

## ORDINANCE 1275

### **AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON AMENDING TITLE 12 SMC, UTILITIES , CHAPTER 12.45, EXTENSION OF CITY SERVICES OUTSIDE CITY LIMITS, AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, The City Council reviewed and adopted an update to the Comprehensive Water System Plan during 2009- 2010, and

**WHEREAS**, The City studied water system capacity and storage of the existing water utility system as well as further water service demand within the City and the Urban Growth Area, and

**WHEREAS**, The Planning Commission held a pre-application meeting on August 21, 2009 to consider amendments to the City policy and code implementing water service within the City and the Urban Growth Area, and

**WHEREAS**, on August 29, 2009 the Stanwood Community Development Department filed Application 2009-2010-01Amendments to the Land Use and Utility Element policies and concurrent municipal code amendments addressing annexation and out of city utilities, and

**WHEREAS**, the City of Stanwood SEPA Responsible Official issued a SEPA threshold determination of non-significance on April 26, 2010, and

**WHEREAS**, on May 10, 2010, June 14, a public hearing was held by the Planning Commission, and all persons wishing to provide public input concerning the were heard, and

**WHEREAS**, the City Council held a joint public workshop with the Planning Commission on the proposed amendments September 9, 2010, and

**WHEREAS**, on September 13, 2010 an additional public hearing was held by the Planning Commission, and

**WHEREAS**, public notice of the above-referenced public hearings were provided as required by law, and

**WHEREAS**, the Planning Commission made a recommendation to the City Council on September 13, 2010, and

**WHEREAS**, the City Council met on October 28, 2010 to consider the Planning Commission's recommendation on the proposed zoning text amendments, and

**WHEREAS**, pursuant to RCW 36.70A.106, the City has notified the Washington State Department of Commerce of the City's intent to adopt the proposed change in regulations;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF STANWOOD, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** SMC Title 12 Utilities, Chapter **12.45, Extension of City Services outside City Limits** is hereby amended to read as follows:

Sections:

12.45.10 City's authority to provide service outside city limits.

12.45.015 Service Outside City Limits

12.45.020 Water or sewer service application.

12.45.030 Charges for water or sewer service.

12.45.040 Utility extension agreement.

~~12.45.050 Extensions for public health, safety or environmental reasons.~~

**12.45.010 City's authority to provide service outside city limits.**

(1) The city is authorized, pursuant to RCW 35.67.310 and 35.92.200, to provide sewer and water service to property outside the city limits. The city's provision of such service is not mandatory.

(2) The City's intent is to provide reasonable steps to phase implementation of the Growth Management Act by

(a) encouraging growth to first locate in areas that have adequate existing public facility and service capabilities to serve such development.

(b) managing growth to transform governance and phase development within the Urban Growth Area.

(c) to provide for orderly growth of the city consistent with the Comprehensive Plan.

~~(3) In all circumstances in which the city agrees to provide water or sewer service to property beyond its limits, the applicants for such service must comply with all of the terms and conditions of this chapter.~~

(4) After designation of the city's urban growth area boundary by the county as contemplated by RCW 36.70A.110, the city is prohibited from annexing territory beyond such boundary (RCW 35A.14.005). Therefore, except to municipal corporations or quasi-municipal corporations, such as water, sewer or fire districts, and then only under the circumstances described in subsection (3) of this section, the city's extension of water and sewer service outside the city limits to property not contained within the city's urban growth area is not appropriate.

(5) The Growth Management Act, Chapter 36.70A RCW, has been amended to allow cities to provide water and sewer services in rural areas in those limited circumstances shown to be necessary to protect basic public health, safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development (RCW 36.70A.110[4]). Applications for water and sewer service in rural areas or areas outside the city's urban growth area may be granted by the city

council under the circumstances in this section, and under the procedures set forth in SMC 12.45.015(2) (Ord. 1122 § 1, 2002).

### **12.45.015 Service Outside City Limits**

#### **(1) Within the Urban Growth Area**

(i) New single-family residential buildings on existing lots or lots configured through boundary line adjustments<sup>[r11]</sup>, and new subdivisions or short plats, new or existing duplexes, multifamily residential, commercial, industrial and other non-residential development may be allowed to connect to the city's water and sewer service only upon annexation to the City of Stanwood except: where any properties are subject to pre-existing contractual commitments by the City such as LID's ULID's or latecomer's agreements to serve water and/or sewer, the requirement to annex as a condition of connecting to such utilities shall be waived. Provided, however, such properties shall be required to execute a covenant not to protest annexation in the future as a condition of such utility connection<sup>[r12]</sup>.

(ii) Existing single family residential buildings on a pre-existing legal lot may connect to the city's water and sewer service without annexation if the property owner can demonstrate by a preponderance of the evidence that the that the service<sup>[r13]</sup> is necessary to protect basic public health, safety, welfare and the environment and the application meets all the requirements of Section 12.45.015(2).

#### **(2) Outside the Urban Growth Area**

(i) Applications for water and sewer service to property outside the city's urban growth area boundary may only be approved if, in addition to all other requirements of this chapter, the applicant can demonstrate by a preponderance of the evidence that the that the service<sup>[r14]</sup> is necessary to protect basic public health, safety, welfare and the environment. This showing may include, among other documentation, an emergency order issued by the Department of Ecology relative to any sewer extension request and/or documentation from the Department of Public Health relative to water or sewer extension.

(ii) To determine whether an extension of service is necessary to protect basic public health, safety, welfare and environment, The City council shall review the application and may, in its sole discretion, allow the extension if the council makes all of the following findings.

(a) The impact on public health potentially impacts the general public rather than solely the property owner making application

(b) The hardship is not the result of the applicant' own action and

(c) The hardship is not merely financial or pecuniary.

(d) The requested service is financially supportable at rural densities and does not permit urban development;

(e) The city's NPDES permit will not be affected by the extension (if applicable); and

(f) The extension is consistent with the goals of the city's water and sewer comprehensive plans and all other applicable law, including, but not limited to, the Public Water System Coordination Act (Chapter 70.116 RCW), the Growth Management Act, and the State Environmental Policy Act

(g) The City has adequate capacity and adequate infrastructure available to provide the required service, or the applicant voluntarily agrees to provide the necessary infrastructure upgrades to allow service consistent with City standards.<sup>[r15]</sup>.

(iii) The council's approval of any utility service or extension <sup>[r16]</sup>under the criteria in subsection (2) of this section may be conditioned upon the following:

(a) Restrictions may be placed on the hours that the city will accept sewage flow from the applicants;

(b) Restrictions may be placed on the amount of sewage flow or water provided to the applicant;

(c) The applicant shall have responsibility to maintain and operate its own facilities; and/or

(d) The applicant shall be required to execute a covenant not to protest annexation in the future as a condition of such utility connection."

(e) Any other conditions the council considers appropriate which fulfill the purpose and intent of this Chapter. (Ord. 1140 § 1, 2003; Ord. 1122 § 1, 2002).

#### **12.45.020 Water or sewer service application.**

1. Any person owning property outside the city limits<sup>[r17]</sup> and desiring to demonstrate that the required public health safety and environment exception have applies to their property connected to the city's water supply system<sup>[r18]</sup> or sewer system shall make application for consideration of an out of city sewer request at the office of the public works department on the appropriate form. Every such application shall be made by the owner of the property to be connected and supplied the service, or by his/her authorized agent. The applicant must state fully the purposes for which the water and/or sewer service exception is required.

2. In instances where a water or sewer hookup to a pre-existing water or sewer line is requested, the city shall only provide service if a public health safety and environmental exception is granted by the City Council pursuant to 12.45.015(2)<sup>[r19]</sup>.

3. Applicants must agree to conform to the city's rules and regulations concerning water and sewer service set forth in this title, as the same now exists or may be amended in the future. If the city receives such a water service application and subsequently issues a water availability certificate, such certificate shall expire within one year of the date of issuance, if the applicant does not pay the required fees and request an actual hook-up or and connection to the subject property within that time period. (Ord. 1122 § 1, 2002).

#### **12.45.030 Charges for water or sewer service.**

Applicants for water and/or sewer service to property outside the city limits shall be charged the rates and connection charges for such service as set forth in Chapter 12.04 SMC (sewer service), Chapter 12.16 SMC (water service), and Chapter 12.40 MC (plant investment charges) as those code sections now exist or may hereafter be amended. All other additional charges applicable to water and/or sewer service to property within

the city limits in this title shall also be imposed, where appropriate. (Ord. 1122 § 1, 2002).

#### **12.45.040 Utility extension agreement<sup>[r10]</sup>.**

Every applicant for water and/or sewer service requiring extension of utilities outside the city limits or hookup to existing facilities outside the Urban Growth Area, except for municipal corporations or quasi-municipal corporations, such as water, sewer or fire districts making application under SMC 12.45.050, must agree to sign a voluntary agreement with the city, which conditions the provision of the service on the following terms:

(1) Agreement to Run with the Property. The agreement shall be recorded against the property in the Snohomish County auditor's office, and shall constitute a covenant running with the land. All covenants and provisions of the agreement shall be binding on the owner and all other persons subsequently acquiring any right, title or interest in or to said property.

(2) Warranty of Title. The agreement shall be executed by the owner of the property, who shall also warrant that he/she is authorized to enter into such agreement.

(3) Annexation. Property owners requesting extension of city sewer and water into outside the unincorporated UGA ~~for pre-existing single family lots under the public health, safety, welfare exception in Section 12.45.015(1).1~~ shall agree to either annex immediately (if such property is located in the UGA), or shall sign<sup>[r11]</sup> a no protest agreement in which the property owner agrees to sign any annexation petition that is circulated in the future to annex their property if at a future point the Urban Growth Area is revised to include the subject property<sup>[r12]</sup>.

~~; as long as the property is located within the UGA at the time of circulation.~~

(4) Costs of Design, Engineering and Construction of Extension. The owner shall agree to pay all costs of design, engineering and construction of the extension, which shall be accomplished to city standards and conform to plans approved by the city public works director. Costs of plan review and construction inspection shall also be paid by the owner.

(5) Plant Investment Charges. The owner shall be responsible for the payment of plant investment charges as defined by Chapter 12.40 SMC, as the equitable share of the costs of serving the property.

(6) Easements and Permits. The owner shall secure and obtain at the owner's sole cost and expense all permits, easements and licenses necessary to construct the extension.

(7) Dedication of Capital Facilities. The owner shall agree to dedicate all capital facilities constructed as part of the water and sewer extension (such as water or sewer main lines, pump stations, wells, etc.), at no cost to the city, upon the completion of construction, approval and acceptance by the city.

(8) Connection Charges. The owner shall be responsible for the payment of the connection charges set by the city in Chapters 12.04 and 12.16 SMC (as these chapters now exist or may hereafter be amended), as a condition of connecting to the city water and/or sewer system. Such connection charges shall be calculated at the rate schedules applicable at the time of actual connection.

(9) Special Assessment District. If, at the time of execution of the agreement, the city has formed a special assessment district to pay for capital project(s) related to service

of the property, the owner shall agree to participate in the district and to waive his/her right to protest the assessment.

(10) Waiver of Right to Protest LID. If, at the time of execution of the agreement, the city has plans to construct certain improvements that would specially benefit the owner's property, the agreement shall specifically describe the improvement. The owner shall agree to sign a petition for the formation of an LID or ULID for the specified improvements at the time one is circulated, and to waive his/her right to protest formation of any such LID or ULID.

(11) ~~Conformance to Public Works Standards.~~

(i) ~~Development~~<sup>[113]</sup> of pProperty shall ~~conform to the City of Stanwood water system plan and the city's wastewater facilities plan and Public Works Standards and SMC Title 12 as they now read or are hereafter~~<sup>[114]</sup> amended.

~~of the city of Stanwood~~, unless otherwise provided by this chapter:

- (i) Chapter ~~12.45~~ SMC (standards for UGA utility extensions);
- (ii) Chapter ~~16.10~~ SMC (standards for long plats);
- (iii) Chapter ~~16.35~~ SMC (standards for short plats);
- (iv) Chapters ~~17.30~~ through ~~17.79~~ SMC (permitted uses and dimensional and density requirements);
- (v) Chapter ~~17.110~~ SMC (signs);
- (vi) Chapters ~~17.115~~ through ~~17.135~~ SMC (critical areas protection);
- (vii) Chapter ~~17.145~~ SMC (landscaping); and
- (viii) ~~Public works standards.~~

(b) ~~The owner shall agree to comply with all~~<sup>[115]</sup> elements of the city of Stanwood comprehensive plan, including but not limited to the city of Stanwood comprehensive water system plan and the city's wastewater facilities plan.

(12) (c) ~~The city council may elect to enter into a utility extension agreement with an owner who cannot meet one or more development standards as contained in subsection (11)(a) of this section only under the following conditions:~~

- (i) ~~The applicant demonstrates that there is a conflict between a particular city development standard and the corresponding Snohomish County standard that prevents an applicant from meeting both development regulations;~~
- (ii) ~~The applicant demonstrates that the proposed departure from one of the city's development standards listed in subsection (11)(a) of this section would result in a development that meets the intent of the applicable provision of the comprehensive plan, subdivision code, zoning code or public works standards;~~
- (iii) ~~The applicant demonstrates that the site of the proposed use is adequate in size and shape to accommodate such use and all yards, spaces, walls and fences, parking, loading, landscaping and other features necessary to ensure compatibility with and not inconsistent with the underlying zoning district;~~
- ~~(iv) Adequate public utilities are available to serve the proposal;~~
- (v) ~~The proposed use will have no significant adverse effect on existing uses or permitted uses or that deviate from the development standard listed in subsection (11)(a) of this section will not further aggravate any adverse effects; and~~
- (vi)(ii) ~~The establishment, maintenance and/or conducting of the uses for which the utility agreement is sought will not, under the circumstances of the particular case, be detrimental to the public welfare, injurious to the environment. nor shall the use~~

be inconsistent with or injurious to the character of the neighborhood or contrary to its orderly developm

(12) Interlocal Agreements. If, at the time of execution of the agreement, the city and the county have approved any interlocal agreements governing the development of the Stanwood urban growth area, the development shall also be subject to the terms of the agreement(s) in place.

(13) Termination for Noncompliance. In addition to all other remedies available to the city for the owner's noncompliance with the terms of the agreement, the city shall have the ability to disconnect the utility, and for that purpose may at any time enter upon the property. (Ord. 1169 § 1, 2005; Ord. 1140 § 1, 2003; Ord. 1122 § 1, 2002).

#### **~~12.45.050 Extensions for public health, safety or environmental reasons.~~**

~~(1) Applications for water and sewer service to property outside the city's urban growth area boundary may only be approved if, in addition to all other requirements of this title, the applicant can demonstrate that the extension is necessary to protect basic public health, safety, welfare and the environment. This showing may include, among other documentation, an emergency order issued by the Department of Ecology relative to any sewer extension request.~~

~~(2) The city council shall review the application and may, in its sole discretion, allow the extension if the council finds:~~

~~(a) That the requested service is financially supportable at rural densities and does not permit urban development;~~

~~(b) That the city's NPDES permit will not be affected by the extension (if applicable); and~~

~~(c) That the extension is consistent with the goals of the city's water and sewer comprehensive plans and all other applicable law, including, but not limited to, the Public Water System Coordination Act (Chapter 70.116 RCW), the Growth Management Act, and the State Environmental Policy Act.~~

~~(3) The council's approval of any extension under the criteria in subsection (2) of this section may be conditioned upon the following:~~

~~(a) Restrictions may be placed on the hours that the city will accept sewage flow from the applicants;~~

~~(b) Restrictions may be placed on the amount of sewage flow or water provided to the applicant;~~

~~(c) For extensions outside the city's urban growth boundary area, the applicant shall have responsibility to maintain and operate its own facilities; and/or~~

~~(d) Any other conditions the council considers appropriate. (Ord. 1140 § 1, 2003; Ord. 1122 § 1, 2002).~~

### **Section 2**

Having reviewed all of the record made before the Planning Commission and the record before the City Council, the Findings of Fact and Conclusions attached hereto as Exhibit A are hereby adopted and incorporated by this reference.

### **Section 3**

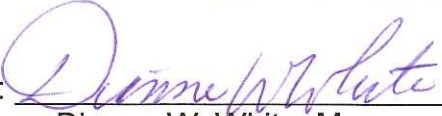
If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality

shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

**Section 4**

This Ordinance shall take effect five days after its publication by summary.

PASSED by the City Council and signed by the Mayor this 28<sup>th</sup> day of Oct, 2010.

By:   
Dianne W. White, Mayor

Attest:

Approved as to form:

By:   
Melissa A. Collins, City Clerk

By:   
Grant K. Weed, City Attorney



## FINDINGS OF FACT AND CONCLUSIONS

### Findings of Fact:

1. As provided by RCW 36.70A and SMC 17.157.020, the State Growth Management Act, the City is entitled to amend its Comprehensive Plan by creating an annual docket of requested amendments.
2. The 2009-2010 docket included CPA 2009-2010-01: Amendments to Land Use and Utility Elements Text addressing policies for Urban Growth Areas, Annexation and Utility Extension, and Concurrent Development Standards Amendments to Chapter 12.45 Extension of City Services Outside City Limits
3. The Planning Commission held a duly noticed public hearing on Application CPA 2009-2010 -02 including the proposed development standards amendments on May 10, and June 14, 2010.
4. Consistent with RCW 43.21C, the Responsible Official issued Determinations of Nonsignificance and Adoption of Existing Environmental Documents on April 26, 2010.
5. The Planning Commission and City Council held a joint workshop on these items on September 9, 2010.
6. The Planning Commission held an additional public hearing on Application CPA 2009-2010 -01, including the proposed development standards amendments, on September 9th 2010.
7. October 28, 2010 at its regularly scheduled City Council meeting which was open to the public, after review of the applications, staff reports, and Planning Commission recommendations and after consideration of the public testimony submitted at or as part of the public hearing, the City Council held first and second reading of Ordinance No 1275 adopting amendments to SMC Title 12, Chapter 12.45 Extension of City Services Outside City Limits
8. As part of the review of Application CPA 2009-2010, the City reviewed water system capacity and storage of the existing water utility system as well as further water service demand within the City and the Urban Growth Area (UGA).
9. Analysis of Residential Unit Supply and Storage Capacity/Zoning Analysis prepared by RH2 Engineering for the Stanwood Public Works Department, July 20, 2010, evaluated the impact of future supply and storage demand for the water system and also evaluated available water supply capacity and storage capacity.
10. The analysis concludes that the City will not have either sufficient supply capacity

or storage capacity to provide full service to build out land capacity in the existing City and the Urban Growth Area (UGA).

11. The analysis further concludes that capacity and storage shortfall can be reduced by future capital investment projects but that development in the UGA cannot be fully serviced by the water system under either city or county zoning standards.
12. Current sewer and water service policies allow out of city service of utilities without annexation. As a result, market driven residential subdivision demand could result in the City's existing water capacity being committed to sites in the UGA before sites within the existing city limits are ready for redevelopment.
13. The Stanwood Comprehensive Plan calls for re-vitalization of the Downtown Center and completion of the Uptown Center for employment growth and mixed use development and calls for infill residential development.
14. The proposed amendments implement the Stanwood Comprehensive Plan by providing standards that allow phasing of development within the City and the Urban Growth.
15. The ability to phase development through a "serve the city first" policy will give the City the ability to plan infrastructure investments consistent with the Growth Management Act.

Conclusions/Decision: Based upon the entire record in this matter, which shall be incorporated by this reference, the Stanwood City Council adopts the following conclusions and decisions.

1. The intent statement Section 12.45.010 is amended to focus on providing phased implementation of the Growth Management Act
  - a. Provide reasonable steps to phase implementation of GMA
  - b. Encourage growth to locate with adequate existing public facility and services
  - c. Manage growth to transform governance and phase development within UGA
  - d. Provide orderly growth of the City consistent with Comprehensive Plan
2. Section 12.45.015 is amended to require new or existing single family residential buildings within the UGB on existing lots, new subdivisions and commercial/multifamily developments to annex before receiving utility service unless there was a public health exception or prior contractual agreement.
3. Outside the UGB service would only be allowed for public health/environmental exceptions

4. The City Council would review applications for public health /environmental exceptions and determine whether evidence of public health, environment issue exists.
5. City Council findings for review of the public health exception are re-phrased and amended to include the following findings.
  - a. Impact on general public
  - b. Hardship not result of applicant's action
  - c. Hardship not merely financial
  - d. Service financially supportable at rural density and does not permit urban development
  - e. Extension consistent with sewer/water plan/other docs
  - f. NPDES permit not affected
  - g. City has adequate capacity and infrastructure
6. Section 12.45.020 is amended to add language clarifying that water or sewer hookups to pre-existing lines outside the UGA are to be handled with a utility extension agreement and would be allowed with the public health and environment exception.
7. An annexation no protest agreement is required in the event that the UGA boundary is amended in the future.
8. Section 12.45.040 is amended to clarify that code requirements for Utility Extension agreements are consistent with the policy amendments and other sections of the code.
9. When the health and environment exception applies a no protest agreement to annexation is required in the event that the UGA boundary is amended in the future.
10. Conformance to public works standards, utility plans and other standards in SMC Title 12 is required.