



*Burien*  
WASHINGTON

**PLANNING COMMISSION AGENDA**  
February 28, 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** February 14, 2012

**5. NEW BUSINESS** None

**6. OLD BUSINESS** Discussion and possible recommendation on Zoning Code Amendments

**7. PLANNING COMMISSION  
COMMUNICATIONS**

**8. DIRECTOR'S REPORT**

**9. ADJOURNMENT**

- Future Agendas (Tentative)**
- March 13, 2012
- Public Hearing on North Burien Comprehensive Plan and Zoning Land Use Designations.
  - Discussion and possible recommendation on Zoning Code Amendments (if needed)
- March 27, 2012
- Discussion and Possible Recommendation on North Burien Comprehensive Plan and Zoning Land Use Designations.

Planning Commissioners

Jim Clingan (Chair)

Ray Helms

Nancy Tosta (Vice Chair)

Greg Duff  
Brooks Stanfield

Rachel Pizarro  
John Upthegrove

*City of Burien*

BURIEN PLANNING COMMISSION  
February 14, 2012  
7:00 p.m.  
Multipurpose Room/Council Chambers  
MINUTES

To hear the Planning Commission's full discussion of a specific topic or the complete meeting, the following resources are available:

- Watch the video-stream available on the City website, [www.burienwa.gov](http://www.burienwa.gov)
- Check out a DVD of the Council Meeting from the Burien Library
- Order a DVD of the meeting from the City Clerk, (206) 241-4647

**CALL TO ORDER**

Chair Jim Clingan called the February 14, 2012, meeting of the Burien Planning Commission to order at 7 p.m.

**ROLL CALL**

Present: Jim Clingan, Greg Duff, Brooks Stanfield, Nancy Tosta, John Upthegrove

Absent: Ray Helms, Rachel Pizarro

Administrative staff present: Scott Greenberg, Community Development Department director; Stephanie Jewett, planner

**AGENDA CONFIRMATION**

**Direction/Action**

**Motion** was made by Commissioner Stanfield, seconded by Commissioner Duff, to approve the agenda for the February 14, 2012, meeting. Motion passed 5-0.

**PUBLIC COMMENT**

None.

**APPROVAL OF MINUTES**

**Direction/Action**

**Motion** was made by Commissioner Duff, seconded by Commissioner Stanfield, and passed 5-0 to approve the minutes of the January 10, 2012, and January 24, 2012, meetings.

**PRESENTATION AND DISCUSSION**

Branden Born, associate professor of Urban Design and Planning at the University of Washington, reviewed the Burien food access assessment that was done as part of the Communities Putting Prevention to Work/Healthy Eating Active Living (CPPW/HEAL) grant.

**PUBLIC HEARING**

Scott Greenberg gave a brief overview of the proposed 2012 Zoning Code amendments. Chair Clingan called the public hearing to order at 8:08 p.m.

Mr. Greenberg submitted an E-mail testimony from **Kevin DeLashmutt** of Prudential Northwest Realty Associates and Shorewood on the Sound Community Club regarding a proposed procedure change for Type 4 land use reviews.

**Chestine Edgar, 1811 SW 152<sup>nd</sup> St.**, expressed concern about proposed changes to the types of land use decisions and their related procedures, elimination of language requiring a database of significant trees, the fee charged for proposed Comprehensive Plan and map amendments, changes to the review process for some public park and recreation facilities, allowed increases in nonconforming building coverage and/or impervious surface coverage if certain requirements are met, the change of “wetland” to “stream” in BMC 19.40.350.1.C and clarification of where stream buffers are required.

**Mike Hart, 2660 SW 172<sup>nd</sup> St.**, testified about the proposed revision to the definition of impervious surface.

**Carol Jacobson, 3324 SW 172<sup>nd</sup> St.**, expressed concern about the designation of gravel as an impervious surface and the negative impact that may have particularly on properties affected by the Shoreline Master Program and about whether there would be a review process and notice to adjacent properties if the Parks Department decided to designate unimproved street ends or public access areas as public parks.

**Robert Howell, 15240 20<sup>th</sup> Ave SW**, expressed concern about proposed changes to the types of land use decisions and their related procedures, the fee charged for proposed Comprehensive Plan and map amendments, and the change of “wetland” to “stream” in BMC 19.40.350.1.C.

**Robbie Howell, 15240 20<sup>th</sup> Ave SW**, testified regarding proposed elimination of language requiring a database of significant trees.

**Good Space Guy, 10219 9<sup>th</sup> Ave S**, asked whether Burien would be better off without a zoning code because such a code decreases the rights of property owners.

The commissioners discussed some of what they heard in testimony. Mr. Greenberg said clarifying language would be added to some of the proposed changes and he would talk with the Public Works Department about gravel can be defined as an impervious or pervious surface.

## **NEW BUSINESS**

None.

## **OLD BUSINESS**

*Discussion and possible recommendation on Zoning Code Amendments*

### **Direction/Action**

Discussion and possible recommendation on the proposed Zoning Code amendments has been tabled until the next Planning Commission meeting.

## **PLANNING COMMISSION COMMUNICATIONS**

Commissioner Tosta said she will be unavailable for the March 13<sup>th</sup> meeting.

Commissioner Upthegrove thanked Deputy Mayor Clark for attending the Planning Commission meeting this evening.

Commissioner Clingan gave an update on the work of the Shoreline Master Program small group.

## **DIRECTOR'S REPORT**

None.

**ADJOURNMENT**

**Direction/Action**

Commissioner Tosta moved for adjournment; Commissioner Stanfield seconded the motion. The motion passed 5-0; the meeting was adjourned at 8:52 p.m.

**APPROVED:** \_\_\_\_\_

\_\_\_\_\_  
Jim Clingan, chair  
Planning Commission

DRAFT

**CITY OF BURIEN, WASHINGTON  
MEMORANDUM**

**DATE:** February 21, 2012

**TO:** Burien Planning Commission

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

**SUBJECT:** Draft Zoning Code Amendments

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At your February 14<sup>th</sup> meeting, the Planning Commission held a public hearing on a set of proposed Zoning Code amendments (attached). The next step in the review process is for the Commission to discuss the proposed amendments and public comment you received as well as make a recommendation to City Council on the amendments.

The proposal is to change the process for site-specific Comprehensive Plan land use map amendments

Based on public and Commission comments, we are proposing some changes to several proposed amendments, shown on the attached document:

**#1 BMC 19.10.280, Definition of ‘Impervious Surface’:** We are proposing to remove amendment #1, which would have added “graveled” to the definition of impervious surface in BMC 19.10.280. We plan to take another look at the larger issue of what constitutes impervious surface, based on more modern concepts (such as pervious pavement and low impact development) and NPDES requirements.

**#4 BMC 19.15 (Multiple Sections)—Public Park & Recreation Facilities:** We are proposing additional language related to notifying neighbors and posting a notice board for park and recreation facilities.

**#13 BMC 19.25.130 Landscaping, Significant Trees-Retention Plan:** We are proposing to remove amendment #13 which would have eliminated the requirement to maintain a database of significant trees. We can note the existence of a tree retention plan on our GIS system. In response to public comment, elimination of the database requirement would not have changed or affected any of the City’s tree retention regulations.

**#19 BMC 19.65.080.4.B Type 4 Decisions-Public Hearing Notice-Distribution:** We are proposing to remove this amendment and leave the existing language in this section related to notification of Type 4 decisions. The proposed amendment would have eliminated the requirement to post an on-site notice and mail to property owners within 500 feet of a site-specific Comprehensive Plan amendment. That was never our intent.

**#20 BMC 19 (various sections):** In addition to the changes above, we are proposing several additional non-substantive changes to BMC references relating to code enforcement. The City Attorney will be presenting a consolidated code enforcement ordinance to the City Council on March 5<sup>th</sup>, creating a new section I.15 in the BMC. Assuming this ordinance is adopted, we will need to update certain references to BMC I.15. If the ordinance is not adopted, the changes would not be made. The affected sections include:

- **BMC 19.40.070.2.A--Critical Areas--Exemptions and Exceptions—Exempt Activities—Emergencies:** Change BMC 8.45 to BMC I.15.

- **BMC 19.40.190.6—Critical Areas--Vegetation Management:** Change BMC 8.45 to BMC 1.15.
- **BMC 19.40.330.9.F--Critical Areas—Wetlands--Mitigation Requirements—Wetland and Wetland Buffer Violations:** Change BMC 8.45 to BMC 1.15.
- **BMC 19.50.025.6—Personal Wireless Service Facilities—Collocation:** Change BMC 8.45 to BMC 1.15.
- **BMC 19.80.010—Enforcement—Purpose:** Change BMC 8.45 to BMC 1.15.
- **BMC 19.80.010—Enforcement—Violations Defined:** Change BMC 8.45 to BMC 1.15.

## **SUMMARY**

The following is a summary of the proposed amendments. Please see the attachment for the complete amendment proposal.

- ~~1. **BMC 19.10.280, Definition of ‘Impervious Surface’:** Revise the definition of impervious surface to include gravel in the definition.~~
- BMC 19.10.475, Definition of ‘School’:** Revise the definition of ‘school’; to include private schools, preschools, and schools of higher education.
- BMC 19.10 & 19.15, allow “Community Gardens” in the City:** Add definition and zoning standards to allow community gardens as a primary land use within most of the City’s zoning designations.
- BMC 19.15 (Multiple Sections)—Public Park & Recreation Facilities:** Eliminate Type 2 Review Process for some public park & recreation facilities and add the following Special Regulation for Public Park and Recreation Facilities: “No special review process if project design is approved by the City Council through a public review process that includes posting a notice board at the site and notification to neighbors; otherwise a Type 2 review process is required.”
- BMC 19.15.035.2 CC Zone, Retail Use, Special Reg. 2:** Eliminate Type 1 review for auto repair and add the following special regulation: “Vehicle repair activities must occur inside a building.”
- BMC 19.15.020.5 CI Zone, Mixed Use:** Add minimum floor area requirement for non-residential use: “At least 25% of the *gross floor area* must be designed and used for *retail, office or eating and drinking establishment uses.*”
- BMC 19.15 (Multiple Sections)—Replace Type 3 Review Process with Type 2 Review Process in all zones**
- BMC 19.17.040.5.A, Cargo Containers:** Remove reference to Title 18.
- BMC 19.17.070, Accessory Dwelling Units:** Allow the legalization of unpermitted Accessory Dwelling Units if the unit complies with building and fire codes.
- BMC 19.17.090.5.I, Home Occupations:** Update building and fire code references.
- BMC 19.20.030.2 Parking—General Requirements:** Allow for administrative waiver of parking demand study.
- BMC 19.20.040.6, Computation of required off-street parking spaces:** Update building code reference.

~~13. BMC 19.25.130 Landscaping, Significant Trees Retention Plan:~~ Eliminate requirement to maintain a database of significant trees.

**14. BMC 19.40.350.1.C, Critical Areas, Streams – Performance Standards- General Requirements:** Change “wetland” to “stream” in section.

**15. BMC 19.40.350.2.A, Critical Areas, Streams – Performance Standards-Buffers:** Clarify where stream buffers are required.

**16. BMC 19.55.025.3.C Nonconformance, Nonconforming and Continuing Uses:** Remove “or” at the end of the section.

**17. BMC 19.55.030.1.B, Nonconforming Structures--Increasing Impervious Surface Coverage:** Replace current ability to cover 100% of a lot with impervious surface with a ratio of one new square foot of impervious surface offset by a reduction of two square feet of existing impervious surface.

**18. BMC 19.70.070, Adequate Roads – Road Capacity Level of Service (“LOS”) Standard:** Revise to reflect newly amended language in the Burien Comprehensive Plan.

**19. BMC 19.65—Procedures:**

- 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

**20. BMC 19 (various sections):** Revise to reflect newly amended language in the Burien Comprehensive Plan.

**ANALYSIS:**

Consideration and approval of Zoning Code amendments is addressed in BMC 19.65.100 and BMC 19.65.080 (Type 4 Decisions). The following analyzes compliance with applicable portions of these code sections.

1. **BMC 19.65.080(2) State Environmental Policy Act (SEPA):** Procedural amendments are categorically exempt from SEPA under WAC 197-11-800 (19). Since the proposed amendments also contain non-procedural elements, the City completed a SEPA Environmental Checklist and issued a Determination of Non-Significance on February 8, 2012.
2. **BMC 19.65.080.3.a and 19.65.080.4 Public Hearing:** This section requires a public hearing prior to the Planning Commission recommending the amendments to the City Council. A public hearing was held on February 14, 2012. Notice of the hearing was distributed 14 days in advance of the hearing to the City’s Planning Commission interest list, Zoning Code amendment interest list, published in the Seattle Times and posted on the City’s website and in City Hall.

3. **BMC 19.65.080.3.b and 19.65.100.4 Decision Criteria:** The Planning Commission must use following criteria in making a recommendation to the City Council:

A. *The amendment is consistent with the Comprehensive Plan*

Analysis: Many of the proposed amendments relate to clarity, consistency and procedural efficiency. These are supported by the following Comprehensive Plan policies:

**Pol. PI 1.2** The City's development regulations should be consistent with other City plans and activities, including other development requirements. Development regulations shall be clearly written and absent duplicative, uncoordinated or unclear requirements.

**Pol. PI 1.3** The development regulations should enable the City to use different types of conditional use permit processes, including administrative, appeal and hearing processes, based on the type of the use applied for and its impact on the community.

**Pol. ED 7.1** Provide high quality customer service and an equitable and efficient development review/land use permitting process.

**Pol. LU 1.7** The city will strive to ensure that basic community values are reflected in the City's land use and decision making processes, while recognizing the rights of individuals to use and develop private property in a manner consistent with City regulations.

**Pol. NQ 1.6** Encourage public participation in land use decisions affecting the livability of neighborhoods.

The proposed changes to transportation levels of service are consistent with the levels of service adopted in the Comprehensive Plan in December, 2011.

The proposed community garden standards are consistent with policies adopted in the Comprehensive Plan in December, 2011:

**Goal HC 1** Burien promotes and supports the health of all community members through healthy and active planning for physical activity and nutrition.

**Pol. HC 1.1** Develop public, private and non-profit partnerships to support the goal of healthy eating and active living, including education, awareness, enforcement and development partnerships.

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

Analysis: All of the amendments are intended to relate to the public health, safety and welfare by being consistent with the Comprehensive Plan. The community garden amendments will allow for healthy food to be grown in neighborhoods and other areas of Burien, promoting public health.

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

Analysis: The proposed amendments will improve the usability of the Zoning Code by clarifying ambiguous or erroneous language, streamlining permit processes, and allowing for community gardens. Therefore, the amendments will be in the best interest of the community.

**RECOMMENDED MOTION:**

The Commission should decide how you would like to vote on the proposed amendments—individually or in one or more groups. Suggested motions are below:

**To vote on all amendments in one motion:**

I move that the Planning Commission recommend to the City Council approval of the proposed Zoning Code amendments on Attachment A, based on the analysis contained in the staff memo dated February 21, 2012.

**To vote on each amendment individually:**

I move that the Planning Commission recommend to the City Council approval of proposed Zoning Code amendment # \_\_\_\_\_ on Attachment A, based on the analysis contained in the staff memo dated February 21, 2012.

# DRAFT ZONING CODE AMENDMENTS

February 21, 2012

(Changes from Feb. 8, 2012 version are in red)

## ~~1. BMC 19.10.280, Definition of ‘Impervious Surface’~~

~~*Background:* The current definition of ‘impervious surface’ is unclear whether gravel is considered impervious surface. The definition should be clarified to include gravel which has historically been considered impervious surface by staff.~~

~~*Proposed Amendment:* Revise the definition of impervious surface to include gravel in the definition.~~

~~19.10.280 Impervious surface – Any nonvertical surface artificially covered or hardened so as to prevent or impede the percolation of water into the soil mantle including, but not limited to, roof tops, swimming pools, paved or graveled roads and walkways or parking areas and excluding landscaping, surface water retention/detention facilities, and vehicular access easements or tracts shared by two or more single detached dwelling units.~~

## 2. BMC 19.10.475, Definition of ‘School’

*Background:* The current definition of ‘school’ includes elementary, middle/junior high, secondary or high schools, but does not include other types of schools such as ~~Montessori~~preschools, vocational/trade schools, or colleges. There is no other definition or use category in the code for such schools, and staff feels they should be added to the definition to include all levels of education.

*Proposed Amendment:* Revise the definition of ‘school’; to include private schools, ~~Montessori~~preschools, and schools of higher education.

19.10.475 School – An institution of learning, public or private, offering instruction in the several branches of learning and study required by the Education Code of the state of Washington, such as ~~Montessori~~preschools, elementary, middle/junior high, and secondary or high schools; also including schools of higher education such as colleges, vocational, and technical schools. ~~The following are categories of schools:~~

- ~~1. Elementary, and middle/junior high schools: Grades kindergarten through nine, including associated meeting rooms, auditoriums and athletic facilities.~~
- ~~2. Secondary or high school schools: Grades 9 through 12, including associated meeting rooms, auditoriums and athletic facilities.~~

## 3. BMC 19.10 & 19.15, allow “Community Gardens” as a primary land use within most of the City’s zoning designations

*Background:* Currently the City’s zoning code does not address community gardens. A recommendation to define and include community gardens as an allowed use in all or most zoning designations came out of two recent planning efforts: 1) The Food Access review component of the Communities Putting Prevention to Work/Healthy Easting Active Living (CPPW/HEAL) grant; and 2) The University of Washington Student project that looked at the feasibility of community gardens in Burien.

*Proposed Amendment:*

**In Definitions (BMC 19.10)**

Add the following definition of “Community Garden” - An area of land managed and maintained by a group of individuals to grow and harvest food and/or horticultural products for personal or group consumption or donation.

**In the Zoning Use Charts (BMC 19.15)**

List “Community Gardens” as an allowed use in the following zones - Residential Single-family (RS), Residential Multi-family (RM), Neighborhood Center (CN), Intersection Commercial (CI), Downtown Commercial (DC), Professional Residential (PR), Community Commercial (CC), Regional Commercial (CR), Office (O), Industrial (I), Airport Industrial (AI), Special Planning Area 1-Old Burien (SPA-1) and Special Planning Area 3-Gateway (SPA-3).

Include the following dimensional requirements to address accessory structures (i.e. garden sheds and greenhouses).

	<b>ZONING DESIGNATIONS</b>												
	<b>RS</b>	<b>RM</b>	<b>CN</b>	<b>CI</b>	<b>DC</b>	<b>PR</b>	<b>CC</b>	<b>CR</b>	<b>O</b>	<b>I</b>	<b>AI</b>	<b>SPA-1</b>	<b>SPA-3</b>
<b>Front Setback</b>	20 ft.	10 ft.	10 ft.	10 ft.	0 ft.	20 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	0 ft.	5 ft.
<b>Interior Setback</b>	5 ft.	5 ft.	0 ft.	0 ft.	0 ft.	5 ft.	0 ft.	0 ft.	0 ft.	0 ft.	10 ft.	0 ft.	0 ft.
<b>Building Coverage</b>	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%
<b>Impervious Surface Coverage</b>	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%
<b>Height</b>	12 ft.	12 ft.	12 ft.	12 ft.	12 ft.	12 ft.	12 ft.	12 ft.	12 ft.	12 ft.	12 ft.	12 ft.	12 ft.

In all zones no special land use review would be required and there would be no minimum lot area requirement. In addition, to determine if parking spaces are required a reference to BMC 19.20.030.2 Parking will be included. Plus, each zone will have the following special Regulation *“A land use agreement approved by the Director shall be executed between the landowner and those who are interested in gardening on*

*private land. The agreement shall include Community Garden Rules to maintain the property safely and prevent disturbances to neighboring property owners and residents”.*

#### **4. BMC 19.15 (Multiple Sections)—Eliminate Type 2 Review Process for some public park & recreation facilities**

*Background:* In many zones, Public Park & Recreation Facilities require a Type 1 review if less than 1 acre in size, and a Type 2 review if more than 1 acre in size. This was done to provide a public hearing opportunity for larger facilities. All new City-provided Public Park & Recreation Facilities already require City Council approval of the facility design, prior to going through the land use review process.

As part of the design process, the City Council will have taken public comments on its design, similar to a public hearing. Therefore, another hearing before the Hearing Examiner is not needed to obtain public input on the proposed facility.

If the City Council has not pre-approved a park or recreation facility design, then a Type 2 land use review would be appropriate to allow the Hearing Examiner to hold public hearing and issue a decision on the proposed project. This could occur if another public agency proposes a park or recreation facility.

*Proposed Amendment:* Eliminate the Special Review Process and add the following Special Regulation for Public Park and Recreation Facilities: “No special review process if project design is approved by the City Council through a public review process **that includes posting a notice board at the site and notification to neighbors**; otherwise a Type 2 review process is required.”

#### **5. BMC 19.15.035.2 CC Zone, Retail Use, Special Reg. 2: Eliminate Type 1 review for auto repair.**

*Background:* The CC Zone allows “vehicle repair” as an accessory use to a “service station” but only through a Type 1 review. This was done to allow the City to address aesthetic concerns that can be generated by vehicle repair shops. These concerns can be addressed by special regulations rather than a discretionary review process.

*Proposed Amendment:* Eliminate Type 1 review requirement, and add the following special regulation: “Vehicle repair activities must occur inside a building.”

#### **6. BMC 19.15.020.5 CI Zone, Mixed Use—Add minimum floor area requirement for non-residential use**

*Background:* Other non-residential zones allowing mixed use projects (CC, CR, SPA-1 and SPA-3) all require that a minimum of 25% of the floor area be used for non-residential use. However, the CI zone does not have the same requirement. The 25% minimum requirement should be added for consistency.

*Proposed Amendment:* Add the following Special Regulation: “At least 25% of the *gross floor area* must be designed and used for *retail, office or eating and drinking establishment uses.*”

**7. BMC 19.15 (Multiple Sections)—Replace Type 3 Review Process with Type 2 Review Process**

*Background:* Some permitted uses in certain zones currently require a Type 3 Land Use Review. A Type 3 review means that 1) City Planning staff makes a recommendation on the application to the City’s Hearing Examiner; 2) The Hearing Examiner holds a public hearing on the application; 3) The Hearing Examiner then makes a recommendation to the City Council; and 4) The City Council makes the final decision on the application. The Council’s decision may be appealed to Superior Court.

Type 3 decisions are considered “quasi-judicial”. The City Council must act like a judge, reviewing applications only on the record established by the Hearing Examiner and not having contact regarding the application outside of the formal public process.

*Proposed Amendment:* Change all Type 3 review processes to Type 2 review processes in all Use Zone Charts. The following list summarizes which land uses would change from a Type 3 to a Type 2 review process, by zone:

<p><u>RS Zone:</u></p> <ul style="list-style-type: none"> <li>• Cemetery</li> <li>• Community Residential Facility-I</li> <li>• Golf Course</li> <li>• Hatchery/Fish Preserve</li> <li>• School</li> <li>• Senior Citizen Assisted Dwelling Unit</li> <li>• Essential Public Facility</li> <li>• Community, Cultural or Government Facility</li> <li>• Public Utility</li> </ul> <p><u>RM Zone:</u></p> <ul style="list-style-type: none"> <li>• Community Residential Facility</li> <li>• Essential Public Facility</li> <li>• Community, Cultural or Government Facility</li> <li>• Public Utility</li> </ul>	<p><u>CN and CI Zones:</u></p> <ul style="list-style-type: none"> <li>• Community, Cultural, Religious or Government Facility</li> <li>• Public Utility</li> </ul> <p><u>CC, CR, SPA-1 and SPA-3 Zones:</u></p> <ul style="list-style-type: none"> <li>• Essential Public Facility</li> </ul> <p><u>SPA-2 Zone:</u></p> <ul style="list-style-type: none"> <li>• Master Plan</li> </ul> <p><u>DC Zone:</u></p> <ul style="list-style-type: none"> <li>• Building height between 8-12 stories (in the 5-story height area)</li> <li>• Essential Public Facility</li> </ul>	<p><u>O Zone:</u></p> <ul style="list-style-type: none"> <li>• Hospital Master Plan</li> <li>• Community, Cultural, Religious or Government Facility</li> <li>• Public Utility</li> <li>• School</li> </ul> <p><u>I Zone:</u></p> <ul style="list-style-type: none"> <li>• Essential Public Facility</li> <li>• Off-site Hazardous Waste Treatment and Storage Facility</li> <li>• Secure Community Transition Facility</li> </ul>
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## 8. BMC 19.17.040.5.A, Cargo Containers

*Background:* The current section of the cargo container code regarding requirements, permits, and approvals for structures references Titles 15, 18, and 19. Title 18 was repealed in August 2010 and therefore needs to be removed from the code section.

*Proposed Amendment:* Remove reference to Title 18 from BMC 19.17.040.5.A.

A. All requirements, permits and approvals of BMC Titles 15, ~~18~~ and 19 pertaining to *structures* shall apply, including but not limited to *setbacks, lot coverage, critical area* and transition area requirements.

## 9. BMC 19.17.070, Accessory Dwelling Units

*Background:* The code does not currently address the legalization of nonconforming ADU's and the process to legalize them. An additional section has been proposed to address structures that have been converted to ADU's without permits and provides reference to life safety requirements from the building code to be met during the legalization process.

*Proposed Amendment:* Add section to BMC 19.17.070 to address the legalization of unpermitted Accessory Dwelling Units.

3. Legalization of Nonconforming ADUs. ADUs existing without city approval may be legalized if the owner applies for the applicable permits. One ADU may be legalized per lot provided the owner occupancy requirements are met and the unit complies with the requirements set forth in BMC Title 15, Buildings and Construction.

## 10. BMC 19.17.090.5.I, Home Occupations

*Background:* The reference to the building and fire code is outdated and should be updated to reflect the current codes.

*Proposed Amendment:* Update the Building and Fire Code from Uniform Building Code and Uniform Fire Code to the International Building Code and International Fire Code.

I. Operation of the *home occupation(s)* shall comply with all applicable regulations, including but not limited to the Burien Municipal Code, ~~Uniform~~ International Building Code and ~~Uniform~~ International Fire Code, and shall not:

## 11. BMC 19.20.030.2 Parking—General Requirements

*Background:* In certain zones or for certain uses, the Code does not establish a fixed number of required parking stalls due to the nature of the zone or use. In those cases, the reader is referred to BMC 19.20.030.2 which requires completion of a parking demand study. These studies add extra cost to a proposed use, and can run several thousand dollars. In many cases, a formal study is not needed to determine the required parking demand. This is especially true when an existing use moves to a new location and has parking data, for small uses, or for uses that are operated in a similar fashion to similar uses where parking demand can be easily determined.

In many cases, staff has adequate information to establish a parking requirement and a formal study is not necessary. The proposed amendment recognizes this situation and provides flexibility for applicants.

*Proposed Amendment:* Amend section as shown below.

2. Parking Requirement Not Specified. If this Code does not specify a parking requirement for a *use*, the *Director* shall establish the minimum requirement. Parking requirements shall be based on the operation of the proposed use, parking requirements established for similar zones or uses, or a study of anticipated parking demand submitted by the applicant. ~~In the study the applicant shall provide~~ Sufficient information shall be provided to demonstrate that the parking demand for a specific *use* will be satisfied. Parking studies shall be prepared by a professional engineer with expertise in traffic and parking analyses, unless an equally qualified individual is authorized by the *Director*.

## **12. BMC 19.20.040.6, Computation of required off-street parking spaces**

*Background:* The building code reference in this section is outdated, and should be updated to reflect the current codes.

*Proposed Amendment:* Update the Uniform Building Code reference to BMC Title 15, Buildings and Construction.

6. Handicapped Parking Requirements. Off-*street* parking and access for physically handicapped persons shall be provided in accordance with BMC Title 15, Buildings and Construction, the Uniform Building Code, Vol. 4, Chapter 11 Accessibility, also known as the Washington State Regulations for Barrier Free Facilities. [Ord. 292 § 1, 2000]

## **13. ~~BMC 19.25.130 Landscaping, Significant Trees Retention Plan~~**

~~*Background:* This section contains a requirement for the City to compile and maintain a database of significant trees that have been identified in approved tree retention plans. This requirement was adopted in 2000 but was not implemented due to an initial lack of technology and resources to compile such database and geographically locate (map) these trees. Even if we mapped these significant trees, we cannot require they be retained once a site is developed (except in a critical area). Therefore, the required database would be of negligible value.~~

~~*Proposed Amendment:* Revise the first paragraph in section 19.25.130 as follows:~~

~~“The *applicant* shall submit a tree retention plan concurrent with a land use review application, grading permit application, building permit application, preliminary subdivision application or short subdivision application, whichever is reviewed and approved first. The *Director* shall compile and maintain a database of significant trees based upon the submitted and approved tree retention plans. The tree retention plan shall consist of:”~~

## **14. BMC 19.40.350.1.C, Critical Areas, Streams – Performance Standards- General Requirements**

*Background:* “C” of subsection “1” gives performance standards for plantings in this critical area. However, instead of stating “streams” it states “wetland”, or “wetland or wildlife habitat”. This is a result of a proof reading

oversight during ordinance creation when similar wording and native plant requirements were used for different critical areas, including wetlands.

*Proposed Amendment:* Revise BMC 19.40.350.1.C, General Requirements, to state that the planting requirements for streams and stream buffers are as follows:

C. Plantings in a ~~wetland~~ *stream* or *buffer* should be native to Western Washington or increase the functions of the ~~stream wetland~~ or ~~buffer wildlife habitat;~~

### **15. BMC 19.40.350.2.A, Critical Areas, Streams – Performance Standards-Buffers relating to clarifying where stream buffers are required.**

*Background:* There is the need to clarify language that states when and where stream buffers are required. Currently, this section states, “A *stream buffer* area shall be established for all development proposals and activities **on a site** (emphasis added) containing a *stream*. The purpose of the *buffer* shall be to protect the integrity, function, and value of the *stream*”.

Some sites do not contain streams but do contain all or part of a buffer for a nearby stream. For example, a stream may flow through many properties and has a required 50’ buffer on either side (think of Miller Creek). The buffer is needed to preserve the functions and values of that stream. The need for stream buffering does not end at a property line--which is a legal creation, unrelated to the functions and values of that stream. This section needs to be clarified so that stream buffers clearly apply to adjacent sites as applicable.

*Proposed Amendment:* Revise the section to remove connection to a “site”. Additionally, correct the spelling of two words in this same citation, all as follows:

#### 2. Buffers.

A. A *stream buffer* area shall be established ~~for all development proposals and activities on a site containing a stream.~~ as required in this section. The purpose of the *buffer* shall be to protect the integrity, functions, and values of the *stream*.

### **16. BMC 19.55.025.3.C Nonconformance, Nonconforming and Continuing Uses**

*Background:* contains three criteria “A”, “B” and “C” that set forth three separate situations when a nonconforming use must be brought into conformance or discontinued. Only one of the three must be satisfied for this subsection to take effect as evidenced by each of “A” and “B” being followed by “or”. However, “C” is also followed by “or” but without a subsequent “D” or other option.

Ordinance 268 created Chapter 19.55 in October 18, 1999. The “or” in question was included in that ordinance, also without a subsequent “D” or other option. Therefore its inclusion appears to be a typographical error and it should be removed.

*Proposed Amendment:* Revise subsection 19.55.025.3.C to remove the “or” at the end of “C” and to read:

“The *nonconforming use* has ceased for 12 or more consecutive months ~~or.~~”

## 17. BMC 19.55.030.1.B, Nonconforming Structures Increasing Impervious Surface Coverage

*Background:* The current language allows expansion of building and impervious surface coverage for sites which already exceed the maximum allowed in that zone provided surface water is treated in accordance with the Surface Water Design Manual. Properties that currently exceed the maximum allowable impervious surface amount can increase their impervious surface up to 100%. Properties that currently have less than the maximum allowable impervious surface amount cannot exceed the maximum allowable in their zone. This approach is not only inequitable but does nothing to limit runoff from residential development, encourage reduction of impervious surface coverage or incentivize use of low impact development for existing residential lots.

In August of this year, the City of Mercer Island adopted an amendment for legally nonconforming residential sites which allows new impervious surfaces when the applicant offsets the newly created impervious surface areas with a net reduction of existing impervious surface areas. The proposed amendment below adapts this concept to Burien.

*Proposed Amendment:* Revise BMC 19.55.030.1.B to allow an increase in building coverage and/or impervious surface coverage when each new square foot of impervious surface is offset by a reduction of two square feet of existing impervious surface.

### 19.55.030.1 Nonconforming structures

B. An increase in nonconforming building coverage and/or impervious surface coverage is permitted ~~if the additional storm drainage runoff created by the new building coverage and/or impervious surface coverage is collected, transported and treated in accordance with the Surface Water Design Manual as adopted by the City of Burien.~~ when each new square foot of impervious surface is offset by a reduction of two square feet of existing impervious surface, or until the site is in conformance with the current requirements for the maximum allowed impervious surface coverage.

## 18. BMC 19.70.070, Adequate Roads – Road Capacity Level of Service (“LOS”) Standard

*Background:* Adoption of 2011 Comprehensive Plan text amendments to Chapter 2.5 Transportation Element has resulted in adoption of a layered network transportation planning concept and establishment of multimodal levels of service for the Burien road network. Revised level of service standards have been established for designated vehicle priority roadways, downtown Burien streets and all other roadway facilities and services.

*Proposed Amendment:* Revise the levels of service standards to reflect amended language in the Burien Comprehensive Plan.

### 19.70.070 Adequate Roads – Road Capacity Level of Service (“LOS”) Standard.

The following calculated level-of-service standards shall be considered adequate and shall apply to all public roads:

1. ~~LOS standard E for First Avenue South; LOS standard D for designated vehicle priority roadways;~~
2. ~~LOS standard D within the urban center boundary, as shown in Figure 2LU-1.11 of the Comprehensive Plan; LOS standard E for downtown Burien streets;~~
3. ~~LOS standard D for the intersection of SW 128th Street and Ambaum Boulevard SW; LOS C for all other roadway facilities and services;~~
4. As mandated by state law, the city of Burien adopts LOS “D” for SR-509 and SR-518 (highways of statewide significance) and an LOS of “E/mitigated” for the segment of SR-509 from First Avenue South to the Burien city limits (highway of regional significance), or whichever LOS is currently adopted by the Washington State Department of Transportation;
5. ~~LOS standards C for all other roadway facilities and services. [Ord. 545 § 1, 2010, Ord. 431 § 1, 2005, Ord. 28 § 1(516), 1993]~~

**19. BMC 19.65-Procedures (see attached chapter)**

**20. BMC 19 (various sections):**

*Background:* The City Attorney will be presenting a consolidated code enforcement ordinance to the City Council on March 5<sup>th</sup>, creating a new section 1.15 in the BMC. Assuming this ordinance is adopted, we will need to update certain references to BMC 1.15. If the ordinance is not adopted, the changes would not be made.

*Proposed Amendment:* In the following sections, “BMC 8.45” would change to “Chapter 1.15 BMC”:

- BMC 19.40.070.2.A--Critical Areas--Exemptions and Exceptions—Exempt Activities—Emergencies
- BMC 19.40.190.6—Critical Areas--Vegetation Management
- BMC 19.40.330.9.F--Critical Areas—Wetlands--Mitigation Requirements—Wetland and Wetland Buffer Violations
- BMC 19.50.025.6—Personal Wireless Service Facilities—Collocation
- BMC 19.80.010—Enforcement—Purpose
- BMC 19.80.010—Enforcement—Violations Defined

## **19.65 Procedures-(Amendments Draft 2-21-12)**

### **Key:**

Underlined text: Proposed revisions to current language

~~Strikeout text~~: Proposed deletions to current language

**Yellow highlight**: Changes to draft since Jan. 30, 2012 Draft

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 on 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
- iii. 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 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~~ 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. Type 4 decisions of the City Council are final decisions of the City, effective on the day on which the ordinance or resolution is effective.

9. Appeal to Growth Management Hearings Board. 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** 4 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 or other affected areas.

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 III 3 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 or other affected areas; 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~~ 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 will serve the public interest by implementing specifically identified goals of the Comprehensive Plan or a new approach supporting the City's vision; 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

~~HF.~~ 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

~~JH.~~ 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]