

**CITY OF MOUNTLAKE TERRACE**

**ORDINANCE NO. 2481**

**AN ORDINANCE OF THE CITY OF MOUNTLAKE TERRACE, WASHINGTON, TO DISSOLVE THE BOARD OF ADJUSTMENT AND TO PROVIDE FOR THE RESTRUCTURING OF THE MOUNTLAKE TERRACE HEARING EXAMINER SYSTEM AND ADMINISTRATIVE APPEALS OF LAND-USE DECISIONS TO STREAMLINE THE CITY'S PERMITTING PROCEDURES, BY REPEALING MOUNTLAKE TERRACE MUNICIPAL CODE (MTMC) CHAPTER 2.30 AND ORDINANCE NO. 2124, AND AMENDING MTMC CHAPTER 2.120 AND ORDINANCE NO. 2386, MTMC 5.05.120 AND ORDINANCE NO. 2059 § 11, MTMC 5.15.140 AND ORDINANCE NO. 2024 § 14, MTMC 5.20.110 AND ORDINANCE NO. 2023 § 11, MTMC 10.15.120 AND 10.15.140 AND ORDINANCE NO. 2035 § 1, MTMC 15.05.310 AND 15.05.360 AND ORDINANCE NO. 2453 § 1, MTMC 15.10.020 AND ORDINANCE NO. 2454 § 1, MTMC 15.15.030 AND ORDINANCE NO. 1678 § 3, MTMC 16.05.240, AND ORDINANCE NO. 2112, MTMC 16.20.120 AND ORDINANCE NO. 2228 § 4, MTMC 16.20.220 AND 16.20.290 AND ORDINANCE NO. 1807 § 17 AND 23.2, MTMC 17.05.140 AND ORDINANCE NO. 1661, MTMC 17.05.280 AND ORDINANCE NO. 1417 § 7.2, MTMC 17.10.100 AND ORDINANCE NO. 2113, MTMC 18.05.010 AND ORDINANCE NO. 2117 § 1.1, MTMC 18.05.040-.090, 18.05.110, 18.05.160, 18.05.190, AND 18.05.220, MTMC 18.05.310 AND ORDINANCE NO. 2174 § 8, MTMC 18.05.320 AND 18.05.330 AND ORDINANCE NO. 2342 § 3, MTMC 18.05.340, MTMC 18.05.430-.490, MTMC 18.05.530, MTMC 18.05.550-MTMC 18.05.560, .570, MTMC 18.05.610 AND ORDINANCE NO. 2117 § 1.3, 4.4, 4.5, 5.2, 5.3, 5.4, 5.5, 5.9, 6.1, 6.2, 6.3, AND 8.1, MTMC 18.20.060 AND ORDINANCE NO. 2342 § 7, MTMC CHAPTER 18.25 AND ORDINANCE NO. 1886 AND ORDINANCE NO. 2342 § 8, MTMC 19.10.050 AND 19.15.030 AND ORDINANCE NO. 2074 § 2.5 AND 3.2, AND FIXING A TIME WHEN SAME SHALL BECOME EFFECTIVE**

**WHEREAS**, during this past year the City Council evaluated the roles and responsibility of the Board of Adjustment and Planning Commission in relationship to land-use permit approvals and/or denials;

**WHEREAS**, to reduce the City's land-use liability, the City Council desires to have the Hearing Examiner act as the main hearing body for quasi-judicial actions and the Planning Commission to continue to review legislative proposals;

**WHEREAS**, it is the City Council's intention to streamline the permit processing and appeal procedures by eliminating the Board of Adjustment and providing the Hearing Examiner

with additional powers and authority;

**WHEREAS**, the City Council has authority under RCW Title 35A to adopt regulations related to the establishment of permit and appeal procedures;

**WHEREAS**, the Planning Commission of the City of Mountlake Terrace has held at least one public hearing on the regulations contained in this ordinance and has determined to recommend adoption of the same to the City Council; and

**WHEREAS**, the City Council has held a public hearing and reviewed the Planning Commission’s recommendations.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNTLAKE TERRACE DOES ORDAIN AS FOLLOWS:**

**Section 1.** Mountlake Terrace Municipal Code, Chapter 2.30 Board of Adjustment, and Ordinance No. 2124 are hereby deleted and repealed in their entirety.

**Section 2.** Mountlake Terrace Municipal Code, Chapter 2.120 Hearing Examiner, and Ordinance No. 2386 are hereby amended to read as follows:

**Chapter 2.120  
HEARING EXAMINER**

Sections:

- 2.120.010 Purpose, authority and legal effect of Hearing Examiner decision.
- 2.120.020 Hearing Examiner – office created – duties.
- 2.120.030 Appointment and term.
- 2.120.040 Qualifications.
- 2.120.050 Freedom from improper influence.
- 2.120.060 Conflict of interest.
- 2.120.070 Rules.
- 2.120.080 Powers.
- 2.120.090 Requests for remission and appeals.
- 2.120.100 Collection of costs and penalties.
- 2.120.110 Decisions.
- 2.120.120 Optional reconsideration by the Hearing Examiner of final legislative decisions.
- 2.120.130 Hearing Examiner’s decision final.
- 2.120.140 Appeal to the City Council.
- 2.120.150 Judicial review of decision.

**2.120.010 Purpose, authority and legal effect of Hearing Examiner decision.**

The purpose of this chapter is to establish a system for regulatory appeals hearings and open record hearings to help ensure procedural due process and appearance of fairness by holding such hearings before a neutral party, competent in the fields assigned and in procedural requirements.

The Hearing Examiner is authorized to conduct hearings on contested civil infractions and render final decisions on alleged violations of chapters 6.05, 8.15, 8.20, 9.70, 10.10, 10.35 and 16.15 MTMC and such other contested civil code violations as authorized by ordinance. Further, the Hearing Examiner is authorized to conduct open record hearings and provide a final decision of the legislative body on the following:

A. applications for conditional uses, variances, subdivisions, shoreline permits, secure community transition facilities or any other class of applications for or pertaining to development of land or land use, including but not limited to those permits or projects pursuant to MTMC 18.05.610 Decision and Hearing Matrix (with the exception of applications for site-specific rezones, preliminary plat approval and plan unit developments (PUDs) which shall be recommendations to the City Council for final decision).

B. appeals of administrative decisions or determinations made by a City official or Department Directors, including but not limited to Critical Area Procedural Provisions, MTMC 16.15.140.

C. appeals of administrative decisions or determinations pursuant to chapter 43.21C RCW.

Provided, however, the Hearing Examiner decision shall not be the final decision of the legislative body if the decision is specifically by ordinance or this chapter given the legal effect of a recommendation to the City Council; or an appeal to the City Council is provided for in City regulations or ordinance authorizing the permit or approval. Any appeal, if authorized, to the City Council shall be made pursuant to MTMC 2.120.140.

#### **2.120.020 Hearing Examiner – office created – duties.**

The office of the Mountlake Terrace Hearing Examiner, hereinafter referred to as the Hearing Examiner, is hereby created. The Hearing Examiner shall interpret, review and render decisions on contested/appealed violations as provided by ordinance and may perform other quasi-judicial functions as provided for in MTMC 2.120.010 or by City ordinance. Unless the context requires otherwise, the term “Hearing Examiner” as used in this chapter shall include deputy examiners and examiners pro tem.

#### **2.120.030 Appointment and term.**

The selection of the Hearing Examiner(s) shall be initiated by a request for proposals from the City Manager’s office, followed by interviews of top candidates by City staff for recommendation to the City Council. Compensation for the services to be rendered by the Hearing Examiner(s) shall be negotiated through contract. The City Council, by majority vote, shall select a Hearing Examiner for appointment and approve the Hearing Examiner contract. The Hearing Examiner shall serve until the end of the term as identified in the contract, or until the appointment is revoked by majority vote of the City Council. The City Council may also appoint, and approve contracts for, deputy hearing examiner(s) or hearing examiner(s) pro tem in the event of the Hearing Examiner(s)’ absence or inability to act.

#### **2.120.040 Qualifications.**

The Hearing Examiner shall be appointed solely with regard to his/her qualifications for the duties of his/her office and will have such training and experience as will qualify him/her to conduct administrative or quasi-judicial hearings and to discharge other delegated functions. Provided, however, the Hearing Examiner must be qualified to practice law in the State of

Washington. Hearing Examiners shall hold no other elective or appointive office or position within the City of Mountlake Terrace.

**2.120.050 Freedom from improper influence.**

No person, including City officials, elected or appointed, shall attempt to influence a Hearing Examiner in any matter pending before him or her, except at a public hearing duly called for such purpose, or to interfere with a Hearing Examiner in the performance of his/her duties in any other way; provided, that this section shall not prohibit the City Attorney from rendering legal service to the Hearing Examiner upon request.

**2.120.060 Conflict of interest.**

The Hearing Examiner shall be subject to the same code of ethics as other appointed public officers in code cities, as set forth in RCW 35.42.020 and chapter 42.23 RCW, as the same now exists or may hereafter be amended.

**2.120.070 Rules.**

The Hearing Examiner shall have the power to prescribe rules for the scheduling and conduct of hearings and other procedural matters related to the duties of his/her office subject to the provisions herein.

**2.120.080 Powers.**

The Hearing Examiner shall have the authority to:

A. Receive and examine available information.

B. Conduct open records hearings in accordance with chapter 42.36 RCW and MTMC

2.120.010 all other applicable law, and to prepare a record thereof.

C. Administer oaths and affirmations.

D. Issue subpoenas upon the request of any party. When so required, the applicant for the subpoena shall show to the satisfaction of the examiner the general relevance and reasonable scope of the evidence sought and examine witnesses; provided, that no person shall be compelled to divulge information which he/she could not be compelled to divulge in a court of law.

E. Regulate the course of the hearing.

F. Make and enter written findings of fact and conclusions to support his/her decisions.

G. At the Hearing Examiner's discretion, hold conferences for the settlement or simplification of the issues.

H. Conduct discovery.

I. Dispose of procedural requests or similar matters.

J. Take official notice of matters of law or material facts.

K. Issue summary orders in supplementary proceedings.

L. Decide appeals, mitigation or contested hearings of civil penalties imposed and "notice and orders" and declarations issued pursuant to chapters 6.05, 8.15, 8.20, 9.70, 10.10 10.35 and 16.15 MTMC, and impose orders to enforce such decisions.

M. Decide requests to remit civil penalties imposed.

N. Consolidate hearings of appeals or requests to remit civil penalties when they cover the same occurrence or property.

1. Remission or Mitigation of Civil Penalties.

a. The Hearing Examiner shall uphold and not remit a civil penalty if the City shows by the preponderance of the evidence that the appellant is liable under the provision that was violated.

b. The appellant may assert as an affirmative defense that extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty, justify the remission or mitigation. If the appellant shows by preponderance of evidence that this is the case, the Hearing Examiner may remit a civil penalty. In no case shall the Hearing Examiner have the authority to remit or mitigate a civil penalty below the minimum penalty set by resolution or ordinance.

O. Take any other action authorized by or necessary to carry out this chapter.

The above authority may be exercised on all matters for which jurisdiction is assigned to the Hearing Examiner by City ordinance, code or other legal action of the City Council.

#### **2.120.090 Requests for remission and appeals.**

A. Remission of Civil Penalties. Within 15 calendar days of the effective date of a notice and order, or other order that includes a civil penalty, the person incurring the penalty may appeal in writing to the Violation Bureau in the case of an alleged violation of chapter 8.15 MTMC, chapter 8.20 MTMC and chapter 10.10 MTMC for remission or mitigation of such civil penalty or contest the violation.

B. Appeal of Notice and Order or Declarations Issued. Within 15 calendar days of the effective date of a notice and order or declaration issued, the owner of the property for which the order was issued or any other person who is subject to the order may file an appeal of the order or declaration in writing to the Violation Bureau.

C. Within ten (10) days of receipt of the written request or appeal received by the Violation Bureau or Chief of Police as allowed by ordinance, the Violation Bureau or Chief of Police receiving the written request or appeal shall notify the Hearing Examiner, the owner of the property for which the order was issued, and any other person who appealed the order of the date, time and place of hearing. The notification of hearing shall be sent to the person who was issued the citation or to the owner of the property for which the order was issued and the person appealing the order, if different than the property owner, by certified mail with return receipt requested. The notices shall be mailed at least ten (10) days before the hearing date. A written declaration of mailing shall be made a part of the record declaring the date and time of mailing. The hearing shall be held within 60 days of receipt of the written request for a hearing unless all parties agree to another date.

#### **2.120.100 Collection of costs and penalties.**

Any civil penalty, or cost imposed, assessed, or billed under this chapter, may be collected by any means authorized by this chapter or otherwise authorized by law. Under this chapter, the City is authorized to collect these penalties, fees, or costs by billing the responsible party, requesting payment by other legal means, turning the debt over to a collection agency, filing a civil lawsuit, or filing a lien as may be authorized by ordinance or state law.

#### **2.120.110 Decisions.**

Decisions shall be rendered and transmitted in accordance with the requirements

governing the application or appeal. Pursuant to RCW 36.70.970, Hearing Examiner decisions shall be in writing and shall include findings and conclusions, based on the record, to support the decision. The findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the City's Comprehensive Plan, Zoning Code and development regulations, if applicable.

If an application is approved, the Hearing Examiner may attach conditions necessary to ensure compliance with the City's Comprehensive Plan, Zoning Code and development regulations. Examples of conditions include, but are not limited to: additional setbacks, screening, restrictive covenants, notices to title, easements, dedications, right of ways, performance bonds, and when supported by the appropriate environmental review, reduction in the density on the parcel, and other measures to mitigate adverse environmental impacts.

Each decision of the Hearing Examiner shall be rendered within ten (10) working days following conclusion of all testimony and hearings, unless a longer period is mutually agreed to in writing by the applicant and the Hearing Examiner.

#### **2.120.120 Optional reconsideration by the Hearing Examiner of final legislative decisions.**

Any party of record as defined in MTMC 18.05.190, including the applicant, who believes that the decision of the Hearing Examiner is based on errors of procedure or fact may make a written request for review by the Hearing Examiner within ten (10) working days of the written decision. This request shall set forth the alleged errors and the Hearing Examiner may, after review of the record, take such further action as he/she deems proper and may render a revised decision. Only one (1) request for reconsideration may be filed by any one (1) person or party, even if the Hearing Examiner reverses or modifies his/her original decision, or changes the language in the decision originally rendered. A request for reconsideration shall extend the applicable time period for appeal to Snohomish County Superior Court by the length of time it takes to resolve the request for reconsideration.

#### **2.120.130 Hearing Examiner's decision final.**

The final action by the Hearing Examiner on any project permits and/or applications and/or an appeal of an administrative decision within his/her jurisdiction shall be deemed a final decision unless the decision is specifically pursuant to this chapter or by ordinance given the legal effect of a recommendation to the City Council. There are no closed record appeals to the City Council unless an appeal to the City Council is provided for in City code, regulations or ordinance authorizing the permit or approval.

#### **2.120.140 Appeal to the City Council.**

An appeal, if authorized, to the City Council of a Hearing Examiner decision shall be a closed record appeal, and no new testimony and/or evidence shall be presented or considered, and only those individuals, organizations or corporations that are a party of record as defined in MTMC 18.05.190 shall be allowed to provide public comment in the form of legal argument.

A. Filing. Every appeal to the City Council shall be filed with the Principal Planner within ten (10) days after the date of the recommendation or decision of the matter being appealed.

B. Contents. The notice of appeal shall contain a concise statement identifying:

1. The name and address of the project or action to which the appeal applies.
2. The decision being appealed (specify).

3. The name and address of the appellant and his/her (or their) interest(s) in the matter.
4. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was in error.
5. The appellant's desired outcome or changes to the decision.
6. The appeals fee.

The appeal shall be pursuant to applicable appeal procedures as set forth in the Administrative Procedure Act, chapter 34.05 RCW. The City Council shall have the authority to accept or reject any findings or conclusions, or to remand the decision of the Hearing Examiner for further hearing on a specific matter of the record. The Hearing Examiner decision shall be upheld unless the City Council finds that the Hearing Examiner's findings are not supported by substantial evidence on the record.

#### **2.120.150 Judicial review of decision.**

Any court action to set aside, enjoin, review or otherwise challenge a final decision of the Hearing Examiner on the grounds of noncompliance with the provisions of the Mountlake Terrace Municipal Code shall be commenced within 21 days of the final action pursuant to RCW 36.70C.040(3) and in accordance with MTMC 18.05.570.

**Section 3.** Mountlake Terrace Municipal Code, Section 5.05.120 Appeal, and Ordinance No. 2059 § 11 are hereby amended to read as follows:

#### **5.05.120 Appeal.**

Any licensee may, within ten (10) days after receipt of such notice of revocation, appeal to the Mountlake Terrace Hearing Examiner by filing a written notice of appeal setting forth the grounds therefore with the City Clerk, and the City Clerk shall set a date within 20 days from the hearing of such appeals before the Hearing Examiner, and the City Clerk shall notify the licensee by mail of the time and place of the hearing. After the hearing thereon, the Hearing Examiner shall, after appropriate findings of fact and conclusions of law, affirm, modify or overrule the revocation and reinstate the license, and may impose any terms upon the continuance of the license which to the Hearing Examiner may seem advisable. Such decision of the Hearing Examiner is appealable within 21 days, or after denial of a motion for reconsideration within seven days after said denial, to the Superior Court of Snohomish County. No revocation of a license issued pursuant to the provisions of MTMC Title 5, shall take effect until ten (10) days after receipt of the notice thereof by the licensee, and if appeal is taken as herein prescribed the revocation shall be stayed pending final action by the Superior Court. All licenses which are revoked shall be surrendered to the City on the effective date of such revocation.

**Section 4.** Mountlake Terrace Municipal Code, Section 5.15.140 Appeal and hearing, and Ordinance No. 2024 § 14 are hereby amended to read as follows:

#### **5.15.140 Appeal and hearing.**

A. Any person aggrieved by the action of the City Clerk in refusing to issue or renew any license under this chapter or in temporarily or permanently suspending or revoking any license issued under this chapter shall have the right to appeal such action to the Mountlake Terrace Hearing Examiner, or to such other hearing body as may hereafter be established by the City

Council for the hearing of such appeals, by filing a notice of appeal with the City Clerk within ten (10) working days after receiving notice of the action from which appeal is taken.

B. The Hearing Examiner, or other hearing body as may hereafter be established by the City Council, upon receipt of a timely notice of appeal, shall set a date for a de novo hearing of such appeal. The Hearing Examiner, or other hearing body, shall hear testimony, take evidence, and may hear oral argument and receive written briefs. Except in cases of summary suspension of licenses because of the threat of immediate serious injury or damage to person or property pursuant to MTMC 5.15.130(B), the filing of such appeal shall stay the action of the City Clerk, pending the decision of the Hearing Examiner or other hearing body. In cases of summary suspension of licenses because of the threat of immediate serious injury or damage to persons or property pursuant to MTMC 5.15.130(B) the Hearing Examiner shall render a decision within ten (10) days of the conclusion of the hearing.

C. The decision of the Hearing Examiner or other hearing body on an appeal from a decision of the City Clerk shall be based upon a preponderance of the evidence. The burden of proof shall be on the City Clerk.

D. The decision of the Hearing Examiner or other hearing body shall be final unless appeal to the Superior Court within 21 days of the date the decision is entered by the filing of an appropriate action and serving of all necessary parties.

**Section 5.** Mountlake Terrace Municipal Code, Section 5.20.110 Appeal and hearing, and Ordinance No. 2023 § 11 are hereby amended to read as follows:

**5.20.110 Appeal and hearing.**

A. Any person aggrieved by the action of the clerk in refusing to issue or renew any license under this chapter or in temporarily or permanently suspending or revoking any license under this chapter shall have the right to appeal such action to the City Hearing Examiner, or to such other hearing body as may hereafter be established by the City Council for the hearing of such appeals, by filing a notice of appeal with the City Clerk within ten (10) days of receiving notice of the action from which appeal is taken.

B. The Hearing Examiner, or such other hearing body as may hereafter be established by the City Council for the hearing of such appeals, upon receipt of a timely notice of appeal, shall set a date for a hearing of such appeal within 20 days from the date of such receipt, except as specified in subsection C of this section. The hearing shall be de novo. The hearing body shall hear testimony, take evidence and may hear oral argument and receive written briefs. The filing of such appeal shall stay the action of the clerk, pending the decision of the hearing body.

C. In cases of summary suspension of licenses because of the threat of immediate serious injury or damage to persons or property pursuant to MTMC 5.20.100(B), the hearing body, upon receipt of a timely notice of appeal, shall set a date for a hearing within five (5) days of the date of such receipt. The hearing body shall render a decision within five days of the conclusion of the hearing. The filing of such appeal shall not stay the action of the clerk.

D. The decision of the hearing body on an appeal from a decision of the clerk shall be based upon a preponderance of the evidence. The burden of proof shall be on the clerk.

E. The decision of the hearing body shall be final unless appealed to the Superior Court within 20 days of the date the decision is entered.

**Section 6.** Mountlake Terrace Municipal Code, Section 10.15.120 Enforcement, and Ordinance No. 2305 § 1 are hereby amended to read as follows:

**10.15.120 Enforcement.**

A. Compliance. For purposes of this section, “compliance” shall mean fully implementing all provisions in an accepted CTR program or meeting or exceeding VMT and SOV goals of this chapter.

B. Program Modification Criteria. The following criteria for achieving goals for VMT per employee and proportion of SOV trips shall be applied in determining requirements for employer CTR program modifications:

1. If an employer meets either or both goals, the employer has satisfied the objectives of the CTR Plan and will not be required to modify the CTR program.

2. If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this chapter, but has not met or is not likely to meet the applicable SOV or VMT goals, the City shall work collaboratively with the employer to make modifications to its CTR program. After agreeing on modifications, the employer shall submit a revised CTR program description to the City for approval within 30 days of reaching agreement.

3. If an employer fails to make a good faith effort, as defined in RCW 70.94.534(2) and this chapter, and fails to meet the applicable SOV or VMT reduction goal, the City shall work collaboratively with the employer to identify modifications to the CTR program and shall direct the employer to revise its program within 30 days to incorporate the modifications. In response to the recommended modifications, the employer shall submit a revised CTR program description, including the requested modifications or equivalent measures, within 30 days of receiving written notice to revise its program. The City shall review the revisions and notify the employer of acceptance or rejection of the revised program. If a revised program is not accepted, the City will send written notice to that effect to the employer within 30 days and, if necessary, require the employer to attend a conference with program review staff for the purpose of reaching a consensus on the required program. A final decision on the required program will be issued in writing by the City within ten (10) working days of the conference.

C. Violations. The following constitute violations if the deadlines established in this chapter are not met:

1. Failure to develop and/or submit on time a complete program, including:

a. Employers notified or that have identified themselves to the City within 180 days of the ordinance codified in this chapter being adopted and that do not submit a CTR program within 150 days from the notification or self-identification; and

b. Employers not identified or self-identified within 180 days from the adoption of the ordinance codified in this chapter.

2. Failure to implement an approved CTR program, unless the program elements that are carried out can be shown through quantifiable evidence to meet or exceed VMT or SOV goals as specified in ordinance; or

3. Failure to make a good faith effort, as defined in RCW 70.94.534(4) and this chapter.

4. Failure to revise a CTR program as defined in RCW 70.94.534(4) and this chapter.

D. Penalties. No affected employer with an approved CTR program may be held liable for failure to reach the applicable SOV or VMT goals. Each day of failure to implement the CTR program required by this chapter shall constitute a violation of this chapter which violation is hereby deemed to be a public nuisance. In order to abate this public nuisance, the City is authorized and may issue a determination of noncompliance, which is appealable to the Hearing Examiner, which shall have the effect of a final legislative decision. Following an appeal or in absence of such an appeal being filed with the Hearing Examiner, the City is authorized and may further abate this nuisance by applying to any court of competent jurisdiction for and such court, upon hearing and for cause shown, may grant a preliminary, temporary and/or permanent injunction restraining any person, firm and/or corporation from failing to implement the required CTR program and comply with the provisions of this chapter. In the event the City is successful in seeking compliance, the violator shall pay all costs incurred by the City in obtaining compliance.

It shall not be considered a failure to implement the CTR program, if an employer's inability to implement an element of a CTR program was the result of an inability to reach agreement within the preceding 12-month period with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith. Unionized employers shall be presumed to act in good faith compliance if they:

1. Propose to a recognized union any provision of the employer's CTR program that is subject to bargaining as defined by the National Labor Relations Act; and
2. Advise the union of the existence of the statute and the mandates of the CTR program approved by the City and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

**Section 7.** Mountlake Terrace Municipal Code, Section 10.15.140 Appeals, and Ordinance No. 2305 § 1 are hereby amended to read as follows:

**10.15.140 Appeals.**

Any affected employer may appeal administrative decisions regarding exemptions, modifications of goals, modification of CTR program elements, and determinations concerning failure to implement a CTR program. The appeal must be filed with the City Clerk not later than the tenth day following the date of the administrative decision. The appeal must be in writing and state in a clear and concise manner the specific exceptions and objections to the administrative decision. At the time of filing the appeal a fee required by the current fee schedule adopted by City ordinance must be paid to the City. The appeal shall be heard by the City's Hearing Examiner. Substantial weight shall be given to the administrative decision and the burden of establishing the contrary shall be upon the appealing party. In reviewing the appeal, the Hearing Examiner shall determine whether the administrative decision is consistent with the provisions of this chapter including the City's CTR Plan. The Hearing Examiner shall have jurisdiction over the appeal and the authority to affirm, modify, reverse or remand the administrative decision, or to grant other appropriate relief. The decision of the Hearing Examiner shall constitute a final decision appealable to Superior Court.

**Section 8.** Mountlake Terrace Municipal Code, Section 15.05.310 Public/site improvements – Relation to building permit, and Ordinance No. 2453 § 1 are hereby amended to read as follows:

**15.05.310 Public/site improvements – relation to building permit.**

A. No building permit shall be issued for any new construction, including the construction of single-family residences on lots platted in accordance with MTMC Title 17 (Subdivisions), until all rights-of-way have been dedicated as determined by the City Council and all plans for public and site improvements, including, but not limited to, streets, curbs and gutters, sanitary sewers, storm sewers, sidewalks, water mains, hydrants, parking lots, driveways, landscaping, and other improvements required by the municipal code or as part of a project approval by the Planning Commission, City Council or Hearing Examiner, meeting City standards for the design, size or capacity required to serve the proposed development, or sized in accordance with any comprehensive plan of the City, whichever is greater, are submitted and approved by the appropriate City staff. All such improvements shall be extended throughout the parcel under development.

B. Public Site Improvements – Relation to Certificate of Occupancy. Except as noted below, a certificate of occupancy shall not be issued until all public and site improvements serving or associated with a development, as outlined in subsection A of this section, are installed, completed, and approved, as indicated by the initialing of the copy of the proposed certificate of occupancy by the appropriate representatives of the Fire Department and the Department of Community Development. In some instances, a certificate of occupancy may be issued prior to completion of all improvements when all of the following are satisfied, as determined by the Community Development Director, or his/her designee, and the Fire Chief, or his/her designee:

1. Public and site improvements for the development are substantially complete;
2. The improvements remaining to be completed are not related to health, safety, or water quality;
3. The improvements remaining to be completed are not critical to the proper functioning of the development; and
4. The developer submits a performance guarantee as provided by the City's current ordinance establishing acceptable types of guarantees to ensure completion of the unfinished improvements within six months of the date of issuance of the certificate of occupancy, or sooner if so determined by the Community Development Director or Fire Chief. If the improvements are not completed within the time frame stated, the City may utilize the funds provided by the performance guarantee for completion of the required improvements.

C. Applicability. Subsections A and B of this section shall apply to all subdivisions, planned unit developments, multifamily, commercial, industrial, and institutional developments, or any other development for which site or public improvements are required. The requirements of subsections A and B of this section shall in no way relieve the obligations required of developments by other City regulations, codes, or standards, including, but not limited to, MTMC Title 16 (Environment), Title 17 (Subdivisions), and Title 19 (Zoning) as adopted and amended by the City.

D. Violation. Occupancy of projects in violation of subsections B and C of this section shall be cause for immediate termination of all occupancy of the project upon notice by the Community Development Director or his/her designee, in addition to any penalties imposed under MTMC 15.05.370.

**Section 9.** Mountlake Terrace Municipal Code, Section 15.05.360 Appeal from Decision of Authority, and Ordinance No. 2453 § 1 are hereby amended to read as follows:

**15.05.360 Appeal from decision of authority.**

An owner, or his/her agent, may appeal a decision of the Building Official to the Hearing Examiner by filing an appeal with the City Clerk. The Hearing Examiner shall have no authority relative to interpretation of the administrative provisions of this code nor shall the Hearing Examiner be empowered to waive requirements of this code. Both parties shall submit their case materials for the record at least two weeks prior to the date set by the Hearing Examiner for hearing of the case. An appeal from the Hearing Examiner's decision shall be brought before the Superior Court of Snohomish County in accordance with RCW 35A.63.110 and shall include any amendment to such section that has been or will be enacted.

**Section 10.** Mountlake Terrace Municipal Code, Section 15.10.020 Section amendments, and Ordinance No. 2454 § 1, are hereby amended to read as follows:

**15.10.020 Section amendments.**

The following sections of the 2006 International Fire Code (IFC) adopted by reference shall be amended or replaced and shall read as follows:

A. Chapter 1, Administration.

1. Section 104.8 Modifications. The fire code official, or the Building Department with the concurrence of the fire code official, shall have the power to modify any of the provisions of the International Fire Code upon application in writing by the owner or lessee, or his duly authorized agent. When there are practical difficulties in carrying out the provisions of this code, the fire code official shall have the authority to grant modifications for individual cases, provided the fire code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the files of the department of fire prevention.

2. Section 104.10.1 Assistance from other agencies. Police and other enforcement agencies shall have authority to render necessary assistance in the investigation of fires and enforcement of the life safety provisions of this code when requested to do so by the fire code official.

3. Section 104.11.2 Obstructing operations. No person shall obstruct the operations of the fire department in connection with extinguishment control or investigation of any fire, or actions relative to other emergencies, or disobey any lawful command of the fire chief or officer of the fire department in charge of the emergency, or any part thereof, or any lawful order of a police officer assisting the fire department.

4. Section 105 Permits.

Section 105.1 General. Permits shall be in accordance with section 105.

Section 105.1.1 Permits required. Permits required by this code shall be obtained from the fire code official. Permit fees, if any, shall be paid prior to issuance of the permit. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire code official. Special inspections and plan

reviews. The fee for each permit shall be set forth in the City of Mountlake Terrace Fee Schedule.

5. Section 108.1 Appeals. Whenever the Chief of the Fire Department shall disapprove an application or refuse to grant a permit applied for, the applicant may appeal the decision of the Chief of the Fire Department to the City Manager. If the City Manager shall also disapprove the aforesaid application, the applicant may appeal the decision of the City Manager to the Hearing Examiner within 21 calendar days of the decision of the appeal.

6. Section 109.3 Violation penalties.

a. Any person or entity who shall violate any of the provisions of the code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made hereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved hereunder, or any certificate of permit issued hereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the City Manager or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively be guilty of a misdemeanor, punishable by a fine of not more than \$1,000 and/or up to 90 days in jail. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each 10 days that prohibited conditions are maintained shall constitute a separate offense.

b. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

B. Chapter 5, Fire service features (fire apparatus access roads). The following sections are adopted by reference as originally set forth in the IFC.

1. Section 503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Sections 503.1.1 through 503.1.3.

2. Section 503.1.1 Buildings and facilities.

3. Section 503.1.2 Additional access.

4. Section 503.1.3 High-piled storage.

5. Section 503.2 Specifications.

6. Section 503.3 Marking.

7. Section 503.4 Obstruction of fire apparatus access roads.

C. Chapter 9, Fire protection systems.

1. Section 901.6.1 Standards. Fire protection systems shall be inspected, tested and maintained in accordance with the referenced standards listed in Table 901.6.1. For the sole purpose of inspecting, testing and maintenance of water-based fire protection systems in accordance with NFPA 25, all existing water-based fire protection systems shall be considered new as of July 1, 2004.

2. Section 903.2.1.1 Group A-1. An automatic sprinkler system shall be provided for Group A-1 occupancies where one of the following conditions exists:

a. The fire area exceeds 10,000 square feet (929 sq. m.);

b. The fire area has an occupant load of 300 or more;

c. The fire area is located on a floor other than the level of exit discharge;

or

d. The fire area contains a multi-theater complex.

3. Section 903.2.1.3 Group A-3. An automatic sprinkler system shall be provided for Group A-3 occupancies where one of the following conditions exists:

a. The fire area exceeds 10,000 square feet (929 sq. m.);

b. The fire area has an occupant load of 300 or more; or

c. The fire area is located on a floor other than the level of exit discharge.

Exception: Areas used exclusively as participant sports areas where the main floor area is located at the same level as the level of exit discharge of the main entrance and exit.

4. Section 903.2.1.4 Group A-4. An automatic sprinkler system shall be provided for Group A-4 occupancies where one of the following conditions exists:

a. The fire area exceeds 10,000 square feet (929 sq. m.);

b. The fire area has an occupant load of 300 or more; or

c. The fire area is located on a floor other than the level of exit discharge.

Exception: Areas used exclusively as participant sports areas where the main floor area is located at the same level as the level of exit discharge of the main entrance and exit.

When not provided by other provisions of this chapter, a fire-extinguishing system installed in accordance with NFPA 13 may be used for increases and substitutions allowed in Section 504.2, 506.3, and Table 601 of the building code.

5. Section 903.2.3 Group F-1. An automatic sprinkler system shall be provided for Group F-1 occupancies where one of the following conditions exists:

a. The fire area exceeds 10,000 square feet (929 sq. m.);

b. Where a Group F-1 fire area is located more than three stories above grade plane; or

c. Where the combined area of all Group F-1 fire areas on all floors, including mezzanines, exceeds 24,000 square feet (2230 sq. m.).

6. Section 903.2.3.1 Woodworking operations. An automatic sprinkler system shall be provided throughout all F-1 occupancy fire areas that contain woodworking operations in excess of 2500 square feet in area (232 sq. m.) which generate finely divided combustible waste or which use finely divided combustible materials.

7. Section 903.2.6 Group M. An automatic sprinkler system shall be provided for Group M occupancies where one of the following conditions exists:

a. The Group M fire area exceeds 10,000 square feet (929 sq. m.);

b. Where a Group M fire area is located more than three stories above grade; or

c. Where the combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 sq. m.).

8. Section 903.2.8 Group S-1. An automatic sprinkler system shall be provided for Group S-1 occupancies where one of the following conditions exists:

a. The Group S-1 fire area exceeds 10,000 square feet (929 sq. m.);

b. Where a Group S-1 fire area is located more than three stories above grade plane; or

c. Where the combined area of all Group S-1 fire areas on all floors,

including any mezzanines, exceeds 24,000 square feet (2230 sq. m.).

9. Section 907 Fire alarm and detection systems.

Section 907.2 When required new buildings and structures. An approved manual, automatic, or manual and automatic fire alarm system installed in accordance with the provisions of this code and NFPA 72 shall be provided in new buildings and structures in accordance with Sections 907.2.1 through 907.2.23 and provide occupant notification in accordance with Section 907.10, unless other requirements are provided by another section of this code. Where automatic sprinkler protection installed in accordance with Section 903.3.1.1 or 903.3.1.2 is provided and connected to the building fire alarm system, automatic heat detection required by this section shall not be required.

In addition, any occupancy over 2,500 square feet (232.3 m<sup>2</sup>) that is not required to be alarmed in Sections 907.2.1 through 907.2.23 shall provide a fire alarm system meeting requirements as set forth by the Mountlake Terrace Fire Department in accordance with current development standards. The fire alarm system shall be monitored by an approved central station.

Exception: R-3, R-4 and Group U Occupancies.

The automatic fire detectors shall be smoke detectors. Where ambient conditions prohibit installation of automatic smoke detection, other automatic fire detection shall be allowed.

**Section 11.** Mountlake Terrace Municipal Code, Section 15.15.030 Enclosures, and Ordinance No. 1678 § 3 are hereby amended to read as follows:

**15.15.030 Enclosures.**

For the protection of the citizens and general public, all swimming pools, spas, and hot tubs shall be completely enclosed by a substantial wall or fence of not less than four feet in height.

Any wall or fence shall be so constructed that holes or gaps shall be such that a two-inch sphere cannot pass through, except for doors or gates when open. All doors and gates shall be self closing and self latching, latches on gates and doors shall be located on the inside and not readily accessible for children to operate. Gates shall have the latching device at least 40 inches from ground level and these gates shall remain locked unless adult supervision is in attendance. Swimming pools, spas, and hot tubs already constructed and in operation shall comply with this chapter within 90 days of the passage of the ordinance codified in this chapter.

Exceptions: If the property on which the swimming pool, spa or hot tub is located is enclosed then the specific provision for enclosing the swimming pool, spa, or hot tub area may be waived by the City Building Department upon inspection and approval of the fenced area.

The City Building Department may make modifications in individual cases upon showing of good cause, with respect to the height, nature, or location of the fence, wall, gates, or latches, or the necessity therefore, provided the protection as sought hereunder is not reduced thereby. Note that in no case may the location of the fence be changed by the Department which would violate the required setbacks without first having obtained the approval of the Hearing Examiner via variance procedures.

The City Building Department may permit other protective devices or structures to be used as long as the degree of protection afforded by the substitute devices or structures is not less than the protection afforded by the wall, fence, gate, and latch described herein.

**Section 12.** Mountlake Terrace Municipal Code, Section 16.05.240 Appeals, and Ordinance No. 2112 are hereby amended to read as follows:

**16.05.240 Appeals.**

The City establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:

A. Any agency or person may appeal to the Hearing Examiner the City's procedural compliance with Chapter 197-11 WAC for issuance of the following:

B. Appeal of the determination of nonsignificance (DNS) must be made in writing to the City Clerk within 10 days of the date the DNS is final (see WAC 197-11-390(2)(a)).

C. The appeal of the determination of significance (DS) must be made in writing to the City Clerk within 10 days of the date the DS is issued.

D. Appeal of the Final Environmental Impact Statement (FEIS) must be made in writing to the City Clerk within 10 days of the date the permit or other approval is issued.

1. For any appeal under this subsection, the Hearing Examiner shall provide for a record that shall consist of the following:

- a. Findings and conclusions;
- b. Testimony under oath; and
- c. A taped or written transcript.

2. The procedural determination by the City's Responsible Official shall carry substantial weight in any appeal proceeding.

3. The City shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.

E. For projects requiring a public hearing, the appeal of a determination of significance or mitigated determination of significance shall be consolidated into the open record public hearing for the project. (Ord. 2112, 1996; Ord. 1575 § 9.2, 1984).

**Section 13.** Mountlake Terrace Municipal Code, Section 16.20.120 Design, and Ordinance No. 2228 § 4 are hereby amended to read as follows:

**16.20.120 Design.**

The following design requirements shall apply to all projects and are intended to be consistent with the comprehensive drainage management plan.

A. Mandatory Requirements.

1. Surface water entering the subject property shall be received at the naturally occurring location and surface water exiting the subject property shall be discharged at the natural location with adequate energy dissipaters within the subject property to minimize downstream damage and with no diversion at any of these points;

2. The 10-year design storm peak discharge from the subject property may not be increased due to the proposed development;

3. Retention/detention facilities with capacities designed for a 25-year 6-hour storm or as specified by the comprehensive drainage plan must be provided in order to maintain surface water discharge rates at or below the existing 10-year design storm peak discharge; and

4. Where open channel construction is used to handle drainage within the subject

property, a minimum of 15 feet will be provided between any structures and the top of the bank of the defined channel.

a. In open channel work the water surface elevation will be indicated on the plan and profile drawings. The configuration of the finished grades constituting the banks of the open channel will also be shown on the drawings.

b. Proposed cross section of the channel will be shown with stable side slopes as approved by the Engineering Department.

c. The water surface elevation of the flow for the design storm will be indicated on the cross section.

5. When a closed system is used to handle drainage within the subject property, the system will be a minimum of 10 feet from all structures.

6. All drainage easements within the subject property shall be at least 20 feet in width for operation and maintenance of open channel or closed system installation.

7. Open retention/detention ponds and infiltration facilities shall not be located in dedicated public road right-of-way areas unless specifically waived by the City.

8. An emergency overflow system is required for all retention/detention and filtration facilities.

9. No naturally occurring marsh, or other wetlands area shall be developed unless it can be shown by the prospective developer that the water quality benefit by development to the wetland area exceeds the natural benefit of the existing marsh or wetland area and is consistent with Critical Area Regulations.

10. Storm water retention/detention shall not occur on asphalt, graveled or concrete surfaces.

11. Where the allowable discharge from a site exceeds one cfs there shall be a multiple stage discharge where the lowest stage discharges 25 percent of the allowable discharge. The minimum size of the lowest orifice of a multiple stage or single stage discharge control device must be one inch in diameter.

B. Recharge. Recharge of storm water into the ground is encouraged; however, recharge potential shall be reviewed and certified by the Design Engineer prior to any attempt to recharge to the ground. Approved recharge projects shall have an inflow capacity sufficient to handle the design storm. An overflow system which meets the water quality and quantity release standards shall be available for backup.

The approval of any recharge project shall not constitute approval of any means by which unstable subsurface conditions may occur; such conditions resulting from recharge projects not constructed by the City shall remain the responsibility of the developer.

C. Construction. Construction materials and methods shall be in accordance with "Standards and Specifications for Municipal Public Works Construction" prepared by the American Public Works Association, latest edition, unless otherwise approved by the City. Copies of this publication are available for public inspection at the office of the City Engineer.

D. Erosion Control. Where drainage facilities discharge to natural drainage ways or watercourses, energy dissipation facilities shall be provided to prevent erosion and deterioration of the streambed or banks. Energy dissipation facilities shall be constructed of approved materials. Material such as broken concrete slabs, pipe, tires, scrap metal or debris are prohibited. No person shall discharge drainage waters from their project to any point or in any

manner not approved by the City. Prior to occupancy of the site or any related structure permanent erosion control must be established and operating at designed efficiency.

E. Storage. All storage basins shall be designed in such a manner that the outlet structures are easily accessible for inspection, testing, and maintenance.

The release of runoff from the storage basin shall be through a weir, orifice, grate, pipeline, or any other structure approved by the City Engineer and shall be maintained by the owner at his expense unless accepted for maintenance by the City as provided for under MTMC 16.20.260. The outlet facility shall provide a means for measuring the rate of outflow from the basin.

Where storage basins are incorporated into the property development in the form of lakes or fountains they shall be designed so as to avoid algae blooms and prevent stagnation. This area of concern shall be addressed in the permit application including regulation of lawn fertilization schedules (if applicable), lake configuration, flushing time and algae control methods.

All open storage basins not incorporated into landscaping arrangements shall not retain water for more than 24 hours. The owner shall be responsible for maintaining all storage basins, and for providing for the safety of the public as related to the storage basins. The City reserves the right to inspect such facilities at any time and upon written notice by the City to the owner that the basin has been filled in to the point where the design capacity is no longer available, or the outlet structure is clogged or blocked, or in some other manner is not functioning as designed and approved, the owner shall correct the problem. If the owner fails to respond to the written notice within 15 days, the City may undertake the work and bill all time and material to the owner.

F. Wetlands. Where existing wetlands function as a control feature in the natural drainage system, no project will be permitted which reduces that control feature. Projects proposed in a wetland area shall be accompanied by an engineering report prepared by a registered civil engineer qualified to practice in the state of Washington describing existing conditions and how those conditions will be maintained during and after project completion. The property owner, however, shall not be required to provide greater runoff control and storage potential than presently exists at the time he seeks project approval. No construction shall be permitted within 50 feet of the average annual high water line of a wetland.

G. Watercourses and Streams. Except on bridges or over culverts, or immediate approaches to them, no building, fences, construction or obstructions shall be permitted within 25 horizontal feet of the seasonal high water elevation of any stream or watercourse except as may be necessary to improve or stabilize the existing drainage. All construction within 50 feet of a watercourse shall be subject to careful control of filling and grading to assure that no erosion products are permitted to enter the natural drainage system.

H. Development in areas where the 100-year flood plain has been established by a comprehensive drainage plan (Halls, Lyon and McAleer basins), Flood Insurance Rate Maps, or where the Community Development Department has determined that drainage or erosion conditions present an imminent potential of harm to the welfare and safety of the surrounding community, shall meet special drainage conditions set by the Department. Conditions may include the limitation of the volume of discharge from the developed property to be pre-development levels, preservation of wetlands or other natural drainage features, or other controls necessary to protect against a community hazard.

Due to the detrimental effect on upstream and downstream properties no filling, grading or construction shall take place within the established flood plains where an equal amount of

displaced flood water storage has not been provided elsewhere. The Developer must provide information, plans and calculations to satisfy the City Engineer that development within the flood plains is not detrimental by increasing the flooding occurring upstream or downstream from the site.

Where applications of the provisions of this section will deny all reasonable use of the property, the restriction of development contained in this section may be waived only by the Hearing Examiner, provided that the resulting development shall be subject to all of the remaining terms and conditions of this chapter.

**Section 14.** Mountlake Terrace Municipal Code, Section 16.20.220 Appeals, and Ordinance No. 1807 § 17 are hereby amended to read as follows:

**16.20.220 Appeals.**

In the event of a permit denial, the City shall state the reasons for the denial and measures necessary to attain permit approval. The applicant shall have the right to appeal the denial with the Hearing Examiner, which shall have the effect of a final decision, or to make corrective measures to the project as necessary to obtain a permit. If the determination is not reversed, the applicant has the choice of correcting the project or permit application as required by the City or file an appeal with Superior Court within 21 days of the Hearing Examiner's decision.

**Section 15.** Mountlake Terrace Municipal Code, Section 16.20.290 Notice of violation – Assessment of penalty, and Ordinance No. 1807 § 23.2 are hereby amended to read as follows:

**16.20.290 Notice of violation – assessment of penalty.**

Whenever the City Engineer has found or determined that a violation is occurring the City Engineer is authorized to issue a notice of violation directed to the developer/owner.

A. The notice of violation shall contain:

1. The name and address of the applicant;
2. The street address when available or a legal description sufficient for identification of the building, structure, premises, or land upon or within which the violation is occurring;
3. A statement of the nature of such violation(s);
4. A statement of the action required to be taken as determined by the City Engineer and a date for correction, which shall be not less than 15 calendar days from the date of service of the notice of violation, unless the City Engineer has determined the violation to be hazardous and to require immediate corrective action or unless the corrective action constitutes an erosion control measure.
5. A statement that a cumulative civil penalty in the amount of \$300.00 per day shall be assessed against the person to whom the notice of violation is directed for each and every day following the date set for correction on which the violation continues; and
6. A statement that the City Engineer's determination of violation may be appealed to the Hearing Examiner by filing written notice of appeal, in duplicate, with the City Engineer's office within 10 calendar days of service of the notice of violation. The per diem civil penalty shall not accrue during the pendency of such administrative appeal unless the violation was determined by the City Engineer to be hazardous and to require

immediate corrective action or was determined by the City Engineer to constitute a temporary erosion control measure.

B. The notice of violation shall be served upon the person(s) to whom it is directed either personally in the manner provided for personal service of notices or complaint in justice court or by mailing a copy of the notice of violation by certified mail, postage prepaid, return receipt requested, to such person at his last known address. Proof of personal service shall be made at the time of service by a written declaration under the penalty of perjury executed by the person affecting service, declaring time, date and the manner by which service was made.

C. A notice of violation issued pursuant to this section constitutes a determination from which an administrative appeal may be taken to the Hearing Examiner. In the event the cumulative civil penalty is not stayed during the appeal because the City Engineer has determined either that the violation is hazardous and requires immediate corrective action or that the corrective action constitutes a erosion control measure, then the applicant shall be entitled to have the appeal considered by the City Manager within two (2) working days following filing of the appeal.

D. For good cause shown, the City Engineer may extend the date set for correction in the notice of violation; provided, that such an extension shall not affect or extend the time within which an administrative appeal must be commenced.

**Section 16.** Mountlake Terrace Municipal Code, Section 17.05.140 Approval – Short subdivisions, and Ordinance No. 1661 are hereby amended to read as follows:

**17.05.140 Approval – short subdivisions.**

Upon the submittal of a complete application, the application shall be forwarded to the City Manager, who shall have sole authority to approve, disapprove, or modify any short subdivision. The City Manager shall not take action to approve, disapprove, or modify any short plat without the written recommendation of the City Engineer and the Planning Officer. All short subdivisions involving an access easement or the deeding of right-of-way shall be forwarded to the Planning Commission for their recommendation prior to final action on the proposal by the City Manager. All short subdivisions involving a variance request under Article VII of this chapter shall receive final action on the variance request from the Hearing Examiner prior to the City Manager taking final action on the short subdivision. The City Manager shall not sign as approved any short plat until all conditions of approval have been satisfied. In the case of the minimum improvements included in MTMC 17.05.090, such improvements shall be either physically installed to the satisfaction of the City or guaranteed through one of the means provided in the City's ordinance establishing acceptable types of guarantees, prior to the City Manager signing the short plat. When a final decision is arrived at, the applicant shall be notified by mail of the decision.

**Section 17.** Mountlake Terrace Municipal Code, Section 17.05.280 Variance procedure, and Ordinance No. 1417 § 7.2 are hereby amended to read as follows:

**17.05.280 Variance procedure.**

A. Application. A subdivider may request specific variances at the time of application for formal subdivision or short subdivision approval, on forms supplied by the Planning Department. Variances requested shall be clearly indicated on the face of the plat or on a separate sheet. The

subdivider must indicate the need for the variances and how the granting of such variances will not adversely affect the public health, welfare or safety. A fee as prescribed by other City ordinances will be required. A complete application must be submitted to the Planning Department at least 28 days prior to the date of Planning Commission review.

B. Variance Review Procedure – Short Subdivisions. Upon the receipt of a complete application as required in subsection A of this section, the Planning Officer shall schedule the application for Planning Department and Hearing Examiner review. The Planning Department shall consider the variance concurrently with consideration of the short plat and shall pass a recommendation on the variance to the Hearing Examiner, who shall approve, disapprove or modify the variance after holding a public hearing on the application.

C. Variance Review Procedure – Formal Subdivisions. Upon the receipt of a complete application as required in subsection A of this section, the Planning Officer shall schedule the application for Planning Commission review. The Planning Commission shall consider the variance concurrently with consideration of the subdivision application. The Planning Commission shall pass a recommendation on the variance concurrently with the recommendation on the subdivision application to the City Council. The City Council may approve, disapprove or modify the variance.

D. Criteria For Approval of Variances.

1. The need for a variance must relate to the hardship induced by the strict application of these regulations because of the size, shape, topography or other natural features of the property; or where strict enforcement of these regulations will lead to detrimental environmental impacts.

2. Variances shall not be granted where the subdivider will benefit at the cost of the public health, welfare or safety.

**Section 18.** Mountlake Terrace Municipal Code, Section 17.10.100 Appeals, and Ordinance No. 2113 are hereby amended to read as follows:

**17.10.100 Appeals.**

An applicant may appeal any administrative decision issued by the Director approving or disapproving a binding site plan to the Mountlake Terrace Hearing Examiner. Such appeal must be made within ten (10) working days from the date on which the binding site plan decision was rendered. The appeal must be in writing to the Principal Planner, stating in sufficient detail the facts and reasons in support of the appeal. The decision of the Hearing Examiner shall be final, unless appealed to Superior Court within 21 days of the decision.

**Section 19.** Mountlake Terrace Municipal Code, Section 18.05.010 Purpose, and Ordinance No. 2117 § 1.1 are hereby amended to read as follows:

**18.05.010 Purpose.**

The purpose of this chapter is to describe procedures for proposing, amending, and implementing land use policy and for submitting, reviewing and approving land use development or redevelopment projects. It provides for incremental and consolidated application, review, and approval processes for land development in the City of Mountlake Terrace in a manner that is clear, concise, and understandable. It is further intended to comply with state guidelines for combining and expediting development review and integrating environmental review and land

use development plans. Final decision on development proposals shall be made within 120 days of the date of the letter of completeness except as provided in MTMC 18.05.530.

The City of Mountlake Terrace intends to meet the requirements and the spirit of the state of Washington Regulatory Reform Act by adopting this "procedures" ordinance as well as revising several ordinances that relate to land use policy and development. The following titles and chapters of this code also apply to land use policy and project development:

Chapter 2.120 Hearing Examiner.

Chapter 2.55 Planning Commission duties.

Chapter 15.05 Building codes: sections re: regulation of removal of trees.

Chapter 15.30 Mobile homes.

Title 16 Environment.

Title 17 Subdivisions.

Title 18 Land use and development.

Title 19 Zoning.

The pertinent requirements of the above ordinances, as may be amended, shall be utilized in conjunction with this chapter. In the case of procedural differences, this chapter shall prevail. In terms of specific application requirements and standards, the most extensive or restrictive shall apply. (Ord. 2117 § 1.1, 1996).

**Section 20.** Mountlake Terrace Municipal Code, Section 18.05.040 "A", and Ordinance No. 2117 § 1.3 are hereby amended to read as follows:

**18.05.040 "A".**

"Annexation" means the procedures by which lands become incorporated into the City.

"Application process, consolidated" combines all the development approvals and environmental review for concurrent review and approval.

"Application process, incremental" means each application relative to a land use action is considered in sequence.

"Applicant" means person(s) seeking development approval from the City.

**Section 21.** Mountlake Terrace Municipal Code, Section 18.05.050 "B", and Ordinance No. 2117 § 1.3 are hereby amended to read as follows:

**18.05.050 "B".**

"Binding site plan" means an alternative to the subdivision method of dividing property for sale or lease purposes in accordance with RCW 58.17.040(4) as may be amended. The binding site plan procedure is applicable to the division of commercially and industrially zoned land for sale or lease or other transfer of such parcels, after conformance with all site plan approval requirements for the underlying zoning classification of the property.

"Building area, building site" means an area within a lot upon which a building to accommodate the principal use of the lot could be practicably built, bound by the setbacks or any environmental limitations.

“Building Official” means the building official of the City of Mountlake Terrace or his/her designee who carries out certain duties, especially related to Chapter 15.05 MTMC.

“Building, principal or main” means the building which accommodates the principal or primary use of a site or lot.

“Building” means a structure having a roof for the shelter of persons or property.

**Section 22.** Mountlake Terrace Municipal Code, Section 18.05.060 “C”, and Ordinance No. 2117 § 1.3 are hereby amended to read as follows:

**18.05.060 “C”.**

“City” means the City of Mountlake Terrace.

“City Council” means the City Council of the City of Mountlake Terrace.

“City Engineer” means the City Engineer of the City of Mountlake Terrace or his/her designee.

“City Manager” means the City Manager of the City of Mountlake Terrace or his/her designee.

“Closed record appeal” means an appeal to the appropriate authority, pursuant to MTMC 18.05.610 or other applicable codes, based on the existing record.

“Comprehensive Plan” means the adopted Mountlake Terrace Comprehensive Plan as amended and updated in conformance with the Growth Management Act.

“Comprehensive Plan amendment” means an amendment or change to the text or maps of the Comprehensive Plan.

“Concurrency” with development means the required improvements or strategies in place at the time of occupancy, or financial commitment is in place to complete the improvements or strategies within six years of approval of the development.

“Conditional use” means a use allowed in one or more zones as defined by the Zoning Code, but which because of characteristics peculiar to such use, the size, technological processes or equipment, or because of the exact location with reference to surroundings, streets, and existing improvements or demands upon public facilities, requires a special permit in order to provide a particular degree of control to make such uses consistent and compatible with other existing or permissible uses in the same zone and mitigate adverse impacts of the use.

“Conditional use permit” means permits are granted with conditions for conditional uses. There are three types of conditional use permits: for essential public services, for conditional uses as described in the several zoning districts, and for home occupations.

“Coverage” means the total ground coverage of all buildings or structures on a site measured from the outside of external walls or supporting members.

“Critical Area Ordinance” means the set of regulations adopted under the Growth Management Act to protect critical areas (environmentally sensitive areas).

“Critical areas” means areas of environmental sensitivity, which include the following areas and ecosystems:

- A. Wetlands;
- B. Areas with a critical recharging effect on aquifers used for potable water;
- C. Fish and wildlife habitat conservation areas;
- D. Frequently flooded areas; and
- E. Geologically hazardous areas.

**Section 23.** Mountlake Terrace Municipal Code, Section 18.05.070 “D”, and Ordinance No. 2117 § 1.3 are hereby amended to read as follows:

**18.05.070 “D”.**

“Date of decision, effective date” means the date on which final action occurs and from which the appeal period is calculated. Specific ordinances may define effective dates of orders. If the effective date of a decision is in question, the pertinent ordinance shall prevail.

“Dedication” means the donation of land to the City for any public purpose.

“Density” means the number of permitted dwelling units allowed or occurring on each acre of land.

“Developer” means any person who proposes an action, required approval or seeks a permit for a land use activity.

“Development decision” means any land use permit or action including but not limited to: larger and smaller site plans for residential, commercial, light industrial, and office uses, subdivisions, binding site plans, lot line adjustments, rezones, conditional use permits, or variances.

“Director” means the Director of Planning and Community Development or his/her designee.

“Docket” means list of items to be considered for Comprehensive Policy Plan and Map and Zoning Ordinance and Map updates.

**Section 24.** Mountlake Terrace Municipal Code, Section 18.05.080 “E”, and Ordinance No. 2117 § 1.3 are hereby amended to read as follows:

**18.05.080 “E”.**

“Easement, access” means a private right-of-way properly approved and devoted to provide vehicular access to a street from no more than three existing or potential lots.

“Effective date” means the date a final decision becomes effective.

“Essential public facilities” means essential public facilities, as defined in RCW 36.70A.200, as now or hereinafter may be amended. Such facilities may be owned or operated by a unit of local, state, or federal government, by a public utility or transportation company, or by any other entity providing a public service as its primary mission; provided, that the facility is either a necessary facility or a component of a necessary system to meet a public need.

“Essential public facilities, Type A” means Type A essential public facilities, as defined in MTMC 18.15.020.

“Essential public facilities, Type B” means Type B essential public facilities, as defined in MTMC 18.15.020.

**Section 25.** Mountlake Terrace Municipal Code, Section 18.05.090 “F”, and Ordinance No. 2117 § 1.3 are hereby amended to read as follows:

**18.05.090 “F”.**

“Final decision” means the final action by the Principal Planner, City Engineer, Director, City Manager, Planning Commission or City Council.

**Section 26.** Mountlake Terrace Municipal Code, Section 18.05.110 “H”, and Ordinance No. 2117 § 1.3 are hereby amended to read as follows:

**18.05.110 “H”.**

“Hearing Examiner” means the individual(s) appointed pursuant to MTMC 2.120.030 and empowered to conduct open record hearings or review appeals from orders, recommendations, permits, decisions or determinations made by a City Official, applications for variances, and applications for conditional use permits or any other class of applications for or pertaining to development of land or land use..

**Section 27.** Mountlake Terrace Municipal Code, Section 18.05.160 “M”, and Ordinance No. 2117 § 1.3 are hereby amended to read as follows:

**18.05.160 “M”.**

“Mayor” means the Mayor of Mountlake Terrace or his/her designee.

“Mitigation contribution” means a cash donation or other valuable consideration offered by the applicant in lieu of: 1) a required dedication of land for public park, recreation, open space, public facilities, or schools; or 2) road improvements needed to maintain adopted levels of service or to ameliorate identified impacts and accepted on the public's behalf as a condition of approval of a subdivision, plat or binding site plan. Voluntary contributions may be accepted by the City.

“Mobile home parks” means any plot of ground upon which mobile homes, occupied for dwelling or sleeping purposes, are located. The ordinance providing for mobile home parks establishes minimum standards for construction and maintenance, utilities and facilities and other physical things and conditions to make mobile home parks safe, sanitary and fit for human habitation. (Ord. 2117 § 1.3, 1996).

**Section 28.** Mountlake Terrace Municipal Code, Section 18.05.190 “P”, and Ordinance No. 2117 § 1.3 are hereby amended to read as follows:

**18.05.190 “P”.**

“Party of record” means any person who has testified at a hearing or has submitted a written statement related to a development action and who provides the City with a complete address. Persons or entities who signed “form letters” and/or petitions do not become a party of record.

“Person” means any person, firm, business, corporation, partnership or other associations or organization, marital community, municipal corporation or governmental agency.

“Planned action” means a significant development proposal as defined in RCW 43.21C.031 as amended.

“Planning Commission” means the body appointed pursuant to chapter 2.55 MTMC.

“Planning Division” means the Planning Division of the Community Development Department.

“Plat” means a to scale drawing of a subdivision showing lots, blocks, streets or tracts or other divisions or dedications of land to be subdivided.

“Plat, final” means a precise drawing of a subdivision and dedications which conforms to

the approved preliminary plat, meets all the conditions of preliminary approval and meets the requirements of the Snohomish County Auditor for recording.

“Plat, final short” means a precise drawing of a short subdivision and dedications which conforms to the approved preliminary short plat, meets all the conditions of approval and meets the requirements of the Snohomish County Auditor for recording. (Provision for two-step short plat process is pending further revision of City’s Subdivision Ordinance.)

“Plat, preliminary” means a neat and approximate scale drawing of a proposed subdivision, showing the existing conditions and the proposed layout of streets, lots, blocks and other information needed to properly review the proposal.

“Plat, preliminary short” means a neat and approximate scale drawing of a proposed short subdivision, showing the existing conditions and the proposed layout of streets, lots, blocks and other information needed to properly review the proposal. (Provision for two-step short plat process is pending further revision of City’s Subdivision Ordinance.)

“Plat, short” means the plat of a short subdivision. A precise drawing of a short subdivision and dedications which conforms to the approved preliminary short plat, meets all the conditions of approval and meets the requirements of the Snohomish County Auditor for recording. (Provision for two-step short plat process is pending further revision of City’s Subdivision Ordinance.)

“Primary or principal use” means the predominant use of the land or building to which all other uses are secondary.

“Principal Planner” means the person designated by the Director to perform certain duties.

“Project” means a proposal for development or redevelopment with buildings, structures, or other site improvements.

“Public facilities and utilities” means land or structures owned by or operated for the benefit of the public use and necessity, including but not limited to public facilities defined in RCW 36.701.030, as amended.

“Public hearing” means an open record hearing at which evidence is presented and testimony is taken.

“Public improvement” means any structure, utility, roadway or sidewalk for use by the public, provided or required as a condition of development approval.

**Section 29.** Mountlake Terrace Municipal Code, Section 18.05.220 “S”, and Ordinance No. 2117 § 1.3 are hereby amended to read as follows:

**18.05.220 “S”.**

“Secure facilities use permit” means a land use permit for a secure community transition facility, pursuant to chapter 18.20 MTMC.

“Site plan, larger scale” means one that involves new land use development projects of 50,000 square feet or more, or the addition, or redevelopment, or alteration of 50,000 square feet or more. Larger-scale residential site plans have 50 or more residential units.

“Site plan, smaller scale” means one that involves new land use development projects that total less than 50,000 square feet, or alterations or redevelopment of less than 50,000 square feet.

“Special use permit – wireless” means a process similar to conditional use permit providing for administrative and Hearing Examiner review for selected wireless communication

facilities.

“Structure” means a combination of materials constructed and erected permanently in or on the ground or attached to something having a permanent location on the ground, not including utility poles and related ground- or pad-mounted equipment, residential fences less than six feet high, retaining walls, rockeries and other similar improvements of a minor character less than three feet high.

“Subdivision” means a division of land into five or more lots, tracts or other divisions. Subdivision includes resubdivisions (replats, plat alteration) of previously subdivided land.

“Subdivision, short” means a division of land into four or fewer lots or tracts.

“Subdivision Ordinance” means an ordinance regulating the subdivision and dedication of land in the City of Mountlake Terrace, Washington, providing rules and regulations for the approval of plats, subdivisions and dedications; prescribing subdivision design procedures, criteria, and standards; providing for minimum improvements to be made or forms of surety for required improvements; providing for variations of standards; and providing penalties for the violation of its provisions.

**Section 30.** Mountlake Municipal Code, Section 18.05.310 Mayor – City Manager – Public Works Director – Principal Planner – City Engineer, and Ordinance No. 2174 § 8 are hereby amended to read as follows:

**18.05.310 Mayor – City Manager – Director – Principal Planner – City Engineer.**

A. Authorities.

1. Mayor. The Mayor signs plats based on a recommendation by the City Engineer and Principal Planner.

2. City Manager. The City Manager works with the City Council to provide the necessary budget and staff for land use planning and development activities. The City Manager is responsible for hiring staff to perform these duties. The City Manager is responsible for forwarding staff reports to the City Council.

The City Manager signs short plats and lot line adjustments based on written recommendation by the Principal Planner and the City Engineer. The City Manager signs binding site plans after they are certified by the City Engineer.

3. Director. The Director oversees the City’s planning and development services, provides policy direction, and coordinates with other departments for land use planning and development. The Director advises the City Manager, Planning Commission, City Council, department directors, and the public on policy measures and on regulatory ordinances that affect the future development of the municipality.

The Director is responsible for coordinating, preparing or overseeing the preparation of staff reports for land use plans and projects and to make recommendations to the Planning Commission, Hearing Examiner, and City Council. The Director is the responsible official for issuing environmental determinations for the Community Development Department.

The Director has primary responsibility for administering and interpreting ordinances for Zoning, Shoreline Management Act, Critical Areas, Subdivisions, Land Use and Development, and the State Environmental Policy Act (SEPA). The Director manages the Comprehensive Plan update process and shall maintain a docket of items to

be considered for such update. The Director also implements the Comprehensive Plan and coordinates the update of the Comprehensive Plan.

4. The Principal Planner, in consultation with the Director and the City Engineer, coordinates review of subdivision, mobile home, and binding site plan proposals. The Principal Planner, also serves as the primary contact for proposing, amending, and implementing land use policy and for submitting, reviewing and approving land use projects.

The Principal Planner, as authorized by the Director, coordinates the annexation process in consultation with the City Manager, City Attorney, City Clerk, Finance Officer, Police and Fire Departments, City Engineer and Director.

5. City Engineer. For land use planning and development, the City Engineer is responsible for administering the ordinance controlling drainage and erosion control, consistent with the Critical Areas Ordinance. The City Engineer assists the Principal Planner and Director in administering the Subdivision, Mobile Home, and Binding Site Plan Ordinances.

**B. Administrative Approvals.**

1. The City Manager, upon recommendation by the Director and City Engineer, grants short plat and lot line adjustment approvals.

2. The Director, in consultation with pertinent departments and divisions, such as fire, police, parks, and engineering, grants administrative approvals of site plans, selected "special use permit – wireless" communication facilities, temporary uses, time extensions, fence permits, garage sale permits, and SEPA threshold determinations as identified by the pertinent ordinances.

3. The City Engineer grants administrative variances to the Storm Drainage Ordinance.

**Section 31.** Mountlake Terrace Municipal Code, Section 18.05.320 City Council, and Ordinance No. 2342 § 3 are hereby amended to read as follows:

**18.05.320 City Council.**

In addition to its legislative responsibility, the City Council shall review and act on the following subjects:

A. Recommendations of the Planning Commission or Hearing Examiner as may be requested by the City Council or as may be initiated by the Planning Commission.

B. Following an open record hearing, the City Council shall act on:

1. Annexations.

2. Recommendations of the Hearing Examiner or Planning Commission for:

a. Preliminary plats;

b. Planned unit developments;

c. Rezones that are concurrent with a Comprehensive Plan amendment proposal.

3. Recommendations of the Planning Commission for:

a. Comprehensive Plan and map amendments;

b. Zoning text and map amendments;

c. Amendments to the Subdivision Code, the Environmental Code, the Mobile Home Park Ordinance, and Title 18 (Land Use and Development).

4. Zoning for annexations;
5. Appeals of site-specific rezone decisions.

**Section 32.** Mountlake Terrace Municipal Code, Section 18.05.330 Planning Commission, and Ordinance No. 2342 § 3 are hereby amended to read as follows:

**18.05.330 Planning Commission.**

A. The Planning Commission shall hold public meetings, review and file reports with recommendations on the following applications and subjects:

1. Amendments to the Comprehensive Plan, or the Official Map;
2. Amendments to the Subdivision Code;
3. Amendments to the Zoning Code;
4. Amendments to the Environmental Code;
5. Amendments to the Mobile Home Park Ordinance
6. Amendments to the Zoning map, excluding any such amendments that are associated with a site-specific application that is not concurrent with a Comprehensive Plan amendment;  
Applications for preliminary plats and plats;
7. Other actions requested or remanded by the City Council;
8. Planned unit developments;
9. Zoning for annexations.

The review criteria are described in the pertinent ordinances.

**Section 33.** Mountlake Terrace Municipal Code, Section 18.05.340 Board of Adjustment, and Ordinance No. 2117 § 5.5 are hereby amended to read as follows:

**18.05.340 Hearing Examiner authority and jurisdiction.**

A. The Hearing Examiner shall hold open record hearings, and review and act on the following subjects:

1. Variances from the standards and dimensional regulations of the Zoning Code, such as height, width, size, setback and yard restrictions;
2. Conditional use permits;
3. Temporary housing units;
4. Appeals from administrative decisions and/or code interpretations by the City Manager, Director, Principal Planner or City Engineer;
5. Temporary uses;
6. Time extensions;
7. Special use permits – wireless.

The review criteria and procedures for the Hearing Examiner are contained in the pertinent ordinances.

**Section 34.** Mountlake Terrace Municipal Code, Section 18.05.430 Notice of appeal hearings, and Ordinance No. 2117 § 4.4 are hereby amended to read as follows:

**18.05.430 Notice of appeal hearings.**

In addition to the posting and publication requirements, notice of appeal hearings shall be as follows:

A. For administrative approvals, notice shall be mailed to the applicant and the immediately adjacent property owners.

B. For Hearing Examiner or Planning Commission decisions, mailed to the applicant and all parties of record.

**Section 35.** Mountlake Terrace Municipal Code, Section 18.05.440 Notice of decision, and Ordinance No. 2117 § 4.5 are hereby amended to read as follows:

**18.05.440 Notice of decision.**

A. A written notice for all final decisions, which include threshold determinations and procedures for administrative appeals, shall be sent to the applicant and all parties of record.

B. For development applications requiring Planning Commission or Hearing Examiner review and City Council approval, the notice shall be the signed ordinance, resolution, or copy of the pertinent sections of the minutes.

**Section 36.** Mountlake Terrace Municipal Code, Section 18.05.450 Administrative approvals without notice, and Ordinance No. 2117 § 4.5 are hereby amended to read as follows:

**18.05.450 Administrative approvals without notice.**

A. The Director, in consultation with the City Engineer, may approve, approve with conditions or deny the following without notice:

1. Lot line adjustment.
2. Lot consolidation.
3. Time extension.
4. 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:

- a. Overall project character,
- b. Increase the number of lots, dwelling units, or density,
- c. Decrease the quality or amount of open space, or
- d. Do not impact ability of the project to meet the requirements of City codes and ordinances except as permitted under original approval.

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

**Section 37.** Mountlake Terrace Municipal Code, Section 18.05.460 Administrative approvals subject to notice, and Ordinance No. 2117 § 5.2 are hereby amended to read as follows:

**18.05.460 Administrative approvals subject to notice.**

A. The Director may grant preliminary approval or approval with conditions, or may deny the following actions subject to the notice and appeal requirements of this chapter:

1. Smaller scale site plans.

B. Final Administrative Approvals. Preliminary approvals under this section shall become final subject to the following:

1. If no appeal is submitted, the preliminary approval becomes final at the expiration of the 10-day notice period.
2. If a written notice of appeal is received within the specified time the matter will be referred to the City Council for a public hearing.

**Section 38.** Mountlake Terrace Municipal Code, Section 18.05.470 Planning Commission actions, and Ordinance No. 2117 § 5.3 are hereby amended to read as follows:

**18.05.470 Planning Commission actions.**

A. Staff Report. The Planning staff shall prepare a staff report on the proposed development or action summarizing the comments and recommendations of City departments, affected agencies and special districts, and evaluate the development's consistency with the City's Zoning Ordinance, adopted plans and regulations. When the Planning Commission or Hearing Examiner holds an open record public hearing, the staff report shall include recommendations, draft findings of fact and conclusions of law, and proposed recommendations for consideration

B. Meeting. As authorized, the Planning Commission shall consider and make recommendations on proposals to be heard by the City Council. In so doing, the Commission shall discuss the development proposal with the applicant, staff, and interested public before making recommendations to the City Council. The Planning Commission should consider and base its recommendations on the following:

1. Type of land use;
2. The density or intensity of use;
3. The availability and adequacy of public facilities;
4. Compliance with specific development and Comprehensive Plan standards;
5. That the environmental impacts are consistent with applicable development regulations or in the absence of applicable regulations, the adopted Comprehensive Plan; and
6. Other factors relevant to the proposal, e.g., previous approvals, engineering standards, other City codes, regulations and standards.

**Section 39.** Mountlake Terrace Municipal Code, Section 18.05.480 City Council actions, and Ordinance No. 2117 § 5.4 are hereby amended to read as follows:

**18.05.480 City Council actions.**

A. Actions. Upon receiving a recommendation from the Planning Commission or notice of any other matter requiring the Council's attention, the Council shall perform the following actions as appropriate:

1. Hold an open record public hearing and a make a determination on the Planning Commission recommendation.
2. Hold a closed record appeal and make a decision.

B. Required Findings and Conclusions. The City Council shall make findings of fact and conclusions of law on applications and/or consider any Planning Commission or Hearing Examiner report on those applications..The findings of fact and conclusions of law shall be

consistent with MTMC 18.05.470(C). The City Council may accept, reject, or modify the findings of fact and conclusions of law.

C. Decisions. The City Council shall make its decision by motion, resolution, or ordinance as appropriate.

1. A Council decision based on a report filed by the Planning Commission or Hearing Examiner with recommendations, or following a public hearing on a proposal or action shall be made by taking one of the following actions:

- a. Approve as recommended.
- b. Approve with additional conditions.
- c. Modify, with or without the applicant's concurrence; provided, that the modifications do not:
  - i. Enlarge the area or scope of the project.
  - ii. Increase the density or proposed building size.
  - iii. Significantly increase adverse environmental impacts as determined by the responsible official.
- d. Deny (reapplication or resubmittal is permitted).
- e. Deny with prejudice (reapplication or resubmittal is not allowed for one year).
- f. Remand for further proceedings and/or evidentiary hearing.

2. A Council decision following a closed record appeal shall be made by taking one of the following actions:

- a. Grant the appeal in whole or in part.
- b. Deny the appeal in whole or in part.
- c. Remand for further proceedings and/or evidentiary hearing.

**Section 40.** Mountlake Terrace Municipal Code, Section 18.05.490 Board of Adjustment actions, and Ordinance No. 2117 § 5.5 are hereby amended to read as follows:

**18.05.490 Hearing Examiner actions.**

A. Actions. Upon receiving an application or report from City staff on a proposal or action, the Hearing Examiner shall hold an open record public hearing.

B. Required Findings of Fact and Conclusions of Law. The Hearing Examiner shall make findings of fact and conclusions of law on applications or proposals before him/her. The findings of fact and conclusions of law shall be consistent with MTMC 18.05.560(B) and MTMC 2.120.110.

C. Closed record appeals. Upon receiving a request to appeal a decision by City staff, the Hearing Examiner shall hold a closed record public hearing and may remand or overturn the staff decision if it is not consistent with City codes, regulations, and standards.

**Section 41.** Mountlake Terrace Municipal Code, Section 18.05.530 Remand, and Ordinance No. 2117 § 5.9 are hereby amended to read as follows:

**18.05.530 Remand.**

A. Decisions by Planning Commission and Hearing Examiner. For hearings and decisions made by the Planning Commission and/or Hearing Examiner which are authorized for appeal to City Council, the City Council shall have the authority to accept or reject any findings

or conclusions, or to remand the decision of the Hearing Examiner or Planning Commission for further hearing on a specific matter of the record. The Council shall specify the items or issues to be considered and the time frame for completing the additional work. The Council may hold a public hearing on a closed record appeal only for the limited purposes identified in RCW 34.05.562(1).

B. Decisions by City Council. For decisions of the City Council, the Court may remand the matter back to the City Council.

**Section 42.** Mountlake Terrace Municipal Code, Section 18.05.550 Appeal of administrative interpretations and approvals, and Ordinance No. 2117 § 6.1 are hereby amended to read as follows:

**18.05.550 Appeal of administrative interpretations and approvals.**

Administrative interpretations and administrative approvals may be appealed, by the applicant or any party of record, to the Hearing Examiner (see Hearing Matrix).

**Section 43.** Mountlake Terrace Municipal Code, Section 18.05.560 Appeal to the City Council, and Ordinance No. 2117 § 6.2 are hereby amended to read as follows:

**18.05.560 Decisions on development applications.**

A. Hearing. As appropriate, the Hearing Examiner, Planning Commission, or City Council shall conduct a public hearing on development proposals over which it has final jurisdiction and approve, approve with conditions, or deny for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the City's codes, adopted plans and regulations including the following:

1. Type of land use,
2. The density or intensity of use,
3. The availability and adequacy of public facilities,
4. Compliance with specific development and Comprehensive Plan standards,
5. That the environmental impacts are consistent with applicable development regulations or in the absence of applicable regulations, the adopted Comprehensive Plan, and
6. Other factors relevant to the proposal, i.e. previous approvals, engineering standards, other City codes regulations and standards.

The appropriate authority shall then make a determination to approve, approve with conditions, or deny the application. Notice of the public hearing shall be in accordance with MTMC 18.05.420.

B. Required Findings. The appropriate authority shall not approve or deny a proposed development unless it first makes findings of fact and conclusions of law consistent with the evidence and determination made. The findings of fact and conclusions of law shall address:

1. The development is consistent or is not consistent with Comprehensive Plan goals and policies.
2. The development meets or does not meet the requirements and intent of the applicable city ordinances.

3. The development makes or does not make adequate provisions for open space, drainage ways, streets and other public ways, transit stops, water supply, sanitary wastes, parks and recreation facilities, playgrounds, sites for schools and school grounds as applicable.

4. The development adequately mitigates or does not adequately mitigate impacts identified under the Critical Area Ordinance and SEPA determination.

5. The development is or is not beneficial to the public health, safety and welfare and is in the public interest.

6. The development does or 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 to meet or exceed 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 are in place at the time of occupancy, or a financial commitment is in place to complete the improvements or strategies within six years of approval of the development.

7. The area, location and features of any land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of the development, and are proportional to the impacts created by the development.

8. The development satisfactorily addresses or does not satisfactorily address criteria for review and consideration set forth in subsection B or C of this section as applicable.

C. Recommendation. Following review of a legislative or development proposal or action at the Planning Commission or Hearing Examiner meeting, the Planning Commission or Hearing Examiner shall provide written findings of fact, conclusions of law and recommendation, and promptly forward them to the decision-making authority for consideration.

D. Determination. Following review of a development proposal or action, the appropriate authority shall make written findings of fact and conclusions of law. The appropriate authority shall make a determination to approve, approve with conditions or deny the development proposal or action. If the proposal is considered by the Planning Commission or Hearing Examiner at a meeting, the Planning Commission or Hearing Examiner shall file a report and can consider subsections A through B of this section in doing so.

**Section 44.** Mountlake Terrace Municipal Code, Section 18.05.570 Judicial appeal, and Ordinance No. 2117 § 6.3 are hereby amended to read as follows:

**18.05.570 Judicial appeal.**

A. Appeals from the final decision of the City Council, Planning Commission or Hearing Examiner, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Snohomish County Superior Court within 21 days of the date the notice of action, 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 City Clerk, Director, and City 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. The appellant shall post with the City Clerk prior to the preparation of any records an advance fee deposit in the amount specified by the City Clerk. Any overage will be promptly returned to the appellant.

**Section 45.** Mountlake Terrace Municipal Code, Section 18.05.610 Hearing matrix, and Ordinance No. 2117 § 8.1 are hereby amended to read as follows:

**18.05.610 Decision and hearing matrix.**

A. The Decision and Hearing Matrix describes administrative decisions, public meetings, open record public hearings and closed record appeal responsibilities of the Planning Commission, Hearing Examiner, City Council and Court.

## Decision and Hearing Matrix

Project type	Decision	Public Meeting and Recommendation	Open Record Hearing	Open Record Appeal	Closed Record Appeal
Access easement	Director			Hearing Examiner	Court
Annexation	City Council		City Council		
Conditional use permit	Hearing Examiner		Hearing Examiner		Court
Conditional use permit for accessory use	Hearing Examiner		Hearing Examiner		Court
Short plat	City Manager			Hearing Examiner	Court
Binding site plan	City Manager			Hearing Examiner	Court
Preliminary plat	City Council	Planning Commission	City Council		Court
Plat alteration	Hearing Examiner		Hearing Examiner		Court
Formal subdivision/plat	City Council	Planning Commission	City Council		Court
Planned unit development	City Council	Planning Commission	City Council		Court
Mobile home park site plan	Director			Hearing Examiner	Court
Site plan	Director			Hearing Examiner	
Variance	Hearing Examiner		Hearing Examiner		Court
Appeal of staff decision	Hearing Examiner		Hearing Examiner		Court
Tree removal plan on undeveloped lot	Director			Hearing Examiner	Court
Special use sign permit and comprehensive sign design approval	Director			Hearing Examiner	Court
Other development approval	Director			Hearing Examiner	Court
Home occupation	Director			Hearing Examiner	Court
SEPA appeal	Hearing Examiner			Hearing Examiner	Court
Approval of temporary gravel parking lot	Director			Hearing Examiner	Court
Shoreline Management Act (SMA) Permit	Director			Hearing Examiner	(State) Shoreline Hearings Board

Essential public permit facilities, Type A	Hearing Examiner		Hearing Examiner		Court
Secure facilities use permit	Hearing Examiner		Hearing Examiner		Court
<b>Process Type</b>			<b>Public Hearing for Recommendation</b>	<b>Public Hearing for Decision</b>	
Comprehensive Plan amendment			Planning Commission	City Council	
Comprehensive Map amendment			Planning Commission	City Council	
Zoning Text amendment			Planning Commission	City Council	
Zoning for annexation			Planning Commission	City Council	
Zoning Map amendment (rezone) that is not part of an application, except when such application is associated with a concurrent Comprehensive Plan amendment			Planning Commission	City Council	
Zoning Map Amendment (rezone) that is part of an application and not associated with a concurrent Comprehensive Plan				Hearing Examiner <sup>1</sup>	
Amendment to Mobile Home Park Ordinance, Environmental Code, Land Use and Development (Title 18), or Subdivision Code			Planning Commission	City Council	

<sup>1</sup> Provided that the decision is subject to a closed record appeal to the City Council.

**Section 46.** Mountlake Terrace Municipal Code, Section 18.20.060 Review and decision procedure, and Ordinance No. 2342 § 7, are hereby amended to read as follows:

**18.20.060 Review and decision procedure.**

A. The siting of a secure community transition facility in the City requires an approved secure facilities use permit. The permit application form may be obtained at City Hall. A secure facilities use permit is subject to meeting the requirements of this chapter.

B. The payment of an application fee is required for secure facilities use permits, pursuant to the fee schedule adopted by city ordinance.

C. The Hearing Examiner shall hold one open record public hearing on the permit application and make a decision to approve, deny, or approve with conditions. The Hearing Examiner’s decision shall be based on whether the applicant meets the requirements of this chapter. The Hearing Examiner may impose reasonable conditions upon the development to increase community safety. The Hearing Examiner’s decision shall be supported by findings of fact and conclusions of law.

D. The City may enter into a long-term contract with the State Department of Social and Health Services, pursuant to RCW 71.09.343 or other relevant laws, in order to memorialize agreements for the operation of a secure community transition facility.

**Section 47.** Mountlake Terrace Municipal Code, Chapter 18.25 Public Notification – Major Land Use, and Ordinance No. 1886 and Ordinance No. 2342 § 8 are hereby amended to read as follows:

**Chapter 18.25  
PUBLIC NOTIFICATION – MAJOR LAND USE**

Sections:

- 18.25.010 Title.
- 18.25.020 Purpose.
- 18.25.030 Scope.
- 18.25.040 Sign size, number, and placement.
- 18.25.050 Content of notice.
- 18.25.060 Sign design and construction standards.
- 18.25.070 Responsibility for installation and removal.
- 18.25.010 Title.

**18.25.010 Title.**

This chapter shall be known as the “Major Land Use Action Public Notification Sign Ordinance of the City of Mountlake Terrace.”

**18.25.020 Purpose.**

The intent and purpose of this chapter is to establish requirements for the proponents of certain types of major land-use proposals to provide additional public notice signs to supplement the City’s normal public hearing postings.

**18.25.030 Scope.**

The following major land-use applications shall require supplemental public notification as provided in this chapter.

- A. Preliminary plats of over ten (10) lots.
- B. Rezones.
- C. Comprehensive Policy Plan amendments.
- D. Shoreline management substantial development permits.
- E. Site development plans for projects containing more than 50 dwelling units, or 50,000 square feet of gross floor area for nonresidential projects.
- F. Type A essential public facilities.

**18.25.040 Sign size, number and placement.**

- A. Each sign shall be four (4) feet by eight (8) feet in size.
- B. One sign shall be placed every 300 feet along each public street frontage of the subject property, a minimum of five feet from the right-of-way, outside the sight distance triangle and clearly visible from the street. The City’s Department of Community Development shall approve the location of each sign.

**18.25.050 Content of notice.**

Signs shall be prepared using templates, stencils or attachable letters. Hand-lettered signs are not acceptable. The required sign shall include:

- A. The title: "Notice of Land Use Application."
- B. A graphic or written description of the site boundaries.
- C. Type of action/application (e.g., preliminary plat, rezone, etc.).
- D. Space for a legal posting stating the date, time and place of the scheduled public hearing(s), if applicable, including a plastic or other weather-resistant pocket sufficient to contain ten (10) removable copies of the legal notice for residents desiring a copy of same.
- E. The name and telephone number of the Community Development Department.
- F. The City of Mountlake Terrace logo.
- G. A brief description of the proposal.
- H. The name and address of the applicant.
- I. Other information as the Community Development Director may determine to be necessary to adequately notify the public of the pending land use application.

**18.25.060 Sign design and construction standards.**

- A. The signs shall be designed and constructed to City standards as specified by the Community Development Department.
- B. The Community Development Department is authorized to develop the standards for design, construction and installation of the public notice signs.

**18.25.070 Responsibility for installation and removal.**

- A. The applicant shall be solely responsible for the sign preparation, construction, installation, removal and all associated costs.
- B. The sign(s) must be erected at least ten (10) days prior to any public hearing on the application. If no public hearing is required, use sign must be erected within ten (10) business days of an application being submitted. The applicant shall submit a sign installation plan to the Community Development Department and obtain approval prior to erecting the sign(s). The applicant shall submit a signed affidavit stating that the sign(s) were properly installed and the date this was completed.
- C. The sign(s) shall be removed within five (5) days after final action by the City on the land use application.
- D. If the sign is removed, for any reason, prior to the City's final action on the proposal, the applicant is responsible for immediate replacement of the sign. Failure to replace the sign within 24 hours of being notified by the City that the sign is missing, may result in the rescheduling of the public hearing, additional assessment of notification fees and delay of a decision.

**Section 48.** Mountlake Terrace Municipal Code, Section 19.10.050 Board of Adjustment, and Ordinance No. 2074 § 2.5 are hereby amended to read as follows:

**19.10.050**

Reserved.

**Section 49.** Mountlake Terrace Municipal Code, Section 19.15.030 “B”, and Ordinance No. 2074 § 3.2 are hereby amended to read as follows:

**19.15.030 “B”.**

“Basement” means that portion of a building below the first story and having at least one-half of its height more than five feet below the adjoining finish grade.

“Bed and breakfast inn/rooming and boarding house” means an owner-occupied dwelling with common kitchen and eating area which provides five or fewer rooms for overnight guests with or without meals and where the principal function is providing lodging for compensation.

“Board of Adjustment” means, for the purpose of this title, a hearing body or Hearing Examiner appointed pursuant to MTMC 2.120.030 and given authority, including but not limited to, the review of appeals from orders, recommendations, permits, decisions or determinations made by a City Official, and the authority to hold open record hearings on applications for variances and applications for conditional use permits and any other class of applications for or pertaining to development of land or land use.

“Building” means any structure used or intended for the support, shelter, or enclosure of persons, animals, or movable property of any kind.

“Building, detached” means a building which is not attached to any other building or structure.

“Building height” means the vertical distance measured from the average elevation of the finished grade around the building to the highest point of a flat roof; to the deck line of a mansard roof; and to the midpoint of a pitched roof (i.e., gable, hip, or gambrel roofs). Specifically excluded from this definition, and from the regulations of maximum building height, are structural elements not intended for habitation and not exceeding 15 feet above the maximum height such as poles, housing/screens for mechanical and elevation equipment, smoke and public ventilation stacks/fans, skylights, tanks, and public utility and transmission line towers.

“Building setback line” means the line established at the minimum front, side, and rear yard setbacks beyond which a building shall not extend into a required yard.

“Building site” means the ground area devoted to a main building and its accessory structures, or to a group of buildings and their accessory structures, together with all yards and open spaces required by this title.


“Bus stop/shelter station” means a semi-enclosed waiting area of approximately 60 square feet located along a bus route and intended for use by public transportation customers for protection from the elements. (Ord. 2074 § 3.2, 1995).

**Section 50. Conflicts.** All ordinances or parts of ordinances of the City of Mountlake Terrace in conflict herewith, be and the same, are hereby repealed.

**Section 51. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any section, sentence, clause or phrase of this Ordinance.

**Section 52. Summary.** This Ordinance, or a summary thereof consisting of the title, shall be published in the official newspaper of the City of Mountlake Terrace and shall take effect and be in full force five days after the date of publication.

PASSED by the City Council of the City of Mountlake Terrace this 2nd day of June 2008, and signed in authentication of its passage this 2nd day of June 2008.



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MAYOR JERRY SMITH

ATTEST:   
CITY CLERK

APPROVED AS TO FORM: Gregory G. Schrag, City Attorney

