

**CITY OF MONROE
ORDINANCE NO. 011/2017**

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, AMENDING TITLE 14 (FLOODPLAIN REGULATIONS), TITLE 17 (SUBDIVISIONS), TITLE 18 (PLANNING AND ZONING), AND TITLE 21 (DEVELOPMENT REVIEW PROCEDURES), OF THE MONROE MUNICIPAL CODE; UPDATING, MODIFYING AND CLARIFYING THE DECISIONAL AUTHORITY, PROCEDURES AND APPELLATE VENUES FOR VARIOUS CATEGORIES OF LOCAL LAND USE DECISIONS; ENTERING LEGISLATIVE FINDINGS; PROVIDING FOR SEVERABILITY; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE

WHEREAS, the City of Monroe regulates the use, subdivision and development of land through numerous regulations codified in the Monroe Municipal Code; and

WHEREAS, the City Council desires to amend the procedural regulations set forth in the MMC in order to facilitate the orderly and efficient processing, consideration and appeals of local land use decisions.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings. The above recitals, together with the Planning Commission findings dated February 13, 2017, are hereby adopted as legislative findings in support of this ordinance. City Council further finds as follows:

- A. The Planning Commission held a public hearing on the substance of this ordinance on February 13, 2017, and recommended adoption by the City Council.
- B. The City is authorized by State law, including but not limited to Chapter 35A.11 RCW, Chapter 35A.63 RCW, Chapter 58.17 RCW, Chapter 36.70A RCW, and Chapter 36.70B to enact local regulations governing the use and subdivision of land and the administrative processing of local land use applications.
- C. The regulations set forth in this ordinance have been processed and considered by the City in material compliance with all applicable procedural requirements, including but not limited to requirements related to public notice and comment.
- D. All relevant requirements of SEPA have been satisfied with respect to this ordinance.

- E. The City Council has carefully considered, and the regulations set forth in this ordinance satisfy, the review requirements and criteria set forth in Title 18 and Title 21 MMC. In adopting this ordinance, the City considered and was guided by the GMA planning goals set forth at RCW 36.70A.020.
- F. The regulations set forth in this ordinance are consistent with and will implement the City's Comprehensive Plan and meet the requirements and intent of the MMC.
- G. The regulations set forth in this ordinance are beneficial to the public health, safety and welfare, and are in the public interest.

Section 2. Amendment of MMC 14.01.170. Monroe Municipal Code (MMC) section 14.01.170, Floodplain Regulations – Flood Hazard Area Regulations - Appeals procedures, is hereby amended as follows:

A. Administrative Appeals.

1. The hearing examiner shall have the authority to hear and decide appeals from any order, requirement, permit, decision or determination made by the city engineer or his designee in the administration and enforcement of provisions of this title.

2. Appeals **from the city engineer's order, requirement, permit, decision, or determination** may be taken to the hearing examiner by any person aggrieved. The appeal shall be filed in writing, in duplicate, in original form with the city clerk within ten days of the date of the action being appealed. Upon filing an appeal, a place and time for the hearing not more than thirty days from such notice of appeal shall be set by the hearing examiner.

3. The hearing examiner may, in conformity with this title or other applicable ordinances, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination appealed from, and may rule on the order, requirement, decision or determination as necessary. To that end, the hearing ~~[BODY]~~**examiner** shall have all the power of the officer from whom the appeal is taken, insofar as the decision on the particular issue is concerned.

4. The decision of the hearing examiner on an administrative appeal shall be final and conclusive.

B. Appeal of Variances.

1. **There shall be no administrative appeal of the hearing examiner's decision on a requested variance under this chapter.**~~[THE CITY COUNCIL SHALL HEAR AND DECIDE APPEALS OF VARIANCE DECISIONS MADE BY THE HEARING EXAMINER.~~

2. ~~EVERY APPEAL TO THE CITY COUNCIL SHALL BE FILED WITH THE CITY CLERK WITHIN FIFTEEN WORKING DAYS AFTER THE DATE OF THE~~

~~DECISION OF HEARING EXAMINER IN THE MATTER BEING APPEALED. THE COUNCIL SHALL CONSIDER THE APPEAL IN A CLOSED RECORD REVIEW.~~

~~3. THE NOTICE OF APPEAL SHALL CONTAIN A CONCISE STATEMENT IDENTIFYING:~~

~~A. THE DECISION BEING APPEALED;~~

~~B. THE NAME AND ADDRESS OF THE APPELLANTS AND THEIR INTEREST(S) IN THE MATTER;~~

~~C. THE SPECIFIC REASONS WHY THE APPELLANT BELIEVES THE DECISION TO BE WRONG. THE APPELLANT SHALL BEAR THE BURDEN OF PROVING THE DECISION WAS WRONG;~~

~~D. THE DESIRED OUTCOME OR CHANGES TO THE DECISION; AND~~

~~E. THE APPEALS FEE.~~

~~4. THE CITY COUNCIL MAY SUSTAIN, REVERSE, MODIFY OR REMAND THE VARIANCE DECISION OF THE HEARING EXAMINER.~~

~~5]2. The city engineer shall maintain the records of all variances granted under this chapter [APPEAL ACTIONS] and shall report any variances to the Federal Insurance Administrator upon request.~~

C. Judicial Appeal.

Appeals from the final decision of the hearing examiner under this chapter shall be made to Snohomish County superior court in accordance with Chapter 36.70C RCW.

~~[1. APPEALS FROM THE FINAL DECISION OF THE CITY COUNCIL OR HEARING EXAMINER FOR WHICH ALL OTHER APPEALS SPECIFICALLY AUTHORIZED HAVE BEEN TIMELY EXHAUSTED, SHALL BE MADE TO SNOHOMISH COUNTY SUPERIOR COURT WITHIN TWENTY ONE DAYS OF THE DATE THE DECISION OR ACTION BECAME FINAL, UNLESS ANOTHER TIME PERIOD IS ESTABLISHED BY STATE LAW OR LOCAL ORDINANCE.~~

~~2. NOTICE OF THE APPEAL AND ANY OTHER PLEADINGS TO BE FILED WITH THE COURT SHALL BE SERVED ON THE CITY AS REQUIRED BY LAW.~~

~~3. 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.]~~

Section 3 Amendment of MMC 17.08.010. Monroe Municipal Code (MMC) Section 17.08.010, Subdivisions – Definitions - Generally, is hereby amended to provide for changes to the definitions of “Approval, preliminary,” “Plat, preliminary,” “preliminary short plat,” “Plat, proposed” and as follows:

“Approval, preliminary” means official action taken by the hearing authority [~~AND COUNCIL~~]with respect to a proposed plat.

“Plat, preliminary” and “preliminary short plat” means a neat and approximate drawing of a proposed subdivision or short subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision or short subdivision consistent with the requirements of this chapter. The preliminary plat or preliminary short plat shall be the basis for the approval or disapproval of the layout of a final subdivision or final short subdivision[~~BY THE HEARING AUTHORITY AND/OR CITY COUNCIL~~].

“Plat, proposed” means the preliminary plan for subdivision submitted by the subdivider to obtain [~~HEARING AUTHORITY AND CITY COUNCIL~~]approval.

Section 4. Amendment of MMC 17.12.020. Monroe Municipal Code (MMC) Subsection 17.12.020(B), Subdivision – Procedure – General requirements, is hereby amended to provide as follows:

B. Upon review and approval by the city engineer of the installation of the required infrastructure and upon finding by the subdivision administrator that the final plat is in substantial conformance with the preliminary plat and the conditions of approval of said plat shall be as [~~RECOMMENDED~~] **approved** by the hearing authority[~~—AND APPROVED BY THE CITY COUNCIL~~], the final plat shall be submitted to the city council for approval[~~AT A REGULARLY SCHEDULED MEETING~~]. If the city council finds that the final plat is in conformance with the preliminary plat and the conditions of approval, the city council shall approve the final plat. In lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, the city council may accept a bond or other surety providing for and securing to the city the actual construction and installation of such improvements within a period specified by the city council and expressed in the bonds or other surety.

Section 5. Amendment of MMC 17.12.030. Monroe Municipal Code (MMC) Subsections 17.12.030(H), (I), (J), and (L), Subdivisions – Procedure – Specific Requirements, are hereby amended to provide as follows:

H. If the hearing authority finds the criteria set forth herein is not met, it may [~~RECOMMEND APPROVAL~~] **approve** with conditions or it may [~~RECOMMEND DENIAL OF~~] **deny** the proposed preliminary plat. The hearing authority shall inquire into how the public interest of future residents of the preliminary plat are to be served by the subdivision and its dedications. It shall determine if provisions are made to protect the public health, safety and general welfare by the provision of open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary waste, parks,

playgrounds, sites for schools and school grounds and shall consider all other relevant facts and determine whether the public interest of the future residents of the subdivision will be served by the dedications therein:

1. The hearing authority shall consider if the proposed subdivision conforms to the comprehensive plan and the Shoreline Master Program;
2. The hearing authority shall consider the physical characteristics of a proposed subdivision site and may ~~[RECOMMEND—DISAPPROVAL OF]~~**disapprove** a proposed plat because of improper protection from floods, inundation or wetland conditions;
3. All identified direct impacts must be mitigated or meet concurrency as set forth in MMC Title 20.

I. If the hearing authority finds the items set forth in this section are met, ~~[A RECOMMENDATION OF APPROVAL OF]~~**it may approve** the preliminary plat~~[SHALL BE FORWARDED TO THE CITY COUNCIL].~~

J. Conditions ~~[OR RECOMMENDATION]~~**of approval** shall be precisely recited in the hearing authority's ~~[REPORT TO THE COUNCIL—]~~**final decision**. Every ~~[RECOMMENDATION]~~**final decision** made under this section shall be in writing and shall include findings of fact and conclusions to support the ~~[RECOMMENDATION]~~**decision**, including findings that the proposed subdivision is in conformity with MMC Title 18 and all other existing land use controls. **A record of all public meetings and the public hearing shall be kept by the city and shall be open to public inspection.**

L. ~~[UPON RECEIPT OF THE HEARING AUTHORITY'S RECOMMENDATION, AND AT A SCHEDULED MEETING FOR CONSIDERING THE PRELIMINARY PLAT, THE COUNCIL SHALL:~~

~~1. ADOPT, REJECT OR AMEND THE RECOMMENDATIONS OF THE HEARING AUTHORITY OR RETURN THE PRELIMINARY PLAT TO THE HEARING AUTHORITY FOR FURTHER CONSIDERATION. THE COUNCIL SHALL CONSIDER THE SAME FACTORS AND CRITERIA AS REVIEWED BY THE HEARING AUTHORITY IN MAKING ITS DECISION ON THE PROPOSED PRELIMINARY PLAT.~~

~~2. THE COUNCIL MAY ADOPT ALL OR PART OF THE HEARING AUTHORITY'S FINDINGS OR MAKE SEPARATE FINDINGS TO SUPPORT ITS DECISION. EVERY DECISION OR RECOMMENDATION MADE UNDER THIS SECTION SHALL BE IN WRITING AND SHALL INCLUDE FINDINGS OF FACT AND CONCLUSIONS TO SUPPORT THE DECISION OR RECOMMENDATION.~~

~~3.]Dedication of land and/or the construction of improvements may be required as a condition of subdivision approval. An offer of dedication may include a waiver of right of direct access to any street from any property, and if the dedication is accepted, any waiver is effective. Such waiver may be required by the city as a condition of approval. The [COUNCIL—]city shall not, as a~~

condition of the approval of any plat, require a release from damages to be procured from other property owners.

Section 6. Amendment of MMC 17.26.010. Monroe Municipal Code (MMC) Section 17.26.010, Subdivisions – Modifications – Procedure, is hereby amended to provide as follows:

A subdivider may request modification of any provision of this code, as it affects his proposed subdivision, where application of such provision would cause undue hardship by reason of any preexisting adverse characteristic of the property, such as topography, soil conditions, and other natural features. Such request shall include details deemed by the subdivider essential to support his case and shall be filed concurrently with the proposed plat.

A. The hearing authority, in its hearing on the proposed plat, shall include discussion of the requested modification and notice of the hearing shall include information on the requested modification.

B. The hearing authority shall obtain, from the administrator, a report and recommendations on the requested modifications. In order to give due consideration to the request for modification, the hearing authority may postpone its decision on the proposed plat by not more than thirty days. The hearing authority shall make its findings of fact and ~~[RECOMMENDATIONS TO THE COUNCIL AND THE COUNCIL]~~ shall make its decision with respect to the request for modification based on ~~[THE HEARING AUTHORITY'S RECOMMENDATION]~~ **the criteria set forth in this section.**

C. No modification shall be approved unless the subdivider can demonstrate satisfactorily that:

1. There are extraordinary circumstances or conditions applying to the subdivision property which do not apply generally to other properties in the vicinity. These include, but are not limited to, size, shape, topography, soil conditions, location and surroundings;

2. Approval of the request for modification is necessary to the preservation and enjoyment of substantial property rights of the applicant;

3. Approval of the request for modification will not affect adversely the health, safety, or general welfare of persons residing or working in the neighborhood of the subdivision property and will not be detrimental to property in the neighborhood nor adversely affect the comprehensive plan;

4. If the ~~[COUNCIL]~~ **hearing authority** denies the request for modification, the subdivider may appeal to the courts in accordance with MMC 21.60.030 and the Land Use Petition Act, Chapter 36.70C RCW. Until the courts have rendered a decision in such a case, further consideration of the proposed plat shall be held in abeyance.

Section 7. Amendment of MMC 17.36.010. Monroe Municipal Code (MMC) Subsection 17.36.010(A), Subdivisions – Administration, enforcement, penalty, conflict and validity – Administration and enforcement-Subdivisions containing ten or more lots, is hereby amended to provide as follows:

A. Proposed subdivisions containing ten or more lots shall be submitted to the hearing authority for ~~[STUDY AND RECOMMENDATIONS TO THE COUNCIL]~~ **a final decision**. The ~~[COUNCIL]~~ **hearing authority** shall have final authority to approve or disapprove such subdivision.

Section 8. Amendment of MMC 18.02.010. Monroe Municipal Code (MMC) Section 18.02.010, Planning and zoning – Definitions - A Definitions, is hereby amended to provide for changes to the definition of “Approval, preliminary” as follows:

“Approval, preliminary” means official action taken by the hearing authority ~~[AND COUNCIL]~~ with respect to a proposed plat.

Section 9. Amendment of MMC 18.02.160. Monroe Municipal Code (MMC) Section 18.02.160, Planning and zoning – Definitions - P Definitions, is hereby amended to provide for changes to the definitions of “Plat, preliminary,” “preliminary short plat,” and “Plat, proposed” as follows:

“Plat, preliminary” and “preliminary short plat” means a neat and approximate drawing of a proposed subdivision or short subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision or short subdivision consistent with the requirements of this chapter. The preliminary plat or preliminary short plat shall be the basis for the approval or disapproval of the layout of a final subdivision or final short subdivision ~~[BY THE HEARING AUTHORITY AND/OR CITY COUNCIL]~~.

“Plat, proposed” means the preliminary plan for subdivision submitted by the subdivider to obtain ~~[HEARING AUTHORITY AND CITY COUNCIL]~~ approval.

Section 10. Amendment of MMC 18.15.050. Monroe Municipal Code Section 18.15.050, Planning and zoning – Essential public facilities – Decision criteria for local essential public facilities, is hereby amended as follows:

The hearing examiner may ~~[RECOMMEND APPROVAL]~~ **approve**, or ~~[APPROVAL]~~ **approve** with conditions, ~~[FOR]~~ a special use permit **application** ~~[TO THE MONROE CITY COUNCIL]~~ for a local essential public facility only when the proposal meets all of the following criteria in addition to the criteria imposed by Chapter 18.96 MMC; provided, that this section shall not apply to facilities sited by a regional decision-making body:

- A. The proposal is consistent with the comprehensive plan;
- B. The project sponsor has demonstrated the need for the project, supported by an analysis of the projected service population, an inventory of existing and planned comparable facilities, and the projected demand for the type of facility proposed;

- C. If applicable, the project will serve a significant share of the city's population, and the proposed site will reasonably serve the project's overall service population;
- D. The sponsor has reasonably investigated alternative sites, as evidenced by a detailed explanation of site selection methodology;
- E. The project is consistent with the sponsor's own long-range plans for facilities and operations;
- F. The project will not result in a disproportionate burden on a particular geographic area;
- G. The sponsor has provided a meaningful opportunity for public participation in the siting decision and development of mitigation measures that is appropriate in light of the project's scope, applicable requirements of the city code, and state or federal law;
- H. The proposal complies with applicable city requirements of Chapter 18.10 MMC, Land Use Zoning District and District Requirements, and all other applicable provisions of the city code;
- I. The project site meets the facility's minimum physical site requirements, including projected expansion needs. Site requirements shall be determined by the minimum size of the facility, setbacks, access, support facilities, topography, geology, and on-site mitigation needs;
- J. The proposal, as conditioned, adequately mitigates adverse impacts to life, limb, property, the environment, public health and safety, transportation system, economic development, and other identified impacts;
- K. The proposal incorporates specific features to ensure that it is compatible to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding properties; and
- L. The project sponsor has proposed mitigation measures that provide substantial assistance to displaced or impacted businesses in relocating within the city of Monroe and greater Snohomish County.

Section 11. Amendment of MMC 18.84.070. Monroe Municipal Code (MMC) Subsection 18.84.070(A), Planning and zoning – Planned residential development (PRD) – Review stages of a PRD, is hereby amended to provide as follows:

- A. Preliminary PRD and Development Plan. Following submittal and certification as a complete application, a preliminary PRD shall be scheduled for a public hearing before the hearing examiner. Following the public hearing, the hearing examiner shall ~~[FORWARD A RECOMMENDATION TO THE CITY COUNCIL, IN ACCORDANCE WITH MMC 21.50.030. UPON RECEIPT OF THE HEARING EXAMINER'S RECOMMENDATION, THE CITY COUNCIL SHALL SCHEDULE A DATE AT WHICH IT SHALL CONSIDER THE RECOMMENDATION, IN ACCORDANCE WITH MMC 21.50.050. A CITY COUNCIL DECISION ON THE HEARING EXAMINER'S~~

~~RECOMMENDATION SHALL INCLUDE]~~**issue a final decision taking** one of the following actions:

1. Approve~~[-AS RECOMMENDED];~~
2. Approve with conditions. All ~~[NEW OR MODIFIED-]~~conditions imposed by ~~[THE CITY COUNCIL ON A RECOMMENDATION BY-]~~the hearing examiner must be based on the record developed at the public hearing;
3. Modify, with or without the applicant's concurrence; provided, that the modifications do not:
 - a. Enlarge the area or scope of the project;
 - b. Increase the density or proposed building size;
 - c. Significantly increase adverse environmental impacts as determined by the responsible official;
4. Deny (reapplication or resubmittal is permitted); **or**
5. Deny with prejudice (reapplication or resubmittal is not allowed for one year).~~];~~
- ~~6. REMAND FOR CLARIFICATION OF THE EVIDENCE OR FINDINGS; PROVIDED, THAT IN ANY MATTER THAT IS BEFORE THE CITY COUNCIL ON A CLOSED RECORD, NO NEW EVIDENCE SHALL BE ADMITTED IN ANY REMANDED PROCEEDING.~~
- ~~7. THE REQUIREMENTS OF RCW 58.17.100 THROUGH 58.17.120 SHALL BE APPLICABLE TO THE DECISION OF THE CITY COUNCIL.]~~

Section 12. Amendment of MMC 18.84.090. Monroe Municipal Code (MMC) Section 18.84.090, Planning and zoning – Planned residential development (PRD) – Procedures for preliminary development plan review, is hereby amended to provide as follows:

The applicant shall submit to the city a preliminary development plan for review by all affected city departments. Following review of the preliminary development plan, a public hearing shall be scheduled at which the hearing examiner shall review and ~~[PROVIDE A RECOMMENDATION TO THE CITY COUNCIL REGARDING-]~~**determine** whether the proposed preliminary development plan, as conditioned, complies with the following:

- A. The requirements of this chapter; and
- B. Provisions of the city's comprehensive plan; and
- C. Provisions of the city's shoreline management plan; and

D. The requirements of other applicable city codes, ordinances, regulations and standards. If the preliminary development plan is approved, the applicant shall submit to the city, within the permitted time frame, a final development plan for review and approval by the city.

Section 13. Amendment of MMC 18.84.100. Monroe Municipal Code (MMC) Section 18.84.100, Planning and zoning – Planned residential development (PRD) - Time limitations of preliminary development plan approval, is hereby amended to provide as follows:

Preliminary development plan approval of the PRD shall expire five years from the date of approval by the ~~[CITY COUNCIL]~~ hearing examiner, or concurrently with the expiration of the preliminary plat, whichever occurs earlier.

Section 14. Amendment of MMC 18.84.170. Monroe Municipal Code (MMC) Section 18.84.170, Planning and zoning - Planned residential development (PRD) - Flexibility provisions of PRD, is hereby amended as follows:

The dimensional and other standards found in the underlying zoning district may only be varied with city ~~[COUNCIL]~~ approval using the PRD process. However, the following zoning code requirements may not be varied under the PRD process:

- A. Off-street parking;
- B. Perimeter setbacks; for the purpose of this section, perimeter setback(s) shall be defined as the setback(s) from the exterior property boundary line of the site;
- C. Uses permitted in the underlying zone.

Section 15. Amendment of MMC 18.96.070. Monroe Municipal Code (MMC) Section 18.96.070, Planning and zoning – Outline of procedures for conditional use permits - Conditional use permits–Effect of hearing examiner decision, is hereby amended to provide as follows:

The decision of the hearing examiner on a conditional use permit shall be final and conclusive ~~[WITH RIGHT OF APPEAL TO THE CITY COUNCIL IN ACCORDANCE WITH MMC 21.60.020]~~ with the right of appeal to the Snohomish County Superior Court in accordance with Chapter 36.70C RCW.

Section 16. Amendment of MMC 18.97. Monroe Municipal Code (MMC) Chapter 18.97, Planning and zoning - Special use permits, Sections 010 (Purpose), 045 (Recommendation to city council), 080 (Revocation of permit), and 100 (Resubmittal of application), are hereby amended to provide as follows:

18.97.010 Purpose.

It is the purpose of this chapter to establish procedures for the regulation of uses possessing characteristics of such unusual, large-scale, unique or special form as to require additional scrutiny, above and beyond the requirements of a conditional use ~~[; AND REQUIRING FINAL ACTION BY THE MONROE CITY COUNCIL].~~

18.97.045 ~~[RECOMMENDATION TO CITY COUNCIL]~~Hearing examiner decision.

A. The hearing examiner shall make findings and conclusions of law and conditions of approval ~~[IN THE EXAMINER'S RECOMMENDATION TO CITY COUNCIL]~~as part of the examiner's final decision on an application for a special use permit.

B. The hearing examiner shall have ten working days to ~~[MAKE A RECOMMENDATION TO THE CITY COUNCIL]~~render a final decision. If a greater period of time is necessary, the length of the extension shall be stated at the public hearing and must be agreed to by the applicant and the zoning administrator.

~~C. [THE HEARING EXAMINER'S RECOMMENDATION SHALL BE FORWARDED TO THE CITY COUNCIL WITHIN TEN WORKING DAYS FOR SCHEDULING OF ACTION BY THE COUNCIL.]~~

~~D. THE CITY COUNCIL SHALL HAVE THE AUTHORITY TO ACCEPT THE HEARING EXAMINER'S RECOMMENDATION, DENY THE RECOMMENDATION OR REMAND THE RECOMMENDATION BACK TO THE HEARING EXAMINER FOR FURTHER CONSIDERATION.~~

~~E.]~~The final decision on a special use permit (SUP) by the ~~[CITY COUNCIL]~~hearing examiner may be appealed to superior court ~~[AS PROVIDED IN MMC 21.60.030, AS NOW OR HEREAFTER AMENDED]~~in accordance with Chapter 36.70C RCW.

18.97.080 Revocation of permit.

A. The ~~[CITY COUNCIL]~~hearing examiner, after a recommendation from the ~~[HEARING EXAMINER]~~zoning administrator or a petition from an aggrieved party, may revoke or modify a special use permit. Such revocation or modification shall be made on any one or more of the following grounds:

1. That the approval was obtained by deception, fraud, or other intentional and misleading representation;
2. That the use for which such approval was granted has at any time ceased for a period of one year or more;
3. That the use for which such approval was granted has been abandoned;
4. That the permit granted is exercised contrary to the terms or conditions of such approval or in violation of any statute, resolutions, code, law or regulation;
5. That the use for which the approval was granted is so exercised as to be detrimental to the public health or safety.

B. Any aggrieved party may petition the ~~[CITY COUNCIL]~~hearing examiner in writing to initiate revocation or modification proceedings.

C. Before a special use permit may be revoked or modified, an ~~[CLOSED]~~**open record** hearing shall be held. Procedures concerning notice, reporting, filing fees and appeals shall be the same as required by this chapter for the initial consideration of a special use permit application.

18.97.100 Resubmittal of application.

An application for a special use permit, which has been disapproved by the ~~[COUNCIL]~~**hearing examiner**, cannot be resubmitted to the hearing body within six months of the date of ~~[COUNCIL]~~**hearing examiner** disapproval.

Section 17. Amendment of MMC 18.98.080. Monroe Municipal Code (MMC) Section 18.98.080, Planning and zoning – Variance permits - Appeal, is hereby amended to provide as follows:

The action of the hearing examiner in granting or denying the application for a variance ~~[MAY BE APPEALED TO THE CITY COUNCIL BY THE ORIGINAL APPLICANT OR AN AGGRIEVED PARTY IN ACCORDANCE WITH MMC 21.20.030 AND 21.60.020]~~**is a final decision appealable to the Snohomish County Superior Court in accordance with Chapter 36.70C RCW.**

Section 18. Amendment of MMC 21.10.030. Monroe Municipal Code (MMC) Section 21.10.030, Development review procedures – Introduction - Definitions, is hereby amended to change the definition of “special use” as follows:

“Special use” means a use that because of its unusual, large-scale, and/or unique impacts requires additional scrutiny and mitigation, above and beyond the requirements of a conditional use, and for which the Monroe ~~[CITY COUNCIL]~~**hearing examiner** is the final decision-making body.

Section 19. Amendment of MMC 21.20.030. Monroe Municipal Code (MMC) Subsection 21.20.030(C), Development review procedures – Administration – City council, is hereby amended to provide in its entirety as follows:

C. Appeal of hearing examiner decisions on ~~[VARIANCES, CONDITIONAL USES,]~~ administrative interpretations, administrative approvals, and other actions and responsibilities as specified in this code.

Section 20. Amendment of MMC 21.20.050. Monroe Municipal Code (MMC) Subsections 21.20.050(F) and (K), Development review procedures – Administration – Hearing examiner, are hereby amended to provide as follows:

F. To hear and ~~[MAKE RECOMMENDATIONS TO THE CITY COUNCIL ON]~~**decide** all applications for preliminary subdivision plats, per Chapter 17.12 MMC, and planned residential/commercial developments, per Chapter 18.84 MMC.

K. To hear and ~~[MAKE RECOMMENDATIONS TO THE CITY COUNCIL ON]~~**decide** all special use permit applications, per Chapter 18.97 MMC, including special use permits for essential public facilities, per Chapter 18.15 MMC.

Section 21. Amendment of MMC 21.50.030. Monroe Municipal Code (MMC) Section 21.50.030, Development review procedures – Review and approval process – Hearing examiner review and recommendation, is hereby amended to provide as follows:

A. Staff Report. The community development department or other city department, including the fire district, 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 evaluating the development's consistency with the city's development regulations, adopted plans and regulations. The staff report shall include findings, conclusions, and proposed recommendations for disposition of the development application. The staff report should be forwarded to the hearing examiner and made available for public review at least one week prior to the public hearing by the hearing examiner.

B. Hearing. The hearing examiner shall conduct a public hearing on development proposals for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the city's development regulations, adopted plans and regulations. Notice of the hearing examiner hearing shall be in accordance with MMC 21.40.030.

C. Required Findings. In drafting a **final decision or** recommendation, the hearing examiner shall address the following, as required in the findings of fact:

1. The development is consistent with the comprehensive plan and meets the requirements and intent of this code.

2. The development makes adequate provisions, if appropriate, 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.

3. The development adequately mitigates impacts identified under Chapters 17.12, 18.84, and 20.04 MMC, and the sensitive area guidelines adopted by resolution.

4. The development is beneficial to the public health, safety and welfare and is in the public interest.

5. The development does not lower the level of service on the following public facilities and services below the minimum standards established within the comprehensive plan:

- a. Potable water;
- b. Wastewater;
- c. Storm water drainage;
- d. Police and fire protection;

- e. Parks and recreation;
- f. Arterial roadways; and
- g. Public schools.

If the development results in a level of service lower than those set forth in the comprehensive plan, the development may be approved if improvements or strategies to raise the level of service above the minimum standard are made concurrent with the development, subject to the requirements of Chapter 20.06 MMC.

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

D. Recommendation. ~~[F]~~**For matters which require a recommendation to the city council by the hearing examiner, the hearing examiner shall provide the original of the recommendation to the community development department. The department shall be responsible for distribution of the document and for scheduling city council action. The hearing examiner's recommendation shall be forwarded to the city council. [THE HEARING EXAMINER'S RECOMMENDATION ON PRELIMINARY PLATS SHALL BE FORWARDED TO THE CITY COUNCIL WITHIN FOURTEEN DAYS FOLLOWING THE HEARING EXAMINER'S ISSUANCE OF THE RECOMMENDATION.]**The responsibilities of the hearing examiner are contained in MMC 21.20.050.

E. Final Decision. For matters which require a final decision by the hearing examiner, the hearing examiner shall provide the original of the decision to the community development department. The department shall be responsible for distribution of the document.

Section 22. Amendment of MMC 21.50.090. Monroe Municipal Code Subsection 21.50.090(A), Development review procedures – Review and approval process – Procedures, is hereby amended to provide as follows:

A. Time for Appeal. Any interested party who participated in the public hearing by testifying or submitting written evidence, other than a petition, aggrieved by the hearing examiner's final decision on ~~[ALL PROCEDURES LISTED UNDER MMC 21.20.050, OR]~~any ~~[OTHER]~~permit **or matter** for which the hearing examiner takes final action **and the city council is designated by this code as the appellate body**, may submit a notice of appeal to the community development department, upon a form furnished by the department in accordance with MMC 21.60.020. No appeal shall be allowed from a hearing examiner's recommendation and only final decisions of the hearing examiner may be appealed. For purposes of this section, the date of issuance of the hearing examiner's decision shall be ~~[THREE DAYS AFTER]~~the date on which the hearing examiner's decision is mailed to all parties of record.

Section 23. Amendment of MMC 21.50.120. Monroe Municipal Code (MMC) Subsection 21.50.120, Development review procedures – Review and approval process - Development review and appeal matrix, is hereby amended to provide as follows:

| | Application Type | Notice of Application | Public Hearing | Recommending Body | Preliminary Approval | Final Decision Body ³ | Notice of Decision | [DECISION/ACTION ⁷] | [FINAL DECISION BODY] | Appeal Body ⁴ | Subsequent Appeal Body ⁶ |
|---|--|-----------------------|----------------|-------------------|----------------------|--|--------------------|---------------------------------|-----------------------|--------------------------|-------------------------------------|
| [ADMINISTRATIVE APPROVALS WITHOUT NOTICE] | Adjustments to Yard Requirements <u>only if categorically exempt from SEPA</u> | No | No | | | Director of Community Development | No | [FINAL] | | Hearing Examiner | [CITY COUNCIL] Superior Court |
| | Administrative Interpretations <u>only if categorically exempt from SEPA</u> | No | No | | | Director of Community Development | No | [FINAL] | | Hearing Examiner | [CITY COUNCIL] Superior Court |
| | Boundary Line Adjustments <u>only if categorically exempt from SEPA</u> | No | No | | | Director of Community Development | No | [FINAL] | | Hearing Examiner | [CITY COUNCIL] Superior Court |
| | Land Clearing/Forest Practices <u>only if categorically exempt from SEPA</u> | No | No | | | Director of Community Development | No | [FINAL] | | Hearing Examiner | [CITY COUNCIL] Superior Court |
| | [MINOR AMENDMENTS] | | | | | [DIRECTOR OF COMMUNITY DEVELOPMENT] | | [FINAL] | | [HEARING EXAMINER] | [CITY COUNCIL] |
| | [MINOR] Construction Permits <u>only if categorically exempt from SEPA</u> | No | No | | | Director of Community Development | No | [FINAL] | | Hearing Examiner | [CITY COUNCIL] Superior Court |
| | <u>Adjustments to Yard if not categorically exempt from SEPA</u> | Yes | No | | | <u>Director of Community Development</u> | No | | | <u>Hearing Examiner</u> | <u>Superior Court</u> |
| | <u>Administrative Interpretations if not</u> | Yes | No | | | <u>Director of Community</u> | No | | | <u>Hearing Examiner</u> | <u>Superior Court</u> |

| | Application Type | Notice of Application | Public Hearing | Recommending Body | Preliminary Approval | Final Decision Body ² | Notice of Decision | [DECISION/ACTION ⁷] | [FINAL DECISION BODY] | Appeal Body ⁴ | Subsequent Appeal Body ⁵ |
|--|---|-----------------------|----------------|-------------------|----------------------|--|--------------------|---------------------------------|-----------------------|--------------------------|--------------------------------------|
| | <u>category exempt from SEPA</u> | | | | | <u>Development</u> | | | | | |
| | <u>Boundary Line Adjustments if not category exempt from SEPA</u> | <u>Yes</u> | <u>No</u> | | | <u>Director of Community Development</u> | <u>No</u> | | | <u>Hearing Examiner</u> | <u>Superior Court</u> |
| | <u>Land Clearing/Forest Practices if not category exempt from SEPA</u> | <u>Yes</u> | <u>No</u> | | | <u>Director of Community Development</u> | <u>No</u> | | | <u>Hearing Examiner</u> | <u>Superior Court</u> |
| | <u>Construction Permits if not category exempt from SEPA</u> | <u>Yes</u> | <u>No</u> | | | <u>Director of Community Development</u> | <u>No</u> | | | <u>Hearing Examiner</u> | <u>Superior Court</u> |
| [ADMINISTRATIVE APPROVALS SUBJECT TO NOTICE] | Accessory Dwelling Units | <u>Yes</u> | <u>No</u> | | | Director of Community Development | <u>No</u> | [FINAL] | | Hearing Examiner | [CITY COUNCIL] <u>Superior Court</u> |
| | <u>Preliminary Binding Site Plans⁴ for less than 10 lots</u> | <u>Yes</u> | <u>No</u> | | | Director of Community Development ⁶ | <u>No</u> | [FINAL] | | Hearing Examiner | [CITY COUNCIL] <u>Superior Court</u> |
| | <u>Final Binding Site Plans for less than 10 lots</u> | <u>Yes</u> | <u>No</u> | | | <u>Director of Community Development</u> | <u>No</u> | | | <u>Hearing Examiner</u> | <u>Superior Court</u> |
| | [MAJOR CONSTRUCTION PERMITS] | | | | | [DIRECTOR OF COMMUNITY DEVELOPMENT] | | [FINAL] | | [HEARING EXAMINER] | [CITY COUNCIL] |
| | <u>Preliminary Short Subdivisions⁴</u> | <u>Yes</u> | <u>No</u> | | | Director of Community Development | <u>No</u> | [FINAL] | | Hearing Examiner | [CITY COUNCIL] <u>Superior Court</u> |

| | Application Type | Notice of Application | Public Hearing | Recommending Body | Preliminary Approval | Final Decision Body ² | Notice of Decision | [DECISION/ACTION] ⁷ | [FINAL DECISION BODY] | Appeal Body ⁴ | Subsequent Appeal Body ⁵ |
|---|--|-----------------------|----------------|--|----------------------|--|--------------------|--------------------------------|-----------------------|---|---|
| | Final Short Subdivisions | Yes | No | | | Director of Community Development | No | | | Hearing Examiner | Superior Court |
| | Single-Family Dwelling Exception to Development Moratoria | Yes | No | | | Director of Community Development | No | [FINAL] | | Hearing Examiner | [CITY COUNCIL] Superior Court |
| | Threshold Determination/EIS Adequacy (SEPA) ² | Yes | No | | | Director of Community Development | No | [FINAL] | | Hearing Examiner | Superior Court |
| [LAND USE (QUASI JUDICIAL) APPROVALS SUBJECT TO PUBLIC HEARING] | Administrative Approvals When a Conflict of Interest Exists | Yes | Yes | Director of Community Development | | Hearing Examiner | Yes | [FINAL] | | City Council | Superior Court |
| | Preliminary Binding Site Plan for 10 or more lots/Contract Rezone | Yes | Yes | Director of Community Development | | [PLANNING COMMISSION] Hearing Examiner | Yes | [RECOMMENDATION] | [CITY COUNCIL] | [SUPERIOR COURT] City Council | Superior Court |
| | Final Binding Site Plan for 10 or more lots/Contract Rezone | Yes | No | | | Director of Community Development | No | | | Hearing Examiner | Superior Court |
| | Conditional Use | Yes | Yes | Director of Community Development | | Hearing Examiner | Yes | [FINAL] | | City Council | Superior Court |
| | Preliminary Planned Residential Development ⁴ | Yes | Yes | Director of Community Development | | Hearing Examiner | Yes | [RECOMMENDATION] | [CITY COUNCIL] | Superior Court | |
| | Final Planned Residential Development | Yes | No | | | City Council | Yes | | | Superior Court | |

| Application Type | Notice of Application | Public Hearing | Recommending Body | Preliminary Approval | Final Decision Body ² | Notice of Decision | [DECISION/ACTION] ⁷ | [FINAL DECISION BODY] | Appeal Body ⁴ | Subsequent Appeal Body ⁵ |
|--|-----------------------|----------------|--|----------------------|---|--------------------|--------------------------------|-----------------------|---|-------------------------------------|
| Reasonable Use Exception | Yes | Yes | <u>Director of Community Development</u> | | Hearing Examiner | Yes | [FINAL] | | [CITY COUNCIL] <u>Superior Court</u> | [SUPERIOR COURT] |
| Removal of a Six-Year Development Moratorium | Yes | Yes | <u>Director of Community Development</u> | | Hearing Examiner | Yes | [FINAL] | | [CITY COUNCIL] <u>Superior Court</u> | [SUPERIOR COURT] |
| Shoreline Conditional Use ^{3,12} | Yes | Yes | <u>Hearing Examiner</u> | | [HEARING EXAMINER] <u>City Council</u> | Yes | [RECOMMENDATION] | [CITY COUNCIL] | Shoreline Hearings Board | Superior Court |
| Shoreline Substantial Development | Yes | Yes | <u>Director of Community Development</u> | | Hearing Examiner | Yes | [FINAL] | | City Council | Shoreline Hearings Board |
| Shoreline Variance ^{3,12} | Yes | Yes | <u>Hearing Examiner</u> | | [HEARING EXAMINER] <u>City Council</u> | Yes | [RECOMMENDATION] | [CITY COUNCIL] | Shoreline Hearings Board | Superior Court |
| Special Use | Yes | Yes | <u>Director of Community Development</u> | | Hearing Examiner | Yes | [RECOMMENDATION] | [CITY COUNCIL] | Superior Court | |
| <u>Preliminary Subdivision</u> ⁴¹ | Yes | Yes | <u>Director of Community Development</u> | | Hearing Examiner | Yes | [RECOMMENDATION] | [CITY COUNCIL] | Superior Court | |
| <u>Final Subdivision</u> | Yes | No | <u>Director of Community Development</u> | | <u>City Council</u> | Yes | | | <u>Superior Court</u> | |
| Temporary Tent Encampments | Yes | Yes | <u>Director of Community Development</u> | | Hearing Examiner | Yes | [FINAL] | | Superior Court | |

| | Application Type | Notice of Application | Public Hearing | Recommending Body | Preliminary Approval | Final Decision Body ² | Notice of Decision | [DECISION/ACTION] ⁷ | [FINAL DECISION BODY] | Appeal Body ⁴ | Subsequent Appeal Body ⁵ |
|---|--|-----------------------|----------------|--|----------------------|--|--------------------|--------------------------------|-----------------------|---|-------------------------------------|
| | Variance | Yes | Yes | <u>Director of Community Development</u> | | Hearing Examiner | Yes | [FINAL] | | [CITY COUNCIL] <u>Superior Court</u> | [SUPERIOR COURT] |
| | Variance from Flood Hazard Regulations | Yes | Yes | <u>City Engineer</u> | | Hearing Examiner | Yes | [FINAL] | | [CITY COUNCIL] <u>Superior Court</u> | [SUPERIOR COURT] |
| [LEGISLATIVE ACTIONS SUBJECT TO PUBLIC HEARING] | Comprehensive Plan Amendments | Yes | Yes | <u>Planning Commission</u> | | [PLANNING COMMISSION] <u>City Council</u> | Yes | [RECOMMENDATION] | [CITY COUNCIL] | Growth Hearing Board | |
| | <u>Development Code</u> Amendments | Yes | Yes | <u>Planning Commission</u> | | [PLANNING COMMISSION] <u>City Council</u> | Yes | [RECOMMENDATION] | [CITY COUNCIL] | Growth Hearing Board | |
| | Rezone Applications | Yes | Yes | <u>Planning Commission</u> | | [PLANNING COMMISSION] <u>City Council</u> | Yes | [RECOMMENDATION] | [CITY COUNCIL] | Superior Court | |

~~[1. BINDING SITE PLANS, SHORT SUBDIVISIONS, PLANNED RESIDENTIAL DEVELOPMENTS, AND SUBDIVISIONS RECEIVE APPROVAL IN TWO PHASES: A PRELIMINARY APPROVAL WITH CONDITIONS AND FINAL APPROVAL WHEN PRELIMINARY CONDITIONS HAVE BEEN COMPLETED.]~~

~~[2]1. Appeals based on the substantive authority of SEPA for conditions imposed outside the threshold determination process are appealable to the city council, as required by RCW 43.21C.060. Otherwise, appeals of SEPA threshold determinations and EIS adequacy are considered procedural determinations and therefore appealable to the hearing examiner per WAC 197-11-680(3)(iv).~~

~~[3]2. Shoreline conditional use permits and variances require final approval by the Department of Ecology per Chapter 19.01 MMC.~~

~~[4. ADMINISTRATIVE APPEALS FOR HEARING EXAMINER DECISIONS ARE AS DESCRIBED FOR ACTIONS OF MMC TITLES 15 AND 17 THROUGH 21. ALL APPEALS OF HEARING EXAMINER DECISIONS WILL BE HEARD BY THE CITY COUNCIL PER CHAPTER 21.60 MMC, UNLESS OTHERWISE NOTED IN THE MONROE MUNICIPAL CODE. PUBLIC HEARINGS, INCLUDING LAND USE DECISION AND PRE-DECISION HEARINGS AND ADMINISTRATIVE APPEAL HEARINGS, HELD BEFORE THE HEARING EXAMINER ARE CONSIDERED OPEN RECORD HEARINGS. ALL APPEAL HEARINGS HELD BEFORE THE CITY COUNCIL ARE CONSIDERED CLOSED RECORD APPEALS, PER MMC 21.50.070. ALTERNATE PROCESSES MAY APPLY FOR ACTIONS FOUND IN OTHER SECTIONS OF THE MONROE MUNICIPAL CODE.~~

~~5. WHEN ALL ADMINISTRATIVE AVENUES ARE EXHAUSTED, ANY SUBSEQUENT APPEALS OF FINAL DECISIONS BY THE HEARING EXAMINER OR~~

| | Application Type | <u>Notice of Application</u> | <u>Public Hearing</u> | <u>Recommending Body</u> | <u>Preliminary Approval</u> | <u>Final Decision Body</u> ² | <u>Notice of Decision</u> | [DECISION/ ACTION] ⁷ | [FINAL DECISION BODY] | Appeal Body ¹⁴ | Subsequent Appeal Body ¹⁵ |
|--|------------------|------------------------------|-----------------------|--------------------------|-----------------------------|---|---------------------------|---------------------------------|-----------------------|---------------------------|--------------------------------------|
|--|------------------|------------------------------|-----------------------|--------------------------|-----------------------------|---|---------------------------|---------------------------------|-----------------------|---------------------------|--------------------------------------|

~~CITY COUNCIL WILL GO DIRECTLY TO SUPERIOR COURT FOR JUDICIAL REVIEW PER MMC 21.60.030.~~
~~6. THE HEARING EXAMINER WILL BE THE DECISION MAKER WHEN A BINDING SITE PLAN CREATES TEN OR MORE LOTS. IN SUCH CASE, THE CITY COUNCIL WILL BE THE APPEAL BODY.~~
~~7]3. When an applicant seeks a concurrent land use approval for a quasi-judicial or legislative action, the city may consolidate all project permit applications for the development proposal, in accordance with MMC 21.50.130.~~

Section 24. Amendment of MMC 21.60.030. Monroe Municipal Code (MMC) Subsection 21.60.030(A), Development review procedures – Appeals – Judicial appeal, is hereby amended to provide as follows:

A. Appeals from the final decision of the city council, planning commission, or hearing examiner, or other city board or body involving MMC Titles 15 through 20, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Snohomish County superior court within twenty-one days of the date the decision or action became final in accordance with Chapter 36.70C RCW, unless another time period and/or another venue is established by state law or local ordinance.

Section 25. Transmittal to Department of Commerce. Pursuant to RCW 36.70A.106, this ordinance shall be transmitted to the Washington State Department of Commerce.

Section 26. 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 other section, sentence, clause or phrase of this ordinance.

Section 27. Effective Date. This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

First Reading: May 9, 2017
Adoption: May 16, 2017
Published: May 19, 2017
Effective: May 24, 2017

CITY OF MONROE, WASHINGTON:



Geoffrey Thomas, Mayor

(SEAL)

ATTEST:



Elizabeth M. Adkisson, MMC, City Clerk

APPROVED AS TO FORM:



J. Zachary Lell, City Attorney