AN ORDINANCE OF THE CITY OF SAMMAMISH, WASHINGTON, AMENDING SECTION 21A.05 OF THE SAMMAMISH MUNICIPAL CODE TO REFINE AND CLARIFY ADMINISTRATIVE PROCEDURES RELATED TO THE ISSUANCE OF INTERPRETATIONS OF THE DEVELOPMENT CODE, AND AMENDING CERTAIN OTHER CHAPTERS OF THE CITY OF SAMMAMISH MUNICIPAL CODE FOR CONSISTENCY WITH SECTION 21A.05

WHEREAS, the City Council adopted the City’s Comprehensive Plan on September 16, 2003; and

WHEREAS, pursuant to RCW 36.70A.020, the City is required to plan under the adopted GMA goals adopted to guide the development and adoption of comprehensive plans and development regulations; and

WHEREAS, the City Council adopted the City of Sammamish Municipal Code on December 2, 2003; and

WHEREAS, the City of Sammamish entered into a settlement agreement, entitled “Commons Settlement Agreement”, which required that the City develop procedures that would include an appeal to the City hearing examiner, for interpretation of the City’s development codes; and

WHEREAS, the existing procedures for issuing an interpretation of the City’s development codes are contained with chapters 5 and 100 of Title 21A of the Sammamish Municipal Code; and

WHEREAS, the City Council has considered the recommended amendments to the Sammamish Municipal Code; and

WHEREAS, the City Council has considered the goals of the GMA as set forth in RCW 36.70A.020 and the amendments attached to this ordinance reflect the City’s balancing of the public interests under the planning goals of the GMA.

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

Section 1. Amendments to the City of Sammamish Municipal Code Adopted. The amendments to the City of Sammamish Municipal Code, as set forth in Attachments “A” to this ordinance, are hereby adopted.
Section 2. Interpretation. The City Council authorizes the applicable director to administratively interpret these provisions as necessary to implement the intent of the City Council.

Section 3. 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 preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 20th DAY OF JANUARY, 2009.

CITY OF SAMMAMISH

Mayor Donald J. Gerend

ATTEST/AUTHENTICATED:

Melanie Anderson, City Clerk

Approved as to form:

Bruce L. Disend, City Attorney

Filed with the City Clerk: December 10, 2008
Public Hearing: December 16, 2008
<table>
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<tr>
<th>First Reading:</th>
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Proposed Sammamish Municipal Code Amendments:
Interpretation Code Amendments

Amendment List:
SMC 21A.05.055  - Interpretation – Applicability and Intent
SMC 21A.05.060  - Interpretation – General
SMC 21A.05.070  - Interpretation – Standard industrial classification
SMC 21A.05.080  - Interpretation – Zoning maps
SMC 21A.05.085  - Interpretation – Public Request – acknowledgement - notice
SMC 21A.05.090  - Administration and review authority
SMC 21A.05.095  - Interpretation – Review
SMC 21A.15.XXX  - Code Interpretation
SMC 21A.15.XXX  - Development Regulation
SMC 21A.100.050  - Director review – Decision regarding proposal.
SMC 21A.100.055  - Director review - Procedure for issuance of interpretations.
SMC 21A.100.060  - Director review – Decision final unless appealed.

Plain Text – Language existing within the Sammamish Municipal Code that will not change
Underlined Text – Language proposed to be added to the Sammamish Municipal Code
Strikethrough Text – Language proposed to be deleted from the Sammamish Municipal Code
21A.05.055  Interpretation – Applicability and Intent

(1) Intent. This chapter and SMC 21A.100 establish the procedure by which the City of Sammamish will render a formal interpretation of a development regulation. The purpose of such an interpretation includes clarifying conflicting or ambiguous provisions in the City’s development regulations.

(2) Applicability. This chapter and SMC 21A.100 authorize the director to issue interpretations on regulations related to controls placed on development or land use activities by the City, including but not limited to, zoning ordinances, critical areas ordinances, shoreline master program requirements, official controls, subdivision ordinances, and binding site plan ordinances, together with any amendments thereto. Nothing in this chapter and SMC 21A.100 shall prevent interpretations related to the applicability of specific regulatory requirements contained within the Sammamish Municipal Code to individual projects. Further, nothing in this chapter or SMC 21A.100 shall preclude the director or Hearing Examiner from interpreting a regulatory requirement during the course of a public hearing.

21A.05.060  Interpretation – General.

(1) In case of inconsistency or conflict, regulations, conditions, or procedural requirements that are specific to an individual land use shall supersede regulations, conditions, or procedural requirements of general application.

(2) A land use includes the necessary structures to support the use unless specifically prohibited or the context clearly indicates otherwise.

(3) In case of any ambiguity, difference of meaning, or implication between the text and any heading, caption, or illustration, the text and the permitted use tables in Chapter 21A.20 SMC shall control. All applicable requirements shall govern a use whether or not they are cross-referenced in a text section or land use table.

(4) Unless the context clearly indicates otherwise, words in the present tense shall include past and future tense, and words in the singular shall include the plural, or vice versa. Except for words and terms defined in this title, all words and terms used in this title shall have their customary meanings.

(5) A written interpretation by the director of the provisions of the Sammamish Municipal Code clarifies conflicting or ambiguous wording, or the scope or intent of the provisions of the code. The written interpretation shall control application of the code sections discussed in it to any specific land use application. Written interpretations issued for regulatory requirements that have been legislatively modified, repealed, or otherwise substantially changed, shall be considered null and void.

(6) Any written interpretation shall not be applied retroactively, unless specifically required by the terms of the interpretation.

21A.05.070  Interpretation – Standard industrial classification.

(1) All references to the standard industrial classification (SIC) are to the titles and descriptions found in the Standard Industrial Classification Manual, 1987 Edition, prepared by United States Office of Management and Budget that is hereby adopted by reference. The SIC is used, with modifications to suit the purposes of this title, to list and define land uses authorized to be located in the various zones consistent with the comprehensive plan land use map.
The SIC categorizes each land use under a general two-digit major group number, or under a more specific three- or four-digit industry group or industry number. A use shown on a land use table with a two-digit number includes all uses listed in the SIC for that major group. A use shown with a three-digit or four-digit number includes only the uses listed in the SIC for that industry group or industry.

An asterisk (*) in the SIC number column of a land use table means that the SIC definition for the specific land use identified has been modified by this title. The definition may include one or more SIC subclassification numbers, or may define the use without reference to the SIC.

The director shall determine whether a proposed land use not specifically listed in a land use table or specifically included within a SIC classification is allowed in a zone. The director’s determination shall be based on whether or not permitting the proposed use in a particular zone is consistent with the purposes of this title and the zone’s purpose as set forth in Chapter 21A.10 SMC, by considering the following factors:

(a) The physical characteristics of the use and its supporting structures, including but not limited to scale, traffic and other impacts, and hours of operation;
(b) Whether or not the use complements or is compatible with other uses permitted in the zone; and
(c) The SIC classification, if any, assigned to the business or other entity that will carry on the primary activities of the proposed use.

21A.05.080 Interpretation – Zoning maps.
Where uncertainties exist as to the location of any zone boundaries, the following rules of interpretation, listed in priority order, shall apply:

(1) Where boundaries are indicated as paralleling the approximate centerline of the street right-of-way, the zone shall extend to each adjacent boundary of the right-of-way. Non-road-related uses by adjacent property owners, if allowed in the right-of-way, shall meet the same zoning requirements regulating the property owners lot;

(2) Where boundaries are indicated as approximately following lot lines, the actual lot lines shall be considered the boundaries;

(3) Where boundaries are indicated as following lines of ordinary high water, or government meander line, the lines shall be considered to be the actual boundaries. If these lines should change the boundaries shall be considered to move with them; and

(4) If none of the rules of interpretation described in subsections (1) through (3) of this section apply, then the zoning boundary shall be determined by map scaling.

21A.05.085 Interpretation – public request – acknowledgement - notice.

(1) A person may request a code interpretation by submitting a request in accordance with this chapter. The director may also issue a code interpretation on the director’s own initiative.

(2) A request for a code interpretation must be submitted in writing to the director.

(3) A code interpretation request must:
   (a) Be in writing and shall be clearly labeled – “Request for Code Interpretation.” Failure to satisfy this requirement relieves the director of any obligation to acknowledge or otherwise process the request;
(b) Identify the person seeking the code interpretation and provide an address to which correspondence regarding the requested code interpretation should be mailed;

(c) Identify the specific section or sections of the City of Sammamish’s development regulations for which an interpretation is requested;

(d) Identify the parcel or site, if the code interpretation request involves a particular parcel of property or site;

(e) Identify the code enforcement action, if the code interpretation request involves a code enforcement case;

(f) Be accompanied by the fee required as set forth by the adopted fee resolution; and

(g) Be limited to a single subject, which may require interpretation of one or more code sections.

(4) Within twenty-one days after receiving a code interpretation request, the director shall acknowledge receipt of the request. The director shall mail the acknowledgment to the person submitting the request at the address provided in the request. The acknowledgment shall include the following information, as applicable:

1. If the director determines that the code interpretation request does not contain the information required under this section, the director shall identify in the acknowledgment the deficiencies in the code interpretation request. In such a situation, the director is under no obligation to process the code interpretation request until a code interpretation request complying with this chapter is submitted;

2. If the director determines that the code interpretation request is ambiguous or unclear, the director may request that the person making the request to clarify the request. The director is under no obligation to process the code interpretation request until an adequately clarified code interpretation request is submitted;

3. If the director determines that the code interpretation request presents substantially the same issue as is pending before an adjudicatory body, such as the City hearing examiner, the City council when acting as a quasi-judicial body, any other quasi-judicial agency or any local, state or federal court, the director shall so state in the acknowledgment. The director is then under no obligation to further process the code interpretation request; and

4. If a code interpretation is requested regarding an issue that the director has previously addressed through a code interpretation, the director is not obligated to issue another code interpretation and shall so state in the acknowledgment required by this section and shall identify the previous code interpretation.

(b) If the director determines that the code interpretation request relates to a particular parcel of property, the director shall cause notice of the code interpretation request to be given to the taxpayer of record for the subject parcel.

(c) If the code interpretation request relates to a specific development project pending before the City, the director shall cause notice of the code interpretation request to be given to all parties of record for that project, including the applicant.
(d) If the code interpretation is initiated by the City, the director shall cause notice of the code interpretation to be posted on the City’s website and at City Hall in addition to any other notice required by this section.

(e) The notice required under this section must include a copy of any code interpretation request and a copy of the director’s acknowledgment. Notice to property tax payers, applicants, or persons requesting an interpretation, may be by United States mail or other appropriate method of delivery.

21A.05.090 Administration and review authority.

(1) The examiner shall have authority to hold public hearings and make decisions and recommendations on reclassifications, subdivisions and other development proposals, and appeals, as set forth in Chapter 21A.100 SMC.

(2) The director shall have the authority to grant, condition or deny applications for variances and conditional use permits, unless a public hearing is required as set forth in Chapter 21A.100 SMC, in which case this authority shall be exercised by the hearing examiner.

(3) The director shall have the authority to issue a written code interpretation in accordance with the procedures contained within Chapters 21A.05 and 21A.100 SMC. The director shall issue such interpretations as he or she deems necessary, or upon the request of any person, in cases of any ambiguity, difference of meaning, unclear procedural requirements, or other unclear regulatory requirements of the SMC.

(4) An interpretation related to a development proposal must be requested prior to the date of expiration of any applicable administrative appeal period for a land use decision on the application to which the request relates.

(5) The department shall have authority to grant, condition, or deny commercial and residential building permits, grading and clearing permits, and temporary use permits in accordance with the procedures set forth in Chapter 21A.100 SMC.

(6) Except for other agencies with authority to implement specific provisions of this title, the department shall have the sole authority to issue official interpretations of this title, pursuant to Chapter 2.55 SMC.

21A.05.095 Review.

(1) Decision Basis. In issuing an interpretation consistent with this chapter, the director may consider the following:

(a) The purpose and intent statements of the chapters in question;

(b) Consistency with other regulatory requirements governing the same or a similar situation;

(c) The legislative direction of the City Council, if any, provided with the adoption the code sections in question;

(d) The policy direction provided by the Sammamish Comprehensive Plan, or other adopted policy documents, as amended;

(e) Relevant judicial actions related to the interpretation;

(f) Expected result or effect of the interpretation; and,

(g) Previous implementation of the regulatory requirements governing the situation.

(2) Content. Consistent with the requirements of Chapter 21A.100 SMC, the director shall provide facts, findings, and conclusions supporting the interpretation. At a minimum these shall include the following:
(a) A brief summary of the issue that requires an interpretation by the director;
(b) The context of the interpretation, if not included or implied from the summary;
(c) Citation of the decision basis from subsection (1) of this section; and,
(d) The interpretation, signature, and date.

**21A.15.XXX “Code Interpretation”** means a formal statement regarding the meaning or requirements of a particular provision in the City of Sammamish’s development regulations.

**21A.15.XXX “Development Regulation”** means the controls placed on development or land use activities by the City, including but not limited to, zoning ordinances, critical areas ordinances, shoreline master program requirements, official controls, subdivision ordinances, and binding site plan ordinances, together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in an ordinance by the City.

**21A.100.040 Director review – Actions subject to review.**
Applications for variances, exceptions under SMC 21A.50.070(4), interpretations under SMC 21A.05, and conditional uses shall be subject to the director review procedures set forth in this chapter.

**21A.100.050 Director review – Decision regarding proposal.**
(1) Decisions regarding the approval or denial of proposals subject to director review shall be based upon compliance with the required showings of Chapter 21A.110 SMC, or in the case of interpretations, based upon compliance with the requirements of Chapter 21A.05 SMC.
(2) The written decision contained in the record shall show:
   (a) Facts, findings and conclusions supporting the decision and demonstrating compliance with the applicable decision criteria; and
   (b) Any conditions and limitations imposed, if the request is granted.
(3) The director shall mail a copy of the written decision to the applicant and to all parties of record.
(4) Rules. The director shall adopt rules for the transaction of business and shall keep a public record of his or her actions, findings, waivers and determinations. (Ord. O99-29 § 1)

**21A.100.055 Director Review - Procedure for issuance of interpretations.**
(1) A person may submit written analysis and supporting documentation to assist the director in analyzing a code interpretation request.
The director may conduct research or investigation as the director deems necessary to resolve the issue presented in the code interpretation request and may refer the request to department staff and other City staff for review and analysis.

A code interpretation must be in writing, clearly labeled—"Code Interpretation", and describe the basis for the interpretation pursuant to SMC 21A.05.095.

The director shall issue a code interpretation within sixty days after receiving the code interpretation request, unless the director determines that based on the unusual nature of the issue additional time is necessary to respond to the request. If the code interpretation request relates to a specific development proposal that is pending before the department of community development or relates to a code enforcement action that is subject to appeal, the code interpretation shall become final when the department of community development issues its final decision on the underlying development proposal for a type 1 or 2 decision, the department makes its recommendation on a type 3 or 4 decision or, based on the code interpretation, the department issues a notice and order, citation or stop work order under SMC Title 23. If the director determines that a code interpretation request does not relate to a specific development proposal that is currently pending before the City or to a code enforcement action, the code interpretation is final when issued by the director.

The director shall maintain a list of indexed code interpretations for public inspection.

The director shall mail copies of the code interpretation to the following:

(a) The person who requested the code interpretation;
(b) If the director determines that the code interpretation relates to a specific development proposal that is pending before the City, the applicant and all other parties of record for that proposal;
(c) If the director determines the code interpretation relates to a specific parcel of property, the taxpayer of record for that parcel; and
(d) Any person who has submitted written comments regarding the director's review of the code interpretation request.

When it is final, a code interpretation remains in effect until it is rescinded in writing by the director or it is modified or reversed on appeal by the hearing examiner, the City council or an adjudicatory body.

A code interpretation issued by the director governs all staff review and decisions unless withdrawn, or modified by the director or modified or reversed on appeal by the City hearing examiner, City council, or an adjudicatory body.

21A.100.060 Director review – Decision and interpretation final unless appealed.

(1) The decision of the director shall be final unless the applicant or an aggrieved party files an appeal to the hearing examiner pursuant to Chapter 20.10 SMC.

(2) The interpretation of the director shall be final except for any appeal allowed as follows:
   (a) If the director determines that a code interpretation is necessary for review of a specific development proposal that is currently before the department, and the development project is subject to an administrative appeal, any appeal of the code interpretation shall be consolidated with and is subject to the same appeal process as the underlying development project. If the director determines that a code interpretation request relates to a code enforcement action, any appeal of the code interpretation shall be consolidated with and is subject to the same appeal process as the underlying development proposal.
as the code enforcement action. If the City of Sammamish hearing examiner makes the City’s final decision with regard to the underlying permit, other approval type or code enforcement action regarding which the interpretation was requested, the hearing examiner’s decision constitutes the City’s final decision on the code interpretation request. If the City council, acting as a quasi-judicial body, makes the City’s final decision with regard to the underlying permit or other approval type regarding which the interpretation was requested, the City council’s decision constitutes the City’s final decision on the code interpretation request.

(b) If the director issues a code interpretation that is not associated with one of the items described in subsection (a) above, the interpretation may be appealed to the hearing examiner within twenty one days of the date the notice of the interpretation is provided.

(2) The hearing examiner shall review and make decisions based upon information contained in the written appeal and the record.

(3) The hearing examiner’s decision may affirm, modify, or reverse the decision of the director.

(4) As provided by SMC 20.10.240(1) and (2):
   (a) The hearing examiner shall render a decision within 10 days of the closing of hearing; and  
   (b) The decision shall be final unless appealed under the provisions of SMC 20.10.250(1).

(5) Establishment of any use or activity authorized pursuant to a conditional use permit or variance shall occur within four years of the effective date of the decision for such permit or variance; provided, that for schools this period shall be five years. This period may be extended for one additional year by the director if the applicant has submitted the applications necessary to establish the use or activity and has provided written justification for the extension.

(6) For the purpose of this section, “establishment” shall occur upon the issuance of all local permit(s) for on-site improvements needed to begin the authorized use or activity; provided, that the conditions or improvements required by such permits are completed within the timeframes of said permits.

(7) Once a use, activity or improvement allowed by a conditional use permit or variance has been established, it may continue as long as all conditions of permit issuance are met.  
(Ord. O99-29 § 1)