



*Burien*  
WASHINGTON

**PLANNING COMMISSION AGENDA**  
January 24, 2012, 7:00 p.m.  
Multipurpose Room/Council Chamber  
Burien City Hall, 400 SW 152<sup>nd</sup> Street  
Burien, Washington 98166

**This meeting can be watched live on Burien Cable Channel 21 or  
streaming live and archived video on [www.burienmedia.org](http://www.burienmedia.org)**

**1. ROLL CALL**

**2. AGENDA CONFIRMATION**

**3. PUBLIC COMMENT** Public comment will be accepted on topics not scheduled for a public hearing.

**4. APPROVAL OF MINUTES** None

**5. NEW BUSINESS** None

**6. OLD BUSINESS** a. Discussion of Zoning Code Amendments (BMC 19.65-Procedures)

**7. FUNCTIONAL PLANNING UPDATES** a. Transportation Master Plan, Parks Recreation and Open Space Plan, Drainage Master Plan

**8. PLANNING COMMISSION COMMUNICATIONS**

**9. DIRECTOR'S REPORT**

**10. ADJOURNMENT**

**Future Agendas (Tentative)** February 14, 2012:  
• Public Hearing and possible recommendation on Zoning Code Amendments  
February 28, 2012:  
• To be determined

Planning Commissioners

Jim Clingan (Chair)

Ray Helms

Nancy Tosta (Vice Chair)

Greg Duff  
Brooks Stanfield

Rachel Pizarro  
John Upthegrove

**CITY OF BURIEN, WASHINGTON  
MEMORANDUM**

**DATE:** January 17, 2012

**TO:** Burien Planning Commission

**FROM:** Scott Greenberg, AICP  
Community Development Director

**SUBJECT:** Draft Zoning Code Amendments—BMC 19.65 Procedures

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In December, 2011, we presented a package of Zoning Code amendments for Commission review. These amendments will be back before the Commission in February.

The next set of amendments for Commission consideration and discussion is to BMC 19.65, which establishes procedures for land use approvals, Comprehensive Plan amendments, Zoning Code amendments and rezones. We are asking the Commission for any initial comments and questions on the attached draft amendments.

The proposed amendments to BMC 19.65 will:

- Update references to State law or other Zoning Code sections
- Eliminate redundancies with BMC 14.10 (SEPA procedures)
- Combine redundant “expiration of approvals” sections
- Generally clarify language
- Separate “area-wide rezone” and “site-specific rezone” into separate processes with new and updated decision criteria.
- Change timing and process for Comprehensive Plan amendments (Note: Changes in timing and deadlines to be effective starting in 2013).
- Create “docketing criteria” for Comprehensive Plan amendments.
- Clarify decision criteria for Comprehensive Plan amendments

A public hearing on the attached draft as well as the package you reviewed in December has been scheduled for February 14. Please contact me if you have any questions.

## **19.65 Procedures-(Amendments Draft 1-13-12)**

19.65.010	User Guide
19.65.015	Purpose and Scope
19.65.017	Exemptions
19.65.020	Framework for Decisions
19.65.025	Pre-application Meeting
19.65.030	Applications
19.65.035	Notice of Complete Application
19.65.040	Notice of Application
19.65.045	Notice of Open Record Predecision Hearing
19.65.050	Project Timelines
19.65.055	Notice of Decision
19.65.057	Modification of Decision
19.65.060	Judicial Appeal
19.65.063	Expiration of Approvals
19.65.065	Type 1 Decisions
19.65.070	Type 2 Decisions
19.65.075	Type 3 Decisions
19.65.080	Type 4 Decisions
19.65.085	Variances
19.65.090	Rezoning
19.65.095	Comprehensive Plan Amendments
19.65.100	Zoning Code Amendments
19.65.105	Administrative Design Review
19.65.110	Repealed

### **19.65.010 User guide.**

Various places in this Code indicate that certain developments, activities, permits or *uses* are permitted only if approved through a Type 1, 2, 3 or 4 review process. If you are interested in obtaining approval for something requiring a Type 1, 2, 3 or 4 decision, you should read this chapter. In general, sections .020 through ~~.060-063~~ apply to all Type 1, 2 and 3 reviews. Sections .065 through .080 apply, as applicable to Type 1, 2, 3 or 4 reviews. Section .085 applies to requests for variance of certain provisions of this Code, which is a Type 1 decision. Section .090 applies to rezoning of land (changing the City's zoning map), which is ~~also~~ a Type 3 or Type 4 decision. Section .095 applies to changing the text or map of the City's Comprehensive Plan, which is ~~also~~ a Type 4 decision. Section .100 applies to changing the text of the City's Zoning Code, which is ~~also~~ a Type 4 decision. Section .105 applies to administrative design review, which is either an administrative or Type 1 decision. [Ord. 479 §1, 2007, Ord. 396 §1, 2003]

### **19.65.015 Purpose and scope.**

The purpose of this chapter is to establish standard procedures for Type 1, 2, 3 and 4 decisions made by the City of Burien. The procedures are designed to promote timely and informed public participation, eliminate redundancy in the application, permit review and appeal processes, minimize delay and expense, and result in development approvals that further City goals and policies as set forth in the Comprehensive Plan. As required by RCW 36.70B.060, these procedures provide for an integrated and consolidated land use permit process. The procedures integrate the environmental review process with the procedures for review of land use decisions and provide for the consolidation of appeal processes for land use decisions. This chapter also provides review

procedures and criteria for variances, rezones, Comprehensive Plan amendments, Zoning Code amendments, and administrative design review. [Ord. 479 §1, 2007, Ord. 396 §1, 2003]

#### 19.65.017 Exemptions.

- A. The following permits and approvals are exempt from the provisions of this Chapter and from RCW 36.70B.060 through 36.70B.090-080 and RCW 36.70B.110 through 36.70B.130: landmark designations, street vacations, street use permits and right-of-way permits.
- B. The following permits and approvals are exempt from the provisions of this Chapter and from RCW 36.70B.060 and RCW 36.70B.110 through 36.70B.130: building and other construction permits, lot line adjustments, final plats, or similar administrative approvals categorically exempt from SEPA (Chapter 43.21C RCW and BMC 14.10) ~~and Ordinance 220, as amended, or permits/approvals for which environmental review has been completed in connection with other project permits are excluded from the following procedures:~~
  - ~~A. Determination of completeness (RCW 36.70B.060 and BMC 19.65.035).~~
  - ~~B. Notice of application (RCW 36.70B.060 and BMC 19.65.040).~~
  - ~~C. Except as provided in RCW 36.70B.140, optional consolidated project permit review processing (RCW 36.70B.060).~~
  - ~~D. Joint public hearings (RCW 36.70B.060).~~
  - ~~E. Single report stating that all of the decisions and recommendations made as of the date of the report do not require an open record hearing (RCW 36.70B.060).~~

~~Notice of decision (RCW 36.70B.060 and BMC 19.65.055).~~ [Ord. 313 §1, 2000]

#### 19.65.020 Framework for decisions.

1. Land use decisions are classified into three processes (Types 1, 2 and 3) based on who makes the decision, the amount of discretion exercised by the decision maker, the level of impact associated with the decision, the amount and type of public input sought, and the type of appeal opportunity. The *Director* shall determine the proper procedure for all land use decisions. If there is a question as to the appropriate type of procedure, the *Director* shall resolve it in favor of the higher numbered procedure. An application involving two or more decisions shall be processed collectively under the highest numbered procedure required for any of the requested applications.
2. SEPA threshold determinations shall be processed as outlined in BMC 14.10 ~~always be processed as a Type 1 decision, regardless of the process required for review of the underlying action. An appeal of a SEPA threshold determination shall be processed in conjunction with and follow the procedures for appeal of the underlying action. If the underlying action does not require a Type 2, 3 or 4 decision, then appeal of a SEPA threshold determination shall follow the procedures for appeal of a Type 1 decision.~~
3. Type 1 decisions are administrative decisions made by the *Director*. Type 2 decisions are quasi-judicial decisions made by the Hearing Examiner following a recommendation by the *Director* and an open record hearing. Type 3 decisions are quasi-judicial decisions made by the City Council based on an open record hearing and recommendation by the Hearing Examiner. See Table 19.65.020-1 for a summary of these processes.

4. Type 4 decisions are not land use decisions, but are legislative non-project decisions. Type 4 decisions are made by the City Council following a public hearing and recommendation by the Planning Commission, under its authority to establish policies and regulations regarding future private and public development and management of public lands. See Table 19.65.020-1 for a summary of the Type 4 process.

**TABLE 19.65.020-1**

	LAND USE DECISIONS			LEGISLATIVE DECISION
	Type 1 (see BMC 19.65.065)	Type 2 (see BMC 19.65.070)	Type 3 (see BMC 19.65.075)	Type 4 (see BMC 19.65.080)
Public hearing held by:	None	Hearing Examiner (Open Record Hearing)	Hearing Examiner (Open Record Hearing)	Planning Commission
Decisionmaker:	<i>Director</i>	Hearing Examiner	City Council (Closed Record Hearing or Meeting)	City Council
City appeal heard by:	Hearing Examiner (Open Record Appeal)	City Council (Closed Record Appeal)	None	None
State appeal heard by:*	Superior Court	Superior Court	Superior Court	Growth Management Hearings Board

\*--Shoreline management permits must first be appealed to State Shorelines Hearing Board.

**19.65.025 Pre-application meeting.**

1. A pre-application meeting is required prior to submitting an application for Type 1, 2 and 3 decisions and is strongly encouraged for other decisions. The purpose of a pre-application meeting is to discuss the nature of the proposed development, application and permit requirements, fees, review process and schedule, and applicable plans, policies and regulations. Upon written request from the *applicant*, the *Director* may waive the pre-application meeting for a minor project or if the *applicant* is familiar with City requirements and procedures.

2. The request for a pre-application meeting shall be submitted to the Department of Community Development on an application form provided by the Department of Community Development. The information requested on the form must be completed and all information submitted prior to the Department scheduling the meeting.

**19.65.030 Applications.**

1. Who may apply.

A. The *applicant* may apply for any Type 1, 2, or 3 decision.

B. A property owner may apply for a Type 4 rezone of his or her property.

C. The City Council, Planning Commission or the *Director* of any City department may initiate a Type 4 decision.

D. Any person may request an interpretation of the Zoning or Subdivision Code. In addition, the *Director* may issue interpretations of the Zoning or Subdivision Codes.

2. Submittal requirements. The *Director* shall prepare written submittal requirements, including type, detail, and number of copies for an application to be complete. The *Director* may waive specific submittal requirements determined to be unnecessary for review of an application. The *Director* may require additional material such as maps, studies, or models when the *Director* determines such material is needed to adequately assess the proposed project.

**19.65.035 Notice of Complete Application.**

1. Within 28 calendar days after receiving an application for a Type 1, 2 or 3 decision, the *Director* shall provide to the *applicant* a written determination that the application is complete, or that the application is incomplete and what is necessary to make the application complete. If the *Director* does not provide a written determination within the 28 calendar days, the application shall be deemed complete as of the end of the 28<sup>th</sup> calendar day.

2. If the additional information requested by the *Director* is not fully submitted within 90 calendar days, the application shall be considered withdrawn and any unspent filing fees shall be returned to the *applicant*. The *applicant* may submit a written request for extension of this deadline. The *Director* may grant such extension, if the *applicant* is actively working on obtaining the requested information, and such extension is in the interests of the City.

3. Within 14 calendar days after receiving any additional information needed to make the application complete, the *Director* shall provide to the *applicant* a written determination that the application is complete, or that the application is incomplete and what is necessary to make the application complete.

4. A permit application is complete for the purposes of this Section when it meets the submittal requirements established by the *Director* in Section 19.65.030.2, even though additional information may be required or subsequent project modifications may occur. The determination of completeness shall not preclude the *Director* from requesting additional information or studies either at the time of the determination of completeness or later, if new information is required to complete review of the application or substantial changes in the permit application are proposed.

**19.65.040 Notice of Application.**

1. Time Frame for Issuance of Notice of Application. Within 14 calendar days after the City has made a determination of completeness of a Type 1, 2 or 3 application, the City shall issue a notice of application in the manner described in this section. If any open record predecision hearing is required for the requested decision(s), the notice of application shall be provided at least 14 days prior to the open record hearing.

2. Contents. The notice of application shall contain at least the following information:

A. The date of application, the date of the notice of completion for the application and the date of the notice of application;

B. A description of the proposed application, a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070;

C. The identification of other permits not included in the application, to the extent known by the City;

D. The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;

E. A statement of the limits of the public comment period. The comment period for all applications subject to review under this section is 21 calendar days beginning on the day following the date of notice of application;

F. A statement of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;

G. The date, time, place and type of hearing, if applicable and scheduled at the date of notice of the application;

H. A statement of the preliminary determination of consistency, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation and consistency.

I. If the City is using the optional DNS process (WAC 197-11-355), additional information shall be added to the notice as required by WAC 197-11-355(2).

J. Any other information determined appropriate by the City, such as the City's likely threshold determination, if complete at the time of issuance of the notice of application.

3. Distribution. A notice of application shall be distributed as follows:

A. Mailed via first class mail to agencies with jurisdiction and property owners of record within 500 feet of the subject property.

B. Posted on one or more notice boards on or near the subject property, and on the notice board at City Hall. The *Director* shall establish standards for size, color, layout, design, wording and placement of the signs and notice boards.

C. Published in the City's official newspaper.

4. Public Comments. Public comments on the notice of application must be received in the Department of Community Development by 5:00 p.m. on the last day of the comment period. Comments may be mailed, personally delivered, sent by facsimile or sent by e-mail as indicated on the Notice of Application. Comments should be as specific as possible.

5. Issuance of a Decision or Recommendation. Except for a determination of significance, the City may not issue its SEPA threshold determination or issue a decision or recommendation on a Type 1, 2 or 3 application until the expiration of the public comment period on the notice of application.

#### **19.65.045 Notice of Open Record Predecision Hearing.**

1. Contents. If an open record predecision hearing is required, the *Director* shall prepare a notice of the hearing containing at least the following information:

- A. The name of the *applicant* and, if applicable, the project name;
- B. The street address of the site, or if not available, a locational description in non-legal language along with a vicinity map that identifies the site;
- C. A brief description of the requested permit application;
- D. The date, time and place of the hearing;
- E. The location where the application and any studies can be reviewed;
- F. A statement of the right of any person to submit written comments or testimony to the hearing body and to appear at the public hearing to give comments or testimony orally;
- G. A statement that only persons who submit written or oral comments or testimony prior to the close of the hearing record may appeal the decision (if applicable).

2. Distribution. At least 14 days prior to the hearing, a notice of open record predecision hearing shall be distributed as follows:

- A. Mailed via first class mail to property owners of record within 500 feet of the subject property, and parties of record that submitted written comments or testimony in response to the Notice of Application.
- B. Posted on one or more notice boards on or near the subject property, and on the notice board at City Hall. The *Director* shall establish standards for size, color, layout, design, wording and placement of the signs and notice boards.
- C. Published in the City's official newspaper. [Ord. 313 §1, 2000]

**19.65.050 Project Timelines.**

The *Director* shall establish reasonable and predictable timelines for review of land use applications and shall provide target dates for decisions on such applications. ~~All land use decisions on applications filed on or after April 1, 1996, shall be made within the time period specified under RCW 36.70B.090.~~ For purposes of calculating timelines and counting days of permit processing, the applicable time period shall begin on the first working day following the date the application is determined to be complete and shall only include the time during which the City can proceed with review of the application ~~as specified in RCW 36.70B.090.~~

**19.65.055 Notice of Decision.**

When a decision is made to approve, conditionally approve, or deny a Type 1, 2 or 3 application, the *Director* shall provide notice of the decision to the *applicant*, parties of record and the King County Assessor's Office. The notice of decision shall, at a minimum, contain the following elements:

- 1. The name of the *applicant* and, if applicable, the project name;
- 2. The street address of the site, or if not available, a locational description in non-legal language;
- 3. A brief description of the requested permit application;

4. A statement of the *Director*, Hearing Examiner or City Council's (whichever is applicable) decision to approve, approve with conditions or deny the application;
5. The date of the decision and the date on which the Notice of Decision was distributed;
6. A statement that affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.
7. A statement describing the process for appealing the decision and the deadline for filing of an appeal.

#### **19.65.057 Modification of Decision.**

The *Director* may approve a proposal for modification of a specific *use* or site plan approved through this chapter if:

1. The proposed modification does not violate specific conditions of approval or applicable codes and ordinances; and either
  - A. The area devoted to the *use* and/or *structure* is expanded by 10 percent or less above the amount approved in the Type 1, 2 or 3 review process; or
  - B. The *Director* determines that the change or alteration will not have significantly more or different impact on the surrounding area than does the present development. In determining impact, the *Director* shall consider the scale of the proposed expansion or modification, and expected changes to traffic, noise, hours of operation, and parking. [Ord. 479 §1, 2007]

#### **19.65.060 Judicial Appeal.**

1. A final City decision on a Type 1, 2 or 3 application, except for shoreline permits, may be appealed to Superior Court by filing a land use petition meeting the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled. An appeal of a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, or a Shoreline Variance shall be to the State Shoreline Hearings Board and shall be filed within 21 days as set forth in RCW 90.58.180.
2. A final City action on a legislative Type 4 decision may be appealed to the Growth Management Hearings Board as set forth in BMC 19.65.080.8 and RCW 36.70A.290.

#### **19.65.063 Expiration of Approvals.**

Approval of a Type 1, 2 or 3 application shall expire two years from the date of the City's final decision on the Type 1, 2 or 3 application, unless one of the following actions occurs prior to the end of the two year term:

1. A complete building permit application is filed. If the building permit application expires, is canceled or withdrawn within the two-year term, the applicant may re-apply for the building permit within the two-year term without the Type 1, 2 or 3 approval expiring. If the building permit application expires, is canceled or withdrawn after the end of the two-year term, it cannot be re-submitted or renewed, and a new Type 1, 2 or 3 application must be filed.

2. If 19.65.063.1 is not applicable, the applicant must begin construction authorized by the Type 1, 2 or 3 approval.

3. If 19.65.063.1 and 2 are not applicable, the applicant must begin the use of land authorized by the Type 1, 2 or 3 approval.

4. For approvals specifically allowing phased construction, the two-year term may be extended as part of the findings, conclusions and conditions of the approval.

5. Extensions. The applicant may apply to the Director for a one-time extension of up to one year, to the two year expiration period. The applicant shall submit a letter demonstrating that substantial progress is being made toward developing the site consistent with the land use decision, and that circumstances beyond his/her control prevent compliance with the two year expiration period. [Ord. 313 §1, 2000]

### **19.65.065 Type 1 Decisions**

1. General. A Type 1 decision is an administrative decision made by the *Director*, based upon the decision criteria set forth in the Code for each type of Type 1 application. City processing of a Type 1 application begins with a determination of completeness (BMC 19.65.035). Once the application is determined to be complete, the City issues public notice in the form of a Notice of Application (BMC 19.65.040). An informational meeting may be required for projects which may be controversial. After the 21-day public comment period ends, the City issues a SEPA threshold determination, if required. The threshold determination may be issued in conjunction with the *Director's* decision on the application. If an Environmental Impact Statement (EIS) is required, the EIS must be completed prior to issuance of the *Director's* decision. If the requirement to prepare an EIS is appealed by the *applicant*, that appeal must be resolved prior to issuance of the *Director's* decision. The *Director's* decision is appealable to the Hearing Examiner (BMC 19.65.065.5). The *Director's* decision, or, if appealed, the Hearing Examiner's action on the appeal is the final City decision on a Type 1 application.

2. State Environmental Policy Act (SEPA). If required by the State Environmental Policy Act (SEPA), a threshold determination will be issued by the Responsible Official. The threshold determination is also a Type 1 decision and may be issued in conjunction with the *Director's* decision on the underlying land use decision. However, if an Environmental Impact Statement (EIS) is required, the threshold determination will be issued early and the EIS will be completed prior to issuance of the underlying land use decision. If the requirement to prepare an EIS is appealed by the *applicant*, that appeal must be resolved prior to the issuance of the land use decision.

3. Public Meetings. The *Director* may require the *applicant* to sponsor and participate in a public meeting to inform citizens about a proposal. When required, public meetings shall be held as early in the review process as possible. Notice of the public meeting shall be provided in the same manner as required for the notice of application. The public meeting notice should be combined with the notice of application whenever possible.

4. Director's Decision.

A. Criteria for Decision. The *Director* shall use the criteria listed in the provision of this Code describing the requested *use* or decision in deciding upon the application. In addition, the *Director* may approve the application only if:

- i. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
- ii. It is consistent with the purpose and intent of the zone in which the *site* is located; and
- ii. It is consistent with the public health, safety and welfare.

B. Decision. The *Director* shall approve, approve with conditions or modifications, or deny an application. The *Director's* decision shall be based on the applicable Zoning Code decision criteria, shall include any conditions to ensure consistency with City zoning regulations, and may include mitigation measures proposed under SEPA. The *applicant* carries the burden of proof that a preponderance of the evidence supports approval of the application or approval with conditions or modifications.

C. Written Decision. The *Director* shall distribute a written report supporting the decision. The report shall contain all of the following:

- i. The *Director's* decision;
- ii. Any conditions included as part of the decision;
- iii. Findings of fact upon which the decision, including any conditions, was based and the conclusions derived from those facts;
- iv. A statement explaining the appeal process.

#### 5. Appeal of Type 1 Decisions.

A. Parties of record may appeal the decision by filing a written statement setting forth:

- i. Facts demonstrating that the person is adversely affected by the decision;
- ii. A concise statement identifying the specific findings of fact or conclusions which are being appealed;
- iii. The specific relief requested; and
- iv. Any other information reasonably necessary to make a decision on the appeal.

B. The written statement of appeal and appeal fee, if any, must be received by the City Clerk no later than 5:00 p.m. on the 14<sup>th</sup> day after issuance of the Notice of Decision; except that if the *Director's* decision is consolidated with a threshold Determination of Non-significance under the State Environmental Policy Act for which a comment period pursuant to WAC 197-11-340 must be provided, the appeal period for the consolidated decision shall be 21 days.

6. Notice of Appeal Hearing. If a Type 1 decision is appealed, an open record appeal hearing before the Hearing Examiner shall be set and notice of the hearing shall be mailed to all parties of record by the *Director*. Notice shall be mailed no less than 14 days prior to the hearing. The notice shall contain the following items, at a minimum:

- A. Appellant name and project name (if applicable)

- B. The street address of the subject property or a description in non-legal terms of the property's location.
- C. A brief description of the decision of the *Director* which is being appealed.
- D. A statement of the scope of the appeal including a summary of the specific errors alleged in the letter of appeal.
- E. The date, time and place of the appeal hearing before the Hearing Examiner.

7. Staff Report on the Appeal. The *Director* shall prepare a staff report analyzing the specific elements of the *Director's* decision disputed in the letter of appeal. At least seven (7) calendar days before the hearing, the *Director* shall distribute copies of the staff report to the Hearing Examiner and all parties of record.

8. Hearing Examiner Hearing on Appeal. The Hearing Examiner shall conduct an open record appeal hearing on a Type 1 appeal. The scope of the appeal is limited to the specific elements of the *Director's* decision disputed in the letter of appeal, and the Hearing Examiner may only consider comments, testimony and arguments on these specific elements. Only parties of record may participate in the appeal. These persons may participate in either or both of the following ways:

- A. By submitting written comments or testimony to the Hearing Examiner prior to the hearing.
- B. By appearing in person, or through a representative, at the hearing and submitting written or oral testimony directly to the Hearing Examiner. The Hearing Examiner may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

9. Hearing Examiner Decision on Appeal.

A. Criteria. The [Hearing](#) Examiner may grant the appeal or grant the appeal with modifications if the appellant has carried the burden of proof and the [Hearing](#) Examiner finds the decision of the *Director* is not supported by a preponderance of the evidence. In all other cases, the appeal shall be denied. The [Hearing](#) Examiner shall accord substantial weight to the decision of the *Director* and SEPA Responsible Official.

B. Conditions. The [Hearing](#) Examiner may impose conditions as part of the granting of an appeal or granting of an appeal with modifications to ensure conformance with the criteria under which the application was made.

C. Findings. The [Hearing](#) Examiner shall adopt findings and conclusions which support its decision on the appeal.

10. Time Period to Complete Appeal Process. The Hearing Examiner's decision on a Type 1 appeal shall be issued within 90 days from the date the original administrative appeal period closed, unless all parties to an appeal have agreed to an extended time period.

11. Effect of Decision. Type 1 decisions of the *Director* and SEPA threshold determinations are final decisions, effective on the day following the expiration of any associated administrative appeal period. If an administrative appeal is filed, the decision is not final until the appeal is heard and decided by the Hearing Examiner. The *Director's* decision, or Hearing Examiner's decision on an appeal, is the City's final decision on the application.

12. Appeal to Superior Court. A final decision by the Hearing Examiner on a Type 1 appeal may be appealed to Superior Court as set forth in BMC 19.65.060.1. [Ord. 269 §28, 1999]

### 19.65.070 Type 2 Decisions

1. General. A Type 2 land use decision is a quasi-judicial decision made by the Hearing Examiner, following a recommendation by the *Director*, and is based upon the decision criteria set forth in the Code for each type of Type 2 application. City processing of a Type 2 application begins with a determination of completeness (BMC 19.65.035). Once the application is determined to be complete, the City issues public notice in the form of a Notice of Application (BMC 19.65.040). An informational meeting may be required for projects which may be controversial. After the 21-day public comment period ends, the City issues a SEPA threshold determination, if required. The threshold determination may be issued in conjunction with the *Director's* recommendation on the application. If an Environmental Impact Statement (EIS) is required, the EIS must be completed prior to issuance of the *Director's* recommendation. If the requirement to prepare an EIS is appealed by the *applicant*, that appeal will also be resolved prior to issuance of the *Director's* recommendation.

Following issuance of the *Director's* recommendation, an open record hearing will be held by the Hearing Examiner. If a SEPA Determination of Non Significance (DNS) was issued and an appeal of the DNS was filed, the appeal hearing on the DNS will be combined with the public hearing on the *Director's* recommendation. Following the public hearing, the [Hearing Examiner](#) will issue a written report which approves, approves with modification, or denies the application.

The Hearing Examiner's decision on the Type 2 application is appealable to the City Council. The Hearing Examiner's decision, or if appealed, the City Council action on the appeal is the final City decision on a Type 2 application.

2. State Environmental Policy Act (SEPA).

A. If required by the State Environmental Policy Act (SEPA) and BMC 14.10, a threshold determination will be issued by the Responsible Official. The threshold determination is a Type 1 decision and may be issued in conjunction with the *Director's* recommendation on the underlying land use decision.

B. An appeal of a threshold determination authorized by BMC 14.10 shall be consolidated with the Hearing Examiner's hearing on the underlying land use application. The Hearing Examiner's decision on the SEPA appeal is the City's final action related to SEPA.

A.C. ~~However,~~ if an Environmental Impact Statement (EIS) is required, the threshold determination will be issued early and the EIS will be completed prior to issuance of the *Director's* recommendation. If the requirement to prepare an EIS is appealed by the *applicant*, that appeal must be resolved prior to the issuance of the *Director's* recommendation.

3. Public Meetings. The *Director* may require the *applicant* to sponsor and participate in a public meeting to inform citizens about a proposal. When required, public meetings shall be held as early in the review process as possible. Notice of the public meeting shall be provided in the same manner as required for the notice of application. The public meeting notice will be combined with the notice of application whenever possible.

4. Director's Recommendation. The *Director* shall prepare a written recommendation to the Hearing Examiner for approval, approval with conditions or modifications, or for denial of the application. The *Director's* recommendation shall be based on the applicable Zoning Code decision criteria, shall include any conditions to ensure consistency with City zoning regulations, and may include mitigation measures proposed under SEPA.

5. Hearing Examiner Public Hearing

A. Participation in Hearing/Parties of Record. Any person may participate in the Hearing Examiner open record hearing and become a party of record by submitting written comments to the *Director* prior to the hearing or by submitting written or oral comments at the hearing.

B. Hearing Record. The Hearing Examiner shall create a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording of each hearing.

6. Hearing Examiner Decision.

A. Criteria for Decision. The Hearing Examiner shall use the criteria listed in the provision of this Code describing the requested *use* or decision in deciding upon the application. In addition, the Hearing Examiner may approve the application only if:

- i. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
- ii. It is consistent with the purpose and intent of the zone in which the *site* is located; and
- iii. It is consistent with the public health, safety and welfare.

B. Decision. The Hearing Examiner shall approve, approve with conditions or modifications, or deny an application. The [Hearing](#) Examiner's decision shall be based on the applicable Zoning Code decision criteria, shall include any conditions to ensure consistency with City zoning regulations, and may include mitigation measures proposed under SEPA. The *applicant* carries the burden of proof that a preponderance of the evidence supports approval of the application or approval with conditions or modifications.

C. Written Decision. Within 10 working days following the close of the record, the Hearing Examiner shall distribute a written report supporting the decision. The report shall contain all of the following:

- i. The Hearing Examiner's decision;
- ii. Any conditions included as part of the decision;
- iii. Findings of fact upon which the decision, including any conditions, was based and the conclusions derived from those facts;
- iv. A statement explaining the appeal process.

D. Distribution. The *Director* shall mail the written decision, bearing the date it is mailed, to all parties of record.

7. Appeal of Type 2 Decisions.

A. Parties of record may appeal the decision by filing a written statement setting forth:

- i. Facts demonstrating that the person is adversely affected by the decision;
- ii. A concise statement identifying the specific findings of fact or conclusions which are being appealed;
- iii. The specific relief requested; and
- iv. Any other information reasonably necessary to make a decision on the appeal.

B. The written statement of appeal and appeal fee, if any, must be received by the City Clerk no later than 5:00 p.m. on the 14<sup>th</sup> day after issuance of the Notice of Decision.

8. Notice of Appeal Hearing. If a Type 2 decision is appealed, a closed record appeal hearing before the City Council shall be set and notice of the hearing shall be mailed to all parties of record by the City Clerk. Notice shall be mailed no less than 14 days prior to the hearing. The notice shall contain the following items, at a minimum:

A. Appellant name and project name (if applicable)

B. The street address of the subject property or a description in non-legal terms of the property's location.

C. A brief description of the decision of the Hearing Examiner which is being appealed.

D. A statement of the scope of the appeal including a summary of the specific errors alleged in the letter of appeal.

E. The date, time and place of the appeal hearing before the City Council.

9. Staff Report on the Appeal. The *Director* shall prepare a staff report analyzing the specific elements of the Hearing Examiner's decision disputed in the letter of appeal. At least seven (7) calendar days before the hearing, the City Clerk shall distribute copies of the staff report to the City Council and all parties of record.

10. City Council Hearing on Appeal. The City Council shall conduct a closed record hearing on a Type 2 appeal. The City Council shall make an electronic sound recording of each appeal hearing. The scope of the appeal is limited to the specific elements of the Hearing Examiner's decision disputed in the letter of appeal, and the City Council may only consider comments, testimony and arguments on these specific elements. Argument on the appeal is limited to information contained in the record developed before the Hearing Examiner and must specify the findings or conclusions which are the subject of the appeal, as well as the relief requested from the Council. Only parties of record may participate in the appeal. These persons may participate in either or both of the following ways:

A. By submitting written comments or testimony to the City Clerk prior to the hearing.

B. By appearing in person, or through a representative, at the hearing and submitting written or oral testimony directly to the City Council. The City Council may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

11. City Council Decision on Appeal.

A. Criteria. The City Council may grant the appeal or grant the appeal with modifications if the appellant has carried the burden of proof and the City Council finds the decision of the Hearing Examiner is not supported by a preponderance of the evidence. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner.

B. Conditions. The City Council may impose conditions as part of the granting of an appeal or granting of an appeal with modifications to ensure conformance with the criteria under which the application was made.

C. Findings. The City Council shall adopt findings and conclusions which support its decision on the appeal.

D. Required Vote. A vote to grant the appeal or grant the appeal with modifications must be by a majority vote of the membership of the City Council. Any other vote constitutes denial of the appeal.

12. Time Period to Complete Appeal Process. The City Council's decision on a Type 2 appeal shall be issued within 60 days from the date the original administrative appeal period closed, unless all parties to an appeal have agreed to an extended time period.

13. Effect of Decision. Type 2 decisions of the Hearing Examiner are final decisions, effective on the day following the expiration of any associated administrative appeal period. If an administrative appeal is filed, the decision is not final until the appeal is heard and decided by the City Council. The Hearing Examiner's decision, or City Council's decision on an appeal, is the City's final decision on the application.

14. Appeal to Superior Court. A final decision by the City Council on a Type 2 appeal may be appealed to Superior Court as set forth in BMC 19.65.060.1.

**19.65.075 Type 3 Decisions**

1. General. A Type 3 land use decision is a quasi-judicial decision made by the City Council, following a recommendation by the *Director*, and public hearing [and recommendation](#) by the Hearing Examiner. The decision is based upon the decision criteria set forth in the Code for each type of Type 3 application. City processing of a Type 3 application begins with a determination of completeness (BMC 19.65.035). Once the application is determined to be complete, the City issues public notice in the form of a Notice of Application (BMC 19.65.040). An informational meeting may be required for projects which may be controversial. After the 21-day public comment period ends, the City issues a SEPA threshold determination, if required. The threshold determination may be issued in conjunction with the *Director's* recommendation on the application. If an Environmental Impact Statement (EIS) is required, the EIS must be completed prior to issuance of the *Director's* recommendation. If the requirement to prepare an EIS is appealed by the *applicant*, that appeal will also be resolved prior to issuance of the *Director's* recommendation.

Following issuance of the *Director's* recommendation, an open record hearing will be held by the Hearing Examiner. If a SEPA Determination of Non Significance (DNS) was issued and an appeal of the DNS was filed, the appeal hearing on the DNS will be combined with the public hearing on the *Director's* recommendation. Following the public hearing, the Hearing Examiner will issue a written report which recommends approval, approval with modification, or denial of the application and any SEPA appeal.

The City Council action on the Hearing Examiner's recommendation on the Type 3 application is the final City decision on a Type 3 application.

2. State Environmental Policy Act (SEPA).

A. If required by the State Environmental Policy Act (SEPA) and BMC 14.10, a threshold determination will be issued by the Responsible Official. The threshold determination is a Type 1 decision and may be issued in conjunction with the *Director's* recommendation on the underlying land use decision.

B. An appeal of a threshold determination authorized by BMC 14.10 shall be consolidated with the Hearing Examiner's hearing on the underlying land use application. The Hearing Examiner's decision on the SEPA appeal is the City's final action related to SEPA.

A.C. However, if an Environmental Impact Statement (EIS) is required, the threshold determination will be issued early and the EIS will be completed prior to issuance of the *Director's* recommendation. If the requirement to prepare an EIS is appealed by the *applicant*, that appeal will be resolved prior to the issuance of the *Director's* recommendation.

3. Public Meetings. The *Director* may require the *applicant* to sponsor and participate in a public meeting to inform citizens about a proposal. When required, public meetings shall be held as early in the review process as possible. Notice of the public meeting shall be provided in the same manner as required for the notice of application. The public meeting notice will be combined with the notice of application whenever possible.

4. Director's Recommendation. The *Director* shall prepare a written recommendation to the Hearing Examiner for approval, approval with conditions or modifications, or for denial of the application. The *Director's* recommendation shall be based on the applicable Zoning Code decision criteria, shall include any conditions to ensure consistency with City zoning regulations, and may include mitigation measures proposed under SEPA.

5. Hearing Examiner Public Hearing

A. Participation in Hearing/Parties of Record. Any person may participate in the Hearing Examiner open record hearing and become a party of record by submitting written comments to the *Director* prior to the hearing or by submitting written or oral comments at the hearing.

B. Hearing Record. The Hearing Examiner shall create a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording of each hearing.

6. Hearing Examiner Recommendation.

A. Criteria for Recommendation. The Hearing Examiner shall recommend approval, approval with conditions or modifications, or denial of an application. The Hearing Examiner's

recommendation shall be based on the applicable Zoning Code decision criteria, shall include any recommended conditions to ensure consistency with City zoning regulations, and may include mitigation measures proposed under SEPA. The *applicant* carries the burden of proof that a preponderance of the evidence supports approval of the application or approval with conditions or modifications.

B. Written Decision. Within 10 working days following the close of the record, the Hearing Examiner shall distribute a written report supporting the recommendation. The report shall contain all of the following:

- i. The Hearing Examiner's recommendation;
- ii. Any conditions included as part of the recommendation;
- iii. Findings of fact upon which the recommendation, including any conditions, was based and the conclusions derived from those facts;
- iv. A statement explaining the City Council decision process.

C. Distribution. The *Director* shall mail the written recommendation, bearing the date it is mailed, to all parties of record.

7. City Council Decision on the Application.

A. General. The City Council shall, at a public meeting, consider and take final action on a Type 3 application.

B. Elements to be Considered. The City Council shall not accept new written or oral information on the application, but shall consider the complete record developed before the Hearing Examiner, including the Hearing Examiner's recommendation.

C. Criteria for Decision. The City Council shall use the criteria listed in the provision of this Code describing the requested *use* or decision in deciding upon the application. In addition, the City Council may approve the application only if:

- i. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
- ii. It is consistent with the purpose and intent of the zone in which the *site* is located; and
- iii. It is consistent with the public health, safety and welfare.

D. Decision. The City Council may approve the application, approve the application with modifications, deny the application or remand the application to the Hearing Examiner for an additional hearing limited to specific issues identified by the Council. The Council may, based on the record, include conditions in order to ensure conformance with the criteria under which the application was made. The City Council shall adopt written findings of fact and conclusions derived from those facts which support the decision of the Council.

E. Required Vote. If the City Council's decision on the application is for approval, or approval with modifications, the Council shall by majority vote of the membership of the Council, adopt an ordinance or resolution containing the findings of fact and conclusions supporting the

Council's decision. If the City Council's decision on the application is to remand the application back to the Hearing Examiner, the Council shall, by motion, identify those specific findings, conclusions and/or conditions to be reconsidered by the Hearing Examiner. Any other vote constitutes a denial of the application.

8. Effect of Decision. Type 3 decisions of the City Council to approve or deny an application are final decisions of the City on the application, effective on the day on which the ordinance or resolution is effective.

9. Appeal to Superior Court. A final decision by the City Council on a Type 3 application may be appealed to Superior Court as set forth in BMC 19.65.060.1.

#### **19.65.080 Type 4 Decisions**

1. General. A Type 4 land use decision is a legislative non-project decision made by the City Council under the City Council's authority to establish policies and regulations regarding future private and public development and management of public lands. The process usually includes a public hearing by the Planning Commission and action by the City Council. The decision is based upon the decision criteria set forth in ~~the~~this Code for each type of Type 4 application.

2. State Environmental Policy Act (SEPA).

A. If required by the State Environmental Policy Act (SEPA) and BMC 14.10, a threshold determination will be issued by the Responsible Official. The threshold determination is a Type 1 decision and may be issued in conjunction with the *Director's* recommendation on the Type 4 decision.

B. An appeal of a threshold determination authorized by BMC 14.10 shall be to the Growth Management Hearings Board pursuant to RCW 36.70A.290.

A.C. ~~However, if~~ an Environmental Impact Statement (EIS) is required, the threshold determination may be issued early and the EIS completed prior to issuance of the *Director's* recommendation. Alternatively, the City may prepare an "integrated GMA document" under the provisions and procedures of WAC 197-11.

3. Planning Commission Procedure.

A. General. Type 4 proposals will usually be introduced to the Planning Commission, which may schedule study sessions as needed to consider the proposal. Prior to making a recommendation, the Planning Commission shall schedule a public hearing. After the public hearing and after any further study sessions as may be needed, the Planning Commission shall transmit its recommendation to the City Council through the applicable department *Director* and City Clerk.

B. Criteria. The Planning Commission may recommend the Council adopt or adopt with modifications a proposal if it complies with the applicable decision criteria of the Zoning Code. In all other cases, the Planning Commission shall recommend denial of the proposal.

C. Limitation on Modification. If the Planning Commission recommends a modification which results in a proposal not reasonably foreseeable from the notice provided pursuant to BMC 19.65.080.4, the Planning Commission shall conduct a new public hearing on the proposal as modified.

D. Required Vote. A vote to recommend adoption of the proposal or adoption with modification must be by a majority vote of the Planning Commission members present and voting.

#### 4. Public Hearing Notice.

A. Contents. The *Director* shall prepare a notice of the Planning Commission or City Council public hearing containing at least the following information:

- i. The name of the *applicant* and, if applicable, the project name;
- ii. The street address of the site, or if not available, a locational description on non-legal language along with a vicinity map that identifies the site;
- iii. A brief description of the requested action;
- iv. The date, time and place of the hearing;
- v. The location where the application and any studies can be reviewed;
- vi. A statement of the right of any person to submit written comments or testimony to the hearing body and to appear at the public hearing to give comments or testimony orally;

B. Distribution. At least 14 days prior to the date of the public hearing, the *Director* shall provide for notice of the public hearing to be published in the City's official newspaper. ~~If the proposal involves specific property, rather than an area wide or zone wide change, the notice shall also be mailed via first class mail to property owners of record within 500 feet of the specific property, and shall also be posted on one or more notice boards on or near the specific property. The *Director* shall establish standards for size, color, layout, design, wording and placement of the signs and notice boards.~~

5. Director's Recommendation. The *Director* shall prepare a written recommendation to the Planning Commission for approval, approval with conditions or modifications, or for denial of the application. The *Director's* recommendation shall be based on the applicable Zoning Code decision criteria, shall include any conditions to ensure consistency with City zoning regulations, and may include mitigation measures proposed under SEPA.

#### 6. Public Hearing.

A. Participation in Hearing. Any person may participate in the public hearing by submitting written comments to the *Director* prior to the hearing or by submitting written or oral comments at the hearing.

B. Hearing Record. The Planning Commission or City Council shall create a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording of each hearing.

#### 7. City Council Decision on the Application.

A. General. The City Council shall consider at a public meeting each recommendation transmitted by the Planning Commission and each proposal before the Council at the Council's'

own direction. The Council may hold a public hearing pursuant to the procedures in BMC 19.65.080.4 and BMC 19.65.080.6. The Council shall take legislative action on the proposal in accordance with State law.

B. City Council Action. The City Council may take one of the following actions:

- i. Adopt an ordinance or resolution adopting the proposal or adopting the proposal with modifications; or
- ii. Adopt a motion denying the proposal; or
- iii. Refer the proposal back to the ~~appropriate Council Committee or~~ Planning Commission for further proceedings, in which case the City Council shall specify the time within which the ~~Council Committee or~~ Planning Commission shall report back to the City Council with a recommendation.

8. Effect of Decision. The action of the City Council on a Type 4 proposal may be appealed together with any SEPA Threshold Determination by filing a petition with the Growth Management Hearings Board pursuant to the requirements set forth in RCW 36.70A.290. The petition must be filed within the 60-day time period set forth in RCW 36.70A.290(2).

#### **19.65.085 Variances.**

1. Purpose. The purpose of this section is to establish the process and criteria for a variance from the provisions of this Code. A variance is a mechanism by which the City may grant relief from the provisions of this Code where practical difficulty renders compliance with the provisions of the Code an unnecessary hardship, where the hardship is a result of the physical characteristics of the *site* and where the purpose of the Code and of the Comprehensive Plan can be fulfilled.

2. Process. Variances shall be considered using the Type 1 review process.

3. Criteria. The City may approve or approve with modifications an application for a variance from the provisions of this Code if:

- A. The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone of the *site*; and
- B. The variance is necessary because of the unique size, shape, topography or location of the *site*; and
- C. The *site* is deprived, by the provisions of this Code, of rights and privileges enjoyed by other properties in the vicinity and same zone as the *site*; and the variance is the minimum necessary to provide the *site* with those rights and privileges; and
- D. The need for the variance is not the result of deliberate actions of the *applicant* or property owner; and
- E. Granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the *site* is located; and
- F. The variance is not inconsistent with the Comprehensive Plan; and

G. The variance is not inconsistent with the intent and purpose of the provision being varied.

4. Limitation on authority. The City shall not grant a variance to:

A. The provisions of BMC 19.15 establishing the allowable uses in each zone; or

B. The provisions of BMC 19.65 or any other procedural or administrative provision of this Code; or

C. Any provision of this Code which, by the terms of that provision, is not subject to a variance; or

D. Any conditions of approval established during prior permit review; or

E. The provisions of BMC 19.40, Critical Areas.

#### **19.65.090 Rezones.**

1. Purpose. The purpose of this section is to establish the process and criteria for a rezone of property from one zoning designation to another. Changes to the zoning map that are Citywide, area-wide, or have area-wide significance are processed as area-wide amendments pursuant to section 2 below. All other rezones shall be processed as site-specific rezones pursuant to section 3 below.

~~2. Process. Rezones shall be considered using the Type 4 review process.~~

#### 2. Area-wide rezones.

A. Process: An area-wide rezone application is processed as a Type IV legislative decision pursuant to the provisions set forth in this chapter.

B. Applicant: Anyone may apply for an area-wide rezone.

C. Criteria for approval: The City Council may approve an area-wide rezone only if all of the following criteria are met:

i. The rezone is consistent with the comprehensive plan; and

ii. The rezone will advance the public health, safety, or welfare; and

iii. The rezone will not have significant adverse environmental impacts that are materially detrimental to adjacent properties.

D. Comprehensive Plan Consistency: If a Comprehensive Plan amendment is required in order to satisfy BMC 19.65.090.2.C.i, approval of the Comprehensive Plan amendment is required prior to or concurrently with the granting of an approval on the area-wide rezone.

#### 3. Site-specific rezones.

A. Process: A site-specific rezone application is processed as a Type II quasi-judicial decision pursuant to the provisions set forth in this chapter.

B. Applicant: The City, federal, state or local agencies, owner(s) of the property proposed for rezoning, or their designated agents may initiate a request for a site-specific rezone.

C. Criteria for Approval: The City may grant a site-specific rezone only if all of the following criteria are met:

- i. The rezone is consistent with the Comprehensive Plan; and
- ii. The rezone will advance the public health, safety, or welfare; and
- iii. The rezone will not have significant adverse environmental impacts that are materially detrimental to adjacent properties; and
- iv. The rezone is necessary because at least one of the following is met:
  - a. Conditions in the immediate vicinity or neighborhood have changed so that it is in the public interest to approve the rezone, or
  - b. The rezone will correct a zone classification or zone boundary that was inappropriate when established, or
  - c. The rezone is necessary to achieve consistency with the Comprehensive Plan land use map.

D. Comprehensive Plan Consistency: If a Comprehensive Plan amendment is required in order to satisfy BMC Section 19.65.090(3)(C)(i), approval of the Comprehensive Plan amendment is required prior to the granting of an approval on the rezone.

~~Criteria. The City may approve or approve with modifications an application for a rezone of property if:~~

- ~~A. The rezone is consistent with the Comprehensive Plan; and~~
- ~~B. The rezone bears a substantial relation to the public health, safety, or welfare; and~~
- ~~C. The rezone will not be materially detrimental to uses or property in the immediate vicinity of the property; and~~
- ~~D. The rezone has merit and value for the community as a whole.~~

4. Map change. Following approval of a rezone, the City shall amend the zoning map to reflect the change in zoning designation. The City shall also indicate on the zoning map the number of the ordinance adopting the rezone.

5. Repealed. [Ord. 479 §1, 2007, Ord. 396 §1, 2003]

#### **19.65.095 Comprehensive Plan Amendments.**

1. Purpose. The purpose of this section is to provide for plan amendments pursuant to the requirements of Growth Management Act (GMA) (RCW 36.70A.130(1)). Comprehensive plan

amendments may be proposed to any element including goals, policies, or plan maps. Amendments to the plan may require and include amendments to supporting plans or ordinances.

2. Process. Amendments to the comprehensive plan may be considered by the City once every calendar year, using the Type 4 review process (BMC 19.65.080) and the timing indicated below. More frequent amendments may be allowed if the amendment complies with RCW 36.70A.130.

A. By ~~May~~ January 1, ~~property owners and other interested parties will be notified~~ the City will issue notice of the annual Comprehensive Plan amendment request deadline. The amendment request deadline is ~~June~~ March 1.

B. The *Director* will create ~~the list a~~ preliminary docket of ~~eligible amendments submitted by the public, the City Council, the Planning Commission, and City staff~~ amendment requests received by the March 1 deadline. ~~By July 1,~~ ~~†~~ The Planning Commission shall hold at least one public meeting on the preliminary docket to consider testimony and make recommendations to the City Council on which amendments to consider, and may recommend a priority be assigned to each proposed amendment.

C. ~~By August 1,~~ ~~†~~ The City Council shall consider the recommendations of the Planning Commission on the preliminary docket, and establish by May 1 adopt by resolution a final docket of Comprehensive Plan amendments for consideration. ~~The final docket shall be kept on file for public review during the public meeting/hearing process.~~

~~D. Once the docket is established by the City Council, the Planning Commission shall hold public meeting(s) and/or hearing(s) to solicit public comment on the docket.~~

~~E. The Director shall provide written recommendations concerning all amendment requests to the Planning Commission.~~

~~F. The proposed amendment(s) shall be accompanied by the necessary documents for compliance with the State Environmental Policy Act by the time the Planning Commission makes a recommendation to the City Council.~~

~~G. The Planning Commission shall make a recommendation to the City Council on all proposed amendments pursuant to a schedule established by the City Council.~~

~~H. The City Council shall consider the recommendations of the Planning Commission at a public meeting. Adoption of the Comprehensive Plan amendment(s) may occur at the public meeting or at a subsequent meeting. Those items that require funding in the City budget shall receive final consideration concurrent with final budget consideration.~~

~~I. Participation in Public Meeting(s) and Hearing(s). Any person may participate in the Public Meeting(s) or Hearing(s) by submitting written comments to the Director prior to the meeting/hearing or by submitting written or oral comments at the meeting/hearing.~~

~~J. Hearing Record. The Planning Commission or City Council shall create a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording of each hearing. [Ord. 397 §4, 2003]~~

3. Concurrent review ~~area-wide rezones~~. A proposed Comprehensive Plan amendment that also requires an area-wide rezone shall be considered concurrently, and all public notice must reflect the dual nature of the request.

4. Docketing Criteria. The City Council shall use the following criteria for deciding whether a proposed amendment is added to the docket in 2C above:

- A. The request has been filed in a timely manner, and either:
- B. State law requires, or a decision of a court or administrative agency has directed such a change; or,
- C. All of the following criteria are met:
  - i. The proposed amendment presents a matter appropriately addressed through the Comprehensive Plan; and
  - ii. The City has the resources, including staff and budget, necessary to review the proposal; and
  - iii. The proposal does not raise policy or land use issues that are more appropriately addressed by an ongoing work program item approved by the City Council; and
  - iv. The proposal demonstrates a strong potential to serve the public interest by implementing specifically identified goals and policies of the Comprehensive Plan; and
  - v. The proposal has not been considered by the City Council in the last three (3) years. This time limit may be waived by the City Council, if the proponent establishes that there exists a change in circumstances that justifies the need for the amendment.

5. Expansion of Land Use Map Amendment. The City may propose to expand the geographic scope of an amendment to the Comprehensive Plan land use map to allow for consideration of adjacent property, similarly situated property, or area-wide impacts. The following criteria shall be used in determining whether to expand the geographic scope of a proposed land use map amendment:

- A. The effect of the proposed amendment on the surrounding area or city;
- B. The effect of the proposed amendment on the land use and circulation pattern of the surrounding area or city; and
- C. The effect of the proposed amendment on the future development of the surrounding area or city.

46. Amendment Decision Criteria. The City Council may approve or approve with modifications a Comprehensive Plan amendment if all of the following criteria are met:

- A. The request has been filed in a timely manner; and
- B. There is a public need for the proposed amendment; and
- CA. The proposed amendment is the best means for meeting ~~the~~an identified public benefit~~need~~; and

~~DB.~~ The proposed amendment is consistent with ~~the overall intent of the goals and policies of the Burien Comprehensive Plan,~~ Growth Management Act, applicable Puget Sound Regional Council (PSRC) plans, and King County Countywide Planning Policies and Burien Comprehensive Plan; and

~~EC.~~ The proposed amendment will result in a net benefit to the community; and

~~FD.~~ The revised Comprehensive Plan will be internally consistent; and

~~GE.~~ The capability of the land can support the projected land use; and

~~HE.~~ Adequate public facility capacity to support the projected land use exists, or, can be provided by the property owner(s) requesting the amendment, or, can be cost-effectively provided by the City or other public agency; and

~~IG.~~ The proposed amendment will be compatible with nearby uses; and

~~JL.~~ The proposed amendment would not ~~result in the loss of capacity to meet other needed land uses, such as housing; and prevent the City from achieving its Growth Management Act population and employment targets; the;~~ and

I. For a Comprehensive Plan land use map change, the applicable designation criteria for the proposed land use designation are met and either of the following is met:

- i. Conditions have ~~so markedly~~ changed since the property was given its present Comprehensive Plan designation so that the current designation is no longer appropriate; or,
- ii. The map change will correct a Comprehensive Plan designation that was inappropriate when established.

57. Comprehensive plan and map change. Following approval of a Comprehensive Plan amendment, the City shall amend the Comprehensive Plan text and map, as applicable, to reflect the change in text or plan designation.

#### **19.65.100 Zoning Code Amendments.**

1. Purpose. The purpose of this section is to establish the process and criteria for amendment of this Code.

2. Process. Zoning Code amendments shall be considered using the Type 4 review process.

3. Initiation of zoning code amendment request. A zoning code amendment request may be initiated by the City Council, Planning Commission or Director; or any City department.

4. Criteria. The City may approve or approve with modifications a proposal to amend the text of this Code if:

A. The amendment is consistent with the Comprehensive Plan; and

B. The amendment bears a substantial relation to the public health, safety, or welfare; and

C. The amendment is in the best interest of the community as a whole.

5. Code change. Following approval of an amendment, the City shall amend this Code to reflect the change.

#### **19.65.105 Administrative Design Review.**

1. Purpose. The purpose of this section is to establish the process and criteria for administrative design review (ADR). [Ord. 273 § 1, 1999]

2. Applicability.

A. *Major new construction or modification* in the DC and SPA-1 zones is subject to the provisions of BMC 19.47, 19.49 and the procedures for ADR contained in this section. [Ord. 441 § 12, 2005]

B. All other changes to existing *structures* and *sites* in the DC and SPA-1 zones do not require ADR approval, unless a design departure is requested. However, the portion of the *structure* or *site* being changed must comply with the applicable design objectives and standards in BMC 19.47 and BMC 19.49. This includes, but is not limited to exterior modifications, including paint, material, roof or *façade* changes; parking area restriping or redesign; and landscaping. [Ord. 273 § 1, 1999, Ord. 441 § 12, 2005]

3. Process. The *Director* shall review applications for ADR according to the procedures established for a Type 1 review (BMC 19.65.065). BMC 19.65.040 (Notice of Application) does not apply, unless SEPA review is required. For large or complex projects, the *Director* may retain design professionals at the *applicant's* expense to review ADR applications submitted by the *applicant*. The *Director* shall establish a roster of qualified licensed design professionals in the fields of architecture, landscape architecture and/or urban design to assist the City in the ADR process. When the *Director* has determined the need for assistance, prior to or following the pre-application meeting, the *Director* shall prepare a scope of work and select at least 3 firms from the roster to prepare specific cost and schedule proposals for completing the scope of work. These proposals shall be reviewed by the *Director*, and if found acceptable, shall be given to the *applicant* for selection. [Ord. 273 § 1, 1999]

4. Criteria for Decision. In addition to the criteria for approval of a Type 1 review in BMC 19.65.065.4.A, the *Director* shall determine whether the proposal complies with the applicable design objectives and standards in BMC 19.47 or BMC 19.49. [Ord. 273 § 1, 1999, Ord. 441 § 12, 2005]

5. Design Departure.

A. General. This section provides a mechanism for obtaining approval from the City for departing from strict adherence to the design standards.

B. Process. If a design departure is requested, the ADR decision will be reviewed and decided upon using the Type 1 review process, described in BMC 19.65.065.

C. Criteria: The City may grant a design departure from BMC 19.47 or BMC 19.49 only if it finds that either: there is a compelling reason to deviate from the specific standards or the intent of the standards can be met, and that:

i. All of the following requirements are met:

- a. The request is consistent with and fulfills the policy basis for the applicable design standards, and
  - b. The departure will not have any substantial detrimental effect on nearby properties and the City as a whole, and
  - c. The departure manifests high quality design and/or innovative and appropriate use of materials that will create a high quality development, and
  - d. The departure will result in increased pedestrian activity and visual interest along the *street*; or
- ii. All of the following requirements are met:
    - a. The size, configuration, topography, or location of the *site* is unusual and was not contemplated in the design standards, and
    - b. Because of these unusual circumstances, application of the design standards to the *site* would not result in a project that fulfills the policy basis for the design standard, and
    - c. The proposed departure will result in a development which fulfills the policy basis for the design regulations and will result in high quality development sensitive to its surroundings. [Ord. 273 § 1, 1999, Ord. 441 § 12, 2005]
6. Modifications.
- A. The *Director* may approve a modification to the ADR approval for the proposed development if:
    - i. The need for the modification was not known and could not reasonably have been known before the ADR approval was granted; and
    - ii. The modification is minor and will not, in any substantial way, change the proposed development; and
    - iii. The development that will result from the modification will be consistent with the design standards.
  - B. Any modification, other than as specified in paragraph A of this section, must be reviewed and decided upon as a new ADR approval under this Chapter. [Ord. 273 § 1, 1999]

~~7. Lapse of approval:~~

- ~~A. General. Unless otherwise specified in the ADR decision, the applicant must submit a complete building permit application to the City (or if no building permit is required, begin the activity approved in the ADR decision) within one (1) year after the final ADR decision, or that decision becomes void. The applicant shall substantially complete construction consistent with the ADR approval and complete all conditions listed in the ADR approval within three (3) years after the final ADR decision, or the decision becomes void. "Final decision" means the final decision of the City on the ADR application, including any appeals.~~
- ~~B. Extensions. The applicant may apply to the Director for a one-time extension of up to one year, of each of the time limits under paragraph A of this section. The applicant shall submit a letter demonstrating that substantial progress is being made toward developing the site consistent with the ADR decision, and that circumstances beyond his/her control prevent compliance with the applicable time limit under paragraph A of this section.~~

8. Appeals. The applicant may appeal denial of a time extension by filing a written statement of appeal and appeal fee, if any, to the City Clerk no later than 5:00 p.m. on the 14th day after issuance of the written denial of the requested extension. The appeal will be processed as an appeal of a Type 1 decision pursuant to Section 19.65.065. [Ord. 273 § 1, 1999]

**19.65.110** Repealed [Ord. 479 §1, 2007, Ord. 396 § 1, 2003]