

ORDINANCE NUMBER 116 -01

AN AMENDMENT TO ORDINANCE 129-00, THE HEARING EXAMINER ORDINANCE

AN ORDINANCE to amend Ordinance 129-00 by revising Title 15, the Development Code, in order to change the duties of the Hearing Examiner.

WHEREAS, the Mason County Board of Commissioners adopted Ordinance 129-00 on December 19, 2000, to be effective March 1, 2001, and Ordinance 129-00 was stayed by Ordinances 25-01 and 81-01, to allow the county to hire a hearing examiner, to establish rules for the hearings, and to further examine the office and its duties;

WHEREAS, hearings were held by the planning commission on August 20, 2001, and the planning commission recommended approval of the amendments;

WHEREAS, the Board of Commissioners heard public testimony at a public hearing on October 2, 2001; and

WHEREAS, the county will be prepared to implement the ordinance in November;

WHEREAS, the office of hearing examiner will benefit the public by providing predictability to applicants and to the general public in the permit process and making the process of administration more effective and efficient;


NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of Commissioners of Mason County hereby ADOPTS amendments to the office of hearing examiner by amending Title 15, as described in ATTACHMENT A; AND provide that these amendments shall take effect on November 1, 2001.

DATED this 23rd day of October, 2001.

Board of Commissioners
Mason County, Washington


Herb Baze, Commissioner


Bob Holter, Commissioner


Wesley E. Johnson, Commissioner

ATTEST:


Clerk of the Board

APPROVED AS TO FORM :


Prosecuting Attorney

ATTACHMENT A, ORDINANCE 116-01

TITLE 15 MASON COUNTY DEVELOPMENT CODE

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**CHAPTER 15.01
INTRODUCTION**

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15.01.010 INTENT

The purpose of this Title is to combine and consolidate the application, review, enforcement, and approval processes for land development in Mason County in a manner that is clear, concise, and understandable. It is further intended to comply with RCW 36.70B, which provides the guidelines for integrating development review and environmental review of proposed development, in coordination with approved land use plans.

Established in this Title is the standard use of the Letter of Completeness, Notice of Application, and Notice of Decision. Final decision on development proposals shall be made within 120 days of the date of the Letter of Completeness, except as provided in Section 15.09.100.

15.01.020 DEFINITIONS

The following definitions shall apply to this Title:

Accessory Structure: As defined in the relevant code or ordinance.

Adjacent Property Owners: The persons who are owners of lots, as shown on the County Assessor records, within 300 feet, not including street rights-of-way, of the boundaries of the property which is the subject of the meeting or pending action.

Code: The Mason County Code or portion of that code.

Comprehensive Plan: The Mason County Comprehensive Plan, as amended.

Comprehensive Plan Amendment: An amendment or change to the text or maps of the Comprehensive Plan.

Completed Application: Per RCW 36.70B.070.

Date of Decision: The date on which final action occurs and from which the appeal period is calculated.

Density: As defined in the relevant code or ordinance.

Development: Any land use permit or action regulated by Titles 6, 7, 8, 14, 16, and 17 MCC, including but not limited to construction permits, conditional use permits, variances, or subdivisions.

Development Code: The Mason County Development Code. Title 15 of the Mason County Code.

Effective Date: The date a final decision becomes effective.

Final Decision: The final action by the review authority or Board of County Commissioners.

MCC: The Mason County Code.

Lot: As defined in the relevant code or ordinance.

Open Record Public Hearing: An open record hearing held by an authorized hearing body, at which evidence is presented, testimony is recorded, and decision is made, to form the local government record on the review and decision-making of the planned action.

Ordinance: Any or all of the adopted Mason County ordinances or resolutions.

Party of Record: Any person who has testified at a public hearing or has submitted a written statement related to a development action and who provides the County with a complete address.

Person: Any person, firm, business, corporation, partnership of other associations or organization, marital community, municipal corporation, or governmental agency.

Project: A proposal for development.

Project Permit: Per RCW 36.70B.020 (4)

Review Authority: The Director of Community Development, the Director of Health Services, the Fire Marshal, or the Building Official, depending on the responsibility as determined by the respective codes, ordinances, and regulations. Responsibilities of the Review Authority may be delegated when not contrary to law or ordinance.

Setback: As defined in the relevant code or ordinance.

Variance: As defined or used in the relevant code or ordinance.

Yard: As defined in the relevant code or ordinance.

CHAPTER 15.03

ADMINISTRATION

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15.03.005 PURPOSE AND APPLICABILITY

This Chapter describes how the County will process enforcement actions and applications for development subject to review under the following Chapters of the Mason County Code and other ordinances and regulations of the county as listed below:

1. Title 6 (Sanitary Code), including the following Mason County Board of Health regulations, which may not be codified in Title 6: On-Site Sewage Regulation, Group B Water System Regulation, Solid Waste Regulation, and Water Adequacy Regulation
2. Title 7 (Shoreline Master Program)
3. Title 8 (Environmental Policy)
4. Title 14 (Construction)
5. Title 16 (Subdivision)
6. Title 8 (Resource Ordinance)
7. Development Regulations (Ordinance 82-96, as amended)

15.03.010 ROLES AND RESPONSIBILITIES

- A. The regulation of land development is a cooperative activity including many different elected and appointed boards and County staff. The specific responsibilities of these bodies is set forth below.
- B. A developer is expected to read and understand the County Development Code and be prepared to fulfill the obligations placed on the developer by the Mason County Code and other ordinances and regulations of the county.

15.03.015 APPLICATION TYPES AND CLASSIFICATION

- A. Applications for review pursuant to Title 15 shall be subject to a Type I, Type II, Type III, or Type IV process.
- B. Unless otherwise required, where the County must approve more than one application for a given development, all applications required for the development may be submitted for review at one time. Where more than one application is submitted for a given development, and those applications are subject to different types of procedure,

then all of the applications are subject to the highest-number procedure that applies to any of the applications.

- C. The review authority for the application in question shall classify the application as one of the four types of procedures.
1. The act of classifying an application shall be an administrative interpretation, if written and transmitted to the applicant.
 2. Questions about what procedure is appropriate shall be resolved in favor of the type providing greatest notice and opportunity to participate.
 3. The review authority shall consider the following guidelines when classifying the procedure type for an application:
 - a. A Type I (ministerial) process involves an application that is subject to clear, objective and nondiscretionary standards or standards that require an exercise of professional judgement about technical issues.
 - b. A Type II (administrative) process involves an application that is subject to objective and subjective standards that require the exercise of limited discretion about nontechnical issues and about which there may be a limited public interest.
 - c. A Type III (quasi-judicial) process involves an application for relatively few parcels and ownerships. It is subject to standards that require the exercise of substantial discretion and about which there may be a broad public interest.
 - d. A Type IV (legislative) process involves the creation, implementation, or amendment of policy or law by ordinance. The subject of a Type IV process involves a relatively large geographic area containing many property owners, and a Type IV application should follow the format detailed in Chap. 15.09.060.
- D. Type I and Type II permit reviews, which are categorically exempt from environmental review under chapter 43.21C RCW, or for which environmental review has been completed in connection with other permits, shall be excluded from the notice of application and notice of decision provisions in this Title, except when specifically required for a particular category of project. Also a letter of completeness shall be at the option of the Review Authority, provided that, if no letter of completeness is prepared, the application is considered complete after 28 days from receiving a date stamped application and within the meaning of chapter 36.70B RCW.

15.03.020 ADMINISTRATIVE DIRECTION

Each Director or authorized official shall review and act on the following:

- A. **Review Authority:** The Director of Community Development, the Director of Health Services, the Fire Marshal, and the Building Official, are responsible for the administration of the respective titles of the Mason County Code and ordinances. The responsibilities of the Review Authority may be delegated when not contrary to law or ordinance.
- B. **Administrative Interpretation:** Upon request or as determined necessary, the review authority shall interpret the meaning or application of the provisions of said titles and

issue a written administrative interpretation within 30 days. Requests for interpretation shall be written and shall concisely identify the issue and desired interpretation.

- C. **Administrative Decisions:** Administrative approval, approval with conditions, or denial of permit applications as set forth in Sections 15.09.020, 15.09.030, and 15.09.040.

15.03.030 BOARD OF COUNTY COMMISSIONERS

In addition to its legislative responsibility, the Board of County Commissioners shall review and act on the following subjects:

- A. Recommendations of the Planning Commission and Shoreline Advisory Board.
- B. Applications for Substantial Development Permits, variances or conditional uses under the Mason County Shoreline Master Program.
- C. Appeal of administrative interpretations and actions by the Department of Community Development on the Mason County Shoreline Master Program.
- D. Appeal of administrative decisions by the Department of Community Development as set forth in Section 15.09.020, 15.09.030, and 15.09.040.
- E. Appeal of a Determination of Significance under Title 8 (Environmental Policy).
- F. Granting of variances or other permit decisions, when provided by the development code or ordinance.

15.03.040 PLANNING COMMISSION

The Planning Commission shall review and make recommendations on the following applications and subjects:

- A. Amendments to the Comprehensive Plan and development regulations per RCW 36.70A.030.
- B. Amendments to the Subdivision Code, Title 16.
- C. Amendments to the Environmental Policy (Title 8) and Interim Resource Ordinance (Title 17).
- D. Applications for Preliminary Plats.
- E. Some Type III permit reviews as specified in Section 15.09.050 (2.0).
- F. Other actions requested or remanded by the County Commissioners.

The review criteria for certain of the actions are contained in Section 15.09.050, MCC.

15.03.050 SHORELINE ADVISORY BOARD

The Shoreline Advisory Board shall review and act on the following subjects:

- A. Amendments to the Mason County Shoreline Master Program.
- B. Applications for Conditional Use and Variance per the Shoreline Master Program.
- C. Other actions requested or remanded by the County Commissioners.

The review criteria and procedures for the Shoreline Advisory Board are contained in Title 7, MCC, and Section 15.09.050 (1.0).

Amendments to the Mason County Shoreline Master Program or other actions requested by the County Commissioners, the Planning Commission.

15.03.060 HEARING EXAMINER

The Hearing Examiner shall review and act on the following subjects:

- A. Appeals of decisions of the Building Official on the interpretation or application of the Building Code.
- B. Revoking or modifying a permit or approval per Section 15.13.070.
- C. Appeals of enforcement actions under the codes, ordinances and regulations listed under 15.03.005. Enforcement actions include interpretations and decisions made as part of the enforcement actions under the authority of provisions in 15.03.005.
- D. Appeals of decisions of the Fire Marshal on interpretation or application of the Fire Code.
- E. Enforcement actions as provided in Chapter 15.13.

CHAPTER 15.05

CONSOLIDATED APPLICATION PROCESS

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15.05.010 APPLICATION

- A. The County shall consolidate development applications consistent with RCW 36.70B and review in order to integrate the development permit and environmental review process, while avoiding duplication of the review processes.
- B. All applications for development permits, conditional uses, variances, and other County approvals under the Development Code shall be submitted on forms provided by the review authority. All applications shall be acknowledged by the property owner or their agent.

15.05.020 PREAPPLICATION ACTIVITIES

- A. **Informal.** Applicants for development are encouraged to participate in an informal discussion prior to the formal preapplication meeting. The purpose of the meeting is to discuss, in general terms, the proposed development, County development standards, and required permits and approval process.
- B. **Formal.** Every person proposing a development in the County, with exception of Type I permits and decisions and some Type II permits and decisions, shall attend a preapplication meeting. The purpose of the meeting is to discuss the nature of the proposed development, application and permit requirements, fees, review process and schedule, applicable plans, policies and regulations. In order to expedite development review, the County shall invite all affected departments, agencies and/or special districts to the preapplication meeting, at the discretion of the review authority.

15.05.030 CONTENT OF APPLICATIONS

- A. All applications for approval under Titles 6, 7, 8, 14, 16, and other applicable ordinances shall include the information specified therein. The review authority may require such additional information as reasonably necessary to fully evaluate the proposal.
- B. The applicant shall apply for all permits identified in the preapplication meeting.

15.05.040 LETTER OF COMPLETENESS OF APPLICATION

- A. Within twenty-eight (28) days of receiving a date stamped application, the County shall review the application and as set forth below, provide applicants with a written determination that the application is complete or incomplete.
- B. A project application shall be declared complete only when it contains all of the following materials:
 - 1. A fully completed, signed, and acknowledged development application and all applicable review fees.
 - 2. A fully completed, signed, and acknowledged environmental checklist for projects subject to review under the State Environmental Policy Act (Title 8).
 - 3. The information specified for the desired project in the appropriate chapters of the Mason County Code and as identified in Section 15.05.030.
 - 4. Any supplemental information or special studies identified by the review authority.
- C. For applications determined to be incomplete, the County shall identify, in writing, the specific requirements or information necessary to constitute a complete application. Upon submittal of the additional information, the County shall, within fourteen (14) days, issue a letter of completeness or identify what additional information is required.

CHAPTER 15.07

PUBLIC NOTICE REQUIREMENTS

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15.07.010 NOTICE OF DEVELOPMENT APPLICATION

- A. Within fourteen (14) days of issuing a letter of completeness under Chapter 15.05, the County shall issue a Notice of Development Application for Type III permits and Type II permits, which are not excluded as provided in section 15.03.015 of this Title. The notice shall include, but not be limited to, the following:
1. The name of the applicant.
 2. Date of application.
 3. The date of the letter of completeness.
 4. The location of the project.
 5. A project description.
 6. The requested approvals, actions, and/or required studies.
 7. A public comment period not less than fourteen (14) nor more than thirty (30) days.
 8. Identification of existing environmental documents.
 9. A County staff contact and phone number.
 10. The date, time, and place of a public meeting, or public hearing if one has been scheduled.
 11. A statement that the decision on the application will be made within 120 days of the date of the letter of completeness.
- B. The Notice of Development Application shall be posted on the subject property and sent to adjacent property owners.
- C. The Notice of Development Application may be combined with any required notice of a public meeting or open record public hearing.
- D. The Notice of Development Application may be combined with the threshold determination and scoping notice for a determination of significance.

15.07.020 NOTICE OF ADMINISTRATIVE DECISIONS

When notice of administrative approvals or denials is required, such notice shall be made as provided in Section 15.07.050.

15.07.030 NOTICE OF PUBLIC MEETINGS AND PUBLIC HEARINGS

Notice of a public meeting or public hearing for all development applications and appeals shall be given as follows:

- A. Time of Notices: Except as otherwise required, public notification of meetings, and hearings, and on pending actions shall be made by:
 - 1. Publication at least ten (10) days before the date of a public meeting, hearing, or pending action in the official newspaper if one has been designated or a newspaper of general circulation in the County; and
 - 2. Mailing at least ten (10) days before the date of a public meeting, or public hearing to all adjacent property owners of the boundaries of the property which is the subject of the meeting or pending action. Addressed, pre-stamped envelopes shall be provided by the applicant; and
 - 3. Posting at least ten (10) days before the meeting, hearing, or pending action in one public place (for example, a post office) and at least two notices on the subject property.
 - 4. Provided that, if the notice is for the purpose of an open record pre-decision hearing, the notice of application shall be provided at least fifteen (15) days prior to the open record hearing.
 - 5. Provided that, if a SEPA threshold determination has been made, that determination shall be issued at least 15 days prior to the hearing date.
- B. Content of Notice: The public notice shall include a general description of the proposed project, action to be taken, a non-legal description of the property or a vicinity map or sketch, the time, date and place of the public hearing and the place where further information may be obtained.
- C. Continuations: If for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date certain and no further notice under this section is required.

15.07.040 NOTICE OF APPEAL HEARINGS

In addition to the posting and publication requirements of Section 15.07.030, for notice of appeals of administrative decisions, notice shall be mailed to parties of record from the permit review.

15.07.050 NOTICE OF FINAL DECISION

- A. When a notice is required for a final decision, such notice shall be sent to the applicant, all parties of record, all parties who requested to be notified, and the County Assessor's Office.
- B. This notice shall include the statement of threshold determination (RCW 43.21C), information on requesting assessed valuation changes by affected property owners, and the procedures of administrative appeal, if any.
- C. This notice may be combined with the transmittal requirements of other codes, state statutes, or ordinances, as appropriate.
- D. Notice of administrative decisions shall be the responsibility of the issuing county department. Notice of County Commission final decision on a project permit or an appeal shall be the responsibility of the County Commissioners Office.

CHAPTER 15.09

REVIEW AND APPROVAL PROCESS

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15.09.010 CONSOLIDATED PERMIT REVIEW

When a proposed action involves two or more project permits (for example, a Shoreline Conditional Use Permit, Mason Environmental Permit, and commercial project review), the applicant may choose to have all or a portion of the proposal reviewed under the consolidated permit review process. When the consolidated permit review is selected, county staff shall include all project permits under review when issuing the determination of application completeness, notice of application, notice of one open record public hearing (when needed), and notice of final decision. Classification of such review is as provided in 15.03.015 B, MCC.

15.09.020 ENVIRONMENTAL REVIEW

A. Developments and planned actions subject to the provisions of the State Environmental Policy Act (SEPA) shall be reviewed in accordance with the policies and procedures contained in Chapter 8, MCC.

B. SEPA review shall be conducted concurrently with development project review. The following are exempt from concurrent review:

1. Projects categorically exempt from SEPA or for which SEPA has already been completed.
2. Components of previously completed planned actions, to the extent permitted by law and consistent with the EIS for the planned action.

15.09.030 TYPE I AND TYPE II REVIEW - WITHOUT NOTICE

A. After the determination of a complete application, the review authority may approve, approve with conditions, or deny the following without notice, unless notice is otherwise required (for example, short subdivision applications):

1. Type I decisions.
2. Extension of time for approval.

3. Minor amendments or modifications to approved developments or permits. Minor amendments are those which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect: (i) overall project character, (ii) increase the number of lots, dwelling units, or density or (iii) decrease the quality or amount of open space.
4. Adjustment to yard setbacks.
5. Type II decisions, which are excluded as provided in section 15.03.010 of this title

B. The review authority's decisions under this section shall be final on the date issued.

15.09.040 TYPE II REVIEW - WITH NOTICE

- A. After a determination of completeness for an application, after providing a notice of application, and after the end of the specified comment period, the review authority may grant approval or approval with conditions, or may deny Type II decisions (such as Short Subdivisions), subject to the notice of decision and appeal requirements of this title.
- B. Final Administrative Approvals: Approvals under this section shall become effective subject to the following:
 1. If no appeal is submitted, the approval becomes effective at the expiration of the 14 day appeal period.
 2. If a written notice of appeal is received within the specified time, the matter will be referred to the County Commissioners as an appeal for an open record public hearing, and shall not become effective until approved on appeal or until the appeal contesting an approval is dismissed.
- C. Administrative Denials: Denials under this section shall become effective immediately.
- D. Notice of the administrative final decision shall be provided in this title, section 15.07.020.

15.09.050 TYPE III REVIEW

After a determination of completeness for an application, Type III permit applications shall be reviewed as follows:

- 1.0 Mason County Shoreline Master Program.
 - A. The review process for shoreline conditional use, variance and substantial development permits shall comply with the notice requirements of 15.07.010, 15.07.030 A 5, and 15.07.050, and the decision requirements of 15.09.100.
 - B. Additional public notice requirements and review procedures are specified in the Shoreline Master Program.
 - C. Conditional use and variance permits shall be reviewed according to the guidelines in 15.09.050 (2.0), except that:
 1. The Shoreline Advisory Board shall replace the Planning Commission as the review body,
 2. The policies, regulations and criteria of the Mason County Shoreline Master Program shall be emphasized in the review, and
 3. Public notice requirements shall be stated in (1.0)A and B.
 - D. Substantial development permits shall be reviewed by the County Commissioner as provided in sections 15.09.070 through 15.09.100, other sections of this Title, and the Shoreline Master Program.
- 2.0 Other Type III decisions.
 - A. Staff Report. The review authority shall prepare a staff report on the proposed development or action summarizing the comments and recommendations of County departments, affected agencies and special districts, and evaluating the development's consistency with the County's Development Code, adopted plans and regulations. The staff report shall include findings, conclusions and proposed recommendations for disposition of the development application.
 - B. Public Meeting. The Planning Commission shall conduct a public meeting on development proposals for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the County's Development Code, adopted plans and regulations. The meeting shall identify issues upon which the County Commissioners shall hear at their decision-making public hearing. Notice of the Planning Commission meeting shall be in accordance with Section 15.07.030.
 - C. Required Review: The Planning Commission shall review a proposed development according to the following criteria:
 1. The development does not conflict with the Comprehensive Plan and meets the requirements and intent of the Mason County Code, especially Title 6, 8, and 16.
 2. The development does not impact the public health, safety and welfare and is in the public interest.
 3. The development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the Comprehensive Plan. If the development results in a level of service lower than those set forth in the Comprehensive Plan, the development may be approved if improvements or strategies to raise the level of service above the minimum standard are made concurrent with the development. For the purpose

of this section, "concurrent with the development" is defined as the required improvements or strategies in place at the time of occupancy, or a financial commitment is in place to complete the improvements or strategies within six (6) years of approval of the development.

- D. Findings. Upon reviewing a development proposal or action, the Planning Commission shall prepare and adopt a motion setting forth its findings of issues to be addressed in the public hearing and promptly forward it to the County Commissioners for consideration, as required by the time lines stated in the relevant Title of the Mason County Code.
- E. Review by the County Commissioners. Upon the close of the public hearing receiving the Planning Commission recommendation, the County Commissioners shall continue the review as provided in sections 15.09.070 through 15.09.100, and other sections of this Title.

15.09.060 TYPE IV DECISION REVIEW

- A. The process for amending the Mason County Comprehensive Plan and implementing development regulations (hereinafter "annual amendment process") shall follow the steps below. Generally, the county will consider both the plan and regulation amendments together, and it will consider them only one time each year.
 - 1. Publish notice of the deadline for proposed plan or development regulation amendment which will be placed on the docket for consideration. Amendments must be considered at least annually. Comprehensive plan amendments can not be adopted more than once a year.
 - 2. The Department of Community Development (DCD) prepares a Comprehensive Plan Amendment Report for presentation to the Planning Commission. The report will include all proposals received, the initial analysis and cumulative impact review, and the initial SEPA determination.
 - 3. The County transmits the proposals to the State Department of Community, Trade, and Economic Development and other state agencies.
 - 4. After presentation of the report to the Planning Commission, the Commission schedules a public hearing and may schedule workshops. (In the case of amendments of special interest to one part of the county, a workshop or hearing should be scheduled in that area.) The public hearing should be not less than 60 days after the official transmittal is provided to the state.
 - 5. The DCD, acting for the Commission, releases public notice of workshops and hearings.
 - 6. Planning Commission holds public hearing and optional workshops, and formulate and transmit its findings and recommendations to the Board of Commissioners.
 - 7. The Board schedules and releases notice of public hearings and workshops as desired.
 - 8. Workshops and public hearings held by the Board of Commissioners.
 - 9. The Board meets to consider and take appropriate action on the amendments.

10. Any resulting amendments are transmitted to the state Department of Community, Trade, and Economic Development and other state agencies, and public notice of adoption is published.
- B. Exceptions to the annual amendment process. In some cases amendments can be made to the Comprehensive Plan outside of the annual amendment process described herein:
1. When an emergency exists, the annual amendment process will not be followed. The process for the planning review is established in RCW 36.70A.390. The review process for SEPA (WAC 197-11-880) has already been adopted by the county in Ordinance 99-84, section 9.1.
 2. When the amendments are intended to resolve an appeal to the Growth Management Hearings Board, then the amendment is not limited to one time a year and will need to be abbreviated because the time allowed in Hearings Board cases is very limited. The process will be adjusted as necessary within the constraints of the Growth Management Act and SEPA.
 3. The initial adoption of a sub-area plan is not required to be part of the annual amendment process and is not limited to once per year. The process will be the same as required for the annual plan amendment, except that the first step will be as follows:
 1. Establish a sub-area committee or a series of sub-area workshops. Public notice will be published of the workshops or meetings of the committee in order to encourage public participation and comment.
 4. The adoption of a shoreline master program amendment shall not follow the annual amendment process, but shall be done under the procedures of Chapter 90.58 RCW.
 5. The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county budget.
 6. Amendments can be made more than once a year if they are restricted to changes in the development regulations consistent with the existing comprehensive plan. The process for amendment is the same as specified for the annual amendment process.

15.09.070 COUNTY COMMISSIONERS ACTIONS

- A. **Actions.** Upon receiving a recommendation from the Planning Commission, Shoreline Advisory Board, or notice of any other matter requiring the County Commissioners' attention, the County Commissioners shall hold an open record public hearing and make a decision on the following matters:
- i. Make a decision on a Shoreline Advisory Board or Planning Commission recommendation.
 - ii. Appeal of administrative interpretations.
 - iii. Appeal of administrative decisions of type I and II permits.
 - iv. Appeal of determinations of significance.
 - v. Other matters not prohibited by law.

- B. **Decisions.** The County Commissioners shall make its decision by motion, resolution, or ordinance, as appropriate, following an open record public hearing and shall include one of the following actions:
- i. Approve as recommended.
 - ii. Approve with additional conditions.
 - iii. Modify, with or without the applicant's concurrence, provided that the modifications do not:
 - a. Enlarge the area or scope of the project.
 - b. Increase the density or proposed building size.
 - c. Significantly increase adverse environmental impacts as determined by the responsible official.
 - iv. Deny (reapplication or re-submittal is permitted).
 - v. Deny with prejudice (reapplication or re-submittal is not allowed for one year).
 - vi. Remand for further proceedings and/or evidentiary hearing in accordance with Section 15.09.090.
2. A County Commissioners' decision following a open record appeal hearing shall include one of the following actions:
- i. Grant the appeal, in whole or in part.
 - ii. Grant the appeal with conditions, in whole or in part.
 - iii. Deny the appeal, in whole or in part.
 - iv. Remand for further proceedings and/or evidentiary hearing in accordance with Section 15.09.090.

15.09.080 PROCEDURES FOR OPEN RECORD PUBLIC HEARINGS BEFORE THE BOARD OF COUNTY COMMISSIONERS

Public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. The Board of County Commissioners Chair shall open the public hearing and, in general, observe the following sequence of events:

- A. Staff presentation, including submittal of any administrative reports. The Members of the hearing body may ask questions of the staff.
- B. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.
- C. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed by the Chair at its discretion.
- D. Rebuttal, response or clarifying statements by the staff and the applicant.
- E. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter before it.
- F. The hearing body shall present a written statement of findings and conclusions upon issuing its decision.

15.09.090 REMAND

In the event the County Commissioners determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the Commissioners may remand the matter back to the hearing body or administrative department to correct the deficiencies. The Commissioners

shall specify the items or issues to be considered, the time frame for completing the additional work, and the date of the continuation of the open record public hearing.

15.09.100 FINAL DECISION

- A. **Time.** The final decision on a development proposal shall be made within 120 days from the date of the letter of completeness. The days pending the effectiveness of an administrative approval per section 15.09.040, MCC, are also within the 120 days. Exceptions to the 120 day requirement include:
1. If the project permit requires an amendment to the Comprehensive Plan or a development regulation.
 2. Any time required to correct plans, perform studies or provide additional information, provided that within 14 days of receiving the requested additional information, the Review Authority shall determine whether the information is adequate to resume the project review.
 3. Substantial project revisions made or requested by an applicant, in which case the 120 days will be calculated from the time that the County determines the revised application to be complete.
 4. All time required for the administrative appeal of a Determination of Significance or an appeal of an administrative decision.
 5. All time required for the preparation and review of an environmental impact statement, as agreed upon by the County and the applicant.
 6. Projects involving the siting of an essential public facility.
 7. An extension of time mutually agreed upon by the County and the applicant.
 8. All time required to obtain a variance.
 9. Any remand to the hearing body.
- B. **Effective Date.** The final decision of the County Commissioners shall be effective on the date stated in the decision, motion, resolution, or ordinance, provided that the date from which appeal periods shall be calculated shall be the date the County Commissioners takes action on the motion, resolution, or ordinance.

CHAPTER 15.11

APPEALS

Sections:		Pages:
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15.11.010 APPEAL OF ADMINISTRATIVE INTERPRETATIONS AND DECISIONS

- A. Administrative interpretations and administrative decisions may be appealed, by applicants or parties of record, to the following hearing body, based upon the relevant code or ordinance as follows:
- Hearing Examiner:** Title 6 (Sanitary Code) and other regulations listed in part 1 of section 15.03.005 and Title 14 (Construction), provided that appeals of the Building Official's notice and order shall be in accordance with section 401 of the Uniform Code of Abatement (hereafter section 401), except that the appeals shall be to the Hearing Examiner as specified in this chapter.
- County Commissioners:** Title 7 (Shoreline Master Program), and Titles 8 (Environmental Policy), 16 (Subdivision), and 8 (Interim Resource) and the Development Regulations, provided that enforcement actions reviewed by the Hearing Examiner are not appealable to the County Commissioners.
- B. The appeal shall be considered and decided within ninety (90) days of receipt of a date stamped application, provided that the parties to an appeal may agree to extend these time periods, and provided that a shorter time period is not specified in the applicable code or regulation.

15.11.020 APPEAL TO THE HEARING EXAMINER OR COUNTY COMMISSIONERS

- A. **Filing.** Every appeal to the Hearing Examiner or County Commissioners shall be filed with the Clerk of the Board within fourteen (14) days after the date of the decision being appealed. The date of the decision and the date from which appeal periods shall be calculated shall be the date on which the written action was either mailed or transmitted by hand, whichever is done and whichever is earliest, to all parties for which transmittal is required for said action. This appeal period shall replace all other previously adopted appeal periods specified in the applicable ordinances.
- B. **Contents.** The application of appeal shall contain a concise statement identifying:
1. The decision being appealed.
 2. The name and address of the appellant and his/her interest(s) in the matter.
 3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong.
 4. The desired outcome or changes to the decision.
 5. The appeals fee as provided for in the applicable ordinance.
- C. **Procedure.** The appeal to the Board of County Commissioners shall be held as an open record public hearing and comply with the standards of Sec. 15.09.080. An

appeal before the Hearing Examiner shall be by procedures established by the Hearing Examiner consistent with RCW 36.70B.

15.11.030 APPEAL TO STATE REVIEW BOARDS

The appeal of the final decision of the Hearing Examiner or County Commissioners may be filed to the appropriate state review board and is subject to the appeal processes of the review board (notification, review, hearing, and decision). The State Environmental Hearings Office processes appeals of shoreline permits, conditional uses, and variances; the State Department of Health processes appeals of public health and air-water quality issues.

15.11.040 JUDICIAL APPEAL

- A. Appeals from the final decision of the County Commissioners or Hearing Examiner involving those codes and ordinances to which this title applies, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Mason County Superior Court within twenty-one (21) days of the date the decision or action became final, unless another time period is established by state law or local ordinance.
- B. Notice of the appeal and any other pleadings required to be filed with the court shall be served on the Clerk of the Board and Prosecuting Attorney within the applicable time period. This requirement is jurisdictional.
- C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant.

CHAPTER 15.13

ENFORCEMENT

Sections:		Pages:
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15.13.005 SEVERABILITY

This Ordinance shall be governed by the laws of the State of Washington. In the event that any portion or section of this Ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected and shall remain in full force and effect.

15.13.010 ENFORCING OFFICIAL; AUTHORITY

The review authority shall be responsible for enforcing those codes and ordinances to which this title applies, and may adopt administrative rules to meet that responsibility. The review authority may delegate enforcement responsibility, as appropriate.

15.13.020 GENERAL PENALTY

Compliance with the requirements of those codes, regulations, and ordinances, to which this title applies, shall be mandatory. Any person violating any of the applicable codes, regulations and ordinances is guilty of a misdemeanor. This includes, but is not limited to, a violation of notice and order, a violation of notice of civil violation, a violation of a warning notice, a violation of a stop work order, and failure to comply with orders of the hearings examiner. Any person convicted of a misdemeanor under this section shall be punished by a fine of not more than five hundred dollars, or by imprisonment not to exceed ninety days, or by both, unless otherwise required by state laws. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any of the applicable provisions is committed, continued, permitted, or aided by any such person.

15.13.030 APPLICATION

- A. Actions under this chapter may be taken in any order deemed necessary or desirable by the review authority to achieve the purpose of this chapter or of the Development Code.
- B. Proof of a violation of a development permit shall constitute prima facie evidence that the violation is that of the applicant and/or owner of the property upon which the violation exists. An enforcement action under this chapter against the owner and/or applicant shall not relieve or prevent enforcement under this chapter or other ordinance against any other responsible person, which, to the extent allowed by state law, includes an officer or agent of a business or nonprofit organization who, while violating the applicable provisions, is acting on behalf of, or in representation of, the organization, .
- C. Nothing in this chapter shall be construed to prevent the application of other procedures, penalties or remedies as provided in the applicable code or ordinance

15.13.035 WARNING NOTICE

Prior to other enforcement action, and at the option of the review authority, a warning notice may be issued. This notification is to inform parties of practices which constitute or will constitute a violation of the development code or other development regulation as incorporated by reference and may specify corrective action. This warning notice may be sent by certified/registered mail, posted on site or delivered by other means. The parties shall respond to the county within 20 days of the postmark, posting on site, or delivery of the notice

15.13.040 NOTICE OF CIVIL VIOLATION

- A. **Authority.** A notice of civil violation may be issued and served upon a person if any activity by or at the direction of that person is, has been, or may be taken in violation of the Development Code.
- B. **Notice.** A notice of civil violation shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any person at the location and/or mailed first class to the owner or other person having responsibility for the location and not returned.
- C. **Content.** A notice of civil violation shall set forth:
 - 1. The name and address of the person to whom it is directed.
 - 2. The location and specific description of the violation.
 - 3. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed.
 - 4. An order that the violation immediately cease, or that the potential violation be avoided.
 - 5. An order that the person stop work until correction and/or remediation of the violation as specified in the order.
 - 6. A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions.
 - 7. A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties.

8. A notice of the date, time and place of appearance before the Hearing Examiner as provided in section 15.13.045.

D. **Remedial Action.** The review authority may require any action reasonably calculated to correct or abate the violation, including but not limited to replacement, repair, supplementation, revegetation, or restoration.

15.13.045 HEARING BEFORE THE HEARING EXAMINER

- A. A person to whom a notice of a civil violation is issued will be scheduled to appear before the hearings examiner after the notice of civil violation is issued. Extensions may be granted at the discretion of the appropriate Review Authority.
- B. **Correction of Violation.** The hearing will be canceled if the applicable Review Authority determines that the required corrective action has been completed or is on schedule for completion as set by the Review Authority at least 48 hours prior to the scheduled hearing.
- C. **Procedure.** The hearings examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearings examiner. The applicable Review Authority and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The county shall have the burden of proof to demonstrate by a preponderance of evidence that a violation has occurred or imminently may occur and that the required corrective action will correct the violation. A hearing examiner's order may prohibit future action, and violations of that order may lead to penalties under this ordinance. The determination of the applicable Review Authority shall be accorded substantial weight by the hearings examiner in determining the reasonableness of the required corrective action.
- D. **Decisions of the Hearings Examiner.**
1. The Hearing Examiner shall determine whether the county has established by a preponderance of the evidence that a violation has occurred and that the required correction will correct the violations and shall affirm, vacate, or modify the county's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.
 2. The Hearing Examiner shall issue an order to the person responsible for the violation which contains the following information:
 - a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
 - b. The required corrective action;
 - c. The date and time by which the correction must be completed;
 - d. The civil fines assessed based on the criteria in subsection (D)(3) of this section;
 - e. The date and time by which the correction must be completed;
 3. Civil fines assessed by the Hearing Examiner shall be in accordance with the civil fine in Section 15.13.050.
 - a. The Hearing Examiner shall have the following options in assessing civil fines:
 - i. Assess was issued and thereafter; or

- ii. Assess civil fines beginning on the correction date set by the applicable Review Authority or alternate correction date set by the Hearings Examiner and thereafter; or
 - iii. Assess less than the established civil fine set forth in Section 15.13.050 based on the criteria of subsection (D)(3)(b) of this section; or
 - iv. Assess no civil fines.
 - b. In determining the civil fine assessment, the Hearing Examiner shall consider the following factors:
 - i. Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;
 - ii. Whether the person failed to appear at the hearing;
 - iii. Whether the violation was a repeat violation or if the person has previously violated the applicable codes, regulations, and ordinances;
 - iv. Whether the person showed due diligence and/or substantial progress in correcting the violation;
 - v. Whether a genuine code interpretation issue exists; and
 - vi. Any other relevant factors.
 - c. The Hearing Examiner may double the civil fine schedule if the violation was a repeat violation or the person has previous violations of the applicable codes, regulations, or ordinances. In determining the amount of the civil fine for repeat violations the Hearing Examiner shall consider the factors set forth in subsection (D)(3)(b) of this section.
- 4. Notice of Decision. Upon receipt of the Hearing Examiner's decision. the Review Authority shall send by first class mail and by certified mail return receipt requested a copy of the decision to the person to whom the notice of a civil violation was issued. The decision of the Hearing Examiner shall be rendered within 10 working days of the hearing.
- E. Failure to Appear. If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the Hearing Examiner will enter a default order with findings pursuant to subsection (D)(2) of this section and assess the appropriate civil fine pursuant to subsection (D)(3) of this section. The county will enforce the Hearing Examiner's order and any civil fine from that person.
- F. Appeal to Superior Court. An appeal of the decision of the Hearings Examiner must be filed with superior court within 21 days from the date the Hearing Examiner's decision was personally served upon or was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred.

15.13.050 CIVIL FINES

- A. **Authority.** A person who violates any provision of the Development Code, or who fails to obtain any necessary permit, who fails to comply with the conditions of a permit, or who fails to comply with a notice of civil violation shall be subject to a civil fine.

- B. **Amount.** The civil fine assessed shall not exceed one thousand dollars (\$1,000.00) for each violation, except where the hearings examiner is authorized under this ordinance to double the fine. Each separate day, event, action or occurrence shall constitute a separate violation.
- C. **Notice.** A civil fine shall be imposed by a order of the hearings examiner, and shall be effective when served or posted as set forth in 15.13.040(B).
- D. **Collection.**
1. Civil fines shall be immediately due and payable upon issuance and receipt of order of the hearings examiner. The review authority may issue a stop work order until such fine is paid.
 2. If remission or appeal of the fine is sought, the fine shall be due and payable upon issuance of a final decision.
 3. If a fine remains unpaid 30 days after it becomes due and payable, the review authority may take actions necessary to recover the fine. Civil fines shall be paid into the County's general fund unless otherwise provided by ordinance. The review authority, in its discretion, may determine that assessments in amounts of \$500.00 or more shall be payable in not to exceed three equal annual installments. The payments shall bear interest equal to that charged on delinquent taxes by the treasurer's office. Such an account in good standing shall not be considered as delinquent unpaid fines as provided in (D4) in this section.
 4. Unpaid fines shall be assessed against the property and be recorded on the assessment role, and thereafter said assessment shall constitute a special assessment against and a lien upon the property, provided that fines in excess of the assessed value shall be a personal obligation of the property owner, and fines assessed against persons who are not the property owner shall be personal obligations of those persons.
- E. Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.
- F. All such assessments remaining unpaid after 30 days from the date of recording on the assessment roll shall become delinquent and shall bear interest at such rates and in such manner as provided for in RCW 84.56.020, as now or hereafter amended, for delinquent taxes.
- G. If the county assessor and the county treasurer assess property and collect taxes for this jurisdiction, a certified copy of the assessment shall be filed with the county treasurer. The descriptions of the parcels reported shall be those used for the same parcels on the county assessor's map books for the current year.
- H. The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary

property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.

15.13.055 COST RECOVERY

- A. **Authority.** A person who violates any provision of the Development Code, or who fails to obtain any necessary permit, or who fails to comply with a notice of civil violation shall be subject to the recovery of abatement and Hearing Examiner costs.
- B. **Amount.** The Review Authority shall keep an itemized account of the expense incurred by the county in the abatement of any violation done pursuant to enforcement under this Mason County ordinance and of the cost of the Hearing Examiner's involvement in enforcement actions.
- C. **Notice.** Upon completion of the work for which cost recovery is proposed, the Review Authority shall provide notice by certified mail return receipt requested to the property owner or other person on whose behalf the costs were incurred.
- D. **Collection.** Collection of costs shall be as provided for collection of civil fines in section 15.13.050(D) through (H) inclusive.
- E. Funds collected shall be as deposited as provided in the respective county regulation or, if no other provision is made, shall be deposited in the general fund of the county.

15.13.060 REVIEW OF APPROVED PERMITS

- A. **Review:** Any approval or permit issued under the authority of the Development Code may be reviewed for compliance with the requirements of the Development Code, or to determine if the action is creating a nuisance or hazard, has been abandoned, or the approval or permit was obtained by fraud or deception.
- B. **Review Authority Investigation:** Upon receipt of information indicating the need for, or upon receiving a request for review of permit or approval, the review authority shall investigate the matter and take one or more of the following actions:
 - 1. Notify the property owner or permit holder of the investigation; and/or
 - 2. Issue a notice of civil violation and/or civil fine and/or recommend revocation or modification of the permit or approval; and/or
 - 3. Refer the matter to the County Prosecutor; and/or
 - 4. Revoke or modify the permit or approval, if so authorized in the applicable code or ordinance; and/or
 - 5. Refer the matter to the Hearing Examiner with a recommendation for action.

15.13.070 REVOCATION OR MODIFICATION OF PERMITS AND APPROVALS

[[HANDLED BY APPROPRIATE DEPARTMENTS]]

- A. Upon receiving a review authority's recommendation for revocation or modification of a permit or approval, the Hearing Examiner shall review the matter at a public hearing, subject to the notice of public hearing requirements (Sec. 15.07.030). Upon a finding that the activity does not comply with the conditions of approval or the provisions of the Development Code, or creates a nuisance or hazard, the Hearing Examiner may delete, modify or impose such conditions on the permit or approval it deems sufficient to remedy the deficiencies. If the Hearing Examiner find no reasonable conditions

which would remedy the deficiencies, the permit or approval shall be revoked and the activity allowed by the permit or approval shall cease.

- B. **Building Permits.** The Building Official, not the Hearing Examiner has the authority to revoke or modify building permits.
- C. **Reapplication.** If a permit or approval is revoked for fraud or deception, no similar application shall be accepted for a period of one year from the date of final action and appeal, if any. If a permit or approval is revoked for any other reason, another application may be submitted subject to all of the requirements of the Development Code.

15.15

CONSOLIDATED APPLICATION REVIEW CHARTS

GUIDELINE TO DEVELOPMENT CODE DECISIONS AND PERMITS

PERMIT ENTRY POINT	DECISION TYPE			
	TYPE I ministerial	TYPE II administrative	TYPE III quasi-judicial	TYPE IV legislative
BUILDING III (building dept., fire marshal, and environmental health dept.)	building permit w/o SEPA building variance land modification permit w/o SEPA fire protection certificate septic system permit w/o MEP water adequacy well construction	SEPA environmental review for building permit and land modification permit MEP review for septic system permit	appeal of type I/II decisions	
BUILDING I (community development)	declaration of parcel combination / separation boundary line adjustment	commercial/industrial development Mason Environmental Permit short plat large lot subdivision	appeal of type I/II decisions preliminary plat final plat large lot subdivision Mason Conditional Environmental Permit shoreline development permit mobile home - RV park permit	county comprehensive plan development regulations