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DECLARATION OF SERVICE

On this day I served a copy of the document on which this declaration appears by email transmission to:

Michael D. McLaughlin, Atty for Parkwood
michael@mdmwalaw.com

Michael Spence, Attorney for S.O.S.
mspence@helsell.com

Robert Bilow
Millrow26@gmail.com

Andy Murphy/LeAnne Bremer, Attys for Tribe
Andy.murphy@millernash.com
Leanne.bremer@millernash.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Sequim, WA this 29th day of September, 2020.



Erika Hamerquist, Secretary/Tellina Sandaine, Paralegal

OFFICE OF THE HEARING EXAMINER
IN AND FOR THE CITY OF SEQUIM

RE: CDR20-001)
)
Consolidated Administrative Appeals)
of January 24, 2020 Notice of) File No. CDR20-001
Determination of Procedure Type:)
May 15, 2020 Director's Report and) DECLARATION OF CITY ATTORNEY
Staff Decision; and May 11, 2020) KRISTINA NELSON-GROSS IN
MDNS for Jamestown S'Klallam Tribe) SUPPORT OF CITY'S SUPPLEMENTAL
Outpatient Clinic) BRIEFING ON ORDINANCE 2020-009
)

Under penalty of perjury under the laws of the State of Washington, Kristina Nelson-Gross hereby states that she is over 18 years of age and makes the following declarations from personal knowledge and belief:

1. I am the City Attorney for the City of Sequim.

ORDINANCE NO. 2020-009

AN ORDINANCE OF THE CITY OF SEQUIM, WASHINGTON ADOPTING INTERIM LAND USE REGULATIONS AND OFFICIAL CONTROLS PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390 BY AMENDING SEQUIM MUNICIPAL CODE CHAPTER 20.01 TO REVISE THE APPEAL PROCESS FOR TYPE A-1 AND A-2 PERMIT DECISIONS; ESTABLISHING A DATE FOR PUBLIC HEARING; ENTERING LEGISLATIVE FINDINGS; AND PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, the zoning code in Sequim Municipal Code (SMC) Section 20.01.030 (Procedures for processing development project permits) lists the procedural steps and decision-making and appeal bodies that are appropriate to each permit type; and

WHEREAS, SMC Chapter 20.01 identifies Type A-1 and A-2 permits as administrative permits; and

WHEREAS, the decision to approve the Jamestown S’Klallam Tribe’s (the Tribe’s) proposed medication-assisted treatment (MAT) clinic was an administrative decision; and

WHEREAS, SMC 20.01.030(A), Table 1, identifies the Hearing Examiner as the Administrative Appeal Body for Type A-1 decisions and the City Council as the Administrative Appeal Body for Type A-2 permit decisions; and

WHEREAS, SMC Chapter 20.01.030, Table 1, provides in footnote “a” that if an administrative decision is appealed the hearing body is the Hearing Examiner; and

WHEREAS, SMC 20.01.090 provides that appeals of A-2 decisions going to the Hearing Examiner; and

WHEREAS, SMC Title 18.24.038 provides that “[a]ppeals of any administrative decision shall be heard by the hearing officer” and all “[a]ppeals of the hearing officer’s decision shall be made to the Clallam County superior court”; and

WHEREAS, the City’s interpretation and application of its zoning code, specifically SMC Chapter 20.01 and the appeals provisions of SMC 18.24.038, has been and remains that the Hearing Examiner has jurisdiction over the appeals brought against the Tribe’s MAT clinic project; and

WHEREAS, in originally adopting SMC Chapter 20.01 and the appeals provisions of SMC 18.24.038, and in the City’s intake of the Tribe’s permit applications and the MAT Clinic appeals, the City Council intended for a Hearing Examiner to hear the MAT Clinic appeals; and

WHEREAS, given the above-cited code language and the City's prior interpretation and application of the permit review and appeal provisions of the City's Zoning Code, the City was surprised that the Hearing Examiner decided not to invoke and accept jurisdiction over the MAT Clinic appeals; and

WHEREAS, the City Council is concerned that the numerous contacts it has received about the MAT Clinic from all parties and other interested individuals over a span of 15 months raises significant and potentially irreconcilable appearance of fairness and potential conflict issues that are unlikely to be overcome; and

WHEREAS, the City Council is concerned that the numerous contacts it has received about the MAT Clinic and other concerns referenced in this preamble will likely lead to collateral litigation, ongoing judicial claims and review, and possible remand, thus impacting the Tribe's MAT Clinic permitting and project and the appellants' due process rights; and

WHEREAS, the City Council did not anticipate holding a hearing on a heavily contested matter with numerous potential conflict and appearance of fairness issues, and currently does not have the time or capacity to conduct a hearing that complies with the law; and

WHEREAS, the City Council is ill equipped to hold an open record appeal hearing on this matter due to the large volume of materials and administrative record to review, the highly technical and legal nature of these appeals and issues presented by the appellants; and

WHEREAS, the City Council is aware that State law requires land use decisions to be made promptly and without unnecessary delay, and that the law requires prompt and efficient decisions on land use permit applications; and

WHEREAS, for the above reasons, the City Council is unable to meet the deadlines necessary to protect the respective rights of the applicant and appellants, which results in the need for action to pass this interim control ordinance; and

WHEREAS, it is therefore the Sequim City Council's intention to clarify language in the City's code to make all Type A-1 and A-2 decisions appealable to the Hearing Examiner, who will conduct an open record appeal hearing, with subsequent appeals of those Hearing Examiner decisions going directly to Clallam County Superior Court; and

WHEREAS, by removing the Sequim City Council from the appeal process for all Type A-1 and A-2 decisions, the City Council may interact with their constituents and advocate on those topics that may be the subject of such decisions without violating the appearance of fairness doctrine or having to disclose potential conflicts of interest; and

WHEREAS, the Council has concluded that the political risk of passing an interim controls ordinance to clarify the Council's intention to have a Hearing Examiner preside over the MAT clinic appeals is much less than the legal risk associated with the Council sitting as conflicted decisionmakers on the subject appeals; and

WHEREAS, by removing the Sequim City Council from all A-1 and A-2 appeals, the City Council can focus its time and energies on important and pressing policy needs; and

WHEREAS, by removing the Sequim City Council from all A-1 and A-2 appeals, the Council may focus on transitioning City governmental functions and processes to a virtual platform that is required to ensure the City remains fully operational in a world greatly affected by the COVID-19 pandemic; and

WHEREAS, by removing the Sequim City Council from all A-1 and A-2 appeals process, the Council will ensure the City's decision-making processes are efficient, transparent, and fair by removing the possibility for allegations of bias, conflict of interest, appearance of fairness issues, or political influence in administrative City functions; and

WHEREAS, the City staff and Council believe that adopting these described interim controls is in the best interest of the public and necessary to protect health, safety and welfare of the citizens of the City of Sequim; and

WHEREAS, RCW 36.70A.390 and RCW 35.63.220 and interpretive judicial decisions authorize the City Council to adopt interim controls with an effective period of up to 6 months without first holding a public hearing, so long as a public hearing is held no more than 60 calendar days after the adoption of the interim controls; and

WHEREAS, an interim zoning ordinance and interim official control enacted under RCW 36.70A.390 and RCW 35.63.220 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development and that the new interim controls in such an ordinance are made effective on the date set forth below; and

WHEREAS, the subject matter of this Ordinance is eligible for, and not exempt from, the establishment of interim controls; and

WHEREAS, the City Council intends the recitals in this Ordinance to be considered findings of fact in support of the adoption of the described interim controls; and

WHEREAS, the City Council intends that any additional or amended findings made during the meeting at which the proposed interim controls ordinance was heard be incorporated as findings of fact in support of their adoption; and

WHEREAS, it is anticipated that additional or amended findings of fact may be made and incorporated after the public hearing on these interim controls occurs; and

WHEREAS, at a future date the City Council may extend these interim controls for an additional 6 months (up to a total of one year) provided staff has developed a work plan or submitted related studies supporting the longer period and if another public hearing is held and findings of fact are made prior to the renewal; and

WHEREAS, the adoption of this Ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act, RCW 43.21C;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SEQUIM, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Interim Controls are Established. The Sequim Municipal Code is amended to establish interim controls as set forth in the attached Exhibit A.

Section 2. Findings. The City Council adopts the recitals set forth above and incorporates those recitals as if fully set forth herein. The City Council also adopts those recitals as findings of fact justifying enactment of this ordinance. The City Council may adopt additional findings when a public hearing is held or when presented with evidence.

Section 3. Duration of Interim Controls. The interim controls established herein are in effect until 6 months from the Effective Date of this Ordinance to [date], and will automatically expire on that date unless repealed, modified, or extended after subsequent public hearing and entry of appropriate findings of fact as provided in RCW 35A.63.220 and RCW 36.70A.390.

Section 4. Public Hearing on Interim Controls. The City Council must hold a public hearing within 60 days of adoption of interim controls. Immediately after the public hearing, the City Council must adopt findings of fact to support continuation of the interim controls or must repeal or modify the interim controls.

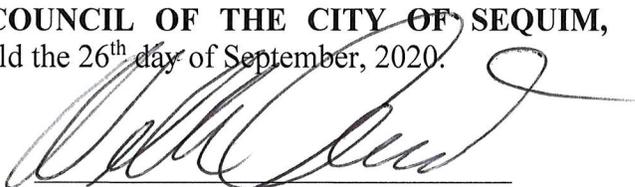
Section 5. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary clerical corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 6. Savings Clause. Those portions of Ordinance 2019-004, 2019-006, 2010-006, 2005-022, 2004-015, 2002-014, 2002-014, and 2000-006 which are repealed or amended by this ordinance remain in force and effect until the effective date of this ordinance. Such repeals and amendments must not be construed as affecting any existing right acquired under the ordinances repealed or amended, nor as affecting any proceeding instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor the administrative action taken thereunder. Notwithstanding the foregoing actions, obligations under such ordinances or permits issued thereunder and in effect on the effective date of this ordinance continue in full force and effect, and no liability thereunder, civil or criminal, is in any way modified. Further, it is not the intention of these actions to reenact any ordinances or parts of ordinances previously repealed or amended, unless this ordinance specifically states such intent to reenact such repealed or amended ordinances.

Section 7. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision does not affect the validity or constitutionality of the remaining parts of this ordinance.

Section 8. Effective Date. This ordinance becomes effective five days after publication of the ordinance, or a summary thereof, in the official newspaper of the City.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF SEQUIM, WASHINGTON, at a regular meeting thereof held the 26th day of September, 2020.



William Armacost, Mayor

Attest:



Sara McMillon, City Clerk

Approved as to Form:



Kristina Nelson-Gross, City Attorney

09/29/2020
Publication Date

10/04/2020
Effective Date

ORDINANCE 2020-009

EXHIBIT A

20.01.030 Procedures for processing development project permits.

A. Project Permit Application Framework.

Table 1

Procedural Steps	Application Process					
	Type "A" Actions Administrative		Type "B" Actions Hearing Examiner	Type "C" Actions Planning Commission and City Council		
	Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3
Recommendations by:	N/A	N/A	Staff	Staff	Planning Commission	Staff
Notice of Application	No	Yes	Yes	Yes	Yes	No
Public Meeting/ Workshop	—	—	—	—	Planning Commission	—
Open Record Public Appeal Hearing	See Note ^a	See Note ^a	Yes Hearing Examiner	Yes Planning Commission	Yes City Council	No
Final Decision-making Body	Staff ^b	Staff ^b	Hearing Examiner ^b	Planning Commission	City Council	City Council
Appeal Authority	Hearing Examiner ^c City Council	City Council ^d Hearing Examiner	Clallam County Superior Court	City Council	Clallam County Superior Court	Clallam County Superior Court

^a~~Public Appeal~~ hearing only if administrative decision is appealed, open record hearing before hearing examiner. ~~The hearing examiner will prepare appeal hearing rules and procedures in lieu of any city public hearing requirements. Subsequent Appeals of the hearing examiner decision go to Clallam County Superior Court.~~

^bDenials of permits, boundary line adjustments and variances must be reviewed by the city attorney for legality before becoming final.

^c~~Appeal authority is the hearing examiner for building and other construction permits; sign permits and boundary line adjustments. Subsequent appeals on these permits to Clallam County Superior Court.~~

^dSubsequent appeals on ~~city council~~ hearing examiner decisions to Clallam County Superior Court.

Table 2

Application Type							
Type A-1	Type A-2	Type B	Type C-1	Type C-2	Type C-3		
Building and other construction permit	SEPA <u>Threshold</u> determination	Variances	Major use permit	Comprehensive plan amendment	Final subdivision map		
Sign permit	Minor subdivision		Shoreline permit	Special use permit	Dedication of public easements and rights-of-way		
Boundary line adjustment	Minor conditional use permit					SMC land use related text amendment	Acceptance of public improvement
Minor amendments to PRDs	ESA and wetland permits					Site-specific rezone	
Home occupation	<u>Design Review</u>					Planned residential developments Major amendments	
Street use						Annexation	
ESA, shoreline and wetland exemptions						Street vacation	
		Preliminary major subdivisions					
		Preliminary binding site plan					

B. Types of Development Permit Applications. For the purpose of project permit processing, all development permit applications are subject to a Type A-1 and Type A-2 process (administrative), Type B process (hearing examiner), or Type C-1, Type C-2 and Type C-3 process (planning commission/city council) as defined in SMC [20.01.020](#). As defined in subsection A of this section, a Type A-1 is an administrative process which does not require public notice; a Type A-2 process is an administrative process which requires public notice; a Type B is a quasi-judicial process which requires a public hearing (the decision-making body for a Type B process is the hearing examiner); Type C-1 processes are quasi-judicial and require public hearings (the decision-making body for Type C-1 processes is the planning commission). Type C-2 are quasi-judicial or legislative and require public hearings (the decision-making body is the city council). Type C-3 are largely ministerial and do not require a public hearing (the decision-making body for Type C-3 is the city council).

C. Exemptions from the requirements of project permit application processing as defined in this chapter are contained in SMC [20.01.070](#).

D. Burden of Proof. During "project permit" or "project permit application" (as defined in SMC [20.01.020\(Q\)](#)) processes as described in this title, the burden of proof is on the proponent or permit applicant. The proponent or applicant must provide convincing evidence to the decision makers that the application conforms to applicable law, including, but not limited to, the Growth Management Act, SEPA, the Sequim Municipal Code, all developmental regulations, and the city's comprehensive plan. The proponent must also present convincing evidence that any significant adverse environmental impacts have been adequately mitigated. (Ord. 2019-004 (Exh. B); Ord. 2019-006 § 1 (Exh. C); Ord. 2010-006 § 1; Ord. 2005-022 § 10; Ord. 2004-015 § 11; Ord. 2002-014; Ord. 2000-006 § 3)

20.01.240 Appeals.

A. Appeal of Administrative Interpretations and Decisions. Administrative interpretations and administrative Type A-1 and Type A-2 decisions may be appealed, by applicants or parties of record, to the hearing examiner. ~~Determinations of nonsignificance may be appealed to the city council.~~ An appeal of a determination of significance must follow Chapter 43.21C RCW and Chapter 197-11 WAC.

B. Consolidated Public Hearing. All appeals of SEPA threshold determinations made pursuant to Chapter 16.04 SMC as amended (other than determinations of significance) are considered together with the decision on the project application in a single, consolidated public hearing.

C. Appeal of Planning Commission ~~and Hearing Examiner Decisions.~~ Decisions of the planning commission ~~or hearing examiner~~ may be appealed, by parties of record from the hearing, to the city council.

D. Recommendations from Planning Commission. The recommendation from the planning commission, after public meetings or workshops, will be the subject of a public hearing at the city council.

E. Procedures for Appeals. Appeals will be conducted, depending on the appeal hearing body, in accordance with the hearing examiner's and city council's rules of procedure and will serve to provide argument and guidance for the body's decision. Appeals to the hearing examiner will also conform to SMC 2.10. The parties to an appeal of a planning commission recommendation may submit timely written statements or arguments.

F. Filing. Every appeal shall be filed with the director within 21 days after the date of the decision of the matter being appealed became final. A notice of appeal shall be delivered to the department by mail or personal delivery, and must be received by 4:00 p.m. on the last business day of the appeal period, with the required appeal fee. Appeals of hearing examiner decisions must be given to the Clallam County Superior Court.

G. Contents of the Notice of Appeal to the appropriate Hearing Examiner or the City Council hearing body. The notice of appeal must contain a concise statement identifying:

1. The decision being appealed;
2. The name and address of the appellant and his/her interest(s) in the matter;
3. The specific reasons why the appellant believes the decision to be wrong. The appellant bears the burden of proving the decision was wrong;
4. The desired outcome or changes to the decision; and
5. The appeal fee.

H. Hearing Examiner or City Council Actions on Appeal. Decision following an appeal hearing must include one of the following actions:

1. Grant the appeal in whole or in part.
 2. Deny the appeal in whole or in part.
 3. Remand for further proceedings and/or evidentiary hearing in accordance with SMC 20.01.220.
-

I. Judicial Appeal. Appeals from the final decision of the hearing examiner [for Type A-1, A-2, or B decisions and for](#) the city council on ~~Type B~~, Types C-1, C-2 and C-3 procedures and appeals from any other final decisions specifically authorized (subject to timely exhaustion of all administrative remedies) must be made to Clallam County superior court within 21 calendar days of the date the decision or action becomes final, as defined in SMC 20.01.230, unless another time period is established by state law or local ordinance. All appeals must conform with procedures set forth in Chapter 36.70C RCW. The costs of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal are borne by the appellant. Prior to the preparation of any records, the appellant must post with the city clerk an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant. (Ord. 2019-004 (Exh. B); Ord. 2002-014; Ord. 2000-006 § 3)
