

**ORDINANCE NO. 0##-19**

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, CLARIFYING REQUIREMENTS FOR MINOR LAND DISTURBING ACTIVITY PERMITS; AMENDING SECTIONS 20.22.020, 20.140.040, 20.140.060, 20.140.070, 20.140.080, AND 20.150.020(10) OF THE CITY OF PORT ORCHARD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City wishes to truncate the permit and review process for minor land disturbing activity and select tree cutting activities; and

**WHEREAS**, the City wishes to establish a means for the timely removal of danger trees that pose a threat to the public; now, therefore,

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

**SECTION 1:** Section 20.22.020 of the Port Orchard Municipal Code is hereby amended to read as follows:

**20.140.040 Decision Type**

(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>
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<p>Building Permit<sup>1</sup>(Subtitle X of this title)                  Binding Site Plan, Final (Chapter 20.94 POMC)                  Preliminary Plat – Minor Modifications (Chapter 20.88 POMC)  <u>Minor</u> Land Disturbing Activity Permit (Chapter 20.140 POMC and POMC20.150.100)                  Boundary Line Adjustment (Chapter 20.84 POMC) Code Interpretation (Chapter 20.10PO MC) Legal Nonconforming Permit (Chapter 20.54 PO MC) Short Plat, Final (Chapter 20.86PO MC)                  Sign Permit (if SEPA not required) (Chapter 20.132P OMC)</p>	<p>Short Plat, Preliminary, Alteration of Preliminary, Alteration of Final, Vacation of Final (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 20.9 4POMC)                  Stormwater Drainage Permit (Chapter 20.150POMC)                  Sign Permit (if SEPA required) (Chapter 20.132 P OMC)                  Shoreline Substantial Development Permit, Administrative (Chapter 20.164POMC)  <u>Major Land Disturbing Activity Permit (Chapter 20.140 POMC and POMC20.150.100)</u></p>	<p>Preliminary Plat, Preliminary Plat Major Modifications, Alteration of Final, Vacation of Final (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 No administrative 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)</p>	<p>Final Plat (Chapter 20.90 P OMC)                  Site-Specific Rezone without Comprehensive Plan Amendment (Chapter 20.42P OMC)</p>	<p>Development Agreement (Chapter 20.26 P OMC)                  Comprehensive Plan Amendment – Land Use Map Amendment, Text Amendment (Chapter 20.04P OMC)                  Legislative Zoning Map Amendment (Chapter 20.06P OMC)                  POMC                  Title 20 Code Amendment (Chapter 20.06P OMC)                  Annexations</p>
<p>Sign Variance (Chapter 20.132P OMC)                  Shoreline Permit Exemption (Chapter 20.164 P OMC)                  Temporary Use Permit, Extension (Chapter 20.58PO MC)</p>	<p>Variance – Administrative (Chapter 20.28POMC)</p>			

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 20.180POMC), 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.

**SECTION 2:** Section 20.140.040 of the Port Orchard Municipal Code is hereby amended to read as follows:

**20.140.040 Decision Type**

A land disturbing activity permit is a either a Type I or Type II action depending on permit scope as described below and shall be reviewed and considered in accordance with the procedures for such actions as set forth in Subtitle II of this title and this chapter.

(1) Land disturbing activity permits for minor development as defined in POMC 20.150.020(11) and for projects limited to tree cutting shall be a Type I action.

(2) Land disturbing activity permits for major development as defined in POMC 20.150.020(11) shall be a Type II decision.

**SECTION 3:** Section 20.140.060 of the Port Orchard Municipal Code is hereby amended to read as follows:

**20.140.060 Permit – Form – Exemptions.**

(1) Permit Required. A land disturbing activity permit is required to be submitted for all land disturbing activity and must be obtained prior to the commencement of any land disturbing activity unless the activity is exempted in this section. A land disturbing activity permit shall be required regardless of any other permits issued by any other department or governmental agency who may be interested in certain aspects of the proposed work.

(2) Permit Form. Applications shall be on forms prescribed by the director and shall include such information as deemed necessary by the director to establish compliance with this chapter.

(3) Permit Exemptions. If a person or entity determines that a proposed land disturbing activity is exempt from obtaining a land disturbing activity permit under this chapter, the person or entity may consult with the department to confirm the determination or to ensure compliance

with other applicable requirements of this code. A consultation may be requested in the form of a preapplication meeting.

(4) Permit Fee. Application fees shall be collected pursuant to the city's current fee schedule to compensate the department for the investigation, permit administration, plan review, and ongoing monitoring/inspection of all clearing and grading permit applications. Additional review fees required under this code may be applicable to individual land disturbing activity permit applications, including, but not limited to, shoreline management, SEPA, and critical areas review fees.

(5) Increased Fee for Work without a Permit. Whenever any work for which a land disturbing activity permit is required by this chapter has been commenced without first obtaining a valid permit, the city may double the application fee. This fee increase may be imposed in addition to any other enforcement procedures pursuant to this chapter.

(6) Any rockery or other retaining structure greater than four feet in height shall be permitted under a separate building permit.

(7) Emergencies. Emergency activities are those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to property and that require remedial or preventative action in a short time frame. The person or agency undertaking such action shall notify the city and the director shall determine if the action taken is within the scope of the emergency action allowed in this section. After the emergency, the person or agency shall obtain the required Land Disturbing Activity Permit and ensure that the area of disturbance is brought into conformance with this chapter.

(8) Danger Tree Removal. Danger Trees shall not require a land disturbing activity permit provided that they are identified by a licensed arborist as damaged, diseased or a safety hazard due to potential root, trunk or primary limb failure prior to removal. Documentation of any danger tree designation provided to the City upon request. The city recommends that notification of danger tree removal along with providing documentation of the presence of a danger tree be provided to the city prior to removal.

**SECTION 4:** Section 20.140.070 of the Port Orchard Municipal Code is hereby amended to read as follows:

**20.140.070 Permit – Stormwater drainage permit required – Exemptions.**

(1) Stormwater Drainage Permit Required. Except as specifically exempt herein, the issuance of a stormwater drainage permit pursuant to Chapter 20.150 POMC shall be required for all activities requiring a land disturbing activity permit under this chapter.

(2) Exemptions. The following land disturbing activities do not require the issuance of a stormwater drainage permit; provided, that an exemption from issuance of a stormwater

drainage permit under this section does not constitute an exemption from the other requirements of this chapter or Chapter 20.150 POMC:

(a) Excavation for utilities, or for wells or tunnels, under a separate permit.

(b) An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This shall not exempt the placement of any fill material removed from such an excavation and shall not exempt any excavation beyond the limits of the basement or footing excavations nor exempt excavations having an unsupported height greater than five feet after the completion of such a structure.

(c) Agricultural crop management outside of critical drainage areas limited to the preparation of soil by turning, discing, or other means endorsed by the Kitsap conservation district.

(d) Excavation for cemetery graves.

(e) Landscape installation where fill is confined to less than one foot of topsoil and land disturbing activities are limited to less than one acre.

(f) The disposal of solid waste, wood waste, problem waste, and demolition waste authorized pursuant to Chapter 70.95 RCW, and regulations presently enacted or as may be amended or as specifically approved by the Bremerton-Kitsap County health district.

(g) Mining, quarrying, excavating, processing, and/or stockpiling of rock, sand, gravel, aggregate, or clay where established and provided by law and a permit for said activity has been issued by the state of Washington or the federal government, provided such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous land.

(h) Exploratory excavations under the direction of a qualified civil engineer.

(i) Grading activities already approved by separate permit granted by any governing authority.

(j) Emergency sandbagging, diking, ditching, filling, or similar work during or after periods of extreme weather conditions when done to protect life or property.

(k) Maintenance activities within public rights-of-way performed by city personnel

(l) Tree cutting activities (no stump removal, clearing, or grubbing)

**SECTION 5:** Section 20.140.080 of the Port Orchard Municipal Code is hereby amended to read as follows:

**20.140.080 Permit – Submittal requirements.**

(1) General Requirements. Each application for a land disturbing activity permit shall be accompanied by plans and specifications and other supporting data, as applicable. The plans

and specifications shall be prepared and signed by a civil engineer registered to practice in the state of Washington. Plans and specifications for single-family residential construction shall not require preparation by a licensed engineer unless deemed necessary by the city engineer.

(2) Soils Report. A soils report shall be prepared by a licensed soils or geotechnical engineer and shall cover all portions of the project within the engineer's expertise, including site history; geologic structures; surface conditions; subsurface conditions; recommendations for foundation support, site preparation, structural fill, slope stability, and mitigation; design parameters for retaining structures and structure backfill, surface and subsurface drainage, dewatering, excavation conditions, and hazards; seismic conditions, erosion, and sedimentation hazards and controls; use of on-site materials for structural fill and backfill; and pavement design. The soils or geotechnical engineer shall be retained as the engineer-of-record for the duration of the project.

(3) Grading Plan. Land disturbing activities that include grading and which meet the definition of a major development shall be required to have an approved engineered grading plan.

(4) Abbreviated Grading Plan. Land disturbing activities that include grading and which meet the definition of a minor development will require an approved abbreviated grading plan in lieu of an engineered grading plan. An abbreviated grading plan is a grading plan that does not require the seal of a professional civil engineer.

(5) Erosion and Sedimentation Control. The grading plan shall include a temporary erosion and sedimentation control plan. The plan shall clearly indicate the construction sequence for establishment of all erosion and sedimentation control work, both temporary and permanent. The plan shall conform to all requirements and standards for erosion and sedimentation control set forth in this chapter.

(6) Critical Areas. If the land disturbing activity is proposed to take place in or adjacent to a critical area as regulated in Chapter 20.162 POMC, additional information as required by that chapter shall be submitted with the application.

(7) Tree Cutting. An application for a land disturbing activity permit for tree cutting meeting the definition of minor development which only involves the cutting of trees (no stump removal or grubbing) will require an abbreviated tree removal plan in lieu of an engineered grading plan or abbreviated grading plan. Abbreviated tree removal plans must indicate the approximate location of the tree(s) to be removed, the species of tree(s) to be retained and removed, the diameter at breast height of each tree to be removed, and the relative location of adjacent (within 75 feet) trees to be retained, buildings, and/or improvements. Any abbreviated tree removal plan shall comply with POMC 20.129 if significant trees are present on the property. If tree removal is proposed in critical areas or critical areas buffers, more detailed tree removal

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plans may be required by the director. Timber harvesting may require additional state permits prior to commencing work under an approved land disturbing activity permit.

**SECTION 6:** Section 20.150.020(10) of the Port Orchard Municipal Code is hereby amended to read as follows:

**20.150.020 (10) "L"**

"Land disturbing activity" shall mean any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography, including the creation and/or replacement of impervious surfaces. Land disturbing activities include, but are not limited to, demolition, construction, paving, clearing, grading, filling, excavation, and grubbing. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices, including landscape maintenance and gardening, are not considered land disturbing activity. Stormwater facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures. The cutting of trees less than 18" DBH, not located within any potential critical areas nor part of required landscape or stormwater infrastructure, is not considered a land disturbing activity.

"Land use permits and approvals" shall mean any use or development of land that requires city action in legislation, administration, or approval.

**SECTION 7: 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 8: 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.

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 \_\_ day of \_\_\_\_\_, 2019.

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

ATTEST:

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Brandy Rinearson, MMC, City Clerk

APPROVED AS TO FORM:

SPONSOR:

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

\_\_\_\_\_  
Scott Diener, Councilmember

PUBLISHED: \_\_\_\_\_, 2019

EFFECTIVE DATE: \_\_\_\_\_, 2019