

**CITY OF SAMMAMISH
WASHINGTON
ORDINANCE NO. O2000-72**

**AN ORDINANCE OF THE CITY OF SAMMAMISH,
WASHINGTON, ESTABLISHING A LAND USE
MEDIATION PROGRAM**

WHEREAS, the City of Sammamish has no mechanism in place for its citizens to express their concerns about proposed land use permits except for public hearings; and

WHEREAS, the City is constrained by law from addressing issues outside the scope of the permitting process at such public hearings; and

WHEREAS, many public concerns are over issues relating to the nature of a given project and not the permits for that project; and

WHEREAS, public concerns that are not addressed by the City may lead to costly and time-consuming litigation; and

WHEREAS, in many situations, a less costly and more direct alternative for addressing these concerns would be for the permit applicant and the concerned citizens to mediate their dispute;

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

Section 1. Rules of Mediation Established. There is hereby established a Land Use Mediation Program for the City of Sammamish, as follows:

A. INTRODUCTION

1. **Purpose.** Mediation is an entirely voluntary process by which two or more parties and/or interested persons, with the assistance of an impartial person (the mediator), attempt to reach a full or partial agreement on a disputed matter. Persons participate in the mediation process only if, and only to the extent, they choose to do so. A participant is bound by the outcome of the mediation process only if that person, or his or her duly authorized representative, approves the mediated agreement. (See Section "Q", below.)

In appropriate cases, mediation may assist in the resolution of land use issues at a substantial savings in time and money to the parties, interested persons, the City of Sammamish, and the general public. Mediation is also available as an alternative to a formal appeal hearing to resolve other disputes between individuals and the City of Sammamish.

2. **Interpretation.** These rules shall be interpreted to facilitate and encourage use of the mediation process at the earliest practical time following the identification of a conflict or dispute which the affected parties or persons are unable to resolve through direct negotiation.

B. DEFINITIONS

“**Person**” includes individuals, corporations, partnerships, other formal associations, and governmental agencies.

“**Party**” means the applicant, proponent, or petitioner; the owner(s) of property subject to a hearing; the responsible city official; or any other city official with jurisdiction or review authority over a proposal or proceeding who has notified the Community Development Director in writing requesting to be a party to the proceeding.

A property owner who has authorized another individual to act as an agent for the development of a parcel of property is not a party unless he/she requests the Community Development Director to be designated as such. Persons joining in or concurring with an appeal or petition are not parties unless they have separately filed the requisite documents and fees for an appeal or petition.

“**Interested Person**” is any person who receives written notice of a proposed land use action under the requirements of the Interim Sammamish Development Code, or has requested of the responsible city official or the Community Development Director notification of proceedings or copies of orders, reports, recommendations or decisions issued in the particular case, or who participates in a hearing by providing evidence, comment or argument, or who participates in a neighborhood meeting (See Section “E”, below). The term does not include a person whose only communication is a signature on a petition or a mechanically or electronically reproduced form, or who has made a standing request for notices or documents encompassing a type of case, or hearings which relate to a geographic area.

“**Responsible City Official**” means the City of Sammamish official who has primary responsibility for coordinating the review of an application or appeal, or who issued the decision or recommendation, or took the action, which is the subject of the proceeding.

C. WHEN MEDIATION IS AVAILABLE

As to any application for a land use permit or an appeal of a land use action which is or could become the subject of a public hearing, the responsible city official, the City Council or the Community Development Director, may at their own discretion or at the request of any party or interested person request mediation. (see Section "F", below) Mediation shall occur only when it is requested or accepted by at least one party and by one additional party or interested person with an opposing position. When the issue proposed for mediation involves the disposition or other action to be taken on an application, mediation shall occur only if the affected applicant agrees to be a participant in the mediation process.

Any objection to an inconsistency between a mediation proposed to be conducted pursuant to these rules and a procedural requirement of the Sammamish Municipal Code shall be raised with the Community Development Director within ten (10) calendar days of the receipt of information that would apprise a reasonable person of such inconsistency. Objections not raised within ten (10) calendar days shall be deemed waived.

D. NOTICE OF AVAILABILITY OF MEDIATION

The City of Sammamish shall take reasonable steps to advise all persons who file applications or appeals that are within the jurisdiction of the hearing examiner that mediation of disputes is available. A "Notice of Availability of Mediation" shall be contained in or attached to application and appeal forms which are provided by the City of Sammamish and shall be contained in the initial mailing to surrounding property owners and the posted notice of every land use application within the jurisdiction of the City. A similar notice also shall be incorporated in the first notice issued by the responsible city official announcing the scheduled date of any public hearing for which mediation is available to resolve disputed issues.

E. NEIGHBORHOOD MEETINGS FOR PLAT APPLICATIONS

The applicant for a subdivision, short subdivision or Conditional Use Permit shall conduct a neighborhood meeting to discuss the proposed development prior to submission of the preliminary plat to the City. The purpose of the meeting is to receive neighborhood input and suggestions prior to submission of the application. Such a public meeting is not a mediation, and any party who participates in such a meeting may still request mediation under these rules.

At least ten days prior to the meeting, the applicant shall give notice of the date, time and location of the neighborhood meeting to the Community Development Director and to all persons who would be entitled to receive notice of the proposed plat application under the requirements of the Interim Sammamish Development Code.

The notice shall be on a form provided by the Community Development Director and shall briefly describe the proposal and its location and shall include the name, address and telephone number of a representative of the applicant who may be contacted for additional information about the proposal. Notice to the Community Development Director shall include a list of the persons and addresses notified of the neighborhood meeting.

F. REQUEST FOR MEDIATION; RESPONSES

1. Request.

a. Method. Any party or interested person may request mediation. The request shall be in writing, unless made orally at a pre-hearing conference or hearing. A request for mediation should be made promptly following the determination that the disputed issues for which mediation is proposed cannot be resolved by direct negotiation between or among the affected parties and interested persons. A request for mediation made after a hearing

has commenced will normally be granted only if all parties to the proceeding agree to participate in the mediation.

b. Cost allocation and tender. Unless otherwise agreed by the parties to the mediation, the opposing sides to a dispute shall each pay an equal share of the cost of mediation. A request for mediation shall be accompanied by a tender to the City of Sammamish of not less than one-third of the anticipated cost for a half-day mediation. Until such time as mediation costs may be set by ordinance, it is expected that the cost of a half-day mediation will be \$450.00. Therefore, the minimum amount required to be tendered with a request for mediation shall be \$150.00.

The cost of mediation is not a fee to be paid to the City of Sammamish. The tender shall be delivered to the City of Sammamish solely for transmittal to the mediator if the request for mediation is accepted. The funds tendered, or any unexpended balance thereof, shall be returned in proportionate shares to the person(s) from whom received if the request for mediation is not accepted, or if the full amount tendered is not expended.

A request for mediation may propose an alternative allocation of the cost of mediation. If an alternative cost allocation is accepted, any excess of the mediation cost tendered will be promptly returned to the party making the request for mediation.

c. Substance of request. The request for mediation shall identify with reasonable specificity the application or appeal to which it applies, the scope of the mediation proposed (including a statement of the particular issues or questions to be addressed), and an estimate of the time likely to be required to conduct and complete the mediation proposed. The request for mediation may propose inclusion of matters or issues which are beyond the scope of the pending hearing, so long as those additional matters are reasonably related to the matters in dispute and are within the control of the parties who will participate in the mediation.

d. To whom transmitted. If made in writing, the request shall be transmitted to all other parties to the proceeding, and also may be addressed to any current or prospective interested persons known to the party making the request. A copy of the request shall also be filed with the Community Development Director.

2. Response to request for mediation.

a. Substance of response. A response to a request for mediation may be made in the form of an agreement to participate in the mediation as proposed, or may propose either a more limited or an expanded mediation. The response may also propose a different allocation of the expense of mediation, time limits for the conduct of mediation, or other conditions.

b. Counter-proposals. Any response other than an agreement to participate in the mediation substantially as proposed by the person making the request shall be considered a counter-proposal and responded to in the same manner as an initial request for mediation.

c. Tender of cost. A positive response to a request for mediation shall be accompanied by a tender to the City of Sammamish of the respondent's share, if any, of the cost of a half-day mediation.

d. Response not required. No party or interested person is obliged to respond to a request for mediation. If there is no response made to a request for mediation within seven (7) calendar days, the request shall be deemed refused. No inferences shall be drawn from a refusal to participate in mediation or a failure to respond to a request for mediation. Requests to mediate and responses thereto shall be privileged and not admissible into evidence under the same rules as apply to settlement negotiations.

e. To whom transmitted. Any response to a request for mediation shall be transmitted to the person who requested the mediation, to any other persons to whom that request was addressed, and to any other persons the respondent proposes to be a participant in the mediation. A copy of the response shall also be filed with the office of the hearing examiner.

f. Technical deficiencies not a bar. Failure of a request for mediation or a response to strictly comply with this rule shall not be a bar to mediation if the intent of the affected persons is clear and the costs of mediation are provided for adequately.

G. ATTENDANCE; REPRESENTATION

A party to the mediation shall be present in person or represented by a person or persons who have the requisite authority to enter into an agreement which implements or binds the party to the results of the mediation. A request to mediate, or acceptance of such request, shall constitute an agreement to attend in person or be represented at the mediation by an individual or individuals who shall possess the authority to enter into a binding agreement with respect to any matters within the scope of the issues agreed to be mediated.

Parties to a mediation may participate directly or through a designated representative. Two or more parties or interested persons who share substantially similar interests or concerns with respect to the matter being mediated may participate through a single representative designated or approved by them unless the mediator determines that individual participation will facilitate the making of a mediated agreement.

H. WHEN MEDIATION MAY OCCUR

1. As a matter of right. Mediation is available as a matter of right upon agreement by all parties to the proceeding to address through mediation all issues in dispute. Mediation shall also be approved as a matter of right upon agreement by all parties to mediate any one or more (but not all) issues in dispute, provided that the agreement to engage in mediation is executed and filed with the Community Development Director fourteen (14) or more days prior to the scheduled opening of the hearing.

2. At the Community Development Director's discretion. Mediation may be approved by the Community Development Director if any party, and any one or more other parties or interested persons with an opposing position, agree to mediate any substantial issue in dispute. In acting upon a request to approve a partial mediation, the Community Development Director shall consider, to the extent applicable, the following factors:

- a. Whether the issue(s) to be mediated affects primarily the private interests of the parties to the proposed mediation, or is a matter of public interest;
- b. If the persons seeking mediation appear to represent substantially all of the persons likely to be affected by or interested in the matters proposed for mediation;
- c. Will the proposed mediation, if successful, be likely to expedite final action on the underlying application or appeal;
- d. Are the costs to the proposed parties to the mediation, as well as to other parties and interested persons, likely to be reduced if the mediation occurs;
- e. The timeliness of the request for mediation, and the effect which granting the request would have on previously established schedules of other parties, interested persons, and the office of the hearing examiner;
- f. The probability of participation by City staff in the mediation process, if such participation appears necessary to accomplish the purpose of the proposed mediation; and
- g. Such other facts or circumstances as bear upon the purposes and objectives of the office of the hearing examiner and these rules.

I. TIME OF MEDIATION

Mediation should normally be accomplished within a half day, and rarely exceed a full day, unless additional information or expertise which is not available that day is identified by the mediator as necessary to a successful mediation. Unless otherwise agreed by all parties to the mediation, as well as all parties to the pending proceeding and the Community Development Director, the mediation session shall occur within twenty-one (21) calendar days of the execution of the agreement to mediate or the date of approval of the mediation by the Community Development Director, whichever is later, and the entire process shall be concluded within thirty (30) calendar days of its commencement.

J. WAIVER OF HEARING AND REVIEW TIME LIMITS

A request by a party for mediation, or agreement by a party to participate in mediation, shall constitute an agreement by such party (or parties) to stay all time limits applicable to the affected permit review and hearing processes from the date of the first proposal to mediate until

the first business day following the receipt by the Community Development Director of the mediator's report. If any party to the proceeding, who is not a participant in the proposed mediation, does not agree to a similar waiver of time limits, the Community Development Director may deny or limit the proposed mediation to assure that applicable time limits for action on the affected application or appeal are not exceeded.

K. SELECTION OF MEDIATOR

1. Selection by the parties. A mediator shall be selected by the parties to the mediation.

2. List of available mediators. Solely as a convenience to the public at large, the Community Development Director will maintain a list of mediators who appear to be qualified by training or experience to conduct mediation of matters which are within the jurisdiction of the hearing examiner. Any person who desires to be on the list shall submit a resume or other statement of qualifications to the Community Development Director. Inclusion of a person on the list of mediators maintained by the Community Development Director shall not constitute a warranty or representation by the City of Sammamish that such person is in fact qualified to conduct mediation in a particular proceeding or type of proceeding. The parties to the mediation shall be the sole judges of the qualifications of the person whom they select as a mediator, whether that person is or is not on the list maintained by the Community Development Director.

The approval of the person selected as a mediator by the Community Development Director is not required. In no event, however, shall a current employee of the City of Sammamish or any person who is currently or contemporaneously acting as an agent or contractor for the City be designated as a mediator.

L. COSTS OF MEDIATION

The City of Sammamish shall have no responsibility for the payment of the costs of mediation, except for the transfer of funds deposited with the City of Sammamish with a request for mediation or a response. The City of Sammamish shall pay the costs, if any, allocable to a responsible city official that participates in the mediation and has agreed, in writing, to pay a specified proportion or amount of the costs of mediation.

M. NOTICE OF MEDIATION

1. Notice to parties to the mediation. It is the responsibility of the parties to the mediation and the mediator to assure that all parties to the mediation and the Community Development Director have reasonable notice of the time and place of the mediation session.

2. Notice to all other parties and interested persons. Upon receipt of notice by the Community Development Director that a mediator has been selected and of the time and place set for the mediation session, the Community Development Director shall give notice to all other parties and known interested persons, if any, that a mediation session has been scheduled. The notice by the Community Development Director shall give the names of the parties to the mediation.

3. Notice of outcome. At the conclusion of the mediation, the Community Development Director shall give notice to all parties and known interested persons of the outcome of the mediation.

N. AUTHORITY OF THE MEDIATOR

The mediator shall have the authority to:

1. Schedule, recess, adjourn, and terminate mediation sessions;
2. Keep order;
3. Request information of the parties, experts or other persons who are present, and ask questions to clarify issues and positions;
4. Request the presence of additional persons; and
5. Generally conduct the mediation in a manner designed to resolve the controverted matters.

Resolutions to the matters in controversy may be proposed by the mediator, but no decision may be imposed by the mediator on participants.

O. USE OF EXPERTS

The mediator may determine, with or without request by a party, that a mediated agreement would be facilitated by the receipt of expert information during the mediation process. If requested by the mediator, the parties to the mediation shall make available expert reports, or arrange for the attendance of their anticipated expert witnesses to provide information at the mediation. Alternatively, one or more independent experts on issues relevant to the mediation may be identified by the mediator for that purpose. Experts provided by a party shall be compensated by that party; responsibility for payment of any independent experts shall be assigned in a manner determined by the mediator and agreed to by those parties to the mediation who will be obliged by that determination to contribute to the cost. No expert, whether provided by a party or independent, shall participate in the mediation with respect to any matter outside the scope of his or her expertise.

P. GENERAL ORDER OF MEDIATION

Unless otherwise determined by the mediator, the order of proceedings at the mediation shall be:

1. Introduction by mediator.
2. Introduction of participants.
3. Opening statements of interest and position by each participant. After hearing initial statements of the interests of all parties to the mediation, the mediator may encourage the designation of a single representative by parties who share substantially similar interests or concerns. (See Section "G", above.)
4. Questions by the mediator to clarify issues, interests, and positions.
5. Identification of issues to be discussed.
6. Discussion of identified issues and other efforts to reach agreement. This may include individual caucuses by the mediator with the parties to the mediation in separate sessions, the written or oral conveyance of proposals by the mediator to other parties to the mediation, the transmittal of responses, and the making of suggestions or proposals by the mediator to the parties separately or jointly.
7. Identification of matters agreed upon.
8. Clarification of agreement by mediator.
9. Written documentation of agreement prepared by the mediator.
10. Signature to agreement by the parties to the mediation who agree thereto.
11. Transmittal of report by the mediator to the Community Development Director and responsible city official.

The foregoing order of proceedings may be modified at any time by agreement of the parties or order of the mediator.

Q. AGREEMENTS RESULTING FROM MEDIATION

1. Execution and notice. All agreements resulting from mediation shall be reduced to writing by the mediator and signed by the persons who have agreed thereto or their authorized representatives. Fully executed copies shall be filed by the mediator with the responsible city official and the Community Development Director.
2. Effect of agreement.

a. Appeals. If the mediated agreement resolves all issues of all parties to an appeal, the mediated agreement shall include a stipulation and waiver of notice authorizing entry of an order dismissing the appeal. An order of dismissal incorporating the mediated agreement shall be promptly entered by the hearing examiner.

If the agreement is not executed by all parties to an appeal, the agreement shall be binding only upon those parties who have agreed thereto. For appeals not fully resolved, the mediator may, with the consent of the parties to the mediation, prepare and file a recommended pre-hearing order which may be adopted or modified by the hearing examiner to govern future proceedings.

b. Applications and other matters. With respect to matters other than appeals for which a hearing examiner is required to make findings and conclusions concerning the public health, safety, and welfare as defined by applicable laws and ordinances, the mediated agreement shall be considered as a joint recommendation to the Community Development Director by the parties to the mediation. The mediated agreement shall be accorded substantial weight in resolving issues between or among the parties to the mediated agreement, and shall be applied to the agreeing parties unless it would be clearly erroneous to do so.

Except for an agreement by an applicant to withdraw or modify an application, a mediated agreement shall not be used to obviate the need for, nor limit the scope of, any public hearing required by law. Mediation is not a substitute for the lawful exercise of discretion by the City Council in performing its legislative and quasi-judicial responsibilities, nor for the performance of the duties and responsibilities of the City of Sammamish Hearing Examiner and responsible city officials.

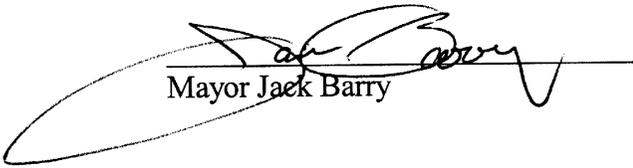
c. Effect on other parties and persons. An agreement arrived at through mediation may be considered by a hearing examiner with respect to parties or persons who did not agree to the mediated agreement only as evidence that the mediated resolution of the disputed matter may be feasible or reasonable. The evidentiary use of the agreement does not preclude any party or interested person who is not bound by the agreement from introducing other evidence and argument that disputes the reasonableness or feasibility of the agreement or supports an alternative resolution of the dispute.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force as of January 1, 2001

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 15th DAY OF NOVEMBER 2000.

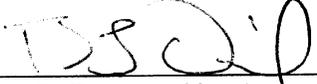
CITY OF SAMMAMISH


Mayor Jack Barry

ATTEST/AUTHENTICATED:


Melonie Anderson, City Clerk

Approved as to form:


Bruce L. Disend, City Attorney

Filed with the City Clerk:	September 29, 2000
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Date of Publication:	November 18, 2000
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