720 SSOD Applicability**

**20.38.730 SSOD Conflicts**

**20.38.740 SSOD Map Amendments**

**20.38.800 View Protection Overlay District (VPOD)**

**20.38.810 VPOD Intent**

**20.38.820 VPOD Applicability**

**20.38.830 VPOD Conflicts**

**20.38.840 VPOD Height Limits**

**20.38.850 VPOD Height Measurement**

**20.38.860 VPOD Variances**

**20.38.870 VPOD Map Amendments**

**20.38.880 VPOD Landscaping**

#### **20.38.600 Downtown Height Overlay District (DHOD)**

A Downtown Height Overlay District (DHOD) is hereby established with boundaries as shown on Figure 1.

#### **20.38.610 DHOD Intent**

The intent of the Downtown Height Overlay District (DHOD) is to protect scenic views on north facing slopes in the vicinity of Sinclair Inlet and Downtown, protect property values, provide access to light, ensure that the scale of development in downtown Port Orchard does not negatively impact the historic character of the community, and otherwise protect the general health, safety, and welfare of the community. The intent of the DHOD is to be achieved by establishing height limits for buildings and by establishing a method of measuring buildings that is different than the methods used elsewhere in this title to recognize the generally sloping characteristics of the overlay district.

#### **20.38.620 DHOD Applicability**

No new building or modification of an existing building may be permitted in the DHOD unless it complies with the height limits established in this chapter.

### 20.38.630 DHOD Conflicts

Where the requirements of this chapter conflict with another chapter, the more restrictive requirement shall control.

### 20.38.640 DHOD Height Limits

(1) DHOD Height Zones Established. Within the DHOD as shown on the Zoning Map, there are three different DHOD height zones with height limits established as follows:

- (a) DHOD 3: 38 feet – 3 Stories
- (b) DHOD 4: 48 feet – 4 Stories
- (c) DHOD 5: 58 feet – 5 Stories

(2) DHOD Height Bonus: A ten-foot (one story) height bonus not to exceed 20,000 feet in area may be granted to exceed the applicable maximum height provided in 20.38.640 (a) (1) if the applicant agrees to construct and operate (or lease to an operator) a grocery store in the same building for which the bonus is sought, with the grocery store space measuring at least 10,000 square feet in area. In addition to the 20,000-square foot bonus limit, the area of this additional ten feet of building height shall not exceed 95% of the area of the floor immediately below this bonus height (floor). Any height bonus shall require a development agreement between the developer and the City that provides assurances to the City guaranteeing that the ground floor commercial space will be developed and operated as a grocery store upon project completion.

(3) DHOD Height Zone Map. The height zones described in this section shall be applied as reflected on the DHOD Height Zone Map as shown in figure 1.



Figure 1: DHOD Height Zone Map



**20.38.650 DHOD Height Measurement**

- (1) Building heights shall be measured one of two ways based on whether the parcel to be developed abuts Bay Street or whether it does not abut Bay Street.
  - a. Building heights for lots abutting Bay Street shall be measured from the average grade of the property line that abuts Bay Street rather than from the grade plane as defined in POMC 20.12 (see “building height” and “grade plane.”)
  - b. Building heights for lots not abutting bay street shall be measured in accordance with the definition of building height as found in POMC 20.12.

**20.38.660 DHOD Variances**

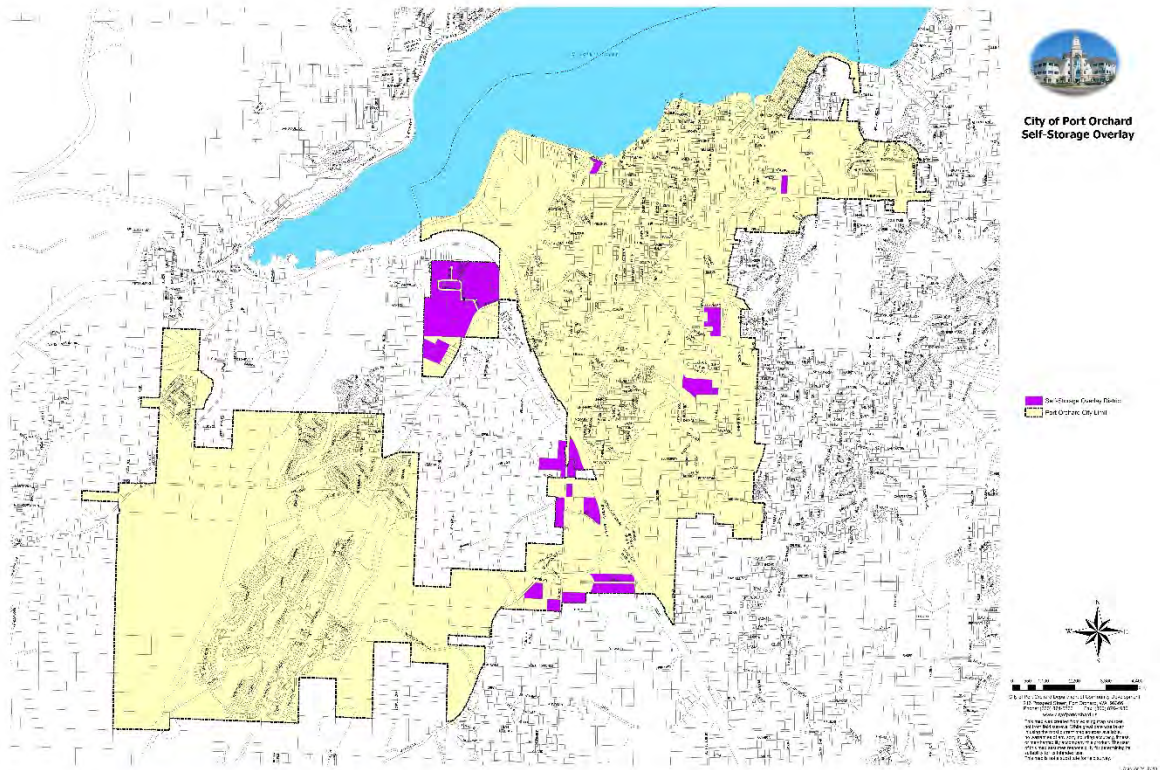
Property owners may seek variances from the building height standards imposed under the DHOD pursuant to POMC 20.28 Variances.

**20.38.670 DHOD Map Amendments**

Property owners seeking to modify the boundaries of the DHOD or the DHOD Height Zone Map in Section 20.38.040 (c) (Figure 1) may do so by a site-specific rezone pursuant to POMC 20.42, Site-Specific Rezones.

**20.38.700 Self Storage Overlay District (SSOD)**

A Self Storage Overlay District (SSOD) is hereby established with boundaries as shown on Figure 2.



**Figure 2: SSOD Map Included Parcels**

### **20.38.710 SSOD Intent**

The intent of the Self Storage Overlay District (SSOD) is to limit self-storage uses to areas of the city where the creation of self-storage facilities will not disrupt the creation of new neighborhoods and will allow for the development of mixed-use centers. The SSOD identifies locations where self-storage uses will be of a minimum impact, as shown on Figure 2.

### **20.38.720 SSOD Applicability**

No new self-storage facility or expansion of an existing self-storage facility shall be permitted except within the boundaries of the SSOD.

### **20.38.730 SSOD Conflicts**

Where the requirements of this chapter conflict with another chapter, the more restrictive requirement shall control.

### **20.38.740 SSOD Map Amendments**

Property owners seeking to modify the boundaries of the SSOD as shown on Figure 2 may do so by a site-specific rezone pursuant to POMC 20.42, Site-Specific Rezones.

### **20.38.800 View protection overlay district (VPOD).**

A View Protection Overlay District is hereby established to include certain property as shown on Figure 3 below.



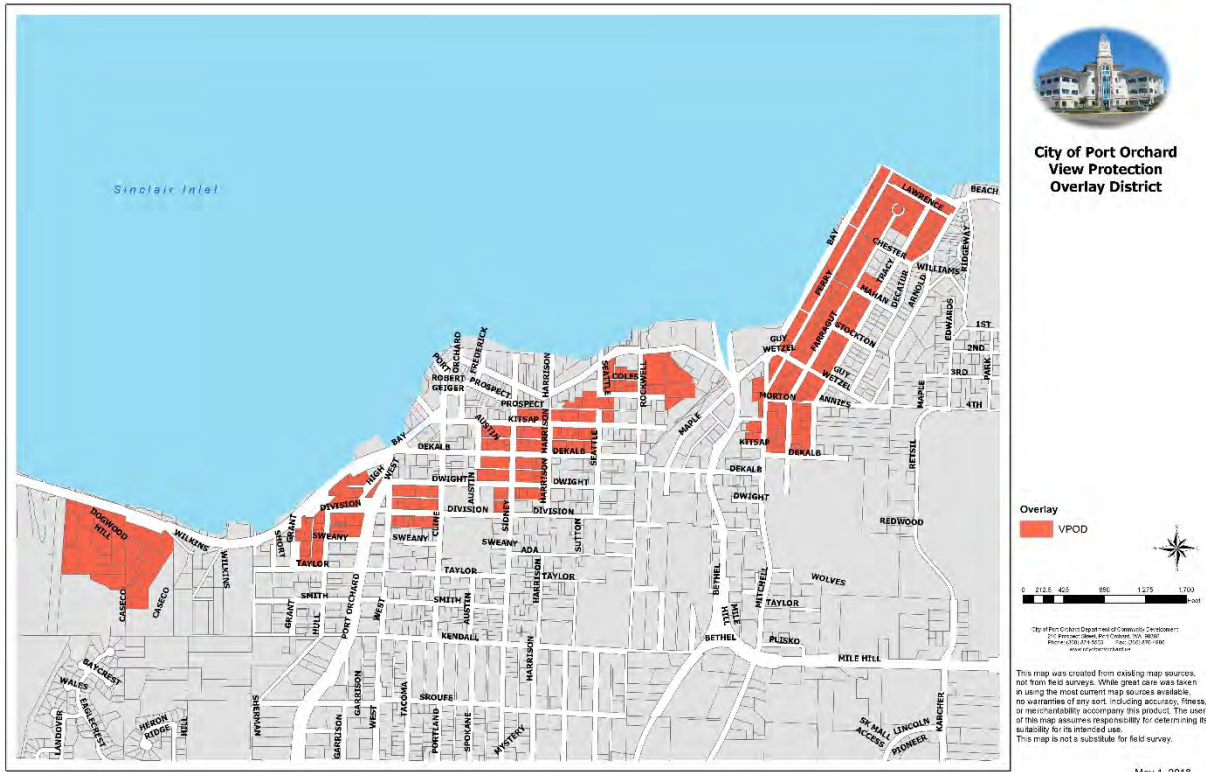


Figure 3: View Protection Overlay District included parcels.

### 20.38.810 VPOD Intent

The intent of the View Protection Overlay District (VPOD) is to protect scenic views on north facing slopes in the vicinity of Sinclair Inlet, protect property values, provide access to light, and otherwise protect the general health, safety, and welfare of the community. The intent of the VPOD is to be achieved by establishing height limits for buildings and by establishing a method of measuring buildings that is different than the methods used elsewhere in this title to recognize the generally sloping characteristics of the overlay district.

### 20.38.820 VPOD Applicability

No new building or modification of an existing building may be permitted in the VPOD unless it complies with the height limits established in this chapter.

### 20.38.830 Conflicts

Where the requirements of this chapter conflict with another chapter, the more restrictive requirement shall control.

### 20.38.840 VPOD Height Limits

Building heights in the VPOD shall be restricted by building type as follows:

- (1) Detached House: 15 Feet
- (2) Backyard Cottage: 15 Feet
- (3) Cottage Court: 15 Feet
- (4) Duplex: Side by Side: 15 Feet
- (5) Duplex: Front to Back: 15 Feet
- (6) Attached House: 15 Feet
- (7) Four Plex: 15 Feet
- (8) Townhome: 15 Feet
- (9) Apartment: 15 Feet
- (10) Live Work: 15 Feet
- (11) Shopfront House: 15 Feet
- (12) Single Story Shopfront: 15 Feet
- (13) Mixed Use Shopfront: 27 Feet
- (14) General Building: 27 Feet
- (15) Accessory Building: 15 Feet

#### **20.38.850 VPOD Height Measurement**

Building height in the VPOD shall be measured from the average uphill property line elevation rather than from the grade plane as described in POMC 20.12 Definitions (see definitions for “building height” and “grade plane.”)

#### **20.38.860 VPOD – Variances**

Property owners may seek variances from the building height standards imposed under the VPOD pursuant to POMC 20.28, Variances.

#### **20.38.870 VPOD Map Amendments**

Property owners seeking to modify the boundaries of the VPOD may do so by a site-specific rezone pursuant to POMC 20.42, Site-Specific Rezones.

#### **30.38.880 VPOD Landscaping**

When landscaping (excluding street trees in the right of way) is required as a condition of development on a project located within the VPOD, plant selections as reflected on a landscaping plan shall not exceed a height of 15 feet as measured from the average elevation of the uphill property line based on the expected mature height of the plants selected. The preparer of a landscaping plan for a project within the VPOD shall provide information on the expected mature plant heights for all species proposed to be planted pursuant to that landscaping plan.

## Chapter 20.39

### USE PROVISIONS

#### Sections:

#### Use Classifications and Table.

- 20.39.010 Use Classification
- 20.39.020 Establishment of Uses
- 20.39.030 Use Table Key
- 20.39.040 Use Table

#### Residential Uses.

- 20.39.100 Household Living
- 20.39.110 Group Living
- 20.39.120 Social Services

#### Public and Civic Uses.

- 20.39.200 Animal Shelter
- 20.39.210 Transit Bus Base
- 20.39.220 Transit Park and Ride Lot
- 20.39.230 Transfer Station
- 20.39.240 Civic Uses
- 20.39.250 Parks and Open Space
- 20.39.260 Utilities
- 20.39.270 Wireless Telecommunication Facilities

#### Commercial Uses.

- 20.39.300 Automobile Service Station
- 20.39.305 Child Care Facilities
- 20.39.310 Conference Center
- 20.39.315 Indoor Recreation
- 20.39.320 Commercial Entertainment
- 20.39.325 Medical Uses
- 20.39.330 Home Occupations
- 20.39.335 Office Uses
- 20.39.340 Outdoor Recreation
- 20.39.345 Overnight Lodging
- 20.39.350 Parking
- 20.39.355 Personal Services
- 20.39.360 Animal Care (Indoor)
- 20.39.365 Animal Care (Outdoor)
- 20.39.370 Restaurant
- 20.39.375 Retail Sales
- 20.39.380 Business Services
- 20.39.385 Marina
- 20.39.390 Fuel Station

**Industrial Uses.**

- 20.39.400 Heavy Industrial Uses**
- 20.39.410 Light Manufacturing**
- 20.39.420 Research and Development**
- 20.39.430 Resource Extraction**
- 20.39.440 Vehicle Service and Repair**
- 20.39.450 Warehouse, Storage and Distribution**
- 20.39.460 Self Storage (Mini Warehouse)**
- 20.39.470 Storage Yard**
- 20.39.480 Waste-Related Services**

**Agricultural Uses.**

- 20.39.500 Agriculture**

**Accessory Uses.**

- 20.39.600 Accessory Apartment**
- 20.39.605 Backyard Cottage Dwelling**
- 20.39.610 Drive-Thru Facility**
- 20.39.615 Home Occupation**
- 20.39.620 Home Business**
- 20.39.625 Livestock Keeping**
- 20.39.630 Outdoor Display**
- 20.39.635 Outdoor Storage**
- 20.39.640 Indoor Self-Storage as Accessory Use to Apartment Buildings**
- 20.39.645 Vehicle Service and Repair Accessory to Residential Uses**
- 20.39.650 Medical Marijuana Cooperative**

**Use Classifications and Table.**

**20.39.010 Use Classification**

(1) Classification of Uses

- (a) Organization of Use Tables. The use table in section 20.39.040 is organized into principal uses and accessory uses.
- (b) Principal Uses.
  - i. In order to regulate a variety of similar uses, use categories have been established for principal uses. Use categories provide a systematic basis for assigning uses to appropriate categories with other, similar uses. Use categories classify principal uses and activities based on common functional, product, or physical characteristics.
  - ii. Where a use category contains a list of included uses, the list is to be considered example uses, and not all-inclusive. The Director has the responsibility for categorizing all uses.
  - iii. The allowed use tables in POMC 20.39 Article II establishes permitted uses by district. No building or lot may be used except for a purpose permitted in the district in which it is located.
  - iv. Use definitions and standards for permitted principal uses are specified beginning in POMC 20.39.100.
  - v. More than one principal use may be established on a property or in a structure.
- (c) Accessory Uses.

- i. An accessory use is any use that is subordinate in both purpose and size, incidental to and customarily associated with a permitted principal use located on the same lot.
  - ii. The allowed use tables in POMC 20.39.040 establishes permitted accessory uses by district.
- (d) Temporary Uses.
  - i. A temporary use is a use that is in place for a limited period of time only. All uses shall be treated as permanent principal or accessory uses except where temporary uses are specifically authorized in code such as in the Temporary Uses (POMC 20.58), Street Use Permit (POMC 12.24), Special Event Permit (POMC 5.94), or Fireworks Stand Permit (POMC 5.60) chapters.
- (e) Principal Uses Not Listed.
  - i. A principal use not specifically listed is prohibited unless the director determines the use to be part of the use category as described in this chapter.
  - ii. The Director is responsible for categorizing all principal uses. If a proposed use is not listed in a use category, but is similar to a listed use, the Director may consider the proposed use as part of that category. When determining whether a proposed use is similar to a listed use, the Director must consider the criteria in POMC 20.39.010 (1) (f). Determinations whether a proposed principal use is a similar use may be made using the process found in POMC 20.10. The Director shall determine whether a code interpretation for a proposed principal use shall require a code interpretation pursuant to POMC 20.10.
  - iii. Where a principal use not listed is found by the Director not to be similar to any other use category, the use is only permitted following a code amendment (see POMC 20.06).
- (f) Criteria for determining whether a proposed use is a similar use:
  - i. The actual or projected characteristics of the proposed use;
  - ii. The relative amount of site area or floor area and equipment devoted to the proposed use;
  - iii. Relative amounts of sales;
  - iv. Relative number of employees;
  - v. Hours of operation;
  - vi. Building and site arrangement;
  - vii. Types of vehicles used and their parking requirements;
  - viii. The number of vehicle trips generated;
  - ix. How the proposed use is advertised;
  - x. The likely impact on surrounding properties; and
  - xi. Whether the activity is likely to be found independent of the other activities on the site;
- (g) Accessory Uses Not Listed.
  - i. An accessory use not listed is prohibited unless the Director determines that the accessory use meets the criteria listed in POMC 20.39.010 (1) (h).
  - ii. Determinations whether a proposed accessory use is a similar use may be made using the process found in POMC 20.39.010(1)(f). The Director shall determine whether a code interpretation for a proposed accessory use shall require a code interpretation pursuant to POMC 20.10.
  - iii. Where a principal use not listed is found by the Director not to be similar to any other use category, the use is only permitted following a code amendment (see POMC 20.06).
- (h) Criteria for determining whether a proposed accessory use may be permitted. The Accessory use may be permitted when the Director determines the proposed accessory use:
  - i. Is clearly incidental to and customarily found in connection with an allowed principal use;
  - ii. Is subordinate to an serving an allowed principal use;
  - iii. Is subordinate in area, extent, and purpose to the principal use served;

- iv. Contributes to the comfort, convenience or needs of the occupants, business or industry in the principal use served; and
- v. Is located on the same lot as the principal use served.

(2) Use Table Key.

- (a) Permitted Use (P). Indicates a use is permitted in the respective district. The use is also subject to all other requirements of this code.
- (b) Conditional Use (C). Indicates that the use may be permitted in the respective district only after issuance of a Conditional Use Permit in accordance with POMC 20.50. Conditional uses are subject to all other applicable requirements of the code, including applicable use standards, except whether the use standards are specifically modified are part of the approval process.
- (c) Use Not Permitted (--). Indicates that a use is not permitted in the respective district.

**20.39.020 Establishment of uses.**

The use of a property is defined by the activity for which the building or lot is intended, designed, occupied, or maintained. All applicable requirements of this title, or other applicable state or federal requirements, shall govern a use located within the Port Orchard incorporated area.

**20.39.030 Use table key.**

(1) Permitted Use (P)

Indicates a use is permitted in the respective zoning district. The use is also subject to all other applicable requirements of this code.

(2) Conditional Use (C)

Indicates a use may be permitted in the respective zoning district only after a conditional use permit has been issued per Chapter 20.50. Conditional uses are subject to all other applicable requirements of this Title, including any applicable use standards, except where the use standards are expressly modified in the conditional use permit.

(3) Use Not Permitted (--)

Indicates that a use is not permitted in the respective zoning district.

**20.39.040 Use table.**

(Gray shading separates categories into Residential, Commercial & Industrial, & Civic/Parks)

Use Category Specific Use	R1	R2	R3	R4	R5	R6	GB	RMU	NMU	CMU	DMU	GMU	BPMU	CC	CH	IF	LI	HI	CI	PR	PF	Definition/ Standards
<b>Residential Uses</b>																						
All household living, as listed below:																						
Single-family detached (including new manufactured homes)	P	P	P	--	--	P	P	P	P	--	--	--	P	--	--	--	--	--	--	--	--	20.39.600-615
Designated Manufactured Home, Manufactured or Mobile Home (except for new designated manufactured homes)	--	-	P	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	20.39.600-615
New Designated Manufactured Home	P	P	P	--	--	P	P	P	P	--	--	--	P	--	--	--	--	--	--	--	--	
Two-family	--	P	P	--	--	P	--	P	P	--	--	--	P	--	--	--	--	--	--	--	--	20.39.600-615
Single-family attached (2 units)	--	P	P	--	--	P	--	P	P	--	--	--	P	--	--	--	--	--	--	--	--	20.39.600-615
Single-family attached (3 or 4 units)	--	P	P	P	P	P	--	P	P	P	P	P	P	P	--	P	--	--	--	--	--	20.39.600-615
Single-family attached (5 or 6 units)	--	--	P	P	P	P	--	P	P	P	P	P	P	P	--	P	--	--	--	--	--	20.39.600-615
Multi-family (3 or 4 units)	--	--	P	P	P	--	--	P	P	P	P	P	P	P	--	P	--	--	--	--	--	20.39.600-615
Multi-family (5 or more units)	--	--	P	P	P	--	--	P	P	P	P	P	P		--	P	--	--	--	--	--	20.39.600-615
Manufactured or Mobile Home Park	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	20.39.600-615
Boarding House	--	--	--	C	C	--	--	--	C	--	--	P	C	--	--	--	--	--	--	--	--	
Congregate Living Facilities	--	--	C	C	C	--	--	--	C	--	--	P	C	--	--	--	--	--	--	--	--	
Lodging House	--	--	C	C	C	--	--	--	C	--	--	P	C	--	--	--	--	--	--	--	--	
Group home (up to 8 residents), except as follows:	P	P	P	P	P	P	P	P	P	--	--	--	P	--	--	--	--	--	--	--	--	20.39.600-615
Adult Family Home	P	P	P	--	--	P	P	P	P	--	--	--	P	--	--	--	--	--	--	--	--	
All group living (9 or more residents)	--	--	--	C	C	--	--	P	C	P	C	--	P	P	--	--	--	--	--	--	--	20.39.610
All social service	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P		--	--	--	20.39.615
<b>Public Uses</b>																						
All civic uses, as listed below:																						

Use Category Specific Use	R1	R2	R3	R4	R5	R6	GB	RMU	NMU	CMU	DMU	GMU	BPMU	CC	CH	IF	LI	HI	CI	PR	PF	Definition/ Standards	
Community college, university, trade or technical school (8,000 square feet or less).	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P	--	--	--	--	20.39.405	
Community college, university, trade or technical school (more than 8,000 square feet).	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	--	C	--	C	20.39.405	
Club or lodge	--	--	--	--	--	--	--	--	--	P	--	P	P	P	--	--	--	--	P	--	--	20.39.405	
Public use	--	--	--	--	--	--	--	--	P	P	P	P	P	P	P	P	P	P	P	P	P	P	20.39.405
Museum, library	--	--	--	--	--	--	--	--	--	P	P	P	P	P	--	--	--	--	--	--	--	P	20.39.405
Place of worship	C	C	C	C	C	--	--	--	--	P	--	P	P	P	--	--	--	--	P	--	--	20.39.405	
School (K-12)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	20.39.405	
Jail or Detention Center	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	--	C	20.39.405	
Transit park and ride lot	--	-	C	C	C	-	--	C	C	P	C	C	C	P	P	P	P	P	P	--	P		
Transfer station	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	P	20.39.XXX	
Transit bus base	-	-	-	-	-	-	-	-	-	-	-	-	-	-	--	--	P	P	-	-	P	20.39.XXX	
All open space and park uses, as listed below:																							
Cemetery	C	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	20.39.410	
Golf course	C	C	C	--	--	C	--	--	--	--	--	--	--	C	--	--	--	--	--	P	P	20.39.410	
Park, recreation field	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	20.39.410	
Animal shelter or adoption center	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	C	C	C	--	C	20.39.XXX	
All utilities, as listed below:																							
Minor utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	20.39.415
Major utilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P	--	P	20.39.415	
Wireless telecommunication facilities, as listed below																							
Amateur radio operator tower	P	P	P	--	--	--	P	--	--	--	--	--	--	--	--	--	--	--	--	--	--	20.39.270	
Small cell wireless telecommunication facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	20.39.270	



Wireless telecommunication tower (excludes small cell facilities)	C	C	C	C	C	C	--	C	C	C	C	C	C	C	C	C	C	C	C	--	C	20.39.270
<b>Commercial Uses</b>																						
All day care, as listed below:																						
Family day care (6 children or fewer)	P	P	P	--	--	P	P	--	--	--	--	--	P	--	--	--	--	--	--	--	--	20.39.505
Group day care (mini day care) (7 to 12)	C	C	C	--	--	C	C	C	P	P	--	P	P	P	--	--	--	--	--	--	--	20.39.505
Day care center (13 or more)	--	--	--	--	--	--	--	C	C	C	--	P	C	P	P	--	--	--	--	--	--	20.39.505
All indoor recreation, except as listed below:	--	--	--	--	--	--	--	--	C	P	C	P	--	P	P	--	--	--	--	C	--	
Shooting range	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	--	--	C	20.39.510
Special event facility	--	--	--	--	--	--	--	--	--	C	C	C	C	C	C	C	C	--	C	C	C	20.39.510
Commercial Entertainment, except as follows:	--	--	--	--	--	--	--	--	--	P	P	P	P	P	P	P	--	--	--	--	--	
Adult Entertainment	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	--	--	--	20.39.515
All outdoor recreation, except as listed below:	--	--	--	--	--	--	--	--	C	C	C	P	--	P	P	--	--	--	--	C	C	
Campground, travel trailer park, RV park (does not include mobile home park)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	20.39.530
Horse stable, riding academy, equestrian center	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	20.39.530
Shooting range	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	20.39.530
Marina (upland areas)	--	--	--	--	--	--	--	--	--	--	C	C	--	C	C	C	C	C	C	C	C	20.39.575
All overnight lodging, as listed below:																						
Level 1: Vacation rentals or similar short-term house/room rentals	P	P	P	P	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--	--	20.39.535
Level 2: Bed and breakfast (up to 7 rooms)	C	C	C	--	--	C	C	--	P	--	--	--	P	--	--	--	--	--	--	--	--	20.39.535
Level 3: Motel	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	--	--	--	--	--	--	20.39.535
Level 4: Hotel										P	P	P	--	P	P							20.39.535
All medical, except as listed below:	--	--	--	--	--	--	--	--	--	C	C	P	P	P	P	P	--	--	--	--	P	

Hospital	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	C	--	--	--	--	C	20.39.520
All office, except as listed below:	--	--	--	--	--	--	--	C	C	P	P	P	P	P	P	P	P	--	--	--	--	--	
Bail bonds	--	--	--	--	--	--	--	--	--	C	C	C	C	P	P	--	--	--	--	--	--	--	20.39.525
Surface parking: commercial parking, commuter lease parking or park and ride, remote parking	--	--	--	--	--	--	--	--	--	C	C	P	P	P	P	P	P	P	--	P	--	C	20.39.540
Commercial parking garage – standalone	--	--	--	--	--	--	--	--	--	C	C	C	C	P	P	P	--	--	--	--	--	C	20.39.540
Electric vehicle charging stations	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	20.12
All personal service, except as listed below:	--	--	--	--	--	--	--	C	C	P	C	P	P	P	P	C	--	--	--	--	--	--	
Funeral home	--	--	--	--	--	--	--	--	--	P	--	P	P	P	P	--	--	--	--	--	--	--	20.39.545
Crematorium	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P	P	--	--	--	20.39.545
Indoor animal care	--	--	--	--	--	--	--	--	C	P	--	P	--	P	P	P	--	--	--	--	--	--	20.39.550
Outdoor animal care	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	C	--	--	--	--	20.39.555
Business services	--	--	--	--	--	--	--	C	P	P	P	P	P	P	P	P	P	--	--	C	--	--	20.39.570
Conference center	-	-	-	-	-	-	-	-	-	-	C	C	C	C	C	-	-	-	C	-	C		20.39.310
All restaurants except as listed below:	--	--	--	--	--	--	--	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	
Food truck	--	--	--	--	--	--	--	P	P	P	P	P	P	P	P	P	--	--	P	--	--	--	20.39.562
All retail sales, as listed below:																							
Retail establishment (up to 5,000 gross floor area)	--	--	--	--	--	--	--	P	P	P	P	P	P	P	P	P	--	--	P	--	--	--	20.39.565
Retail establishment (5,001 - 15,000 gross floor area)	--	--	--	--	--	--	--	--	--	P	P	P	--	P	P	P	--	--	--	--	--	--	20.39.565
Retail establishment (15,001 - 50,000 gross floor area)	--	--	--	--	--	--	--	--	--	--	--	P	--	P	P	P	--	--	--	--	--	--	20.39.565
Retail establishment over (50,000 gross floor area)	--	--	--	--	--	--	--	--	--	--	--	--	--	C	P	P	--	--	--	--	--	--	20.39.565
Fireworks sales in accordance with POMC 5.60.	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	--	--	--	--	--	--	
Recreational marijuana sales	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	--	P	--	--	--	--	20.64

Convenience store with fuel pumps	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	--	--	--	20.39.565
Convenience store without fuel pumps	--	--	--	--	--	--	--	--	C	C	C	--	--	P	P	P	--	--	--	--	20.39.565
Fuel station, including fuel pumps and fuel sales, without convenience store	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	P	--	--	--	--	
Automobile service station.	-	-	-	-	-	-	-	-	-	-	-	-	-	C	-	P	-	-	-	-	20.39.XXX
All vehicle and tool/construction equipment sales and rental, as listed below:																					
Light vehicle and light tool or construction equipment sales and rental	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	--	--	--	20.39.565
Heavy vehicle and heavy tool or construction equipment sales and rental	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	--	--	--	20.39.565
All vehicle service and repair, as listed below:																					
Car wash	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	--	--	--	20.39.625
Vehicle service and repair, minor	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	--	--	--	20.39.640
Vehicle service and repair, major	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	--	--	--	20.39.645
Vehicle service and repair, commercial vehicle	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	--	--	--	20.39.650
<b>Industrial Uses</b>																					
All heavy industrial	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	--	20.39.605
All light manufacturing, except as listed below:	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	--	--	
Commercial laundry, dry cleaning or carpet cleaning facility	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	--	--	--	20.39.610
Brewery, Distillery under 5,000 square feet	--	--	--	--	--	--	--	--	--	P	P	--	--	P	--	--	--	--	--	--	
Brewery, Distillery 5,001-15,000 square feet	--	--	--	--	--	--	--	--	--	C	C	--	C	P	P	--	--	--	--	--	
Brewery, Distillery over 15,000 square feet	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	--	--	--	--	
Craft shop	--	--	--	--	--	--	P	P	P	P	P	--	P	P	P	P	P	--	--	--	20.39.610

Food and beverage processing, boutique (area used for processing less than 3,000 SF)	--	--	--	--	--	--	--	P	P	P	P	P	--	P	P	P	P	P	--	--	20.39.610
Food and beverage processing, industrial	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	--	--	--	20.39.610
Recreational marijuana production	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	--	--	--	20.64
All research and development	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P	P	--	--	--	20.39.615
Resource extraction – mining, dredging, raw mineral processing, except:	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	--	20.39.620
Timber harvesting in the absence of concurrent development	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
Sand and Gravel Mining	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	--	--	--	
Stockpiling of sand, gravel or other aggregate materials	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	P	--	--	P	20.39.620
Sheet metal, welding, machine shop, tool and equipment manufacturing, vehicle painting facility	--	--	--	--	--	--	--	--	--	--	--	--	--	C	P	P	P	--	--	P	20.39.610
All warehouse, storage and distribution, as listed below:	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	C	C	--	--	--	
Enclosed storage	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P	--	--	20.39.655
Self-service storage, mini-warehouse	--	--	--	--	--	--	--	--	C	--	--	--	C	C	C	--	--	--	--	--	20.39.655
Storage yard	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C	P	P	--	--	P	20.39.XXX
All waste-related service, including wastewater treatment facilities, decant facilities and recycling centers	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	P	20.39.660
Recreational marijuana processing	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	--	--	--	20.64
<b>Agricultural Uses</b>																					
All agriculture, as listed below:																					
Agricultural processing, excluding marijuana processing	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	P	P	--	--	--	20.39.705
Community garden	P	P	P	P	P	P	--	P	P	P	--	--	--	--	--	--	--	--	P	P	20.39.705

Nursery	--	--	--	--	--	--	P	--	--	--	--	--	--	P	P	P	P	--	--	--	20.39.705	
Winery	--	--	--	--	--	--	C	--	--	C	C	C	--	P	P	P	P	--	--	--	20.39.705	
Accessory uses not otherwise listed below, as determined by the [Administrator]:																						
Accessory dwelling units, as listed below:																						
Accessory apartment (attached dwelling)	P	P	P	--	--	P	P	--	--	--	--	--	P	--	--	--	--	--	--	--	--	20.68, 20.39.805
Backyard cottage dwelling	P	P	P	--	--	P	P	--	--	--	--	--	P	--	--	--	--	--	--	--	--	20.39.805
Drive-thru facility	--	--	--	--	--	--	--	--	--	C	--	--	--	P	P	P	P	--	--	--	20.39.870	
Home occupation	P	P	P	P	P	P	P	P	P	--	--	--	P	--	--	--	--	--	--	--	--	20.39.830
Home business	P	P	P	--	--	P	P	--	--	--	--	--	P	--	--	--	--	--	--	--	--	20.39.835
Livestock keeping	P	P	P	--	--	--	P	--	--	--	--	--	--	--	--	--	--	--	--	--	--	20.39.845
Outdoor display	--	--	--	--	--	--	--	--	--	P	P	P	P	P	P	P	P	P	--	--	--	20.39.850
Outdoor storage as listed below:																						
Low-impact	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P	--	--	--	20.39.855
High-impact	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	--	--	20.39.855
Self-Storage as accessory use to Apartment Building	--	--	--	P	P	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	20.39.860
Vehicle service and repair, accessory to a residential use	P	P	--	--	--	P	P	--	--	--	--	--	--	P	P	--	--	--	--	--	--	20.39.900
Park as accessory use to residential development	P	P	P	P	P	P	--	P	P	P	P	P	P	--	--	--	--	--	--	--	--	
Medical marijuana cooperative	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	--	--	--	--	Ch. 20.64

Key: P = Permitted Use C = Conditional Use -- = Use Not Permitted

## Residential Uses.

**20.39.100 Household Living.** Defined: Residential occupancy of a dwelling unit by a household. Household living includes the following:

- Single-family detached (including a new manufactured home);
- Two-Family;
- Multi-Family;
- Designated Manufactured Home, Manufactured Homes or Mobile Homes (Excluding a new designated manufactured home);
- New Designated Manufactured Home;
- Manufactured or Mobile Home Park;
- Group Home; and;
- Adult Family Home;

(1) Single-Family Detached. One dwelling unit in a single principal structure; may also contain an accessory unit in an attached accessory apartment or a backyard cottage. A new manufactured home shall be treated as a single family detached home for the purposes of this chapter.

(2) Two-Family. Two dwelling units in a single principal structure.

(3) Single-Family Attached. Two or more dwelling units where each unit is attached vertically by a common side wall. Units cannot be vertically mixed.

(4) Multi-Family. Three or more dwelling units in a single principal structure that do not meet the definition of single-family attached, above. Where multi-family is allowed as a limited use, it is allowed only in the upper stories of a mixed-use building. A lobby or other entrance is allowed on the ground floor.

(5) Designated manufactured home, manufactured home or mobile home. Designated Manufactured Homes, manufactured homes or mobile homes (excluding new designated manufactured homes) shall only be permitted within an existing manufactured or mobile home park.

(6) Manufactured or Mobile Home Park. A cluster of manufactured or mobile homes configured such that more than one mobile home is located on a lot, parcel, or tract. A Manufactured or Mobile Home Park typically features land or un-subdivided lots leased or rented by the manufactured home owner. New manufactured or mobile home parks are not permitted in the City. Existing manufactured or mobile home parks may be maintained insofar as the individual homes within a manufactured or mobile home park may be swapped out, but the number of manufactured homes in the manufactured home park may not be increased.

(7) Medical Marijuana Cooperative.

(8) Group Home.

- (a) A dwelling unit containing up to 8 unrelated persons who are mentally or physically impaired who are protected under the Fair Housing Act, along with support or supervisory personnel or family members who may reside at the facility.
- (b) The term mental or physical impairment includes conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness.
- (c) Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered mentally or physically impaired under the Fair Housing Act.

(d) The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

(9) Adult Family Home.

(a) A dwelling, licensed by the State of Washington, in which a person or persons provide personal care, special care, room and board to more than one but not more than 6 adults who are not related by blood or marriage to the person or persons providing the service.

**20.39.110 Group Living.** Defined: Residential occupancy of a structure by nine (9) or more people that does not meet the definition of household living. Generally, group living facilities have a common eating area for residents, and residents may receive care or training. Group living includes the following:

- (1) Assisted living facility;
- (2) Boarding house, rooming house, or lodging house;
- (3) Congregate care facility;
- (4) Dormitory;
- (5) Hospice;
- (6) Monastery or convent;
- (7) Nursing or care home;
- (8) Independent living facility; and
- (9) Skilled nursing care facility.

**20.39.120 Social Services.** Defined: A facility that provides treatment for persons not protected under the Fair Housing Act or who present a direct threat to the persons or property of others. Includes persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders. Also includes facilities that provide transient housing related to post-incarceration and social service programs.

### **Public and Civic Uses**

**20.39.200 Animal shelter.** A facility for the temporary housing of abandoned, surrendered, sick or wounded domestic or wild animals subject to licensing conditions by appropriate county and state officials.

**20.39.210 Transit bus base (includes school bus bases).** A facility for the storage, dispatch, repair and maintenance of buses and other vehicles of a public transit system.

**20.39.220 Transit park-and-ride lot.** Vehicle parking specifically for the purpose of access to a public transit system.

**20.39.230 Transfer station.** A staffed collection and transportation facility used by private individuals and route collection vehicles to deposit solid waste collected off site into larger transfer vehicles for transport to permanent disposal sites. May also include recycling facilities involving collection or processing for shipment.

**20.39.240 Civic Uses.** Defined: Places of public assembly that provide ongoing governmental, life safety, educational, and cultural services to the general public, as well as meeting areas for religious practice. Civic includes the following:

- Community College or University;
- Club or Lodge;
- Museum or Library;
- Place of Worship;
- Public Use;
- Trade or Technical School
- Schools (K-12); and
- Jail or Detention Center.

(1) Community College or University. A facility of higher education having authority to award associate and higher degrees.

(2) Club or Lodge. A facility used for associations or organizations of an educational, fraternal, or social character, not operated or maintained for profit. Representative organizations include but are not limited to Elks, VFW, Lions, and Rotary.

(3) Museum or Library. A facility having public significance by reason of its architecture or former use or occupancy, or a building serving as a repository for a collection of books, natural, scientific, literary curiosities or objects of interest, or works of art, and arranged, intended, and designed to be viewed by members of the public, with or without an admission fee.

(4) Place of Worship. A facility that by design and construction is primarily intended for conducting organized religious services.

(5) Public Use. Any building, structure, or use owned and operated by the federal government, state, county, the city, port, utility district, or other municipality, or any authority, agency, board, or commission of the above governments that is necessary to serve a public purpose, including but not limited to government administrative buildings; post offices; police, fire and EMS stations; public health facilities; public works facilities; community centers; and jails and correctional facilities.

(6) Trade or Technical School. A facility having a curriculum devoted primarily to industry, trade, or other vocational-technical instruction.

(7) Schools (K-12). A facility for students in grades pre-kindergarten through grade 12.

(8) Jail or Detention Center. A facility operated by a governmental agency that is designed, staffed, and used for the incarceration of persons for the purpose of punishment, correction, and rehabilitation following conviction of an offense.

**20.39.250 Parks and Open Space.** Defined: Uses focusing on natural areas consisting mostly of vegetation, passive or active outdoor recreation areas, and having few structures. Parks and open space includes the following:

(1) Golf course. A golf course is a public or private recreational facility that contains a golf course, and may contain ancillary facilities such as a driving range, pro shop, storage and maintenance buildings, clubhouse, meeting rooms and restaurant.

(2) Cemetery. Land or structures used for burial or internment of the dead. For purposes of this code, pet cemeteries are considered a subclassification of this use.

(3) Park, Recreation Field. An area used for outdoor play or recreation, often containing recreational equipment such as slides, swings, climbing frames, ballfields, soccer fields, basketball courts, swimming pools, and tennis courts. May include passive and active recreation.

**20.39.260 Utilities.** Defined. Public or private infrastructure serving a limited area with no on-site personnel (minor utility) or serving the general community with on-site personnel (major utility). Utilities includes the following:



(1) Minor utilities, including on-site stormwater retention or detention facility, neighborhood serving telephone exchange/switching center, gas/electric/telephone/cable transmission lines, water and wastewater pump station or lift station, gas gates, reservoir, control structure, drainage well, water supply, water well.

(2) Major utilities, including aeration facility, electrical substation, electric or gas generation plant, filter bed, transmission towers, waste treatment plant, water pumping facility, water tower or tank.

#### **20.39.270 Communications Facilities.**

(1) Wireless telecommunication facility means a facility for the provision of radio waves or wireless telephone or data services and includes the following:

(a) Amateur radio operator tower. Means a facility used for personal, non-commercial radio licensed by the Federal Communications Commission.

(b) Small cell wireless telecommunication facility. Means a wireless telecommunication facility that meets both of the following qualifications:

(i) Each antenna is located inside an antenna enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and

(ii) All other equipment associated with the facility (excluding antennas) is cumulatively no more than twenty-eight (28) cubic feet in volume.

(c) Wireless telecommunication tower. Means any mast, pole, monopole, lattice tower or other structure designed and primarily used to support antennas.

(2) Small cell wireless telecommunication facilities shall be installed in accordance with the City's adopted public works and engineering standards and specifications (PWESS).

#### **Commercial Uses.**

##### **20.39.300 Automobile Service Station.**

Defined: Any building, and the lot on which it is located, that is used for the sale of gasoline or other motor fuels, oils, lubricants, and for the minor servicing of motor vehicles. Automobile service stations are primarily engaged in selling gasoline and lubricating oils; frequently selling other merchandise, such as tires, batteries, and other automobile parts, or performing minor repair work. An automobile service station may be a principal use that is combined with other activities, such as grocery stores, convenience stores, or car washes.

**20.39.305 Day Care Facility.** Defined: A facility providing care and supervision for compensation during part of a 24-hour day, for a child/adult or children/adults not related by blood, marriage, or legal guardianship to the person or persons providing the care, in a place other than the child's/adult's or children's/adults' own home or homes. Day care facilities include the following:

- Family day care home (6 or fewer children/adults)
- Mini day care center (7-12 children/adults)
- Day care center (13 or more children/adults)

(1) Family day care home. A facility in which regular care is provided during part of the 24-hour day to six (6) or fewer children/adults in the family abode of the person or persons under whose direct care the children/adults are placed.

(2) Mini day care center. A facility in which regular care is provided during part of the 24-hour day to twelve (12) or fewer children/adults in a facility other than the family abode of the person or persons under whose direct care the children/adults are placed, or for the care of seven (7) to twelve (12) children/adults in the family abode of such person or persons.

(3) Day care center. A facility in which regular care is provided for thirteen (13) or more children/adults during part of the 24-hour day.

**20.39.310 Conference Center.** Defined: An establishment developed primarily as a meeting facility, which may include facilities for recreation, events, seminars, and related activities.

**20.39.315 Indoor Recreation.** Defined: A commercial facility providing daily or regularly scheduled recreation-oriented activities in an indoor setting. Indoor recreation includes the following:

- Amusement center, game/video arcade;
- Assembly hall, auditorium, meeting hall;
- Billiard hall, pool hall;
- Bowling alley;
- Dance, martial arts, music studio or classroom;
- Extreme sports facility such as BMX, skateboarding or roller blading;
- Gym, health spa or yoga studio;
- Ice or roller skating rink;
- Indoor sports facility;
- Inflatable playground, indoor trampolines;
- Miniature golf facility;
- Motor track;
- Movie theater or other indoor theater;
- Shooting range; and
- Special event facility.

(1) Dance, Martial Arts, Music Studio or Classroom. A facility that offers or provides instruction to more than two (2) students at a time in dance, singing, music, painting, sculpting, fine arts or martial arts.

(2) Gym, Health Spa, Yoga Studio. A facility that, for profit or gain, provides as one of its primary purposes, services or facilities which assist patrons to improve their physical condition or appearance. Not included within this definition are facilities operated by nonprofit organizations, facilities wholly owned and operated by a licensed physician at which such physician is engaged in the practice of medicine, or any establishment operated by a health care facility.

(3) Shooting Range. A facility with an enclosed firing range with targets for archery, rifle or handgun practice.

(4) Special Event Facility. A facility or assembly hall available for lease by private parties or special events, such as weddings.

**20.39.320 Commercial Entertainment.**

Adult Entertainment. Defined: An enterprise whose predominant emphasis is involved in the selling, renting or presenting for commercial purposes of adult entertainment merchandise including books, magazines, motion pictures, films, video cassettes, or cable television for observation by patrons therein. Examples of such establishments include, but are not limited to, adult book or video stores and

establishments offering panoramas, or peep shows. "Predominant emphasis" means 50 percent or more of gross revenue generated or total volume of shelf space and display area, whichever is more restrictive.

**20.39.325 Medical Uses.** Defined: A facility providing medical or surgical care to patients. Some facilities may offer overnight care. Medical uses include the following:

- (1) Ambulatory surgical center;
- (2) Blood plasma donation center, medical or dental laboratory;
- (3) Hospital. A facility providing health services primarily for the sick or injured, and offering inpatient medical and/or surgical care;
- (4) Medical, dental office or chiropractor, osteopath, physician, medical practitioner;
- (5) Medical clinic; and
- (6) Urgent care, emergency medical office.

**20.39.330 Home Occupations.** Defined: A limited-scale activity with some on-site fabrication, sales and/or service which occurs in a dwelling unit or accessory building and is subordinate to the primary use of the premises as a residence, and which does not impact the character of the surrounding residential neighborhood. Home occupations shall be consistent with the requirements of Chapter 20.60 POMC.

**20.39.335 Office Uses.** Defined: A facility used for activities conducted in an office setting and generally focusing on business, professional or financial services. Office uses include the following:

- (1) Services including, but not limited to, advertising, business management consulting, computer or data processing, graphic design, commercial art or employment agency;
- (2) Professional services including, but not limited to, lawyer, accountant, auditor, bookkeeper, engineer, architect, sales office, travel agency, interior decorator or security system services;
- (3) Financial services including but not limited to, lender, investment or brokerage house, bank, bail bonds, insurance adjuster, real estate or insurance agent, mortgage agent or collection agency;
- (4) Counseling in an office setting;
- (5) Radio, TV station, recording studio;
- (6) Bail Bonds. A facility with a bail bond agent, or bondsman, that provides surety and pledges money or property as bail for the appearance of persons accused in court; and
- (7) Call Center. A facility used for the purpose of receiving or transmitting a large volume of telephone calls.

**20.39.340 Outdoor Recreation:** Defined: A commercial facility, varying in size, providing daily or regularly scheduled recreation-oriented activities. Activities take place predominately outdoors or within outdoor structures. Outdoor recreation includes the following.

- Drive-in theater;
- Campground, travel trailer park, RV park;
- Extreme sports facility such as BMX, skateboarding or roller blading;
- Horse stable, riding academy, equestrian center;
- Outdoor amusements such as batting cage, golf driving range, amusement park, miniature golf facility or water park;
- Outdoor theater; and
- Shooting range.

- (1) Campground, Travel Trailer Park, RV Park. A facility used for two (2) or more tent or recreational vehicle campsites. Does not include sites for manufactured homes.
- (2) Horse Stable, Riding Academy, Equestrian Center. A facility used primarily for the care, breeding, boarding, rental, riding or training of horses or for the teaching of equestrian skills. Where a horse stable, riding academy or equestrian center is allowed as a limited use, no part of any building, structure or run in which animals are housed may be closer than 50 feet from any property line, except property owned or occupied by an owner or operator of the facility.
- (3) Shooting Range. A facility with an outdoor firing range with targets for archery, rifle or handgun practice.

**20.39.345 Overnight Lodging.** Defined: Accommodations arranged for short term stays. Overnight lodging includes the following:

- (1) Level 1 Lodging (Vacation Rentals) . A vacation rental is a self-contained dwelling that may be rented by individuals or groups on a daily basis.
- (2) Level 2 Lodging (Bed and breakfast) (up to 7 rooms). A bed and breakfast is an owner-occupied dwelling which offers no more than seven [six?] bedrooms for paying guests on a daily basis.
- (3) Level 3 Lodging (Motel). A motel is an establishment providing overnight accommodations with a majority of all guest rooms having direct access to the outside without the necessity of passing through the main lobby of the building, with or without food services.
- (4) Level 4 Lodging (Hotel). A hotel is an establishment providing overnight accommodations with a majority of all guest rooms having direct access through the main lobby of the building, with or without food services.

**20.39.350 Parking.** Defined: A facility that provides parking as a principal use. Parking includes the following.

- Commercial parking; and
- Remote parking.

(1) Commercial Parking. A facility that provides parking as a principal use and where a fee is charged. A Type A or B buffer (see Section 20.128.060) must be established along all lot lines abutting a ground floor residential use. All surface parking areas must be landscaped in accordance with Section 20.128.070.

(2) Remote Parking. A facility that provides parking as a principal use and where a fee is not charged. Where remote parking is allowed as a limited use, it is subject to the following:

- (a) The remote parking facility must be located within the same or more intense zoning district as the principal use served;
- (b) A Type A or B buffer (see Section 20.128.060) must be established along all lot lines abutting a ground floor residential use; and
- (c) All surface parking areas must be landscaped in accordance with Section 20.128.070.

**20.39.355 Personal Services.** Defined: A facility involved in providing personal or repair services to the general public. Personal services include, but are not limited to the following:

- (1) Beauty, hair or nail salon;
- (2) Catering establishment;
- (3) Cleaning establishment, dry-cleaning or laundry drop-off facility, laundromat, washeteria;
- (4) Copy center, printing, binding, photocopying, blueprinting, mailing service;
- (5) Funeral home, funeral parlor, mortuary, undertaking establishment, crematorium;
- (6) Landscaping services;
- (7) Locksmith;

- (8) Optometrist;
- (9) Palmist, psychic, medium, fortune telling;
- (10) Repair of appliances, bicycles, canvas product, clocks, computers, jewelry, musical instruments, office equipment, radios, shoes, televisions, watch or similar items;
- (11) Tailor, milliner or upholsterer;
- (12) Tattoo parlor or body piercing;
- (13) Taxidermist;
- (14) Tutoring; and
- (15) Wedding chapel.

**20.39.360 Animal Care (Indoor).**

Defined: A facility designed or arranged for the care of animals without any outdoor activity. No outdoor activity associated with care of animals is allowed. Includes animal grooming, animal hospital, veterinary clinic, pet clinic, animal boarding, animal shelter, cattery, commercial kennel and doggy day care.

**20.39.365 Animal Care (Outdoor).** Defined: A facility designed or arranged for the care of animals that includes outdoor activity. Includes animal grooming, animal hospital, veterinary clinic, pet clinic, animal boarding, animal shelter, cattery, commercial kennel and doggy day care. Where outdoor animal care is allowed as a limited use, it is subject to the following:

- (1) All outdoor exercise areas and runs must be fenced for the safe confinement of animals;
- (2) A Type A or B buffer (see Section 20.128.060) must be established along any outside areas used to exercise, walk, or keep animals that abuts a ground floor residential use; and
- (3) No animal may be outdoors between 11 PM and 6 AM.

**20.39.370 Restaurant.** Defined: A facility for commercial use in which food and beverages are prepared and sold for on- or off-premises consumption. This definition also includes food trucks, which are mobile vehicles in which food is prepared and served.

**20.39.375 Retail Sales.** Defined: A facility involved in the sale, lease or rental of new or used products. Retail sales includes, but is not limited to, the following:

- (1) Recreational Marijuana Sales;
- (2) Convenience Store with Fuel Pumps. A facility with a floor area less than 5,000 square feet that sells convenience goods, such as prepackaged food items and a limited line of groceries. A convenience store with fuel pumps may sell vehicle fuel but cannot have any type of vehicle repair or service. Where a convenience store with fuel pumps is allowed as a limited use, it is subject to the following:
  - (a) A convenience store with fuel pumps is subject to the conditional use permit requirements of a Fuel Station (see Section 20.39.380).
  - (b) All fuel pumps must be located at least 25 feet from any public right-of-way or lot line, and all buildings and appurtenances must be located at least 100 feet from all lot lines abutting a residential use;
  - (c) A Type A or B buffer (see Section 20.128.060) must be established along all lot lines abutting a residential use; and
  - (d) All fuel must be stored underground outside of any public right-of-way.
- (3) Convenience Store without Fuel Pumps. A facility with a floor area less than 5,000 square feet that sells convenience goods, such as prepackaged food items and a limited line of groceries. A convenience store without fuel pumps cannot sell vehicle fuel or have any type of automotive service.

- (4) Vehicle Sales/Rental. A facility that sells, rents or leases passenger vehicles, light and medium trucks, and other consumer vehicles such as motorcycles, boats and recreational vehicles.
- (5) Light Vehicle/Equipment. Sales, rental or leasing of passenger vehicles, motorcycles, boats.
  - (a) A Type A or B landscape buffer (see Section 20.128.060) must be established along all lot lines abutting a ground floor residential use;
  - (b) Vehicle display areas may not be artificially elevated above the general topography of the site; and
  - (c) Parked or stored vehicles may not encroach upon any public right-of-way or sidewalk.
- (6) Heavy Vehicle/Equipment. Sales, rental or leasing of commercial vehicles, heavy equipment and manufactured homes. Includes recreational vehicles, 18-wheelers, commercial box trucks, high-lifts, construction, heavy earth-moving equipment and manufactured homes.
  - (a) A Type A or B landscape buffer (see Section 20.128.060) must be established along all lot lines abutting a ground floor residential use;
  - (b) Vehicle display areas may not be artificially elevated above the general topography of the site; and
  - (c) Parked or stored vehicles may not encroach upon any public right-of-way or sidewalk.

**20.39.380 Business Services.**

Defined: A facility providing other businesses with services including maintenance, repair and service, testing, and rental, such as business equipment repair services, document storage, document destruction, and soils and materials testing laboratories.

**20.39.385 Marina.**

Defined: A facility that provides launching, storage, supplies, moorage, and other accessory services for six or more pleasure and/or commercial water craft.

**20.39.390 Fuel Station.** Defined: A facility that provides gasoline and/or diesel fuel to retail consumers for motor vehicles.

(1) Where indicated in the use table, 20.39.040, a fuel station is required to obtain a conditional use permit per Chapter 20.50. In addition to the criteria for approval in Section 20.50.050, the hearing examiner must also make the following findings in order to issue the conditional use permit:

- (a) The proposed fuel station use will provide additional fueling pumps that are necessary to meet the needs of Port Orchard's population, as demonstrated by a demand analysis and report provided by the applicant.

**Industrial Uses.**

**20.39.400 Heavy Industrial Uses.** Defined: A facility that involves dangerous, noxious or offensive uses or a facility that has smoke, odor, noise, glare, fumes, gas, vibration, threat of fire or explosion, emission of particulate matter, interference with radio, television reception, radiation or any other likely cause. Heavy industrial includes the following:

- (1) Animal processing, packing, treating, and storage;
- (2) Bottling plant;
- (3) Bulk fuel sales;
- (4) Bulk storage of flammable liquids, chemical, cosmetics, drug, soap, paints, fertilizers and abrasive products;

- (5) Concrete batch plant;
- (6) Prison (public or private);
- (7) Primary metal manufacturing; and
- (8) Sawmill, log production facility, lumberyard.

**20.39.410 Light Manufacturing.** Defined: A facility conducting light manufacturing operations within a fully-enclosed building. Light manufacturing includes the following:

- (1) Laundry, dry-cleaning, and carpet cleaning plant;
- (2) Brewery, distillery;
- (3) Clothing, textile or apparel manufacturing;
- (4) Craft shop;
- (5) Food and beverage processing, boutique;
- (6) Food and beverage processing, industrial;
- (7) Facilities engaged in the assembly or manufacturing of scientific measuring instruments; semiconductor and related devices, including but not limited to clocks, integrated circuits, jewelry, medical, musical instruments, photographic or optical instruments or timing instruments;
- (8) Pharmaceutical or medical supply manufacturing;
- (9) Recreational equipment manufacturing;
- (10) Sheet metal, welding, machine shop, tool repair;
- (11) Stone, clay, glass or concrete products;
- (12) Woodworking, cabinet makers or furniture manufacturing;
- (13) Marijuana production;
- (14) Marijuana processing;
- (15) Craft Shop. A facility devoted solely to the arts and crafts that produces or makes items that by their nature, are designed or made by an artist or craftsman by using hand skills Where a craft shop is allowed as a limited use, it is subject to the following:
  - (a) May have no more than five (5) employees;
  - (b) No more dust, fumes, gases, odors, smoke, or vapors are allowed to escape from the premises than that which is usual in the neighborhood;
  - (c) All by-products, including waste, are effectively confined to the premises or disposed of off the premises so as to avoid air pollution, other than that which is usual in the neighborhood;
  - (d) No noise or disturbance of adjoining premises takes place other than that which is usual in the neighborhood; and
  - (e) All equipment and material storage is kept in an enclosed structure.

(16) Food and Beverage Processing, Boutique. A facility in which food, beverages or alcohol are processed or otherwise prepared and distributed for eventual human consumption. The facility may, in addition to its processing operation and exclusive of the processing, bottling, and storage floor area limitation, have a restaurant, offer related and unrelated retail sales, and on-site consumption of free samples when permitted by the State. The use shall be conducted in a fashion that does not generate continuous, frequent, or repetitive noises or vibrations than that which is usual in the neighborhood.

(17) Food and Beverage Processing, Industrial. A facility in which food, beverage or alcohol are processed, or otherwise prepared and distributed for eventual human consumption. The establishment may, as a subordinate use, offer retail sales and on-site consumption of free samples with no associated seating area, when permitted by the State, of only products produced or processed by the principal use on site.

**20.39.420 Research and Development.** Defined: A facility focused primarily on the research and development of new products. Research and development includes the following:

- (1) Laboratories, offices and other facilities used for research and development by or for any individual, organization or concern, whether public or private;
- (2) Prototype production facilities that manufacture a limited amount of a product in order to fully investigate the merits of such a product; and
- (3) Pilot plants used to test manufacturing processes planned for use in production elsewhere.

**20.39.430 Resource Extraction.** Defined: A facility that extracts minerals and other solids and liquids from land. Resource extraction includes the following:

- (1) Extraction of phosphate or minerals;
- (2) Extraction of sand or gravel, borrow pit;
- (3) Metal, sand stone, gravel clay, mining and other related processing; and
- (4) Stockpiling of sand, gravel, or other aggregate materials.

**20.39.440 Vehicle Service and Repair.** Defined: Repair and service to passenger vehicles, light and medium trucks, and other consumer motor vehicles such as motorcycles, boats and recreational vehicles. Vehicle service includes the following:

- Car wash;
- Vehicle repair (minor);
- Vehicle repair (major); and
- Vehicle repair (commercial vehicle).

(1) Car Wash. A facility with mechanical or hand-operated equipment used for cleaning, washing, polishing or waxing of motor vehicles. Car wash facilities are subject to the following:

(a) No hand-operated car wash is permitted within 50 feet of a residential use (measured from the residential lot line to the lot line of the car wash facility).

(b) No mechanical car wash is permitted within 150 feet of a residential use (measured from the residential lot line to the lot line of the car wash facility).

(c) A Type A or B buffer (see Section 20.128.060) must be established along all lot lines abutting a ground floor residential use.

(d) When abutting a ground floor residential use, the car wash facility cannot operate before 6 AM or after 11 PM.

(2) Vehicle Repair (Minor). A facility where minor vehicle repair and service is conducted. Includes audio and alarm installation, custom accessories, quick lubrication facilities, minor scratch and dent repair, emissions testing, bed-liner installation, and glass repair or replacement. The following apply to vehicle repair (minor) facilities:

(a) A Type A or B buffer (see Section 20.128.060) must be established along all lot lines abutting a ground floor residential use; and

(b) The dismantling of vehicles for salvage and the storage of impounded vehicles is not allowed.

(3) Vehicle Repair (Major). A facility where general vehicle repair is conducted, including transmission, brake, muffler and tire shops, along with body and paint shops. The following apply to vehicle repair (major) facilities:

(a) A Type A or B buffer (see Section 20.128.060) must be established along all lot lines abutting a ground floor residential use; and

(b) The dismantling of vehicles for salvage and the storage of impounded vehicles is not allowed.



(4) Vehicle Repair (Commercial Vehicle). A facility conducting repair, service, washing or accessory installation for commercial vehicles, including box trucks, 18-wheelers and construction or other heavy equipment. The following apply to vehicle repair (commercial vehicle) facilities:

- (a) A Type A or B buffer (see Section 20.128.060) must be established along all lot lines abutting a ground floor residential use; and
- (b) The dismantling of vehicles for salvage and the storage of impounded vehicles is not allowed.

**20.39.450 Warehouse, Storage and Distribution.** Defined: A facility involved in the storage or movement of goods for itself or other firms. Goods are generally delivered to other firms or the final consumer with little on-site sales activity to customers. Warehouse, storage and distribution includes enclosed storage such as bulk storage, cold storage plants, frozen food lockers, household moving and general freight storage.

**20.39.460 Self Storage (Mini Warehouse).** Defined: A facility involved in the rental of storage space, such as rooms, lockers, or containers to individuals for the purpose of storing personal belongings.

(1) Self storage shall only be permitted in areas within the self storage overlay district (SSOD) in accordance with POMC 20.38.700-.740, and in zones where permitted outright or as a conditional use in the land use table in this chapter. Self storage facilities that are built and operated as an accessory to an apartment use are not subject to the limitations of the SSOD.

(2) Where indicated as a conditional use in the use table, Section 20.39.040, a self-storage facility is required to obtain a conditional use permit per Chapter 20.50. In addition to the criteria for approval in Section 20.50.050, the hearing examiner must also make the following findings in order to issue the conditional use permit:

- (a) The proposed self-service storage use will provide self storage units that are necessary to meet the needs of Port Orchard's population, as demonstrated by a demand analysis and report provided by the applicant.
- (b) The self-storage facility shall be at least two stories in height, as measured from ground level and not including any basement or below-grade area.

**20.39.470 Storage Yard.**

Defined: A facility used for the storage of any material or item, including motor or marine vehicles, that is not in a structure comprised of at least three (3) walls and a roof. Does not include facilities that are primarily used for the sale of motor and/or marine vehicles.

**20.39.480 Waste-Related Services.** Defined: A facility that processes and stores waste material. Waste-related service includes the following:

- (1) Automobile dismantlers and recyclers, junk yard, wrecking yard, salvage yard;
- (2) Recycling and recovery facility, including recyclable material storage, including construction material;
- (3) Scrap metal processors, secondary materials dealers; and
- (4) Wastewater treatment plant.

**Agricultural Uses**

**20.39.500 Agriculture.** Defined: The production of crops, livestock or poultry. Agriculture includes the following:

- Agricultural processing, excluding marijuana processing;
- Community garden;
- Nursery; and
- Winery.

(1) **Agricultural Processing.** Any operation that transforms, packages, sorts, or grades farm products into goods that are used for intermediate or final consumption, including goods for non-food use, such as the products of forestry. Agricultural processing includes milk plant, grain elevator, and mulch or compost production and manufacturing, but does not include animal processing, packing, treating, and storage. Agricultural processing also does not include marijuana processing pursuant to Chapter 20.64.

(2) **Community Garden.** An area of land managed and maintained by a group of individuals to grow and harvest food crops and non-food ornamental crops, for personal or group use, consumption or donation. May be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group, and may include common areas maintained and used by the group. Where a community garden is allowed as a limited use, it is subject to the following:

(a) A community garden must be primarily used for growing and harvesting food and ornamental crops for consumption or donation or for sale off-site; and

(b) Only mechanical equipment designed for household use may be used.

(3) **Nursery.** A facility for the sale of plants and plant materials grown on- or off-site, as well as garden supplies, equipment and related items.

(4) **Winery.** A facility for processing grapes or other fruit into wine for sale on-site or through wholesale or retail outlets.

### **Accessory Uses**

**20.39.600 Accessory Dwelling Units** (1) Defined: An accessory dwelling unit (ADU) is a separate, complete dwelling unit attached to or contained within the structure of the primary home or use. An ADU may be either an accessory apartment (attached dwelling) or a backyard cottage dwelling.

(2) Requirements: Refer to Section 20.68 of this Title.

**20.39.610 Drive-Thru Facility.** Defined: A facility at which the customer is served while sitting in a vehicle, typically associated with drive-thru restaurants, banks and pharmacies.

(1) No drive-thru window, lane or order box is permitted within 50 feet of a ground floor residential use (measured from the residential lot line to the closest point of the drive-thru lane).

(2) In all drive-thru areas, including but not limited to menu boards, stacking lanes, trash receptacles, ordering box, drive up windows, and other objects associated with the drive-thru, must be located to the side or rear of the building. Drive-thru windows and lanes may not be placed between a public street (not including an alley) and the associated building.

(3) Queuing, landscaping and screening requirements are specified in Section 20.124.060 and Chapter 20.128.

**20.39.615 Home Occupation.** Defined: A home occupation provides a service or product that is conducted wholly within a dwelling unit. Customers and employees coming to the dwelling to conduct business are not allowed. A home occupation does not include a bed and breakfast or day care facility.

(1) The use of the dwelling unit for a home occupation must be clearly incidental and subordinate to its use for residential purposes, and under no circumstances change the residential character of the building.

(2) No business, storage or warehousing of materials, supplies or equipment is allowed outside.

- (3) No equipment or process may be used that creates excessive noise, vibration, glare, fumes, odors, or electrical interference.
- (4) No display of products may be visible from the street.
- (5) No persons other than members of the family residing on the premises may be engaged in the home occupation.
- (6) No more than one vehicle may be used in the conduct of the home occupation, and it must be parked on-site.
- (7) Storage space and the operation of the business cannot exceed twenty-five percent of the total floor area of the dwelling (including any accessory structures on the lot).
- (8) Customers and employees are not allowed.
- (9) The delivery of materials may not exceed more than two (2) deliveries of per day. No delivery may be by a vehicle larger than typical delivery van.
- (10) No signs advertising the home occupation are allowed.

**20.39.620 Home Business.** Defined: A home business provides a service or product that is conducted wholly within a dwelling that requires employees, customers, clients or patrons to visit the dwelling. A home business does not include a bed and breakfast or day care facility.

- (1) The use of the dwelling unit for a home business must be clearly incidental and subordinate to its use for residential purposes, and under no circumstances change the residential character of the building.
- (2) No business, storage or warehousing of materials, supplies or equipment is allowed outside.
- (3) No equipment or process may be used that creates excessive noise, vibration, glare, fumes, odors, or electrical interference.
- (4) No display of products may be visible from the street.
- (5) The home business must be conducted by a person residing on the premises.
- (6) No employees of the business shall work on the premises.
- (7) No more than one vehicle may be used in the conduct of the home business, and the vehicle must be parked on-site.
- (8) Storage space and the operation of the business inside the dwelling cannot exceed twenty-five percent of the total floor area of the building (including any accessory structures on the lot).
- (9) Not more than six (6) clients a day are permitted to visit the home business.
- (10) The delivery of materials may not exceed more than two (2) deliveries of per day. No delivery may be by a vehicle larger than typical delivery van.
- (11) Retail sales of goods must be entirely accessory to any service provided on the site (such as hair care products sold as an accessory to hair cutting).
- (12) No mechanical equipment is installed or used except such that is normally used for domestic or professional purposes.

**Livestock Keeping.** Defined: Livestock includes any animals of the equine, swine or bovine class, including goats, sheep, mules, cattle, hogs, pigs and other grazing animals, and all ratites, including, but not limited to, ostriches, emus and rheas.

- (1) Prohibited:
  - (a) The keeping of any animal other than dogs, cats and other household domestic animals and those specifically allowed below is prohibited.
  - (b) Roosters are not allowed.
- (2) Rabbits, Turkeys, Ducks and Chickens:

- (a) One rabbit, turkey, duck or chicken is allowed per 1,500 square feet of lot area, provided that no more than five (5) rabbits, ducks or chickens, and no more than three (3) turkeys are located on a single parcel.
  - (b) An area of at least twenty (20) square feet or at least four (4) square feet for each rabbit, turkey, duck or chicken, whichever is larger, must be provided. The area must be adequately fenced, cannot be located in a front yard, be at least twenty-five (25) feet from any dwelling on an abutting lot and be at least fifteen (15) feet from any side or rear lot line.
  - (c) Coops or cages may not exceed 8 feet in height.
- (3) Alpacas, Llamas, Goats and Sheep:
- (a) A lot least one half (1/2) acre in size is allowed one (1) alpaca, llama, goat or sheep per 10,000 square feet of lot area.
  - (b) An area of at least five hundred (500) square feet or at least two hundred fifty (250) square feet for each alpaca, llama, goat or sheep, whichever is larger, must be provided.
  - (c) The containment area must be adequately fenced, cannot be located in a front yard and must be at least fifteen (15) feet from any side or rear lot line.

**20.39.630 Outdoor Display.** Defined: The outdoor display of products actively available for sale. The outdoor placement of propane gas storage racks, ice storage bins, soft drink or similar vending machines is considered outdoor display. Outdoor display does not include merchandise or material in boxes, in crates, on pallets or other kinds of shipping containers (see limited outdoor storage). Where allowed, the outdoor sale or rental of vehicles or equipment as part of a properly permitted use is not considered outdoor display.

- (1) Outdoor display is only allowed with a permitted nonresidential use.
- (2) Outdoor display must abut the primary façade with the principal customer entrance, and may not extend more than six (6) feet from the facade or occupy more than twenty-five percent of the horizontal length of the façade.
- (3) Outdoor display may not exceed six (6) feet in height.
- (4) Outdoor display must be removed and placed inside a fully-enclosed building at the end of each business day, except propane gas storage racks, ice storage bins, soft drink or similar vending machines may remain outside overnight.
- (5) Outdoor display may not encroach upon any public right-of-way or sidewalk. Outdoor display may not impair the ability of pedestrians to use the sidewalk. There must be a minimum of six (6) feet of clear distance of sidewalk at all times.

**20.39.635 Outdoor Storage.**

Defined:

- (1) Low-Impact:
  - (a) Low-impact outdoor storage includes, but is not limited to:
    - i. The overnight outdoor storage of vehicles awaiting repair;
    - ii. The outdoor storage of merchandise or material in boxes, in crates, on pallets or other kinds of shipping containers;
    - iii. Outdoor sale areas for sheds, building supplies, garden supplies, plants, lawn movers, barbecue's and other similar items; and
    - iv. The outdoor storage of vehicles, boats, recreational vehicles or other similar vehicles at a self-service storage, mini warehouse facility.
  - (b) Use Standards:

- i. All material stored outdoors cannot be located in a required setback;
- ii. All material stored outdoors may not be more than twelve (12) feet in height;
- iii. All material stored outdoors must be fully screened from view from the public right-of-way and abutting properties using a Type A or B buffer (see Chapter 20.128.060); and
- iv. Vehicles awaiting repair may only be stored up to fourteen (14) days within the screened storage area.

(2) High-Impact:

(a) High-impact outdoor storage includes, but is not limited to:

- i. The outdoor storage of contractors equipment, lumber, pipe, steel or wood;
- ii. The outdoor storage of salvage, recycled materials or scrap metal;
- iii. The outdoor storage of impounded or inoperable vehicles;
- iv. The outdoor storage or loading yard for vehicles, trailers or equipment;
- v. The outdoor storage of construction material; and
- vi. The outdoor storage of domestic or construction waste or debris.

(b) Use Standards:

- i. All material stored outdoors cannot be located in a required setback and must be located at least fifteen (15) feet from the public right-of-way; and
- ii. All material stored outdoors must be fully screened from view from the public right-of-way and abutting properties using a Type C or D buffer (see Chapter 20.128.060).

**20.39.640 Indoor Self Storage as Accessory Use to Apartment Buildings.** Indoor self-storage may be permitted as an accessory use to a site containing one or more apartment buildings as defined in POMC 20.32, provided that the gross floor area of self-storage does not exceed twenty percent of the gross floor area of the residential living space located within apartment buildings on the site.

**20.39.645 Vehicle Service and Repair Accessory to Residential Uses.** Vehicle service and repair, as an accessory use to an existing residential use, is allowed pursuant to the requirements of Chapter 20.66 and the land use table in Chapter 20.39.

**20.39.650 Medical Marijuana Cooperatives.** Medical marijuana cooperatives, as an accessory use to an existing residential use, are allowed pursuant to the requirements of Chapter 20.64 and the land use table in Chapter 20.39.

## Chapter 20.40

### SITE AND LOT DIMENSIONS

#### Sections:

**20.40.010 Site and Lot Dimensions**

**20.40.020 Building Setbacks**

**20.40.030 Build-to Zone**

**20.40.040 Setback Encroachments**

**20.40.050 Height**

**20.40.060 Neighborhood Compatibility**

#### **20.40.010 Site and Lot Dimensions**

(1) Site. A site is any lot or group of contiguous lots owned or controlled by the same person or entity, assembled for the purpose of a single development.

(a) Site Area. Site area is the cumulative area of all contiguous lots that make up the site. Site area does not include existing or proposed right-of-way, whether dedicated or not dedicated to public use.

(b) Site Width. Site width is the cumulative width of all contiguous lots that compose the site.

(c) Site Depth. Site depth is the cumulative depth of all contiguous lots that compose the site.

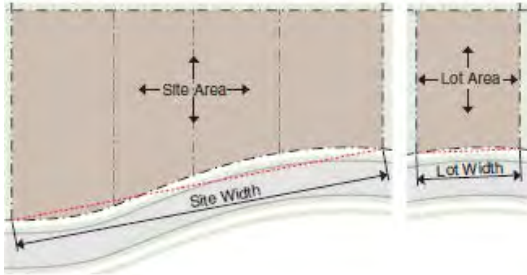
(2) Lot. A parcel of land either vacant or occupied intended as a unit for the purpose, whether immediate or for the future, of transfer of ownership, or possession, or for development.

(a) Lot Area. Lot area is the area included within the rear, side and front lot lines. Lot area does not include existing or proposed right-of-way, whether dedicated or not dedicated to public use. Minimum lot area may not include constrained land such as wetlands, fish and wildlife habitat area, floodways and floodplains, and slopes over twenty-five percent which are two thousand (2,000) square feet or more of contiguous sloped area. Where on-site waste treatment is required, Health Department standards will determine whether minimum lot area must be increased to accommodate the on-site waste treatment system.

(b) Lot Width. Lot width is the distance between the two side lot lines measured at the primary street property line along a straight line or along the chord of the property line on a curvilinear lot. For irregularly shaped lots or flag lots, lot width may determined by measuring the diameter of the largest circle that can be drawn within the lot's boundaries.

(c) Lot Frontage. Every lot must abut a public or private street, or a courtyard specifically for a cottage court building type .

(d) Lot, Flag. A lot with less length of property on a public street than is normally required, with no less than fifteen (15) feet abutting a public or private street generally intended to make deeper property accessible.



(3) Hard Surface Coverage. The area of the lot that is covered by buildings, including both principal structures, structured parking and roofed accessory structures, including gazebos. Hard surface coverage also includes paved and gravel areas such as driveways, walkways, uncovered porches or patios, decks, swimming pools, parking lots, and roof overhangs of over two (2) feet, driveways, walkways, steps, terraces and uncovered decks.

### 20.40.020 Building Setbacks

(1) Type of Setbacks. There are four (4) types of setbacks – primary street, side street, side interior and rear. Building setbacks apply to both principal and accessory buildings or structures except where it is explicitly stated otherwise.

(2) Measurement of Setbacks.

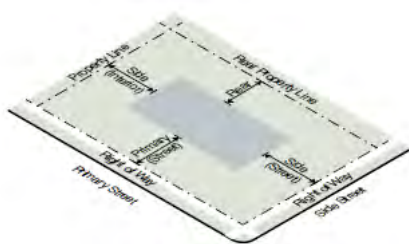
(a) The primary street setback is measured at a right angle from the primary street right-of-way line, or, from the proposed boundary line of a right of way acquisition area if area is including in an approved right of way acquisition plan.

(b) On corner lots, the side street setback is measured at a right angle from the side street right-of-way line.

(c) The rear setback is measured at a right angle from the rear property line or the rear right-of-way or easement line where there is an alley. The rear property line is the property line opposite to the primary street property line. Where there is more than one primary street, the director will determine the rear property line based on the criteria in section 20.40.020(4).

(d) All lot lines which are not primary street, side street or rear lot lines are considered side interior lot lines for the purpose of measuring setbacks. Side interior setbacks are measured at a right angle from the side property line.

(3) Irregular Shaped Lots. The director will determine setbacks for irregularly-shaped lots.



(4) Primary/Side Street Designation.

(a) Where only one street abuts a lot, that street is considered a primary street.

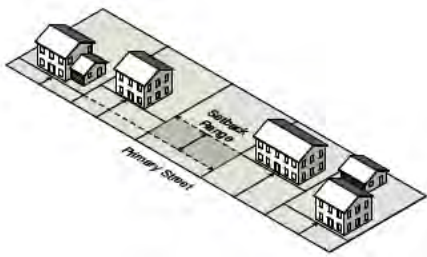
(b) A multiple street frontage lot must designate at least one primary street. A lot may have more than one primary street. The Director will determine which streets are primary streets based on (where applicable):

- (i) The street or streets with the highest classification (highest classification is Principal Arterial, lowest is Local Access);
- (ii) The established orientation of the block;
- (iii) The street or streets abutting the longest face of the block;
- (iv) The street or streets parallel to an alley within the block;
- (v) The street that the lot takes its address from; and
- (vi) The pedestrian orientation of adjacent or abutting development, existing or proposed.

(5) Primary Setback Averaging. The primary street setback requirements for principal buildings in R1, R2, R3, R4, R5, and R6 zones may be averaged as follows:

(a) The proposed building must be located within the range of primary street setbacks, no closer than the smallest setback in the range and no further than the largest setback in the range.

(b) On an interior lot, the range of setbacks is measured on the basis of the two (2) closest lots in either direction along the block face.



(c) On a corner lot, the range of setbacks is measured on the basis of the three (3) closest lots along the block face.



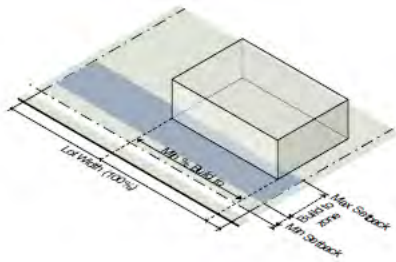


(d) Where the calculation cannot be applied to at least four (4) lots on an interior lot or three (3) lots on a corner lot, the building must meet the district standards.

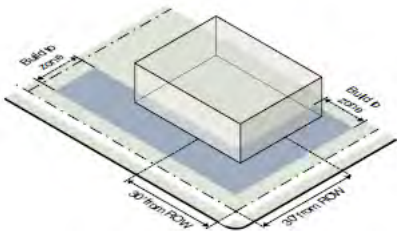
### 20.40.030 Build-to Zone

(1) Build-to Zone. The build-to zone is the area on the lot where a certain percentage of the front building façade must be located, measured as a minimum and maximum setback range from the edge of the right-of-way.

(2) Build-to Zone on interior lots. The required percentage specifies the amount of the front building façade that must be located in the build-to zone, measured based on the width of the building divided by the width of the lot.



(3) Build-to Zone on Corner Lots. On a corner lot, a building façade must be placed within the build-to zone for the first thirty (30) feet along the street extending from the block corner, measured from the intersection of the two right-of-way lines.



(4) Build-to zone – Uses Allowed. With the exception of parking spaces and outdoor storage, all structures and uses (including outdoor dining) allowed on the lot are allowed in the build-to zone.

### 20.40.040 Setback Encroachments

(1) All buildings and structures must be located at or behind the required setbacks, except as listed in subsections 2 through 5 below, and in accordance with applicable building codes. No building or structure may extend into a required easement or public right-of-way (except by written agreement with the City Council or through an approved street vacation).

(2) Building Features.

(a) Porches, stoops, balconies, galleries and awnings/canopies may extend into a required primary or side street setback as stated in POMC 20.122.

(b) Building eaves, roof overhangs, gutters, downspouts, light shelves, bay windows and oriels less than ten (10) feet wide, cornices, belt courses, sills, buttresses or other similar architectural

features may encroach up to three (3) feet into a required setback, provided that such extension is at least two (2) feet from the vertical plane of any lot line.

(c) Chimneys or flues may encroach up to four (4) feet, provided that such extension is at least three (3) feet from the vertical plane of any lot line.

(d) Unenclosed patios, decks, balconies, stoops, porches, terraces or fire escapes may encroach into a side interior or rear setback, provided that such extension is at least three (3) feet from the vertical plane of any lot line.

(e) Handicap ramps may encroach to the extent necessary to perform their proper function.

(f) Structures below and covered by the ground may encroach into a required setback.

### (3) Site Features.

(a) Fences and walls may encroach into a required setback.

(b) Sidewalks and driveways may encroach into a required setback.

(c) Required buffers may encroach into a required setback.

(d) Signs under may encroach into a required setback provided that they meet any sign specific setbacks pursuant to POMC 20.132.

### (4) Low Impact Stormwater Features.

(a) Low impact stormwater management features may encroach into a primary street setback (but not into the sidewalk), side interior setback, or rear setback including, but not limited to:

1. Rain barrels or cisterns, six (6) feet or less in height;
2. Planter boxes;
3. Bioretention areas; and
4. Similar features, as determined by the director.

### (5) Mechanical Equipment and Utility Lines.

(a) Mechanical equipment associated with residential uses, such as HVAC units, swimming pool pumps or filters, and security lighting, may encroach into a side interior or rear setback, provided that such extension is at least three (3) feet from the vertical plane of any lot line.

(b) Minor structures accessory to utilities (such as hydrants, manholes, and transformers and other cabinet structures and related fences) may encroach into a required rear or side setback.

(c) Minor utilities below and covered by the ground may encroach into a required setback.

## 20.40.050 Height

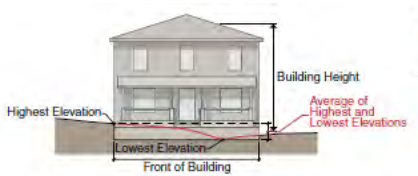
### (1) Building Height

(a) This section shall apply to all development in the City except for development in the View Protection Overlay District. This section shall not apply to signs.

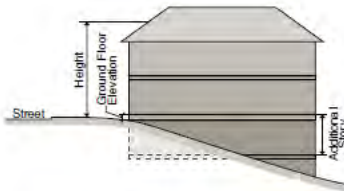
(b) Building height is regulated in both number of stories and feet and is measured from the grade plane to the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof or to the highest point of roof surface of a flat roof.



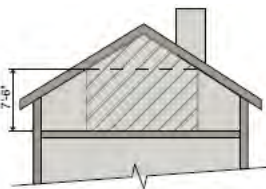
(b) Average grade is determined by calculating the average of the highest and lowest elevation along natural or improved grade (whichever is more restrictive) along the front of the building parallel to the primary street setback line.



(c) Where a lot slopes downward from the front property line, one story that is additional to the specified maximum number of stories may be built on the lower, rear portion of the lot.



(d) A half story has less than fifty percent of the attic floor area with a clear height of seven (7) feet or more; measured from the finished floor to the finished ceiling. If more than fifty percent of the attic floor area has a clear height of seven (7) feet or more, it shall be considered a full story.



(e) A basement with fifty percent or more of its perimeter wall area surrounded by natural grade is not considered a story.

(2) Height Encroachments. Any height encroachment not listed below is prohibited except where the Director determines that the encroachment is similar to a permitted encroachment listed below.

(a) The maximum height limits of the district do not apply to a spire, belfry, cupola, dome, or other similar feature that does not contain conditioned space and is not intended for human occupancy, or public utility facilities which by design or function must exceed the established height limits.

(b) The following may exceed the established height limit of the district provided they do not exceed the maximum height by more than six (6) feet:

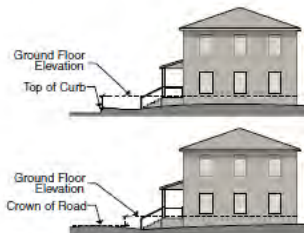
- (i) Chimney, flue or vent stack;
- (ii) Rooftop deck, patio, shade structure;
- (iii) Flagpole;
- (iv) Vegetation associated with a rooftop garden or landscaping;
- (v) Skylights;
- (vi) Parapet wall; and
- (vii) Solar panels, wind turbines and rainwater collection systems.

(c) The following may exceed the established height limits provided they do not exceed the maximum building height by more than ten (10) feet, do not occupy more than twenty-five percent of the roof area, and are set back at least ten (10) feet from the edge of the roof:

- (i) Elevator or stairway access to roof; and
- (ii) Mechanical equipment.

(3) Ground Floor Elevation. Ground floor elevation is the height of the ground floor relative to the height of the sidewalk and is measured from top of the abutting curb, or from the crown of the road where no curb exists, to the top of the finished ground floor.

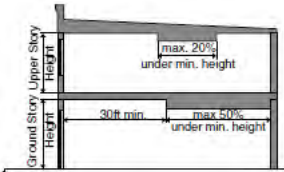
(a) Minimum ground floor elevation applies to the first twenty (20) feet of the lot measured from the right-of-way line.



(4) Story Height.

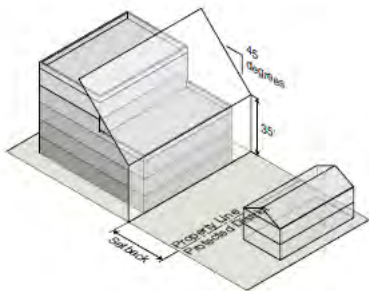
(a) Story height is the height of each story of building and it is measured from the top of the finished floor to the ceiling above.

(b) Minimum ground story height applies to the first thirty (30) feet of the building measured inward from the interior wall of the primary street-facing facade. At least fifty percent of the ground story must meet the minimum height provisions.



**20.40.060 Neighborhood Compatibility**

(1) Height Plane. A height plane is required when a building taller than thirty-five (35) feet is located on a lot that abuts another lot with a R-1, R-2, or R-6 zoning designation. In such situations, a building cannot extend into a forty-five (45) degree angular plane projecting over the subject property measured from a height of thirty-five (35) feet at the side interior or rear setback line. One foot of additional setback is required for every foot of height above thirty-five (35) feet until the maximum height of the district is reached.



## Chapter 20.41

### TRANSFER OF DEVELOPMENT RIGHTS PROGRAM

#### Sections:

**20.41.010 Purpose**

**20.41.020 Authority**

**20.41.030 Applicability**

**20.41.040 General Requirements**

**20.41.050 Sending Areas**

**20.41.060 Sending Site Calculations**

**20.41.070 Receiving Areas**

**20.41.080 Use of Development Rights**

#### **20.41.010 Purpose.**

The purpose of this chapter is to create a process for certification and transfer of transferable development rights from designated sending areas within Kitsap County to designated receiving areas within Port Orchard that are zoned for multifamily residential development (apartment buildings). The transfer of development rights from one property within Kitsap County to another within Port Orchard is allowed in order to provide the following:

- (1) Flexibility and efficient use of land and building techniques;
- (2) Preservation of rural character, promotion of farming areas, and provision of long-term open space opportunities; and
- (3) A mechanism to work toward achieving policies outlined in the Kitsap County Countywide Planning Policies, Kitsap County Comprehensive Plan, the Port Orchard Comprehensive Plan and Port Orchard development regulations.

#### **20.41.020 Authority.**

The transfer of transferable development rights (“TDR”) system for Port Orchard is established. The base residential density of a sending site within Kitsap County may be transferred and credited to a receiving site within the City of Port Orchard in accordance with this chapter only when a TDR certificate is issued in accordance with the rules and procedures in this chapter and in Kitsap County Code Chapter 17.580.

#### **20.41.030 Applicability.**

This chapter supplements City and County land use regulations and other land protection efforts by establishing a TDR process, which may be employed at a landowner’s option to certify and transfer development rights from an eligible sending site in Kitsap County to an eligible receiving site in Port Orchard, and which may include transfer through an open market or TDR bank. This chapter regulates the following with respect to the transfer of development rights:

- (1) Provides a conversion formula to convert County development rights into City building height bonuses;

- (2) Provides a market-based TDR implementation system based on the issuance of TDR certificates by Kitsap County that may be freely sold or otherwise transferred for use in the City of Port Orchard; and
- (3) Requires the recording of conservation easements that restrict development on sending sites within Kitsap County.

**20.41.040 General Requirements.**

- (1) Development Rights. Residential development rights are considered to be interests in real property.
- (2) Transfer of Development Rights Permitted. The number of dwelling units allowed to be constructed on a sending parcel within Kitsap County under Kitsap County Code Section 17.580.050 may be transferred to a receiving parcel within the City of Port Orchard pursuant to the conversion provided in subsection 3 of this section. In approving a transfer of development rights to a receiving area within Port Orchard, the decision-maker (depending on permit type) must find that such a transfer is permitted under and consistent with the zoning applicable to the receiving property. A transfer of development rights is allowed only under the provisions in this chapter.
- (3) Transfer of Development Rights Conversion formula. Each development right (i.e., allowed dwelling unit) sent from a sending area in Kitsap County shall be worth a 1-story (10 foot) height bonus measuring two thousand (2,000) square feet on the receiving property within Port Orchard. To illustrate this conversion, if a mixed use storefront building (e.g., with retail on the ground floor and apartments on higher floors) in Port Orchard is proposed with a building footprint of twenty thousand (20,000) square feet at four (4) stories, but the zone allows for a height bonus pursuant to the TDR program to increase that height to five (5) stories, the purchase of ten (10) development rights from Kitsap County would allow one (1) additional 10-foot story measuring twenty thousand (20,000) square feet, thus increasing the allowed height of proposed building from four (4) to five (5) stories.

**20.41.050 Sending Areas.**

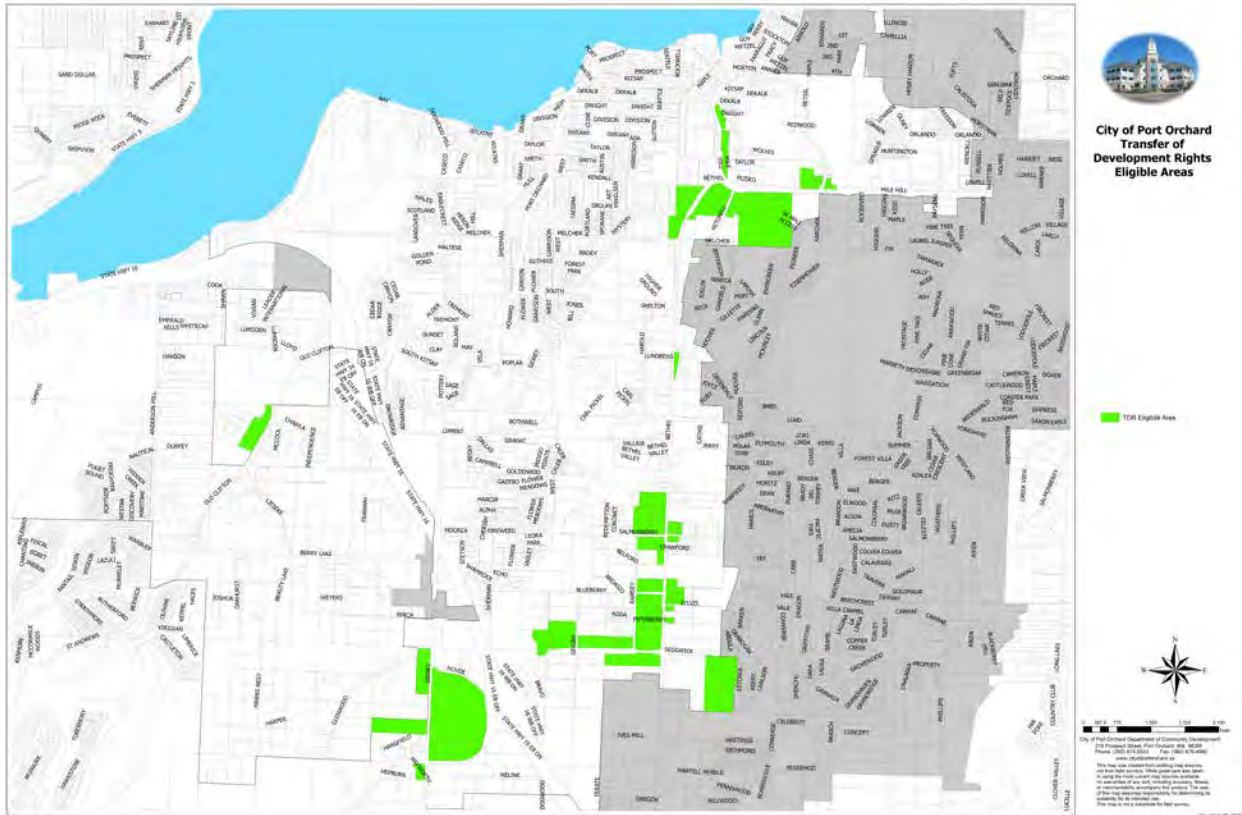
- 1. The City of Port Orchard will rely on Kitsap County sending area designations in place as of [ADOPTION DATE OF THIS ORDINANCE] and additionally shall only accept development rights transferred from properties located in zip codes 98366, 98367, 98312, and 98359, in accordance with Kitsap County Code Chapter 17.580.
- 2. Land already encumbered by a conservation easement shall not be eligible as a TDR sending site.
- 3. Any land below ordinary high water of any fresh or saltwater body shall not be eligible as a TDR sending site.
- 4. Development rights allocated to eligible sending sites may be converted to TDR certificates which may be transferred to eligible receiving sites through the TDR transfer process. After completion of the conveyance of a sending site's development rights, the property shall be maintained in a condition that is consistent with the TDR conservation easement imposed under Kitsap County Code Section 17.580.100.

**20.41.060 Sending Site Calculations.**

The City of Port Orchard shall rely on Kitsap County calculations of development rights eligible for transfer from a sending site pursuant to Kitsap County Code Chapter 17.580.

**20.41.070 Receiving Areas.**

The following map shows eligible TDR receiving areas in which height bonuses allowing buildings to be constructed up to 8 stories not to exceed 88 feet may be constructed. The 8 story / 88 foot height limit allowed for properties shown on the map supersedes the height limits in POMC chapters 20.34 and 20.35.



**20.41.080 Use of Transferred Development Rights.**

Once development rights have been obtained in accordance with Kitsap County Code Chapter 17.580, the County will issue certificate(s) certifying the number of rights purchased and the location from which the rights are being sent. Applicants seeking to use the issued Kitsap County certificate(s) shall submit the certificate(s) with their development permit application for a project to be constructed on an eligible suitably zoned property within Port Orchard. Prior to permit issuance for a project that has been approved pursuant to a TDR height bonus, the certificate shall be conveyed to the City of Port Orchard and extinguished in exchange for the approved height bonus.



## Chapter 20.54

### NONCONFORMITIES

#### Sections:

20.54.010	Purpose.
20.54.020	Definitions.
20.54.030	Establishing a legal nonconforming building type, lot, use or structure for the record.
20.54.040	Establishing a legal nonconforming lot for the record.
20.54.050	Restrictions on legal nonconforming uses.
20.54.060	Restrictions on legal nonconforming building types and structures.
20.54.070	Restrictions on legal nonconforming lots.
20.54.080	Permit required.
20.54.090	Administration of nonconforming permits.
20.54.100	Requirements for a complete application.
20.54.110	Criteria for approval – Permit to establish legal nonconforming building type, use or structure for the record.
20.54.120	Criteria for approval – Permit to establish legal nonconforming lot for the record.
20.54.130	Final decision on nonconforming permit.
20.54.140	Appeal of nonconforming permit.
20.54.150	Nonconformities and Build-To Zone Requirements

#### 20.54.010 Purpose.

This chapter provides standards and procedures for identifying nonconforming situations, establishing restrictions on the alteration or expansion of a nonconforming situation, and it also specifies when a nonconforming situation must be brought into compliance with the code. In addition, this chapter also establishes an optional process for a property owner to obtain a determination that a building, use or lot is legally nonconforming so that the property owner may use such determination for purposes of property sale/transfer, or to defend in a code enforcement action. For properties within the city's shoreline zone, the standards of the city's shoreline master program also apply, including regulations for nonconforming uses and structures within the shoreline zone. For nonconforming signs, please also see Chapter 20.132 POMC.

#### 20.54.020 Definitions.

(1) Nonconforming Building Type. A nonconforming building type is a building type which lawfully existed in a zoning district prior to the adoption of this zoning code, but which is not one of the building types allowed in the current zoning district pursuant to Chapter 20.32.

(2) Nonconforming Lot. A nonconforming lot is a lot which lawfully existed prior to the adoption of this zoning code, but which does not comply with one or more of the lot standards for the applicable zoning district in the current code, such as minimum lot size, minimum lot width or required access.

(3) Nonconforming Use. A nonconforming use is a use which lawfully existed in a zoning district prior to the adoption of this zoning code, but which is not one of the uses that is permitted or conditionally permitted in the current zoning district per Chapter 20.39.

(4) Nonconforming Structure. A nonconforming structure is a structure which lawfully existed in a zoning district prior to the adoption of this zoning code, but which does not comply with one or more requirements for the applicable zoning district in the current code for maximum height, minimum setbacks, maximum lot coverage or impervious surface coverage, or design standards.

**20.54.030 Establishing a legal nonconforming building type, lot, use or structure for the record.**

(1) Permit Required. A landowner may establish that he/she has a legal nonconforming building type, use or structure for the record by obtaining the permit described in POMC 20.54.080. This process is optional in situations other than code enforcement actions (in which the landowner may choose to utilize the process in order to establish the legality of the nonconforming building type, use or structure).

(2) Abandonment or Discontinuance. In order to establish a legal nonconforming building type, use or structure, the use or structure must not have been abandoned or discontinued, under the criteria in POMC 20.54.050(4).

(3) Destruction. Should a nonconforming building type, structure or nonconforming portion of a structure be destroyed by any means to an extent more than fifty percent of its replacement cost at the time of its destruction, as determined by the city building official, it shall be reconstructed only in conformity with this code, and only under the following conditions: (a) a complete application for a building permit (or other applicable permit) is filed with the city within twelve (12) months after the damage occurred, and the permit issues, with not more than one (1) 180-day extension; (b) the cause of the damage or destruction was not the willful act of the owner or the owner's agent; and (c) the cause of the damage or destruction was not due to the ongoing neglect of the owner or the owner's agent.

(4) Enforcement. If a landowner is not able to establish a legally nonconforming building type, use or structure, or, if the city proves that a legal nonconforming building type, use or structure was abandoned or discontinued, then the building type, use or structure may be subject to an enforcement action. In this enforcement action, the landowner will either be required to terminate the use, demolish the building or other structure or conform the building or other structure to the requirements of this code, including the provisions of Chapter 20.02 POMC, Administration and Enforcement.

(5) Applicability of New Regulations to Legal Nonconforming Building Types, Uses and Structures. Legal nonconforming building types, uses and structures have only a vested right not to have the building type, use or structure or other development immediately terminated when a new code provision is adopted that prohibits the building type, use or structure. The building type, use or structure may still be subject to newly adopted reasonable police power regulations.

A legal use of land does not become nonconforming because the zone in which it is located is changed to a zoning district which requires a conditional use permit for the use. However, any alteration, expansion or intensification of a use previously approved as a conditional use must follow the process in Chapter 20.50 POMC for approval of a new conditional use permit unless the zoning changes such that the use is now permitted outright.

**20.54.040 Establishing a legal nonconforming lot for the record.**

(1) Permit Required. A landowner may establish that he/she has a legal nonconforming lot for the record by obtaining the permit described in POMC 20.54.060 through 20.54.080. This process is optional in situations other than code enforcement actions.

(2) Enforcement. If a landowner is not able to establish a legally nonconforming lot, then the lot may be subject to an enforcement action. In this enforcement action, the landowner will either be required to establish a legally conforming lot through subdivision, boundary line adjustment, legal adjudication or other legally-accepted method of lot creation, or else abandon the claim to ownership of a legal lot of record, subject to the requirements of this code.

(3) Applicability of New Regulations to Legal Nonconforming Lots. Legal nonconforming lots have only a vested right not to have any use, structure or other development immediately terminated when a new code provision is adopted which creates or increases the nonconformity of a lot. The lot may still be subject to newly adopted reasonable police power regulations.

**20.54.050 Restrictions on legal nonconforming uses.**

(1) Enlargement, Increase, Intensification and Extension Prohibited. A legal nonconforming use may not be enlarged, increased, intensified or extended to occupy a greater area of land or space, including air space, than was occupied at the effective date of adoption or amendment of this code. No additional structure, building or sign shall be constructed on the lot in connection with such nonconforming use of land.

(2) Use Cannot Be Moved to New Location. No legal nonconforming use shall be moved in whole or in part to any portion of the building or any lot other than that occupied by such use except where that use is permitted outright at the effective date of adoption or amendment of this code.

(3) Change in Use. A nonconforming use cannot be changed to another nonconforming use. A change in tenancy or ownership is not considered a change to another nonconforming use, provided that the use itself remains unchanged.

(4) No Discontinuation or Abandonment. In order to retain its legally nonconforming status, the legal nonconforming use of land cannot be discontinued or abandoned for any reason for a period of more than one hundred eighty (180) days, or for eighteen (18) months in a three (3) year period. For purposes of calculating the 180-day or 18-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:

(a) On the date when the use of land is physically vacated;

(b) On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;

(c) On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or

(d) On the date a request for final reading of water and power meters is made to the applicable utility districts.

(5) Uses which vary seasonally (such as agricultural uses) shall be deemed abandoned if the seasonal use is not utilized during one full season, consistent with the traditional use.

(6) Application of Code Criteria and Standards. If the use is discontinued or abandoned for any reason (other than seasonal use as allowed by subsection (5) of this section) for a period of more than one hundred eighty (180) days or for eighteen (18) months in a three (3) year period, any subsequent use of land shall conform to the applicable standards and criteria specified by this code for the land use zone in which such land is located.

**20.54.060 Restrictions on legal nonconforming building types and structures.**

(1) Alterations and Maintenance. A nonconforming building type or structure may not be enlarged or altered in a way that increases its nonconformity, but any structure or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this code or in a way that will not increase its nonconformity. Ordinary maintenance and repair shall be permitted.

(2) Roadway Access. The owner of a nonconforming access connection (i.e., street or highway access) may be required to bring the nonconforming access into conformance with this code and other applicable standards as a condition of the city or other roadway authority approving a new access connection permit, or a landowner's requested change in land use.

(3) Relocation or Removal. Should the nonconforming building type or structure be moved for any reason and by any distance, it shall thereafter conform to the regulations of this code. However, a structure may be moved on the same site without full compliance if the movement reduces the building type or structure's degree of nonconformity with the code.

(4) Historic Buildings and Structures. Nothing in this chapter shall prevent the full restoration by reconstruction of a building or structure which is either listed on the National Register of Historic Places, the Washington State Register of Historic Places, or the Washington State Cultural Resource Inventory, as shown in a historical survey meeting the standards of the State Department of Archaeology and Historic Preservation. "Restoration" means reconstruction of the historic building or structure with as nearly the same visual design appearance and materials as is consistent with full compliance with the State Building Code and any code provisions adopted by the city on the subject of historic preservation. The reconstruction of all such historic buildings and structures shall comply with the life safety provisions of the State Building Code.

(5) Mobile Homes or Manufactured Homes. Any mobile home or manufactured home located in a residential district which is a legal nonconforming use may be replaced with an approved manufactured home that conforms to the applicable requirements of this title.

**20.54.070 Restrictions on legal nonconforming lots.**

(1) A nonconforming lot may not be altered in size or shape in any way that increases its nonconformity, but it may be altered in a way that satisfies the current requirements of this code or in a way that will not increase its nonconformity.

(2) Use of Legal Nonconforming Lot as a Building Site. A legal nonconforming lot may be used as a building site, provided that all other requirements of the applicable zoning district are met or a variance is obtained.

#### **20.54.080 Permit required.**

A property owner may obtain a nonconforming permit to establish a legal nonconforming building type, lot, use or structure for the record. This permit is not required, unless the city has brought a code enforcement action relating to the property, or if the property owner desires the permit for another purpose, such as to obtain a building permit consistent with the desired legal nonconforming building type, lot, use or structure. In such event, the property owner has the burden to follow the procedures set forth herein to establish that the condition of the property is legally nonconforming. In the case of a code enforcement action, the director may place the code enforcement action in abeyance for a reasonable time in order to allow a property owner to gather the necessary information to demonstrate that the property is legally nonconforming.

#### **20.54.090 Administration of nonconforming permits.**

(1) The following steps shall be followed in the processing of nonconforming permits:

- (a) Determination of complete application (POMC 20.24.050);
- (b) Determination of consistency (POMC 20.24.090);
- (c) Notice of decision by director (POMC 20.24.100); and
- (d) Administrative appeal, if any (open record hearing, POMC 20.24.072).

(2) Because the processing of these permit applications requires the submission of different information for approval, imposes different burdens on the applicant and the city, and varies in other material respects from the processing of a project permit application, these permits are exempt under RCW 36.70B.140 from all project permit processing requirements (identified in Chapter 20.22 POMC), other than those set forth in this chapter.

#### **20.54.100 Requirements for a complete application.**

A complete application for a nonconforming permit shall include the following items as applicable to each classification of nonconformity (building type, lot, use, structure). Refer to the relevant city application form for numbers of copies of each item that must be included and the type of accompanying electronic submittal that is required (if relevant):

- (1) Completed application form;
- (2) Date, name, address, telephone number and email of the applicant;
- (3) Name, address, telephone number and email of the owner of the property identified in the application;
- (4) Legal description, street address and assessor's parcel number of the subject property;
- (5) A description and photographs of existing site conditions, any plans or permit approvals, and/or information relevant to the proposed applicant's demonstration of a legal nonconforming building type, lot, use or structure;

- (6) Information demonstrating that (a) the building type, structure or use is not permitted outright under the city's code, including, but not limited to, the use standards of the current zoning or applicable district; (b) the current zoning code or building code standards for the building type, lot, use or structure are not met; and (c) the use has not been abandoned or discontinued for the period identified in this chapter;
- (7) Proof of legal nonconforming status, including, but not limited to, planning permits/approvals, building permits, leases, aerial maps showing the structure and footprint, listings in business or phone directories (or directory with a list of businesses and residents referenced by address), etc.;
- (8) If the application is for a remodel, a complete description of the proposed remodeling relating to such section(s) of the structure or the entire structure;
- (9) The applicant's narrative statement describing the manner in which the application satisfies the criteria for approval in the applicable section of this chapter;
- (10) A SEPA checklist (unless categorically exempt);
- (11) The application fee established by the city; and
- (12) Any other required information as indicated by city staff in a preapplication meeting.

**20.54.110 Criteria for approval – Permit to establish legal nonconforming building type, use or structure for the record.**

(1) Criteria. A permit will be approved establishing the legal nonconforming status of the building type, use or structure if the applicant provides sufficient evidence and demonstrates to the director's satisfaction:

(a) That the building type, use or structure satisfies the definition for a legal nonconforming building type, use or structure in this chapter; and

(b) That the building type, use or structure has been in existence and maintained continuously, with no interruption that would constitute abandonment or discontinuance under either former or current city codes.

(2) Acceptable Documentation. The evidence presented by the applicant may include, but is not limited to, the following as documentation of the existence of a building type, use or structure from a time when it would have been permitted outright and as documentation of its uninterrupted continuation:

(a) Signed written statements from persons having no financial interest in the property and who are not relatives of the applicant or property owner. Notarization is not required.

(b) Occupancy listing from the Polk directory or reverse telephone directories.

(c) Business and/or licensing records.

(d) County records showing the previous permitted use if the property was formerly not part of the city.

(e) Assessment records.

(f) Evidence of more than one electric or gas meter or sewer hookup.

(g) Other evidence that the director deems useful and reliable, based on the circumstances of the individual case. Examples include, but are not limited to, photographs, U.S. Census reports, and signed written statements of experts.

(3) It is the responsibility of the applicant to furnish at least two different types of documentation from the sources listed above. The city may, in its discretion, require further documentation if the documentation submitted by the applicant does not demonstrate the existence of the building type, use or structure from a time when it was permitted outright, or fails to show continuous, uninterrupted maintenance of the use. The city may also accept only one type of documentation from the sources listed above, if that documentation is particularly persuasive. Any number of written, signed statements, however, are not sufficient by themselves to document the existence of a building type, use or structure.

**20.54.120 Criteria for approval – Permit to establish legal nonconforming lot for the record**

(1) Criteria. A permit will be approved establishing the legal nonconforming status of a lot if the applicant provides sufficient evidence and demonstrates to the director’s satisfaction that the lot was lawfully created and recorded with the county auditor’s office.

(2) Acceptable Documentation. The evidence presented by the applicant may include, but is not limited to, a recorded subdivision, large lot subdivision, testamentary subdivision (provided that the testamentary subdivision conformed to zoning at the time of recording), short plat or binding site plan; a recorded boundary line adjustment approved by the City if such approval was required at the time of recording; or a legal adjudication requiring the creation of the lot with subsequent recording with the county auditor’s office.

**20.54.130 Final decision on nonconforming permit.**

Because the city has excluded nonconforming permits from the procedures set forth in RCW 36.70B.140, there is no deadline for the city’s issuance of a final decision.

**20.54.140 Appeals of nonconforming permit.**

A nonconforming permit is a Type I decision per Section 20.22.020 of this Title. If an appeal of the director’s decision is filed, the procedures in POMC 20.22.030(7) and (8) shall be followed.

**20.54.150 Nonconformities and Build-To Zone Requirements.**

“Build-to zone” requirements may apply to certain development proposals in residential, commercial and mixed-use zoning designations. For information on build-to zone requirements and their applicability to a proposal, refer to Chapters 20.34 and 20.35.

(1) Building Additions. When an existing building is being expanded and the building does not meet the build-to requirement, the following provisions apply:

(a) Front. Any addition to the front of the building must be placed in the build-to zone. The addition does not have to meet the build-to percentage for the lot.

(b) Rear. Rear additions are allowed because the addition does not increase the degree of the nonconformity.

(c) Side. Side additions are not allowed because the extension increases the width that is not located in the build-to zone.

(2) New Buildings. When a new building is proposed on a site with an existing building that does not meet the build-to requirement, the following provisions apply:

(a) Front. All new buildings must be placed in the build-to zone until the build-to percentage for the lot has been met.

(b) Rear. New buildings located outside of the build-to zone are not allowed until the build-to percentage for the lot has been met.

(c) Side. New buildings located outside of the build-to zone are not allowed until the build-to percentage for the lot has been met.



## Chapter 20.58

### TEMPORARY USES

#### Sections:

**20.58.110 Temporary uses.**

**20.58.120 Temporary uses requiring permits.**

**20.58.130 Additional permit requirements.**

**20.58.140 Temporary uses exempt from permit requirements.**

#### **20.58.110 Temporary uses.**

A temporary use is a use established for a limited duration with the intent to discontinue such use upon the expiration of the time period. In order to regulate such uses by their scope and period of use, a permit is required for the establishment of temporary uses that are not otherwise permitted in a zone. Although a temporary use permit is a Type 1 decision, any appeal of a temporary use permit decision shall be made to the city council.

#### **20.58.120 Temporary uses requiring permits.**

The following categories identify temporary uses that are permitted uses subject to securing a permit from the planning director:

- (1) Uses not otherwise permitted in the zone that can be made compatible for periods of limited duration and/or frequency, such as a seasonal event like a produce or farm market stand that extends beyond 30 days' duration.
- (2) Limited expansion of any use that is otherwise allowed in the zone but which exceeds the intended scope of the original land use approval – such as a special event like a tent sale or revival annex.
- (3) Temporary construction residence as a temporary dwelling for the property owners; provided, that:
  - (a) A building permit application for a permanent dwelling on the site has been submitted.
  - (b) The temporary residence must be of minimum impact to the neighborhood.
  - (c) The temporary residence has adequate sanitary sewer and water provisions.
  - (d) The temporary residence permit shall be effective for a period of 12 months. The permit may be extended for one additional period of six months if the permanent dwelling is constructed with a finished exterior by the end of the initial approval period.
  - (e) The construction residence shall be removed within 90 days of the expiration of the temporary construction residence permit or the issuance of a certificate of occupancy for the permanent residence, whichever occurs first.

#### **20.58.130 Additional permit requirements.**

(1) Temporary use permits shall be limited in duration and frequency as follows:

- (a) For temporary use permits issued pursuant to POMC 20.58.120(1) or (2), the permit shall be effective for 180 days from issuance.

- (b) The temporary use permit shall specify a date upon which the use shall be terminated and removed.
- (2) Parking and access for proposed temporary uses shall be approved by the city engineer.
- (3) The applicant for a proposed temporary use shall provide any parking or traffic control attendants as specified by the city engineer.

**20.58.140 Temporary uses exempt from permit requirements.**

- (1) The following uses shall be exempt from requirements for a temporary use permit when located in the CH, CC, DMU, GMU, CMU, IL, IH, CF, PR or CI zones for the time period specified below:
  - (a) Seasonal uses not to exceed a total of 30 days each calendar year, such as Christmas tree lots and produce stands.
  - (b) A special event not to exceed a total of 14 consecutive days, such as amusement rides, carnivals, or circuses, community festivals, and parking lot sales.
  - (2) Any use not exceeding a consecutive total of three days for a maximum of four events each calendar year shall be exempt from requirements for a temporary use permit.
  - (3) Any community event held in a public park or property and not exceeding a period of seven days shall be exempt from requirements for a temporary use permit.
  - (4) Temporary structures for tools storage, equipment, and for supervisory offices may be permitted for construction projects; provided, that such structures are:
    - (a) Allowed only during periods of active construction.
    - (b) Removed within 30 days of project completion or cessation of work.
  - (5) One temporary real estate office located on any new residential development; provided, that activities are limited to the initial sale or rental of property or units within the development. The office use shall be discontinued within 30 days of the issuance of a final certificate of occupancy of the last unit in the development.

## Chapter 20.68

### ACCESSORY DWELLING UNITS

#### Sections:

**20.134.010 Accessory dwelling units – Defined.**

**20.134.020 Accessory dwelling units - Purpose.**

**20.134.030 Accessory dwelling units – Decision type.**

**20.134.034 Accessory dwelling units - Administration.**

**20.134.050 Accessory dwelling units – Property ownership.**

**20.134.060 Accessory dwelling units – Commercial and industrial development – Code applicability.**

**20.134.070 Accessory dwelling units – Application procedures.**

**20.134.080 Inspection.**

**20.134.090 Violations.**

**20.134.100 General requirements.**

**20.134.110 Bulk, location and design requirements.**

#### **20.134.010 Accessory dwelling units – Defined.**

An accessory dwelling unit is a separate, complete dwelling unit associated with, attached to or contained within the structure of the primary home or use. An ADU may be either an accessory apartment (attached dwelling) or a backyard cottage dwelling.

#### **20.134.020 Accessory dwelling units – Purpose.**

A. Intent. Accessory dwelling units (hereinafter referred to as “ADUs”) are intended to:

1. Provide homeowners with a means of providing for companionship and security.
2. Add affordable units to the existing housing supply.
3. Make housing units within the City available to moderate income people.
4. Provide an increased choice of housing that responds to changing needs, lifestyles (e.g., young families, retired), and modern development technology.
5. Protect neighborhood stability, property values, and the single-family residential appearance by ensuring that ADUs are installed in a compatible manner under the conditions of this section.
6. Increase density in order to better utilize existing infrastructure and community resources and to support public transit and neighborhood retail and commercial services.
7. Provide a means for commercial and industrial sites to have a resident caretaker or security officer.

#### **20.134.030 Accessory dwelling units - Decision type.**

An ADU permit is a Type I action and shall be reviewed and considered in accordance with the procedures for such actions as set forth in Subtitle II of this Title.

#### **20.134.040 Accessory dwelling units - Administration.**

The planning director shall have the authority to develop and implement procedures to administer and enforce this chapter.

**20.134.050 Accessory dwelling units – Property ownership.**

For the purposes of this chapter, “property owner” and “homeowner” shall mean the owner of a property according to the title of record, or the beneficiary of a legal trust or guardianship.

**20.134.060 Accessory dwelling units – Commercial and industrial development – Code applicability.**

The following subsections of this chapter do not apply to the construction or establishment of an ADU that is accessory to a commercial or industrial use:

20.134.100.A. and D.

20.134.110.I and J

**20.134.070 Accessory dwelling units – Application procedures.**

A. Procedures. Any property owner seeking to establish an ADU shall apply for approval in accordance with the following procedures:

1. Application. Prior to installation of an ADU, the property owner shall apply for an ADU permit. A complete application shall include a properly completed application form, floor and structural plans for modification, a site plan if detached structures or an addition are proposed, and fees as prescribed in subsection 2 below.

2. Fees. Upon sale of the property, the new property owner shall be required to sign a new affidavit and to register the ADU, paying the applicable fee in accordance with the city’s adopted fee schedule. If new or upgraded water or sewer connections are required, water and/or sewer connection fees shall be required in accordance with Title 13.

3. Accessory dwelling unit agreement. The owner of any property containing an ADU shall record with the Kitsap County Auditor an accessory dwelling unit agreement and notice to title for the ADU. Such agreement and notice shall be approved by the planning director, on a form approved by the city council, and shall include as a minimum: (a) the legal description of the property which has been permitted for the ADU; (b) affirmation that the owner shall occupy either the main building or the ADU (unless the ADU is within a commercial or industrial development), and that the property owner agrees to all requirements provided in subsection B.; and (c) the conditions necessary to apply the restrictions and limitations contained in this section.

The property owner shall submit proof that the agreement and notice to title have been recorded prior to issuance of an ADU permit. The ADU agreement and notice to title shall run with the land as long as the ADU is maintained on the property. The property owner may, at any time, apply to the planning director for a termination of the ADU agreement. Such termination shall be granted upon proof that the ADU no longer exists on the property and that a notice to title has been recorded which that the ADU has been removed.

4. Permit. Upon receipt of a complete application, application fees, proof of recorded accessory dwelling unit agreement, and approval of any necessary building or other permits, an ADU permit shall be issued.

**20.134.080 Inspection.**

The city shall inspect the property to confirm that minimum and maximum size limits, required parking and design standards, and all applicable building, health, safety, energy, and electrical code standards are met.

**20.134.090 Violations.**

A. A violation of this chapter regarding provision of ownership shall be governed by subsection 20.134.090.D, and a violation of provision of legalization of nonconforming ADUs shall be governed by subsection 20.134.090.H. Violations of any other city permit or code requirements shall be governed by Chapter 20.02.

**20.134.100 General requirements.**

ADUs shall be subject to the following requirements, which shall not be subject to a variance.

A. ADU permits may only be issued for a legal lot of record zoned for single-family use containing not more than one (1) single family dwelling.

B. Occupancy. The maximum number of occupants in any ADU shall be 4 persons. Maximum occupancy may be further limited by Section 1004 (Occupant Load) of the International Building Code.

C. Composition. The ADU shall include facilities for cooking, living, sanitation, and sleeping.

D. Ownership and occupancy. The property owner must maintain his or her occupancy in the main residence or the ADU. For the purposes of this Chapter, "occupancy" means that the property owner, as reflected in title records, makes his or her legal residence at the site, as evidenced by property tax, voter registration, vehicle registration, or similar means, and actually resides at the site more than six months out of any given year, and at no time receives rent for the owner-occupied unit. Owners shall record a notice on title, as approved by the City, which attests to their occupancy and attests that, at no time, shall they receive rent for the owner-occupied unit. Falsely attesting owner-residency shall be a gross misdemeanor subject to a fine not to exceed \$5,000, including all statutory costs, assessments, and fees. In addition, ADUs shall not be subdivided or otherwise segregated in ownership from the main building.

E. Parking. No off-street parking is required for the ADU provided that the minimum required off-street parking per Chapter 20.124 for the primary use (single-family residence, commercial or industrial development) is met on the lot or if on-street parking is provided on both sides of the street(s) abutting the lot. One (1) parking stall shall be provided per ADU if either of the preceding conditions is not satisfied. If additional ADU parking is provided, parking for a commercial or industrial ADU shall be located in the rear portion of the lot and shall not be accessed from the front if suitable access to the rear is available, such as an abutting right-of-way that is or can practicably be developed. Driveways shall comply with the vehicular access and driveway standards in Chapter 20.139.020(2) and the City's development guidelines.

F. Home occupations. Home occupations shall be allowed, subject to existing regulations. However, for residential ADUs if both the main residence and the ADU contain home occupations, only one of the two is permitted to receive customers on the premises.

G. Short-term rental. The use of an ADU as a short-term rental shall be allowed, subject to compliance with the bed and breakfast regulations in Chapter 20.46.

H. Legalization of Nonconforming ADUs. Existing ADUs that are made nonconforming by this ordinance, or ADUs legally existing prior to the enactment of these requirements, may be maintained as a legal non-conforming use in accordance with Chapter 20.54.

I. Utilities. An ADU must be connected to the utilities of the main residence, or the associated commercial or industrial development, and may not have separately billed services, with the exception of telephone and cable television or internet.

**20.134.110 Bulk, location and design requirements.**

A. In commercial or industrial developments, detached ADUs are not allowed, and the ADU shall be located on or above the second floor of the building in which it is located.

B. For attached ADUs, the lot must meet the minimum lot dimensional and size requirements of the applicable zoning designation per Chapter 20.24. Attached ADUs that do not increase the building envelope of an existing residential structure are exempt from this requirement.

C. Size. For backyard cottage detached ADUs, refer to Section 20.32.030 of this Title. For an attached apartment ADU that is accessory to a detached residential dwelling, the ADU shall not exceed 40 percent of the total square footage of the residential dwelling and the ADU combined, after modification or construction, or 1,000 square feet, whichever is greater. For an attached apartment that is accessory to a commercial or industrial use, the ADU shall not exceed 1,000 square feet.

D. Height. For a backyard cottage detached ADU, refer to Section 20.32.030 of this Title. For an attached apartment that is accessory to a commercial or industrial use, refer to the appropriate building type in Section 20.32.

E. Location. A backyard cottage ADU shall be permitted as a second dwelling unit accessory to a detached dwelling unit and shall be located in the rear yard, in accordance with Section 20.32.030.. An accessory apartment ADU shall be permitted within a detached residential dwelling, or within a commercial or industrial building.

F. Setbacks and lot coverage. For a backyard cottage ADU, refer to Section 20.32.030 of this Title. For an attached apartment that is accessory to a commercial or industrial use, refer to the appropriate building type in Section 20.32.

G. Design - Attached ADUs. An attached ADU shall be designed to maintain the architectural design, style, appearance, and character of the main building as a single-family residence. If an attached ADU extends beyond the current footprint or existing height of the main building, such an addition must be consistent with the existing façade, roof pitch, siding, and windows. Any exterior modification or addition to a single-family residence shall comply with the design standards in Chapter 20.139. Additionally, only one entrance is permitted to be located in the front façade of the dwelling. If a separate outside entrance is necessary for an attached ADU, it must be located either off the rear or side of the main building. Such entrance must not be visible from the same view of the building which encompasses the main entrance to the building and must provide a measure of visual privacy.

H. Design – Attached ADUs Associated with a Commercial or Industrial Development. The ADU shall be part of an overall site and building design that complies with the requirements Chapter 20.128 (Design Standards), and shall be reviewed in conjunction with the underlying land use or building permit.

I Design - Detached ADUs. A detached ADU shall be designed to complement the architectural design, style, appearance, and character of the main building by utilizing complementary colors and finish materials, window styles, and roof design to the main building. The entrance door to a detached ADU shall not face the same property line as the entrance door to the main building except when the entrance door to the ADU is located behind the rear wall of the main building.

J. Other Accessory Buildings. The detached ADU structure shall be the only accessory building allowed on the parcel, although it can be integrated into a structure that includes a garage or other non-habitable space. Accessory buildings under 200 square feet in size may be exempted from this restriction, provided that such buildings meet the relevant zoning requirements for height, setbacks and maximum lot coverage.

K. Walkways. For ADUs with a separate exterior entrance, a pedestrian walkway shall be provided between the ADU and the nearest sidewalk, or where no sidewalk exists, the nearest street right-of-way. The walkway shall be composed of materials that are distinct from any adjacent vehicle driving or parking surfaces. The walkway may function as a shared pedestrian/vehicle space provided that it is constructed of distinct materials, is located along an exterior edge of a driving surface, and vehicles are not permitted to park on the walkway so that pedestrian use is hindered or prevented.

## Chapter 20.100

### DEVELOPMENT STANDARDS—SUBDIVISION DESIGN

#### Sections:

- 20.100.010 Purpose.**
- 20.100.020 General Requirements.**
- 20.100.030 Lot Layout.**
- 20.100.040 Street Standards.**
- 20.100.050 Intersections, Half-Streets.**
- 20.100.060 Street Length.**
- 20.100.070 Cul-de-sac Streets**
- 20.100.080 Dead-end Streets.**
- 20.100.090 Street Width and Design.**
- 20.100.100 Street Offsets.**
- 20.100.110 Curbs and Gutters.**
- 20.100.120 Private Streets.**

#### **20.100.010 Purpose.**

(1) The purpose of this section is to ensure that subdivisions, short plats, and binding site plans are compact, pedestrian-friendly, provide necessary infrastructure and services, and contribute to the character of the town and surrounding neighborhoods, by providing building and site design standards that:

- (a) Reduce the visual impact of large residential buildings from adjacent streets and properties;
- (b) Enhance the aesthetic character of large residential buildings;
- (c) Contain sufficient flexibility of standards to encourage creative and innovative site and building design;
- (d) Meet the on-site recreation needs of project residents;
- (e) Enhance aesthetics and environmental protection through site design;
- (f) Allow for continued or adaptive re-use of historic resources while preserving their historic and architectural integrity;
- (g) Create pedestrian-friendly neighborhoods; and
- (h) Provide for the orderly development of property.

(2) These guidelines do not alter the standards as provided in the underlying zoning districts defined in this title. Projects shall comply with all relevant criteria set forth in this chapter.

#### **20.100.020 General Requirements.**

(1) Design in accordance with city standards. All subdivisions, short plats, and binding site plans shall be designed in accordance with all city standards including but not limited to the adopted City



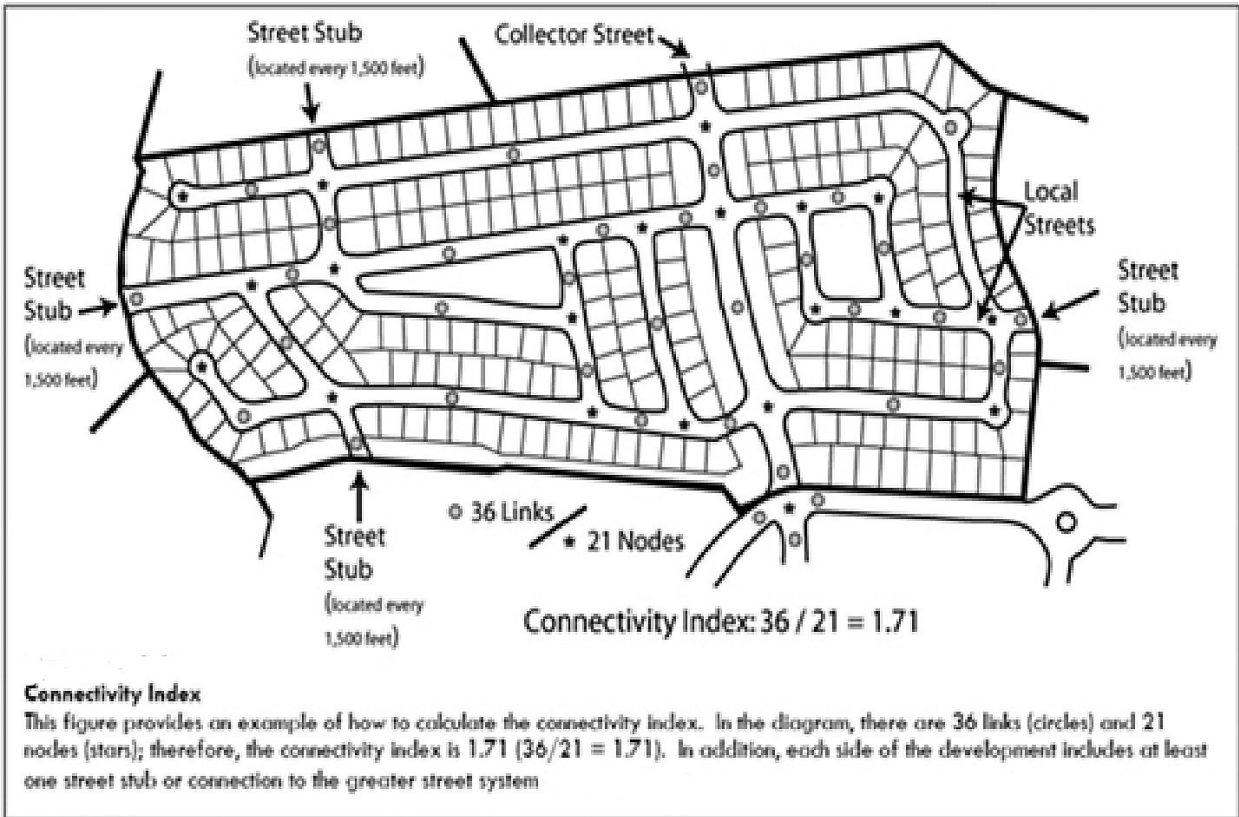
of Port Orchard Public Works Engineering Standards and Specifications (PWESS) and the Port Orchard Comprehensive Plan.

(2) Approach Roads and Access. All subdivisions, short plats, and binding site plans with a single point of access must have no roadway that exceeds three hundred (300) feet or sixty (60) dwelling units from the access point or an average daily traffic (ADT) of greater than one thousand two hundred (1,200). All other subdivisions, short plats, and binding site plans must have at least two points of vehicular access and must be connected with improved roadways to the city's improved thoroughfare and street system by two or more approach roads of the dimensions and standards hereinafter set forth. An access road that is divided with twenty feet in each direction to the intersection of two streets shall be considered two means of access.

- (a) Requirements for dedication of right-of-way and improvement of approach roads, signalization, median breaks, additional lanes and other traffic mitigation or safety improvements may be increased depending upon the size or density of the proposed development, or if the need is demonstrated by traffic impact analysis.
- (b) An exception to standards under subsection (2) above may be granted for a subdivision, short plat, or binding site plan may be allowed by the decision making authority provided a second emergency access that is controlled in a manner acceptable to Fire Authority shall be provided.
- (c) Adequate lighting of access points shall be coordinated and provided by the subdivider.

(3) Roadway Network Connectivity.

(a) All proposed developments must have a connectivity index of 1.4 or greater. The connectivity index shall be calculated by dividing the total number of links (streets including stub-out streets that connect nodes) by the total number of nodes (intersections, cul-de-sac, no-outlets, dead-ends).



- (b) The decision making authority may grant exceptions to these requirements only upon a finding that the development is constrained by topographic features, existing development or other impassible features.
- (c) Street right-of-way dedication. Street right-of-way dedications may be required as a condition of subdivision, short plat, or binding site plan.
- (d) Street Construction. All streets and thoroughfares providing access to a proposed subdivision, short-plat, or binding site plan shall be constructed and paved to city standards and within rights-of-way in accordance with the adopted PWESS, city's transportation plan, and other adopted city standards.
- (e) Intersection Improvements and Traffic Control Devices. Intersection improvements may be required to ensure public safety as a condition of subdivision, short plat, or binding site plan and shall be designed and improved in accordance with the city's transportation plan, adopted PWESS and/or nationally recognized standards subject to city review and acceptance. Intersection improvements and/or traffic control devices shall be required only as a result of the findings of a traffic impact analysis reviewed and accepted by the city.
- (f) Private Streets. See Section 20.100.120 - Private streets.
- (g) Access Management on City Streets. Subdivisions, short plats, and binding site plans shall meet the access management standards found in the adopted PWESS.

- (h) Access management on state highways. Subdivisions, short plats, and binding site plans shall meet WSDOT access management standards.

**20.100.030 Lot Layout.**

(1) Lots to be created within a proposed subdivision, short plat, or binding site plan should comply with the following requirements:

- (a) Lot lines should be at right angles to street lines or radial to curvilinear streets unless a variation will result in a better street or lot plan; and
- (b) Corner lots should be graded to provide sufficient sight clearance at intersections.

**20.100.040 Street Standards.**

(1) Arrangement of Streets and Conformance to the City of Port Orchard Comprehensive Plan Transportation Element. Except as provided in subsection (1)(a) below, the city's adopted Transportation Element shall be used to determine the minimum type of roadway, the general location of the roadway, and the areas that the roadway is intended to connect as part of the platting process. For streets that are not identified in the city's Transportation Element, such as local residential streets, the arrangement of such streets within a subdivision shall:

- (a) Conform to any plan for the neighborhood or subarea plan approved or adopted by the city to meet a particular situation where topographical or other conditions make continuance or conformity to existing streets impractical;
- (b) Provide for future access, by stubbing streets for future extension, to adjacent vacant or undeveloped areas which will likely not have incompatible land uses; and
- (c) Not conflict in any way with existing or proposed driveway openings (including those on the other side of an existing or planned median-divided arterial, in which case new streets shall align with such driveway openings such that median openings can be shared).

(2) Projections and Related Requirements. Where adjoining un-subdivided areas exist, the subdivision street arrangement shall make provision for projection of streets into such areas. Dead-end streets shall otherwise be prohibited, except where projections into un-subdivided land are necessary or where turnarounds are provided in accordance with Section 20.100.080 of this chapter. Private streets shall not be allowed to project beyond the subdivision boundary, and therefore shall not be allowed to dead-end at the subdivision boundary.

(3) Transitions of Right-of-Way Width. Wherever the right-of-way width of a residential, local, collector or arterial street must transition to a greater or lesser width, the transition shall not occur within an intersection but within the street right-of-way so that the right-of-way shall be the same on both sides of the street intersection.

(4) Configuration Shall Reduce Minimal Offsets. Intersecting streets onto an existing or future divided roadway must be configured in accordance with Section 20.100.100 – Street Offsets, such that the centerline off-set will accommodate the appropriate median opening and left-turn lanes (with required transition and stacking distances) on each divided roadway, and shall be aligned with any existing or

proposed streets or driveways on the opposite side of the divided roadway (in order to share the median opening). Median openings and off-sets should be analyzed in the traffic impact analysis, and a determination made if developments sharing a median opening may cause additional traffic conflicts, where an exception to sharing a median opening may be made.

(5) Extensions of Existing Streets. New streets which extend existing streets shall bear the names of the existing streets and shall be dedicated at equal or greater right-of-way widths than the existing streets for an appropriate transition length, if applicable, unless a lesser street is justified by a TIA.

(6) Street Grades and Horizontal Curves. Minimum and maximum street grades and horizontal curves shall conform to standards set forth in the Engineering Standards and Specifications the American Association of State Highway and Transportation Officials (AASHTO), or as otherwise approved by the City Engineer.

(7) Street Signs. Street signs shall be installed by the developer at all intersections within and abutting the subdivision. These signs shall be of a type approved by the city, and shall be installed according to city standards and in conformance with the Manual on Uniform Traffic Control Devices.

(8) Streetlights. Streetlights shall be installed in accordance with the requirements set forth in the adopted PWESS.

(9) Pedestrian Connectivity. Pedestrian connectivity and access shall be provided between subdivisions, schools (where access is allowed by the school district), cul-de-sacs (i.e., bulb-to-bulb access), adjacent areas available for future development, and park and open space areas.

(10) Reserve Strips. Reserve strips controlling access to streets shall be prohibited except where their control is required by the city and approved by the approving authority.

#### **20.100.050 Intersections, Half-Streets.**

(1) Intersections. Street intersections shall be situated at an angle of ninety (90) degrees, plus or minus fifteen (15) degrees, except where the intersection utilizes knuckles, turning heels or eyebrows in accordance with the adopted PWESS. Such intersections shall maintain proper intersection visibility as determined by the latest edition of AASHTO's "A policy on Geometric Design of Highways and Streets." The major access driveway to large multifamily, commercial and industrial developments shall also meet the requirements of this chapter.

(2) Half-Streets. Construction of half-streets shall be prohibited, except when essential to the reasonable development of the subdivision, short plat, or binding site plan in conforming with the other requirements of this code and the Transportation Element, and where the decision making authority makes a determination at the time of approval that there is no immediate benefit to be gained by constructing the full street section since no access from the street will be needed by the project in question.

## 20.100.060 Street Length.

(1) Length of a block or street segment. The maximum length of any block or street segment (including a looped street) shall be six hundred (600) feet along arterial streets. Block faces shall not exceed eight hundred (800) feet along other streets and the full perimeter of a block shall not exceed two thousand four hundred (2,400) feet except where topographic or critical areas features on parcels of one-half acre or larger would justify an exception from this requirement. Cul-de-sac streets shall adhere to Table 20.100.070 (1) or other requirements herein. Measurements shall be measured along the centerline of the street from the centerline or center point of one intersection to the centerline or center point of the next intersection. For the purposes of measurement, either a full four-way intersection or a "T" three-way intersection shall be considered an intersection.

(2) The length of a block or street segment may exceed the maximum length stated in Subsection 1. above under the following conditions:

- (a) Blocks containing retention or detention ponds;
- (b) Blocks containing parks; and
- (c) Development where the proposed development abuts the rear of an existing development and no rights-of-way have been provided.

(3) Maximum Length of a Cul-De-Sac Street.

- (a) No cul-de-sac served by one access point in any single-family, multiple-family, industrial, or commercial subdivision shall exceed four hundred fifty (450) feet in length or the length as shown in Table 20.100.070 (1), whichever is less.
- (b) No cul-de-sac in any single-family subdivision district shall be designed to serve more than twenty-five (25) single-family dwelling units, unless an exception is granted by the Hearing Examiner to the maximum length, in which case the maximum number of dwelling units shall be increased in the same percentage as the maximum length has been increased.
- (c) For purposes of this paragraph, cul-de-sac length shall be measured along the centerline of the cul-de-sac from a point beginning at the intersection of the cul-de-sac street with the centerline of the street from which it extends to the center of the turnaround at the end of such cul-de-sac. (Also see Section 20.100.070 for cul-de-sac requirements.) For the purposes of measurement, either a full four-way intersection or a "T" three-way intersection shall be considered an intersection.
- (d) An exception to the maximum cul-de-sac lengths may be granted by the decision making authority to develop a parcel:
  - i. With significant topographic constraints such as those documented in a geological report or where the resulting roadway would exceed a 12% grade;
  - ii. With critical areas requiring protection on or adjacent to the parcel;
  - iii. That is effectively landlocked with no other alternative than a cul-de-sac exceeding four hundred fifty feet;
  - iv. Is in a proposed subdivision that has such a unique configuration that the only way to serve the area in question is with a cul-de-sac exceeding four hundred fifty (450) feet. Such exception shall not be granted if the length of the cul-de-sac can be reduced by connection to an adjacent and/or parallel street. The desire to gain additional lots from the cul-de-sac exception by itself is not reason enough to grant such exception to the maximum length;

- v. Additional modifications may be required by the decision making authority upon recommendation by the fire authority including intermediate turnarounds (eyebrows) to accommodate emergency vehicles being provided at a maximum distance of three hundred feet;
- vi. Building construction within the area of the cul-de-sac beyond the four hundred fifty (450) feet distance shall be fire sprinklered and a note shall be added to the recording plat and the subdivision improvement plans indicating that buildings are required to be sprinklered within the subdivision, and which lot numbers have such requirement.

(4) Cross-Reference. Also see Section 20.100.070 below for cul-de-sac requirements.

**20.100.070 Cul-de-sac Streets.**

Cul-De-Sac Streets. Except where projecting into adjacent unsubdivided areas, any street having only one vehicular access to another street shall be terminated by a permanent turnaround. Standards for both the turnaround and its street approach are set forth within this section. Exceptions to these standards shall be discouraged due to firefighting and solid waste collection requirements. Any turnaround, either temporary or permanent, that does not meet these requirements shall be permanently signed for no parking or marked as a fire lane in accordance with the adopted PWESS.

(1) That portion of any street extending from an intersection to a turnaround shall be improved and rights-of-way platted with the minimal dimensions provided in Table 20.100.080 (1) below.

Table 20.100.070 (1): Width for Cul-de-sac Streets for Certain Activities

Activity Served	Paving Width*	Right-of-way Width	Additional Requirements
Less than 12 dwellings	32'	52'	300 feet maximum length
1 – 25 dwelling units	34'	56'	450 feet maximum length – Single family, duplex only**
Nonresidential Zoning Districts (except as otherwise specified)	36'	56'	300 feet maximum length
Industrial Districts	40'	62'	300 feet maximum length

\* Measured from the front of adjoining curbs.

\*\* Cul-de-sacs (dead end streets) serving triplex, quadraplex and higher density multifamily uses shall be discouraged. Exceptions may be granted by the Hearing Examiner where no alternative exists and meeting the Industrial Districts Standard or in infill development situations.

(2) The turnaround portion of any cul-de-sac shall be improved, and rights-of-way platted, as prescribed below:

Table 20.100.070-2: Width for Cul-de-sac Turnarounds for Certain Activities

Activity Served	Paving Width*	Right-of-Way Width	Additional Requirements***
Residential and Nonresidential Zoning Districts (except as otherwise specified)	90' diameter	110' diameter or 100' with 10' utility and sidewalk easement**	Shall be a min. of 10' of ROW or ROW/Easement Combination behind curb
Industrial Districts	100' diameter	120' diameter	

\* Measured to front of adjoining curbs.

\*\* 7 feet to provide room for fire hydrants and other utilities, streetlights and traffic/no parking signs, and satisfy ADA compliance.

\*\*\* or in accordance with the Engineering Standards and Specifications.

**20.100.080 Dead-end Streets.**

Dead-end Streets. Except when recommended by the Department of Community Development, no public dead-end streets will be approved unless they are provided to connect with existing streets (including stubbed-out streets) or future platted streets on adjacent land.

- (1) In the case of dead-end streets which will eventually be extended into the adjacent property, no more than one lot (per side) can front onto the dead-end street stub unless a temporary turnaround bulb (with the appropriate temporary street easement) is provided at the end.
- (2) A temporary dead-end street shall not exceed the maximum allowed length of a normal cul-de-sac, and the temporary turnaround bulb must be constructed like a cul-de-sac, as provided in Section 20.100.070 Cul-de-sac streets, above.
- (3) A note shall be placed on the final plat, short plat, or binding site plan clearly labeling any temporary dead-end streets (if any) that will at some point be extended into the adjacent property. Any required temporary turnaround easements shall be shown on the final plat along with their appropriate recording information, if they are off-site or established by separate instrument.

**20.100.090 Street Width and Design.**

(1) Pavement Widths and Rights-of-Way. Pavement widths and design and rights-of-way shall be as designated in the adopted PWESS, provided that for Local Access Streets, the subdivision also meets the applicable block length requirements of 20.100.060 and connectivity index in 20.100.020.

(2) Design. Streets shall be designed according to the following requirements:

(a) Arterial. Streets shall be designed to accommodate cross-city traffic movement, distributing traffic to and from collector streets;

(b) Collector. Streets shall be designed to collect traffic from local streets and connect with arterial streets and freeways;

(c) Residential Collector. Generally, the term "subcollector" shall refer to streets designed to accommodate traffic movement from local streets to higher classifications of streets as well as provide direct access to activity on individual lots. Specifically, a subcollector may be defined as any street or portion thereof providing direct access to property within commercial or industrial districts as designated on the official zoning map of the City of Port Orchard, any street or portion thereof providing the shortest direct route to a collector street for twenty-five dwelling units or more, or any street segment extending without off-set from a collector street and connecting two or more collector streets. Where subcollector streets are terminated by a permanent turnaround, standards for street width and paving shall be as described in the Engineering Standards and Specifications;

(d) Local. Streets shall be designed to provide direct access to residential activity, and in such a way as to encourage connectivity of the roadway network, but discourage cut-through traffic.

#### **20.100.100 Street Offsets.**

Intersection Offsets. Where parallel streets intersect another street, the centerline of those streets shall be offset a minimum of one hundred twenty (120) feet, unless a stricter standard is adopted in a subarea or corridor plan.

#### **20.100.110 Curbs and Gutters.**

Curbs and Gutters. Curbs and gutters shall be installed according to the provisions of this chapter and to the adopted PWESS. Combination curb and gutter improvements shall be provided to mark the edge of pavement and carry surface water, as set forth below:

- (1) Beside Arterial and Collector Streets. The subdivider shall install curbs on both sides of all arterial and collector streets within the subdivision, and on one side of all such streets along the subdivision frontage.
- (2) Beside Local Streets. The subdivider shall install curbs on both sides of all local streets within the subdivision and at subdivision boundaries, except for existing boundary streets, in which case curb and gutter installation shall be required on the subdivision's frontage only.
- (3) At Street Intersections. The minimum curvature of curbs at street intersections shall be as prescribed in the adopted PWESS and shall maintain proper stopping sight distance as determined by the latest edition of AASHTO's "A policy on Geometric Design of Highways and Streets."

#### **20.100.120 Private Streets.**

(1) Permitted Only as Local Street. Private streets shall require approval as an exception at the time of preliminary plat approval by the Hearing Examiner in accordance with this title. No streets or thoroughfares shown in the adopted City of Port Orchard Comprehensive Plan may be a nonpublic street. Construction and development of private streets shall meet the standards for right-of-way width and improvement as set forth in this chapter as applied to public streets.



(2) Classification. At the time a private street is proposed, it shall be classified as either a local access or sub-collector street, as described herein and made to conform in all respects with right-of-way paving, curb and gutter, construction, and design requirements as applicable to a public street.

(3) Subdivision Boundary Streets. New subdivision boundary streets (streets proposed or constructed along a subdivision perimeter boundary) shall not be private.

(4) Private Streets, General. In order to be considered for an exception to allow the construction of private streets, the developer shall meet the requirements set out in this section.

(a) Construction: All private streets shall be designed, constructed, and maintained to meet city standards. The construction and improvement plans shall be reviewed by the city in the same manner as construction and improvement plans for public infrastructure. The city shall not participate in any portion of the cost of constructing a private street.

(b) Inspection During Construction: All private streets shall be subject to inspections by city staff in the same manner, at the same intervals, as public streets, including the payment of applicable inspection fees. A construction schedule shall be submitted with the construction and improvement plans in order to assist in scheduling the inspections. Failure to pass an inspection and meet city construction standards shall require re-inspection, and re-construction, as necessary. No certificates of occupancy shall be released for structures along a private street until all inspections shall have been completed satisfactorily.

(c) Traffic Control Devices: All private traffic control devices and regulatory signs shall conform to the "Manual of Uniform Traffic Control Devices", as amended, and to city standards.

(d) Restricted Access: The subdivision homeowners association shall clearly mark entrances to all private streets with a sign, in accordance with the adopted PWESS, placed in a prominent and visible location, indicating that the streets within the subdivision are private, and not maintained nor regularly patrolled by the city. All restricted access entrances shall be manned twenty-four (24) hours every day, or they shall provide a reliable, alternative means of ensuring access into the subdivision by the City, by emergency service providers, and by other utility or public service providers, such as postal carriers and utility companies, with appropriate identification. The method used to ensure city and emergency access into the subdivision shall be approved by South Kitsap Fire and Rescue and by any other applicable emergency service providers during the final platting process. Gates on private streets shall provide a traffic queue analysis and provide adequate on-street storage in advance of the gate. If the homeowners association fails to maintain reliable access as required by city codes, the city may enter the private street subdivision and remove any gate or device that is a barrier to access, and bill the expense to the association. If the bill is not paid, the city may file a lien for the expense against any property owned by the association.

(e) Waiver of Services: Certain city services may not be provided for private street subdivisions, including street maintenance, routine law enforcement patrols, enforcement of traffic and parking regulations, preparation of accident reports, and

payment of costs for street lighting. A note as to waiver of services may be required on the face of the plat.

- (f) **Street Lighting:** Street lighting as required by this title shall be entirely at the expense of the developer and subsequent property owners. Decorative poles or alternative spacing may be approved by the City Engineer, who shall make such recommendation based on the lighting type, the lumens necessary to effectuate safe traffic and pedestrian travel, and a finding that the proposed lighting plan provides as well or better for the health, safety and welfare of the future residents of the private street subdivisions.
- (g) **Maintenance:** The developer shall provide for the establishment of a homeowners or property owners association, in covenants, conditions, and restrictions (CCRs), to assume the obligation of perpetual maintenance of private streets and other improvements held privately, including a mandatory assessment for such private streets and improvements to be placed on all property owners within the subdivision, allowance for city staff to inspect the streets to assure they are being maintained to city standards, hold harmless provisions as required in subsection 5, and providing for notice to the city attorney and city manager of any amendments to these relevant sections. The city shall be a necessary party for the amendment of any portions of the CCRs dealing with these requirements. The proposed CCRs shall be submitted for review by the city attorney at the time of filing the preliminary plat. The city attorney shall review the CCRs to ensure that the requirements of this section are met, and shall submit recommended changes to the developer, who shall incorporate such changes. Absence of city attorney approval of the CCRs shall require the denial of the exception for private streets.
- (h) **Petition to Convert to Public Streets:** A property owners association may petition the city to accept private streets and any associated property as public streets and right-of-way upon written notice to all association members, and the favorable vote of a majority of the membership, or as required in the CCRs. A dedication instrument shall also be submitted, and shall be reviewed and the final form approved by the city attorney prior to submission of this request to city council.

The city shall not be required to accept any private streets for public dedication and maintenance. The staff shall review the request and make a recommendation to city council. City council shall make their decision based on the public health, safety and welfare considerations of the streets. As a condition of accepting the dedication and maintenance of private streets, the city may impose a requirement for repairs and improvements at private expense prior to acceptance, enter into an agreement for an assessment or pro-rata sharing of costs for repairs or improvements prior to acceptance, or other legal or equitable options to ensure that the streets being accepted are not a liability to the city. The city shall be the sole judge of the nature and extent of repairs or improvements needed. The city may also require, at the sole expense of the association's or property owner's expense, the removal of any guard houses, access control devices, landscaping or other amenities located within the streets or common areas prior to city acceptance.

(5) Hold Harmless: The property owners association, as owner of the private streets and appurtenances, shall release, indemnify, defend and hold harmless the city, any other governmental entity, and any public utility entity for damages to the private streets that may be occasioned by the reasonable use of the private streets by same, and for damages and injury (including death) arising from the condition of the private streets, out of any use of access gates or cross arms, or out of any use of the subdivision by the city or governmental or utility entity.

## Chapter 20.122

### BUILDING ELEMENTS

#### Sections:

**20.122.010 Intent**

**20.122.020 Awning and Canopy**

**20.122.030 Balconies**

**20.122.040 Forecourt**

**20.122.050 Gallery**

**20.122.060 Porch**

**20.122.070 Stoop**

#### **20.122.010 Intent.**

The following standards are intended to supplement POMC 20.32 and ensure that certain building elements, when added to a street-facing façade, are of sufficient size to be both usable and functional and be architecturally compatible with the building they are attached to.

#### **20.122.020 Awning and Canopy.**

A wall-mounted, cantilevered structure providing shade and cover from the weather for a sidewalk.



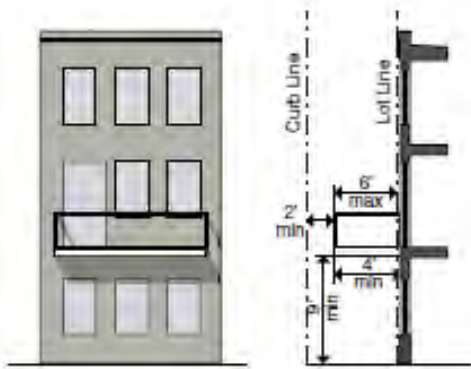
(1) An awning/canopy must be a minimum of nine (9) feet clear height above the sidewalk and must have a minimum depth of six (6) feet.

(2) An awning/canopy may extend into a primary or side street setback.

(3) An awning/canopy may encroach up to six (6) feet into the public right-of-way but must be at least two (2) feet inside the curb line or edge of pavement, whichever is greater.

#### **20.122.030 Balcony.**

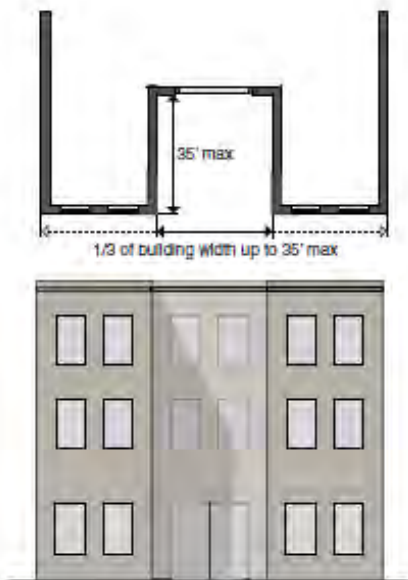
A platform projecting from the wall of an upper-story of a building with a railing along its outer edge, often with access from a door or window.



- (1) A balcony must be at least four (4) feet deep.
- (2) A balcony must have a clear height above the sidewalk of at least nine (9) feet.
- (3) A balcony may be covered and screened but cannot be fully enclosed.
- (4) A balcony may extend into a into a primary or side street setback.
- (5) A balcony may encroach up to six (6) feet into the public right-of-way but must be at least two (2) feet inside the curb line or edge of pavement, whichever is greater.

**20.122.040 Forecourt.**

An open area at grade, or within thirty (30) inches of grade, that serves as an open space, plaza or outdoor dining area.



- (1) A forecourt must be no more than one-third of the length of the building face, and in no case longer

than thirty-five (35) feet in width.

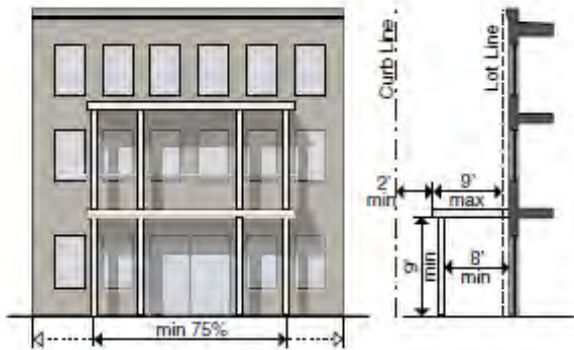
(2) The depth of the forecourt must not exceed the general width. A forecourt may be no more than thirty-five (35) feet in depth.

(3) A maximum of one forecourt is permitted per lot.

(4) A forecourt meeting the above requirements is considered part of the building for the purpose of measuring the build-to zone.

#### **20.122.050 Gallery.**

A covered passage extending along the outside wall of a building supported by arches or columns that is open on three (3) sides.



(1) A gallery must have a clear depth from the support columns to the building's facade of at least eight (8) feet and a clear height above the sidewalk of at least 9 feet.

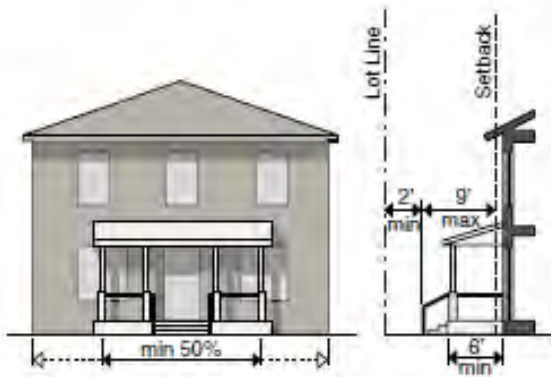
(2) A gallery must be contiguous and extend over at least seventy-five percent of the width of the building facade from which it projects.

(3) A gallery may extend into a primary or side street setback.

(4) A gallery may encroach up nine (9) feet into the public right-of-way but must be at least two (2) feet inside the curb line or edge of pavement, whichever is greater.

#### **20.122.060 Porch.**

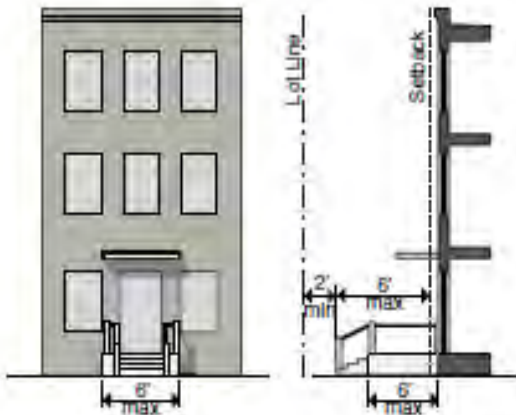
A raised structure attached to a building, forming a covered entrance to a doorway.



- (1) A front porch must be at least six (6) feet deep (not including the steps).
- (2) A front porch must be contiguous, with a width not less than fifty percent of the building façade from which it projects.
- (3) A front porch must be roofed and may be screened, but cannot be fully enclosed.
- (4) A front porch may extend up to nine (9) feet, including the steps, into a required front setback, provided that such extension is at least three (3) feet from the vertical plane of any lot line.
- (5) A front porch may not encroach into the public right-of-way.

**20.122.070 Stoop.**

A small raised platform that serves as an entrance to a building.



- (1) A stoop must be no more than six (6) feet deep (not including the steps) and six (6) feet wide.
- (2) A stoop may be covered but cannot be fully enclosed.
- (3) A stoop may extend up to six (6) feet, including the steps, into a required setback, provided that such extension is at least two (2) feet from the vertical plane of any lot line.
- (4) A stoop may not encroach into the public right-of-way.

## Chapter 20.124

### DEVELOPMENT STANDARDS – PARKING AND CIRCULATION

#### Sections:

- 20.124.010 Purpose.**
- 20.124.020 Applicability and Administration.**
- 20.124.030 Off-street parking spaces requirement.**
- 20.124.040 Bicycle parking required.**
- 20.124.050 Accessible parking requirements.**
- 20.124.060 Stacking spaces for drive-through facilities.**
- 20.124.070 Transit and rideshare provisions.**
- 20.124.080 Pedestrian circulation and access.**
- 20.124.090 Off-street parking design standards.**
- 20.124.100 Compact car allowance requirements.**
- 20.124.110 Internal circulation road standards.**
- 20.124.120 Downtown Mixed-Use parking standards.**
- 20.124.130 Minimum parking standards.**
- 20.124.140 Minimum parking stall dimensions.**

#### **20.124.010 Purpose.**

The purpose of this chapter is to:

- (1) Implement the city's Comprehensive Plan;
- (2) Ensure that the city's supply of available parking matches parking demand most of the time;
- (3) Encourage the continued development of Port Orchard as a walkable community;
- (4) Support the efficient provision of transit services including buses and passenger ferries;
- (5) Support transit-oriented development in local centers;
- (6) Limit the creation of unnecessary new impervious surfaces;
- (7) Ensure the efficient use of available and existing parking;
- (8) Provide alternatives to single occupant vehicle trips;
- (9) Encourage the creation of housing that is affordable to all segments of the population;
- (10) Provide housing, employment, and commerce opportunities to residents who by choice or other limitation, do not own a car;
- (11) Recognize innovations in transportation including car sharing, ride sharing, bike sharing, and other emerging technologies that are likely to change transportation patterns in the future;
- (12) Recognize that the city's goals related to the development of walkable local centers is hindered by restrictive parking minimums and that expansion of transit service as an alternative to single occupant vehicle ownership is hindered by the lack of development in local centers; and
- (13) Support the commitment expressed in the city's Comprehensive Plan to reduce greenhouse gas emissions.

#### **20.124.020 Applicability and Administration.**

- (1) The City shall not issue any land use approval (including building permits, subdivisions, conditional use permits, binding site plans, short subdivisions, or other similar approvals which have the effect



of creating a parking demand) or issue an occupancy permit for any new building or a change in use unless the use complies with the parking requirements found in this chapter.

- (2) Parking studies prepared by individuals with expertise in traffic and parking analysis may be required at the discretion of the director for unique projects which don't fit squarely in the land use categories contained herein. The director may require that such studies be evaluated and reviewed by outside experts hired by the city at the developer's expense prior to city acceptance.
- (3) Required parking may be provided off-site if contracts and/or deed restrictions are provided to ensure the satisfaction of the minimum parking quantity requirements found in this chapter in perpetuity. Should the parking quantity requirements found in this chapter change, a contract and/or deed restriction may be amended by agreement with the city so long as minimum parking quantity requirements continue to be met under the new standard.

**20.124.030 Off-street parking spaces requirement.**

(1) Off-street parking areas shall contain at a minimum the number of vehicle and bicycle parking spaces set forth in Sections 20.124.040 and 20.124.140. Off-street parking ratios expressed as number of spaces per square feet means the gross square footage of floor area. If the formula for determining the number of off-street parking spaces results in a fraction, the number of off-street parking spaces shall be rounded to the nearest whole number with fractions of 0.50 or greater rounding up and fractions below 0.50 rounding down.

(2) An applicant may request a modification of the minimum required number of parking spaces by submitting an application for an administrative variance type 2 pursuant to POMC 20.28.150.

(3) When the city has received a shell-and-core building permit application, off-street parking requirements shall be based on the possible tenant improvements or uses authorized by the zone designation and compatible with the limitations of the shell-and-core permit. When the range of possible uses result in different parking requirements, the director will establish the amount of required parking based on a likely range of uses.

**20.124.040 Bicycle parking required.**

(1) Bicycle parking facilities shall be provided for new buildings or facilities, additions to or enlargements of existing buildings, or for changes in the use of buildings or facilities that result in the need for additional auto parking facilities in accordance with the parking requirements in 20.124.140 and where required in table, Section 20.124.140. The director is authorized to approve modifications to these standards when the applicant successfully demonstrates that the proposed alternative layout, location, design or type of racking meets the intent of these standards.

(2) The number of required bicycle parking spaces shall be calculated as shown in table, Section 20.124.140.

(3) Individual bicycle parking spaces shall be a minimum of seventy-five (75) inches long by twenty-four (24) inches wide for each space. Where double-sided multi-racks are utilized resulting in overlapping of bicycle parking spaces, the minimum bicycle parking space for two bicycles shall be one hundred (100) inches long by thirty-six (36) inches wide.

(4) Bicycle parking racks shall be located in areas visible from public right-of-way and, shall be provided with adequate lighting if intended for use after dark. A minimum of fifty percent of the required number of bicycle parking spaces shall be located within fifty (50) feet of a public entrance to the building requiring bicycle parking spaces.

(5) Bicycle parking racks shall support the bikes in a stable, upright position, without damage to wheels, frame or other components.

- (6) Bicycle parking racks shall support the frame of the bicycle at two (2) points of contact and at least one (1) wheel. Racks shall allow the frame and one wheel to be locked to the rack, regardless of whether the front wheel is removed or not. Racks shall be securely anchored. Racks shall accommodate a wide variety of sizes and types of bicycles, including those with water bottles or without kick stands.
- (7) Bicycle parking racks shall be permanently mounted/installed within private property on solid surfaces. Racks placed adjacent to sidewalks shall not encroach upon required pedestrian access ways, accessible routes or accessible passing space areas.
- (8) Access shall be provided to each required bicycle parking space. Aisles shall have a width of at least three feet to the front, rear or side of the bicycle parking spaces.
- (9) Racks shall be placed a minimum of twenty-four (24) inches away from walls and other elements that may create an obstacle to accessing the bike parking spaces.
- (10) Where the required bicycle parking spaces cannot be properly located upon the property generating the need for bicycle parking, the owner or applicant of the property generating the need for bicycle parking may apply for a street use from the city for permission to locate the bicycle parking on city right-of-way.
- (11) New and existing building and facilities may substitute up to ten percent of the required vehicular spaces for additional bike parking. Substitutions shall be made based on one (1) vehicular parking space for at least six (6) bicycle parking spaces.

**20.124.050 Electric vehicle parking required.**

- (1) Beginning January 1, 2020, development for each of the land uses identified in table 20.124.050(1) shall be required to provide electric vehicle infrastructure as shown in the table. For the purposes of table 20.124.050(1), electric vehicle charging stations shall be provided when a proposed development contains one or more of the land uses specified in the table, and one of the following occurs:
  - (a) A new development of 10,000 gross square feet or more is proposed;
  - (b) A new multi-family residential development containing 10 or more residential units is proposed;
  - (c) An addition or improvement is made to an existing development that brings the total development to 10,000 gross square feet or more; or
  - (d) The parking capacity of an existing parking garage, lot or other site is increased by more than fifty percent.
- (2) The first column in table 20.124.050(1) shows the type of land use for which electric vehicle charging stations shall be provided, pursuant to this section. The second column shows the minimum percentage of the facility's parking spaces that shall provide a connection to electric vehicle charging stations.

**Table 20.124.050(1)  
Required Number of Electric Vehicle Charging Stations**

Land Use Type	Percentage of Parking Spaces
Multi-family residential	10%
Overnight Lodging (Levels 3-4)	3%
Retail establishment	1%
All Restaurants (excluding food trucks)	1%

Land Use Type	Percentage of Parking Spaces
All Office	3%
All Medical	3%
Industrial	1%
All Civic Uses	3%
Convenience Store with Fuel Pumps	5%, minimum of 2 spaces.
Other Uses	1%

(3) Design for Expansion. In order to allow for additional electric vehicle parking in the future as the market for such vehicles grows, beginning January 1, 2023, all development that meets the criteria of subsection (1) of this section shall be designed to allow for double the amount of electric vehicle parking shown in table 20.124.050(1).

(4) Site design must provide electrical, associated ventilation, accessible parking, and wiring connection to transformer to support the additional potential future electric vehicle charging stations.

(5) General station requirements.

(a) Size. A standard size parking space shall be used for an electric vehicle charging station where such a station is required or planned.

(b) Installation and Equipment. The station installation and equipment shall be consistent with the rules and regulations adopted pursuant to RCW 19.27.540, electric vehicle infrastructure requirements, and with applicable regulations under the city’s building and fire codes.

(c) Location, Design, and Maintenance. Where provided, parking for electric vehicle charging purposes shall meet the standards of subsections 1 through 5 of this section.

(i) Signage. Each charging station space shall be posted with signage indicating the space is only for electric vehicle charging purposes. Days and hours of operation shall be included if time limits or tow-away provisions are to be enforced.

(ii) Clearance. Charging station equipment mounted on pedestals, light posts, bollards or other devices shall be a minimum of twenty-four (24) inches clear from the face of curb.

(iii) Charging Station Equipment. Charging station outlets and connector devices shall be no less than thirty-six (36) inches or no higher than forty-eight (48) inches from the top of surface where mounted, and shall contain a retraction device and/or a place to hang permanent cords and connectors sufficiently above the ground or paved surface.

(iv) Charging Station Equipment Protection. When the electric vehicle charging station space is perpendicular or at an angle to curb face and charging equipment, adequate equipment protection, such as wheel stops or concrete-filled steel bollards shall be used.

(v) Maintenance. Charging station equipment shall be maintained in all respects, including the functioning of the charging equipment. A phone number or other contact information shall be provided on the charging station equipment for reporting when the equipment is not functioning or other problems are encountered.

(6) Data to Be Available. To allow for maintenance and notification, the owners of any private new electric vehicle infrastructure station that will be publicly available (see definition of “electric vehicle charging station – public”) shall provide information on the station’s geographic location, date of installation, equipment type and model, and owner contact information.

(7) Time limits may be placed on the number of hours that an electric vehicle is allowed to charge, prohibiting indefinite charging/parking. If applicable, warnings shall be posted to alert charging station users about hours of use and possible actions affecting electric vehicle charging stations that are not being used according to posted rules.

(8) Location. Placement of a single electric vehicle charging station is preferred at the beginning or end stall on a block face.

(9) Accessible facilities. Where electric vehicle charging stations are provided in parking lots or parking garages, excluding garages in single-household residential units, accessible electric vehicle charging stations shall be provided according to the ratios shown on Table 20.124.050. The first column indicates the number of electric vehicle stations being provided on site and the second column indicates the number of accessible charging stations that are to be provided for the corresponding number(s) of charging stations.

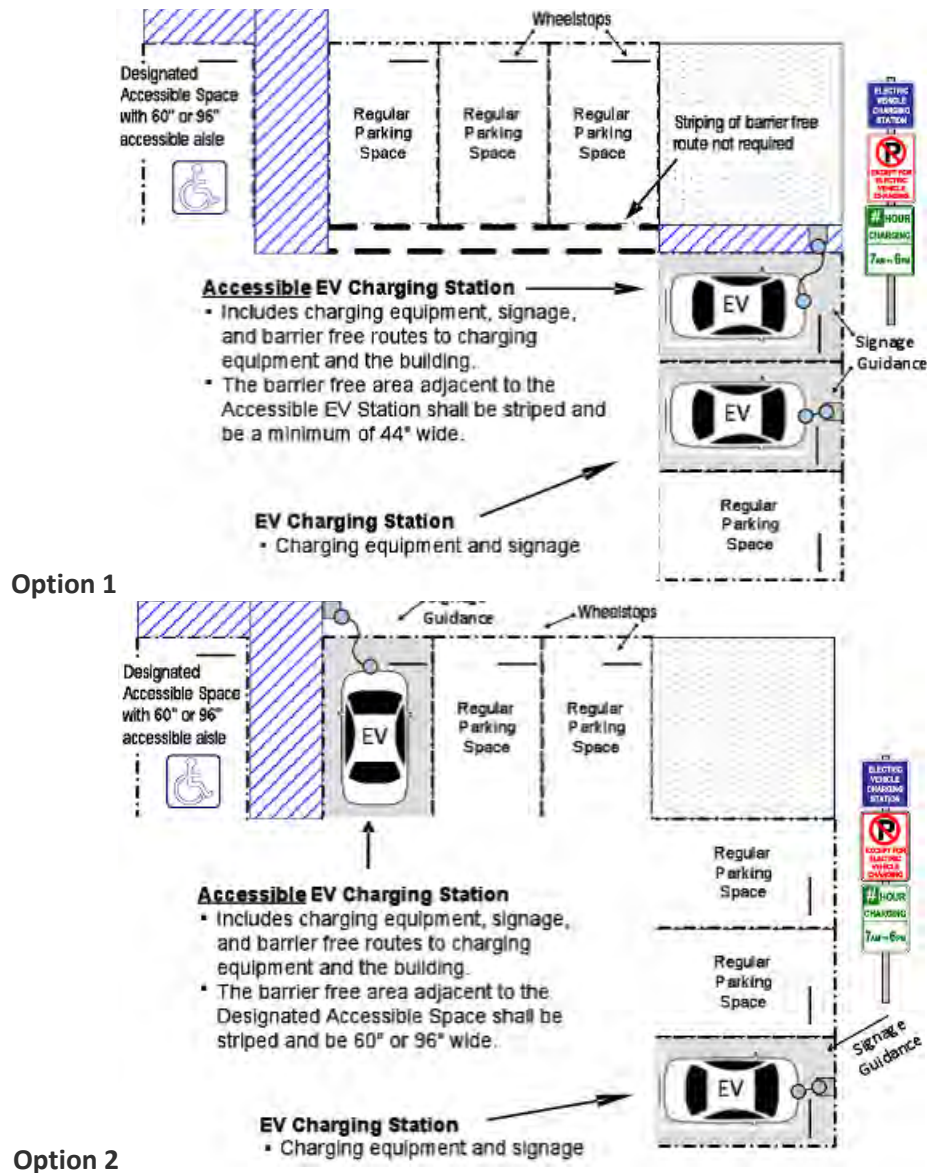
**Table 20.124.050(2)**

**Minimum Number of Accessible Electric Vehicle (EV) Charging Stations**

<b>Number of EV charging stations</b>	<b>Minimum accessible EV charging stations</b>
5–50	1
51–100	2
101–150	3
151–200	4
201–250	5
251–300	6

(10) Accessible electric vehicle charging stations should be located in close proximity to the building or facility entrance and shall be connected to a barrier-free accessible route of travel. It is not necessary to designate the accessible electric vehicle charging station exclusively for the use of disabled persons.

Below are two options for providing for accessible electric vehicle charging stations.



- (11) Charging and parking. Electric vehicle charging stations, where provided for public use, are reserved for parking and charging electric vehicles only, except as otherwise provided by this chapter.
- (12) Electric vehicles may be parked in any space designated for public parking, subject to the restrictions that would apply to any other vehicle that would park in that space.
- (13) Parking restrictions. No person shall stop, stand or park any nonelectric vehicle in a space designated through signage as an electric EV vehicle charging station. Any nonelectric vehicle is subject to removal by the property owner or the property owner's agent.
- (14) Any electric vehicle in an electric vehicle parking stall that is signed exclusively for electric vehicle charging and that either: (a) is not electrically charging; or (b) is parked beyond the days and hours designated on regulatory signs posted at or near the space shall be subject to removal as posted by the property owner or the property owner's agent. For purposes of this subsection, "charging" means an electric vehicle is parked at an electric vehicle charging station and is connected to the charging station equipment.

(15) Signage. Electric vehicle charging stations, other than in residential use, shall have posted signage, as identified in this section, allowing only charging electric vehicles to park in such spaces. (Exception: the director may allow an exemption for such signage at a portion of electric vehicle parking stalls within a publicly owned transit center upon the public transit agency demonstrating through a utilization study that not all of the electric vehicle charging stalls are needed for commuters using transit and that the amount of nonelectric vehicle parking is inadequate to meet existing needs; such exemption may be renewed by the director each year, based on a utilization study completed during the prior year.) For purposes of this subsection, “charging” means that an electric vehicle is parked at an electric vehicle charging station and is connected to the charging station equipment.



(16) Signage for parking of electric vehicles shall include:

(a) Information on the charging station to identify voltage and amperage levels and any time of use, fees, or safety information.

(b) As appropriate, directional signs to effectively guide motorists to the charging station space(s).

(17) Optional Signage. Optional information may be posted to alert potential charging station users to other expectations.

(18) An applicant may request a modification of the minimum required number of electric vehicle parking spaces by applying for an administrative variance type 2 pursuant to POMC 20.124.030 (2). Relief under an administrative variance type 2 pursuant to POMC 20.124.030 (2) may include but is not limited to allowing the installation of electrical conduits and sizing panels and electrical services to standard parking stalls in support of the future installation of charging facilities while waiving or delaying requirements for installing wiring and chargers as a condition of the project.

**20.124.060 Accessible parking requirements.**

Off-street accessible parking shall be provided in accordance with the Americans with Disabilities Act of 1990, or as subsequently amended, and all state and federal standards including but not limited to the minimum number of standard and van accessible spaces based on the total off-street parking facility size.

**20.124.070 Stacking spaces for drive-through facilities.**

(1) A stacking space shall be an area measuring eight feet by twenty (20) feet with direct forward access to a service window of a drive-through facility. A stacking space shall be located to prevent any vehicle from extending onto the public right-of-way or interfering with any pedestrian circulation, traffic maneuvering, or other parking space areas. Stacking spaces for drive-through or drive-in uses may not be counted as required parking spaces.

(2) Uses providing drive-up or drive-through services shall provide vehicle stacking spaces in the following serial or combined sequence per lane of drive-up window; such required spaces shall include the drive-up window space itself:

- (a) For each service window of a drive-through restaurant, a minimum of five stacking spaces shall be provided.
- (b) For all other uses, each drive-up window requires a minimum of three stacking spaces.
- (c) The director may require a vehicle stacking study for proposals if evidence exists to indicate that more than the minimum stacking spaces under sections a and b above are required to serve a particular use or development.

(3) Stacking spaces shall be screened from the right of way and adjacent properties using a five (5) foot type A or B landscape buffer as described in POMC 20.128.060.

#### **20.124.080 Transit and rideshare provisions.**

To support the use of ridesharing as an alternative mode of transportation that will aid the city in its efforts to reduce air pollution, traffic congestion, and fossil fuel consumption, the following shall apply:

(1) All land uses with twenty-five (25) employees working at any given work site during a single work shift listed under the government/business services and manufacturing tables shall be required to reserve parking spaces for registered rideshare vehicle parking as follows:

- (a) There shall be a minimum of one (1) open parking space reserved for an employee rideshare vehicle, and all registered rideshare vehicles shall have a reserved parking space.
- (b) A vehicle parked in a rideshare vehicle only parking space must be registered in Kitsap Transit's countywide public rideshare vehicle registration program, qualify as a rideshare vehicle as defined by Kitsap Transit, and display a valid car/vanpool pass.
- (c) Each rideshare vehicle parking space shall be clearly labeled with a Kitsap Transit carpool or vanpool parking sign.
- (d) Except for disabled parking spaces, rideshare vehicle parking spaces shall be located closer to the primary employee entrance than any other employee parking spaces.

(2) When one or more scheduled transit routes provide service within six hundred sixty (660) feet of the employment site and there is designated pedestrian access, the planning director may reduce the number of required off-street parking spaces.

(3) All uses which are located on an existing transit route and are required under the computation for required off-street parking to provide more than two hundred (200) parking spaces may be required to provide transit shelters, bus turnout lanes or other transit improvements as a condition of permit approval. Uses that reduce required parking pursuant to subsection 2 of this section may provide transit shelters if transit routes adjoin the site.

#### **20.124.090 Pedestrian circulation and access.**

The following general pedestrian design standards shall apply to all developments throughout the city in addition to those outlined elsewhere within the special design districts:

(1) All uses, except single-family detached buildings, shall provide pedestrian access onto the site.

Pedestrian access shall be located as follows:

- (a) Access points at property edges and to adjacent lots shall be coordinated with the existing development to provide circulation patterns between development sites. Pedestrian access to adjacent lots shall not be required if the topography is greater than three percent between the lots.
- (b) Residential developments shall provide links between cul-de-sacs or groups of buildings to allow pedestrian access from within the development and from adjacent developments to activity

centers, parks, common tracts, open spaces, schools or other public facilities, transit stops, and public streets.

- (2) Pedestrian walkways shall minimize the conflict between pedestrians and traffic at all points of pedestrian access to on-site parking and building entrances as follows:
  - (a) All developments which contain more than one building shall provide walkways between the principal entrances of the buildings.
  - (b) Pedestrian walkways across parking areas shall be located as either one of the following:
    - (i) Walkways running parallel to the parking rows shall be provided at a minimum of every two parking lot aisles.
    - (ii) Walkways running perpendicular to the parking rows shall be no further apart than twenty-five (25) parking spaces.
- (3) Pedestrian access and walkways shall meet the following minimum design standards:
  - (a) Access and walkways shall be physically separated from driveways and parking spaces by landscaping, berms, barriers, grade separation or other means to protect pedestrians from vehicular traffic. Lighting may be required.
  - (b) Access and walkways shall be a minimum of sixty (60) inches of unobstructed width and meet the surfacing standards of the Port Orchard road standards for walkways or sidewalks.
  - (c) Access shall be usable by mobility-impaired persons and shall be designed and constructed to be easily located by the sight-impaired pedestrian by grade change, texture or other equivalent means.
  - (d) A crosswalk shall be required when a walkway crosses a driveway or a paved area accessible to vehicles.
  - (e) Wherever walkways are provided, raised crosswalks or speed bumps may be located at all points where a walkway crosses the lane of vehicle travel.

**20.124.100 Off-street parking design standards.**

- (1) The most distant parking space shall not be located more than one thousand (1000) feet away from the nearest building entrance it is required to serve. Where the off-street parking areas do not abut the buildings they serve, the required maximum distance shall be measured from the nearest building entrance that the parking area serves:
  - (a) In designated local centers, required parking spaces may be located on consolidated off-site parking lots distributed at accessible locations within the center.
- (2) Minimum parking space and aisle dimensions shall be determined by the director. Regardless of the parking angle, one-way aisles shall be at least 10 feet wide, and two-way aisles shall be at least twenty (20) feet wide.
- (3) Any parking spaces abutting a landscaped area on the driver or passenger side of the vehicle shall provide an additional eighteen (18) inches above the minimum space width requirement to provide a place to step other than in the landscaped area. The additional width shall be separated from the adjacent parking space by a parking space division stripe. The parking space depth may be reduced when vehicles overhang a walkway under the following conditions:
  - (a) Wheelstops or curbs are installed; and
  - (b) The remaining walkway provides a minimum of sixty (60) inches of unimpeded passageway for pedestrians.
- (4) The amount of space depth reduction is limited to a maximum of eighteen (18) inches.
- (5) Lighting of off-street parking areas shall be provided for safety of traffic and pedestrian circulation on the site, as specified in the International Building Code. Lighting shall be designed to minimize direct illumination of abutting properties and adjacent streets. The director shall have the authority to



determine lighting requirements including requiring the preparation of lighting plans to determine the adequacy of onsite lighting as well as the off-site lighting impacts.

(6) Tandem or end-to-end parking is allowed in single-family detached residential developments. Driveways crossing required setback areas may be used for parking when serving single-family detached dwellings but shall not be considered for purposes of calculating required parking. Attached single-family and multifamily developments may have tandem parking areas for each dwelling unit but shall not combine parking for separate dwelling units in tandem parking areas.

(7) All vehicle parking and maneuvering areas serving a development activity shall be an asphalt or concrete surface, except in industrial zones where only required vehicle parking and related maneuvering areas must be paved.

(8) Low Impact Development (LID) best management practices (BMPs) shall be used for all parking lot design and construction, unless site and soil conditions make LID infeasible as determined by the city. LID BMPs for parking lot design and construction include, but are not limited to:

- (a) Pervious surfacing;
- (b) Integrating stormwater management facilities, such as bioretention swales, with required parking lot landscaping; and
- (c) Using native species in the landscape design.

LID BMPs shall be designed and constructed in accordance with the LID Technical Guidance Manual for Puget Sound (current edition).

**20.124.110 Compact car allowance requirements.**

Subject to director review and approval, up to forty (40) percent of the total number of spaces to be provided in any development may be sized to accommodate compact cars. Aisle widths shall conform to the standards set for standard size cars.

**20.124.120 Internal circulation road standards.**

Internal access roads to off-street parking areas shall conform with or exceed the surfacing and design requirements of the most recent adopted edition of the Port Orchard Public Works Design Standards manual.

**20.124.130 Downtown mixed-use parking standards.**

Except as otherwise provided in this section, development within Downtown Mixed-Use Zone (DMU) shall provide parking in accordance with the off-street parking requirements set forth in this chapter.

(1) Parking shall not be required for ground floor uses abutting Bay Street between Orchard Avenue and Harrison Avenue.

(2) For multifamily residential uses in the DMU zone, the off-street parking standard shall be a minimum of one parking space for each dwelling unit, regardless of the number of bedrooms.

(3) No new street level parking lot or parking garage that fronts directly on Bay Street shall be allowed between Robert Geiger Street and Seattle Avenue.

(4) Exemptions. The following uses and buildings within the DMU Zone shall be exempt from the parking standards set forth in this chapter:

- (a) Existing buildings and uses along both sides of Bay Street from Orchard Avenue to Seattle Avenue shall be exempt from the parking requirements set forth in this chapter.

**20.124.140 Minimum parking standards.**

- (1) Vehicle parking minimum quantities shall be provided in accordance with table 20.124.140 below.

Table 20.124.140

Land Use	Unit of Measure	Minimum Off-Street Parking Requirement	Supplemental Parking Requirement	Additional Off-street Parking required when lot does not have adjacent public on-street parking
<b>Residential Uses</b>				
Single-family detached (including manufactured homes, mobile homes)	Per Dwelling	2.0		1.0
Two-family	Per Dwelling	2.0		1.0
Single-family attached (2 units)	Per Dwelling	2.0		1.0
Single-family attached, multifamily:				
Studio	Per Studio Dwelling	1.25		.25
One Bedroom	Per One Bedroom Dwelling	1.5		.25
Two Bedroom	Per Two Bedroom Dwelling	1.75		.25
Three Plus Bedroom	Per Three Plus Bedroom Dwelling	2		.25
Boarding House	Per Bedroom	.5		.25
Congregate Living Facilities	Per Bedroom			
Lodging House				
Group home (up to 8 residents), except as follows:	Per Bedroom	.5		
Adult Family Home	Per Adult Family Home	2	Plus .5 spaces per bed.	1.0

All group living (9 or more residents)	Per Bed	.5		.25 per bed
All social service	Per Bed/Per 300 square feet office	.5 per bed and 1 per 300 square feet office		
<b>Public Uses</b>				
All civic uses, except as listed below:	Per 300 square feet office	1.0		
Community college, high school, university, trade or technical school	Per Class Room	1.0	Plus 1 per 5 students	
Elementary, Middle, or Junior High School	Per Class Room	1.0	Plus 1 per 50 students	
Club or lodge	Per 3 Fixed Seats	1.0		
Place of worship	Per 3 Fixed Seats	1.0		
All open space and park uses, except as listed below:				
Golf course	Per hole	1.0		
All utilities	No Min			
<b>Commercial Uses</b>				
All day care	Per 1,000 square feet	2.0		
All indoor recreation, except as listed below:	Per 1,000 square feet	1.0		
Shooting range	Per Target	1.0		
Bowling Alley	Per Lane	3.0		
All outdoor recreation, except as listed below:	Determined during application			
Shooting range	Per Target	1.0		
All overnight lodging	Per Room available for overnight	1.0		

	use by guests			
All medical:	Per 1,000 square feet	2.0		
All office	Per 1,000 square feet	2.0		
All personal and business services	Per 1,000 square feet	2.0		
All restaurants, (except that taverns, bars, and portions of buildings within restaurants primarily used for the consumption of alcohol shall not require any vehicle parking or be included in minimum parking calculations)	Per 1,000 square feet	5.0		
All retail sales	Per 1,000 square feet	2.0		
All vehicle and tool/construction equipment sales and rentals	Per 1,000 square feet	2.0		
All vehicle service and repair	Per 1,000 square feet	1.0		
<b>Industrial Uses</b>				
All light manufacturing	Per 1,000 square feet	1.0		
All research and development	Per 1,000 square feet	1.0		
All warehouse, storage and distribution, as listed below:	Per 1,000 square feet	2.0		

(2) Bicycle parking minimum quantities shall be provided in accordance with table 20.124.130 (2) below. In no case is a single use required to provide more than twenty-four (24) bicycle parking spaces.

Land Use	Unit of Measure	Minimum Off-Street Bicycle Parking Requirement
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<b>Residential Uses</b>		
Multi-family (5 or more units)	Per Dwelling	1.0
All other household living	None Required	
All group living	Per bed	.125
<b>Public Uses</b>		
All Civic	Percentage of Required Vehicle Parking	5% with a minimum of 3 spaces
All Parks and Recreation	None Required	
All Utilities	None Required	2
<b>Commercial Uses</b>		
All day care	Percentage of Required Vehicle Parking	5% of total Minimum Off-Street Parking Requirement (minimum 3)
All indoor recreation		
All outdoor recreation, except as listed below:		
All overnight lodging		
All medical:		
All office		
All personal and business services		
All restaurants		
All retail sales		
All vehicle and tool/construction equipment sales and rentals		
All vehicle service and repair		
<b>Industrial Uses</b>		
All light manufacturing	Percentage of Required	5% of total Minimum Off-Street
All research and development		

All warehouse, storage and distribution, as listed below:	Vehicle Parking	Parking Requirement (minimum 3)
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**20.124.150 Minimum parking stall dimensions.**

<b>Table 20.124.150 Minimum Parking Stall Dimensions</b>		
<b>Minimum Parking Stall Dimensions</b>	<b>Stall Width</b>	<b>Stall Depth</b>
Compact stall	8.0 feet	16.0 feet
Standard stall (required for single-family and duplex parking)	9.0 feet	20.0 feet
<b>Minimum Loading Requirements</b>		
	<b>Unit of Measurement</b>	<b>Minimum Loading Spaces</b>
<b>Nonresidential Buildings with Retail, Wholesale, Manufacturing, Storage Uses (1)</b>		
10,000 – 16,000	square feet	1.0
16,001 – 40,000	square feet	2.0
40,001 – 64,000	square feet	3.0
64,001 – 96,000	square feet	4.0
96,001 – 128,000	square feet	5.0
128,001 – 160,000	square feet	6.0
160,001 – 196,000	square feet	7.0
Each additional 36,000	square feet	2.0
<b>Retail, Hotel, Office, Restaurant, Hospital, Auditorium, Convention Hall, Exhibition Hall, Sports Arena/Stadium or Similar</b>		
40,000 – 60,000	square feet	1.0
60,001 – 160,000	square feet	2.0

**Table 20.124.150  
Minimum Parking Stall Dimensions**

Minimum Parking Stall Dimensions	Stall Width	Stall Depth
160,001 – 264,000	square feet	3.0
264,001 – 388,000	square feet	4.0
388,001 – 520,000	square feet	5.0
520,001 – 652,000	square feet	6.0
652,001 – 784,000	square feet	7.0
784,001 – 920,000	square feet	8.0
Each additional 140,000	square feet	1.0
(1) Excluding self-service storage facilities.		

Section 20.127.020 is hereby amended to read as follows:

**20.127.020 Applicability and compliance.**

(1) Applicability. The provisions of this chapter apply to all development within Port Orchard, except:

(a) Detached houses, backyard cottages, cottage courts (cottages), side by side duplexes, back to back duplexes, attached houses, and townhomes as defined in POMC 20.32 shall not be required to comply with this chapter except that 20.127.330 shall apply to these building types. In addition, 20.127.340 shall apply to townhomes as defined in POMC 20.32. Additional detached house, backyard cottage, cottage court (cottage), side by side duplexes, back to back duplexes, attached house, and townhome design standards are found in Chapter 20.139 POMC.

(b) Properties within the designated Old Clifton Industrial Park. See the figure below for a map clarifying the location of properties which are exempt.

**Figure 20.127.020(1)**

**Old Clifton Industrial Park**



(c) The director may waive these provisions in other employment – industrial/office zoned properties where they are screened from view from the public right-of-way and adjacent nonemployment – industrial/office properties by a minimum 20-foot wide landscaped buffer meeting the requirements of



Table 20.128.296 for urban buffers – full screening or by preservation of comparable existing landscaping on the site.

(2) Relationship to Other Codes and Documents. Where provisions of this chapter conflict with provisions in any other section of the Port Orchard design standards, this chapter prevails unless otherwise noted herein.

(3) For building additions, remodels, and site improvements, three different thresholds have been established to gauge how the design standards in this chapter are applied to such projects. See Figure 20.127.020(3) below for examples of site development and the respective types of improvements required under each of the three levels of improvements.

(a) Level I improvements include all exterior remodels, building additions, and/or site improvements that affect the exterior appearance of the building/site or cumulatively increase the gross floor area by up to 20 percent of the gross square footage that existed three years prior to the date of permit issuance. The requirement for such improvements is only that the proposed improvements meet the standards and do not lead to further nonconformance with the standards.

For example, if a property owner decides to replace a building facade's siding, then the siding must meet the applicable exterior building material standards, but elements such as building articulation (see POMC 20.127.430) would not be required.

(b) Level II improvements include all improvements that cumulatively increase the gross floor area by 20 percent or more, but not greater than 75 percent, of the gross square footage that existed three years prior to the date of permit issuance. All standards that do not relate to repositioning the building or reconfiguring site development apply to Level II improvements. For example, if a property owner of an existing home in the BP zone wants to convert the home to an office and build an addition equaling 45 percent of the current building's area, then the following elements would apply:

(i) The location and design of the addition/remodel must be consistent with the block frontage standards (see Article II of this chapter), to the extent possible given the location of the existing building. For such developments seeking additions to buildings where an off-street parking location currently does not comply with applicable parking location standards, building additions are allowed provided they do not increase any current nonconformity and generally bring the project closer into conformance with the standards. See Figure 20.127.020(3) for an example of this.

(ii) Comply with applicable site planning and design elements (see Article III of this chapter).

(iii) Comply with all building design provisions of Article IV of this chapter, except architectural scale and materials provisions related to the existing portion of the building where no exterior changes are proposed. The entire building must comply with building elements/details, materials, and blank wall treatment standards of POMC 20.127.450.

(iv) The proposed improvements shall comply with the off-street parking, landscaping, and signage provisions of Chapters 20.124, 20.128, and 20.132 POMC.

(c) Level III improvements include all improvements that cumulatively increase the gross floor area by more than 75 percent of the gross square footage that existed three years prior to the date of permit issuance. Such developments must conform to all applicable standards.

Figure 20.127.020(3)

Examples of Improvement Types and Required Compliance

Existing Site



- Pre-existing non-conformities:
- Parking in front of the building
  - No pedestrian connection to the entry
  - Doesn't meet streetscape and landscaping standards
  - Facade doesn't meet standards

Level I Improvement Example

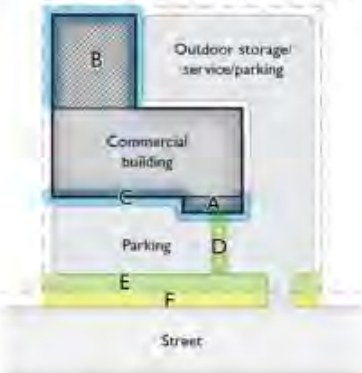
Expand existing building footprint 0-20%



- Required improvements:
- A. Entry addition meets facade and building design standards (POMC 20.127.400-460)
  - B. Rear addition meets applicable building design standards (POMC 20.127.400-460)
  - C. Landscaping improvements are encouraged but not required

Level II Improvement Example

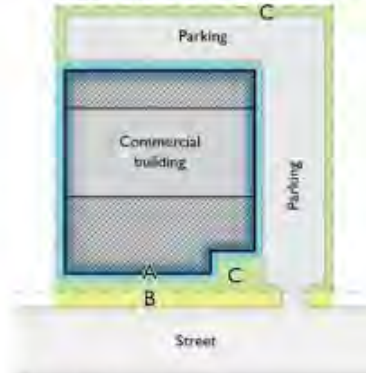
Expand existing building footprint 20-75%



- Required improvements:
- A. Entry addition meets facade and building design standards (POMC 20.127.400-460)
  - B. Rear addition meets applicable building design standards (POMC 20.127.400-460)
  - C. Facade upgraded to meet applicable facade and building design standards (POMC 20.127.400-460)
  - D. Pedestrian access improvements (POMC 20.127.330)
  - E. Parking lot landscaping improvements (Chapter 20.128 POMC)
  - F. Landscaping improvements are encouraged but not required

Level III Improvement Example

Expand existing building footprint >75%



- Required improvements:
- A. Entire building meets facade and building design standards (POMC 20.127.400-460)
  - B. Landscaping improvements are encouraged but not required
  - C. Site meets site planning standards (POMC 20.127.300-360)

(4) Review for Compliance. Proposals for development, including design standard departure requests, shall be reviewed for consistency with the design standards as found in this chapter in conjunction with every underlying permit application(s) (i.e., building permit, stormwater drainage permit, conditional use permit, binding site plan, etc.) at each stage of the development. The city recognizes that every project is unique and that permits are not always submitted in a single package simultaneously. For instance, a project may require a conditional use permit, building permit, land disturbing activity permit, and stormwater drainage permit. It is common that a building permit application be submitted after site development activities have begun. It is also common to develop building pads for future construction as part of an approved development.

**Section 20.127.340 is hereby amended to read as follows:**

**20.127.340 Vehicular circulation and parking.**

The standards herein supplement the provisions of public works standards and Chapter 20.124 POMC. Where there is a conflict, the provisions herein apply, except that the public works director may override this requirement and apply the public works standard for a driveway if the public works director finds that a failure to apply the public works standards will result in a threat to public safety.

(1) Purpose.

- (a) To create a safe, convenient, and efficient network for vehicle circulation and parking.
- (b) To enhance the visual character of interior access roads.
- (c) To minimize conflicts with pedestrian circulation and activity.

(2) Driveway Provisions.

- (a) Driveways must comply with the public works standards. Where there is a conflict between the driveway provisions in this chapter and those in the public works standards, the driveway provisions in this chapter apply, except that the public works director may override this requirement and apply the public works standard for a driveway if the public works director finds that a failure to apply the public works standards will result in a threat to public safety.
- (b) Drive aisles must meet the standards set forth in POMC 20.124.100, Off-street parking design standards.
- (c) Minimize parking lot entrances, drive aisles, and other vehicle access routes onto private property from a public right-of-way through the following means:
  - (i) Driveway lanes crossing a public sidewalk must be no wider than the minimum required per entry or exit lane. The city may impose additional restrictions to parking lot and vehicle access points to reduce impacts to public safety, pedestrian movement, on-street vehicle circulation, and visual qualities.
  - (ii) Minimize the number of driveway entrances and comply with the public works standards for driveway entrances.
  - (iii) The reviewing authority may require joint drive aisles serving adjacent developments when joint access is physically and legally available.
  - (iv) Minimize conflicts between entries and vehicle parking and maneuvering areas.
  - (v) At street corner sites, drive aisles must be located on the lowest classified roadway and as close as practical to the property line most distant from the

intersection, unless the reviewing authority finds there is a compelling reason to the contrary.

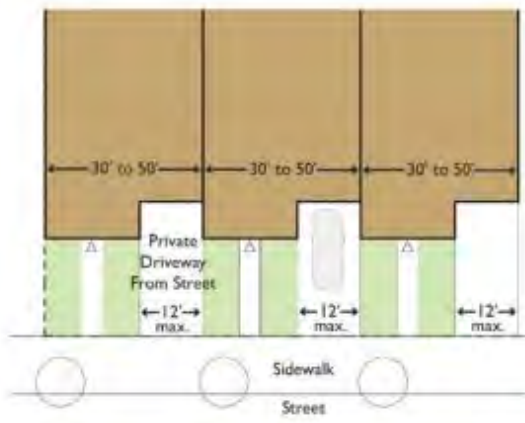
(d) Standards for driveways for front-loaded townhouses.

(i) Individual driveways are limited to a single lane 12 feet wide.

(ii) Driveways shared between two attached units are limited to 20 feet in width.

(iii) Front-loaded townhouses or other similar attached housing types must be at least 30 feet wide to qualify for individual or shared driveways.

Figure 20.127.340(2)(d)  
Driveway Standards for Front-Loaded Townhouses



The left image shows an acceptable front-loaded townhouse example in plan view, where individual units are at least 30 feet wide. The below example does not meet that requirement.



(e) Port Orchard Boulevard Access. Access from Port Orchard Boulevard except for areas with a designated block frontage as shown in the community design framework maps in POMC 20.127.130 shall be prohibited.

(3) Intersite Connectivity. The provision of through vehicle access connections between commercially or nonresidentially zoned properties is required except where the reviewing authority determines it is infeasible or undesirable (e.g., where it is determined that such a vehicle connection would impact safe pedestrian movement). See Article II of this chapter for specific block frontage standards. Vehicle access may be in the form of a dedicated or private alley, connected or shared parking lots, shared drive aisles, or similar features.

(4) Internal Roadway Design.

(a) To increase the function and appearance of internal roadways on large sites (greater than two acres), street trees and sidewalks must be provided on all internal access roadways, excepting access roads designed solely for the purpose of service (e.g., waste pick-up) and loading.

(b) In some instances where traffic speed and volume are low, the reviewing authority may approve a street where vehicle, bicycle and pedestrian movement are mixed such as in a “woonerf” or “shared street.” Woonerf streets must feature traffic calming and safety measures as well as landscape and amenity features as determined by the reviewing authority.

Figure 20.127.340(4)

Good Internal Roadway Examples



The examples above include angled parking and planter strips with street trees. Pedestrian-scaled lighting also contributes to the character in the upper right image.



The above left image illustrates a thoroughfare lane with a row of street trees. A sidewalk is included on one side of the street to provide a strategic connection between businesses. The right image illustrates the curbsless “woonerf” design where travel speeds are low and lanes are shared between pedestrians and vehicles.

(c) Drive-Through Facilities. Where allowed, drive through facilities (e.g., drive-up windows) must comply with the following:

(i) Drive-through lanes, including waiting and holding lanes, must be buffered from the street and internal walkways by one or both of the following:

(A) A planting strip at least five feet wide with continuous plantings of evergreen shrubs and/or trees that will, at maturity, provide a continuous evergreen screen at least four feet tall.

(B) A wall at least three feet high constructed of brick, stone or siding materials that matches the principal walls of the building to which the sign applies.

Departure: Alternative screening schemes may be approved provided they include both the wall and a substantial vegetative screen. The landscaping must comply with Chapter 20.128 POMC.

(ii) Drive-through lanes must not restrict pedestrian access between a public sidewalk and on-site buildings. Walkways must not be located within required stacking space as set forth in the public works standards.

(iii) This section contains standards for drive-through lanes and facilities. Signs associated with drive-through lane are regulated under POMC 20.132.150(7).



## Chapter 20.128

### LANDSCAPING

#### Sections:

**20.128.010 - Purpose**

**20.128.020 - Applicability and compliance**

**20.128.030 - Landscape plans**

**20.128.040 - Integration with LID stormwater management facilities.**

**20.128.050 - Plant material and installation standards**

**20.128.060 - Landscaping types**

**20.128.070 - Landscape site design standards**

**20.128.080 - Development within required buffers**

**20.128.090 - Irrigation standards**

**20.128.100 - Maintenance of required buffers and landscaped areas**

**20.128.110 - Performance assurance/bonding**

**20.128.120 - Maintenance assurance/bonding**

#### **20.128.010 Purpose.**

It is the purpose of this chapter to:

- (1) Promote well-planned and attractive landscaping that enhances the visual and aesthetic appearance of the city.
- (2) Provide space definition and landscape continuity between the built environment and the natural environment.
- (3) Provide appropriate barriers and relief from traffic, noise, heat, glare, and the spread of dust and debris.
- (4) Reduce potential negative impacts between adjacent and neighboring uses.
- (5) Reduce flooding and reduce the impact of development on the city's storm drainage system.
- (6) Promote tree retention and the protection of existing native vegetation.
- (7) Provide for the long-term establishment and health of new landscape plantings.
- (8) Aid in the conservation of energy and replenish the atmosphere with oxygen.
- (9) Provide for a more pleasant and relaxing urban environment.
- (10) Ensure the long term maintenance and attractiveness of landscape plantings.
- (11) Maintain and enhance property values.

#### **20.128.020 Applicability and compliance.**

- (1) Applicability. The provisions of this chapter shall apply to all new non-residential, single family attached (three or more units), and multifamily (three or more units) development within the city.

Also:



- (a) The provisions of this chapter shall apply to building additions, remodels and site improvements per the Level I-III improvement thresholds set forth in POMC 20.127.020(3)(a-c).
- (b) The maintenance provisions of this chapter apply to existing and previously approved landscape plans and required landscape areas.
- (c) Temporary deferral. A certificate of occupancy shall be contingent upon the screening and landscaping requirements of this chapter being met. This provision may be temporarily deferred by the director in cases where it is not reasonable for the developer to install certain species of plant material prior to occupancy due to the recommended planting season not occurring at an appropriate phase in construction. In such case, the time deadline for planting such materials shall be extended only to the nearest seasonal period suitable for planting such materials. Additionally, the director shall require that the applicant obtain a temporary deferral when water restrictions are in place preventing regular irrigation or watering of plant material. The director may authorize a temporary deferral through the issuance of a temporary certificate of occupancy or through the approval of a performance bond in accordance with this Title.
- (d) Review in conjunction with other permits. Landscape plan review shall be performed in conjunction with other permit applications (i.e. land disturbing activity, stormwater drainage, building permit, etc.). Appeals of decisions related to the application of this chapter shall be connected to the underlying permit application to which the landscape code has been applied.
- (e) The provisions of this chapter may also apply to subdivisions and short plats as specified in POMC 20.100, but shall not apply to the construction of an individual detached house, duplex, or backyard cottage.

(2) Exceptions.

The director may waive the provisions of this chapter for Light Industrial (LI) zoned properties which do not front Old Clifton Road or SR-160 depending on the type of use, number of anticipated employees and customers, and the site's physical relationship and anticipated impacts to adjacent and neighboring zones, uses and development.

**20.128.030 Landscape plans.**

- (1) In order to implement the requirements of this section, landscape plans for the entire site are required as part of the following permit application submittals:
  - (a) Building permit applications.
  - (b) Preliminary plat applications.
  - (c) Short plat applications.
  - (d) Binding site plan applications.
  - (e) Conditional use permit applications (where new construction, or expansion of a building is proposed, or where landscaping is required to meet conditions for granting approval).
  - (f) Stormwater drainage permit applications.
  - (g) Land disturbing activity permit applications.
- (2) In order to implement the requirements of this section, landscape plans for the entire site shall be required as part of a Land Disturbing Activity Permit application submittal if the scope of the permit

application does not include restoration to pre-disturbance conditions or if the landscape plan approval is not issued under another permit approval as listed in POMC 20.128.030(1).

- (3) Plans shall be developed by a Washington state licensed landscape architect, Washington-Certified Professional Horticulturalist (CPH), or other qualified individual.
- (4) Landscape plans shall include:
  - (a) Boundaries and dimensions of the site.
  - (b) Location of existing and proposed easements, streets, curbs, utilities, sidewalks and any other hard surfaces.
  - (c) Location of buildings and structures, parking lots, driveways, loading areas, outdoor mechanical equipment, signs, refuse enclosures, overhead utilities, water meter location, swales, parking lot lighting, and any existing vegetation that is to remain on the site.
  - (d) The location and design of landscape areas to be preserved and planted, and plant list to include the location, number, height at maturity, and type of plant material by botanical and common name.
  - (e) Proposed irrigation system if a permanent or temporary system is proposed. All landscaped areas including adjacent right-of-way must be provided with an underground irrigation system.
  - (f) Specifications for soil amendments to provide suitable long term growing conditions.
  - (g) North arrow and scale.
  - (h) Planting detail section drawings.
  - (i) Name, address, and phone number of the person preparing the plan.
  - (j) Calculations demonstrating compliance with this chapter.
  - (k) Landscape Planting, Hardscape, and Material Precedents (imagery) depicting (approximately) the landscape plantings, hardscape, and materials to be used in the project.
- (5) Applicants shall familiarize themselves with existing site conditions, and are encouraged to meet with staff to discuss appropriate design options and alternatives for accomplishing the screening and landscaping objectives of this chapter prior to preparing and submitting a landscape plan.
- (6) Applicants are encouraged to integrate landscape plans and stormwater system designs consistent with the City's adopted Stormwater Management Manual.

#### **20.128.040 Integration with LID stormwater management facilities.**

The required landscape design requirements in this chapter may be integrated with low impact development (LID) stormwater management facilities and best management practices (BMPs) unless site and soil conditions make LID infeasible, subject to the approval of the director and public works department. LID facilities shall not compromise the purpose or intent of required landscaping and landscaping shall not result in the disruption of the LID facilities' functions. LID facilities shall be designed and constructed in accordance and the LID Technical Guidance Manual for Puget Sound (current edition).

**20.128.050 Plant material and installation standards.**

**(1) Native plant species.** New landscaping materials shall include species native to the region or hardy, waterwise, and non-invasive species appropriate in the climatic conditions of the region (decorative annuals are an exception). Generally acceptable plant materials must be those identified as hardy in Zone 8b as described in United States Department of Agriculture's Plant Hardiness Zone Map. The selection of plant species should include consideration of soil type and depth, the amount of maintenance required, spacing, exposure to sun and wind, the slope and contours of the site, compatibility with existing native vegetation preserved on the site, water conservation where needed, and the impact of landscaping on visibility of the site for purposes of public safety and surveillance.

**(2) Tree standards and guidelines.**

(a) Tree heights may be called for within this chapter or elsewhere within this title:

- (i) Large tree: Capable of growing 35 feet high or greater under normal growing conditions.
- (ii) Medium tree: Capable of growing over 15 feet high and less than 35 feet high under normal growing conditions.
- (iii) Small tree: Capable of growing up to 15 feet high under normal growing conditions.

(b) Unless otherwise noted herein, required trees shall meet the following standards at the time of planting:

- (i) Required deciduous trees shall be fully branched, have a dominant leader branch, have a minimum caliper of one-and-one-half inches (as measured 24 inches above the root ball), and a minimum height of six feet at the time of planting as measured from the top of the leader branch to the top of the root ball.
- (ii) Required evergreen trees shall be fully branched and a minimum of six feet in height, measured from the treetop to the ground, at the time of planting.
- (iii) Required trees of any species within parking areas shall be a minimum caliper of one-and-one-half inches (as measured 24 inches above the root ball) and a minimum height of ten feet at the time of planting.

**(3) Shrub standard.** Shrubs, except for ornamental grasses, shall be a minimum of one-gallon size at the time of planting.

**(4) Ground cover standards and guidelines.**

(a) Ground covers shall be planted and spaced to result in total coverage of the required landscape area within three years as follows, or as per recommendations by Washington state licensed landscape architect, Washington-Certified Professional Horticulturalist (CPH), or other qualified individual. Ground cover plants other than turf forming grasses must be planted in triangular spacing at the following rates:

- (i) Four-inch pots at 18-inches on-center.
- (ii) One-gallon or greater sized containers at 24-inches on-center.
- (iii) Alternative plant spacing may be appropriate depending on the specific plants. When applicable, plant spacing information must be included with permit application submittals from published sources, such as the *Sunset Western Garden Book*, from Internet sources, or

from cut sheets provided by a nursery. Such sources must be identified for verification purposes.

- (b) Grass is acceptable as ground cover in landscaped areas, but generally not preferred for water conservation and maintenance purposes (lawn areas designed as play areas are an exception).
- (c) Ground cover areas shall contain at least two inches of composted organic material at finished grade.

**(5) Tree and plant diversity.**

- (a) If there are more than eight required trees, no more than 40 percent of them may be of one species.
- (b) If there are more than 24 required trees, no more than 20 percent of them may be of one species.
- (c) If there are more than 24 required shrubs, no more than 75 percent of them may be of one species.

**(6) Soil augmentation and mulching.**

- (a) Existing soils shall be augmented with a two-inch layer of fully composted organic material tilled a minimum of six inches deep prior to initial planting.
- (b) Landscape areas shall be covered with at least two inches of mulch to minimize evaporation. Mulch shall consist of organic materials such as bark chips and wood grindings or yard waste, sawdust, and/or manure that is fully composted. Washed rock may also be used as a mulch.

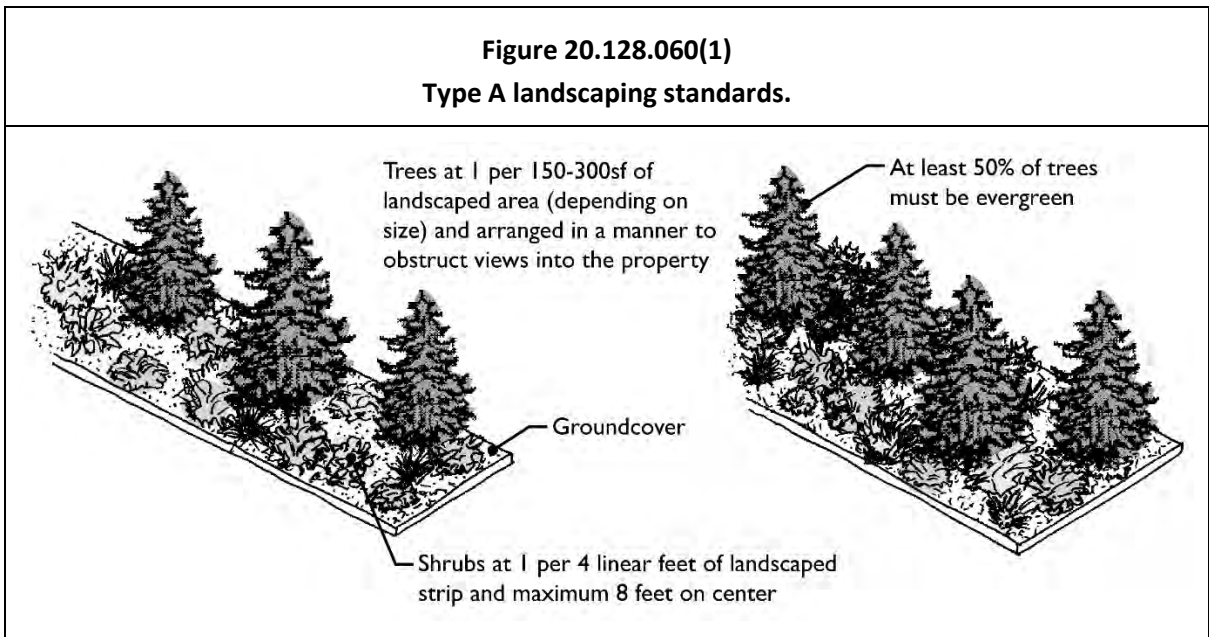
**(7) Landscape installation standards.**

- (a) All required landscaping shall be in-ground, except when in raised planters. Plant materials shall be installed to current nursery industry standards.
- (b) Plant materials shall be properly supported to ensure survival. Support devices such as guy wires or stakes shall not interfere with vehicular or pedestrian movement. Where support is necessary, stakes, guy wires or other measures shall be removed as soon as the plant can support itself.
- (c) Existing trees and plant materials to be retained shall be protected during construction. Protection measures may include silt fencing, chain link fencing, or other sturdy fencing placed at the dripline of trees to be retained. Grading, topsoil storage, construction material storage, vehicles, and equipment shall not be allowed within the dripline of trees to be retained.
- (d) Installation of landscaping materials must take into consideration access to utility vaults, pedestals, and other public and private utility facilities.
- (e) Trees and major shrubs at mature size should avoid interference with windows, decks, pedestrian walkways or other travelled ways, or lighting.

**20.128.060 Landscaping types.**

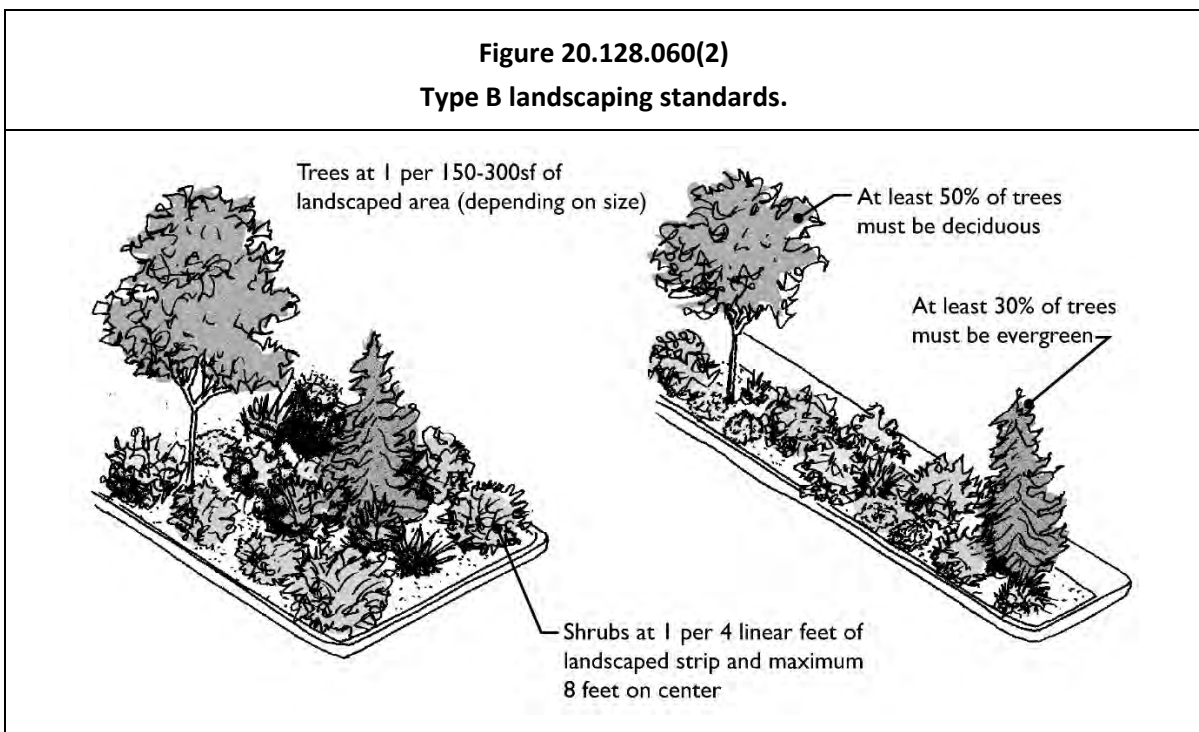
**(1) Type A landscaping.**

- (a) Type A landscaping shall function as a full screen and visual barrier. This landscaping is typically found between residential and nonresidential areas and used to screen unwanted views.
- (b) Type A landscaping shall minimally consist of:
  - (i) Trees: Predominately evergreen (more than 50 percent) at the following rates on landscape strips:
    - (A) One large tree per 300 square feet or 30 linear feet.
    - (B) One medium tree per 220 square feet or 22 linear feet.
    - (C) One small tree per 150 square feet or 15 linear feet.At least 70 percent of the trees shall be large.
  - (ii) Shrubs: Predominately evergreen provided at a rate of one shrub per four linear feet of landscaped strip and spaced no more than eight feet on center.
  - (iii) Plant diversity. Trees and shrubs must comply with POMC 20.128.050(5).
  - (iv) Groundcover: Planted at a density to cover the landscape buffer per POMC 20.128.070 within three years.
  - (v) The selected plant materials and configuration will be able to screen 70 percent of the unwanted views within five years of planting and fully screen the unwanted view within six years. This requirement will account for the size of materials planted and their typical growth rate.



**(2) Type B landscaping.**

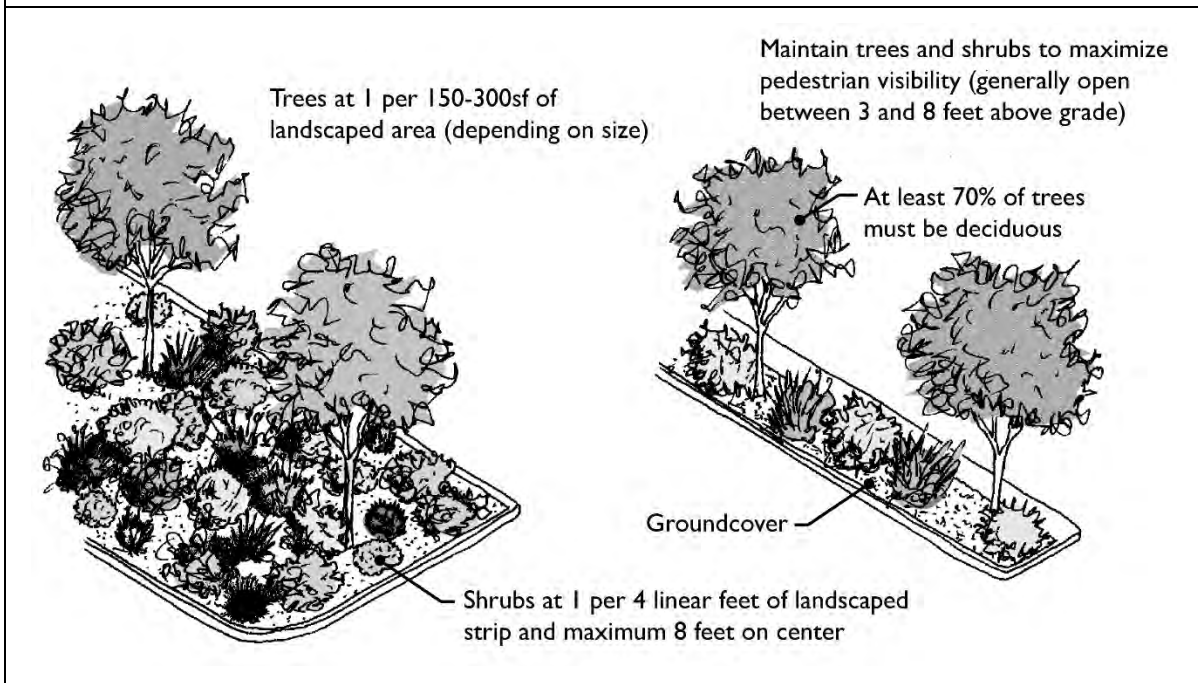
- (a) Type B landscaping is a “filtered screen” that functions as a visual separator. This landscaping is typically found between differing types of residential development and used to screen unwanted views from the pedestrian environment.
- (b) Type B landscaping shall minimally consist of:
  - (i) Trees: At least 50 percent deciduous trees and at least 30 percent evergreen trees at the following rates on landscape strips:
    - (A) One large tree per 300 square feet or 30 linear feet.
    - (B) One medium tree per 220 square feet or 22 linear feet.
    - (C) One small tree per 150 square feet or 15 linear feetAt least 70 percent of the trees shall be large.
  - (ii) Shrubs: Provided at the rate of one shrub per four linear feet of landscaped strip and spaced no more than eight feet on center.
  - (iii) Plant diversity. Trees and shrubs must comply with POMC 20.128.050(5).
  - (iv) Groundcover: Planted at a density to cover the landscape buffer per POMC 20.128.070 within three years.
  - (v) The selected plant materials and configuration will meet the purpose of the standards within five years of planting. This requirement will account for the size of materials and the growth rate.



**(3) Type C landscaping.**

- (a) Type C landscaping is a “see-through screen” that functions as a partial visual separator to soften the appearance of parking areas and building elevations. This landscaping is typically found along street frontages or between multifamily developments.
- (b) Type C landscaping shall minimally consist of:
  - (i) Trees: At least 70 percent deciduous trees at the following rates on landscape strips:
    - (A) One large tree per 300 square feet or 30 linear feet.
    - (B) One medium tree per 220 square feet or 22 linear feet.
    - (C) One small tree per 150 square feet or 15 linear feetAt least 70 percent of the trees shall be large.
  - (ii) Shrubs: Provided at the rate provided at a rate of one shrub per four linear feet of landscaped strip and spaced no more than eight feet on center.
  - (iii) Groundcover: Planted at a density to cover the landscape buffer per POMC 20.128.070 within three years.
  - (iv) Plant diversity. Trees and shrubs must comply with POMC 20.128.050(5).
  - (v) Tree and shrub placement shall be designed to maximize pedestrian visibility (generally between three and eight feet above grade once trees have matured).
  - (vi) The selected plant materials and configuration will meet the purpose of the standards within five years of planting. This requirement will account for the size of materials and the growth rate.
- (c) Where Type C landscaping is designed to also function as a rain garden, adjustments in the spacing of trees, shrubs, and ground cover will be allowed provided the rain garden meets the function requirements of subsection (6) below and the intended function of Type C landscaping as defined in subsection (a) above.

**Figure 20.128.060(3)**  
**Type C landscaping standards.**



**(4) Type D landscaping.**

- (a) Type D landscaping refers to all other landscaped areas that do not qualify as Type A-C landscaping. While native and low maintenance trees and shrubs are encouraged in these areas, lawn areas may be used for recreational or design purposes. These areas may also include flower beds and perennial beds.
- (b) Type D landscaping may include any combination of plant materials provided they comply with POMC 20.128.050.

**(5) Low hedge.**

A low hedge is intended to function as an attractive visual divider of space rather than a visual buffer between uses and properties. To qualify as a hedge landscaping type, the planting must be at least 30 inches wide and 30 inches tall. The hedge include plant materials that typically grow no taller than five feet at maturity or are maintained between 30 inches and 48 inches tall. Additional limits on hedges may be imposed by the public works director within required sight triangles at intersections. Shrubs or other hedge plant materials must be placed at a rate of one per four linear feet of landscaped strip or otherwise recommended for shrub species. Plant spacing information must be included with permit application submittals from published sources, such as the *Sunset Western Garden Book*, from Internet sources, or from cut sheets provided by the nursery.



**Figure 20.128.060(5)**  
**Low hedge examples.**

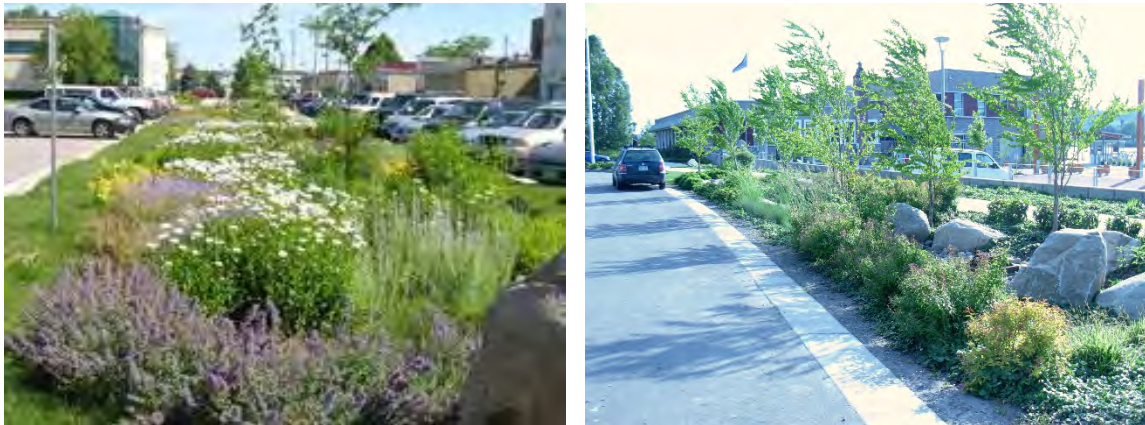
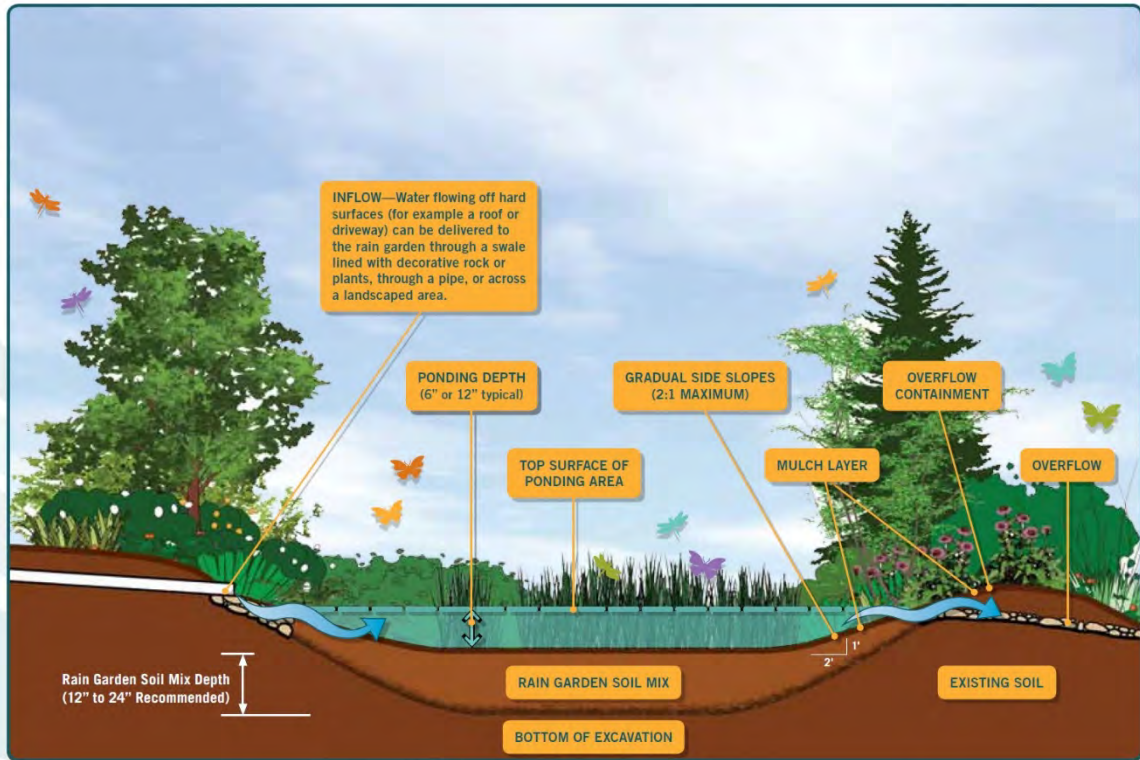


**(6) Rain garden.**

A rain garden is a landscaped depression that collects, absorbs, and filters stormwater runoff from rooftops, driveways, patios, and other hard surfaces. They can also function as an attractive visual divider of space. To qualify as a rain garden, the following elements must be included:

- (a) Garden located and designed to capture impervious area runoff.
- (b) Six to 12 inches ponding depth.
- (c) Twelve to 24 inches rain garden soil depth with two to three inches surface mulch layer.
- (d) Gradual side slopes (maximum 2:1).
- (e) Overflow design elements with measures to protect erosion.
- (f) Generous plantings (capable of reaching 100 percent groundcover) of a variety of small trees, shrubs, ground covers, and grasses. Select plants suitable for the three planting zones within the garden and around the perimeter.

**Figure 19.66.050(6)**  
**Rain garden examples.**



**20.128.070 - Landscape site design standards.**

**(1) Required landscape buffer standards.** Screening between certain uses may be called for in Table 20.128.070 below or elsewhere in this chapter:

- (a) The provisions of this section do not apply to, and landscape buffers are not required for, development with a designated storefront block frontage (POMC 20.127.090-260) unless required as a condition of a permit (such as a conditional use permit or subdivision) or SEPA.
- (b) Where mature trees and vegetation exists within the required buffer areas, the preservation of said mature trees and vegetation may be preferable to new plant materials. The director may require up to 50 percent additional buffer width and/or specific planting conditions to better ensure the survival of existing mature trees and/or augment existing plantings to meet the intent of the standards.
- (c) The letters A, B, and C refer to the required landscape buffer type(s), (described in POMC 20.128.060). Where more than one buffer type is referenced at the intersection of the column and the row, only one of the listed buffer types is required.
- (d) Where the cells at the intersection of the column and the row are empty, there are no landscaping buffer requirements for the particular situation.
- (e) The numbers 1, 2, or 3 after a letter refer to minimum buffer width intensity requirements set forth in subsection B below.
- (f) If a \* appears after a use or term within the table, then the use or term is defined in POMC Chapter 20.12 or 20.39.
- (g) Where superscript numbers are included in a cell, see the corresponding note matching the number below the table.
- (h) For the application of building additions, remodels and site improvements, the provisions of POMC 20.127.020(3) shall apply.
- (i) Departures. Alternative buffer treatments may be approved per POMC 20.127.060 for any of the buffer types required below, provided they meet the purpose of this chapter.

<b>Table 20.128.070</b>									
<b>Required buffer types for developing uses.</b>									
<b>Developing use</b>	<b>Existing abutting uses and zones</b>								
	<b>Street, park or trail</b>	<b>R1, R2, R6, GB zones</b>	<b>R3, R4, R5 zones</b>	<b>RMU, NMU, GMU, DMU, CMU, BPMU zones</b>	<b>CC, CH zones</b>	<b>IF zone</b>	<b>IL zone</b>	<b>IH zone</b>	<b>CI, PF zones</b>
Single Family attached* (3 or more units) or Multifamily* (3 or more)	See subsection (2) below.	Fence plus BC-5'	Fence plus BC-5'	Fence and BC-5' and path	Fence and BC-5' and path	Fence plus AB-10'	Fence plus AB-10'	Fence plus AB-10'	Fence plus BC-5'

Table 20.128.070 Required buffer types for developing uses.									
Developing use	Existing abutting uses and zones								
	Street, park or trail	R1, R2, R6, GB zones	R3, R4, R5 zones	RMU, NMU, GMU, DMU, CMU, BPMU zones	CC, CH zones	IF zone	IL zone	IH zone	CI, PF zones
units)									
Low intensity non-residential use*		Fence plus ABC-5'	Fence plus ABC-5'	Fence or BC-5' or path	Fence or BC-5' or path	Fence plus ABC-10'	Fence plus ABC-10'	Fence plus ABC-10'	Fence plus ABC-5'
Moderate intensity non-residential use*		Fence plus ABC-10'	Fence plus ABC-10'	Fence or BC-5' or path	Fence or BC-5' or path	Fence plus ABC-10'	Fence plus ABC-10'	Fence plus ABC-10'	Fence plus ABC-10'
High intensity non-residential use*		Fence plus ABC-15'	Fence plus ABC-15'	Fence or BC-5' or path	Fence or BC-5' or path	Fence plus ABC-10'	Fence plus ABC-10'	Fence plus ABC-10'	Fence plus ABC-15'
Use featuring an open storage yard*		Fence plus ABC-10'	Fence plus ABC-10'	Fence plus ABC-5' or A-10'	Fence plus ABC-5' or A-10'	Fence or A-5' or B-10'	Fence or A-5' or B-10'	Fence or A-5' or B-10'	Fence plus ABC-10'
Heavy industry*		Fence plus ABC-20'	Fence plus ABC-20'	Fence plus ABC-5' or A-10'	Fence plus ABC-5' or A-10'	Fence plus ABC-5' or A-10'	Fence plus ABC-5' or A-10'	Fence plus ABC-5' or A-10'	Fence plus ABC-20'

**(2) Street, park, or trail buffers.**

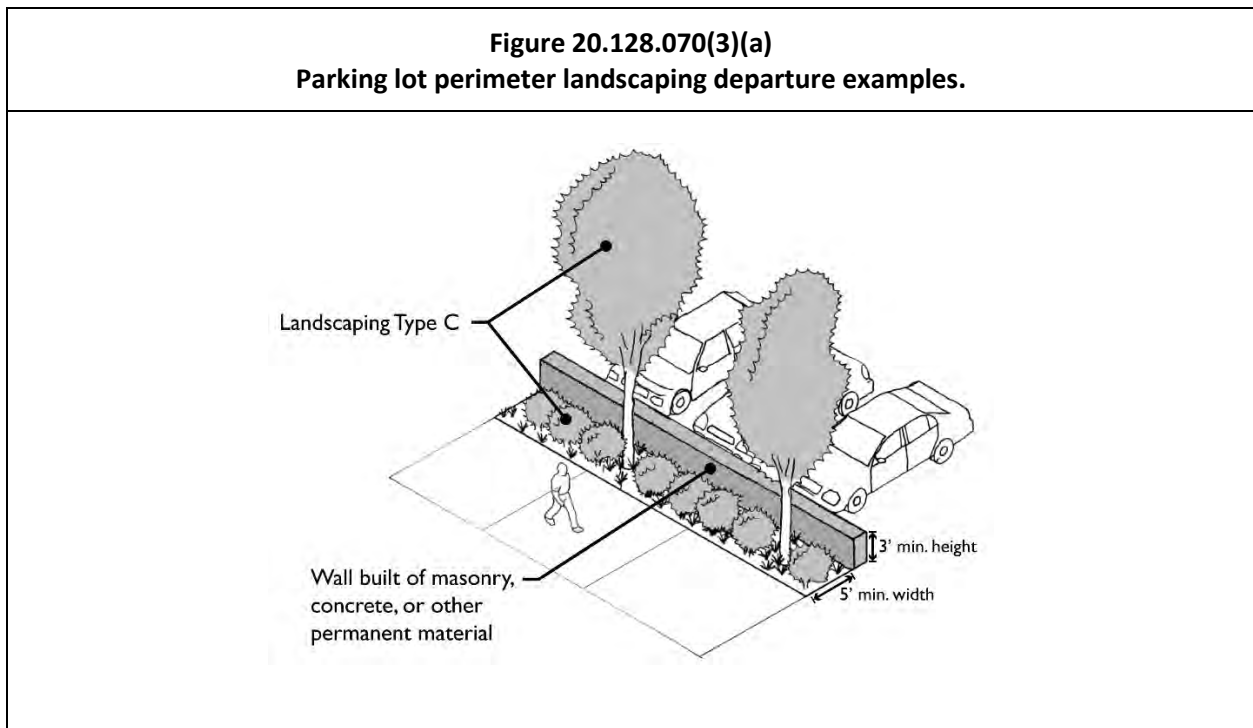
- (a) For landscaping between uses or structures and streets, also see the applicable block frontage standards in POMC 20.127.100-260. Plant materials, installation, and maintenance are subject to the standards of this chapter.

- (b) For non-residential, single family attached (three units or more), and multifamily development (three units or more), see POMC 20.127.220 for Trail/Park block frontage standards. Alternative designs will be considered based on the unique context of the site, the development, and the park/trail provided the designs promote safety for park/trail users, and mitigate any potential negative impacts of the proposed use on the park/trail.
- (c) For storage yards, a minimum ten-foot wide planting strip with Type A landscaping is required between any street and such storage yard.

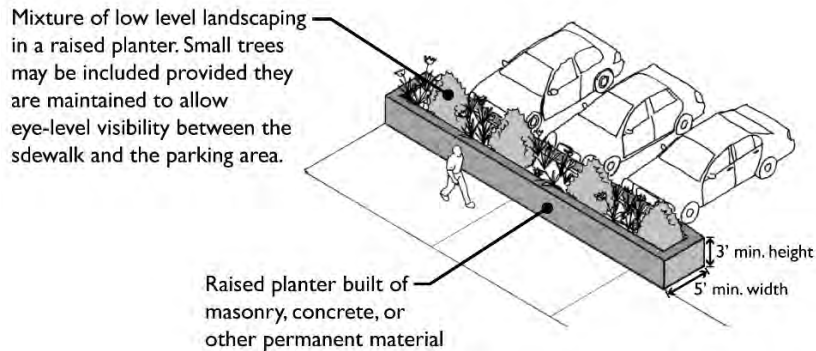
**(3) Surface parking lot landscaping.**

- (a) Parking lot perimeters.
  - (i) For parking lots abutting public right of way, use Type C landscaping at a width equal to or greater than the minimum building setback specified for the applicable block frontage type specified in POMC 20.127.100-260. For parking lots on sites without an applicable block frontage type, the parking lot landscape buffer shall be at least ten feet deep.
  - (ii) For parking lots along internal private roadways in commercial areas, provide a planting strip at least six feet wide with Type C landscaping.
  - (iii) For parking lots along internal lot lines, use Type A or B landscaping at least ten feet deep, except where a greater buffer width is required per the standards in Table 20.128.070.

Departures will be considered provided they meet the purpose of this chapter. Examples of acceptable departures may include decorative low walls with landscaping, decorative elevated planters, or landscaping with a trellis. In no case may landscaping buffers be less than five feet wide. The minimum height of planters or walls, where used, is three feet. The maximum height of walls where used shall be five (5) feet.



**Figure 20.128.070(3)(a)**  
**Parking lot perimeter landscaping departure examples.**



Above are two possible departure parking lot landscaping buffer designs that may be acceptable in more urbanized areas, such as downtown.

(b) Internal parking lot landscaping.

(i) Trees and shrubs required.

- (A) For every 1,000 square feet of vehicular use area, at least one deciduous tree must be planted.
- (B) Trees and shrubs must be planted within 15 feet of the parking lot to count as parking lot landscaping.
- (C) When a development contains 20 or more parking spaces, 50 percent of the trees and shrubs must be planted in islands or medians located within the parking lot.

(ii) Landscaping type.

- (A) Type C landscaping shall be utilized for landscaping islands internal to parking lots.
- (B) At least 75 percent of the required deciduous trees must be large trees. Medium and small trees are acceptable where overhead electric lines would interfere with normal growth.
- (C) Rain gardens and swales may be integrated into required planting areas.

(iii) Landscaped island sizes. At a minimum, tree islands shall be a minimum of 256 square feet. Planting islands must be at least six feet deep and wide.

(iv) Landscaped island spacing. Parking bays shall be broken up with landscaped islands or medians to avoid long monotonous rows of parking. Tree islands shall be evenly distributed throughout the parking lot in order to provide an even tree canopy throughout the lot.

(v) Each parking space must be located within 75 feet of a tree measured from the closest point of the parking space to the tree trunk.



Departures will be considered provided they meet the purpose of this chapter.

**(4) Foundation planting.** All street-facing elevations must have landscaping along any exposed foundation. The landscaped area may be along the outer edge of a porch instead of the foundation. This landscaping requirement does not apply to portions of the building facade that provide access for pedestrians or vehicles to the building. The foundation landscaping must meet the following standards:

- (a) The landscaped area must be at least three feet wide.
- (b) There must be at least one three-gallon shrub for every three lineal feet of foundation.
- (c) Ground cover plants must fully cover the remainder of the landscaped area.

**Figure 20.128.070(4)**  
**Foundation planting.**



Foundation plantings would be required along this exposed concrete foundation.

**(5) Existing vegetation.**

- (a) Existing healthy, native, and non-invasive vegetation may be used to fulfill the requirements of this chapter.
- (b) When existing vegetation is proposed to be used to fulfill the requirements of this chapter, that vegetation shall be shown on required landscape plans as “existing vegetation to be retained” and prior to land disturbing activities, these areas shall be flagged in the field and be protected by construction fencing. In the event that existing vegetation proposed to be used to fulfill the requirements of this chapter is altered, damaged, or removed during development or construction activity, this area shall be restored to its original state after the development or construction activity is complete, or, shall be replanted in accordance with a new revised landscaping plan developed and approved in accordance with this chapter.

**(6) Stormwater facilities.**

- (a) Plant-based stormwater treatment facilities such as rain gardens [see POMC 20.128.060(6)] and swales may be used to meet the requirements of this section as provided elsewhere in this chapter.

- (b) Stormwater detention facilities such as ponds and collection basins may not be used to meet the requirements of this section unless designed per subsection (a) above.

**20.128.080 Development within required buffers.**

This section applies to buffers that are required per Table 20.128.070.

**(1) Pedestrian walkways** are allowed within buffers, subject to the following standards:

1. Walkways shall not exceed five feet in width.
2. Walkways shall cross buffers at an angle between 60 and 90 degrees.
3. Walkways may only run along the length of a buffer if the buffer is at least 40 feet in width, and the walkway is located within the inner 25 percent of the buffer.

**(2) Utilities** are not permitted in buffers within a residential subdivision, unless no reasonable alternative exists. However, utilities may be installed in an easement that is located along street frontage and parallel to the street. If utilities are placed in a buffer, they shall be located and installed in a way that minimizes disturbance of the buffer area: not parallel, but crossing at an angle between 60 and 90 degrees. If storm water drainage channels are placed in a buffer at an angle less than 60 degrees, the buffer width shall be increased by the width of the utility easement or disturbance, or at least ten feet, whichever is greater.

**20.128.090 Irrigation standards.**

The purpose of this standard is to ensure that plants will survive the critical establishment period when they are most vulnerable.

All required landscaped areas in the city must comply with at least one of the following:

- (1) A permanent built-in irrigation system with an automatic controller will serve the proposed landscape area, and the system will be installed and operational before the city grants an occupancy permit or final inspection for the development.
- (2) A temporary irrigation system will serve the proposed landscape area, provided the applicant can successfully demonstrate that the proposed temporary irrigation system will provide sufficient water to ensure that the plant materials to be planted will survive installation and, once established, will survive without watering other than natural rainfall.
- (3) A permanent or temporary irrigation system will not serve the proposed landscape area, provided:
  - (a) The director finds the landscape area otherwise fulfills the requirements of this section, and
  - (b) The applicant submits all of the following with the site plan application:
    - (i) A statement from a Washington state licensed landscape architect, Washington-Certified Professional Horticulturalist (CPH), or other qualified individual certifying that the materials to be planted will survive without watering other than natural rainfall.
    - (ii) A plan for monitoring the survival of required vegetation on the approved site plan for at least one year and for detection and replacement of required vegetation that does not survive with like-kind material or other material approved by the director.



- (iii) A statement from the applicant agreeing to install an irrigation system if the director finds one is needed to ensure survival of required vegetation, based on the results of the monitoring plan.

**20.128.100 Maintenance of required buffers and landscaped areas.**

**(1) Maintenance responsibility.**

The owners of the property and their agents, heirs, or assigns shall be responsible for the installation, preservation, and maintenance of all planting and physical features (installed or vegetated natural areas) required under this section. Damage to these areas shall result in the revegetation requirements or fines per POMC 20.128.090.

**(2) Inspections after second and fifth year.**

The director shall inspect the site two and five years after the issuance of a permanent certificate of occupancy in order to ensure compliance with the approved landscape plan and to ensure that the landscaping is properly maintained. Failure to maintain required landscape areas on a permanent basis may result in fines according to POMC 20.02 and POMC 2.64.

**(3) Maintenance responsibility, replacement of damaged vegetation, and associated fines.**

- (a) The owners of the property and their agents, heirs, or assigns must be responsible for maintaining all required landscaping and screening areas in a healthy, growing condition.
- (b) All landscaping and screening areas must be maintained reasonably free of weeds and trash, must be treated for pest/diseases in accordance with the approved landscape plan, and must be maintained so as to prevent mulch, straw, dirt, or other materials from washing onto streets, sidewalks, and adjoining properties.
- (c) Limbing up trees and “topping” or shearing off trees is prohibited, unless required for public safety reasons approved by the director.
- (d) The property owner shall take actions to protect trees and landscaping from unnecessary damage during all facility and site maintenance operations.
- (e) Any dead, unhealthy, or missing vegetation, or vegetation disfigured by severe or excessive pruning, unusual weather occurrence or natural catastrophe, or other natural occurrence such as damage by wild or domestic animals, must be replaced with equivalent vegetation that conforms to the plant materials and installation standards in POMC 20.128.050, other applicable standards of this title, and the approved site plan.
- (f) The owner shall have one growing season to replace or replant after receiving notice from the director. The director shall consider the type and location of the required vegetation area in making a determination on the extent of replanting requirements.
- (g) Failure to maintain all plantings in accordance with this section shall constitute a violation of the Port Orchard Municipal Code and may result in fines in accordance with POMC 20.02.

**(4) Landscape maintenance plan.**

The paragraph and list below regarding a landscape maintenance/management plan shall be placed on the landscape plan prior to plan approval, along with any other notes applicable to site landscaping. This statement may be individualized based on the specific characteristics of each site and its landscaping plan requirements. The maintenance plan shall be prepared by a Washington

state licensed landscape architect, Washington-Certified Professional Horticulturalist (CPH), or other qualified individual.

"The owners of the property and their agents, heirs, or assigns shall be responsible for the installation, preservation, and maintenance of all planting and physical features shown on this plan. The owners shall be responsible for maintenance of the vegetation, including but not limited to:

- (a) Fertilization.
- (b) Pruning.
- (c) Pest control.
- (d) Mulching.
- (e) Mowing (if any).
- (f) Protection of the root zones from equipment, construction and storage of materials.
- (g) Watering.
- (h) Other continuing maintenance operations.

Failure to maintain all plantings in accordance with this plan shall constitute a violation of the Port Orchard Municipal Code and may result in fines."

**20.128.110 Performance assurance/bonding.**

In the event that landscaping improvements cannot be installed prior to final plat, final short plat, final binding site plan or formal certificate of occupancy, a cash deposit, letter of credit or other assurance acceptable to the city equal to 150 percent of the estimated landscaping and installation costs must be required. Such deposit must be accompanied by a letter which stipulates completion of all landscape development no later than the next autumn planting season following issuance of the certificate of occupancy or date of final approval, whichever is later. If these conditions are not met, the city may use the deposit to install the landscaping.

**20.128.120 Maintenance assurance/bonding.**

Prior to granting a (permanent) certificate of occupancy and/or granting final approval of site improvements, the owner of the subject property shall provide a two-year landscape maintenance bond, cash set-aside, or other assurance acceptable to the city (hereafter "assurance") in an amount equal to 125 percent of the estimated landscaping and installation costs for the project. It shall be the owner's responsibility to request a landscape maintenance inspection at least two years after city acceptance upon final landscaping installation inspection. The assurance shall not be released by the city unless the city finds upon inspection that the landscaping has been maintained and is in good health. If the city finds that the landscaping has not been maintained or is not in good health, the city may at its option require the owner to maintain and restore the required landscaping to healthy conditions prior to releasing the landscape maintenance assurance, or may itself perform work to correct the deficiencies using the provided assurance. In the event that a significant amount of the required landscaping requires replacement as determined by the director, the city may require an additional two-year landscape maintenance assurance on all or a portion of the required landscaping.

## Chapter 20.129

### SIGNIFICANT TREES

#### Sections:

**20.129.010 Purpose**

**20.129.020 Applicability**

**20.129.030 Definitions**

**20.129.040 Removal and replacement of all significant trees**

**20.129.050 Retention and protection of significant trees associated with development proposals.**

#### **20.129.010 Purpose.**

It is the purpose of this chapter is to:

- (1) Provide incentives for preserving significant trees and to require the replacement of significant trees at specified ratios when they are removed.
- (2) Mitigate the environmental and aesthetic consequences of tree removal in land development through tree replacement to achieve a goal of no net loss of significant trees throughout the city.
- (3) Provide measures to protect significant trees that may be impacted during construction activities.
- (4) Maintain and protect the public health, safety, and general welfare.
- (5) Preserve the aesthetic, ecological, and economic benefits of forests and tree-covered areas in Port Orchard including:
  - (a) Providing varied and rich habitats for wildlife;
  - (b) Absorbing carbon dioxide;
  - (c) Moderating the effects of winds and temperatures;
  - (d) Stabilizing and enriching the soil;
  - (e) Slowing runoff from precipitation and reducing soil erosion;
  - (f) Improving air quality;
  - (g) Improving water quality;
  - (h) Masking unwanted sound;
  - (i) Providing visual relief and screening;
  - (j) Providing recreational benefits;
  - (k) Enhancing the economic value of developments; and
  - (l) Providing a valuable asset to the community.

#### **20.129.020 Applicability.**

- (1) This section applies to all significant trees in the city.

- (2) No significant tree may be removed unless the requirements of this chapter are met.
- (3) The following situations, activities, and projects are exempt from the significant tree protection requirements of this section unless the tree is located in a critical area as identified in POMC 20.162:
  - (a) Utility developments.
  - (b) Roadway or street (including sidewalks) construction.
  - (c) Parks projects.
  - (d) Trees that interfere with overhead utility lines.
  - (e) Trees that are causing damage to building foundations.
- (4) This chapter shall not be construed to authorize the removal of trees where tree removal is not otherwise permitted in the POMC.

**20.129.030 Definitions.**

- (1) Significant trees are those trees with a DBH (diameter at breast height) of 18 inches or greater and which are not identified by a licensed arborist as damaged, diseased, or a safety hazard due to potential root, trunk or primary limb failure, or new exposure to wind after having grown in a closed, forested situation.
- (2) The root protection zone is equal to one-foot radius from the center of the tree for every one inch of tree DBH. A modified root protection zone may be established by a certified arborist's individual tree evaluation.

**20.129.040 Removal and replacement of all significant trees.**

- (1) Approval of the director is required for the removal of significant trees and shall be granted provided that all other applicable requirements and standards of the Port Orchard Municipal Code are met. The decision to authorize the removal of a significant tree shall be a Type 1 decision; however, an application that involves two or more procedures may be processed consistent with the procedures provided in POMC 20.22.020(2). Approval requires that the following condition and the replacement requirements of subsection (2) are met:
  - (a) All significant trees located within any required landscape buffer area or required landscape planting area shall be retained to the extent practical and feasible.
  - (b) This provision shall not be construed as to prohibit mass grading provided that significant trees are replaced in accordance with this chapter.
- (2) Significant trees that are removed shall be replaced with trees meeting the following requirements:
  - (a) Trees must be replaced at the rates described in Table 20.129.040 and at no less than a 1:1 ratio for any proposed development. If the number of replacement trees required in accordance with Table 20.129.040 results in a fraction, the number shall be rounded up to the nearest whole number.

<b>Table 20.129.040.Replacement tree quantity.</b>	
<b>Significant Tree Diameter</b>	<b>Number of Replacement Trees Required</b>
18-22 inches diameter	.5
22-28 inches diameter	1
28-36 inches diameter	2
Greater than 36 inches diameter	3

- (b) To incentivize significant tree retention, every significant tree that is retained shall reduce the required number of replacement trees by three (3) trees.
  - (c) Replacement deciduous trees shall be fully branched, have a dominant leader branch, have a minimum caliper of one-and-one-half inches (as measured 24 inches above the root ball), and a minimum height of six feet at the time of planting as measured from the top of the leader branch to the top of the root ball.
  - (d) A replacement deciduous tree that has a minimum caliper of three inches (as measured 24 inches above the root ball) and a minimum height of eight feet at the time of planting as measured from the top of the leader branch to the top of the root ball may substitute for two (2) required replacement trees.
  - (e) Replacement evergreen trees shall be fully branched and a minimum of six feet in height, measured from the top of the leader branch to the top of the root ball, at the time of planting.
  - (f) Replacement trees shall primarily be those species native to the Pacific Northwest. In making a determination regarding the species of replacement trees, the director shall defer to the species selected by the property owner unless the director determines that the species selected is unlikely to survive for a period of at least ten years, represents a danger or nuisance, would threaten overhead or underground utilities
  - (g) The property owner shall maintain all replacement trees in a healthy condition. The property owner shall be obligated to replace any replacement tree that dies, becomes diseased, or is removed. Replacement trees shall not be removed except when they are moved to another location in accordance with this chapter.
  - (h) The director may authorize the planting of fewer and smaller replacement trees if the property owner can demonstrate the reduction is suitable for the site conditions, neighborhood character, and the purposes of this section, and that such replacement trees will be planted in sufficient quantities to meet the intent of this section. The director may require a certifying statement from a Washington state licensed landscape architect, Washington-Certified Professional Horticulturalist (CPH), or certified arborist.
- (3) If the site does not allow for planting of replacement trees, the trees may be planted (1) on an alternative site within the city, or (2) on public property (such as in a city park) subject to the approval of the public works director. If the trees are not planted on public property, guarantees shall be provided (such as a conservation easement) to ensure that the replacement trees will not be removed prior to reaching 18 inches DBH (at which time they will be considered significant trees).

- (4) The director shall not authorize the planting of shrubs or bushes in lieu of required replacement trees.
- (5) For projects containing 5 or fewer significant trees, the required replacement trees planted shall be in addition to other required trees installed to satisfy street tree and landscaping buffer, parking lot, and other landscape area requirements. For projects on non-forested sites containing more than 5 significant trees, up to seventy-five percent (75%) of the required replacement trees to be planted may be satisfied by planting trees within required or proposed landscaping areas including but not limited to landscape buffers and parking lot islands as specified in POMC 20.128. For projects on forested sites containing more than 5 significant trees, up to one hundred percent (100%) of the required replacement trees to be planted may be satisfied by planting trees within required or proposed landscaping areas including but not limited to landscape buffers and parking lot islands as specified in POMC 20.128. For the purposes of this section, a site is considered forested if it contains more than 20 significant trees per acre.
- (6) Guidelines for significant tree replacement. The following guidelines and requirements shall apply to significant tree replacement:
  - (a) When individual trees or tree stands are protected, replacement trees should be planted to re-establish or enhance tree clusters where they previously existed.
  - (b) Replacement trees shall be planted in locations appropriate to the species' growth habit and horticultural requirements.
  - (c) Replacement trees shall be planted in areas that connect or are adjacent to native growth protection areas or other open space, where appropriate.
  - (d) Replacement trees shall be integrated into the required landscape plans, if any, for a development.
  - (e) Replacement trees to be planted next to or under power lines shall be selected with consideration of the trees' maturation and maintenance requirements.

**20.129.050 Retention and protection of significant trees associated with development proposals.**

- (1) Significant tree retention plan.** The applicant or property owner shall submit a tree retention plan prepared by a certified arborist, horticulturalist, landscape architect, forester or other qualified professional concurrent with the underlying development permit application (such as a land disturbing activity, short subdivision, binding site plan, conditional use, building, or preliminary subdivision permit application), whichever is reviewed and approved first. The tree retention plan shall consist of:
  - (a) A tree survey that identifies the location, size, and species of individual significant trees or the perimeter of stands of trees on a site;
  - (b) Identification of the significant trees that are proposed to be retained; and
  - (c) The location and design of root protection during construction and development activities.
- (2) Exemption:** Significant tree retention plans shall not be required for the construction of a detached house or backyard cottage, but these projects shall comply with all other sections of this chapter.

**(3) Protection of significant trees.** To provide protection for significant trees that are to remain during and after development activity the following standards apply:

- (a) Prior to construction, grading, or other land development, each root protection zone is identified with a temporary chain-link or orange mesh fence with a minimum height of five feet.
- (b) No impervious surfaces, fill, excavation, or storage of construction materials shall be permitted within the root protection zone.
- (c) Alternative protection methods may be used if determined by the director to provide equal or greater significant tree protection.

## Chapter 20.139

### RESIDENTIAL DESIGN STANDARDS

#### Sections:

20.139.005	Purpose
20.139.010	Applicability
20.139.015	Residential Garage Configuration Standards
20.139.020	Garage Placement and Design
20.139.025	Building Design
20.139.030	Architectural Details
20.139.035	Architectural Variety
20.139.040	Building Design
20.139.045	Rood Design
20.139.050	Accessory Building Standards
20.139.055	Side by Side Duplex and Attached House Standards
20.139.060	Back to Back Duplex Standards
20.139.065	Residential Walls and Fences Standards

#### **20.139.005 Purpose.**

The purpose of this chapter is to protect the public health, safety and welfare of Port Orchard by guiding development to ensure that:

- (1) Residential structures are designed and constructed in an attractive manner;
- (2) Property values are protected;
- (3) On and off-street parking areas are used efficiently;
- (4) Public spaces are visible from private living areas; and
- (5) Neighborhoods are healthy, walkable places.

#### **20.139.010 Applicability.**

(1) The standards in this chapter shall apply to detached houses, backyard cottages, cottages within a cottage court, duplexes, attached houses, townhouses, and accessory buildings as defined in POMC 20.32, in any zone in which they are built as indicated herein. For existing structures that are being modified or enlarged, the standards shall only apply to the portions of the structure being modified and to any additions, unless the project valuation exceeds 50 percent of the taxable value for the structure.

(2) When the project valuation exceeds 50 percent of the taxable value for the structure, the entire structure shall be brought into compliance with this chapter; except that for any portion of the existing building to which an owner is not proposing structural changes, the city shall not require that portion of the existing building to be modified in the following ways (except when required pursuant to the city's building codes):

- (a) Moving an existing exterior wall;
- (b) Adding additional windows to an existing exterior wall;
- (c) Enlarging an existing covered entry;
- (d) Relocating an existing garage or driveway;
- (e) Replacing existing siding material; and
- (f) Modifying an existing roofline.



**20.139.015 Residential Garage Configuration Standards.**

(1) The configuration and maximum number of garage bays for the building types listed below shall be limited based on lot width as follows:

Building Type	Lot Width	Maximum number of side by side enclosed standard parking stalls when vehicle access is from primary street
Detached House	Less than 40 feet	1
	> 40 feet up to 74 feet	2
	>74 feet up to 100 feet	3
	>100	No limit
Backyard Cottage	N/A	N/A
Side-by-side duplex	74 feet or less	1 per unit
	>74 feet	2 per unit
Duplex back-to-back	40 feet or less	1 for the front unit, no limit for rear unit.
	>40 feet and up	2 for the front unit, no limit for rear unit.
Attached House	74 feet or less	1 per dwelling unit
	>74 and up	2 per unit
Townhouse (See POMC 20.127.340 (2) (d))	<30 feet	Not Permitted
	➤ 30 feet	1 per unit
Accessory Buildings	N/A	N/A

(2) A side by side interior parking space shall mean an area within a structure designed for the storage of a single passenger car or light truck.

**20.139.020 Garage Placement and Design.**

(1) The following provisions apply to detached houses, side by side duplexes, and back to back duplexes.

(a) Where lots front on a public street, and where vehicular access is from the street, garages or carports shall be set back at least five feet behind the ground floor front wall of the occupied portion of a house or front edge of an unenclosed porch.

Exceptions:

(i) Garages may project up to six feet closer to the street than the ground floor front wall of the occupied portion of a structure or front edge of an unenclosed porch, provided it is set back at least 18 feet from the property line or sidewalk edge (when sidewalks are present) and incorporates at least two of the design/detail features below. Garages placed flush with the ground floor front wall (or between zero and five feet behind the front wall) of the occupied portion of the house shall incorporate at least one of the design/detail features below:

(A) A decorative trellis or arbor over the entire garage face, above and surrounding the garage door.

(B) A balcony that extends out over the garage and includes columns.

(C) Two separate doors for two car garages instead of one large door.

- (D) Decorative windows on the garage door.
  - (E) Decorative details on the garage door. Standard squares on a garage door will not qualify as a decorative detail. Traditional visible hinges and handles (functional or decorative), and other construction methods creating depth and texture on a garage door surface are acceptable forms of decorative details. Examples of decorative details are shown in Figure 2.
  - (F) A garage door color (other than white) that matches or complements the color of the house.
  - (G) Other design techniques that effectively deemphasize the garage, as determined by the director.
- (ii) Garages may be placed closer to the street than the front wall of the house or front edge of an unenclosed porch, provided the garage door faces an interior lot line and features (a) window(s) facing the street, so that it appears to be habitable.
  - (iii) Where lots abut an alley, the garage or off-street parking area shall take access from the alley, unless precluded by steep topography. This requirement shall not apply to unopened alleys.

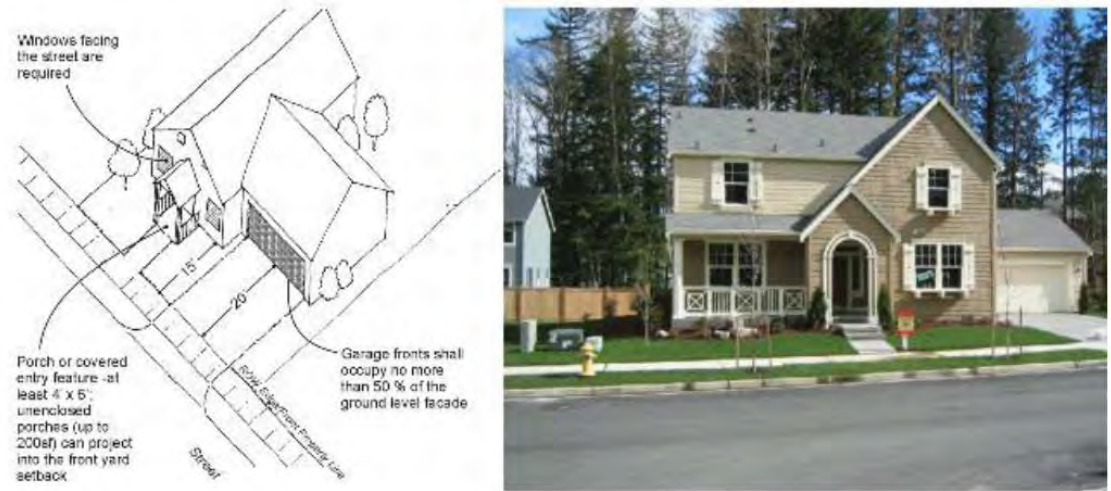


Figure 1: Garage placement/frontage standards and design.

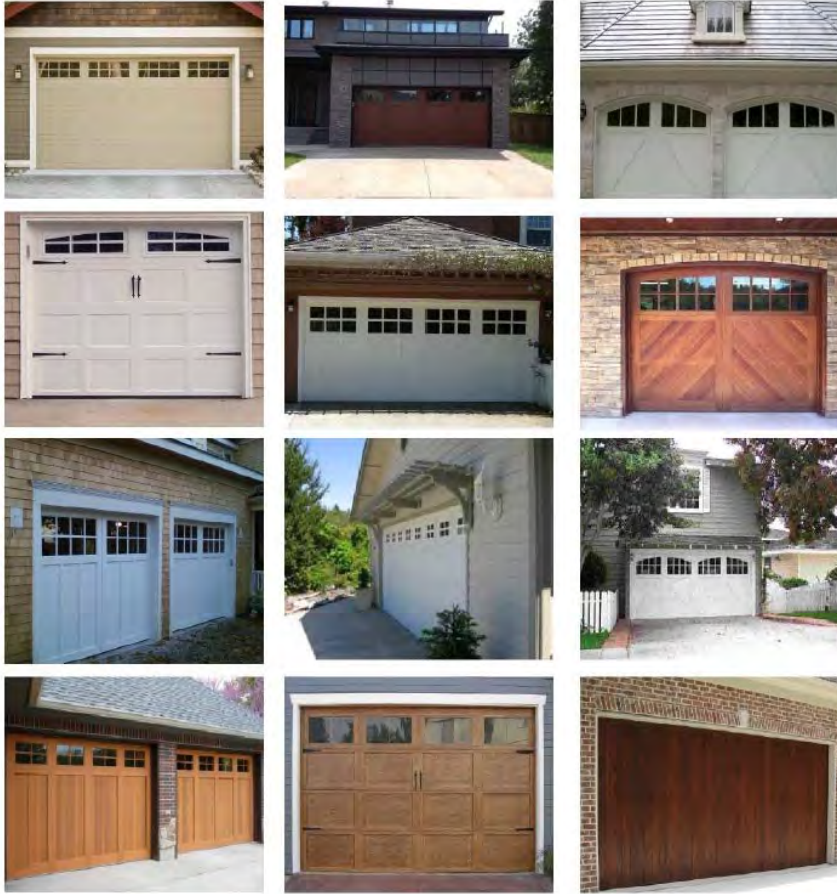


Figure 2: Garage design/detail examples.

**20.139.025 Building Design.**

This section shall apply to detached houses, cottages within a cottage court, all duplex types, attached houses, and townhouses as defined in Chapter 20.32.

(1) Porches. All detached houses, cottages within a cottage court, attached houses, and all duplex types shall have a porch meeting the standards of Chapter 20.122.060.

(2) Focal Point. All detached houses, cottages within a cottage court, attached houses, all duplex types, and townhouses shall include front doors or windows (excluding windows on a garage door or above a garage door) as a focal point on the front elevation.

(3) Windows and Transparency. All detached houses, cottages within a cottage court, attached houses, all duplex types, and townhouses shall provide windows and meet transparency requirements as follows:

- (a) Transparent windows and/or doors facing the street are required. To meet this requirement, at least eight percent of the façade must be transparent. The façade is measured from the base of the house to the start of the roofline and any other vertical walls facing the street, except for gabled portions of the façade not containing livable floor area (see Figure 3 for clarification). Garages located on the street facing wall of the house shall count as part of the façade.

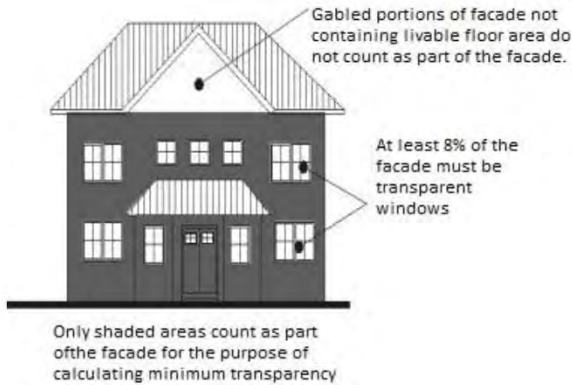


Figure 3: Façade transparency.

(b) Building façades visible from a public street shall employ techniques to recess or project individual windows above the ground floor at least two inches from the façade or incorporate window trim at least three and one-half inches in width that features color that contrasts with the base building color. Exceptions will be considered where buildings employ two or more other distinctive window or façade treatments that add depth and visual interest to the building. Examples of distinctive window or façade treatments are shown in Figure 5. Distinctive window or façade treatments include:

- (i) Shutters on all street facing windows.
- (ii) A keystone above a window (on masonry homes).
- (iii) Windows containing more than two glass panes (or that give the appearance of multiple panes).
- (iv) Stained or custom glass.
- (v) Exterior window sills.
- (vi) Significantly increased facade transparency percentages in a modern architectural application.
- (vii) Other design techniques that effectively emphasize windows as an architectural feature as determined by the director.



Figure 4: Acceptable (left and middle) and unacceptable (right) window design.





Figure 5: Examples of distinctive window or façade treatments.

**20.139.030 Architectural Details.**

This section shall apply to detached houses, cottages within a cottage court, all duplex types, attached houses, and townhouses.

(1) Architectural Details. Provide for architectural details that add visual interest to the neighborhood and are well proportioned to achieve good human scale. Specifically, incorporate at least three of the following detail elements into the façade of the house:

- (a) Decorative porch design, including decorative columns or railings.
- (b) Bay windows or balconies.
- (c) Decorative molding/framing details around all ground floor windows and doors.
- (d) Decorative door design including transom and/or side lights or other distinctive feature.
- (e) Decorative roofline elements including brackets, multiple dormers, and chimneys.
- (f) Decorative building materials, including decorative masonry, shingle, brick, tile, stone, or other materials with decorative or textural qualities.
- (g) Landscaped trellises or other decorative elements that incorporate landscaping near the building entry.
- (h) Distinctive paint schemes (such as a paint scheme consisting of three or more colors).
- (i) Other decorative façade elements or details that meet the intent and standards as determined by the director.



Figure 6. Examples of how houses can meet architectural detail criteria. Image A includes decorative windows, building material treatment, and roofline elements. Image B includes decorative brick use, window treatments, entry design, and ventilation circles. Image C includes decorative building materials, door/entry feature, windows, and roofline elements.

**20.139.035 Architectural Variety.**

This section shall apply to detached houses, all duplex types, and attached houses.

(1) Developments shall achieve architectural variety by accommodating a variety of architectural styles, variations of the same architectural style, and through the use of multiple design elements. Specifically:

(a) Duplicative house designs adjacent to each other are prohibited. Simple reverse configurations of the same house design on adjacent lots are not sufficient to meet architectural variety goals. Exceptions may be granted by the director in special circumstances where similar architectural consistency provides a distinct character for a cluster of homes surrounding an open space or on a particular street (cottage homes in a cottage court for example).

(b) Generally, the more houses in a subdivision or on a street block, the greater the number of different façade elevations will be required. Specifically, the following subdivision and street block variety standards shall apply:

(i) Subdivisions:

- (A) Ten to 19 structures, a minimum of four different façade elevations shall be used.
- (B) Twenty to 39 structures, a minimum of five different façade elevations shall be used.
- (C) Forty to 69 structures, a minimum of six different façade elevations shall be used.
- (D) Seventy or more structures, a minimum of seven different façade elevations shall be used.

(ii) Street Block:

- (A) Less than six structures, a minimum of three different façade elevations shall be used.
- (B) Seven to 10 structures, a minimum of four different façade elevations shall be used.
- (C) Eleven to 14 structures, a minimum of five different façade elevations shall be used.
- (D) Fifteen or more structures, a minimum of six different façade elevations shall be used.



Figure 7. Examples of detached houses featuring different façade elevations. Notice the different rooflines, entry features, window designs/locations, exterior materials, and colors.

(c) In order to qualify as a different façade elevation, dwellings shall have different roofline configurations, different color palettes, and different porch/entry design. In addition, a minimum of two of the following alternatives shall be utilized:

- (i) Different window openings (location and design).
- (ii) One- and two-story houses.
- (iii) Different exterior materials and finishes.
- (iv) Different garage location, configuration, and design.
- (v) Other different design element that helps to distinguish one façade elevation from another as determined by the director.

#### **20.139.040 Building Materials.**

This section shall apply to detached houses, cottages within a cottage court, all duplex types, attached houses, and townhouses.

(1) the following building material standards shall be met:

- (a) Mirrored glass and exposed concrete block (except for foundation/crawl space walls where not visible from the street) are prohibited. Board form concrete is acceptable.
- (b) T-111 siding and other plywood types of siding (board and batten with a brick, stone, or horizontal lap siding lower portion of the building is an exception) shall not be used for façades adjacent to or directly viewable from a street or public place.

#### **20.139.045 Roof Design.**

This section shall apply to detached houses, all duplex types, and attached houses.

(1) A variety of articulated roof forms shall be provided for each individual home that emphasize building form to create visual interest to the neighborhood and to avoid a monotonous series of rooflines. Roof should exhibit variety between different plans by using front-to-rear and side-to-side gabled and hipped roofs, and/or by the introduction of single-story elements. Roof materials, colors and treatments should correspond to the individual character or style of the home and should be compatible with the overall look of the neighborhood.

(2) All buildings with pitched roofs shall have a minimum slope of four feet vertical rise for every 12 feet of horizontal run on the primary roof of the building. A continuous pitched roof shall extend no more than 40 linear feet unless it contains roof elements. Roof elements may include at least one of the following:

- (a) Dormers.
- (b) Cupolas.
- (c) Gable or hip projection.

(c) Hipped roofs or similar construction are encouraged alongside yards in neighborhoods with closely-adjacent homes to maximize solar access to neighboring homes and/or private open space, as shown below.

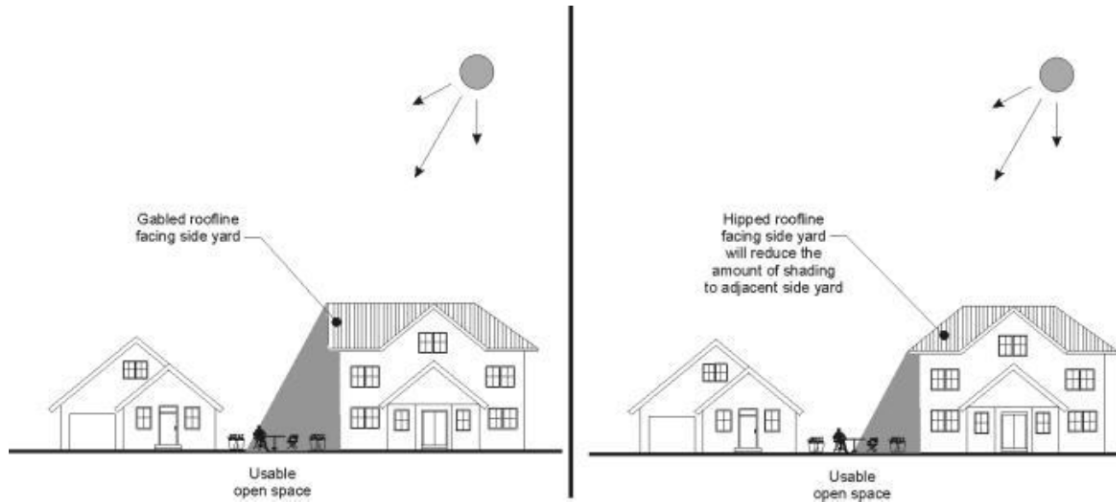


Figure 8: Encourage rooflines along the side yard that maximize solar access to adjacent homes and/or private open space.

#### **20.139.050 Accessory Building Standards.**

Accessory buildings (including detached garages) with more than 200 square feet of floor area shall be designed to be compatible with the primary structure in scale, size, materials, detailing, and roofline, as determined by the director. Accessory buildings of any size that have more than one story (such as a loft, mezzanine or attic space), and accessory buildings that will be located within a required fire separation according to the IRC, may require a building permit.

#### **20.139.055 Side by Side Duplex and Attached House Standards.**

Duplexes should be designed similar in nature to single-family homes and shall feature a visible pedestrian entry and windows facing the street. Specifically, duplexes shall comply with all detached single-family design standards in this section with the following exceptions and additional provisions:

- (1) For sites without alleys, duplexes may include a 20-foot-wide shared driveway or two 12-foot driveways on opposite ends of the lot.
- (2) Separate covered entries for each unit are required with a minimum dimension of four feet by six feet. Porches up to 200 square feet may project into the required front yard by up to six feet.
- (3) Duplexes on corner lots shall place pedestrian entries on separate streets.
- (4) At least 10 percent of the street-facing façade shall be windows or other glazing (e.g., door glazing).



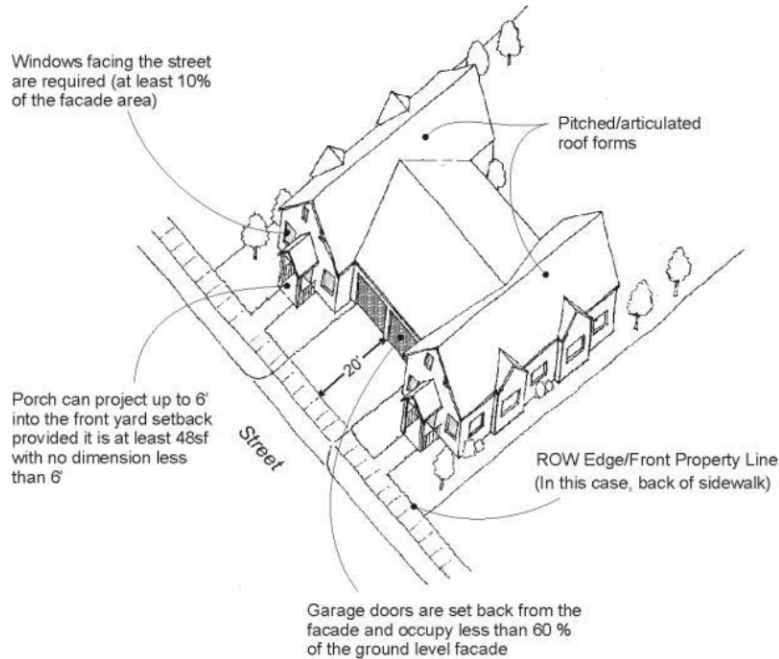


Figure 9: Duplex design standards.

**20.139.060 Back to Back Duplex Standards.**

Back to back duplexes shall comply with all of the same standards applicable to detached houses as listed in POMC 20.139.015-045 and for any unit within a back to back duplex that abuts a public street. Any rear unit that does not directly abut a public street is encouraged to meet the listed in POMC 20.139.015-045 and to be finished consistent with the forward street abutting unit.

**20.139.065 Residential Walls and Fences Standards.**

(1) General Standards. The following standards shall apply to all residential development:

(a) Fences and walls shall either be finished (i.e., without exposed supports or stringers) on both sides, or else shall be installed so that the finished side faces any street.



Figure 10: Fence with finished side facing a street (left); fence finished on both sides (center); fence with finished side not facing a street (right).

(b) Fences and walls shall follow the contour of the ground as far as practicable. Fences on sloped ground may be installed on an incline, or may be installed in stepped sections, with or without an accompanying retaining wall; however, inclined fences and stepped fences and/or walls shall have the fence and/or fence section height measured in the same manner as level fences and shall comply with

the maximum height restrictions as provided in this section. Adjustments for grade shall occur at the bottom of the fence to every extent possible. See Figure 11.



Figure 11: Fences on slopes.

(c) Solid fencing or wall sections more than 200 feet long located along a street shall include architectural features, such as masonry, brick or wood-framed columns to break up the street facing side of the fence. The minimum separation between those features shall be no less than 15 feet. Examples of acceptable (upper rows) architectural features and unacceptable (bottom row) architectural features are shown in Figure 12.



Figure 12. Fences that are broken up with architectural features (top two rows) and those that are not broken up (bottom row).

(d) Approved columns or posts may exceed the height of the fence by one foot and must meet all permit and setback requirements.

(e) Fences shall be maintained in good repair. It shall be a violation of the zoning code to allow a fence to fall into disrepair.

(2) Fence Height. The following standards shall apply to all residential development:

(a) If a minimum linear distance of 10 feet separates a fence and retaining wall, a fence may be erected to a height of six feet above the highest finished grade within the 10 foot distance.

(b) All fences in the primary front yard of single-family, duplex and attached residential uses shall not exceed four feet in height and a minimum 35 percent open area (see Figures 14, 15).

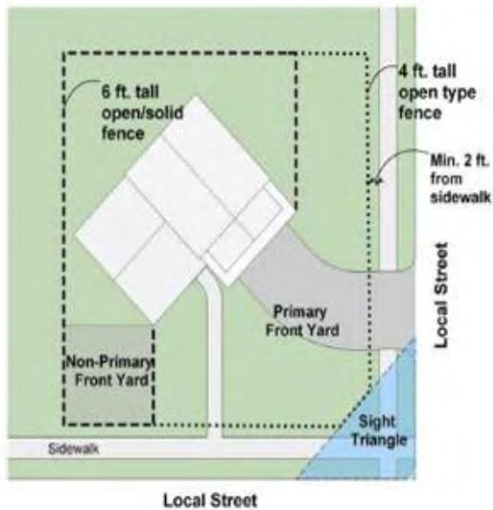


Figure 13. Fence type and height – Front vs. side and rear yard.



Figure 14: Fences with at least 35 percent open area – open type fence.

(c) All fences in the rear yard, side yard, nonprimary front of single-family, duplex, attached residential, and multifamily uses may be solid and shall not exceed six feet in height.

(d) A combination fence and retaining wall may be erected to a height of six feet above the highest finished grade or eight feet above the lowest finished grade, at the location of the fence, except that at no time shall the fence portion exceed six feet above the highest finished grade at any point (see Figure 15).

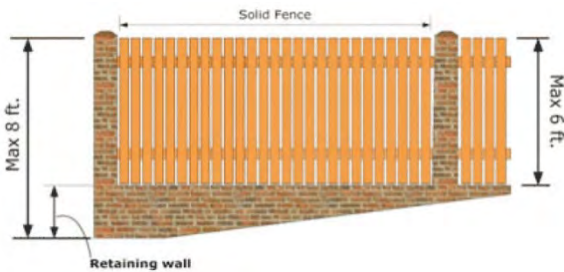


Figure 15: Fence and retaining wall on grade.

(e) A retaining wall may not elevate a fence to any height more than allowed by this section.

(f) An entry feature or trellis may have a maximum height of 10 feet and maximum width of 10 feet.

(3) Fence and Wall Placement. The following standards shall apply to all residential development:

(a) No portion of a fence shall extend beyond the property line of the fenced property into the public right-of-way unless allowed by a right of-way use permit.

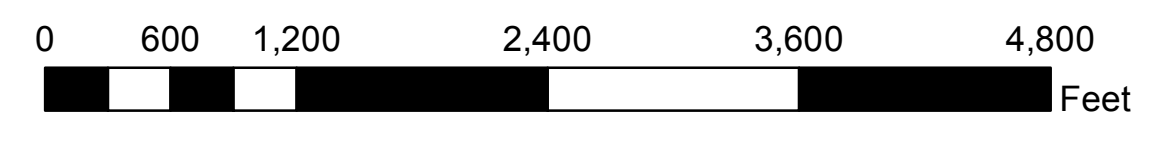
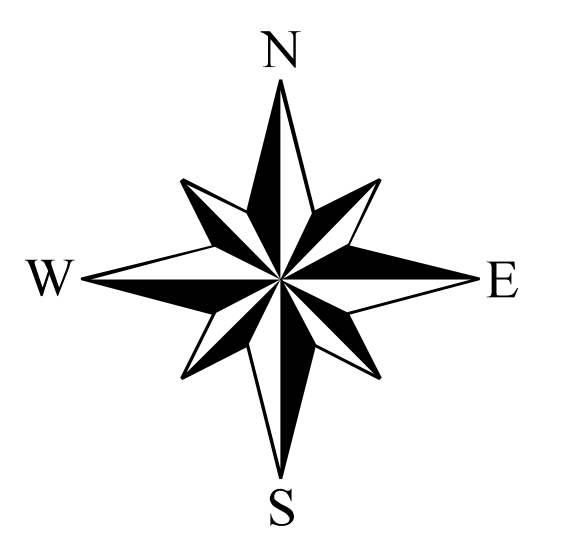
- (b) All fences and walls including fence support systems such as posts, pillars and columns shall be set back at least to the property line and a minimum of two feet from the back edge of the sidewalk to allow for safe passage by persons on a sidewalk or traveled walkway or where no sidewalk exists then two feet behind the edge of asphalt.
  - (c) Vehicular gates must be set back at a minimum 20 feet from the travel surface of the street or back of curb in order to meet vehicle stacking requirements.
  - (d) Gates adjacent to sidewalks, alleys and public rights-of-way shall open inward to the private property.
  - (e) A fence along common property lines may be placed at the furthest point forward of the adjacent property if the adjacent property allows for fence placement that differs from the neighbors.
  - (f) Solid fences and walls may be erected to a height of eight feet to separate a property from an arterial street or a frontage road adjacent to a highway. The director shall consider the aesthetic, visual, and noise reduction characteristics of the fence or wall. A building permit may be required for fences exceeding six feet in height and for walls.
  - (g) Where a corner lot is permitted to have a solid fence along a nonprimary front property line that coincides with an adjacent property's primary front yard, no fence will be permitted that creates a site distance hazard for vehicles exiting that property or for pedestrians walking along a sidewalk or traveled walkway.
- (4) Residential Fence and Wall Materials.
- (a) Approved materials for fence construction include, but are not limited to, commercial quality wood, brick, masonry, metal, stone, wrought iron, manufactured vinyl or PVC fence material or any other material approved by the director, unless otherwise prohibited by this chapter.
  - (b) Barbed wire or razor wire is not allowed on any property used for residential purposes or any property that has residential zoning.
  - (c) Electrical fencing is allowed only on properties where legal agricultural uses exist and shall be used solely for the enclosure of livestock. This provision does not prohibit invisible fences.
  - (d) Combination fences of lattice and other decorative materials may be used in conjunction; however, at no time shall the combination exceed the overall fence height limitation.
  - (e) Prohibited fence materials shall include, but are not limited to, aluminum siding, vehicle parts, smooth face concrete masonry units/blocks, cloth or plastic tarps, scrap wood or any other material not customarily sold for fencing.
  - (f) Plastic or temporary construction fence may not be used as a permanent fence material.
  - (g) Approved materials for wall construction include, but are not limited to: stone, commercial quality brick, decorative masonry units, or decorative concrete or any other material approved by the director unless otherwise prohibited by this chapter.





**DRAFT**  
 Revised Zoning Categories  
 Conversion of Existing Zones  
 And Proposed Rezones

- BPMU
  - CC
  - CH
  - CI
  - CMU
  - DMU
  - GB
  - GMU
  - LI
  - NMU
  - PF
  - PR
  - R1
  - R2
  - R3
  - R4
  - R6
- Urban Growth Area**
- Port Orchard UGA



City of Port Orchard Department of Community Development  
 216 Prospect Street, Port Orchard, WA 98366  
 Phone: (360) 874-5533 Fax: (360) 876-4980  
[www.cityofportorchard.us](http://www.cityofportorchard.us)

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## City of Port Orchard Work Study Session Executive Summary

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**Issue Title:** Proposed Street Cut Moratorium (POMC 12.04 and 20.24 Proposed Amendments)

**Meeting Date:** February 19, 2019

**Time Required:** 15 Minutes

**Attendees:** Mark R. Dorsey, P.E, Public Works Director/City Engineer

**Action Requested At This Meeting:** Discussion and direction to staff regarding proposed revisions to POMC 12.04.020 and 20.24.080, thereby establishing a Street Cut Moratorium on newly paved streets.

**Background/Issue:** As a function of the 2019 update of the Public Works Department Engineering Standards, and to address the long-standing issue of pavement degradation of the City's streets by utility contractors, a draft 'Street Cut Moratorium Ordinance' was brought forth to the Land Use Committee on January 28, 2019. In order to maintain the integrity of the City's transportation system, which is integral to both the economic vitality and the quality of life within Port Orchard, this important public function must be protected.

**Alternatives:** As directed by Council.

**Recommendation:** Staff recommends discussing the issue, and then be given direction to proceed.

**Relationship to Comprehensive Plan:** Chapter 8 - Transportation

**Attachments:** Draft Ordinance (Redline), SC Comments, and Trench Restoration Detail (Non-Moratorium Related).

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**ORDINANCE NO. 002-19**

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, ESTABLISHING A STREET CUT MORATORIUM ON NEWLY PAVED STREETS; AMENDING SECTIONS 12.04.020 AND 20.24.080 OF THE CITY OF PORT ORCHARD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, The City of Port Orchard owns and maintains a transportation system that is vital to the City's economic vitality and the City's quality of life, and is an important public function; and

**WHEREAS**, the City wishes to minimize pavement degradation, maintain the structural integrity of streets, maintain a smooth riding surface for all modes of transportation, and limit negative visual impacts; and

**WHEREAS**, street cuts and trenching for utilities can seriously impact the condition and useful life of City streets; and

**WHEREAS**, by establishing a Street Cut Moratorium, contractors and/or utilities companies with proposed projects that require trenching/excavation within public roadways can more effectively coordinate and plan the installation of utilities with minimal impact to the condition and useful life of City streets; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1:** Section 12.04.020 of the Port Orchard Municipal Code is hereby amended to read as follows:

**12.04.020 Compliance Required for Permit**

(1) The ~~superintendent of Public Works~~ Director shall grant such permit only upon compliance with terms and conditions set forth in POMC 12.04.020 through 12.04.100.

(2) No permit shall be issued under this Chapter for work which requires cutting or excavating the paved surface of any street, alley, or other public place for a period of five (5) years from the completion of construction, resurfacing, or reconstruction of that surface; except that this prohibition shall not apply to:

(a) Emergency repairs that could not have been anticipated or are necessary for the protection of the public's health and safety, or

- (b) Work necessary to ensure continued service delivery to an agency's or utility's existing customer; or
- (c) Work for new utility services where no other reasonable means of providing service to a building exists; or
- (d) Work that is mandated by City, State, or Federal legislation; or
- (e) Work deemed by the Public Works Director to be in the best interests of the City.

Any approved work that requires cutting or excavating of the paved surface of any street, alley, or other public place within the five-year moratorium period from the completion of resurfacing or reconstruction of that surface requires a waiver from the City; and the permittee must restore the pavement according to the currently adopted City of Port Orchard Standards and Specifications for pavement restoration.

**Section 2:** Section 20.24.080 of the Port Orchard Municipal Code is hereby amended to read as follows:

**20.24.080 Project Review – Public Notice**

(1) Within 10 business days of determining an application as technically complete, the director shall:

(a) Transmit a copy of the application, or appropriate parts of the application, to each affected government agency and city department for review and comment, including those responsible for determining compliance with state and federal requirements. The affected agencies and city departments shall have 15 business days to comment on the application. The agency or city department is presumed to have no comment if comments are not received within this 15-business-day period. The Public Works Director shall grant an extension of time only if the application involves unusual circumstances.

(b) The Public Works Director shall provide for public notice of application, as set forth in Chapter 20.25 POMC.

(2) Project review by the Public Works Director and appropriate city staff shall identify specific project design and conditions relating to the character of the development, such as the details of site plans, curb cuts, drainage swales, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts.

(3) The public notice and inter-agency communication set forth in this Chapter shall include a statement regarding whether the project involves the construction, reconstruction, or resurfacing of any street, alley or other public place and whether a five-year street cut moratorium period, as outlined in Section 12.04.020, will be in effect.

~~(3)~~(4) Except when a land use action is categorically exempt from SEPA, environmental review shall be conducted concurrently with review of other proposed land use actions requested by an applicant. When a proposed development requires more than one land use action, the applicant may request concurrent review of all proposed land use actions.

**Section 3: Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of the Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

**Section 4: Effective Date.** This ordinance shall be in full force and effect five (5) days after posting and publication, as required by law. A summary of the Ordinance may be published in lieu of the entire Ordinance, as authorized by State Law.

\_\_\_\_\_  
Robert Putaansuu, Mayor

ATTEST:

\_\_\_\_\_  
Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Sharon Cates, City Attorney

SPONSORED BY:

\_\_\_\_\_  
Scott Diener, Councilmamber

reconstruction, or resurfacing of any street, alley or other public place, and whether a five-year street cut moratorium period, will go into effect as outlined in Section 12.04.020, will be in effect.

(3)(4) Except when a land use action is categorically exempt from SEPA, environmental review shall be conducted concurrently with review of other proposed land use actions requested by an applicant. When a proposed development requires more than one land use action, the applicant may request concurrent review of all proposed land use actions.

**Section 3: Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of the Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

**Section 4: Effective Date.** This ordinance shall be in full force and effect five (5) days after posting and publication, as required by law. A summary of the Ordinance may be published in lieu of the entire Ordinance, as authorized by State Law.

**Commented [SC2]:** The way Section 12.04.020 is written, any construction, reconstruction or resurfacing of a street, alley or other public place has a 5-year street cut moratorium attached. Should this last phrase read "that a five-year street cut moratorium period, as outlined in Section 12.04.020, will be in effect"? (Rather than "whether" it will be in effect?)

\_\_\_\_\_  
Robert Putaansuu, Mayor

ATTEST:

\_\_\_\_\_  
Brandy Rinearson, MCMC, City Clerk

APPROVED AS TO FORM:

SPONSORED BY:

\_\_\_\_\_  
Sharon Cates, City Attorney

\_\_\_\_\_  
Scott Diener, Councilmember

- (a) Emergency repairs that could not have been anticipated or are necessary for the protection of the public's health and safety; or
- (b) Work necessary to ensure continued service delivery to an agency's or utility's existing customer; or
- (c) Work for new utility services where no other reasonable means of providing service exists to a building exists; or
- (d) Work that is mandated by the City, State, or Federal legislation; or
- (e) Work deemed by the Public Works Director to be in the best interests of the City.

Any approved work that requires cutting or excavating of the paved surface of any street, alley, or other public place within the five-year moratorium period from the completion of resurfacing or reconstruction of that surface public place requires a waiver from the City, and the permittee must restore the pavement according to the currently adopted City of Port Orchard Standards and Specifications for pavement restoration.

**Commented [SC1]:** This waiver requirement is unclear to me. Is a waiver required only if the work is "deemed by the PW Director to be in the best interests of the City" so that the City can place certain extra requirements on the work, or is a waiver required in any of the above listed scenarios? It seems that, if any of the above listed scenarios applies, then a regular permit would be issued. And wouldn't that permit have the pavement restoration requirements listed in this paragraph?

**Section 2:** Section 20.24.080 of the Port Orchard Municipal Code is hereby amended to read as follows:

**20.24.080 Project Review – Public Notice**

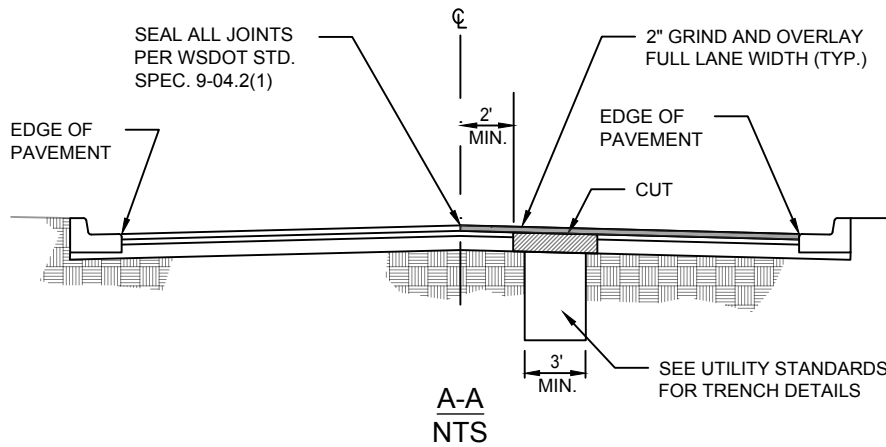
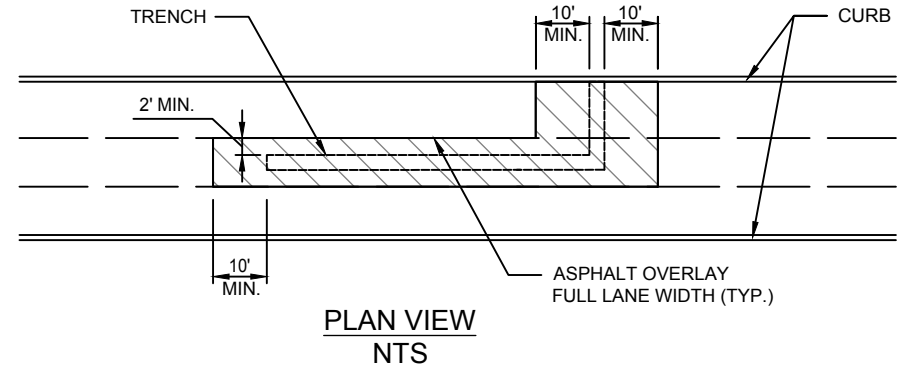
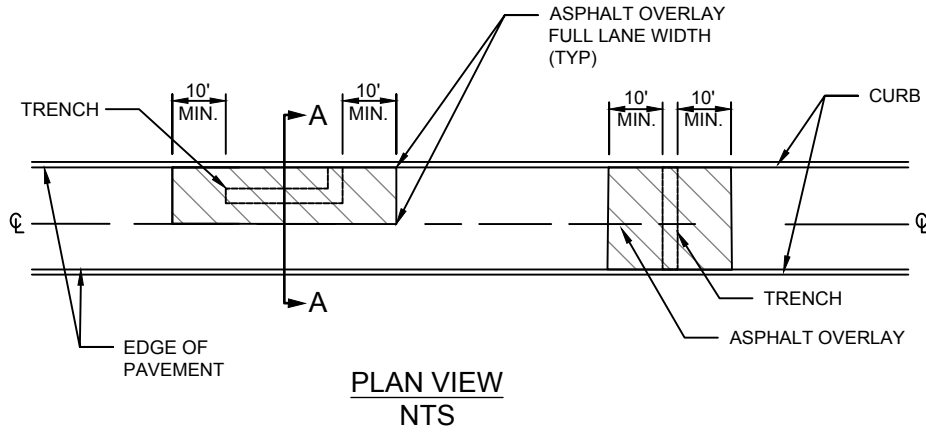
(1) Within 10 business days of determining an application as technically complete, the director shall:

(a) Transmit a copy of the application, or appropriate parts of the application, to each affected government agency and city department for review and comment, including those responsible for determining compliance with state and federal requirements. The affected agencies and city departments shall have 15 business days to comment on the application. The agency or city department is presumed to have no comment if comments are not received within this 15-business-day period. The Public Works Director shall grant an extension of time only if the application involves unusual circumstances.

(b) The Public Works Director shall provide for public notice of application, as set forth in Chapter 20.25 POMC.

(2) Project review by the Public Works Director and appropriate city staff shall identify specific project design and conditions relating to the character of the development, such as the details of site plans, curb cuts, drainage swales, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts.

(3) The public notice and inter-agency communication set forth in this Chapter shall include a statement regarding whether the project involves the is required to construction,



**NOTES:**

1. THIS STANDARD APPLIES TO ALL CUTS IN ASPHALT ROADWAY.
2. GRIND/OVERLAY WITHIN SIGNAL LOOP DETECTION ZONE MAY BE EXTENDED TO INCLUDE ADDITIONAL LANES AND/OR DETECTORS
3. OVERLAY AREA MAY BE EXTENDED AT THE DISCRETION OF THE TRANSPORTATION ENGINEER TO ENCOMPASS ADJACENT STREET CUTS OR PREVIOUS RESTORATIONS.
4. ADJUST ALL UTILITY CASTINGS TO FINISHED GRADE AFTER OVERLAY AND RESTORE CHANNELIZATION AND LOOP DETECTION

DRAWN BY	IDS
DATE	1/16/2019
SCALE	NTS
DRAWING NUMBER	604



## City of Port Orchard Work Study Session Executive Summary

---

**Issue Title:** Discussion Regarding the Adoption of an Ordinance, Thereby Creating New Chapter 12.34, New Sections 13.04 and 13.06, Adopting the 2019 Public Works Engineering Standards and Specifications (PWESS) and Repealing Resolution No. 006-14.

**Meeting Date:** February 19, 2019

**Time Required:** 15 Minutes

**Attendees:** Mark R. Dorsey, P.E, Public Works Director/City Engineer

**Action Requested At This Meeting:** Discussion and direction to staff regarding proposed addition of POMC New Chapter 12.34, New Sections 13.04/13.06, adopting the 2019 PWESS and repealing Resolution No. 006-14.

**Background/Issue:** As a necessary function of the 2019 Zoning Code update, the Public Works Department needs to update and codify the 2019 Public Works Engineering Standards and Specifications (PWESS), and repeal the previously adopted (via Resolution No. 006-14) 2014 Development Guidelines. The PWESS is required for continued compliance with the City of Port Orchard’s Water System Plan, Comprehensive Sanitary Sewer Plan, Transportation Element of the Comprehensive Plan, Stormwater Plan and the City’s Phase II NPDES Permit.

**Alternatives:** As directed by Council.

**Recommendation:** Staff recommends discussing the issue, and then be given direction to proceed.

**Relationship to Comprehensive Plan:** Chapter 7 – Utilities, and Chapter 8 – Transportation

**Attachments:** Draft Ordinance. (Council was emailed the full and redline PWESS documents on February 6, 2019).

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, ADOPTING A NEW CHAPTER 12.34 STREET AND SIDEWALK STANDARDS; ADOPTING A NEW SECTION 13.04.300 WATER AND SEWER STANDARDS; ADOPTING A NEW SECTION 13.06.300 STORMWATER STANDARDS; ADOPTING THE 2019 PUBLIC WORKS ENGINEERING STANDARDS AND SPECIFICATIONS; REPEALING RESOLUTION 006-14; PROVIDING FOR SEVERABILITY AND CORRECTIONS; SETTING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION.**

**WHEREAS**, in April of 2014, the City adopted Resolution No. 006-14, thereby establishing an update to the 2004 Developer's Handbook, being the 2014 City of Port Orchard Development Guidelines; and

**WHEREAS**, for continued compliance with the City of Port Orchard's Water System Plan, Comprehensive Sanitary Sewer Plan, Transportation Element of the Comprehensive Plan, Stormwater Plan, and the City's Phase II NPDES Permit, the City of Port Orchard must have Public Works Engineering Standards and Specifications ('Standards') adopted by Ordinance; and

**WHEREAS**, the City's Departments of Community Development and Public Works have worked cooperatively to integrate a codified 'Standards' Handbook; now, therefore,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. POMC Chapter 12.34 Created.** A new Port Orchard Municipal Code chapter 12.34 is hereby adopted to read as follows:

**POMC 12.34 Streets and Sidewalk Standards.**

**12.34.010 Street and Sidewalk Standards.** All roads, streets, sidewalks, and roadway facilities shall be designed and constructed in accordance with the "2019 City of Port Orchard Public Works Engineering Standards and Specification (PWESS)," three copies of which are on file with the City Clerk.

**Section 2. POMC Section 13.04.300 Water and Sewer Standards Created.** A new Port Orchard Municipal Code section 13.04.300 is hereby adopted to read as follows:

**POMC 13.04.300 Water and Sewer Standards.** All water and sewer improvements shall be designed and constructed in accordance with the "2019 City of Port Orchard Public Works



Engineering Standards and Specifications (PWESS),” three copies of which are on file with the City Clerk.

**Section 3. POMC 13.06.300 Stormwater Standards Created.** A new Port Orchard Municipal Code section 13.04.300 is hereby adopted to read as follows:

**POMC 13.06.300 Stormwater Standards.** All stormwater improvements shall be designed and constructed in accordance with the “2019 City of Port Orchard Public Works Engineering Standards and Specifications (PWESS),” three copies of which are on file with the City Clerk, which shall apply in addition to other adopted stormwater standards including but not limited to POMC 20.140 and 20.150.

**Section 4. 2019 City of Port Orchard Public Works Engineering Standards and Specifications Adopted.** The “2019 City of Port Orchard Public Works Engineering Standards and Specifications (PWESS)” attached and labeled Exhibit 1 hereto and incorporated fully herein by this reference, are hereby adopted in their entirety.

**Section 5. Resolution 006-14 Repealed.** City Council Resolution 006-14 is hereby repealed in its entirety;

**Section 6. Severability.** Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid by a court, board, or tribunal of competent jurisdiction, for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 7. Corrections.** Upon the approval of the City Attorney, the City Clerk is authorized to make any necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

**Section 8. Effective Date; Publication.** This ordinance shall take effect and be in full force and effect five days after publication, as provided by law. An approved summary of this ordinance consisting of the title shall be published in the official newspaper of the City.

**PASSED BY THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON,** at a regular meeting thereof this 26th day of February, 2019, and **SIGNED** by the Mayor and attested by the Clerk in authentication of such passage this 26<sup>th</sup> day of February, 2019.

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Robert Putansuu, Mayor

ATTEST:

\_\_\_\_\_  
Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Sharon Cates, City Attorney

Sponsored by:

\_\_\_\_\_  
\_\_\_\_\_, Councilmember

PUBLISHED:

EFFECTIVE DATE:

**Attachment 2019 PWESS**