



CITY COUNCIL MEETING AGENDA

March 5, 2012

SPECIAL MEETING, Miller Creek Conference Room, 3rd Floor
 For the purpose of conducting Planning Commission interviews

6:00 p.m.

and

COUNCIL MEETING, Council Chambers, 1st Floor

7:00 p.m.

400 SW 152nd Street
 Burien, Washington 98166

| | | PAGE NO. |
|---|--|---------------------|
| 1. CALL TO ORDER | 2. PLEDGE OF ALLEGIANCE | 3. ROLL CALL |
| 4. AGENDA CONFIRMATION | | |
| 5. PUBLIC COMMENT | Individuals will please limit their comments to three minutes, and groups to five minutes. | |
| 6. CORRESPONDENCE FOR THE RECORD | a. Email Dated February 27, 2012, from Kathy Gollob Regarding Burien Community Center. | 3. |
| 7. CONSENT AGENDA | a. Approval of Vouchers: Numbers 31007 - 31061 in the Amounts of \$132,194.88. | 5. |
| | b. Approval of Minutes: Council Meeting, February 27, 2012. | 15. |
| 8. BUSINESS AGENDA | a. Proclamation Naming 2012 as the Year of the Girl. | 19. |
| | b. Presentation of Southwest King County Chamber of Commerce Annual Report. | |
| | c. Discussion of Proposed Zoning Code Amendments. | 21. |
| | d. Adopt Proposed Ordinance 562, Updating and Revising Criminal and Traffic Codes. | 63. |
| | e. Adopt Proposed Ordinance 561, Updating and Consolidating Code Enforcement Regulations. | 77. |
| | f. City Business. | 119. |
| 9. COUNCIL REPORTS | | |
| 10. ADJOURNMENT | | |

COUNCILMEMBERS

| | | |
|----------------------|--------------------------|-------------------|
| Brian Bennett, Mayor | Rose Clark, Deputy Mayor | Jack Block, Jr. |
| Bob Edgar | Lucy Krakowiak | Gerald F. Robison |

Janet Stallman

From: Burien
To: Gollob, Kathleen M
Subject: RE: Burien Community Center - Plans for the future

Thank you for your email. It will be included in a future council packet as Correspondence for the Record. Janet S.

From: Gollob, Kathleen M [<mailto:Kathleen.Gollob@fnf.com>]
Sent: Monday, February 27, 2012 9:28 AM
To: Burien
Subject: Burien Community Center - Plans for the future

As a person who has used the Federal Way Community center and a resident of Burien (North Burien - thank you ☺), I wanted to send a note about Burien's Community Center.

I understand that before the economic difficulties of the past few years, Burien had planned a community center project similar to the facility in Federal Way. I wanted to express my hope that those plans have been delayed rather than cancelled. The Federal Way Community Center FEELS like a community Center, full of people having a great day, helpful staff, and a truly pleasant and invigorating atmosphere.

I am a grandmother so it isn't as though I am hoping for this to all be done tomorrow so I can personally benefit from it (We do fine using the Federal Way facility when we want to do any of the activities they have available there).

I understand the Library building project was an extensive and expensive project and it is a great facility, a bit "cold" to my taste (I am a person who remembers using the first little wood library in Burien - near where the current one is, then the second when it moved on to the little 2 story on 153rd across from Vinces, and lastly the Library Park Library - which I loved and sorely missing being in-as a library. It just felt like a place to enjoy the books, etc.). The kids do enjoy the water feature in the summer - a nice accessory). I digress

I just wanted to express my desire that the expanded community center is still something that is on a "burner" somewhere.

Thanks.

Kathy Gollob

CFTR: 03/05/12

COMPUTER CHECK REGISTER

CHECK REGISTER APPROVAL

WE, THE MEMBERS OF THE CITY COUNCIL OF BURIEN, WASHINGTON, HAVING RECEIVED DEPARTMENT CERTIFICATION THAT MERCHANDISE AND/OR SERVICES HAVE BEEN RECEIVED OR RENDERED, DO HEREBY APPROVE FOR PAYMENT ON This 5th day of March 2012 the FOLLOWING:

CHECK NOS. 31007-31061

IN THE AMOUNTS OF \$132,194.88

WITH VOIDED CHECK NOS. NA

Accounts Payable
Checks for Approval



Burien
Washington, USA

User: CathyR
Printed: 02/29/2012 - 10:56 AM

| Check Number | Check Date | Fund Name | Account Name | Vendor Name | Amount |
|--------------|------------|-------------------------------|-------------------------------|-------------------------------|----------|
| 31007 | 03/05/2012 | Surface Water Management Fund | Regional Watershed (wria9) | King County Office of Finance | 5,851.00 |
| | | | | Check Total: | 5,851.00 |
| 31008 | 03/05/2012 | Street Fund | Repairs And Maintenance | ACE Hardware | 100.56 |
| | | | | Check Total: | 100.56 |
| 31009 | 03/05/2012 | General Fund | Repairs And Maintenance | ADT Security Services | 88.88 |
| | | | | Check Total: | 88.88 |
| 31010 | 03/05/2012 | Street Fund | Repairs And Maintenance | Alpine Products Inc | 188.89 |
| 31010 | 03/05/2012 | Street Fund | Repairs And Maintenance | Alpine Products Inc | 1,335.90 |
| | | | | Check Total: | 1,524.79 |
| 31011 | 03/05/2012 | General Fund | Office And Operating Supplies | Aramark Uniform Services | 21.90 |
| | | | | Check Total: | 21.90 |
| 31012 | 03/05/2012 | General Fund | Quarterly Newsletter | Kenneth Barger | 183.36 |
| | | | | Check Total: | 183.36 |
| 31013 | 03/05/2012 | General Fund | Telephone | JACK BLOCK, JR. | 55.48 |
| | | | | Check Total: | 55.48 |
| 31014 | 03/05/2012 | General Fund | Printing | Brim Press, LLC | 328.50 |

| Check Number | Check Date | Fund Name | Account Name | Vendor Name | Amount |
|--------------|------------|-------------------------------|-----------------------------|------------------------------|-----------|
| | | | | Check Total: | 328.50 |
| 31015 | 03/05/2012 | Street Fund | Repairs And Maintenance | Bryant's Tractor & Mower Inc | 378.33 |
| | | | | Check Total: | 378.33 |
| 31016 | 03/05/2012 | General Fund | Celebration | Burien Trophy | 109.45 |
| | | | | Check Total: | 109.45 |
| 31017 | 03/05/2012 | General Fund | Animal Control Services | Community Animal Resource & | 10,000.00 |
| | | | | Check Total: | 10,000.00 |
| 31018 | 03/05/2012 | General Fund | Telephone | ROSE CLARK | 53.62 |
| | | | | Check Total: | 53.62 |
| 31019 | 03/05/2012 | General Fund | Telephone | CenturyLink | 89.54 |
| 31019 | 03/05/2012 | General Fund | Telephone | CenturyLink | 44.95 |
| 31019 | 03/05/2012 | General Fund | Telephone | CenturyLink | 44.95 |
| 31019 | 03/05/2012 | General Fund | Telephone | CenturyLink | 43.79 |
| 31019 | 03/05/2012 | General Fund | Telephone | CenturyLink | 100.70 |
| 31019 | 03/05/2012 | General Fund | Telephone | CenturyLink | 60.82 |
| | | | | Check Total: | 384.75 |
| 31020 | 03/05/2012 | General Fund | Utilities | COMCAST | 71.90 |
| | | | | Check Total: | 71.90 |
| 31021 | 03/05/2012 | General Fund | Rental Housing License Fee | City of Kent | 675.00 |
| | | | | Check Total: | 675.00 |
| 31022 | 03/05/2012 | Surface Water Management Fund | Utilities | City of Seattle | 62.36 |
| 31022 | 03/05/2012 | Surface Water Management Fund | Utilities | City of Seattle | 30.57 |
| 31022 | 03/05/2012 | Street Fund | Utilities - Traffic Signals | City of Seattle | 107.78 |
| 31022 | 03/05/2012 | Street Fund | Utilities - Traffic Signals | City of Seattle | 77.10 |
| 31022 | 03/05/2012 | Street Fund | Utilities - Traffic Signals | City of Seattle | 58.00 |
| 31022 | 03/05/2012 | Street Fund | Utilities - Traffic Signals | City of Seattle | 263.68 |
| 31022 | 03/05/2012 | Street Fund | Utilities - Traffic Signals | City of Seattle | 212.52 |

| Check Number | Check Date | Fund Name | Account Name | Vendor Name | Amount |
|--------------|------------|-------------------------------|-------------------------------|--------------------------------|-----------|
| | | | | Check Total: | 812.01 |
| 31023 | 03/05/2012 | General Fund | Telephone | Robert Edgar | 69.95 |
| | | | | Check Total: | 69.95 |
| 31024 | 03/05/2012 | Transportation CIP | Transpo Master Plan | Fehr and Peers | 5,956.49 |
| | | | | Check Total: | 5,956.49 |
| 31025 | 03/05/2012 | General Fund | Drug seizure proceeds KCSO | GPS Intelligence LLC | 800.00 |
| | | | | Check Total: | 800.00 |
| 31026 | 03/05/2012 | Street Fund | Repairs And Maintenance | ICON Materials | 128.94 |
| 31026 | 03/05/2012 | Surface Water Management Fund | Repairs And Maintenance | ICON Materials | 65.34 |
| 31026 | 03/05/2012 | Street Fund | Repairs And Maintenance | ICON Materials | 65.35 |
| | | | | Check Total: | 259.63 |
| 31027 | 03/05/2012 | Street Fund | Repairs & Maint. - Fleet | Interstate Tire & Automotive | 325.36 |
| 31027 | 03/05/2012 | Surface Water Management Fund | Repairs & Maint. - Fleet | Interstate Tire & Automotive | 325.37 |
| | | | | Check Total: | 650.73 |
| 31028 | 03/05/2012 | General Fund | Telephone | LUCY KRAKOWIAK | 54.99 |
| | | | | Check Total: | 54.99 |
| 31029 | 03/05/2012 | Street Fund | Office And Operating Supplies | King County Fleet Adm. | 412.75 |
| 31029 | 03/05/2012 | Surface Water Management Fund | Office And Operating Supplies | King County Fleet Adm. | 412.74 |
| | | | | Check Total: | 825.49 |
| 31030 | 03/05/2012 | General Fund | City Hall Bldg Maintenance | King County Library System | 5,000.00 |
| 31030 | 03/05/2012 | General Fund | City Hall Bldg Maintenance | King County Library System | 35,385.00 |
| | | | | Check Total: | 40,385.00 |
| 31031 | 03/05/2012 | General Fund | Repairs And Maintenance | King County Solid Waste Divisi | 26.72 |
| 31031 | 03/05/2012 | General Fund | Repairs And Maintenance | King County Solid Waste Divisi | 75.41 |

| Check Number | Check Date | Fund Name | Account Name | Vendor Name | Amount |
|--------------|------------|-------------------------------|-------------------------------|-------------------------|----------|
| | | | | Check Total: | 102.13 |
| 31032 | 03/05/2012 | General Fund | Prof. Svcs-instructors | Kim Klose | 81.00 |
| | | | | Check Total: | 81.00 |
| 31033 | 03/05/2012 | General Fund | Mileage | KIM KRAUSE | 125.87 |
| | | | | Check Total: | 125.87 |
| 31034 | 03/05/2012 | Surface Water Management Fund | Repairs And Maintenance | Lloyd Enterprises Inc | 262.66 |
| | | | | Check Total: | 262.66 |
| 31035 | 03/05/2012 | General Fund | Office And Operating Supplies | MBI Systems, Inc. | 21.16 |
| | | | | Check Total: | 21.16 |
| 31036 | 03/05/2012 | Surface Water Management Fund | Office And Operating Supplies | McLendon Hardware, Inc. | 23.86 |
| 31036 | 03/05/2012 | Street Fund | Office And Operating Supplies | McLendon Hardware, Inc. | 23.86 |
| 31036 | 03/05/2012 | Street Fund | Repairs And Maintenance | McLendon Hardware, Inc. | 69.24 |
| 31036 | 03/05/2012 | Street Fund | Repairs And Maintenance | McLendon Hardware, Inc. | 75.85 |
| 31036 | 03/05/2012 | Surface Water Management Fund | Office And Operating Supplies | McLendon Hardware, Inc. | 60.67 |
| 31036 | 03/05/2012 | Street Fund | Repairs And Maintenance | McLendon Hardware, Inc. | 75.94 |
| | | | | Check Total: | 329.42 |
| 31037 | 03/05/2012 | General Fund | B&O Tax collect & audit | Microflex, Inc. | 1,927.74 |
| 31037 | 03/05/2012 | General Fund | B&O Tax collect & audit | Microflex, Inc. | 57.54 |
| 31037 | 03/05/2012 | Street Fund | Dt Business License Svcs | Microflex, Inc. | 3,711.84 |
| 31037 | 03/05/2012 | Street Fund | Dt Business License Svcs | Microflex, Inc. | 57.53 |
| 31037 | 03/05/2012 | General Fund | Sales Tax Auditing Costs | Microflex, Inc. | 71.88 |
| | | | | Check Total: | 5,826.53 |
| 31038 | 03/05/2012 | Street Fund | Repairs And Maintenance | Miller Paint Co. | 17.03 |
| | | | | Check Total: | 17.03 |
| 31039 | 03/05/2012 | General Fund | Office/operating Supplies | Mountain Mist | 33.25 |

| Check Number | Check Date | Fund Name | Account Name | Vendor Name | Amount |
|--------------|------------|-------------------------------|-------------------------------|--------------------------------|----------|
| | | | | Check Total: | 33.25 |
| 31040 | 03/05/2012 | General Fund | Office And Operating Supplies | National Maintenance Contracto | 314.01 |
| | | | | Check Total: | 314.01 |
| 31041 | 03/05/2012 | Street Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 155.83 |
| 31041 | 03/05/2012 | Surface Water Management Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 155.83 |
| 31041 | 03/05/2012 | Surface Water Management Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 2.30 |
| 31041 | 03/05/2012 | Street Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 2.31 |
| 31041 | 03/05/2012 | Surface Water Management Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | -6.57 |
| 31041 | 03/05/2012 | Street Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | -6.57 |
| 31041 | 03/05/2012 | Street Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 25.62 |
| 31041 | 03/05/2012 | Surface Water Management Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 25.63 |
| 31041 | 03/05/2012 | Street Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 12.26 |
| 31041 | 03/05/2012 | Surface Water Management Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 12.26 |
| 31041 | 03/05/2012 | Street Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 5.47 |
| 31041 | 03/05/2012 | Surface Water Management Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 5.47 |
| 31041 | 03/05/2012 | Surface Water Management Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 10.61 |
| 31041 | 03/05/2012 | Street Fund | Repairs & Maint. - Fleet | O'Reilly Auto Parts | 10.60 |
| | | | | Check Total: | 411.05 |
| 31042 | 03/05/2012 | Surface Water Mgmt CIP | DRAINAGE MASTER PLAN | OTAK, Inc | 7,941.50 |
| | | | | Check Total: | 7,941.50 |
| 31043 | 03/05/2012 | Street Fund | Repairs & Maint. - Fleet | Pacific Torque LLC | 272.18 |
| 31043 | 03/05/2012 | Surface Water Management Fund | Repairs & Maint. - Fleet | Pacific Torque LLC | 272.18 |
| | | | | Check Total: | 544.36 |
| 31044 | 03/05/2012 | Street Fund | Office And Operating Supplies | Pacific Industrial Supply | 220.45 |
| 31044 | 03/05/2012 | Surface Water Management Fund | Office And Operating Supplies | Pacific Industrial Supply | 220.45 |
| | | | | Check Total: | 440.90 |
| 31045 | 03/05/2012 | General Fund | Postage | Reserve Account | 5,000.00 |
| | | | | Check Total: | 5,000.00 |
| 31046 | 03/05/2012 | General Fund | Operating Rents & Leases | Pitney Bowes Global Financial | 969.09 |

| Check Number | Check Date | Fund Name | Account Name | Vendor Name | Amount |
|--------------|------------|-------------------------------|--------------------------------|-------------------------------|-----------|
| | | | | Check Total: | 969.09 |
| 31047 | 03/05/2012 | General Fund | Utility Tax low income refund | Lorraine Phelps | 55.79 |
| | | | | Check Total: | 55.79 |
| 31048 | 03/05/2012 | General Fund | Business & Occupation Tax | Cort Business Services | 28.61 |
| | | | | Check Total: | 28.61 |
| 31049 | 03/05/2012 | General Fund | Refund Clearing Account -Parks | Gloria Witters | 200.00 |
| | | | | Check Total: | 200.00 |
| 31050 | 03/05/2012 | General Fund | Business & Occupation Tax | Armoire Chocolat LLC | 16.24 |
| | | | | Check Total: | 16.24 |
| 31051 | 03/05/2012 | Surface Water Management Fund | Repairs And Maintenance | Renton Concrete Recyclers LLC | 55.10 |
| 31051 | 03/05/2012 | Surface Water Management Fund | Repairs And Maintenance | Renton Concrete Recyclers LLC | 63.63 |
| | | | | Check Total: | 118.73 |
| 31052 | 03/05/2012 | General Fund | Jail contracts | SCORE | 29,668.34 |
| | | | | Check Total: | 29,668.34 |
| 31053 | 03/05/2012 | Transportation CIP | Construction | SEATTLE CITY LIGHT | 2,074.00 |
| | | | | Check Total: | 2,074.00 |
| 31054 | 03/05/2012 | General Fund | Professional Services | Nancy Shattuck | 1,895.00 |
| | | | | Check Total: | 1,895.00 |
| 31055 | 03/05/2012 | Street Fund | Repairs And Maintenance | Six Robbles' Inc. | 365.82 |
| | | | | Check Total: | 365.82 |
| 31056 | 03/05/2012 | General Fund | Drug seizure proceeds KCSO | Teel Technologies | 1,525.00 |

| Check Number | Check Date | Fund Name | Account Name | Vendor Name | Amount |
|--------------|------------|-------------------------------|------------------------------|--------------------------------|------------|
| | | | | Check Total: | 1,525.00 |
| 31057 | 03/05/2012 | General Fund | Celebration | U Frame It | 100.10 |
| | | | | Check Total: | 100.10 |
| 31058 | 03/05/2012 | Street Fund | Operating Rentals And Leases | United Rentals Northwest, Inc. | 2,297.36 |
| | | | | Check Total: | 2,297.36 |
| 31059 | 03/05/2012 | General Fund | Jail contracts | WASPC-Regional Cities EHM | 1,113.00 |
| | | | | Check Total: | 1,113.00 |
| 31060 | 03/05/2012 | Surface Water Management Fund | Repairs And Maintenance | Washington Tractor | 489.22 |
| 31060 | 03/05/2012 | Surface Water Management Fund | Repairs And Maintenance | Washington Tractor | -202.19 |
| 31060 | 03/05/2012 | Surface Water Management Fund | Repairs And Maintenance | Washington Tractor | 64.30 |
| | | | | Check Total: | 351.33 |
| 31061 | 03/05/2012 | Transportation CIP | construction engineering | Washington State D.O.T. | 323.79 |
| | | | | Check Total: | 323.79 |
| | | | | Report Total: | 132,194.88 |



CITY COUNCIL MEETING MINUTES

February 27, 2012

SPECIAL MEETING, Miller Creek Conference Room, 3rd Floor

For the purpose of conducting Business & Economic Development Partnership and
Parks & Recreation Board Interviews

6:00 p.m.

COUNCIL MEETING, Council Chambers, 1st Floor

7:00 p.m.

and

RECEPTION HONORING CITIZEN OF THE YEAR

7:15 p.m. – 7:45 p.m.

400 SW 152nd Street

Burien, Washington 98166

To hear Council'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*
- *Check out a DVD of the Council Meeting from the Burien Library*

SPECIAL MEETING

Mayor Bennett called the Special Meeting of the Burien City Council to order at 6:00 p.m. for the purpose of conducting Business & Economic Development Partnership and Parks & Recreation Board interviews.

Present: Mayor Brian Bennett, Deputy Mayor Rose Clark, Councilmembers Jack Block, Jr., Bob Edgar, Lucy Krakowiak, Joan McGilton and Gerald F. Robison.

Administrative staff present: Mike Martin, City Manager.

Interviews were held with applicants Rick Onyshko, Joey Martinez, and Daniel Mendes.

No action was taken.

The Special Meeting adjourned to the Regular Meeting at 6:55 p.m.

CALL TO ORDER

Mayor Bennett called the Meeting of the Burien City Council to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Mayor Bennett led the Pledge of Allegiance.

ROLL CALL

Present: Mayor Brian Bennett, Deputy Mayor Rose Clark, Councilmembers Jack Block, Jr., Bob Edgar, Lucy Krakowiak, Joan McGilton and Gerald F. Robison.

Administrative staff present: Mike Martin, City Manager; Craig Knutson, City Attorney; Michael Lafreniere, Parks, Recreation and Cultural Services Director; and Monica Lusk, City Clerk.

CITIZEN OF THE YEAR AWARD

Mayor Bennett read a proclamation and presented the proclamation and a plaque to Citizen of the Year John Feeney.

John Feeney thanked the Council for the honor of being named Citizen of the Year. He encouraged all to volunteer at schools to teach English and reading.

RECESS FOR RECEPTION

Mayor Bennett called a recess at 7:06 for the purpose of holding a reception for John Feeney, Citizen of the Year.

Mayor Bennett reconvened the Regular Meeting at 7:30 p.m.

AGENDA CONFIRMATION

Direction/Action

Motion was made by Deputy Mayor Clark, seconded by Councilmember McGilton and passed 6-0 to affirm the February 27, 2012, Agenda. Councilmember Krakowiak returned to the dais after the vote on the motion.

PUBLIC COMMENT

Bernie Dorsey, Highline School Board and Mia Gregerson, SeaTac City Councilmember Mr. Dorsey and Councilmember Gregerson spoke to the Highline Communities Coalition's vision statement, the upcoming City Schools Summit on March 15, and elements that promote regional vitality.

Michael Fowler, Homeless
Mr. Fowler spoke to the John T. Williams killing.

Pearl Richard, 533 3rd Avenue West, #409, Seattle
Ms. Richard spoke to Resolution No. 499, smoking prohibited in housing complexes.

Ken Taylor, CEO of Valley Cities Counseling and Penny Bartley, Director of SCORE
Mr. Taylor spoke to the \$1 million grant received from the Bristol-Myers Squibb Foundation to help offenders with mental illness re-enter to the community.
Ms. Bartley described how SCORE is a cooperative effort by the cities of Auburn, Burien, Des Moines, Federal Way, Renton and SeaTac.

Goodspaceguy, 10219 Ninth Avenue South, Seattle
Mr. Goodspaceguy spoke to how jobs are destroying minimum wage.

Maggie Larrick, 15007 24th Avenue SW, Burien
Ms. Larrick invited all to attend "Tommy the Rock Opera" at Burien Little Theatre. She spoke to the PROS Plan and the lack of space for the performing arts.

Robert Howell, 15240 20th Avenue SW, Burien
Mr. Howell noted that the Burien Comprehensive Plan states that the City have a business plan in place prior to an annexation vote and one should be in place before a North Highline Annexation vote.

CORRESPONDENCE FOR THE RECORD

- a. Email Dated February 9, 2012, from Suzanne Greive Regarding BEDP Meetings.

CONSENT AGENDA

- a. Approval of Vouchers: Numbers 30896 - 31006 in the Amounts of \$494,012.91.
- b. Approval of Minutes: Council Meeting, February 13, 2012.

Direction/Action

Motion was made by Deputy Mayor Clark, seconded by Councilmember McGilton, and passed unanimously to approve the February 27, 2012, Consent Agenda.

BUSINESS AGENDA

Motion to Approve Appointment to the Business & Economic Development Partnership. 27

Direction/Action

MOTION was made by Deputy Mayor Clark, seconded by Councilmember McGilton and passed unanimously to appoint Rick Onyshko to the Business & Economic Development Partnership for an unexpired term that will begin on February 27, 2012, and end on March 31, 2015.

Motion to Approve Appointment to the Parks and Recreation Board. 29

Direction/Action

MOTION was made by Deputy Mayor Clark, seconded by Councilmember McGilton and passed unanimously to appoint Daniel Mendes to the Parks and Recreation Board Position 2 for an unexpired term that will begin on February 27, 2012, and end on March 31, 2015.

Motion to Approve Resolution No. 328, Adopting the 2012 Parks, Recreation and Open Space (PROS) Plan

Direction/Action

MOTION was made by Deputy Mayor Clark, seconded by Councilmember McGilton and passed unanimously to adopt Resolution 328, approving the February 2012 Parks, Recreation and Open Space Plan.

Review of Proposed Council Agenda Schedule

Follow-up

Staff will add discussions on pursuing a new community center and on business development to the list of Study Session topics, and invite Girl Scouts to attend the next meeting where a Girl Scout pledge video will play prior to the presentation of a proclamation for The Year of the Girl.

City Business

Follow-up

Staff will provide an update on the 1st Avenue South Phase I completion prior to the next Council meeting.

COUNCIL REPORTS

Councilmember Krakowiak noted Discover Burien’s annual dinner, silent auction and awards event on March 2.

Deputy Mayor Clark provided a status on the Des Moines Memorial Drive – Road of Remembrance restoration.

ADJOURNMENT

Direction/Action

MOTION was made by Deputy Mayor Clark, seconded by Councilmember McGilton and passed unanimously to adjourn the meeting at 8:56 p.m.

Brian Bennett, Mayor

Monica Lusk, City Clerk

DRAFT



**PROCLAMATION
OF THE CITY OF BURIEN
Washington**

**A PROCLAMATION OF THE BURIEN CITY COUNCIL OF THE CITY OF BURIEN,
WASHINGTON, PROCLAIMING 2012 AS**

THE YEAR OF THE GIRL

WHEREAS, March 12, 2012 marks the 100th anniversary of the Girl Scouts of the United States of America, which began in 1912 when Savannah, GA native Juliette "Daisy" Gordon Low gathered 18 girls to provide them the opportunity to develop physically, mentally and spiritually; and

WHEREAS, for 100 years, Girl Scouting has helped build millions of girls and women of courage, confidence, and character who act to make the world a better place; and

WHEREAS, today, more than 500 million American women are Girl Scout alumnae, 3.3 million girls and adult volunteers are active members, and Girl Scouts is the largest member of the World Association of Girl Guides and Girl Scouts, a global movement comprised of more than 10 million girls in 145 countries worldwide; and

WHEREAS, core programs around Science, Technology, Engineering and Math, environmental stewardship, healthy living, financial literacy and global citizenship help girls develop a solid foundation in leadership; and

WHEREAS, many girls from the City of Burien and numerous dedicated adult volunteers are proud to be a part of the Girl Scout tradition in our community;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, does hereby ask all Burien citizens to join us in applauding the Girl Scouts of the United States of America for their 100 years of leadership and expertise as the voice for and of girls; the Girl Scouts of Western Washington for providing the local support for Girl Scouting in our community; and the Girl Scouts of Burien for their courage, confidence, and character to act to make our world a better place, and proudly proclaim 2012 as:

The Year of The Girl

Dated this 5th day of March, 2012.

Mayor Brian Bennett
Councilmember Jack Block
Councilmember Lucy Krakowiak
Councilmember Gerald F. Robison

Deputy Mayor Rose Clark
Councilmember Bob Edgar
Councilmember Joan McGilton

City of Burien


Mayor

**CITY OF BURIEN
AGENDA BILL**

| | | |
|--|---|--|
| Agenda Subject: Discussion of Proposed Zoning Code Amendments | | Meeting Date: March 5, 2012 |
| Department: Community Development | Attachments: Memo to Council | Fund Source: N/A Activity Cost: N/A Amount Budgeted: N/A Unencumbered Budget Authority: N/A |
| Contact: Scott Greenberg, AICP, Community Development Director | | |
| Telephone: 206-248-5519 | | |
| Adopted Initiative: Yes X No | Initiative Description: Streamline development codes and eliminate outdated language | |
| <p>PURPOSE/REQUIRED ACTION: The purpose of this agenda item is to introduce and review the Planning Commission recommendations on a set of proposed Zoning Code amendments. Staff is requesting Council discussion and direction so that a final Ordinance can be prepared for future action.</p> <p>BACKGROUND (Include prior Council action & discussion): In late 2011, Planning staff prepared a set of Zoning Code amendments designed to provide clarity, consistency and procedural efficiency. The amendments were considered by the Planning Commission at meetings on Dec. 13, 2011 and on January 24, February 14 and February 28, 2012. Please see attached memo for a summary of the proposed amendments. We are working on formatting of the ordinance and will provide it to Council at your March 19th meeting. There is no deadline for adoption of the proposed amendments.</p> <p>OPTIONS (Including fiscal impacts): Change proposed amendments.</p> | | |
| Administrative Recommendation: Discuss proposed amendments and provide direction to staff. | | |
| Committee Recommendation: N/A | | |
| Advisory Board Recommendation: On February 28, the Planning Commission recommended approval of the proposed amendments by a 6-1 vote. | | |
| Suggested Motion: None required. | | |
| Submitted by: Scott Greenberg | | |
| Administration _____ | City Manager _____ | |
| Today's Date: February 29, 2012 | File Code: R:\CC\Agenda Bill 2012\030512cd-1 Zoning Code Amendments.docx | |

**CITY OF BURIEN, WASHINGTON
MEMORANDUM**

DATE: February 29, 2012

TO: Mayor Brian Bennett and Councilmembers

FROM: Scott Greenberg, AICP
Community Development Director

SUBJECT: Draft Zoning Code Amendments

At your March 5th meeting, the City Council will begin consideration of on a set of Zoning Code amendments recommended for approval by the Planning Commission and staff (attached). The amendments are proposed to a variety of sections, and are mostly procedural and clarifying in nature. One notable exception is some proposed regulations that would allow community gardens in most zones in the City if certain criteria are met. These are not medical marijuana ‘collective gardens’, but are your typical fruit, vegetable and herb gardens.

SUMMARY

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

1. **BMC 19.10.475, Definition of ‘School’:** Revise the definition of ‘school’; to include private schools, preschools, and schools of higher education.
2. **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.
3. **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; otherwise a Type 2 review process is required.”
4. **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.”
5. **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.*”
6. **BMC 19.15 (Multiple Sections)—Replace Type 3 Review Process with Type 2 Review Process in all zones**
7. **BMC 19.17.040.5.A, Cargo Containers:** Remove reference to Title 18.
8. **BMC 19.17.070, Accessory Dwelling Units:** Allow the legalization of unpermitted Accessory Dwelling Units if the unit complies with building and fire codes.
9. **BMC 19.17.090.5.I, Home Occupations:** Update building and fire code references.

10. **BMC 19.20.030.2 Parking—General Requirements:** Allow for administrative waiver of parking demand study.
11. **BMC 19.20.040.6, Computation of required off-street parking spaces:** Update building code reference.
12. **BMC 19.40.350.1.C, Critical Areas, Streams – Performance Standards- General Requirements:** Change “wetland” to “stream” in section.
13. **BMC 19.40.350.2.A, Critical Areas, Streams – Performance Standards-Buffers:** Clarify where stream buffers are required.
14. **BMC 19.55.025.3.C Nonconformance, Nonconforming and Continuing Uses:** Remove “or” at the end of the section.
15. **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.
16. **BMC 19.70.070, Adequate Roads – Road Capacity Level of Service (“LOS”) Standard:** Revise to reflect newly amended language in the Burien Comprehensive Plan.
17. **BMC 19—Code Enforcement References:** Non-substantive revision to reflect proposed change in Code Enforcement Chapter from BMC 8.45 to BMC 1.15.
18. **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 Sept. 2013, after this year’s docketing schedule).
 - Create “docketing criteria” for Comprehensive Plan amendments.
 - Clarify decision criteria for Comprehensive Plan amendments

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.

DRAFT ZONING CODE AMENDMENTS
Recommended by Planning Commission and Staff

February 29, 2012

1. 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.~~

2. 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).

| | ZONING DESIGNATIONS | | | | | | | | | | | | |
|------------------------------------|----------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|----------|----------|-----------|--------------|--------------|
| | RS | RM | CN | CI | DC | PR | CC | CR | O | I | AI | SPA-1 | SPA-3 |
| Front Setback | 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. |
| Interior Setback | 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. |
| Building Coverage | 15% | 15% | 15% | 15% | 15% | 15% | 15% | 15% | 15% | 15% | 15% | 15% | 15% |
| Impervious Surface Coverage | 25% | 25% | 25% | 25% | 25% | 25% | 25% | 25% | 25% | 25% | 25% | 25% | 25% |
| Height | 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”.

3. 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.”

4. 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.”

5. 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.*”

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

7. 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.

8. 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.

9. 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:

10. 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.

1. 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*.

11. 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. 1, Chapter 11 Accessibility, also known as the Washington State Regulations for Barrier Free Facilities. [Ord. 292 § 1, 2000]

12. 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~~.”

13. 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*.

14. 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.~~”

15. 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.

16. 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]~~

17. BMC 19 (various sections):

Background: The City Attorney will be presenting a consolidated code enforcement ordinance to the City Council on March 5th, 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

18. BMC 19.65-Procedures (see attached chapter)

19.65 Procedures-

Planning Commission Recommended Amendments 2-29-12

Key:

Underlined text: Proposed revisions to current language

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

| | |
|-----------|---|
| 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 28th 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 14th day after issuance of the Notice of Decision; except that if the *Director's* decision is consolidated with a threshold Determination of Non-significance under the State Environmental Policy Act for which a comment period pursuant to WAC 197-11-340 must be provided, the appeal period for the consolidated decision shall be 21 days.

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

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

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

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

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

9. Hearing Examiner Decision on Appeal.

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

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

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

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

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

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

19.65.070 Type 2 Decisions

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

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

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

2. State Environmental Policy Act (SEPA).

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

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

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

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

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

5. Hearing Examiner Public Hearing

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

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

6. Hearing Examiner Decision.

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

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

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

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

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

- iv. A statement explaining the appeal process.
- D. Distribution. The *Director* shall mail the written decision, bearing the date it is mailed, to all parties of record.
7. Appeal of Type 2 Decisions.
- A. Parties of record may appeal the decision by filing a written statement setting forth:
 - i. Facts demonstrating that the person is adversely affected by the decision;
 - ii. A concise statement identifying the specific findings of fact or conclusions which are being appealed;
 - iii. The specific relief requested; and
 - iv. Any other information reasonably necessary to make a decision on the appeal.
 - B. The written statement of appeal and appeal fee, if any, must be received by the City Clerk no later than 5:00 p.m. on the 14th 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 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 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 a preliminary docket~~ of ~~eligible amendments submitted by the public, the City Council, the Planning Commission, and City staff amendment requests received by the March 1 deadline.~~ ~~By July 1, t~~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, t~~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]

**CITY OF BURIEN
AGENDA BILL**

| | | |
|---|---|--|
| Agenda Subject: Adopt proposed Ordinance 562 updating and revising criminal and traffic codes | | Meeting Dates: March 5 and 19, 2012 |
| Department: Legal | Attachments: <u>Proposed Ordinance 562 updating and revising criminal and traffic codes</u> | Fund Source: Activity Cost: Amount Budgeted: Unencumbered Budget Authority: |
| Contact: Craig Knutson, Renee Walls | | |
| Telephone: | | |
| Adopted Work Plan Priority: Yes No | Work Plan Item Description: | |
| <p>PURPOSE/REQUIRED ACTION: The City Attorney and City Prosecutor are recommending adoption of an ordinance updating and revising the City’s criminal and traffic codes. The ordinance is necessary to correct inconsistencies with state law and to adopt provisions dealing with Inattentive Driving, Attempted Forgery, Vehicle Trespass, and Public Defender Standards.</p> <p>BACKGROUND (Include prior Council action & discussion):</p> <p><u>Inattentive Driving</u> The inattentive driving offense will provide a lesser charge option for defendants to plead guilty to in lieu of non-criminal moving violations, such as negligent driving, failure to yield, following too close, speeding, etc. This offense will not be reported to the Department of Licensing, will not affect insurance rates, and will be a useful prosecutorial option.</p> <p><u>Attempted Forgery</u> Under recently adopted King County filing standards, forgery is one of the crimes that cities are now responsible for prosecuting. Burien needs to adopt forgery as a non-felony offense, so that it may be charged in District Court.</p> <p><u>Vehicle Trespass</u> Adopting the crime of Vehicle Trespass will allow another charging option in situations where it is difficult to prove intent to commit a crime in the vehicle, which is necessary to charge the crime of Vehicle Prowling.</p> <p><u>Public Defender Standards</u> State law requires cities and counties to adopt public defender standards to insure that indigent defendants receive effective assistance of counsel. RCW 10.101.030. The standards endorsed by the Washington State Bar Association serve as accepted guidelines. The proposed City standards are modeled after these guidelines.</p> <p>OPTIONS (Including fiscal impacts):</p> <ol style="list-style-type: none"> 1. Adopt the ordinance. 2. Do not adopt the ordinance. | | |
| Administrative Recommendation: Adopt the ordinance | | |
| <p>Suggested Motion for March 19, 2012 meeting: Move to adopt Ordinance 562, updating and revising the City’s criminal and traffic codes</p> | | |
| Submitted by: | | |
| Administration _____ | City Manager _____ | |
| Today’s Date: | File Code: \\File01\records\CC\Agenda Bill 2012\030512ls-Ord updating and revising criminal and traffic codes.doc | |

**CITY OF BURIEN
Burien, Washington**

ORDINANCE 562

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, UPDATING THE CITY'S CRIMINAL AND TRAFFIC CODES, ADOPTING NEW PROVISIONS RELATED TO ATTEMPTED FORGERY, INATTENTIVE DRIVING, VEHICLE TRESPASS, AND PUBLIC DEFENDER STANDARDS, AMENDING THE PROVISION RELATED TO LIQUOR IN A PUBLIC PLACE, AND AMENDING TITLES 9 AND 10 OF THE BURIEN MUNICIPAL CODE

WHEREAS, some of the City's current criminal and traffic code provisions need to be updated; and

WHEREAS, it is in the interest of the public health, safety and welfare to adopt new provisions related to attempted forgery, inattentive driving, vehicle trespass, and public defender standards; and

WHEREAS, in order to be consistent with State law, the crime of liquor in a public place should be penalized as a civil infraction, as provided in RCW 66.44.100, rather than a misdemeanor, as currently provided in the BMC 9.15.200;

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

Section 1. A new Burien Municipal Code Section 9.85.600, entitled "Attempted Forgery," and Section 9.85.610, entitled "Definitions-Fraud," are hereby adopted to read as follows:

9.85.600. Attempted Forgery.

(1) A person is guilty of the crime of attempted forgery if with the intent to commit the crime of forgery does intend to injure or defraud by:

1. falsely making, completing, or altering a written instrument; or
2. possessing, uttering, offering, disposing of or putting off as true, a written instrument which he knows to be forged; and

does an act which is a substantial step toward the commission of that crime.

9.85.610. Definitions, Fraud

The following section of the Washington Criminal Code, as now in effect, and as may subsequently be amended, is adopted by reference as definitions of fraud under the Burien criminal code:

RCW 9A.60.010 Definitions.

Section 2. A new Burien Municipal Code Section 10.05.080, entitled "Inattentive Driving," is hereby adopted to read as follows:

10.05.080. Inattentive Driving.

(1) Definition.

For the purpose of this section, "inattentive" means with a lack of attentiveness to conditions, circumstances, and one's duties required to safely operate the vehicle. Conditions include but are not limited to the nature and condition of the roadway, presence of other traffic, presence of pedestrians, and weather conditions.

(2) Inattentive Driving Prohibited.

It is unlawful for any person to operate a motor vehicle in an inattentive manner.

(3) Violation – Penalty.

The offense of inattentive driving shall be considered to be a lesser offense than, but included in, the offense of operating a motor vehicle in a negligent manner.

Any person convicted of inattentive driving shall be guilty of an infraction, and shall be subject to a fine of two hundred and fifty dollars (\$250.00).

Section 3. A new Burien Municipal Code Section 9.85.105, entitled “Vehicle trespass,” is hereby adopted to read as follows:

| |
|--|
| 9.85.105 Vehicle trespass prohibited – Penalty. |
| (1) A person is guilty of vehicle trespass if he or she knowingly enters or remains unlawfully in a vehicle belonging to another. |
| (2) As used in this section: |
| (a) The word “enter” shall include the entrance of the person, or the insertion of any part of his or her body, or any instrument or weapon held in his or her hand. |
| (b) A person enters or remains unlawfully in or upon a vehicle when he or she is not licensed, invited, or otherwise privileged to so enter or remain. |
| (3) Vehicle trespass is a misdemeanor. |

Section 4. A new Burien Municipal Code Chapter 9.150, entitled “Public Defender Standards,” is hereby adopted to read as follows:

PUBLIC DEFENDER STANDARDS

9.150.010 Adoption of public defender standards.

The city hereby adopts the following standards for public defenders:

(1) Purpose and Intent. These public defender standards are intended to ensure that indigent criminal defendants receive high-quality legal representation through a public defense system that efficiently and effectively protects the constitutional requirement of effective assistance of counsel.

(2) Contract. All indigent defense services shall be paid pursuant to a written contract between the indigent defense attorney(s) and the city, with input from judicial officers.

(3) Compensation. All indigent defense attorneys shall be reasonably compensated, taking into consideration the experience and training of the attorney. Attorneys who have a conflict of interest shall be required to select or compensate conflict counsel.

(4) Duties and Responsibilities of Counsel. All indigent defense contracts shall require that services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable Washington State Bar Association standards, the Rules of Professional Conduct (RPC), case law and applicable court rules defining the duties of counsel and the rights of defendants. Counsel’s primary and most fundamental responsibility is to promote and protect the best interests of the client.

(5) Malpractice Insurance. Indigent defense attorneys shall maintain malpractice insurance with agreed-upon policy limits.

(6) Caseload Limits and Types of Cases. Caseloads shall be limited to ensure effective representation. An attorney should not allow his or her private law practice to interfere with the competent representation of indigent defendants.

The caseload standards adopted by the Washington Supreme Court shall be considered as guidelines. A “case” is defined as the filing of a document wherein a person is designated a defendant or respondent and an attorney is appointed by the court. Adjustments may be made wherein a full case is not attributed in the following nonexclusive circumstances:

- (a) A bench warrant is issued before a case is resolved;
- (b) Probation violation, extradition, restitution hearings, etc., that do not require a full-blown hearing;
- (c) Diversions, continuances for dismissal, misdemeanor compromises or similar dispositions;
- (d) Deferred prosecution or other similar procedure;
- (e) Early dismissal by a prosecutor based on lack of evidence or standard plea offers, based on the prosecutor’s charging and plea bargaining practices or other reasons that dispose of a case without extensive litigation; or
- (f) Withdrawal of counsel at an early stage of the case, due to conflict of interest or other reasons.

Additional adjustments may be made for attorneys who have extensive experience in the practice of criminal law and are able to competently handle more cases, due to their ability to recognize issues, awareness of longstanding case law, knowledge regarding specific jurisdictions, and the administrative procedures of the District Court serving the City of Burien. Such adjustments may include adding an additional 50 cases to a public defender's case limit for every five years of experience spent working primarily in criminal law.

Attorneys providing indigent defense services, judicial officers and city administration shall monitor caseloads to assure adequate representation and progress in moving cases to final adjudication. The above-mentioned parties should not hesitate to confer and craft a remedy for dealing with caseload issues that materially affect representation of an indigent client. Excessive continuances, missed court dates, client complaints, etc., shall be addressed as soon as practicable.

(7) Services Other Than Counsel. Reasonable compensation for expert witnesses, investigators and other services necessary for an adequate preparation and presentation of the defense case shall be provided pursuant to Criminal Rule 3.1(f).

(8) Administrative Expenses. Attorneys shall be responsible for paying all administrative expenses of their office or firm not otherwise provided for in these standards or in a contract. Such costs may include law libraries, financial accounting, case management systems and other costs incurred in the day-to-day management of the contract. Attorneys shall maintain an office to maintain confidential meetings with clients.

(9) Reports of Attorney Activity and Vouchers. Attorneys on contract shall maintain a case reporting and management information system, which includes the number and type of cases. Any such system shall be maintained independently from client files so as to disclose no privileged information. At least quarterly reports shall be submitted by the contract firm to the court and to the city administration. If the City needs to obtain information regarding the disposition of cases, such information may be obtained from the District Court.

A standardized voucher form shall be used by attorneys seeking payment for services rendered. Payment should be made at times agreed to by the parties, without regard to the number of cases closed in the period.

(10) Training. Attorneys shall participate in regular training programs in areas relating to their indigent defense practice.

Attorneys providing counsel to indigent accused should take the opportunity to attend courses that foster trial advocacy skills and to review professional publications and tapes.

(11) Supervision. Each attorney or firm providing indigent defense services should provide adequate supervision of attorneys providing indigent defense services.

(12) Substitution of Attorneys or Assignment of Contracts. The attorney or firm engaged by the respective city to provide indigent defense services shall not subcontract with another firm or attorney to provide representation without prior written approval and shall remain directly involved in the provision of representation. If the contract is with a firm or office, the respective city or judicial officer may request the names and experience levels of those attorneys who will actually be providing the services, to ensure they meet minimum qualifications. Any indigent defense contract shall address the procedures for new counsel taking over upon the conclusion of the contract to ensure a smooth transition upon nonrenewal or termination, with the minimal possible detriment to the indigent client.

(13) Limitations on Private Practice for Contract Attorneys. New contracts for indigent defense attorneys with private attorneys or firms may set limits on the number of private or special appointment cases. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent. An attorney or firm rendering indigent defense services shall not allow his or her private practice or accept special appointments to diminish his or her ability to represent indigent clients he or she is obligated to serve by any contract.

(14) Disposition of Client Complaints. The following procedure shall be utilized for responding to client complaints: Complaints should first be directed to the attorney, firm or agency which provided representation. If the attorney and client cannot resolve the complaint amicably, the attorney shall ask the court to withdraw and substitute new counsel. The complaining client should be informed as to the disposition of his or her complaint within a reasonable period of time. If the client feels dissatisfied with the evaluation and response received, he or she should be advised of the right to complain to the Washington State Bar Association.

(15) Cause for Termination or Removal of Attorney. Contracts for indigent defense services should include the grounds for termination of the contract by the parties. Termination of an attorney's contract should only be for good cause or as provided within the terms of the agreement between the city and firm or attorney. Good cause shall include the failure of the attorney to render adequate representation to clients; the willful disregard of the rights and best interests of the client; the willful disregard of the standards herein addressed; or violations of the RPCs.

The representation in an individual case establishes an inviolable attorney-client relationship. Removal of counsel from representation, therefore, should not occur over the objections of both the attorney and the client.

(16) Nondiscrimination. Neither the city, in its selection of an attorney, firm, or agency to provide indigent defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, sex, sexual orientation, or handicap. Both the city and the contractor shall comply with all federal, state, and local nondiscrimination requirements.

(17) Guidelines for Awarding Defense Contracts. The city shall award contracts for indigent defense services only after determining that the attorney or firm chosen can meet appropriate professional standards and qualifications. Under no circumstances will a contract be awarded on the basis of cost alone. Attorneys or firms seeking contracts for indigent defense services must demonstrate their ability to meet these standards.

Prosecutor and law enforcement officers shall not select the attorneys who will provide indigent defense services.

Section 5. Titles 9 and 10 of the Burien Municipal Code are hereby amended by amending various sections as set forth in the attached Exhibit A.

Section 6. Effective Date. This Ordinance shall take effect five days after publication.

Section 7. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE _____ DAY OF _____, 2012, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 2012.

CITY OF BURIEN

Joan McGilton, Mayor

AUTHENTICATED:

Monica Lusk, City Clerk

Approved as to form:

Craig D. Knutson, City Attorney

Filed with the City Clerk: _____, 2012

Passed by the City Council: _____, 2012

Ordinance No. _____

Date of Publication: _____, 2012

EXHIBIT A

9.05.005 Adoption of State Criminal Statutes

(1) With the exception of the RCW sections set forth in subsection (3) of this section or other RCW sections that are otherwise specifically disavowed in this Code, all RCW sections that constitute misdemeanors and gross misdemeanors and the RCW sections necessary for the investigation, arrest, prosecution, sentencing, confinement, and enforcement of misdemeanors and gross misdemeanors are hereby adopted by reference, as well any future changes, amendments, recodifications, additions, or deletions to those sections, and shall be given the same force and effect as if set forth herein in full. The fact that sections of this Code adopt by reference specific sections of the RCW shall not affect this section. Sections of the Code that specifically recite that sections of the RCW are not adopted or do not apply shall control over this section.

(2) Every section of the RCW's that describes a crime designated as a Class C felony is hereby adopted by reference, as well any future changes, amendments, recodifications, additions, or deletions to those sections, for the purposes of charging a gross misdemeanor anticipatory crime. The adoption of RCW sections describing Class C felonies shall be subject to the provisions of subsections (1) and (4) of this section.

(3) The following RCW sections are specifically not adopted:

(a) RCW 9A.16.110, Defending against violent crime – Reimbursement.

(4) In adopting the state's statutes by reference, only those crimes and offenses within the jurisdiction of a municipality are intended to be adopted and in those sections adopted which deal with both felonies and misdemeanors or gross misdemeanors, only the language applicable to misdemeanors or gross misdemeanors is to be applied (including to the extent that an anticipatory offense would be a misdemeanor or gross misdemeanor). By adopting state statutes, the city intends to assume jurisdiction over and become the jurisdictional authority for the enforcement and prosecution of misdemeanor and gross misdemeanor crimes. Whenever the word "state" shall appear in any statute adopted by reference in this chapter, the word "city" shall be substituted; provided, however, the term "city" shall not be substituted for the term "state" in those circumstances that set forth administrative or licensing duties of the state and its subdivisions. Whenever a state statute specifically adopted in this chapter refers to another state statute not specifically adopted in this chapter, the statute referred to shall be given the force and effect necessary to enforce the statute specifically adopted in this chapter. When issuing a citation, information, or complaint for the violation of any section of the RCW adopted by this chapter, it shall be sufficient for a commissioned officer or prosecutor to cite to and refer to the RCW section number.

(5) Reference to, or adoption of, a statute, code, or ordinance includes and incorporates the statute, code, or ordinance as it exists or is enacted at the time of the reference or adoption, as well any future changes, amendments, recodifications, additions, or deletions in that statute, code, or ordinance that may thereafter occur unless a contrary intent is clearly expressed, and such statute, code, or ordinance shall be given the same force and effect as if set forth in full. Whenever the word "state" shall appear in any statute adopted by reference in this chapter, the word "city" shall be substituted; provided, however, the term "city" shall not be substituted for the term "state" in those circumstances that set forth administrative or licensing duties of the state and its subdivisions. Whenever a state statute specifically adopted in this chapter refers to another state statute not specifically adopted in this chapter, the statute referred to shall be given the force and effect necessary to enforce the statute specifically adopted in this chapter. Statutes and codes adopted by reference by this Code shall be harmonized with other provisions of this Code to the extent practicable, but if they are in direct conflict with other provisions of this Code that are explicitly articulated, the articulated provisions control.

9.05.030 City criminal jurisdiction.

~~Any person who commits within the corporate limits of the city any crime, in whole or in part, is liable to arrest and punishment.~~

The following persons are subject to arrest, prosecution, and criminal punishment:

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(1) A person who commits within the corporate limits of the city any crime, in whole or in part;

(2) A person who commits out of the city any act which, if committed within it, would be theft and is afterward found in the city with any of the stolen property;

(3) A person who, being out of the city, counsels, causes, procures, aids, or abets another to commit a crime in the city;

(4) A person who commits an act without the city which affects persons or property within the city which, if committed within the city, would be a crime.

9.05.040 Classes of crimes.

Any violation of this code for which punishment is authorized for more than 90 days in jail is deemed a gross misdemeanor. Any violation of this Code for which punishment is solely authorized for 90 days or less is deemed a misdemeanor.

~~(1) An offense defined by this code, for which a sentence of imprisonment is authorized, constitutes a violation of city ordinance and a crime. For purposes of this code, the two terms shall have the same meaning and may be used interchangeably. Violations of city ordinances are classified as gross misdemeanors, or misdemeanors.~~

~~(2) A violation of a city ordinance is a gross misdemeanor, if not otherwise designated by this code, and if persons convicted thereof may be fined up to \$5,000 and sentenced to imprisonment for a term not in excess of one year. A violation of city ordinance is a misdemeanor, if so designated in this code, and if persons convicted thereof may be fined up to \$1,000 and sentenced to imprisonment for a term not in excess of 90 days. [Ord. 63 § 4, 1993]~~

9.05.060 Personal jurisdiction.

Every person, regardless of whether or not an inhabitant or resident of the city, may be tried and punished under this code for any violation of city ordinance committed by him or her within the criminal jurisdiction ~~corporate limits~~ of the city. [Ord. 63 § 6, 1993]

9.05.070 Limitation of action.

(1) Prosecution for a ~~No~~ violation of a city ordinance which is classified as a gross misdemeanor may not be commenced ~~be prosecuted~~ more than two years after its commission. Prosecution for a ~~No~~ violation of a city ordinance classified as a misdemeanor may not be commenced ~~be prosecuted~~ more than one year after its commission.

(2) The periods of limitation prescribed herein do not run during any time when the person charged is not usually and publicly resident within this state.

(3) If, before the end of a period of limitation prescribed herein, a complaint or an information has been filed, and the complaint or information is set aside, then the period is extended by a period equal to the length of time from the filing to the setting aside. [Ord. 63 § 7, 1993]

9.05.150 Violation – Penalty.

(1) Unless otherwise specified, every ~~Every~~ person convicted of violating a city ordinance classified as a gross misdemeanor, or not otherwise classified, shall be punished by a fine of not more than \$5000, or by imprisonment for not more than three hundred sixty-four (364) days, or by both such fine and imprisonment. ~~by imprisonment in jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than \$5,000, or by both such imprisonment and fine.~~

(2) Unless otherwise specified, every ~~Every~~ person convicted of violating a city ordinance classified as a misdemeanor, shall be punished by a fine of not more than \$1000, or by imprisonment for not more than ninety

~~(90) days, or by both such fine and imprisonment, imprisonment in jail for a maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than \$1,000, or by both such imprisonment and fine.~~

(3) A person who is convicted of a misdemeanor violation of any provision of Chapter 69.50 RCW adopted by reference shall be punished by imprisonment for not less than 24 consecutive hours, and by a fine of not less than \$250.00. On a second or subsequent conviction, the fine shall not be less than \$500.00. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of 40 hours of community service. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred. [Ord. 63 § 15, 1993]

9.05.160 Restitution – Adopted by reference.

(1) RCW 9A.20.030, as now in effect, and as may subsequently be amended, is adopted by reference to provide for restitution as an alternative to a fine under the Burien criminal code.

(2) Restitution may be imposed as part of a sentence and shall be ordered by the court whenever a person is convicted of a crime which results in injury to any person or damage to or loss of property, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the defendant pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the defendant be required to pay restitution to a victim of an offense or offenses that are not prosecuted pursuant to a plea agreement. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim.

(a) Restitution shall be ordered by the court whenever a person is convicted of any charge of hit and run, whether involving persons, property, or attended vehicles. This restitution shall include:

(i) Damages for injury, property loss and/or lost wages attributable to leaving the scene of the accident or collision in all cases; and

(ii) Damages for injury, property loss and/or lost wages where there is a preponderance of evidence that the convicted person was at fault in the underlying accident or collision.

(b) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within 180 days thereof. The court may continue the hearing beyond the 180 days for good cause. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime, whichever is greater.

(c) The city or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or defendant. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

9.15.200 Liquor in public place.

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(1) Except as permitted by RCW Title 66, no person shall open a package containing liquor, or possess an open container of liquor, or consume liquor in a public place; provided, this provision shall not apply to containers kept in the trunk of a vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(2) This section shall not prohibit the offering of alcohol for sale and consumption in a public place as part of a community event; provided, that the organization seeking to offer alcohol must request in writing authorization from the city manager and identify the particular community event or events at which the sponsor wishes to offer alcohol for sale and consumption. The written request must be made no later than 30 days prior to the first community event for which authorization is sought. Those applying for the city manager's authorization to offer alcohol for sale and consumption must meet the requirements of state law with respect to liquor permits and this chapter. During the course of the community event, the state liquor permit must be displayed within the area. For purposes of this subsection, "community event" shall mean fairs, markets, and festivals held on public property where the public at large is invited to attend, including but not limited to the Farmers Market, the Strawberry Festival, Oktoberfest, and the Fourth of July Festival. As appropriate, the city manager may specify special conditions of use and note the conditions on the authorization.

(3) Violation of this section is a ~~class 3 civil infraction under Chapter 7.80 RCW, misdemeanor punishable by a fine of not more than \$100.00.~~ [Ord. 546 § 1, 2010; Ord. 412 § 1, 2004; Ord. 96 § 2, 1994; Ord. 63 § 89, 1993]

9.60.200 Obstructing governmental operation – Adopted by reference.

(1) The following sections of the Washington Criminal Code as now in effect and as may subsequently be amended, are adopted by reference to establish the crimes relating to obstructing governmental operation under the Burien criminal code:

RCW

9A.76.010 Definitions

9A.76.020 Obstructing a law enforcement officer.

9A.76.030 Refusing to summon aid for a peace officer.

9A.76.040 Resisting arrest.

9A.76.050 Rendering criminal assistance – Definition of term.

9A.76.060 Relative defined.

9A.76.070 Rendering criminal assistance in the first degree.

9A.76.080 Rendering criminal assistance in the second degree.

9A.76.090 Rendering criminal assistance in the third degree.

9A.76.100 Compounding.

9A.76.130 Escape in the third degree.

9A.76.160 Introducing contraband in the third degree.

9A.76.170 Bail jumping.

9A.76.200 Harming a police dog.

9A.76.175 Making a false or misleading statement to a public servant.

(2) The following sections of RCW Title 9, as now in effect and as may subsequently be amended, are adopted by reference to establish additional crimes relating to obstructing governmental operation under the Burien criminal code:

RCW

9.31.090 Escaped prisoner recaptured.

9.62.010 Malicious prosecution.

9.62.020 Instituting suit in name of another.

9.60.400 Interference of court – Adopted by reference.

The following sections of RCW Title 9, as now in effect and as may subsequently be amended, are adopted by reference to establish the crimes relating to contempt and interference with courts under the Burien criminal code:

RCW

~~—9.23.010 Criminal contempt.~~

9.27.015 Interference, obstruction of any court, building, or residence – Violations.

9.60.600 Violation of court ordered probation – Adopted by reference.

(1) Probation violations. It is a misdemeanor for any person, who has been convicted of a criminal offense and has been placed and remains on probation in connection with a suspended or deferred sentence by a court, to knowingly violate any provision of a court’s probation order.

(2) The following sections of the King County Code now in effect and as may subsequently be amended, are adopted by reference to provide for arrest upon violation of court ordered probation under the Burien criminal code and the provisions thereof shall also apply to suspensions or deferrals of sentence by the Municipal Court of the city:

KCC

- 12.150.010 Definitions.
- 12.150.020 Arrest without warrant.

9.80.300 Harassment – Adopted by reference.

(1) The following sections of the Revised Code of Washington as now in effect and as may subsequently be amended, are hereby adopted by reference:

RCW

- 9A.46.010 Legislative finding.
- 9A.46.020 Definition – Penalties.
- 9A.46.030 Place where committed.
- 9A.46.040 Court-ordered requirements upon person charged with crime – Violation.
- 9A.46.050 Arraignment – No-contact order.
- 9A.46.060 Crimes included in harassment.
- 9A.46.070 Enforcement of orders restricting contact.
- 9A.46.080 Order restricting contact – Violation.
- 9A.46.090 Nonliability of peace officer.
- 9A.46.100 “Convicted,” time when.
- 9A.46.110 Stalking.

(2) The following sections of RCW Title 9, as now in effect, and as may subsequently be amended, are adopted by reference to establish additional crimes of harassment under the Burien criminal code:

RCW

- 9.61.230 Telephone calls to harass, intimidate, torment, embarrass.
- 9.61.240 Telephone calls to harass, intimidate, torment, or embarrass – Permitting telephone to be used.
- 9.61.250 Telephone calls to harass, intimidate, torment, or embarrass – Offense, where deemed committed.
- 9.61.260 Cyberstalking

(3) The following sections of RCW Title 10, as now in effect and as may subsequently be amended, are adopted by reference to establish additional crimes of harassment under the Burien criminal code:

- 10.14.120 Disobedience of order -- Penalties.
- 10.14.170 Criminal penalty.

9.85.200 Theft and possession of stolen property – Adopted by reference.

The following sections of the Washington Criminal Code, as now in effect, and as may subsequently be amended, are adopted by reference to establish the crimes of theft and stolen property under the Burien criminal code:

RCW

- 9A.56.010 Definitions.
- 9A.56.020 Theft – Definition, defense.
- 9A.56.050 Theft in the third degree.
- 9A.56.060 Unlawful issuance of checks or drafts.
- 9A.56.100 Theft and larceny equated.
- 9A.56.140 Possessing stolen property – Definition – Access, devices, presumption.
- 9A.56.170 Possessing stolen property in the third degree.

- 9A.56.180 Obscuring identify of a machine.
- 9A.56.220 Theft of cable television services.
- 9A.56.230 Unlawful sale of cable television services.
- 9A.56.240 Forfeiture and disposal of device used to commit violation.
- 9A.56.260 Connection of channel converter.
- 9A.56.270 Shopping cart theft.
- 9A.56.330 Possession of another's identification

9.90.080 Subsequent ~~prostitution convictions as violation for prostitution activity as separate crime.~~

~~It is a gross misdemeanor and a separate crime for any person to commit any~~ Any second or subsequent violation of this chapter relating to unlawful acts of prostitution or pandering, unlawful acts of prostitution loitering, unlawful acts of permitting prostitution or pandering, or unlawful acts of patronizing a prostitute, when the person has a previous violated a provision of this chapter relating to unlawful acts of prostitution or pandering, unlawful acts of prostitution loitering, unlawful acts of permitting prostitution or pandering, or unlawful acts of patronizing a prostitute, and the conviction date of the previous violation is within 12 months of the incident date of the new violation. ~~which may arise from an incident occurring within any period of 12 months from a first or prior conviction of the same or similar offense shall constitute a separate crime which is designated a gross misdemeanor and, upon conviction shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than \$5,000, or by both such imprisonment and fine.~~ The court may suspend all or a portion of the term of imprisonment or fine on condition that the convicted person never enter into, or be present in, any anti-prostitution emphasis area during the term of any such suspension or deferral. The court may further require AIDS testing and counseling, as a condition of suspension or deferral, pursuant to RCW 70.24.350, at the defendant's expenses; provided, however, that King County, as agent for the city pursuant to interlocal agreement, may require such testing and counseling as provided in RCW 70.24.360 upon imprisonment in jail of any such convicted person. [Ord. 63 § 47, 1993]

9.90.090 Violation of conditions of release or conditions of suspension or deferral as separate crime.

The presence of any person within a designated area in violation of court-imposed conditions of release or conditions of suspension or deferral of any sentence shall constitute a separate crime designated a gross misdemeanor and any such person may be apprehended and arrested without the necessity for any warrant or additional court order. ~~Upon conviction, any person so violating the conditions of release or conditions of suspension or deferral shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than \$5,000, or by both such imprisonment and fine.~~ [Ord. 63 § 48, 1993]

9.100.100. Impersonating members of public safety department – Adopted by reference.

The following sections of the King County Code and the Washington Criminal Code, as now in effect, and as may subsequently be amended are adopted by reference to establish the crime of fraud by impersonating members of the public safety department, except that the reference thereto shall also refer to members of the city police department whether contracted or employed:

KCC

- 12.08.010 Impersonating members of public safety department.
- 12.08.020 Selling or disposing of police badges prohibited.
- 12.08.030 Possessing badge with intent to impersonate officer.
- 12.08.040 Intent to impersonate presumed.
- 12.08.050 Penalty for violation.

RCW

- 9A.60.045 Criminal impersonation in the second degree.

9.100.200 Obstructing ~~public~~ city officers.

(1) It is unlawful for any person to make any ~~willfully untrue, misleading or exaggerated statement~~ false or misleading material statement to, or to willfully hinder, delay or obstruct any public city officer in the discharge of his or her official powers or duties. Obstructing public city officers is a misdemeanor.

(2) “Public City officer”, as used in this article, comprises ~~police officers, fire chief and his or her designees, health officers, and~~ the public works director and his or her designees, city clerk and his or her designees, code enforcement personnel, and other city personnel authorized for enforcement of city ordinances, statutes and codes. [Ord. 63 § 33, 1993]

~~_____~~
~~_____~~
10.11.050 Enforcement procedure.

~~The enforcement procedure for this chapter shall be the enforcement procedure set out in Chapter 8.45.~~

10.45.030 Violation – Penalty.

Violation of BMC 10.45.020 is an infraction ~~a misdemeanor~~ and will be punished by a fine of not less than \$100.00 or more than \$1,000 per violation.

10.50.020 General penalties.

(1) Except as otherwise provided in this section or elsewhere in this division, every violation of this division and all conduct made unlawful by this division shall constitute a civil violation. ~~Conviction of a violation shall not give rise to any disability or legal disadvantage based on the conviction of a criminal offense.~~

(2) Any person convicted of a violation of this division may be punished by a civil fine or forfeiture not to exceed \$500.00 or such lesser amount as may be specifically provided for in this division. ~~; provided, that any person convicted of an offense or conduct made unlawful by this division shall be guilty of a crime and, unless specifically provided otherwise in this division, may be punished by a fine in any sum not to exceed \$500.00 or by imprisonment in the city jail for a term not to exceed six months, or by both such fine and imprisonment.~~

(3) ~~Notwithstanding the civil nature of the penalty provided herein for violations, nothing in this section shall deny any constitutional rights which a defendant would have were the penalty deemed criminal.~~

**CITY OF BURIEN
AGENDA BILL**

| | | |
|--|--|--|
| Agenda Subject: Adopt proposed Ordinance 561 updating and consolidating code enforcement regulations | | Meeting Dates: March 5 and 19, 2012 |
| Department: Legal | Attachments: Proposed Ordinance 561 updating and consolidating code enforcement regulations | Fund Source: Activity Cost: Amount Budgeted: Unencumbered Budget Authority: |
| Contact: Craig Knutson | | |
| Adopted Work Plan Priority: Yes No | Work Plan Item Description: | |
| PURPOSE/REQUIRED ACTION: | | |
| <p>The City Attorney, Code Enforcement Officer, Paralegal, and other staff involved in code enforcement are recommending adoption of an ordinance updating and consolidating the City’s code enforcement regulations. The ordinance is necessary to address legal issues with the existing regulations, make the regulations more internally consistent, and update the regulations to more effectively deal with current code enforcement situations. Some of the more significant matters addressed in the ordinance are as follows:</p> <p>1)The new ordinance provides a clear and concise process for addressing code violations and contains several clear options for obtaining compliance (i.e. voluntary compliance, infraction, notice of civil violation, stop work order, appeal to hearing examiner).</p> <p>2)The definition of “Person responsible for violation” is amended to include a mortgagee of property that is in foreclosure or has been unoccupied for 90 days . This should be a substantial tool in obtaining compliance, as we have had numerous properties with significant code violations where the owner has disappeared. Usually, in order to obtain compliance we have to wait until the foreclosure sale occurs, which can take a year or more. The amended definition will allow us to hold the banks responsible much sooner and get properties secured and cleaned up in a more timely manner.</p> <p>3)Instead of numerous code enforcement sections throughout the code that sometimes conflict with other chapters or are unclear regarding enforcement mechanisms, the new ordinance refers most code violations to one chapter for enforcement;</p> <p>4) Monetary penalties are set forth in a clear and consistent manner.</p> <p>5) The methods of serving notice and the process for obtaining abatement authority have been revised to be more expedient and legally supportable.</p> <p>The City’s Hearing Examiner has been given the opportunity to review the proposed ordinance and is very supportive of how it addresses issues such as effective service of notice, who is a responsible party, how abatement may proceed, and some ambiguities that now exist in the current code.</p> | | |
| OPTIONS (Including fiscal impacts): | | |
| <ol style="list-style-type: none"> 1. Adopt the ordinance. 2. Do not adopt the ordinance. | | |
| Administrative Recommendation: Adopt the ordinance | | |
| Suggested Motion for March 19, 2012 meeting: Move to adopt Ordinance 561, updating and consolidating the City’s code enforcement regulations. | | |
| Submitted by: | | |
| Administration _____ | City Manager _____ | |
| Today’s Date: | File Code: \\File01\records\CC\Agenda Bill 2012\030512ls-1 Updating and consolidating code enforcement provisions.doc | |

CITY OF BURIEN
Burien, Washington

ORDINANCE 561

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, CONSOLIDATING AND UPDATING THE CITY'S CODE ENFORCEMENT PROVISIONS BY ADOPTING A NEW CHAPTER 1.15 AND AMENDING VARIOUS ENFORCEMENT SECTIONS IN TITLES 2, 3, 5, 7, 8, 12, 13, AND 15, OF THE BURIEN MUNICIPAL CODE

WHEREAS, the City's current code enforcement provisions are set forth in various parts of the Burien Municipal Code and are in need of being consolidated and updated in order to be more uniform and effective; and

WHEREAS, it is in the public interest to revise the City's code enforcement provisions to have a uniform enforcement scheme that applies to all appropriate and applicable violations of the Burien Municipal Code;

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

Section 1. A new Chapter 1.15 of the Burien Municipal Code is hereby adopted to read as follows:

Chapter 1.15
CODE ENFORCEMENT

Sections:

- 1.15.010 Purpose
- 1.15.020 Definitions
- 1.15.030 Conflicting code provisions
- 1.15.040 Joint and several responsibility and liability
- 1.15.050 Computation of time
- 1.15.060 Interference with code enforcement unlawful
- 1.15.070 Service of documents
- 1.15.080 Violations
- 1.15.090 Infractions
- 1.15.100 Voluntary correction
- 1.15.110 Stop work order
- 1.15.120 Notice of civil violation
- 1.15.130 Response to notice of civil violation
- 1.15.140 Scheduling of hearing to contest or mitigate – correction prior to hearing
- 1.15.150 Contested hearing – procedure
- 1.15.160 Mitigation hearing – procedure
- 1.15.170 Decision of Hearing Examiner
- 1.15.180 Failure to appear – default order
- 1.15.190 Judicial review
- 1.15.200 Payment and recovery of penalties and costs
- 1.15.210 Abatement
- 1.15.220 Right of entry

1.15.010 Purpose.

The purpose of this Chapter is to establish an efficient system of enforcing City regulations that will enable violations to be promptly resolved whenever possible, while providing both appropriate penalties and a full opportunity for alleged violators to have a hearing to contest the violations. It is the express and specific purpose

and intent of this Chapter to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Chapter. It is also the express and specific purpose and intent of this Chapter that no provision or term used in this Chapter is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Chapter is intended or shall be construed to create or form the basis of any liability on the part of the City, its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City, its officers, employees or agents.

1.15.020 Definitions.

The definitions in this section apply throughout this Chapter unless the context clearly requires otherwise or they are more specifically defined in a subchapter or section. Terms not defined shall be given their usual meaning.

“Abate” means to act to stop an activity and/or to repair, replace, remove, or otherwise remedy a condition, when such activity or condition constitutes a violation of this Code or a City regulation, by such means and in such a manner and to such an extent as the applicable department director, enforcement officer, or other authorized official determines is necessary in the interest of the general health, safety, and welfare of the community. For the purposes of this Chapter, the verbs “abate” and “correct” shall be interchangeable and have the same meaning.

“Act” means doing or performing something.

“City” means City of Burien, Washington.

“Civil penalty” or “monetary penalty,” as used in any code, ordinance or regulation of the City, shall be deemed to have the same meanings as used in this Chapter.

“Code” means the Burien Municipal Code.

“Code enforcement officer” or “enforcement officer” means the City’s Code Enforcement Officer(s); the Building Official; building inspectors; construction inspectors; the Fire Marshal or his or her designee; fire inspectors; the Chief of the Burien Police Department or his or her designee; the Director of the Community Development Department or his or her designee; the Director of the Public Works Department or his or her designee; or any other person or persons assigned or directed by the City Manager or his or her designee to enforce the regulations subject to the enforcement and penalty provisions of this Chapter.

“Costs” means, but is not limited to, contract expenses and City employee labor expenses incurred in abating a nuisance; a rental fee for City equipment used in abatement; costs of storage, disposal, or destruction; legal expenses and attorneys’ fees associated with civil judicial enforcement of abatement orders or in seeking abatement orders; and any other costs incurred by the City, excluding fees and expenses associated with appeals authorized by this Code or by state law.

“Correction Notice” means a written statement issued by a code enforcement officer, notifying a person that property or work under his or her control is in violation of one or more regulations and informing such person that a notice of civil violation may be issued and/or an infraction or criminal charges filed if the violations are not abated.

“Day” or “Days” means one or more calendar days, unless expressly stated otherwise in a given section or subsection. In addition, any portion of a twenty-four hour day shall constitute a full calendar day.

“Hearing Examiner” means the Burien Hearing Examiner and the office thereof, as established pursuant to Ch. 2.15 BMC.

“Knowledge” means being aware of a fact or circumstance or having information, which would lead a reasonable person in the same situation to believe a fact or circumstance exists. A person acts knowingly or with knowledge when that person either is aware of one or more facts, circumstances, or results, which are described by an ordinance defining an offense, or has information which would lead a reasonable person in the same situation to believe that facts, circumstances, or results exist, which are described by an ordinance defining an offense.

“Notice of Violation” or “Notice of Civil Violation” means a written statement, issued by a code enforcement officer, which contains the information required under Section 1.15.120 and which notifies a person that he or she is responsible for one or more civil violations of the Burien Municipal Code.

“Omission” means a failure to act.

“Owner” means any owner, part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of a building or land.

“Person” means any individual, firm, business, association, partnership, corporation, or other legal entity, public or private, however organized. Because “person” shall include both human beings and organizational entities, any of the following pronouns may be used to describe a person: he, she, or it.

“Person Responsible for the Violation” or “Violator” means any of the following: a person who has titled ownership or legal control of the property or structure that is subject to the regulation; an occupant or other person in control of the property or structure that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the regulation; a mortgagee that has filed an action in foreclosure on the property that is subject to the regulation, based on breach or default of the mortgage agreement, until title to the property is transferred to a third party; a mortgagee of property that is subject to the regulation and has not been occupied by the owner, the owner’s tenant, or a person having the owner’s permission to occupy the premises for a period of at least ninety (90) days; or any person who created, caused, participated in, or has allowed a violation to occur.

“Regulation” means and includes any of the following, as now enacted or hereafter amended:

1. All Burien Municipal Code provisions;
2. All standards, regulations, and procedures adopted by the City pursuant to a City ordinance;
3. The terms and conditions of any permit or approval issued by the City, or any concomitant agreement entered into with the City, pursuant to Code provisions; and
4. A written order of the Hearing Examiner that has been served as provided in this Chapter.

“Repeat Violation” means, as evidenced by the prior issuance of a correction notice or a notice of violation, a subsequent violation that has occurred on the same property or that has been committed by a person responsible for the prior violation elsewhere within the City of Burien. To constitute a repeat violation, the violation need not be the same violation as the prior violation. The violation of a written order of the Hearing Examiner that has been served as provided in this Chapter shall constitute a repeat violation.

“Right-of-way” means land owned, dedicated or conveyed to the public or a unit of government, used primarily for the movement of vehicles or pedestrians and providing for access to adjacent parcels, with the secondary purpose of providing space for utility lines and appurtenances and other devices and facilities benefiting the public. “Right-of-way” includes, but is not limited to, any street, easement, sidewalk, or portion thereof under the jurisdiction of the City.

“Violation” or “civil violation” or “civil infraction” means an act or omission contrary to a regulation as defined in this section. A violation continues to exist until abated to the satisfaction of the City, with each day or portion thereof in which the violation continues constituting a separate violation.

1.15.030 Conflicting code provisions.

In the event a conflict exists between the enforcement provisions of this Chapter and the enforcement provisions of any international or uniform code, statute, or regulation that is adopted in the Burien Municipal Code and subject to the enforcement provisions of this Chapter, the enforcement provisions of this Chapter will prevail, unless the enforcement provisions of this Chapter are preempted or specifically modified by said code, statute, or regulation. In the event of a conflict between this Chapter and any other provision of this Code or City ordinance providing for a civil penalty, the more specific provision shall control.

1.15.040 Joint and several responsibility and liability.

Responsibility for violations of the codes enforced under this Chapter is joint and several, both as to duty to correct and to payment of monetary penalties and costs, and the City is not prohibited from taking action against a party where other persons may also be potentially responsible for a violation, nor is the City required to take action against all persons potentially responsible for a violation.

1.15.050 Computation of time.

In computing any period of time prescribed or allowed by this Code, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

1.15.060 Interference with code enforcement unlawful.

Any person who intentionally obstructs, impedes, or interferes with any lawful attempt to serve a notice of violation, stop work order, or emergency order, or intentionally obstructs, impedes, or interferes with lawful attempts to correct a violation shall be guilty of a gross misdemeanor.

1.15.070 Service of documents.

(1) Methods of service. For purposes of this Chapter, service of documents related to code enforcement, such as correction notices, notices of civil violation, stop work orders, etc. (hereinafter “document”), shall be accomplished by one of the following methods, provided that civil infractions shall be served as provided in Chapter 7.80 RCW and criminal misdemeanors and gross misdemeanors shall be served as provided by applicable law:

(a) “Personal service” is accomplished by handing the document to the person subject to the document or leaving it at his or her last known dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or leaving it at his or her office or place of employment with a person in charge thereof. Personal service may also be accomplished by the Hearing Examiner or his or her assistant handing any order, ruling, decision, or other document to a person prior to, during, or after a hearing.

(b) “Service by mail” is accomplished by sending the document by regular first class mail to the last known address of the person subject to the document. The last known address shall be an address provided to the City by the person to whom the document is directed. If an address has not been provided to the City, the last known address shall be any of the following as they appear at the time the document is mailed: the address of the property where the violation is occurring, as reflected on the most recent equalized tax assessment roll of the County Assessor or the taxpayer address appearing for the property on the official property tax information website for King County; the address appearing in any database used for the payment of utilities for the property at which the violations are occurring; or the address of the person to whom the documents are being sent that appears in the Washington State Department of Licensing database.

(c) “Service by posting” is accomplished by affixing a copy of the document in a conspicuous place on the subject property or structure, or as near to the affected property or structure as feasible, with at least one (1) copy of such document placed at an entryway to the property or structure if an entryway exists.

(d) “Service by publication” is accomplished by publishing the document as set forth in RCW 4.28.100 and RCW 4.28.110, as currently enacted or hereafter amended.

(2) Service – when complete. If service is accomplished by personal service, service shall be deemed complete immediately. If service is accomplished by mail, service shall be deemed complete upon the third day following which the document is placed in the mail, unless the third day falls on a Saturday, Sunday, or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day. If service is accomplished by posting, service shall be deemed complete upon the fourteenth day following the day upon which the document is posted. If service is accomplished by publication, service shall be deemed complete upon the final publication of the document as set forth in RCW 4.28.110.

(3) Proof of service – Due diligence. Proof of service shall be made by written affidavit or declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service and the manner by which service was made. If service was made solely by posting or publication, the proof of service shall include a statement as to what steps were used in attempting to serve personally and by mail the person at whom service of the document is directed. If service was made by posting, a photograph of the posting may be taken and retained by the City as documentation.

(4) Additional proof of service not necessary. No additional proof of service beyond the requirements in this Chapter shall be required by the Hearing Examiner or other entity. Any failure of the person to whom a document is directed to observe a document served by posting or publication shall not invalidate service made in compliance with this section, nor shall it invalidate the document.

1.15.080 Violations.

(1) The violation of any regulation shall be unlawful. Violations may be enforced by issuing notices of violation and, if necessary, by filing civil infractions. In addition, any violation of this Code shall constitute a misdemeanor, unless otherwise designated as a gross misdemeanor, and the City shall have discretionary authority to enforce a violation as either a civil infraction or civil violation pursuant to this Chapter or as a criminal misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000) or by both such imprisonment and fine. A gross misdemeanor is punishable by a fine of not more than five thousand dollars (\$5000) or by imprisonment for not more than twelve (12) months or by both such fine and imprisonment.

(2) Each day during any portion of which a violation of this Code occurs or continues is a separate offense.

(3) Civil enforcement of the provisions of this Code or the terms and conditions of any permit or approval issued pursuant to this Code shall be governed by this Chapter unless other more specific provisions apply.

(4) Code enforcement officers are authorized to enforce the Code using the provisions and procedures of this Chapter; provided, however, that enforcement under this Chapter is in addition to, and does not preclude or limit, any other forms of enforcement available to the City including, but not limited to, criminal proceedings or sanctions, nuisance and injunction actions, rights to file and enforce liens, or other civil or equitable actions to abate, discontinue, correct, or discourage unlawful acts in violation of this Code.

(5) Nothing in this Chapter or in other Chapters of the Burien Municipal Code shall prevent code enforcement officers or any other officers of the City of Burien or other governmental unit from taking any other action, summary or otherwise, necessary to eliminate or minimize an imminent danger to the health or safety of any person or property. The City's costs of abating any such nuisance or endangerment summarily or otherwise abated shall be recoverable under this Chapter as well as in the same manner and to the same extent as costs of abating nuisances or endangerment under any other provisions of this Code, in addition to or as an alternative to any other rights or remedies the City may possess.

1.15.090 Infractions.

(1) When the City determines that it is appropriate to enforce violations of this Code as civil infractions rather than civil or criminal violations as otherwise provided in this Chapter, or if the City is unable to obtain payment of civil

finer pursuant to a notice of civil violation, enforcement officers shall file such infractions in King County District Court and shall follow the provisions of Chapter 7.80 RCW. First offenses shall be class 2 civil infractions, for which the maximum penalty and the default amount shall be \$125.00, and second or subsequent violations shall be class 1 civil infractions, for which the maximum penalty and the default amount shall be \$250.00, not including fees, costs, and assessments.

(2) Chapter 7.80 RCW is hereby adopted by reference to the extent that it is not inconsistent with explicit provisions of the Burien Municipal Code, including this Section.

1.15.100 Voluntary correction.

(1) General. When the City determines that a violation has occurred, a code enforcement officer may attempt to secure the voluntary correction of a violation by attempting to contact the person responsible for the violation, explaining the violation, and requesting correction. This may be done orally and/or in writing. The City may also enter into a written voluntary correction agreement with any person causing, allowing, or participating in the violation, including the property owner. A voluntary correction agreement may be instead of, in lieu of, or in conjunction with, a notice of violation. Voluntary correction efforts need not be made where the nature of the violation creates a risk of imminent harm to public health or safety or where it is a repeat violation.

(2) Contents of written voluntary correction agreement. A voluntary correction agreement is a contract between the City and the person responsible for the violation, in which the responsible person agrees to abate the violation within a specified time and according to specified conditions. A voluntary correction agreement will generally contain the following information:

- (a) The name and address of a person responsible for the violation;
- (b) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
- (c) A description of the violation and a reference to the code provisions that have been violated;
- (d) A statement indicating what corrective actions are required and a correction deadline stating the date by which the corrective actions must be completed to the satisfaction of the code enforcement officer in order for the violator to avoid the issuance of a notice of violation;
- (e) An agreement by the person responsible for the violation that the City may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement;
- (f) An agreement by the person responsible for the violation and/or the owner(s) of property on which the violation has occurred or is occurring that, if the terms of the voluntary correction agreement are not met, the City may enter the property, abate the violation, and recover its costs and expenses as provided in this Chapter;
- (g) An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the Hearing Examiner under this Chapter regarding the violation, any penalty, and/or required corrective action; and
- (h) A statement indicating that, pursuant to BMC 1.15.120, a notice of civil violation may be issued with each violation constituting a separate offense subject to civil penalties, or, alternatively, civil infraction or criminal charges may be filed.

(3) Extension of voluntary correction period or modification of required actions. An extension of the deadline for voluntary correction, or a modification of any required corrective action, may be granted by the code enforcement officer if the person responsible for the violation has, in the opinion of the code enforcement officer, shown due diligence or made substantial progress in correcting the violation but unforeseen circumstances have rendered correction unattainable within the original deadline.

(4) Revocation of deadline for compliance. The original deadline for compliance, or any extension for compliance previously granted by the code enforcement officer, may be revoked and immediate compliance required where, in the opinion of the code enforcement officer, circumstances make immediate correction necessary to avoid an imminent risk of injury to persons or property.

(5) Failure to comply with voluntary correction agreement.

(a) Abatement by the City. In addition to any other remedy provided for in this Chapter, the City may abate the violation in accordance with BMC 1.15.210, if the terms of the voluntary correction agreement are not met.

(b) Penalties and costs. If the terms of the voluntary correction agreement are not met, the person responsible for the violation may be issued a notice of civil violation and assessed a monetary penalty in accordance with BMC 1.15.120, plus all costs and expenses of abatement. Alternatively, the City may file a civil infraction or criminal charges.

1.15.110 Stop work order.

(1) Issuance. Whenever a code enforcement officer determines that any work, use, activity, or conduct is a violation under the Burien Municipal Code and creates an imminent threat of injury to the health, safety, or welfare of any member of the public or will damage or injure, or exacerbate damage or injury already caused, to any property, the code enforcement officer may issue a stop work order directing any person causing, allowing, or participating in the offending conduct to cease such use, activity or conduct immediately.

(2) Service of order. Service of the stop work order shall generally be accomplished as set forth in BMC 1.15.070(1)(c).

(3) The stop work order shall state the reasons for the order and may be appended to, or incorporate by reference, a notice of violation. The stop work order shall take effect immediately upon service and may be appealed under the procedures set forth in this Chapter. During any such appeal, the stop work order shall remain in effect.

(4) Effect of a stop work order. When a stop work order has been issued, posted and/or served pursuant to this section, it is unlawful for any person to whom the order is directed or any person with actual or constructive knowledge of the order to conduct the activity or perform the work covered by the order, even if the order has been appealed, until the code enforcement officer has removed the copy of the order, if posted, and issued written authorization for the activity or work to be resumed. In addition, a monetary penalty shall accrue for each day or portion thereof that a violation of a stop work order occurs, in the same amounts as under BMC 1.15.120. In addition to such criminal or monetary penalties, the city may enforce a stop work order pursuant to any other provision of this Chapter and enforce it in Superior Court.

(5) Removal of a stop work order. When a stop work order has been posted in conformity with the requirements of this Chapter, removal of such order without the authorization of the City, or the Hearing Examiner if the matter has been heard by the Hearing Examiner, is unlawful and a violation.

1.15.120 Notice of civil violation.

(1) Issuance of notice of violation. When the City determines that a violation has occurred or is occurring, the code enforcement officer may issue a notice of civil violation to any person responsible for the violation.

(2) Monetary penalty. A monetary penalty shall accrue for each day or portion thereof that each violation continues beyond the date set in a notice of civil violation or any Hearing Examiner's decision. Unless a different penalty amount for a given violation is expressly authorized or required by a more specific City code provision, the maximum penalty and the default amount shall be \$125.00 for the first violation and \$250.00 for a second or subsequent violation of the same nature or a continuing violation past a deadline set by a notice of violation, not

including fees, costs, and assessments. The City may waive the monetary penalty, if corrective action is completed by the date specified in the notice of civil violation or a voluntary correction agreement. The City shall have the discretion to impose penalties in an amount lower than those shown above.

(3) Contents of notice. The notice of civil violation shall include the following:

- (a) The name and address of a person responsible for the violation;
- (b) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
- (c) A description of the violation and a reference to the provision violated and a description of what must be done to correct the violation;
- (d) A statement indicating that the violator must respond to the notice of civil violation within fourteen (14) days of the date of issuance, or within such other time period as specified in the notice of civil violation, by doing one of the following:
 - i. Paying any fine and correcting the violation;
 - ii. Entering into and complying with a voluntary correction agreement with the City;
 - iii. Requesting a mitigation hearing and correcting the violation; or
 - iv. Requesting a hearing to contest the violation;
- (e) A statement indicating that failure to respond to the notice of violation, or failure to attend any hearing, shall result in the violation being deemed committed without requiring further action by the City, and that the monetary penalty specified in the notice shall be due to the City by the violator and further accrue as provided; and
- (f) A statement indicating that payment of a monetary penalty does not relieve the person or entity named in the notice of civil violation of the duty to abate the violation, and that failure to abate may result in the issuance of additional notices of violation and/or criminal charges, with additional civil and/or criminal penalties, including the payment of costs for any abatement action taken by the City.

(4) Extension. Upon written request received prior to the correction date or time, the code enforcement officer may extend the date set for correction for good cause or in order to accommodate a violation correction agreement. The code enforcement officer may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as a good cause.

(5) Transfer of Ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a notice of civil violation to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of civil violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of civil violation issued by the code enforcement officer and shall furnish to the code enforcement officer a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of civil violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

1.15.130 Response to notice of civil violation.

(1) Generally. A person who has been served with a notice of civil violation must respond to the notice within fourteen (14) days of the date the notice is served or within such other time period as specified in the notice of civil violation. A person may respond to the notice of civil violation by:

- (a) Paying the amount of the monetary penalty as set forth in the notice of violation. Partial payment or payment using a check that is rejected for insufficient funds shall not be deemed payment under this subsection. Payment of the fine shall not relieve the person or entity responsible for the violation from the duty to correct or abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.
- (b) Entering into a voluntary correction agreement with the City.
- (c) Contesting the notice of civil violation by requesting a contested hearing in writing and sending the request and a \$100 filing fee to the City as described in subsection (2) below.
- (d) Seeking to mitigate the monetary penalty by requesting a mitigation hearing to explain the circumstances surrounding the violation. The request to mitigate must be made in writing and sent to the City with a \$100 filing fee as described in subsection (2) below. Requesting to mitigate the penalty shall not relieve the person responsible for the violation from the duty to correct or abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.

(2) Method of response. The person or entity to whom a notice of civil violation has been issued may respond by mailing or hand-delivering the response and the \$100 filing fee to the City Clerk. Mailed responses must be received no later than the fourteenth (14th) day from the date of service of the notice of violation or such other day as specified in the notice of violation. Hand-delivered responses must be brought to the City Clerk no later than 4:30 p.m. on the fourteenth (14th) day after service or such other day as specified in the notice of violation; provided that, where the fourteenth or other specified day falls on a weekend or holiday, the deadline shall be extended to the next regular business day. Telephone, facsimile, or email responses shall not satisfy the requirements of this section.

(3) If the person to whom the notice of civil violation is issued fails to respond as required in BMC 1.15.090, the violation(s) shall be deemed committed without requiring further action by the City or the City's Hearing Examiner, and the person to whom the notice of civil violation was issued shall owe the monetary penalty indicated.

1.15.140 Scheduling of hearing to contest or mitigate – correction prior to hearing.

(1) Notice and scheduling of hearing. Upon the timely filing of a request for a hearing to contest a violation or to mitigate the penalty, the matter shall be scheduled to be heard at the next available appearance by the Hearing Examiner that is a minimum of fourteen (14) but no later than sixty (60) calendar days after the date the request was received by the City. Notice of the hearing date and time shall be served by regular first class mail to the address of the party who requested the hearing. The date and time for any hearing may be rescheduled by the Hearing Examiner for good cause upon the motion of a party or the Hearing Examiner.

(2) Correction of violation prior to hearing. The hearing may be cancelled and the party requesting the hearing need not appear if, at least two (2) business days prior to the scheduled hearing, the code enforcement officer determines that the violation has been satisfactorily corrected or abated and the monetary penalty paid in full. Where the scheduled hearing involves a repeat violation as defined in this Chapter, the hearing shall not be cancelled unless the new violation has been corrected or abated to the satisfaction of the code enforcement officer and the monetary penalty and costs for the new violation(s) and any monetary penalty and costs owing for the previous violation(s) have been paid in full.

1.15.150 Contested hearing – procedure.

The Hearing Examiner shall conduct a contested violation hearing when such hearing is properly and timely requested. The City and the person or entity to whom the notice of civil violation was issued may participate in the hearing, and each party or its legal representative may call witnesses and present evidence and rebuttal, subject to the following:

(1) Where not in conflict with a more specific provision of this Chapter, hearings shall be conducted in accordance with Chapter 2.15 BMC

(2) The City shall have the burden of proving by a preponderance of the evidence that a violation has occurred.

(3). The parties are responsible for securing the appearance of any witnesses they may wish to call. Neither the City nor the Hearing Examiner shall have the burden of securing any witnesses on behalf of the person who is contesting the violation(s) or seeking to mitigate the penalties.

(4) Formal rules of evidence shall not apply to any such hearing, and the Hearing Examiner shall allow hearsay testimony by the parties and not require proof of chain of custody for evidence that is presented; provided that the Hearing Examiner shall determine the weight to be assigned to any evidence presented.

(5) Any notes, reports, summaries, photographs, or other materials prepared by the parties shall be admitted into evidence if requested; provided that the parties are free to argue the weight that should be assigned by the Hearing Examiner to any evidence submitted.

1.15.160 Mitigation hearing – procedure.

The Hearing Examiner shall conduct a hearing to mitigate the penalty on a violation when such hearing is properly and timely requested; provided that in the event a person has requested a hearing to contest a violation and prior to the start of the hearing indicates to the Hearing Examiner a desire to mitigate rather than contest, the Examiner shall permit the person to seek mitigation of the monetary penalty. The mitigation hearing shall be conducted according to the following general procedures:

(1) The person responsible for the violation shall be given the opportunity to explain or provide evidence regarding the nature of the violation, why the violation exists, why the violation has not been abated or corrected, and any other information the Hearing Examiner determines is relevant.

(2) The City shall be given the opportunity, at its discretion, to provide evidence of the nature of the violation, evidence to rebut assertions made by any party, and any other information or evidence the Hearing Examiner deems to be relevant.

1.15.170 Decision of Hearing Examiner.

(1) Contents of Order. Upon the conclusion of a hearing, the Hearing Examiner may issue an oral decision pending issuance of the written decision. If necessary, the Hearing Examiner may delay issuing the written order for up to ten (10) business days following the hearing. In either event, the oral decision and written order shall contain findings and conclusions based on the record, which to the extent applicable includes the following information:

(a) In mitigation hearings a statement indicating that each alleged violation has been found committed, and in contested hearings, for each alleged violation of the City code, a statement indicating whether the violation has been found committed or not committed;

(b) For violations found committed, the monetary penalties and costs being assessed pursuant to this Chapter; provided that, where the person has requested to mitigate the monetary penalty, the Hearing Examiner may reduce the monetary penalty for each violation, but in no case shall the penalty be reduced to an amount less than one hundred dollars (\$100) for each violation found committed;

(c) For violations found committed, any required corrective actions and compliance dates;

(d) For violations found committed, a finding that abatement of the violations by the City is authorized, at the expense of the person responsible for the violations; and

(e) A statement notifying the person responsible for the violation that he or she is subject to additional civil and/or criminal penalties if any violation that was the subject of the hearing has not been corrected or abated as required by the Hearing Examiner's order.

(2) Notice of decision. The Hearing Examiner may cause a copy of the decision and order to be served upon the parties at the close of the hearing. When the Hearing Examiner requires more time to prepare a written order, or when a party fails to appear after requesting a contested hearing, the Hearing Examiner shall cause a copy of the decision and order to be served on the parties by mailing a copy to each party's last known address no later than ten (10) business days following the hearing.

1.15.180 Failure to appear – default order.

If the person who requests a hearing to contest a violation or mitigate the penalty then fails to appear at the scheduled hearing after having been given notice in the manner provided for by this Chapter, the Hearing Examiner shall immediately issue a default order, which finds committed all the violations set forth in the notice of civil violation and which assesses a monetary penalty in the full amount indicated in the notice of violation. In addition, at the request of the City, the Hearing Examiner shall also impose upon the non-appearing party any costs to the City related to preparation for the hearing. The Hearing Examiner shall cause a copy of the decision to be served upon the non-appearing party by mailing a copy to the last known address of the non-appearing party within ten (10) business days of the hearing. Upon the motion of a party, the Hearing Examiner may rescind a default judgment only upon a showing of good cause to do so and only if such motion has been brought within thirty (30) calendar days of the date of the hearing at which the default judgment was ordered.

1.15.190 Judicial review.

Judicial review of a decision by the Hearing Examiner relating to any ordinance regulating the improvement, development, modification, maintenance, or use of real property may be sought by any person aggrieved or adversely affected by the decision, pursuant to the provisions of the Land Use Petition Act, Chapter 36.70C RCW, if applicable, or other applicable authority, if any, if the petition or complaint seeking review is filed and served on all parties within 21 days of the date of the decision. For purposes of this section, "aggrieved or adversely affected" shall have the meaning set forth in RCW 36.70C.060(2). Judicial review of all other decisions may only occur subject to the procedures of Chapter 7.16 RCW.

1.15.200 Recovery of penalties and costs.

(1) Payment of monetary penalties and costs. Any monetary penalties or costs assessed pursuant to this Chapter constitute a personal obligation of the person responsible for the violation. In addition, the monetary penalties or costs assessed pursuant to this Chapter may be assessed against the property that is the subject of the enforcement action. The City Attorney is authorized to collect the monetary penalty or costs by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate the accrual of additional per diem monetary penalties so long as the violation continues. The city may incorporate any outstanding penalty or cost into an assessment lien, if the city incurs costs of abating the violation. Any monetary penalty assessed must be paid in full to the City within thirty (30) days from the date of service of an uncontested notice of civil violation or any order of the Hearing Examiner that assesses monetary penalties.

(2) Recovery of costs. The City shall bill its costs, including incidental expenses, of pursuing code compliance and/or of abating a violation to the person responsible for the violation and/or against the subject property. Such costs shall become due and payable 30 days after the date of the bill. The term "incidental expenses" shall include, but not be limited to, personnel costs, both direct and indirect, including attorneys' fees incurred by the City; costs incurred in documenting the violation; the actual expenses and costs to the city in the preparation of notices, specifications and contracts, and in inspecting the work; hauling, storage and disposal expenses; the cost of any required printing and mailing; and interest. The City Manager or designee, or the Hearing Examiner, may in his or her discretion waive in whole or part the assessment of any costs upon a showing that abatement has occurred or is no longer necessary or that the costs would cause a significant financial hardship for the responsible party. Any challenge to the amount of the abatement costs must be made within 14 days of issuance of the bill and shall be

heard by the City Manager in an informal hearing. The City Manager shall make a written determination as to whether or not the City's costs were accurate and necessary for accomplishing the abatement.

(3) Use of collection agency. Pursuant to Chapter 19.16 RCW, as currently enacted or hereafter amended, the City may, at its discretion, use a collection agency for the purposes of collecting penalties and costs assessed pursuant to this Chapter. The collection agency may add fees or interest charges to the original amount assigned to collections as allowed by law. No debt may be assigned to a collection agency until at least thirty (30) calendar days have elapsed from the time that the City attempts to notify the person responsible for the debt of the existence of the debt and that the debt may be assigned to a collection agency for collection if the debt is not paid. Notice of potential assignment to collections shall be made by regular first class mail to the last known address of the person responsible for the violation; provided that inability to ascertain a current mailing address shall not prohibit the debt from being assigned to collections.

(4) Assessment lien. If penalties or costs assessed against a property are not paid within 30 days, the City Clerk shall certify to the County Treasurer the confirmed amount for assessment on the tax rolls. The County Treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates as provided in RCW 84.56.020, as now or hereafter amended, for delinquent taxes, and when collected to be deposited to the credit of the general fund of the City. The lien shall be of equal rank with the state, county and municipal taxes. The validity of any assessment made under the provisions of this Chapter shall not be contested in any action or proceeding unless the same is commenced within 15 calendar days after the assessment is placed upon the assessment roll. The City Attorney may also file a lien for such costs against the real property.

(5) Continuing duty to abate violations. Payment of a monetary penalty or costs pursuant to this Chapter does not relieve the person responsible for the violation of the duty to correct or abate the violation. Additional notices of violation may be issued and/or criminal charges filed for continuing failure to correct or abate a violation.

1.15.210 Abatement.

(1) Abatement by City. The City may perform the abatement required upon noncompliance with the terms of an unappealed notice of violation, a voluntary correction agreement, or a final order of the Hearing Examiner. The City may utilize city employees or a private contractor under City direction to accomplish the abatement. The City, its employees and agents using lawful means are expressly authorized to enter upon the property of the violator for such purposes. Nothing in this Chapter shall prohibit the City from pursuing abatement of a violation pursuant to any other laws of the State of Washington or the City.

(2) Summary Abatement. Whenever any violation causes a condition, the continued existence of which constitutes an immediate threat to the public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it shall be given to the person responsible for the violation as soon as reasonably possible after the abatement. No right of action shall lie against the City or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the City be entitled to recover any costs incurred for summary abatement, prior to the time that notice thereof is served on the person responsible for the violation as set forth in BMC 1.15.070.

(3) Obstruction with work prohibited. No person shall obstruct, impede or interfere with the City, its employees or agents, or any person who owns or holds any interest or estate in any property in the performance of any necessary act preliminary or incidental to carrying out the requirements of a notice of violation, voluntary correction agreement, or order of the Hearing Examiner issued pursuant to this Chapter.

1.15.220 Right of entry.

(1) When it is necessary to enforce the provisions of the Burien Municipal Code, or when a code enforcement officer has reasonable cause to believe that there exists in a building or upon a premises a condition that is contrary to or in violation of this Code, the code enforcement officer may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the code enforcement officer shall first make a reasonable effort to locate the owner or other person having charge or control

of the building or premises and request entry. If entry is refused, the code enforcement officer shall have recourse to the remedies provided by law to secure entry.

(2) Posted property. Where private property is posted with a "No Trespassing" sign and has a gate or chain on private property, or where private property is enclosed by a secured gate or chain (other than by a simple latching or closure device) a City employee shall not make entry beyond areas open to the public without the express permission of the property owner/resident or a court order. No employee shall be required to enter a posted or gated piece of property if the employee feels threatened, intimidated, or otherwise in fear of his or her personal safety.

(3) Employee identification. City employees shall carry identification cards while on duty. Any employee, when legitimately requested by the public, shall show the requesting party his/her identification card.

(4) Intimidation of employees. Threats, intimidation, or other violations of public peace directed against an employee engaged in the lawful action upon private property are unlawful and may subject that person and the owner of the property, as applicable, to legal action.

Section 2. Titles 2, 3, 5, 7, 8, 12, 13, and 15 of the Burien Municipal Code are hereby amended by amending various enforcement sections as set forth in the attached Exhibit A.

Section 3. Effective Date. This Ordinance shall take effect five days after publication.

Section 4. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE _____ DAY OF _____, 2012, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 2012.

CITY OF BURIEN

Brian Bennett, Mayor

AUTHENTICATED:

Monica Lusk, City Clerk

Approved as to form:

Craig D. Knutson, City Attorney

Filed with the City Clerk: _____, 2012

Passed by the City Council: _____, 2012

Ordinance No. ____

Date of Publication: _____, 2012

EXHIBIT A

2.15.070 Duties of the examiner.

The examiner shall consider the matters set forth below.

(1) Applications and Appeals – Final Decision. The examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon those facts, which conclusions shall represent the final action on the application, unless appealed, as specified herein, for the following type of applications and appeals:

(a) Applications.

(i) Applications for residential condominium binding site plan;

(ii) Applications for shoreline substantial development permits when combined with other land use applications pursuant to ~~KCC 25.32.080~~.

(b) Appeals.

(i) Appeals from the decision of the director regarding short subdivisions;

(ii) Appeal of administrative decision on building permits, grading permits and temporary use permit pursuant to review of the zoning code;

(iii) ~~Appeals from notices and orders issued pursuant to KCC Title 23 as adopted by reference;~~

~~(iv)~~ Appeal from decisions of the director on requests for rate adjustments to surface and storm water management rates and charges.

(2) Applications – Recommendation to Council. Until such time as the planning commission is created and its duties and procedures are adopted, the examiner shall receive and examine available information, conduct public hearings, prepare a record thereof and enter findings of fact and conclusions, based upon those facts, together with a recommendation to the city council, for the following applications:

(a) Applications for preliminary plats;

(b) Applications for shoreline environment redesignation.

(3) The examiner shall act as the board of appeals ~~and the hearing examiner~~ for the purposes of the building and construction codes adopted in BMC Title 15.

(4) Other applications or appeals which the council may prescribe by ordinance.

(5) Hearings related to Chapter 1.15 BMC.

2.15.110 Appeals.

Other than matters arising under Chapter 1.15 BMC, when ~~When~~ an appeal has been filed with the director or city clerk as prescribed by ordinance, the hearing shall be scheduled pursuant to the appeal procedures set forth in Chapter 2.20 BMC. [Ord. 61 § 11, 1993]

2.15.120 Public hearing.

(1) Before rendering a decision or recommendation on any application or appeal, other than one arising under Chapter 1.15 BMC, the examiner shall hold at least one public hearing thereon.

(2) Notification of the time and place of the public hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given as follows:

(a) Published and posted notice at least 10 days prior to scheduled hearing; and

(b) Mailed notice to all parties of record at least 10 day prior to scheduled hearing. [Ord. 61 § 12, 1993]

3.06.220 Unlawful actions – Violations – Penalties

(1) It shall be unlawful for any person liable for fees under this chapter (or other chapters as listed):

(a) To violate or fail to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the director;

(b) To make any false statement on any license application or tax return;

(c) To aid or abet any person in any attempt to evade payment of a license fee or tax;

(d) To fail to appear or testify in response to a subpoena issued in accordance with state law;

(e) To testify falsely in any investigation, audit, or proceeding conducted pursuant to this chapter.

(2) Violation of any of the provisions of this chapter is a gross misdemeanor. ~~Any person convicted of a violation of this chapter may be punished by a fine not to exceed \$1,000, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.~~

(3) Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor ~~and may be punished by a fine not to exceed \$5,000, or imprisonment not to exceed one year, or both fine and imprisonment.~~

3.10.060 Penalties.

It is unlawful for any seller to fail or refuse to collect taxes with intent to violate the provisions of BMC 3.10.010 and 3.10.020, or to gain some advantage or benefit, whether direct or indirect, or for any buyer to refuse to pay any tax due under the provisions of BMC 3.10.010 and 3.10.020. Any such violation shall constitute a misdemeanor ~~and shall be punished by a fine not exceeding \$1,000 or by imprisonment for any term not exceeding 180 days, or both.~~

3.10.130 Penalties.

It is unlawful for any seller to fail or refuse to collect taxes with intent to violate the provisions of BMC 3.10.080 and 3.10.090 or to gain some advantage or benefit, whether direct or indirect, or for any buyer to refuse to pay any tax due under the provisions of BMC 3.10.080 and 3.10.090. Any such violation shall constitute a misdemeanor ~~and shall be punished by a fine not exceeding \$1,000 or by imprisonment for any term not exceeding 180 days, or both.~~

5.55.300 Penalty for violations.

Any person who violates or fails to comply with any requirement of this chapter shall be guilty of a gross misdemeanor. ~~violation of a city ordinance and shall be subject to punishment by fine of not more than \$5,000 or imprisonment for a term not in excess of one year, or both.~~

5.62.090 License – Ground for suspension or revocation.

The city manager or designee may deny, suspend or revoke a rental housing license, with cause. Cause for denial, suspension or revocation shall include, but not be limited to, the following:

(1) The license was procured by fraud or misrepresentation of fact;

(2) The licensee has failed to comply with any of the provisions of this chapter, or any other city ordinance including but not limited to the zoning code and other development regulations;

- (3) The licensee, or licensee's management personnel, have been convicted of a crime, or suffered civil judgment or consent decree which bears a direct relationship to the operation of rental housing;
- (4) The licensee is causing or permitting a public nuisance to exist;
- (5) The licensee, or licensee's employees or agents, have engaged in, have permitted or have acquiesced in unlawful activity on the business premises;
- (6) The licensee currently owes a civil penalty or is currently in noncompliance with any notice and order ~~of the city clerk~~ with regard to a violation of this chapter; or
- (7) The licensee's continued operation of rental housing will, for any other reason, result in substantial danger to the public health, safety or welfare. [Ord. 322, § 10, 2001]

6.05.500 Violation – Penalty.

Any person who allows an animal to be maintained in violation of this title, or otherwise violates or fails to comply with any requirement of this title, shall be guilty of a violation of a city ordinance, ~~and shall be subject to punishment by fine of not more than \$5,000 or imprisonment for a term not in excess of one year, or both.~~ 3 [Ord. 543 § 1 (Exh. A), 2010; Ord. 11 § 11, 1993] which violation shall constitute a gross misdemeanor.

6.40.200 Penalty Enforcement.

Violation of this chapter shall ~~constitute a civil infraction, punishable by a civil fine not to exceed \$2,000. [Ord. 543 § 1 (Exh. A), 2010; Ord. 207 § 2, 1997]~~ be enforced as provided in Chapter 1.15 of the Burien Municipal Code.

7.40.020 Criminal violation.

Any person who violates BMC ~~7.30.230, 7.30.240 or 7.30.320~~ is guilty of a misdemeanor ~~and shall be subject to a maximum fine of \$1,000 or imprisonment for no more than 90 days or to both such fine and imprisonment.~~ Any person who violates BMC ~~7.30.270 or BMC 7.30.330~~ ~~and the damage to the property is in an amount exceeding \$250.00~~ is guilty of a gross misdemeanor ~~and shall be subject to a maximum fine of \$5,000 or imprisonment for no more than 365 days or to both such fine and imprisonment, and in all other cases shall be guilty of a misdemeanor and shall be subject to a maximum fine of \$1,000 or imprisonment for no more than 90 days or to both such fine and imprisonment.~~ Any person who violates BMC 7.30.330 shall be guilty of a gross misdemeanor and shall be subject to a maximum fine of \$5,000 or imprisonment for no more than 365 days or to both such fine and imprisonment. [Ord. 475 § 2, 2007]

8.05.030 Enforcement – Penalty.

The director of the Seattle-King County department of public health, the director of the King County department of public health, and city personnel occupying similar positions and authorities are authorized to enforce the provisions of this title, and any rules and regulations promulgated hereunder, and any applicable United States statutes, and any person violating any provision of this title shall, upon conviction, be guilty of a gross misdemeanor ~~violating a city ordinance, and shall be punished by a fine not to exceed \$5,000 or imprisonment for a term not to exceed one year, or both, and each day during which such violation continues shall be considered an additional violation.~~

8.45.015 Declaration of nuisance.

All violations of city of Burien ordinances are found and declared to be detrimental to the public health, safety, and welfare and are further found and declared to be nuisances. It is unlawful and a violation of this chapter, whether by act or omission, to cause, create, maintain, suffer, or allow a nuisance to occur, exist, or remain. Each day any person allows or fails to abate such nuisance after notice shall constitute a separate violation. Nuisances create public harm. Prevention and correction of nuisances are necessary to prevent public harm. For purposes of this chapter, "public nuisances" and "private nuisances" shall have the same meaning. [Ord. 383 § 1, 2003; Ord. 146 § 1, 1995]

8.45.020 Definitions.

As used in this chapter, unless a different meaning is plainly required:

~~(1) “Abate” means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner, and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety and welfare of the community.~~

(1) “Act” means doing or performing something.

~~(3) “Administrative notice of violation” means the notice of violation issued pursuant to BMC [8.45.035](#).~~

(2) “Applicable department director” means the city manager or his designee, including any department director or other designee, empowered by ordinance or by the city manager to enforce a city ordinance or regulation.

~~(5) “Civil violation” means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation.~~

(3) “Development” means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts authorized by a city regulation.

~~(7) “District court” shall mean the King County District Court, South Division.~~

(4) “Emergency” means a situation which in the opinion of the applicable department director requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.

(5) “Nuisance” (also referred to herein as “violation” or “nuisance violation”) means:

(a) A violation of any city of Burien ordinance;

(b) Doing an act, omitting to perform any act or duty, or permitting or allowing any act or omission, which annoys, injures, or endangers the comfort, repose, health or safety of others, is unreasonably offensive to the senses, or which obstructs or interferes with the free use of property so as to interfere with or disrupt the free use of that property by any lawful owner or occupant; or

(c) The existence, without limitation, of any of the following conditions:

(i) Trash Covered Premises. Any premises containing trash or abandoned materials, except that kept in garbage cans or containers maintained for regular collection;

(ii) Dangerous Structures. Any dangerous, decaying, unkempt, falling or damaged dwelling, fence, or other structure;

(iii) Potential Vermin Habitat or Fire Hazard. Any accumulation of material on a property including, but not limited to, animal matter, ashes, bottles, boxes, broken stone, building materials which are not properly stored or neatly piled, cans, cement, crates, empty barrels, dead animals or animal waste, glass, litter, mattresses or bedding, old appliances or equipment or any parts thereof, furniture, iron or other scrap metal, packing cases, packing material, plaster, plastic, rags, wire, yard waste or debris or other objects which endanger property or public safety, or constitute a fire hazard or vermin habitat; provided, that nothing herein shall prevent the temporary retention of waste in approved, covered receptacles;

(iv) Junk Vehicles. Any wrecked, inoperable, abandoned or disassembled trailer, house trailer, boat, tractor, automobile or other vehicle, or any parts thereof. A junk vehicle includes apparently inoperable, immobile, disassembled or extensively damaged vehicles. Evidence of inoperability and damage includes, but is not limited to, a buildup of debris that obstructs use, a broken window or windshield, a

missing wheel, a flat tire, a nonfunctional motor or transmission, missing bumpers, or missing license plates; provided nothing herein shall prevent the keeping or storage of any vehicle on private property which is screened from view;

(v) Attractive Nuisances. Any attractive nuisance which may prove detrimental to children whether in or on a building, on the premises of a building, or upon an unoccupied lot, which is left in any place exposed or accessible to children. This includes unused or abandoned refrigerators, freezers, or other large appliances or equipment or any parts thereof; abandoned motor vehicles; any structurally unsound or unsafe fence or edifice; any unsecured or abandoned excavation, pit, well, cistern, storage tank or shaft; and any lumber, trash, debris or vegetation which may prove a hazard for minors;

(vi) Obstructions to the Public Right-of-Way. Use of property abutting a public street or sidewalk or use of a public street or sidewalk which causes any obstruction to traffic or to open access to the streets or sidewalks; provided, that this subsection shall not apply to events, parades, or the use of the streets or public rights-of-way when authorized by the city. This section includes the existence of drainage onto or over any sidewalk, street or public right-of-way, and the existence of any debris or plant growth on sidewalks adjacent to any property;

(vii) Vegetation. Any noxious or toxic weed or uncultivated plant, weeds or tall grass which may be a fire hazard, or any tree which is in danger of falling and creates a substantial risk of damage or injury;

(viii) Illegal Dumping. Dumping of any type by any person on public or private property not registered as a legal dump site; and

(ix) Dumping in Waterways. Dumping, depositing, placing or leaving of any garbage, ashes, debris, gravel, earth, rock, stone or other material upon the banks, channels, beds or bars of any navigable water, or the felling of any tree or trees, so that the same shall in whole or in part project within the high water bank of any navigable watercourse, or the casting, placing, depositing or leaving of any logs, roots, snags, stumps or brush upon the banks or in the bed or channel of any navigable watercourse.

(6) "Omission" means a failure to act.

(11) ~~"Person" means any individual, firm, association, partnership, corporation or any entity, public or private.~~

(12) ~~"Person responsible for the violation" means any person who has an interest in or resides on the property, whether as owner, tenant, occupant, or otherwise.~~

(13) ~~"Repeat violation" means a violation of the same regulation in any location by the same person, for which voluntary compliance previously has been sought or a notice of civil violation has been issued, within the immediately preceding 12 consecutive month period.~~

(14) ~~"Superior Court" shall mean the Washington State Superior Court for King County. [Ord. 383 § 1, 2003; Ord. 146 § 1, 1995]~~

8.45.030 Voluntary correction.

(1) ~~Applicability. While it is the city's desire to obtain voluntary correction pursuant to this section, compliance herewith is not a prerequisite for pursuing any of the other remedies for correction in this chapter, or any remedies available in law or equity. This section may apply whenever the applicable department director determines that a nuisance has occurred or is occurring.~~

(2) ~~General. The applicable department director may attempt to secure voluntary correction by contacting the person responsible for the nuisance and, where possible, explaining the violation and requesting correction.~~

(3) ~~Issuance of Voluntary Correction Agreement. A voluntary correction agreement may be entered into between the person responsible for the violation and the city, acting through the applicable department director.~~

~~(a) Content. The voluntary correction agreement is a contract between the city and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:~~

~~(i) The name and address of the person responsible for the violation; and~~

~~(ii) The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and~~

~~(iii) A description of the violation and a reference to the regulation which has been violated; and~~

~~(iv) The necessary corrective action to be taken, and a date or time by which correction must be completed; and~~

~~(v) An agreement by the person responsible for the violation that the city may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and~~

~~(vi) An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and/or a monetary penalty pursuant to this chapter from the person responsible for the violation if the terms of the voluntary correction agreement are not satisfied; and~~

~~(vii) An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the district court under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.~~

~~(b) Right to a Hearing Waived. Upon entering into a voluntary correction agreement, the person responsible for the violation shall have no right to a hearing before the district court under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.~~

~~(c) Extension and Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable department director if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation, but unforeseen circumstances delay correction under the original conditions.~~

~~(d) Abatement by the City. The city may abate the violation in accordance with BMC [8.45.060](#) if the terms of the voluntary correction agreement are not met.~~

~~(e) Collection of Costs. If the terms of the voluntary correction agreement are not met the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with BMC [8.45.040](#)(5), plus all costs and expenses of abatement, as set forth in BMC [8.45.060](#)(4). [Ord. 383 § 1, 2003; Ord. 146 § 1, 1995]~~

8.45.035 Administrative notice and order.

~~(1) Effect.~~

~~(a) An administrative notice of violation represents a determination that a civil code violation has occurred, that the cited party is a person responsible for code compliance, and that the violations set out in the administrative notice of violation require the assessment of penalties and costs and other remedies specified in the administrative notice of violation.~~

~~(b) Failure to correct the civil code violation in the manner prescribed by the administrative notice of violation subjects the person to whom the administrative notice of violation is directed to the use of any of the compliance remedies provided by this title, including:~~

~~(i) Additional civil penalties and costs;~~

~~(ii) A requirement that abatement, remediation and/or mitigation be performed;~~

~~(iii) Abatement by a director and recovery of the costs of abatement under BMC [8.45.060](#); or~~

~~(iv) Any other legal or equitable remedy within this chapter or at law.~~

~~(c) Any person identified in the administrative notice of violation as responsible for code compliance may appeal the administrative notice of violation by filing a written notice of appeal with the city clerk no more than 10 days following the date of the administrative notice of violation along with a \$100.00 filing fee. The appellant must include in the notice of appeal concise statements indicating the reasons why the administrative notice of violation is in error. This requirement that the notice of appeal contain concise reasons for the appeal is jurisdictional, and upon motion of the city attorney, the hearing examiner shall dismiss appeals failing to comply with the requirements in this section regarding content of the notice of appeal. Appeals before the hearing examiner shall be scheduled and conducted as set forth in BMC 2.20.070. For purposes of the appeal hearing before the hearing examiner, the appellant bears the burden of establishing, by a preponderance of the evidence, that the appellant has not violated the applicable ordinances and regulations of the city of Burien. Should the appellant not prevail on appeal before the hearing examiner, the appellant shall reimburse the city the hearing examiner's fees for conducting the appeal hearing.~~

~~(d) Failure to appeal the administrative notice of violation within the applicable time limits shall render the administrative notice of violation a final determination that the conditions described in the administrative notice of violation existed and constituted a civil code violation, and that the named party is liable as a person responsible for code compliance.~~

~~(e) Issuance of an administrative notice of violation in no way limits a director's authority to issue a stop work order to a person previously cited through the administrative notice of violation process pursuant to this title, or to pursue any of the other remedies for compliance set forth in this chapter. Payment of the civil penalties assessed under the administrative notice of violation does not relieve a person found to be responsible for code compliance of his or her duty to correct the violation and/or to pay any and all civil fines or penalties accruing under this chapter.~~

~~(2) Contents. The administrative notice of violation shall include the following:~~

~~(a) The name and address of the person responsible for code compliance; and~~

~~(b) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and~~

~~(c) A description of the violation and a reference to the provision(s) of the city regulation(s) which has been violated; and~~

~~(d) The required corrective action and a date and time by which the correction must be completed after which the city may abate the unlawful condition in accordance with BMC 8.45.060; and~~

~~(e) A statement specifying the amount of any civil penalty assessed on account of the violation and, if applicable, the conditions on which assessment of such civil penalty is contingent; and~~

~~(f) Statements advising that:~~

~~(i) If any required work is not commenced or completed within the time specified, a director will proceed to abate the violation and cause the work to be done and charge the costs thereof as a lien against the property and as a joint and separate personal obligation of any person in violation;~~

~~(ii) If the date for compliance is to be extended, such request for an extension must be made, in writing, to the department within three days of the date of the administrative notice of violation;~~

~~(iii) If any assessed civil penalty is not paid, a director will charge the amount of the penalty as a lien against the property and as a joint and separate personal obligation of any person in violation; and~~

~~(iv) A statement advising that the order shall become final, unless, no later than 10 days after the notice and order are served, any person aggrieved by the order requests in writing an appeal before the city of Burien hearing examiner pursuant to subsection (1) of this section.~~

~~(3) Service of Administrative Notice of Violation. The city shall serve the administrative notice of violation upon the person responsible for code compliance, either personally or by mailing a copy of the notice of civil violation by certified or registered mail, return receipt requested, to such person at their last known address. If the person responsible for code compliance cannot be personally served within King County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under~~

penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made and, if by posting, the facts showing the attempts to serve the person personally or by mail.

(4) Extension. Extensions of the time specified in the administrative notice of violation for correction of the violation may be granted at the discretion of the applicable department director; provided, however, that should a person in violation desire to extend the time by which compliance is required as stated in the administrative notice of violation, such a request must be made to the department in writing within three days of the date of the administrative notice of violation; the department has the authority to deny the request.

(5) Monetary Penalty. The monetary penalty to be imposed concurrent with the notice of administrative violation shall be \$100.00. The city may waive the monetary penalty if corrective action is completed by the date specified in the notice of administrative violation. If corrective action is not completed by the date specified in the notice of administrative violation, the \$100.00 shall remain in effect. The notice of administrative violation shall contain a second deadline for compliance to be established by the department. If the corrective action is not completed by the second deadline, the penalty shall increase to \$250.00. The notice of administrative violation shall contain a third deadline for compliance. If the corrective action is not completed by the third deadline, the penalty shall increase to \$500.00. The department shall have the discretion to impose penalties in an amount lower than those shown above.

(6) Continued Duty to Correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

(7) Collection of Monetary Penalty.

(a) The monetary penalty constitutes a personal obligation of the person to whom the administrative notice of violation is directed. Any monetary penalty assessed must be paid to the city within 10 calendar days from the date the penalty is imposed pursuant to the notice of administrative violation. Any such monetary penalty shall further constitute a lien against the affected real property, in the manner as set forth in BMC [8.45.060\(6\)](#).

(b) The city attorney is authorized to pursue any legal or equitable action to collect the monetary penalty, including referring the action to a collection agency.

(8) Recording.

(a) Whenever an administrative notice of violation is served on a person responsible for code compliance, the city attorney shall cause to have recorded a copy of the administrative notice of violation with the King County records and elections division, or its successor agency.

(b) When all violations specified in the administrative notice of violation have been corrected or abated, the city attorney shall cause to have recorded a certificate of compliance with the King County records and elections division, or its successor agency. The certificate shall include a legal description of the property where the violation occurred and shall state that any unpaid civil penalties for which liens have been recorded are still outstanding and continue as liens on the property.

(9) Supplementation, Revocation, Modification.

(a) Whenever there is new information or a change in circumstances, a director may add to, rescind in whole or part or otherwise modify an administrative notice of violation by issuing a supplemental notice and order. The supplemental administrative notice of violation shall be governed by the same procedures applicable to all administrative notice of violations contained in this title.

(b) A director may revoke or modify an administrative notice of violation issued under this title if the original notice and order was issued in error or if a party to an order was incorrectly named. The revocation or modification shall identify the reasons and underlying facts for revocation and shall be recorded with the King County records and elections division, or its successor agency.

(10) Administrative Conference. An informal administrative conference may be conducted by a director at any time for the purpose of facilitating communication among concerned persons and providing a forum for efficient resolution of any violation. Interested parties shall not unreasonably be excluded from such conferences.

(11) Remedies — Civil Penalties — Authority and General Provisions.

(a) Failure to correct a civil code violation in the manner and within the time frame specified by the administrative notice of violation subjects the person responsible for code compliance to civil penalties as set forth in BMC [8.45.040\(5\)](#).

(b) Civil penalties assessed create a joint and several personal obligations in all persons responsible for code compliance. The city attorney may collect the civil penalties assessed by any appropriate legal means.

~~(c) Civil penalties assessed also authorize the city of Burien to take a lien for the value of civil penalties imposed against the real property of the person responsible for code compliance.~~

~~(d) The payment of penalties does not relieve a person responsible for code compliance of any obligation to cure, abate or stop a violation.~~

~~(12) Remedies—Cost Recovery.~~

~~(a) In addition to the other remedies available under this title, a director may charge the costs of pursuing code compliance and abatement incurred to correct a code violation to the person responsible for code compliance, including legal and incidental expenses to the extent these costs exceed the amount of the penalty paid. Such costs are due and payable 30 days from mailing of the invoice.~~

~~(b) For purposes of this section, “legal and incidental expenses” shall include but are not limited to:~~

~~(i) Personnel costs, both direct and indirect, including attorney’s fees and costs incurred to document the violation as soon as the violation occurs;~~

~~(ii) Hauling, storage and disposal expenses;~~

~~(iii) Actual expenses and costs of the city in preparing notices, specifications and contracts and in accomplishing or contracting and inspecting the work and the costs of any required printing or mailing; and~~

~~(iv) Interest on the costs of abatement incurred by the city.~~

~~(c) All costs assessed by the city in pursuing code compliance and/or abatement create a joint and several personal obligation in all persons responsible for code compliance. The city attorney may collect the costs of code compliance efforts by any appropriate legal means.~~

~~(d) The city of Burien may take a lien for the value of the costs of pursuing code compliance against the real property of the person responsible for code compliance.~~

~~(13) Remedies—Abatement—Authorized. In addition to or as an alternative to any other judicial or administrative remedy, a director may use the administrative notice of violation provisions of this title to order any person responsible for code compliance to abate the violation and to complete the work at such time and under such conditions as a director determines reasonable under the circumstances. If the required corrective work is not commenced or completed within the time specified, a director may proceed to abate the violation pursuant to BMC [8.45.060](#). [Ord. 383 § 1, 2003]~~

8.45.040 Filing of nuisance abatement action in district court.

~~(1) Issuance.~~

~~(a) When the applicable department director determines that a violation has occurred or is occurring, the department director may cause the city attorney to issue a notice and order of civil violation and summons to the person responsible for the violation.~~

~~(b) The notice and order of civil violation and summons may issue without the city having attempted to secure voluntary correction as provided in BMC [8.45.030](#) at the discretion of the department director.~~

~~(2) Content. The notice and order of civil violation and summons shall include the following:~~

~~(a) The name and address of the person responsible for that violation; and~~

~~(b) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and~~

~~(c) A description of the violation and a reference to the provision(s) of the city regulation(s) which has been violated; and~~

~~(d) The required corrective action and a date and time by which the correction must be completed after which the city may abate the unlawful condition in accordance with BMC [8.45.060](#); and~~

~~(e) The date, time and location of an appeal hearing before a judge, judge pro tem, or commissioner of the district court which will be at least 20 days but no more than 60 days from the date the notice of civil violation is issued, unless such date is continued by the district court for good cause shown; and~~

~~(f) A statement indicating that the hearing will be canceled and no monetary penalty will be assessed, other than the district court filing fee, if the applicable department director approves the completed, required corrective action prior to the hearing; and~~

~~(g) A statement that the costs and expenses of abatement incurred by the city pursuant to BMC 8.45.060(4), and a monetary penalty in an amount per day for each violation as specified in subsection (5) of this section, may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the district court.~~

~~(3) Service of Notice and Order of Civil Violation and Summons. The city shall serve the notice and order of civil violation and summons upon the person responsible for code compliance, either personally or by mailing a copy of the notice of civil violation by certified or registered mail, return receipt requested, to such person at their last known address. If the person responsible for code compliance cannot be personally served within King County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person affecting the service, declaring the time and date of service, the manner by which the service was made and, if by posting, the facts showing the attempts to serve the person personally or by mail.~~

~~(4) Extension. Extensions of the time specified in the notice and order of civil violation and summons for correction of the violation may be granted at the discretion of the applicable department director or by order of the district court.~~

~~(5) Monetary Penalty. The monetary penalty for each violation shall be \$100.00, which shall increase to \$250.00 if the violation is not corrected within seven days prior to the district court hearing, and which shall increase to \$500.00 if the violation is not corrected by the date of the scheduled hearing in district court.~~

~~(6) Continued Duty to Correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice and order of civil violation and summons was issued of the duty to correct the violation.~~

~~(7) Collection of Monetary Penalty.~~

~~(a) The monetary penalty constitutes a personal obligation of the person to whom the notice and order of civil violation and summons is directed. Any monetary penalty assessed must be paid to the city within 10 calendar days from the date of mailing of the district court's decision or a notice from the city that penalties are due. Any such monetary penalty shall further constitute a lien against the affected real property, in the manner as set forth in BMC 8.45.060(6). Payment of the monetary penalty does not relieve the person responsible for code compliance of the duty to correct the violation.~~

~~(b) The city attorney is authorized to take appropriate action to collect the monetary penalty. [Ord. 383 § 1, 2003; Ord. 146 § 1, 1995]~~

8.45.050 Hearing before the district court.

~~(1) Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the district court not less than 20 calendar days nor more than 60 calendar days after the notice of civil violation is issued. Continuances may be granted at the discretion of the applicable department director, or by the district court for good cause shown.~~

~~(2) Prior Correction of Violation. The hearing will be canceled and no monetary penalty will be assessed, other than the district court filing fee, if the applicable department director approves the completed required corrective action prior to the scheduled hearing.~~

~~(3) Procedure. The district court shall conduct a hearing on the civil violation pursuant to the then-current applicable rules of civil procedure for district courts of limited jurisdiction. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable under the circumstances. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the court in determining the reasonableness of the required corrective action.~~

~~(4) Decision of the District Court.~~

~~(a) The district court shall determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable under the circumstances, and shall affirm, vacate, or modify the city's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.~~

~~(b) The district court shall issue an order to the person responsible for the violation which contains the following information:~~

~~(i) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;~~

~~(ii) The required corrective action;~~

~~(iii) The date and time by which the correction must be completed;~~

~~(iv) The monetary penalties assessed based on the criteria in subsection (4)(c) of this section; and~~

~~(v) The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.~~

~~(c) Assessment of Monetary Penalty. Monetary penalties assessed by the district court shall be in accordance with the monetary penalty in BMC [8.45.040\(5\)](#).~~

~~(i) The district court shall have the following options in assessing monetary penalties:~~

~~(A) Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or~~

~~(B) Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the district court and thereafter; or~~

~~(C) Assess less than the established monetary penalty set forth in BMC [8.45.040\(5\)](#), based on the criteria of subsection (4)(c)(ii) of this section; or~~

~~(D) Assess no monetary penalties.~~

~~(ii) In determining the monetary penalty assessment, the district court shall consider the following factors:~~

~~(A) Whether the person responded to staff attempts to contact the person, and cooperated to correct the violation;~~

~~(B) Whether the person failed to appear at the hearing;~~

~~(C) Whether the violation was a repeat violation;~~

~~(D) Whether the person showed due diligence and/or substantial progress in correcting the violation;~~

~~(E) Whether a genuine, "close call" code interpretation issue exists; and~~

~~(F) Any other relevant factors.~~

~~(iii) The district court may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations the district court shall consider the factors set forth in subsection (4)(c)(ii) of this section.~~

~~(5) Failure to Appear. If the person to whom the notice of civil violation was issued fails to appear without lawful excuse at the scheduled hearing, the district court will enter an order with findings pursuant to subsection (4)(b) of this section and assess the appropriate monetary penalty pursuant to subsection (4)(c) of this section. The city may enforce the district court's order and recover all related expenses, including attorney fees, plus the costs of the hearing and any monetary penalty from that person.~~

~~(6) Appeal to Superior Court. Any appeal of the decision of the district court shall be prosecuted pursuant to the then current Rules for Appeal from Courts of Limited Jurisdiction (RALJ). [Ord. 383 § 1, 2003; Ord. 146 § 1, 1995]~~

8.45.060 Abatement by the city.

~~(1) The city may abate a condition which was caused by or continues to be a civil violation when:~~

~~(a) The terms of voluntary correction agreement pursuant to BMC [8.45.030](#) have not been met; or~~

~~(b) An administrative notice of violation has been issued pursuant to BMC 8.45.035 and the required correction has not been completed by the date specified in the administrative notice of violation; or~~

~~(c) A notice and order of civil violation and summons has been issued pursuant to BMC 8.45.040 and a hearing has been held pursuant to BMC 8.45.050 and the required correction has not been completed by the date specified in the district court's order; or~~

~~(d) The condition is subject to summary abatement as provided for in subsection (2) of this section.~~

~~(2) Summary Abatement. Whenever any nuisance causes a condition, the continued existence of which constitutes an immediate threat to the public health, safety or welfare or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it shall be given to the person responsible for the violation as soon as reasonably possible after the abatement. No right of action shall lie against the city or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the city be entitled to recover any costs incurred for summary abatement, prior to the time that actual notice of same is provided to the person responsible for the violation.~~

~~(3) Authorized Action by the City. Using any lawful means, the city may enter upon the subject property and may remove or correct the condition which is subject to abatement. The city may seek such judicial process as it deems necessary to effect the removal or correction of such condition.~~

~~(4) Recovery of Costs and Expenses. The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or control of the property and shall become due and payable to the city within 10 calendar days. The term "incidental expenses" includes but is not limited to personnel costs, both direct and indirect and including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the city in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing. All such costs and expenses shall constitute a lien against the affected property, as set forth in subsection (6) of this section.~~

~~(5) Interference. Any person who knowingly obstructs, impedes, or interferes with the city or its agents, or with the person responsible for the violation in the performance of duties imposed by this chapter, shall be guilty of a misdemeanor punishable by imprisonment not exceeding 90 days and a fine not exceeding \$1,000.~~

~~(6) Lien — Authorized. The city of Burien shall have a lien for any monetary penalty imposed, the cost of any abatement proceedings under this chapter, and all other related costs including attorney and expert witness fees, against the real property on which the monetary penalty was imposed or any of the work of abatement was performed. The lien shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for state and county taxes, with which it shall be on a parity.~~

~~(a) The applicable department director shall cause a claim for lien to be filed for record within 90 days from the later of the date that the monetary penalty is due or the date the work is completed or the nuisance abated.~~

~~(b) The claim of lien shall contain sufficient information regarding the notice of civil violation, as determined by the applicable department director, a description of the property to be charged with the lien and the owner of record, and the total amount of the lien.~~

~~(c) Any such claim of lien shall be verified by the applicable department director, and may be amended from time to time to reflect changed conditions.~~

~~(d) No such liens shall bind the affected property for a period longer than five years, without foreclosure or extension agreed to by the property owner. [Ord. 383 § 1, 2003; Ord. 146 § 1, 1995]~~

8.45.080 Conflicts.

~~In the event of a conflict between this chapter and any other provision of the Burien Municipal Code or other city ordinance providing for a civil penalty, this chapter shall control. [Ord. 383 § 1, 2003; Ord. 146 § 1, 1995]~~

8.45.070 Enforcement procedures.

~~This chapter shall be enforced as provided in Chapter 1.15 of the Burien Municipal Code. The provisions of this chapter are not exclusive and may be used in addition to other enforcement provisions authorized by the Burien Municipal Code except as precluded by law.~~

8.55.030 Graffiti prohibited.

It shall be unlawful for any person to write, paint or draw upon any wall, rock, bridge, building, fence, gate, signage or other structure, tree or other real or personal property, either publicly or privately owned, any drawing, inscription, figure or mark of the type which is commonly known and referred to as "graffiti" within the city without permission from the city.

Violation of any of the provisions of this section shall constitute a gross misdemeanor, ~~and may be punished by a fine of up to \$5,000 and a jail term not in excess of one year.~~ [Ord. 270 § 4, 1999]

8.55.050 City costs enforceable – Debt – Lien.

Any and all costs incurred by the city in the abatement of the graffiti nuisance as provided in this chapter shall be recoverable pursuant to Chapter 1.15 BMC ~~constitute a debt owed to the city by the property owner and shall be enforceable as a lien against the property upon which such nuisance existed, in addition to the other legal remedies available for enforcement of debts.~~ [Ord. 270 § 6, 1999]

8.55.060 Appeal.

Within 14 calendar days from the mailing or from personal service of the notice of intent to remove graffiti, the owner or person occupying or managing the premises affected may appeal the matter to the hearing examiner serving the city. Appeals will be governed by the provisions of Chapter 1.15 BMC ~~Chapter 2.20 BMC~~. [Ord. 312 § 10, 2000; Ord. 270 § 7, 1999]

10.10.010 Regulation of vehicle impoundment and redemption – Adopted by reference.

(1) Chapter 46.08 KCC, Impoundment and Redemption of Certain Vehicles, as now in effect and as may subsequently be amended is adopted in its entirety, except that unless the context indicates otherwise, the words "county" or "King County" shall refer to the city and references to violations of the county code or of a county ordinances shall be deemed to be references to violations of a city ordinances, ~~subject to punishment by fine of not more than \$5,000 or imprisonment for a term not to exceed one year, or both.~~ which shall constitute a gross misdemeanor.

(2) To the extent necessary or convenient to implement this chapter, the administrative hearing officers appointed pursuant to KCC 46.08.100 or otherwise, are appointed as agents for the city of Burien to conduct any applicable hearings on Burien's behalf. ~~[Ord. 43 § 1, 1993]~~

10.11.050 Enforcement procedure.

The enforcement procedure for this chapter shall be the enforcement procedure set out in Chapter ~~8.45~~ 1.15 BMC. ~~[Ord. 492 § 1, 2008]~~

12.17.050 Definitions.

The following words and phrases when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

(1) ~~"Administrative notice of violation means a letter from the city to a right of way use permittee notifying the recipient of specific nonconforming or unsafe conditions and specifying the date by which corrective action must be taken.~~

(1) "Citation and notice" means a written document initiating a criminal proceeding after an arrest and issued by an authorized peace officer, in accordance with the Criminal Rules for Courts of Limited Jurisdiction.

(2) "City" means the city of Burien, Washington.

(3) "City inspector" means the designated employee(s) of the department responsible for inspecting the installation of warning and safety devices in the public right-of-way and restoration of public rights-of-way disturbed by work.

(4) “Complaint” means a written document certified by the prosecuting attorney initiating a criminal proceeding in accordance with the Criminal Rules for Courts of Limited Jurisdiction.

(5) “Department” means the public works department or other department designated by the city manager.

(6) “Director” means the director of the public works department, or his/her designated representative, or other person designated by the city manager.

(7) “Emergency” means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, but not limited to, damage to persons or property from natural or manmade consequences, such as storms, earthquakes, riots or wars.

(8) “Franchised utilities” means utilities that have city approval to use city rights-of-way for the purpose of providing their services within the city, whether by written franchise or other agreement granted by the city.

(9) “Nonprofit” means not for a monetary gain unless for charitable purposes.

(10) “Oral directive” means a directive given orally by city personnel to correct or discontinue a specific condition.

(11) “Permit” means a document issued by the city granting permission to engage in an activity not allowed without a permit.

(12) “Permit center” means the central location for applying for permits.

(13) “Person” means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

(14) “Private use” means use of the public right-of-way for the benefit of a person, partnership, group, organization, company, or corporation, other than as a thoroughfare for any type of vehicles, pedestrians or equestrians.

(15) “Procedure” means a procedure adopted by the director to implement this code, or to carry out other responsibilities as may be required by this code or by other codes, ordinances, or resolutions of the city or other agencies.

(16) “Right-of-way” means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, paths, trails, sidewalks, bikeways and horse trails, whether improved, unimproved, or unopened, including the air rights, sub-surface rights and easements related thereto.

(17) “Right-of-way use permit” or “permit” means a permit for use of the right-of-way issued in conformance with BMC [12.17.080](#).

(18) “Stop work order” means a notice posted at the site of activity that requires all work to be stopped until the city approves continuation of work.

(19) “Telecommunications carrier” means every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the city, used or to be used for the purpose of offering and providing telecommunications or cable services.

(20) “Telecommunications facilities” means the plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optic cable, pedestals, antennas, electronics, poles, and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications or cable services.

(21) “Telecommunications provider” means every person who provides telecommunications or cable services over telecommunications facilities without any ownership or management control of the facilities.

(22) “Telecommunications service(s)” means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

(23) “Underground location service” means the underground utilities location center that will locate all underground utilities prior to an excavation.

(24) “Unsafe condition” means any condition which the director determines is a hazard to health, or endangers the safe use of the right-of-way by the public, or does or may impair or impede the operation or functioning of any portion of the right-of-way, or which may cause damage thereto. [Ord. 395 § 2, 2004]

12.17.110 Correction and discontinuance of unsafe, nonconforming, or unauthorized conditions.

(1) Whenever the director determines that any condition on any right-of-way is in violation of, or any right-of-way is being used contrary to any provision of this code or procedures adopted hereunder or other applicable codes

or standards, or without a right-of-way use permit, the director may order the correction or discontinuance of such condition or any activity causing such condition.

(2) The director is authorized to order correction or discontinuance of any such condition or activities following the methods specified in any of the procedures adopted pursuant to this code or pursuant to Chapter ~~8.45~~1.15 BMC.

(3) The director shall also have all powers and remedies which may be available under state law, this code, and procedures adopted hereunder for securing the correction or discontinuance of any condition specified in this section.

(4) The director is authorized to use any or all of the following methods in ordering correction or discontinuance of any such conditions or activities as the director determines appropriate including but not necessarily limited to:

(a) Serving of oral or written directives to the permittee or other responsible person requesting immediate correction or discontinuance of the specified condition;

(b) Service of a ~~written administrative~~ notice of civil violation pursuant to BMC ~~8.45.035~~1.15.120, ordering correction or discontinuance of a specific condition or activity within any reasonable period as the director may determine;

(c) Service of a ~~summons and notice of order of violation~~civil infraction filed in the King County District Court, Division South pursuant to Chapter ~~8.45~~ 1.15 BMC;

(d) Revocation of previously granted permits where the permittee or other responsible person has failed or refused to comply with requirements imposed by the city related to such permits;

(e) Issuance of a stop work order to immediately stop work until authorization is received from the city to proceed with such work;

(f) Service of summons and complaint certified by the ~~city prosecutor prosecuting attorney~~ or a citation and notice to appear by an arresting peace officer upon the permittee or other responsible person who is in violation of this or other city ordinances;

(g) Any object or thing which shall occupy any right-of-way without a permit is declared a nuisance per Chapters 8.45 and 9.75 BMC. The department may attach a notice to any such object or thing stating that if it is not removed from the right-of-way within 24 hours of the date and time stated on the notice, the object or thing may be taken into custody and stored at the owner's expense. The notice shall provide an address and phone number where additional information may be obtained. If the object or thing is a hazard to public safety, it may be removed summarily by the city. Notice of such removal shall be thereafter given to the owner, if known. This section does not apply to motor vehicles legally occupying the right-of-way;

(h) All expenses incurred by the city in abating the condition or any portion thereof shall constitute a civil debt owing to the city jointly and severally by such persons who have been given notice or who own the object or thing or placed it in the right-of-way, which debt shall be collectible in the same manner as any other civil debt; and

(i) The city shall also have all powers and remedies which may be available under law, this code and procedures adopted hereunder for securing the correction or discontinuance of any conditions specified by the city. [Ord. 395 § 2, 2004]

12.17.250 Violation – Penalty.

~~(1) The violation of or failure to comply with any provision of this chapter is declared to be unlawful and subject to enforcement as set forth in Chapter 1.15 BMC.~~

~~(2) Any violation of any provision of this chapter is a civil violation as provided for in Chapter 8.45 BMC, for which a monetary penalty may be assessed and abatement may be required as provided therein.~~

~~(3) In addition to or as an alternative to any other penalty provided by this chapter or by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor.~~

12.20.060 Violations – Penalty.

~~The violation of or failure to comply with any provision of this chapter is declared to be unlawful and subject to enforcement as set forth in Chapter 1.15 BMC. (1) Criminal Penalties. Any violation of this chapter is a misdemeanor and shall be punishable, upon conviction, by fine not exceeding \$250.00 or by confinement in the county jail not exceeding 90 days, or both.~~

~~(2) Civil Penalties. Any person who fails to comply with the provisions of this chapter is in addition, but not as an alternative, to any criminal penalties, subject to a maximum civil penalty of \$250.00 for each day or portion of any day that the violation continues.~~

~~(3) Other Legal Remedies. Nothing in this chapter limits the right of the city to pursue other lawful, criminal, civil or equitable remedies to abate, discontinue, correct or discourage unlawful acts under or in violation of this chapter.~~

12.38.060 Violations – Penalties.

~~(1) The violation of or failure to comply with any provision of this chapter is declared to be unlawful and subject to enforcement as set forth in Chapter 1.15 BMC. Criminal Penalties. In addition to or as an alternative to any other penalty herein or by Chapter 8.45 BMC, any person who violates any provision of this chapter shall be guilty of a misdemeanor, and shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than \$1,000, or by both such imprisonment and fine.~~

(2) Nuisance. Any person violating the provisions of this chapter is hereby declared to have committed, or to continue to commit, a nuisance and is subject to applicable enforcement provisions contained in Chapters 1.15 and 8.45 BMC.

(3) Action ~~Under~~ RCW 64.12.030. In addition to or as an alternative to any other penalty provided herein, the city may bring an action in trespass under the timber trespass statute, RCW 64.12.030, for the removal or damage to any tree or ornamental shrub on city property. Should the city obtain judgment against a person or persons under RCW 64.12.030, the city shall be entitled to treble the amount of damages claimed or assessed therefor.

(4) Additional Enforcement Procedures. The provisions of this chapter are not exclusive and may be used in addition to any other remedies in law or equity. [Ord. 402 § 1, 2003]

13.10.510 Enforcement – Violations.

~~The provisions set forth in this section shall apply to all~~ Any violations of this chapter, ~~or the Surface Water Design Manual, and or the Stormwater Pollution Prevention Manual, are violations of this chapter and code and are subject to the provisions of this section.~~ In addition to the listed enforcement options, the city may also pursue any other lawful civil, criminal or equitable remedy or relief. At the director of public works' discretion, the choice of enforcement option taken and the severity of any monetary penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, the public resources expended to take enforcement action and ensure compliance with this chapter, and/or the degree of bad faith of the persons subject to the enforcement action. Enforcement options are cumulative and shall not be deemed exclusive.

(1) Nuisance. Any structure, condition, act or failure to act which violates any provision of this chapter shall be, and the same is declared to be, unlawful and a public nuisance, and may be abated using the procedures of Chapters 1.15, 8.45, and 9.75 BMC, as currently written or hereafter amended or as otherwise allowed by law.

(2) Violation. Any structure, condition, act or failure to act which violates any provision of this chapter shall be and the same is declared to be, unlawful and is subject to the enforcement and penalty provisions of this section, Chapter 1.15 BMC, and BMC 13.10.520.

~~(3) Order to Cease Activity. The director or designee shall have the authority to order immediate cessation of any activity that is in violation of this chapter whether occurring on public or private property.~~

~~(a) Posting and Notice. The director or designee shall prominently post this order at the subject location and shall make reasonable attempts to send this order on to the property owner, the person in charge of the property, or the person causing the activity to be conducted or the improvement erected or altered.~~

~~(b) Effect. When an order to cease activity has been posted on the subject location, it is a violation of this chapter for any person with actual or constructive knowledge of the order to conduct the activity or do the work covered by the order until such time as the director or designee has removed or authorized removal of the order. If an order to cease activity is violated, the director or designee may issue a notice of civil infraction under subsection (5) of this section.~~

~~(e) Appeal. An order to cease activity may be appealed in like manner as a notice of civil infraction under subsection (5) of this section. If a notice of civil infraction has also been issued and appealed, the appeals shall be consolidated for hearing.~~

~~(4) Notice of Violation. If the public works director or designee determines that any structure, condition, act or failure to act exists that is in violation of this chapter, he/she may issue a notice of violation. This notice will specifically indicate:~~

~~(a) The name and address of the property owner or other person to whom the notice of violation is directed;~~

~~(b) The street address or description sufficient for identification of the location where the violation has occurred or is occurring;~~

~~(c) A description of the violation and a reference to the provision or provisions of this chapter being violated;~~

~~(d) A statement of the action required to be taken to correct the violation, as determined by the public works director, and a date or time by which correction is to be completed; and~~

~~(e) A statement that a monetary penalty in an amount per day for each violation as specified by BMC [13-10.520](#) shall be assessed against the person to whom the notice of violation is directed for each and every day, or portion of a day, that the violation continues following the date set for correction.~~

~~(f) Notice to Property Owner and Responsible Party. The public works director or designee shall:~~

~~(i) Leave a copy of this notice with the occupant or responsible party or post it in a conspicuous place on the subject property; and~~

~~(ii) Personally serve or send a copy of the notice by certified mail to the owner of the subject property and/or responsible party.~~

~~(iii) Extension. Upon written request received prior to the correction date or time, the public works director or designee may extend the date set for correction for good cause. The public works director or designee may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as good cause.~~

~~(5) Notice of Civil Infraction.~~

~~(a) General. The public works director or designee may cause a notice of civil infraction to be issued in the following circumstances:~~

~~(i) There is a violation of a posted order to cease activity; or~~

~~(ii) If, after the time specified in a notice of violation, the corrections specified in the notice of violation have not been completed, and a violation persists; or~~

~~(iii) There is reasonable cause to believe that there has been a violation of this chapter.~~

~~(b) Issuance. The notice of civil infraction will be issued to the owner of the property and/or to the responsible party, if the violation exists on private property, or to the party responsible for the activity or condition if the violation exists on public property.~~

~~(i) Notwithstanding the provisions of subsections (3) and (4) of this section, the public works director or designee may issue a notice of civil infraction without having issued an order to cease activity or a notice of violation when a repeated violation occurs within a six-month period of time or otherwise at the director's or designee's discretion.~~

~~(ii) A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless appealed as provided in this chapter.~~

~~(c) Content. The following shall be included in the notice of civil infraction:~~

~~(i) The name and address of the property owner or other persons to whom the notice of civil infraction is directed;~~

~~(ii) The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;~~

~~(iii) A description of the violation and a reference to that provision or provisions of this chapter which has been violated;~~

~~(iv) A statement that the monetary penalty in the amount per day for each violation as specified in BMC [13.10.520](#) is assessed against the person to whom the notice of civil infraction is directed for each and every day, or portion thereof, during which the violation continues beyond the date or time established for correction in the notice of violation; and~~

~~(v) A statement that the person to whom the notice of civil infraction was directed must complete correction of the violation and may pay the monetary penalty imposed to the city clerk or may appeal the notice of civil infraction as provided in subsection (5)(c) of this section.~~

~~(d) Service of Notice. The public works director or designee shall serve the notice of civil infraction upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil infraction by certified mail, postage prepaid, return receipt requested, to such person at his/her last known address or by posting the notice of civil infraction conspicuously on the affected property or structure. The person who effected personal service shall make proof of service at the time of service by a written declaration under penalty of perjury declaring the time and date and the manner in which service was made.~~

~~(e) Appeal to Hearing Examiner.~~

~~(i) A person to whom a notice of civil infraction is directed may appeal the notice of civil infraction, including the determination that a violation exists, or may appeal the amount of any monetary penalty imposed to the hearing examiner.~~

~~(ii) A person may appeal the notice of a civil infraction by filing a written notice of appeal with the department of public works within the earlier of seven calendar days from the date of personal service of the notice of civil infraction, and if the notice is not personally served, within 10 calendar days from the date the notice was deposited in the United States mail, properly addressed and postage prepaid, and if the notice was posted, within 10 calendar days from the date the notice was posted on the property.~~

~~(iii) The monetary penalty for a continuing violation does not accrue during the pendency of the appeal; however, the hearing examiner may impose a daily monetary penalty from the date of service of the notice of civil infraction if the hearing examiner finds that the appeal is frivolous or intended solely to delay compliance.~~

~~(iv) The hearing before the hearing examiner shall be conducted as follows:~~

~~(A) The office of the hearing examiner shall give notice of the hearing before the hearing examiner to the appellant 17 calendar days before such hearing; and~~

~~(B) The hearing examiner shall conduct a hearing on the appeal. The city and the appellant may participate as parties in the hearing and each may call witnesses. The city shall have the burden of proof by a preponderance of the evidence that a violation has occurred.~~

~~(f) Action of Hearing Examiner.~~

~~(i) The hearing examiner shall determine whether the city has proven by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend, or modify the amount of any monetary penalty imposed by the notice of civil infraction with or without written conditions.~~

~~(ii) The hearing examiner shall consider the following in making his/her determination:~~

~~(A) Whether the intent of the appeal was to delay compliance;~~

~~(B) Whether the appeal is frivolous;~~

~~(C) Whether there was a written contract or agreement with another party which specified the securing by the other party of the applicable permit or approval from the city;~~

~~(D) Whether the appellant exercised reasonable and timely effort to comply with applicable development regulations; and~~

~~(E) Any other relevant factors.~~

~~(g) Notice of Decision. The hearing examiner shall mail a copy of his or her decision to the appellant by certified mail, postage prepaid, return receipt requested.~~

~~(h) Judicial Review. The decision of the hearing examiner may be reviewed pursuant to the standards set forth in Chapter 36.70C RCW in King County superior court. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the hearing examiner. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW.~~

~~(i) Criminal Penalty. Each day for which there occurs or continues to occur a willful violation of an order issued pursuant to this section for which a criminal penalty is not prescribed by state law shall constitute a misdemeanor and any person found guilty thereof shall be subject to a maximum penalty of \$1,000 or 90 days in jail, or by both such fine and imprisonment for each such day that a violation occurs or continues to occur.~~

~~(63) Criminal. Any willful violation of the provisions of this chapter is deemed a misdemeanor unless a more exacting charge is allowed by law. [Ord. 534 § 13, 2010; Ord. 519 § 14, 2009; Ord. 489 § 2, 2008]~~

13.10.520 Enforcement – civil penalties.

Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation and for all costs of inspection and sampling in the event the violation constitutes an illicit discharge. If the city repairs or replaces the damaged property, the actual cost to the city for such repair or replacement shall be assessed against the responsible party and shall be due and payable within ten days of the date of written notice of the same. Delinquent bills may be collected by a civil action or as otherwise allowed by law. If the City obtains judgment, it shall also be entitled to reimbursement for court costs and reasonable attorney's fees expended in the litigation.

(1) Monetary Penalty.

~~(a) The amount of the monetary penalty per day or portion thereof for each violation of this chapter shall be as set forth in Ch. 1.15 BMC. is as follows:~~

~~(a) — Except as may be otherwise set forth herein, the monetary penalty assessed shall not exceed \$1,000 per day for each such day that a violation occurs or continues to occur. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil infraction is directed. Any monetary penalty assessed must be paid to the City Clerk within seven calendar days from the date of service of the notice of civil infraction or, if a contested or mitigation hearing was held pursuant to Ch. 1.15 BMC, within seven calendar days of the Hearing Examiner's decision.~~

~~(b) — The City Attorney, on behalf of the city, is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or~~

~~granting of which shall neither stay nor terminate accrual of additional per diem monetary penalties so long as the violation continues.~~

~~(e) In the event of failure to appear at a hearing as provided in Ch. 1.15 BMC, the Hearing Examiner shall assess the monetary penalty prescribed and a penalty of twenty-five dollars.~~

~~(db) In the event of a conflict between this chapter and any other provision of this code of city ordinances providing for a civil penalty, this chapter shall control.~~

~~(2) Payment of a monetary penalty pursuant to this chapter does not relieve a person of the duty to correct the violation as ordered by the Director of Public Works.~~

15.05.410 Violations – Penalties.

~~The violation of or failure to comply with any provision of this chapter is declared to be unlawful and subject to enforcement as set forth in Chapter 1.15 BMC. (4) Notice of Violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.~~

~~(2) Enforcement of Violation. If the notice of violation is not complied with in the time prescribed by such notice, the building official is authorized to request the legal counsel of the city to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto. The city may enforce violations of this Chapter and the codes referenced herein under Chapter 8.45 BMC.~~

~~(3) Penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by this section.~~

~~(a) Civil Violation. Except as otherwise provided in this title, any violation of any of the provisions of this title shall constitute a civil infraction for which a monetary penalty in an amount not to exceed \$5,000 may be imposed.~~

~~(b) Criminal Penalty. In addition to or as an alternative to any other penalty provided herein or by any other regulation, any person, partnership, firm, association, or corporation who violates any provision of this chapter shall be guilty of a misdemeanor and shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than 90 days or by a fine in an amount fixed by the court of not more than \$1,000 or by both such imprisonment and fine.~~

~~(c) Separate Offense. Each day or portion thereof upon which a violation occurs, continues, or is permitted shall constitute a separate offense for the purposes of subsections (a) and (b) of this section.~~

~~(4) Remedies Not Exclusive. Nothing herein shall prohibit nor prevent the city from utilizing any remedy at law or equity for the enforcement of violations herein. [Ord. 541 § 2 (Exh. A), 2010]~~

15.05.415 Stop work order.

(1) Authority. Whenever the building official finds any work being performed in a manner either contrary to the provisions of this code, the construction codes, or other pertinent laws or ordinances that are violated during the course of work authorized by the permit, the building official is authorized to issue a stop work order. Issuance of a notice of violation, infraction or notice and order is not a condition precedent to the issuance of the stop work order.

(2) Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work and posted in plain sight on the premises, structure, fixture, or system as applicable. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order and the conditions under which the cited work will be permitted to resume.

(3) Effect.

- (a) The building official is authorized to assess a special investigation fee for the issuance of a stop work order when work has started without the issuance of a permit. The special investigation fee shall be determined in accordance with BMC [15.05.375\(5\)](#), Work Commencing before Permit Issuance.
- (b) A stop work order represents a determination that a code violation has occurred and that any work or activity that is causing or contributing to the violation on the property where the violation has occurred or is occurring must cease.
- (c) A stop work order requires the immediate cessation of the specified work or activity on the named property. Work or activity may not resume unless specifically authorized by the building official or designee.
- (d) A stop work order may be appealed to the city hearing examiner according to the procedures prescribed by BMC [15.05.400](#), Appeals.
- (e) Failure to appeal the stop work order within the applicable time limits shall render the stop work order a final determination that a code violation occurred and that work was properly ordered to cease.
- (f) Failure to comply with the terms of a stop work order ~~subjects the person responsible for code compliance to penalties and costs. is declared to be unlawful and subject to enforcement as provided in BMC 1.15.110.~~

~~(4) Remedy—Penalties. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed in BMC [15.05.410](#).~~

~~(a) In addition to any other judicial or administrative remedy, the building official or designee may assess penalties for the violation of any stop work order as set forth in BMC [15.05.410\(3\)](#), Penalties.~~

~~(b) Penalties for the violation of any stop work order shall begin to accrue on the first day the stop work order is violated and shall cease on the day the work is actually stopped.~~

~~(c) Violation of a stop work order shall be a separate violation from any other code violation. Civil penalties assessed create joint and several personal obligations in all persons responsible for the code violation. The city may collect the penalties assessed by any appropriate legal means.~~

~~(d) In addition to all other remedies, a lien for the value of the penalties imposed may be filed against the real property that is subject to compliance with this title. [Ord. 541 § 2 (Exh. A), 2010]~~

15.05.420 Unsafe structures and equipment.

(1) General. Structures or existing equipment which are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities or inadequate light and ventilation, which constitute a fire hazard, are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Additionally, a structure that is not secured against entry or which has been abandoned for more than one year or for which the applicant or owner fails to request the required inspection(s) prior to permit expiration or occupancy may be deemed unsafe by the building official.

(2) Evacuation. Where conditions exist that are deemed hazardous to life and property, the building official is authorized to abate summarily such hazardous conditions that are in violation of the codes. The building official shall be authorized to order the immediate evacuation of any unsafe occupied building when such building has hazardous conditions that present imminent danger to building occupants. Persons so notified shall immediately leave the structure or premises and shall not enter or re-enter until authorized to do so by the building official.

(3) Abatement. Where a structure has been deemed unsafe, the building official or designee shall first issue a notice of civil violation as prescribed in BMC ~~15.05.410~~ [15.120](#). The notice of violation shall include a statement requiring the unsafe structure or equipment to be taken down and removed or made safe, as the building official

deems necessary and as provided for in Chapter 15.40 BMC, Burien Building and Property Maintenance Code. [Ord. 541 § 2 (Exh. A), 2010]

15.40.095 Violations and penalties.

(1) Unlawful Acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code. Signs, tags or seals posted or affixed by the code official shall not be mutilated, destroyed or tampered with or removed without authorization from the code official.

~~(2) Notice of Violation. The code official is authorized to serve a notice of violation or order in accordance with BMC 8.45.035.~~

~~(3) Enforcement of Violation. If the notice of violation is not complied with in the time prescribed by such notice, the code official is authorized to request the legal counsel of the city to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. The code official is authorized to enforce violations of this chapter and the codes referenced herein under Chapter 8.45 BMC.~~

~~(4) Penalties Enforcement. Any person who violates a provision of this code or fails to comply with any of the requirements thereof shall be subject to enforcement as set forth in Chapter 1.15 BMC, penalties as prescribed by this section.~~

~~(a) Civil Violation. Except as otherwise provided in this title, any violation of any of the provisions of this title shall constitute a civil infraction for which a monetary penalty in an amount not to exceed \$5,000 may be imposed.~~

~~(b) Criminal Penalty. In addition to or as an alternative to any other penalty provided herein or by any other regulation, any person, partnership, firm, association, or corporation who violates any provision of this chapter shall be guilty of a misdemeanor and shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than 90 days or by a fine in an amount fixed by the court of not more than \$1,000 or by both such imprisonment and fine.~~

~~(c) Separate Offense. Each day or portion thereof upon which a violation occurs, continues, or is permitted shall constitute a separate offense for the purposes of subsections (4)(a) and (b) of this section.~~

~~Failure to correct a civil violation in a manner and within the time frame specified by the administrative notice of violation subjects the person(s) responsible for code compliance to additional civil penalties as set forth in BMC 8.45.040(5), (6), and (7).~~

~~(5) Abatement of Violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.~~

~~(6) Remedies — Cost Recovery. In addition to other remedies, the cost of pursuing code compliance and abatement incurred to correct a code violation shall be in accordance with BMC 8.45.035(12). [Ord. 541 § 11 (Exh. E), 2010]~~

15.40.100 Voluntary correction.

~~(1) Applicability. While it is the city's desire to obtain voluntary correction pursuant to this section, compliance herewith is not a prerequisite for pursuing any of the other remedies for correction in this chapter or any remedies available in law or equity. This section may apply whenever the applicable department director determines that a nuisance has occurred or is occurring.~~

~~(2) General. The applicable department director may attempt to secure voluntary correction by contacting the person responsible for the nuisance and, where possible, explaining the violation and requesting correction.~~

~~(3) Issuance of Voluntary Correction Agreement. A voluntary correction agreement may be entered into between the person responsible for the violation and the city, acting through the applicable department director.~~

~~(a) Content. The voluntary correction agreement is a contract between the city and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:~~

~~(i) The name and address of the person responsible for the violation; and~~

~~(ii) The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and~~

~~(iii) A description of the violation and a reference to the regulation which has been violated; and~~

~~(iv) The necessary corrective action to be taken, and a date or time by which correction must be completed; and~~

~~(v) An agreement by the person responsible for the violation that the city may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and~~

~~(vi) An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and/or a monetary penalty pursuant to this chapter from the person responsible for the violation if the terms of the voluntary correction agreement are not satisfied; and~~

~~(vii) An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the district court, under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.~~

~~(b) Right to a Hearing Waived. Upon entering into a voluntary correction agreement, the person responsible for the violation shall have no right to a hearing before the district court, under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.~~

~~(c) Extension and Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable department director if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation, but unforeseen circumstances delay correction under the original conditions.~~

~~(d) Abatement by the City. The city may abate the violation in accordance with BMC [8.45.060](#) if the terms of the voluntary correction agreement are not met.~~

~~(e) Collection of Costs. If the terms of the voluntary correction agreement are not met the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with BMC [8.45.040](#)(5), plus all costs and expenses of abatement, as set forth in BMC [8.45.060](#)(4). [Ord. 541 § 11 (Exh. E), 2010]~~

15.40.105 Notices and orders.

~~(1) Notice to Person Responsible. Whenever the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in BMC [8.45.035](#)(2) to the person responsible for the violation as specified in this code.~~

A copy of such notice shall also be filed with the county auditor, and such filing of the notice or order shall have the same force and effect as other lis pendens notices provided by law.

(2) Method of Service. A notice of violation shall be served in accordance with BMC ~~8.45.035~~(3). Such notice shall be deemed to be properly served if a copy thereof is:

(a) Delivered personally;

(b) Sent by certified or first class mail with return receipt requested, addressed to the last known address; or

(c) If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

(3) Unauthorized Tampering. Signs, tags or seals posted or affixed by the code official shall not be mutilated, destroyed or tampered with, or removed without authorization from the code official.

(4) Penalties. Penalties for noncompliance with orders and notices shall be as set forth in BMC ~~15.40.095~~(4).

(5) Transfer of Ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation. [Ord. 541 § 11 (Exh. E), 2010]

15.40.115 Closing of vacant structures.

If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official is authorized to cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and such costs will be recoverable pursuant to BMC ~~8.45.060~~15.200. [Ord. 541 § 11 (Exh. E), 2010]

15.40.130 Notice.

Whenever the code official has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice, and served on the owner or the person or persons responsible for the structure or equipment in accordance with BMC 15.40.105. If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in BMC ~~15.40.105~~15.070. [Ord. 541 § 11 (Exh. E), 2010]

15.40.165 Demolition.

(1) General. The code official shall have the authority to order the owner of any premises upon which is located any structure, which in the code official's judgment after review is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, the code official is authorized to order the owner to demolish and

remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless approved by the building official.

(2) Notices and Orders. All notices and orders shall comply with BMC ~~15.40.1051~~15.120.

(3) Failure to Comply. If the owner of a premises fails to comply with a demolition order within the time prescribed, the code official shall have the authority to cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

(4) Salvage Materials. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state. [Ord. 541 § 11 (Exh. E), 2010]

15.40.180 Stop work order.

(1) Authority. Whenever the code official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or in a dangerous or unsafe manner, the code official is authorized to issue a stop work order. Issuance of a notice of violation, infraction or notice and order is not a condition precedent to the issuance of the stop work order.

(2) Issuance. A stop work order shall be in writing and shall be given to the owner of the property, to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order and the conditions under which the cited work is authorized to resume.

(3) Emergencies. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work.

(4) Effect.

(a) The code official is authorized to assess a special investigation fee for the issuance of a stop work order when work has started without the issuance of a permit. The special investigation fee shall be determined in accordance with BMC 15.05.375(5), Work Commencing before Permit Issuance.

(b) A stop work order represents a determination that a civil code violation has occurred and that any work or activity that is causing or contributing to the violation on the property where the violation has occurred or is occurring must cease.

(c) A stop work order requires the immediate cessation of the specified work or activity on the named property. Work or activity may not resume unless specifically authorized by the building official or designee.

(d) A stop work order may be appealed to the city of Burien hearings examiner according to the procedures prescribed by BMC 15.40.170, Means of appeal.

(e) Failure to appeal the stop work order within the applicable time limits renders the stop work order a final determination that the civil code violation occurred and that work was properly ordered to cease.

(f) Failure to comply with the terms of a stop work order subjects the person responsible for code compliance to civil penalties and costs pursuant to Chapter 1.15 BMC.

(5) Remedy – Civil Penalties. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by ~~law~~ Chapter 1.15 BMC.

(a) In addition to any other judicial or administrative remedy, the code official or designee may assess penalties for the violation of any stop work order as set forth in ~~BMC 15.40.095(4), Penalties~~ Chapter 1.15 BMC.

(b) Penalties for the violation of any stop work order shall begin to accrue on the first day the stop work order is violated and shall cease on the day the work is actually stopped.

(c) Violation of a stop work order shall be a separate violation from any other civil code violation. Civil penalties assessed create joint and several personal obligations in all persons responsible for code violation. The city of Burien may collect the civil penalties assessed by any appropriate legal means.

(d) In addition to all other remedies, a lien for the value of the civil penalties imposed may be filed against the real property that is subject to compliance with this title. [Ord. 541 § 11 (Exh. E), 2010]

15.40.200 Motor vehicles.

The following city codes shall be applicable to motor vehicles on private property. Enforcement shall be in accordance with Chapter ~~8.45~~ 1.15 BMC.

(1) Nuisance, Junk Vehicle(s). BMC 8.45.020(9)(c)(iv).

(2) Parking on Residential Property. Chapter 10.11 BMC.

(3) Off Street Parking Design Standards. BMC 19.20.100(10)(B).

(4) Critical Area Aquifer Recharge Areas – Performance Standards Vehicle Repair and Servicing. BMC 19.40.430(6)(G). [Ord. 541 § 11 (Exh. E), 2010]

15.40.240 Rubbish and garbage.

(1) Accumulation of Rubbish or Garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

(2) Disposal of Refuse and Recyclable Materials. Every occupant of a structure shall dispose of refuse and recyclable materials in a clean and sanitary manner by placing such materials in an approved disposal facility or approved containers maintained for regular collection.

(3) Containers. Containers for the purpose of collecting refuse shall provide adequate storage capacity to assure that all refuse is totally contained. All refuse shall be contained at all times. The number of refuse containers and the collection frequency of these containers shall be determined by the property owner, landlord or the individual(s) who are in control of the use of the property. The code official may require additional containers, larger containers or more frequent collection of all refuse if all refuse is not kept within the containers.

Any refuse that is not contained shall constitute a nuisance and the code official is authorized to abate the nuisance in accordance with Chapter ~~8.45~~ 1.15 BMC.

The city is authorized to recover all costs and expenses from the property owner in accordance with BMC ~~8.45.060~~ 1.15.200.

(4) Recyclable Materials and Solid Waste Storage. Space required by WAC 51-50-009 for the storage of recycled materials and solid waste shall be maintained to meet the needs of the occupancy and efficiency of pickup, and shall be available to occupants and haulers.

(5) Refrigerators. Refrigerators, freezers and similar equipment not in operation shall not be discarded, abandoned or stored on premises and are defined as an attractive nuisance as set forth in BMC 8.45.020. [Ord. 541 § 11 (Exh. E), 2010]



Burien

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MEMORANDUM

TO: Honorable Mayor and Members of the City Council
FROM: Mike Martin, City Manager
DATE: March 5, 2012
SUBJECT: City Manager's Report

I. INTERNAL CITY INFORMATION

A. Seattle City Light Franchise Fees

The City received notification from Seattle City Light that they did not pay franchise fees for the area annexed into Burien on April 1, 2010. Included with the notification was a check for \$249,708.00 which is an initial payment for the period April 1, 2010 through December 31, 2011. This is a result of the utility tax audit currently in progress. Our auditors will review Seattle City Light's documentation and work with them to determine additional amounts owed. The rest of the audit is in progress. We have completed non-disclosure agreements with most of the other ten companies and are collecting their data. Our contract with the auditor requires us to pay 25% of recovered revenue.

B. Highline School District (HSD) Superintendent's Search

Highline School District held three community forums for residents to meet the finalists for their Superintendent position in the City Hall Council Chambers February 22, 23 & 24. Using the Chambers allowed HSD to televise these sessions, making them more accessible for public participation. Along with questions from live audience members, questions were taken through email. The School District expressed their thanks to the city for use of the facility.

C. Burien Geographic Information System (GIS) and King County GIS Collaborate

The City of Burien, King County, United States Geological Service and about fifty other cities and districts are collaborating on a joint effort to obtain new aerial photography of the entire region. The project area covers almost 4,000 square miles and includes all of King and portions of Kitsap, Pierce and Snohomish counties. The final output of this project includes not just aerial photography but also 2' ground contours and impervious surface area designations. Our portion of the data will reside in the City's Geographic Information System (GIS) and will be used by our Building, Planning and Public Works departments.

The City has obtained aerial photography from the County in the past, but this is the first time a coordinated effort with this many organizations has been established. It is estimated that each participant in the consortium will reduce their costs by as much as 85%.

D. PaRCS Establishes a New Youth Services Networking Group

Local organizations that provide teen program services are now meeting once each month to discuss and share each other's programs and services that are available to Burien teens. Agency representatives identify what are the current issues for our teens, how each organization can work together, and what resources are available. Guest speakers are also scheduled and training is provided on mutual topics of interest. Meetings are open to all. Participating organizations include staff from Burien Parks, Recreation & Cultural Services (PaRCS), the Burien Library, Sylvester Middle School, Highline High School, NAVOS, the Orion Center, and the Community Schools Collaboration. This networking group was initiated by Burien PaRCS' Youth & Family Recreation Division staff.

E. Burien Artists Exhibit in State Legislators' Offices

Burien Arts Commissioner Michael O'Neill recently completed a project at the request of our representatives in Olympia, hanging artwork by Burien artists in their offices. Works will be on display through the end of the 2012 Legislative Session. Works by the following artists are being displayed in the offices of the following elected officials: Rep. Zack Hudgins (artists Jean Cavanaugh, Lisa Pickering, Doug Query, Shannon Twilley – all students of Moshier's art program for developmentally disabled participants, as well as Kelda Martensen, Michael Lowe, Jesse Murray, Kenneth De Roux, Kim Bly, and Francis Zera); Rep. Tina Orwell (artists Garreth Schuh, Crystal Campbell, Nancy Bogni); Rep. Bob Hasegawa (artists Shelli Park and Francis Zera); and in the Democratic Caucus Room, artists Kelda Martensen and Garreth Schuh.

F. New Vendor Management for Wild Strawberry Festival

Following a Request for Proposal process, PaRCS has selected a new vendor management firm for the 2012 Wild Strawberry Festival. "The Workshop" is a Seattle company that produces numerous events, including the West Seattle Street Fair. The company's staff person assigned to our event is Oliver Little, a resident of the Boulevard Park neighborhood of Burien. Mr. Little is very interested in building community engagement over a 3-year period, which should also expand local business involvement in the Festival event. He has also worked extensively in the Seattle event community including Bumbershoot, Teatro ZinZanni, and the Family 4th of July at Lake Union.

G. Seahurst Park Beach Restoration Project – Status Update

The Seahurst Restoration project has had much activity over the last few months and received mention in local media recently. This was prompted by the announcement that the federal budget has appropriated \$2 million dollars to the Puget Sound and Adjacent Restoration Program for two local projects. These funds will go to the U.S. Army Corps of Engineers (USACE) for the Seahurst Beach and Restoration Project and the Qwuloolt Estuary Restoration Project.

This good news demonstrates renewed local and national focus and funding on these two important projects. Prior to this new funding, the federal share of the construction budget needed for the two projects totals \$7.85 million. As the new funding does not yet provide all the funding necessary to construct either project, both local entities are working with USACE to evaluate how best to keep the projects moving forward. Aside from funding discussions, the Corps has just completed 95% construction plans and bid specifications for the Seahurst project, as well as almost all of the required permitting.

H. Puget Sound Park Playground – Status Update

The playground renovation and ADA trail addition at Puget Sound Park is progressing. PaRCS has purchased the play equipment and completed the construction design and specifications. This project, funded mostly by the King County Community Development Block Grant Program is a collaboration between PaRCS, Public Works and Finance staff. It provides for the removal of existing, non-compliant play equipment and replacing it with new KOMPAN (brand name) equipment, as well as expanding the play area to add a swing set. The project will also add a connection between the park's walking track and the parking lot via a new accessible trail.

Construction bid advertising is scheduled for February 28, 2012, with bid opening scheduled for March 14, 2012. PaRCS anticipates construction to be underway in April, with completion no later than June.

I. Construction Permits Update

Group Health Cooperative was issued a demolition permit on February 27. The work includes removal of six houses and all accessory structures in preparation for construction of a new building at 140 SW 146th Street.

Building permit applications were received on February 22 from Highmark Homes for construction of three new single family homes located on S. 126th Street near 2nd Ave S.

59 building permits were issued for new single family homes in 2011. This is up significantly from 2010 when only 10 were issued.

J. North Burien Land Use Open House II

On February 29th the Community Development Department hosted a second community open house at Hilltop Elementary to present preliminary comprehensive plan and zoning designations to the residents and property owners in the North Burien area. There were approximately 25 attendees. The open house served as an informational meeting in preparation for the Planning Commission's public hearing scheduled for March 13th. Attendees were able to spend an extensive amount of time with staff to better understand the proposed land use changes.

Comments from the participants were collected and will be used to assist both the Planning Commission and staff in establishing final comprehensive land use and zoning designations for the North Burien areas. Additionally, comments that were received will be forwarded to the other planning efforts that are currently underway.

II. COUNCIL UPDATES/REPORTS

A. Notices (Pg. 123)

The following (attached) notice was published:

Puget Sound Park Improvements – Phase 1 Sealed Proposals will be received by the undersigned at the City of Burien, 400 SW 152nd Street, Suite 300, Burien, Washington 98166, until 2:00 p.m. local time on Wednesday, March 14, 2012, for furnishing the necessary labor, materials, equipment, tools, and guarantees thereof to construct the Puget Sound Park Improvements – Phase 1 project. Bids received later than said time and date shall not be considered. (See attachment for specific details.)

NOTICE TO CONTRACTORS

CITY OF BURIEN

PUGET SOUND PARK IMPROVEMENTS – PHASE 1

Sealed Proposals will be received by the undersigned at the City of Burien, 400 SW 152nd Street, Suite 300, Burien, Washington 98166, until 2:00 p.m. local time on Wednesday, March 14, 2012, for furnishing the necessary labor, materials, equipment, tools, and guarantees thereof to construct the Puget Sound Park Improvements – Phase 1 project. Bids received later than said time and date shall not be considered.

The project includes the demolition of existing play equipment, construction of a new adjacent play area, construction of a new soft surface pathway, and coordination with the City's manufacturer/installer of the new play equipment, and other miscellaneous work as required. The project includes clearing and grubbing, grading, soft surface paving, cement concrete curb, surface restoration, erosion control, and traffic control.

The Work shall be substantially complete within 30 working days as stated in the Contract. All bidding and construction is to be performed in compliance with the Contract Provisions and Contract Plans for this project and any addenda issued thereto that are on file at the office of the City Clerk, City Hall, Burien, Washington.

This project is financed through the Community Development Block Grant Program with funds obtained from the U.S. Department of Housing and Urban Development. The contract will be subject to regulations of the Departments of Labor and Housing, and Urban Development.

Attention is called to federal provisions for Equal Employment Opportunity, HUD Section 3 requirements, and the minimum wages as set forth in the contract documents.

The Proposals will be publicly opened and read aloud shortly after the time and date stated above. Proposals are to be submitted only on the form provided with the Contract Provisions, specifically Page 5 of the Attachment A to the Small Public Works Contract.

Plans, specifications, addenda and the bidders list may be viewed and obtained online from the Builder's Exchange of Washington, Inc. at www.bxwa.com. Click on: "Posted Projects", "Public Works", "City of Burien", and "Projects Bidding". Bidders are encouraged to register to ensure they receive automatic email notification of future addenda and to be placed on the bidders list. Registration for the bidders list may be made online, by phoning (425) 258-1303, or at Builder's Exchange offices at 2607 Wetmore Ave, Everett, WA. The City will not sell bid packages. Bidders may contact Roger Kuykendall, P.E., of Gray & Osborne, Inc. with questions at (206) 284-0860.

Financing of the Project has been provided by City of Burien and King County Community Development Block Grant funds. The City of Burien expressly reserves the right to reject any or all Proposals and to waive minor irregularities or informalities and to Award the Project to the lowest responsive, responsible bidder as it best serves the interests of the City.

City of Burien is an Equal Opportunity and Affirmative Action Employer.

Very truly yours,
CITY OF BURIEN

Monica Lusk
City Clerk

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