

# EXHIBIT B

## Chapter 16.09

### SHORELINE ADMINISTRATION AND PROCEDURES

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#### **16.09.010 Purpose.**

This chapter contains the provisions regarding the city's administration and enforcement of the Shoreline Management Act and the Poulsbo shoreline master program (Chapter 16.08), as well as the permit system applicable to the Shoreline Management Act and shoreline master program of the city.

#### **16.09.020 Shoreline administrator.**

The city planning director is the shoreline administrator, and is responsible for the administration of the Shoreline Management Act and the shoreline master program of the city.

#### **16.09.030 Applicability of the shoreline master program.**

Within the shoreline jurisdiction, the shoreline master program applies to all development as that term is defined in RCW 90.58.030, whether or not that development is exempt from the requirements of obtaining a permit under this chapter.

#### **16.09.040 Exemption from permit requirements.**

All shoreline development, except as specified in WAC 173-27-040, and RCW 98.58.030(3)(e), 90.58.140(9), 90.58.147, ~~90.58.355~~ and 90.58.515, must obtain a permit prior to commencement. Chapter 16.08 and this chapter indicate which permit is required for specific development types that do not meet the exemption criteria.

#### **16.09.050 Letter of exemption issued in certain cases.**

WAC 173-27-050 establishes the circumstances under which the planning director will issue a letter stating that a proposed development is exempt from the permit requirements of the Shoreline Management Act and this chapter.

#### **16.09.060 Review of exempt actions.**

Applicants shall consult with the planning director prior to commencing any work on a development which the applicant believes is exempt from the permit requirements of the Shoreline Management Act and this chapter. The planning director will review these proposed developments for consistency with the requirements of the Shoreline Management Act and the shoreline master program to determine whether the city concurs that the development is exempt from permit requirements. If the planning director determines that the development is not exempt from the permit requirements, the applicant shall be required to submit an application for a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance application, as well as any other permit applications deemed necessary by the planning director.

#### **16.09.070 Application materials.**

The planning director is directed to adopt and publish application forms and materials for permits required under this chapter. At a minimum, these application forms and materials will require the information specified in WAC 173-127-130. An applicant for a permit shall be required to submit all of the forms and materials specified by the planning director, together with the application fee, in order for the application to be considered complete.

#### **16.09.080 Concurrent review of permit applications.**

Where the city must approve more than one type of shoreline permit and/or other land use permit application for a proposed development or use, all of the applications shall be submitted, reviewed and processed concurrently, according to the requirements of the highest-level permit and its relevant permit type (Type I, II or III). The review and approval process shall be consistent with the requirements of Title 19 (Project Permit Application Procedures) and Chapter 173-27 WAC. Type IV and V applications are not subject to this section.

#### **16.09.090 Developments and uses located both inside and outside of the shoreline.**

When a proposed development or use includes both shoreline and nonshoreline areas, and any type of shoreline permit is required, the shoreline permit must be obtained before any part of the development, including the development activity that is entirely confined to the upland areas, can proceed.

#### **16.09.100 Notice of applications and hearings.**

Public notices of pending applications and hearings on permits under the Shoreline Management Act, including substantial development permits, shoreline conditional use permits, and shoreline variances, will, at a minimum, contain the information specified in WAC 173-27-110 and Title 19 according to the permit type (Type I, II or III), and

will be distributed according to the requirements of those regulations. The public comment period for a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance shall be 30 days following the date of notice of application.

**16.09.110 General review criteria for all substantial development permits.**

WAC 173-27-150 establishes that a ~~minor shoreline substantial development permit or a~~ shoreline substantial development permit may only be granted when the proposed development is consistent with all of the following:

- A. The policies and procedures of the Shoreline Management Act;
- B. The provisions of Chapter 173-27 WAC;
- C. Chapter 16.08;
- D. Any conditions attached by the city to the permit approval as necessary to ensure compliance with the Act and Chapter 16.08.

**16.09.120 Minor shoreline substantial development permits (Type II).**

- A. Applicable Development Activities. A development activity that does not qualify for a shoreline exemption per Section 16.09.040, but that meets one or more of the following criteria, shall be processed as a minor shoreline substantial development permit unless the planning director determines that subsection B of this section is applicable to the proposed development.
  - 1. Development that meets the requirements for minor site plan review in Section 18.~~27068~~.020.
  - 2. Public access and other associated amenities (such as trails, signage, benches, educational or recreational facilities) that are located landward of the ordinary high-water mark (OHWM), and that do not have a fair market value of more than fifty thousand dollars.
  - 3. Underground utility improvements, including utility extensions, within an existing right-of-way or an existing public or private street.
  - 4. Habitat restoration activities that are not associated with a development plan or mitigation for development or use impacts.
- B. Exceptions. Any development that is determined by the planning director to have a probable detrimental impact to shoreline habitat functions and values, or that will be located waterward of the ~~ordinary high water mark OHWM, or that will reduce public shoreline access or public views of the shoreline,~~ does not qualify for a minor shoreline substantial development permit.
- C. Review Process. A minor shoreline substantial development permit shall be processed as a Type II administrative permit application, according to the requirements of Title 19 and Chapter 173-27 WAC. The decision maker shall be the planning director, and appeals shall be heard by the city hearing examiner.

**16.09.130 Shoreline substantial development permits (Type III).**

- A. Applicable Development Activities. A development activity ~~that meets one or more of the following criteria~~ shall be processed as a shoreline substantial development permit if it does not qualify for a shoreline exemption or a minor shoreline substantial development permit.
- B. Review Process. A shoreline substantial development permit shall be processed as a Type III quasi-judicial permit application, according to the requirements of Title 19 and Chapter 173-27 WAC. The decision maker shall be the city hearing examiner, and appeals shall be heard by the city council.

**16.09.140 General review criteria for all shoreline conditional use permits.**

The requirements of this section apply to all ~~minor shoreline conditional use permits and~~ shoreline conditional use permits:

- A. Purpose. Per WAC 173-27-160, the purpose of a shoreline conditional use permit is to allow flexibility within the shoreline master program in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the city or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Shoreline Management Act and the city's shoreline master program.

- B. Criteria for Approval. Uses which are classified or set forth in the city's shoreline master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
  1. That the proposed use is consistent with the policies of RCW 90.58.020 and the city's shoreline master program;
  2. That the proposed use will not interfere with the normal public use of public shorelines;
  3. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the city's comprehensive plan and shoreline master program;
  4. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
  5. That the public interest will suffer no substantial detrimental effect.
- C. Cumulative Effects. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
- D. Unclassified Uses. Uses which are not classified in the city's shoreline master program as shown on the official shoreline use table may be authorized as conditional uses, provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the city's shoreline master program, and receives a conditional use permit for such use.
- E. Uses which are specifically prohibited by the master program may not be authorized through a conditional use permit.

**16.09.150 Minor shoreline conditional use permits (Type II).**

- A. Applicable Uses. A use that is classified as a conditional use by the city's shoreline master program shall be processed as a minor conditional use if it meets the requirements of Section 16.09.140, and if one or more of the following are met:
  1. The use will occur entirely within an existing building and involve no changes to the building exterior.
  2. The use will be associated with development activities that qualify for a shoreline exemption or a minor substantial development permit.
  3. The use does not involve any development activities, but is classified as a conditional use by the city's shoreline master program.
- B. Review Process. A minor shoreline conditional use permit shall be processed as a Type II administrative permit application, according to the requirements of Title 19 and Chapter 173-27 WAC. The decision maker shall be the planning director, and appeals shall be heard by the city hearing examiner.

**16.09.160 Shoreline conditional use permits (Type III).**

- A. Applicable Uses. A use that is classified as a conditional use by the city's shoreline master program may be authorized if it meets the requirements of Section 16.09.140.
- B. Review Process. A shoreline conditional use permit shall be processed as a Type III quasi-judicial permit application according to the requirements of Title 19 and Chapter 173-27 WAC. The decision maker shall be the city hearing examiner, and appeals shall be heard by the city council.
- C. Approval by Department of Ecology. Shoreline conditional use permits require approval by the Department of Ecology. When the city has approved a minor conditional use permit or a conditional use permit the city will forward it to the Department of Ecology for its review and approval, approval with conditions, or disapproval according to the requirements of WAC 173-27-200.

**16.09.170 Shoreline variances.\***

- A. General. This section establishes the procedures and criteria that the city will use to review and decide upon each application for a shoreline variance under the Shoreline Management Act. Chapter 16.08 establishes when a shoreline variance shall be required.
- B. Purpose of a Shoreline Variance. Under WAC 173-27-170, the purpose of a variance is strictly limited to granting relief to specific bulk, dimensional or performance standards of the shoreline master program where there are extraordinary or unique circumstances relating to the subject property such that the strict implementation of the shoreline master program would impose unnecessary hardship on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the shoreline use regulations of the master program are prohibited.
- C. Review Process. A shoreline variance shall be reviewed as a Type III permit pursuant to the requirements of Title 19 and Chapter 173-27 WAC. The review authority is the city hearing examiner and appeals shall be heard by the city council. If any conflict should exist between the provisions of Title 19 and this chapter, the provisions of this chapter will be followed.
- D. Criteria for Approval. WAC 173-27-170 establishes the criteria under which the city may grant a variance. Additionally, the city shall review the proposal against any relevant zoning variance criteria in Chapter 16.20 and Title 18. If there is a conflict between WAC 173-27-170 and Chapter 16.20 or Title 18, the more stringent variance criteria shall apply.
- E. Approval by Department of Ecology. Shoreline variances require approval by the Department of Ecology. When the city has approved a variance, the city will forward it to the Department of Ecology for its review and approval, approval with conditions, or disapproval according to the requirements of WAC 173-27-200.

~~\* Code reviser's note: Ordinance 2012 10 adds this section as Section 16.09.160. It has been editorially renumbered, along with the sections that follow it, to avoid duplication of numbering.~~

**16.09.180 Issuance of permits.**

After approving a shoreline substantial development permit, shoreline conditional use permit or shoreline variance under the Shoreline Management Act and the shoreline master program, the city will issue a permit containing, at a minimum, the information specified in WAC 173-27-190.

**16.09.190 Filing with Department of Ecology.**

WAC 173-27-130 establishes the requirements and procedures for filing decisions on permits with the Department of Ecology.

**16.09.200 Requests for review.**

WAC 173-27-220 establishes the procedures and time periods for requesting review of decisions that have been issued by either the city or the Department of Ecology on substantial development permits, conditional use permits and variances and other decisions under the Shoreline Management Act and the shoreline master program.

**16.09.210 Time to commence and complete development.**

WAC 173-27-090 establishes time requirements for commencing and completing work authorized by a permit under the Shoreline Management Act and the shoreline master program. The city may, on a case-by-case basis, issue permits for an alternative fixed time period as authorized in WAC 173-27-090.

**16.09.220 Revision to issued permits.**

WAC 173-27-100 establishes the procedure and criteria under which the city may approve a revision to a permit issued under the Shoreline Management Act and the shoreline master program.

**16.09.230 Enforcement authority.**

Chapter 173-27 WAC, Part II, contains enforcement regulations, including authority for the city to issue regulatory orders to enforce the Shoreline Management Act and the shoreline master program. The city's shoreline enforcement regulations are in Section 16.08.500. Enforcement authority established in any other city code, including but not limited to the critical areas ordinance (Chapter 16.20) and the zoning ordinance (Title 18) shall also be applicable. In addition, the city shall have any and all other powers and authority granted to or devolving

upon municipal corporations to enforce ordinances, resolutions, regulations, and other laws within its territorial limits.

**16.09.240 Additional authorities and responsibilities.**

The city shall have any and all additional authority and perform any and all additional responsibilities now or hereafter granted to or devolving upon municipal corporations with respect to the administration and enforcement of the Shoreline Management Act and shoreline master program.