# CITY OF BURIEN, WASHINGTON

## ORDINANCE NO. 560

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**AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, AMENDING TITLE 19 OF THE BURIEN MUNICIPAL CODE RELATED TO ZONING, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, the City desires to amend Burien Municipal Code Title 19 to provide clarity, consistency and procedural efficiency; and

WHEREAS, the Planning Commission held a duly noticed public hearing to receive public comments on February 14, 2012 and subsequently recommended approval of the proposed amendments; and

WHEREAS, the City Council has received recommendations from the Planning Commission regarding the proposed amendments; and

WHEREAS, the SEPA Responsible Official issued a Determination of Non-Significance on February 8, 2012; and

WHEREAS, the City provided the proposed zoning amendments to the Washington State Department of Commerce and did not receive any comments during the 10-day expedited comment deadline; and

WHEREAS, the City Council held public meetings on March 5 and 19, 2012 to review and discuss the proposed amendments.

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

Section 1: Amendments to BMC Title 19. The City Council of the City of Burien hereby amends BMC Title 19 as set forth in Exhibit A, which is attached hereto and is incorporated herein by this reference.

Section 2: Findings and Criteria. In accordance with the criteria set forth in BMC 19.65.100, the City Council finds that the amendments adopted herein are consistent with the Comprehensive Plan, bear a substantial relation to the public health, safety, or welfare, and are in the best interest of the community as a whole.

Section 3: Severability. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4: Savings. The enactments of this ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this ordinance.

Section 5: Effective Date. This ordinance shall be published by summary in the official newspaper of the City and shall take effect and be in full force five (5) days after the date of publication, except the amendments to BMC 19.65.095.2.A, B and C shall take effect September 1, 2012.

**ADOPTED** BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THIS 19TH DAY OF MARCH, 2012, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 19TH DAY OF MARCH, 2012.

CITY OF BURIEN

Brian Bennett

Brian Bennett, Mayor

ATTEST/AUTHENTICATED:

Monica Lusk, City Clerk

Approved as to form:

Craig D. Kratson, City Attorney

Filed with the City Clerk: 3/12/12
Passed by the City Council: 3/19/12
Ordinance No. 560
Date of Publication: 3/22/12

R:/CC/AAA Ordinances/Ord560 Zoning Code Amendments

ORDINANCE 560
EXHIBIT A

19.10.062 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.

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 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.~~

**19.17.040 Cargo Containers**

1. Purpose. The purpose of this section is to promote vibrant, attractive pedestrian mixed use areas while protecting residential neighborhoods and allow use of *cargo containers* by Burien businesses, contractors and community-related *uses* to provide secure, easily accessible *accessory* storage at relatively inexpensive levels.

2. Temporary Use. *Cargo containers* may be used for temporary storage of equipment and/or materials at a construction *site* during active construction that is authorized by a city permit.

3. *Cargo containers* are not allowed in the Downtown Commercial (DC), Office (O), Neighborhood Center (CN), Professional Residential (PR) and Special Planning Area 1 (SPA-1) zones, except as permitted in BMC 19.17.040.2.

4. *Cargo containers* are permitted as *accessory uses* in *residential zones* at a *community facility, government facility, hospital, public park and recreation facility,* or *school.*

   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.

   B. *Cargo containers* located within a *residential zone* shall be no greater in size than ten (10) feet by twenty (20) feet, and shall have a stick-built *structure* constructed to completely enclose the *cargo container.* Upon removal of the *cargo container* the screening *structure* shall also be removed. No stick-built *structure* shall be required if the *cargo container* is totally *screened* from abutting *residential zone lots* as determined by the *Director.*

C. *Cargo containers* shall not be stacked.

D. *Cargo containers* shall not occupy any required off-*street parking spaces*, vehicular access, pedestrian facilities or landscape areas for the *site*.

5. *Cargo containers* are permitted as *accessory uses* in the Industrial (I), Intersection Commercial (CI), Community Commercial (CC-1 and CC-2), Regional Commercial (CR), Special Planning Area 3 (SPA-3), Airport Industrial (AI) zones and in the SPA-2 zone as part of the master plan review (pursuant to BMC 19.15.060.1). *Cargo containers* in these zones are subject to the requirements below. *Airplane unit load devices* located in the I and AI zones are not regulated as *cargo containers*.

   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.

   B. *Cargo containers* shall be *screened* from abutting *rights-of-way* and *adjoining lots* with a minimum of 10 feet of Type I *landscaping*. The *Director* may approve alternate *screening* that achieves the intent of a visual barrier. In reviewing alternate *screening*, the *Director* shall consider the proposed location of the *cargo container*, amount of usable space on the *site* for *landscaping*, view of the *cargo container* from abutting *rights-of-way* and *adjoining lots*, and the physical condition of the *cargo container*. All proposed *screening* shall be submitted for the review and approval by the *Director*.

   C. *Cargo containers* shall not be located between a *building* and *front property line*. On a *site* with all *front property lines*, the *cargo container* shall be placed in a location that minimizes visual impact of the *cargo container* from surrounding *streets* and properties.

   D. *Cargo containers* shall be painted to match the primary color of the adjacent *building*. If the *cargo container* is located within a *building* or not visible from abutting *rights-of-way* and *adjoining lots* as determined by the *Director*, painting is not required.

   E. A *cargo container* located within 100 feet of a *residential zone* shall be no greater in size than ten (10) feet by twenty (20) feet, and shall have a stick-built *structure* constructed to completely enclose the *cargo container*. Upon removal of the *cargo container* the screening *structure* shall also be removed. No stick-built *structure* shall be required if the *cargo container* is totally *screened* from abutting *residential zone lots* as determined by the *Director*.

   F. *Cargo containers* shall not occupy any required off-*street parking spaces*, vehicular access, pedestrian facilities or landscape areas for the *site*.

   G. *Cargo containers* may be stacked two-high in the Industrial (I) zone, and shall not be stacked in any other zone.

   H. *Cargo containers* shall not be used for warehouse/storage as the primary use of the property.

   I. Outdoor *cargo containers* shall not be refrigerated.

6. Legal Nonconforming Cargo Containers: *Cargo containers* that have been legally located on a *site* prior to November 12, 2002 shall be a legal *nonconforming structure*. In addition to the provisions for nonconforming structures in BMC 19.55, *cargo containers* shall lose legal *nonconforming* status under the

following circumstances:

A. Any legal *nonconforming cargo container* that is moved to a different location on a *site* shall comply with the requirements of BMC 19.17.040.

B. If a legal nonconforming *cargo container* is removed from a *site*, any subsequent *cargo containers* placed on the *site* shall comply with the requirements of BMC Titles 15~~, 18~~ and 19.

7. Illegal Cargo Containers: *Cargo containers* located on a *site* prior to {Effective date of ordinance} that do not have all required permits and approvals are considered illegal and shall have until {12 months after effective date of ordinance} to either come into compliance with BMC Titles 15~~, 18~~ and 19 or be removed.

8. Permits for *cargo containers* shall include all necessary approvals from the *Director*, Building Official and Fire Marshal. Required permits include a building permit and a General Use Fire Permit. Use of the container shall not inhibit the Building Official and/or Fire Marshal from conducting all necessary inspections. [Ord. 529, 2009, Ord. 396 §1, 2003, Ord. 369 §1, 2002; Ord. 313 §1, 2000]

**19.17.070 Accessory Dwelling Units.**

1. Purpose. *Accessory dwelling units* (ADUs) implement the housing policy provisions of the city's comprehensive plan by creating an affordable housing alternative and providing a choice of housing that responds to changing needs and lifestyles by offering rental income, security, and companionship to individuals and families. The purpose of the ADU regulations is to allow ADUs, while protecting property values, the stability, and appearance of single-family neighborhoods.

2. Requirements. An *accessory dwelling unit* is allowed as an *accessory use* to a single *detached dwelling unit*, provided the following requirements are met:

A. Number. Only one attached or detached *accessory dwelling* is allowed per *lot*. [Ord. 479 §1, 2007]

B. For the purpose of this section "attached" shall mean that the primary unit and *ADU* have at least one common wall and appear to be contained within one *structure*. Connection through a breezeway or covered pathway shall not constitute an attached *ADU*. [Ord. 479 §1, 2007]

C. Owner Occupancy. Either the primary residence or the *accessory dwelling unit* shall be *owner occupied*.

D. Record Notice. Approval of the *accessory dwelling unit* shall be subject to recording a notice approved by the city attorney with the King County Records and Elections Division. The notice shall run with the land, identify the address of the property, state that the owner(s) must reside in either the *primary* or *accessory dwelling unit*, and provide for the removal of the *ADU* if the owner occupancy requirement is violated.

E. Size.

i. The finished floor area of the *accessory dwelling unit* shall not be larger than 50 percent of the finished floor area of the primary residence; and

ii. Internal or attached *ADUs* shall not exceed 1000 square feet and detached *ADUs* shall not exceed 800 square feet.

iii. The *Director* may make exceptions to size limitations to allow for the better utilization of existing spaces. *Buildings* must be at least 5 years old to be eligible for an exception to the size limitation.

F. Parking. One additional on-site *parking space* shall be provided. Such parking must be located at the rear or side if feasible.

G. Design. *ADUs* shall meet the following design requirements:

i. All new *structures*/additions must meet current *development standards* for the zone in which the property is located.

ii. A single *detached dwelling* that contains an *ADU* shall have only one entrance on each front or *street* side of residence. If the residence is not adjacent to a *street*, the front shall mean the side that contains the main entrance to the *primary dwelling*. Exceptions may be made if the second outside, front entrance is recessed or hidden from view.

iii. Additions shall be consistent with the *façade*, roof pitch, siding and windows of the existing *structure*.

iv. Detached *structures* shall match (or complement) the design of the primary unit and must integrate well with the single-family character of the neighborhood. Trailers, recreational vehicles or other such accommodations shall not be allowed as an *ADU*. [Ord. 479 §1, 2007, Ord. 355 §1, 2002]

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.

**19.17.090 Home occupations**

1. Purpose. The purpose of the *home occupation* regulations is to encourage flexibility in the work place and promote small-business opportunities in Burien by allowing *home occupations*. The further purpose of the regulations is to protect the residential character of neighborhoods by ensuring that *home occupations* are of a scale and intensity that is compatible with residential areas.

2. Home Occupation Types.

A. Type A *home occupations* are those that have no employees or customers come to the *site* and that do not use machinery or use or store *hazardous substances* on the premises. Type A *home occupations* may

use equipment commonly found in a single-family home or professional *office*, such as computers, fax machines and copiers.

B. Type B *home occupations* are those that have one employee or any number of customers come to the *site*, use machinery, such as wood or metal shop tools, or use or store *hazardous substances* on the premises.

3. Licensing and Permits Required.

A. All *home occupations* (Type A and Type B) are required to obtain a City of Burien business license from the City Clerk's Office.

B. Type B *home occupations* are required to obtain a home occupation permit from the Department of Community Development prior to issuance of a business license.

C. Home occupation permit procedures:

i. *Home occupation* permits are valid for a period of two years. It is the responsibility of the *applicant* to obtain a permit every two years.

ii. Permits for *home occupations* that utilize machinery and/or use or store *hazardous substances* shall obtain approval from the Building Official and Fire Marshall.

iii. Inspection may be required prior to the issuance of a *home occupation* permit or as necessary to ensure compliance with applicable codes and conditions of the permit.

iv. Upon approval of a Type B *home occupation* permit, the Department of Community Development shall issue a notice to residents abutting and across the *street* from the *home occupation* and within 300 feet along the *street* in both directions. The notice shall describe the approved *home occupation* and standards by which it must operate

v. The *Director* shall take appropriate action to enforce the requirements of this section. Failure to comply with the regulations of this section or conditions of the permit may result in the *home occupation* permit being revoked or denial of an application for renewal of the permit.

D. Type B *home occupations* that have a valid City of Burien business license on April 23, 2002 shall be required to obtain a *home occupation* permit within 2 years. If the Type B *home occupation* does not comply with current standards, it shall be subject to the provisions of BMC 19.55 Non-conformance.

4. Permitted home occupations. Residents of a *dwelling unit* may conduct one or more *home occupation* as *accessory* activities, provided they comply with the standards of this section and are not prohibited by subsection A below or another section of this code. The rational for restricting the specific *uses* listed below is based on the goals and policies of the comprehensive plan, which generally states that well established residential areas should be protected from encroachment of non-residential *uses* that may be detrimental to those residential areas. The following *uses* are inconsistent with the goals and policies of the comprehensive plan and are restricted due to incompatibilities including but not limited to noise generation, visual appearance, odor and traffic impacts that are detrimental to residential areas:

A. Prohibited home occupations.

i. Automobile, truck and *heavy equipment* repair, body work or painting

ii. Large or small engine repair

iii. Large appliance repair

iv. Parking and storage of *heavy equipment* or vehicles

v. Storage of building materials for use on other properties

vi. Headquarters or dispatch centers where more than one employee comes to the *site* and are dispatched to other locations

vii. Commercial *kennels*, cateries and stables

viii. Commercial painting

ix. *Religious facilities* (see BMC 19.15 for specific zoning requirements)

5. Standards for operation of a *home occupation*:

A. Size. The total area devoted to all *home occupation(s)* shall not exceed 25 percent of the combined *gross floor area* of the primary residence and permitted *accessory buildings*, provided the floor area must be enclosed within a *building* to be counted.

B. Location. *Home occupations* may be conducted in the primary residence or a permitted *accessory building*. All the activities of the *home occupation(s)* shall be conducted indoors, except for those related to growing or storing of plants used by the *home occupation(s)*. Exterior storage, display or repair of goods or equipment related to *home occupation(s)* is prohibited.

C. Employees. *Home occupations* shall have no more than one nonresident employee on the premises at any one time.

D. Parking. In addition to required parking for the *dwelling unit*, on-site parking shall be provided as follows:

i. One stall for a nonresident employee that will work on the premises; and

ii. One stall for customers when services are rendered on-site.

E. Retail Sales. Retail sales shall be limited to items produced on-site or incidental sales of items associated with a service provided by the *home occupation*.

F. Customers. Customer visits to *home occupations* are limited to the hours from 8 a.m. to 8 p.m. No more than one customer may be at the residence at any one time and no more than 8 customer visits shall occur in any one-day. For the purpose of this section, one customer may consist of more than one person, such as a *family*.

G. Vehicles. The *home occupation(s)* may use or store one (1) vehicle for pickup or delivery of materials used by the home occupation(s), provided:

i. Such vehicle shall not park on adjacent *streets* or within any required *setback* areas of the *lot*, with the exception of the driveway; and

ii. Such vehicle shall not exceed a gross vehicle weight rating of 10,000 pounds or capacity of one ton or similarly sized vehicle. The *Director* shall have the final determination authority on vehicle size and should consider potential impacts to the residential character of the neighborhood and/or surrounding properties.

H. Deliveries to the *home occupation(s)* are permitted between 8 a.m. and 8 p.m. Vehicles used to deliver goods to the *home occupation* are limited to passenger vehicles, mail carriers and express carriers, such as UPS.

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:

i. Create vibrations, heat, glare, dust, odors or smoke that is discernible at the *property lines* and is offensive to a reasonable person;

ii. Create noise exceeding 55 decibels at the *property line* from 8 a.m. to 8 p.m. or any noise discernible by the human ear at the *property lines* from 8 p.m. to 8 a.m. or noise considered a nuisance under BMC Chapter 8.45;

iii. Change the *building* occupancy classification of the *structure(s)* used for the *home occupation(s)*;

iv. Use or store *hazardous substances* in excess of those normally allowed in a residential area under the Uniform Building Code and Uniform Fire Code.

v. Create any electrical, magnetic or other interference off the premises; or

vi. Consume utility quantities that negatively impact the delivery of utilities to surrounding properties.

J. Residential Character. Internal or external alterations that make the property appear less residential in character are not allowed. Examples of such changes may include paving of *setbacks*, constructing large parking areas visible from the *street* or neighboring properties and commercial type lighting. Use of commercial mobile offices are not allowed.

K. Signs. Signage for *home occupations* is subject to the standards in BMC 19.30.050. [Ord. 523 § 1, 2009]

6. Exceptions.

   A. Telecommuting is not classified as a *home occupation* and is not subject to the regulations of this section. For the purpose of this section, telecommuting is work done from home on a part-time basis for a business that is based off the premises. Telecommuting does not allow for non-resident employees or customer visits.

   B. *Bed and breakfast establishments* are not subject to the regulations of this section. Regulations for *bed and breakfast establishments* are in section 19.17.080.

   C. Family daycare homes are not subject to the regulations of this section. Regulations for family daycare homes are located in chapter 19.15 Use Zone Charts.

   D. Garage sales, yard sales, temporary home boutiques or bazaars for handcrafted items, parties for display of domestic products, and other such *uses* are not subject to the regulations of this section, provided that any such *use* does not exceed three (3) days in duration and does not operate more than nine (9) days in a calendar year. [Ord. 355 §1, 2002]

**19.20.030 General requirements**

1. Parking Plan Required. Prior to issuance of any permits for a new *building*, *structure* or *use*, or for the enlargement of an existing *building*, *structure* or *use* that requires off-*street* parking, the *applicant* shall submit a parking plan for approval by the *Director*. This plan shall contain all design features and elements necessary to show compliance with this Chapter.

2. Parking Requirement Not Specified. If this Code does not specify a parking requirement for a *use*, the *Director* shall establish the minimum requirement. Parking requirements shall be based on the operation of the proposed use, parking requirements established for similar zones or uses, or a study of anticipated parking demand submitted by the applicant. ~~In the study the *applicant* shall provide s~~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*.

3. *Fee-in-Lieu* Option. The minimum number of stalls to be provided through payment of a *Fee-in-Lieu* of parking as allowed by this Chapter shall be based on a schedule derived from Institute of Transportation Engineers (ITE) standard parking rates for Land Uses, as adjusted periodically to reflect Downtown Burien parking usage. This schedule may be amended as needed by the City Council. [Ord. 531 § 1, 2010]

   A. The decision to allow or require payment in lieu of construction will be made by the decision maker of the underlying land use review or by the Director if a land use review is not required.

   B. Provision of required parking through the *Fee-in-Lieu* program shall be optional on the part of the applicant and City, except that *Fee-in-Lieu* payment shall be required for existing buildings with a change of use that requires parking in excess of that available on-site or through a shared parking agreement.

C. Per Space Fee. The per space parking fee for this program shall be uniform throughout the DC and SPA-1 zones. The fee shall be adjusted annually, based on changes in the State of Washington Department of Transportation's Construction cost Index.

D. Fee Payment. All applicants shall pay the *Fee-in-Lieu* Parking Program fee in accordance with provisions of this chapter at the time that the applicable building permit or certificate of occupancy when a building permit is not required is ready for issuance. The actual *Fee-in-Lieu* payment shall be based upon the schedule in effect at the time of permit issuance.

E. Accounting. The City shall maintain a record of all of the properties that have met their required parking space obligation by paying the appropriate fee for the spaces.

F. Future Obligation. Payment of the *Fee-in-Lieu* of parking shall not relieve the development or property owner from any future obligation to participate financially in construction of publically accessible parking spaces through additional funding mechanisms (e.g. a local improvement district, business improvement district). Payment of the *Fee-in-Lieu* of parking does not guarantee the developer or property owner that parking spaces will be constructed for the sole use of or in the immediate proximity of that development.

G. Program Review. The fee-amount and performance of the *Fee-in-Lieu* program shall be reviewed biennially, with the initial report made to the City Council beginning in January of the second full calendar year following the effective date of the implementing ordinance.

4. If the *site* is in the DC zone, the requirements contained in BMC 19.47 supersede any conflicting provisions of this Chapter. The provisions of this Chapter that do not conflict with BMC 19.47 apply to DC-zoned properties.

5. Except as permitted with a temporary use permit pursuant to BMC 18.80, required *parking spaces* shall be available for the parking of operable passenger motor vehicles of customers, patrons, employees and residents only and shall not be used for any other purpose. [Ord. 292 § 1, 2000]

## 19.20.040 Computation of required off-street parking spaces

1. Number of Parking Spaces. Off-*street* parking areas shall contain at a minimum the number of *parking spaces* as stipulated in BMC 19.15. If the formula for determining the number of off-*street parking spaces* results in a fraction, the number of off-*street parking spaces* shall be rounded to the nearest whole number with fractions of .50 or greater rounding up and fractions below .50 rounding down. In the case of two or more *uses* on the same *site*, the total requirements for off-*street* parking shall be the sum of the requirements for each *use* computed separately, except as permitted in BMC 19.20.050 pertaining to shared parking. [Ord. 313 §1, 2000]

2. Guest Parking. For *townhouse* or *apartment dwelling units*, the *Director* may require additional *parking spaces* for guests if there is inadequate guest parking proposed on the *site*, and

   A. Adequate, safe on-*street* parking is not available, or

   B. The on-*street* parking is located in or adjacent to an RS zone.

3. Modification of Number of Required Parking Spaces.

   A. An *applicant* may request a modification of the minimum required number of *parking spaces* by submitting a study of anticipated parking demand complying with BMC 19.20.030.2, proving that parking demand can be met with a reduced parking requirement. In such cases, the *Director* may approve a reduction of the minimum required number of *parking spaces* on a case-by-case basis.

   B. In the DC and SPA-1 zone, the *applicant* may meet his/her parking obligation, computed using BMC 19.15, in one of the following ways: [Ord. 531 § 1, 2010]

      i. By providing the required number of *parking spaces* in accordance with the Fee-in-Lieu of Parking Demand Rate Schedule for Downtown Burien Zones as shown on Table 19.20-2.

      ii. By performing a study of anticipated parking demand in accordance with BMC 19.20.030.2. *Fee-in-Lieu* of parking is not available if required parking is determined through a parking demand study.

      iii. In accordance with BMC 19.20.030.3, the applicant may meet a portion of his/her parking obligation through contribution to a parking *Fee-in-Lieu* program. The cost per parking space for the parking *Fee-in-Lieu* program shall be established by the City Council.

4. Parking for Shell Building Permits. When the city has received a shell building permit application, off-*street* parking requirements shall be based on the possible tenant improvements or *uses* authorized by the zone designation and compatible with the limitations of the shell permit. When the range of possible *uses* result in different parking requirements, the *Director* will establish the amount of parking based on a likely range of *uses*. The *Director* may deny a certificate of occupancy for an individual *use* if the number of *parking spaces* required by BMC 19.15 and this chapter are not provided.

5. Bicycle Parking. At least one bicycle parking slot for every 12 required motor vehicle *parking spaces* shall be provided in all non-residential developments. Bicycle parking shall be bike rack or locker-type parking facilities unless otherwise specified.

   A. The *Director* may reduce bicycle parking facilities for patrons when it is demonstrated that bicycle activity will not occur at that location;

   B. Bicycle parking facilities for patrons shall be located within 100 feet of the *building* entrance and shall be designed to allow either a bicycle frame or wheels to be locked to a *structure* attached to the pavement or building.

   C. All bicycle parking and storage shall be located in safe, visible areas that do not impede pedestrian or vehicle traffic flow, and shall be well lit for nighttime use.

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]

**19.40.070 Exemptions and exceptions.**

1. Avoid or limit impacts. All exempt activities shall use city-approved *best management practices* and other reasonable methods to reasonably minimize impact to *critical areas* and their required *buffers*. To be exempt from this Chapter does not give permission to degrade a *critical area* or ignore risk from natural hazards. The *Director* may require submittal of a critical area study pursuant to BMC 19.40.110 through BMC 19.40.130 if needed to assess public safety risks associated with the proposal. Restoration of non-exempted *alterations* or damage to a *critical area* or its *buffer* may be required.

2. Exempt activities. The following shall be exempt from the provisions of this Chapter; however, the activities listed below may not be exempted from other city, state or federal permit requirements or regulations:

   A. Emergencies. *Alterations* in response to emergencies which pose an immediate threat to the public health, safety and welfare or which pose an imminent risk of damage to property. Any *alteration* undertaken as an emergency shall be reported within one (1) business day to the Department of Community Development. The *Director* shall confirm that an emergency exists and determine what, if any, *mitigation* and conditions shall be required to protect the health, safety, welfare and environment and to repair any damage to the *critical area* and its required *buffers*. Emergency work must be approved by the City. If the *Director* determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of ~~BMC 8.45~~ Chapter 1.15 BMC shall apply.

   B. Normal and routine operation, maintenance, remodeling, repair and revegetation of existing public facilities, parks and open spaces as long as any such activities do not involve the expansion of improvements into previously unimproved areas.

   C. Normal and routine operation, maintenance, remodeling, replacement and repair of existing public *streets* and city-approved private roads. Such activities shall not involve the expansion of roadways or related improvements into previously unimproved portions of rights-*of-way* or vehicular access easements or tracts.

   D. Except in *streams* and *wetlands* or their *buffers*, normal and routine operation, maintenance, remodeling, and repair of existing public and quasi-public utilities (including water, sanitary sewer, storm drainage, electric, natural gas, cable communications, telephone utility and related activities), including:

      i. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by a local governmental agency which approves the new location of the facilities;

      ii. Replacement, modification, installation or construction in an improved city road *right-of- way* or city authorized private road of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less;

      iii. Relocation of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by a local governmental agency which approves the new location of the facilities; and

iv. Replacement, modification, installation or construction of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public *right-of-way* or city authorized private roadway;

E. Normal and routine maintenance, repair, renovation or structural alteration of public and private *structures* not listed in this section, in existence on January 14, 2003.

F. New *accessory structures* and additions to *structures* that do not exceed a cumulative *impervious surface* addition after January 14, 2003 of 1,000 square feet or 7% of *lot area*, whichever is greater; provided that:

i. Construction is not within a *stream*, *wetland* or lake or in their required *buffers*; and

ii. The proposal does not increase non-conformance to *critical area* standards related to *streams*, *wetlands* or lakes.

G. Public and private pedestrian trails, except in *streams*, *wetlands*, fish and wildlife habitat conservation areas, or their *buffers*, subject to the following:

i. *Critical area* and/or *buffer* widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and

ii. Trails proposed to be located in *landslide* or *erosion hazard areas* shall be constructed in a manner that does not increase the risk of *landslide* or *erosion* and in accordance with an approved geotechnical report;

H. Forest practices. *Forest practices* regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and *forest practices* regulations, Title 222 WAC, and those that are exempt from city's jurisdiction, provided that *forest practice* conversions are not exempt.

I. Minor site investigative work. Work necessary for permit submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads, significant amounts of excavation or removal of *significant trees*. In every case, impacts to the *critical area* shall be minimized and disturbed areas shall be immediately *restored*.

J. Slope exemptions: The following *slopes* are exempt, unless the *slope* is part of another *critical area* or required *buffer*:

i. *Slopes* resulting from *street*, *alley*, sidewalk and other typical *rights-of-way* improvements, including rockeries or retaining walls. This exemption shall not extend beyond the cut or fill created by the *street*, *alley*, sidewalk or other *rights-of-way* improvement.

ii. *Slopes* with a vertical elevation change of up to ten feet (10) and not part of a larger steep-*slope* system.

iii. *Slopes* which have been created through previous verifiable, legal *grading* activities, may be exempted by the *Director* based on a geotechnical report demonstrating that no adverse impact will result from the exemption.

K. Stabilization of Landslide-hazard Area. Certain *landslide hazard areas* may be exempt if the *Director* determines based on geotechnical expertise, that application of the regulations would prevent necessary stabilization of a *landslide*-prone area.

L. Non-regulated activities in the *critical aquifer recharge areas*.

3. Public agency and utility exception.

A. If the application of this chapter would prohibit a development proposal by a *public agency* or *public utility*, the agency or utility may apply for a Public Agency and Utility Exception. All requirements of this chapter apply, except as specifically waived as part of the decision on the exception.

B. Exception request and review process. An application for a public agency and utility exception shall be made to the city and shall include a *critical area* study, including mitigation plan, if necessary; other related project documents, and any applicable environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The application shall be processed using the Type 1 review process pursuant to BMC 19.65.

C. Public agency and utility exception review criteria. The *Director's* decision shall be based on the following criteria:

i. There is no other practical or feasible alternative to the proposed development with less impact on the *critical area*; and

ii. The proposal minimizes the impact on *critical areas*; and

iii. The application of this chapter would unreasonably restrict the ability to provide utility services to the public, and

iv. The proposal meets the decision criteria in BMC 19.40.100.

4. Reasonable use exception.

A. If the application of this chapter would deny all *reasonable use* of the property, the *applicant* may apply for a Reasonable Use Exception. All requirements of this chapter apply, except as specifically waived as part of the decision on the exception.

B. Limitations. Reasonable use exceptions are not authorized for changes in density limitations, permitted *uses* or activities in *critical areas* or their required *buffers*, expanding a use otherwise prohibited, and shall not be used to achieve the maximum density allowed without the existence of *critical areas*.

C. Exception request and review process. An application for a reasonable use exception shall be made to the city and shall include a *critical area* study, including mitigation plan, if necessary; and any other related project documents, such as special studies, and environmental documents prepared pursuant to

the State Environmental Policy Act (Chapter 43.21C RCW). The application shall be processed using the Type 1 review process pursuant to BMC 19.65.

D. Reasonable use exception review criteria. The *Director's* decision shall be based on the following criteria:

i. The application of this chapter would deny all *reasonable use* of the property;

ii. There is no other *reasonable use* with less impact on the *critical area*;

iii. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal *site* and is consistent with the general purposes of this chapter and the public interest; and

iv. Any *alterations* permitted to the *critical area* shall be the minimum necessary to allow for *reasonable use* of the property.

v. The proposal meets the decision criteria in BMC 19.40.100. [Ord. 394 § 1, 2003; Ord. 376 § 1, 2003]

**19.40.190 Vegetation management plan.**

1. For all proposals where preservation of existing vegetation is required by this chapter, a vegetation management plan shall be submitted and approved prior to issuance of the permit or other request for permission to proceed with an *alteration*.

2. The vegetation management plan shall incorporate all City requirements relating to protection, maintenance and planting of vegetation and shall identify the proposed clearing limits for the project and any areas where vegetation in a *critical area* or its *buffer* is proposed to be disturbed.

3. Clearing limits as shown on the plan shall be marked in the field in a prominent and durable manner. Proposed methods of field marking shall be reviewed and approved by the *Director* prior to any *site alteration*. Field marking shall remain in place until the certificate of occupancy or final project approval is granted.

4. The vegetation management plan may be incorporated into a temporary erosion and sediment control plan or landscaping plan where either of these plans is required by other laws or regulations.

5. Vegetation within *critical areas* and their *buffers* may be trimmed, pruned or removed only upon prior written approval by the *Director*. A report by a qualified professional or certified arborist may be required to address alternatives, to ensure that the proposed activity will not be detrimental to surrounding properties and to the *functions and values* of the associated *critical area*.

6. Where *alteration* of the *critical area* or *buffer* has occurred during construction, revegetation with *native vegetation* will be required unless the *Director* approves a substitute vegetation with the same or better functions than the original *buffer* area. If the *alteration* was unauthorized by the City, the *Director* may also impose penalties pursuant to ~~BMC 8.45~~Chapter 1.15 BMC. [Ord. 394 § 1, 2003; Ord. 376 § 1, 2003]

## 19.40.330 Wetlands - Mitigation Requirements.

1. General Requirements.

   A. All approved activities that affect regulated *wetlands* or their *buffers* require *compensatory mitigation* so that the goal of no net loss of *wetland* function or value may be achieved.

   B. Mitigation for *alterations* to *wetlands* shall achieve equivalent or greater biological functions. Mitigation plans shall be consistent with the Department of Ecology Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposal (Ecology, 1994) or other *best available science.*

   C. *Wetland* mitigation shall provide for *in-kind* lost *functions and values*. Mitigation actions shall address functions affected by the *alteration* to achieve functional equivalency or improvement, and shall provide similar *wetland* functions as those lost except when:

      i. The altered *wetland* provides minimal functions as determined by a site-specific function assessment; and

      ii. The proposed mitigation action(s) will provide equal or greater functions or will provide functions that are limited in the watershed; or

      iii. Out-of-kind replacement will best meet formally identified regional goals, such as replacement of historically diminished *wetland types*.

2. Types of Mitigation. *Applicants* shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to *wetlands* and *wetland buffers*. When an *alteration* to a *wetland* or its required *buffer* is proposed, such *alteration* shall be avoided, minimized, or compensated for in the following order of preference:

   A. Avoidance of *wetland* and *wetland buffer* impacts, whether by finding another *site* or changing the location of the proposed activity on-site.

   B. Minimizing *wetland* and *wetland buffer* impacts by limiting the degree of impact on-site.

   C. Mitigation actions that require compensation by replacing, enhancing, or substitution, shall occur in the following order of preference:

      i. *Restoring wetlands* on upland *sites* that were formerly *wetlands*.

      ii. *Creating wetlands* on disturbed upland *sites* such as those with vegetative cover consisting primarily of exotic introduced *species* or *noxious weeds*.

      iii. *Enhancing* significantly degraded *wetlands*.

3. Mitigation Location. Mitigation actions shall be conducted within the same *sub-drainage basin* and on the *site* as the alteration except when all of the following apply:

A. There are no reasonable on-*site* or in *sub-drainage basin* opportunities or on-*site* and in *sub-drainage basin* opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site *buffers* or connectivity are inadequate;

B. Off-*site* mitigation has a greater likelihood of providing equal or improved *wetland* functions than the impacted *wetland*; and

C. Off-*site* locations shall be in the same *sub-drainage basin* and the same Water Resource Inventory Area (WRIA) unless regional or watershed goals for water quality, flood or conveyance, habitat or other *wetland* functions have been established and strongly justify location of mitigation at another site.

D. If compensatory *wetland* or *wetland buffer* mitigation is proposed off-*site*, a signed statement of consent is required from owners of all affected properties. This statement shall be submitted to the *Director* and a Notice on Title recorded with King County Department of Assessments prior to approval of a *compensatory mitigation* plan.

4. Mitigation Timing. Mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development causing the *wetland alteration*. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora.

5. Mitigation Schedule.

A. A mitigation *monitoring* schedule shall be established for a period of five years.

B. An "as-built" mitigation report shall be submitted to the City within one month of mitigation installation. Acceptance of the as-built report by the City will be made after a site investigation is performed by the City, and all changes requested by the City are completed.

C. Mitigation *monitoring* reports shall be submitted annually to the City.

6. Financial Surety. A performance bond, or other approved financial surety, is required before building and clearing and grading permits are issued. The purpose of the financial surety is to hold an *applicant* accountable for implementing the mitigation, *monitoring*, and contingency plans. The release of financial surety is contingent on satisfactory completion by the *applicant* of the proposed construction, mitigation, *monitoring*, and contingency plans as determined by the Director.

7. Mitigation ratios

A. The following ratios shall apply to *creation* or *restoration* that meets all other requirements in Section 19.40.330.1 to .6 and is the same category of *wetland*, and has a high probability of success. The first number in the following table specifies the acreage of replacement *wetlands* and the second specifies the acreage of *wetlands* altered.

| Wetland Category | Creation or Restoration Ratio |
|---|---|
| Category 1 and 2 | 3-to-1 |
| Category 3 and 4 | 2-to-1 |

B. Increased creation or restoration ratios. The City of Burien may increase the ratios under the following circumstances:

i. Uncertainty exists as to the probable success of the proposed *restoration* or *creation*;

ii. A significant period of time will elapse between impact and replication of *wetland* functions;

iii. Proposed mitigation will result in a lower category *wetland* or reduced functions relative to the *wetland* being impacted; or

iv. The impact or alteration requiring mitigation was not authorized by the City.

8. Wetlands enhancement as mitigation.

A. Impacts to *wetlands* may be mitigated by *enhancement* of existing significantly degraded *wetlands*. *Applicants* proposing to enhance *wetlands* must produce a critical area study that identifies how *enhancement* will increase the functions of the degraded *wetland* and how this increase will adequately mitigate for the loss of *wetland* area and function at the impact *site*. An *enhancement* proposal must also show whether existing *wetlarid* functions will be reduced by the *enhancement* actions.

B. At a minimum, *enhancement* acreage shall be double the acreage required for *creation* or *restoration* under Subsection A.

9. Wetland and Wetland Buffer Violations. *Restoration* shall be required when a *wetland* or its *buffer* is altered in violation of law or without any specific permission or approval by the *Director*. The following minimum requirements shall be met for the *restoration* of a *wetland*:

A. The original *wetland* configuration shall be replicated including its depth, width, length and gradient at the original location;

B. The original soil type and configuration shall be replicated;

C. The *wetland edge* and *buffer* configuration shall be *restored* to its original condition;

D. The *wetland*, *edge* and *buffer* shall be replanted with vegetation *native* to Burien which replicates the original vegetation in *species*, sizes and densities; and

E. The original *wetland* functions shall be *restored* including, but not limited to, hydrologic and biologic functions.

F. Violators may be imposed penalties pursuant to ~~BMC 8.45~~ Chapter 1.15 BMC.

G. At the discretion of the *Director*, the violator may be required to enhance the *wetland* or *wetland buffer* to provide higher *functions and values* than the original *wetland* or *wetland buffer*. [Ord. 394 § 1, 2003]

**19.40.350 Streams – Performance Standards.**

1. General Requirements.

A. Any *alterations* to a *stream* may require state and federal approvals that may require mitigation and conditions of approval beyond those required by the City.

B. The use of *hazardous substances*, pesticides and fertilizers in the *stream* corridor and its *buffer* are prohibited by the City of Burien unless approved by the City.

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*~~;

D. No vegetation removal, including mowing, shall be allowed in a *stream buffer* unless authorized by the *Director*. Removal of *noxious weeds* is permitted if done manually.

E. Non-Conformance. Activities occurring in a *stream* or *stream buffer* prior to October 20, 2003 shall be considered a non-conforming use as described in BMC 19.55.

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*.

B. Required *buffer* widths shall reflect the sensitivity of the particular *stream*. The following minimum *buffers* for *streams* shall be established from the *ordinary high water mark* of the adjacent *stream*(s) or from the top of the defined *stream* bank if the *ordinary high water mark* cannot be identified:

| Stream Type | Standard Stream Buffer (feet) |
|---|---|
| Type 1* | 125 |
| Type 2 | 100 |
| Type 3 | 50 |
| Type 4 | 25 |

* as of October 20, 2003, no Type 1 *streams* exist in Burien

C. Any *stream restored* or *enhanced* because of a *stream alteration* shall have the minimum *buffer* required for the highest *stream* class involved pursuant to an approved *mitigation* plan and *stream* study set forth in Section 19.40.370.

D. No *impervious surfaces* are allowed within of fifteen (15) feet of the edge of a designated or modified *stream buffer*. This area serves to protect the *stream* during development activities, use, and routine maintenance occurring adjacent to these resources. The following *impervious surfaces* may be allowed within fifteen (15) feet of the *buffer* edge: building overhangs which do not extend more than eighteen (18) inches into the area, and residential driveways and patios subject to water quality regulations as adopted in the City's stormwater management regulations (BMC 13.10).

E. Increased *stream buffer* widths may be required by the City of Burien when the *slope* is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the *stream*.

F. Any *stream* with an *ordinary high water mark* within twenty-five (25) feet of the toe of a *slope* thirty percent (30%) or steeper, shall have the minimum *buffer* required for the *stream* class involved or a twenty-five (25) foot *buffer* beyond the top of the *slope*, whichever is greater.

G. Standard *buffer* width averaging may be allowed by the *Director* (in accordance with an approved *critical area* review) if:

i. Additional protection to the *stream* and *riparian habitat* area will be provided through the implementation of a *buffer enhancement* plan as described in BMC 19.40.350.2 (H);

ii. Minimum *buffer* width is the greater of fifty percent (50%) of the standard *buffer* width or twenty-five (25) feet;

iii. *Stream* and riparian *functions or values* will not be reduced; and

iv. As long as the total area contained in the *buffer* on the development proposal *site* does not decrease.

H. *Buffer* reduction with *enhancement* may be allowed by the *Director* (in accordance with an approved critical area study) if:

i. Additional protection to *streams* will be provided through the implementation of a *buffer enhancement* plan.

ii. The existing condition of the *buffer* is degraded.

iii. *Buffer enhancement* includes, but is not limited to the following:

a. Planting *vegetation* that would increase value for fish and *wildlife habitat*, improve water quality, or provide aesthetic/recreational value.

b. *Enhancement* of *wildlife habitat* by incorporating *structures* that are likely to be used by wildlife, including wood duck boxes, bat boxes, nesting platforms, snags, rootwads/stumps, birdhouses, and heron nesting areas.

c. Removing non-native plant *species* from the *buffer* area.

iv. *Buffer* reductions under this Section shall be limited to twenty five (25)% of the standard *buffer* width or a minimum of twenty-five (25) feet, whichever is greater.

v. If the *buffer* reduction results in a *buffer* of less than twenty-five (25) feet, the *applicant* shall be responsible for attending an environmental stewardship class acceptable to the City.

I. Unless otherwise provided, the following restrictions shall apply to all development proposals within the vicinity of all City of Burien *streams* and *stream buffers* that include the introduction of livestock:

i. Implementation of a plan approved by the *Director* to protect and *enhance* the *stream's* water quality; and

ii. Fencing located at the *stream buffer* edge. [Ord. 394 § 1, 2003]

**19.50.025 Collocation.**

To minimize potential adverse visual impacts associated with the proliferation of *PWSF support structures*, *collocation* of *PWSF antennas* on existing or new *support structures* is encouraged, as follows:

1. *Collocation* shall be accomplished in a manner consistent with the provisions of this Chapter.

2. This subsection applies to both new and existing *PWSF*. The terms and conditions for collocating late-comer providers on collocatable *PWSF* facilities shall be reasonable and based on current market rates for comparable facilities. Imposition of unreasonable or higher than market rate terms and conditions by the host provider shall be considered failure to cooperate in good faith to accommodate *collocation* with competitors and shall be subject to the provisions of BMC 19.50.025.6 below.

3. The City may deny an application to construct a new *monopole* if the *applicant* has not shown by substantial evidence that it has made an effort to mount the proposed *antennas* on an existing *building* or *support structure* that would provide adequate service to the proposed coverage area. The *applicant* shall use the following *collocation* protocol:

A. Prior to or with an application for approval of a *PWSF*, the *applicant* shall demonstrate that the following notice was mailed via certified mail to all other *PWSF* providers licensed to provide service within the City:

"Pursuant to the requirements of City of Burien Municipal Code Section 19.50.025, (name of wireless provider) is hereby providing you with notice of our intent to submit an application with the City of Burien for construction of a new freestanding personal wireless service facility that would be located at _____ (location). In general, we plan to construct a monopole of _____ feet in height for the purpose of providing (cellular, PCS, ESMR, etc.) service in the _____ frequency range. Please inform us whether you have any existing or planned personal wireless service facilities within one mile of the proposed facility that may be available for possible collocation. If you do not have a facility available for collocation, please indicate whether you would be interested in collocating on our proposed facility. Please provide us with this information within 10 business days after the date of this letter. Your cooperation is appreciated."

B. Copies of any responses to the *collocation* request letter shall be provided to the City prior to or with the *PWSF* application. If a response to a *collocation* request letter is received by an *applicant* indicating an opportunity for *collocation*, the *applicant* shall make a good faith effort to analyze the feasibility of *collocation*. This analysis shall be submitted with an application for any *monopole* and shall include, at a minimum:

i. A statement from a qualified engineer indicating whether the necessary service can or cannot be provided by *collocation* at the possible *collocation* site.

ii. Evidence that the lessor of the possible *collocation site* either agrees or disagrees to *collocation* on his/her property.

iii. Evidence that adequate space exists or does not exist at the possible *collocation site* to accommodate needed equipment and meet the applicable requirements of this Code.

iv. Evidence that adequate access does or does not exist at the possible *collocation site*.

4. To reduce the number of future *support structures* needed in the City, new *support structures* shall be designed to accommodate *antennas* for more than one user, unless the *applicant* demonstrates why such design is not feasible for economic, technical or physical reasons.

5. Unless *collocation* is not feasible, an *applicant*'s site plan shall reserve an area for at least one other provider's equipment near the base of the *applicant*'s *monopole*. An option agreement to lease the area at the base of the *monopole* for a second provider shall not expire prior to the underlying lease.

6. *Personal wireless service* providers, their lessees and agents shall cooperate in good faith to accommodate *collocation* with competitors, including responding in a timely manner to a collocation letter required by BMC 19.50.025.3. If a dispute arises about the feasibility of collocating, the *Director* may require a third party technical study, pursuant to BMC 19.50.050, to resolve the dispute. Failure to accommodate *collocation* may be grounds for revocation of permit and removal of the *PWSF* under public nuisance abatement procedures (~~BMC 8.45~~ Chapter 1.15 BMC). [Ord. 265 § 6, 1999]

**19.55.025 Nonconforming and continuing uses**

A *nonconforming* or *continuing use* may be continued and is transferable to a new owner or tenant, subject to the following conditions:

1. If a *use* is a *nonconforming* or *continuing use*, the applicable use zone chart in BMC Chapter 19.15 does not establish what regulations of this Code apply to that *use* in that zone. To determine which regulations apply, the *Director* will select the use in that zone that is most similar to the *nonconforming* or *continuing use*.

2. The following applies only to a *continuing use*:

   A. The *gross floor area* and the area devoted to outdoor use, activity or storage may be expanded under the following conditions:

      i. Such expansion shall comply with applicable development regulations in BMC Chapter 19.15 (including but not limited to setbacks and landscaping); and

ii. Expansion may occur on contiguous *lots* if on November 1, 1999, the *continuing use* and contiguous *lot* were owned by the same property owner and have remained joined through any ownership transfer.

B. A continuing *use* must be brought into conformance or discontinued if the *use* has ceased for 12 or more consecutive months.

3. Except as authorized in BMC 19.55.025.4 or .5, any *nonconforming use* that does not qualify as a *continuing use* under BMC 19.55.025.2 must be brought into conformance or discontinued if:

A. The *applicant* is increasing the *gross floor area* of any *structure* that houses or supports the *nonconforming use*; or

B. The applicant is increasing the area devoted to outdoor use, activity or storage associated with the *nonconforming use*; or

C. The *nonconforming use* has ceased for 12 or more consecutive months~~; or~~.

4. The *Director*, through a Type 1 review, may allow up to a 10 percent increase in the area of land or *structure* occupied by the *nonconforming use* on the date of adoption of this Code, or any subsequent amendments. In deciding whether to grant such request, the *Director* shall use the criteria in BMC 19.55.025.5.

5. The City Council, through the Type 3 review process, may modify or waive any of the provisions in BMC 19.55.025.2 or 3, based on a finding that the proposal:

A. Does not create an expansion that would be detrimental to adjacent properties; and

B. Improves aspects of safety or function of the *nonconformance*. [Ord. 268 § 6, 1999]

**19.55.030 Nonconforming structures**

A *nonconforming structure* may remain and be used, provided that:

1. A *nonconforming structure* shall not be expanded unless the expansion conforms to the regulations of this Code or as follows:

A. A *structure* in an RS or RM zone with *nonconforming setbacks* may extend horizontally and vertically along existing *building setbacks* (see Figure 19.55-1) if the proposed expansion:

i. Will not endanger public safety; and

ii. Will not interfere with adopted City plans or regulations requiring additional *right-of-way* width; and

iii. Is not an expansion of a *setback* previously authorized by a City of Burien variance process or Type 1, 2, or 3 land use review. In this case, a new variance or Type 1, 2 or 3 land use review application is required; and

iv. Will not create any new *nonconformance* in *height* or *setback*.

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.

2. If moved, the *structure* shall be made to conform to this Code;

3. If the *structure* is damaged or destroyed, it may be reconstructed or repaired provided that:

   A. The fire or other casualty was not intentionally caused by the *applicant* or owner of the *structure*; and

   B. The damage or destruction was not due to abatement or voluntary demolition beyond 50% of the assessed value of the *nonconforming structure* as established by the most current county assessor's tax roll; and [Ord. 523 § 1, 2009]

   C. Except as allowed in BMC 19.55.030.1, the extent of the previously existing *nonconformance* is not increased and a new *nonconformance* is not created; and

   D. A complete building permit application for repair or reconstruction is submitted within 12 months of the occurrence of the damage or destruction; and

   E. Construction conforms with the provisions of the City of Burien *Construction Code* in effect at the time when the complete building permit application is submitted.

4. The City Council, through the Type 3 review process, may modify or waive any of the provisions in Sec. 19.55.030.1 through 3 above, based on a finding that the proposal:

   A. Does not create an expansion that would be detrimental to adjacent properties; and

   B. Improves aspects of safety or function of the *nonconformance*.

5. Any *nonconforming structure* for which a valid building permit has been issued prior to the effective date of this Code as now or hereafter amended, may be completed and used in accordance with the provisions of this Code as now or hereafter amended, provided that such *structure* is completed essentially in accordance with the plans and specifications on which the building permit was issued. [Ord. 268 § 7, 1999]

**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]

**19.65.017 Exemptions.**

1. 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.

2. 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).~~

~~F. 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: | *Director* | 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.

**19.65.050 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~~.

**19.65.063 Expiration of Approvals.**

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

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

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

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

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

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

**19.65.065 Type 1 Decisions**

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

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

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

application. The public meeting notice should be combined with the notice of application whenever possible.

4. Director's Decision.

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

i. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and

ii. It is consistent with the purpose and intent of the zone in which the *site* is located; and

ii. It is consistent with the public health, safety and welfare.

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

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

i. The *Director's* decision;

ii. Any conditions included as part of the decision;

iii. Findings of fact upon which the decision, including any conditions, was based and the conclusions derived from those facts;

iv. A statement explaining the appeal process.

5. Appeal of Type 1 Decisions.

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

i. Facts demonstrating that the person is adversely affected by the decision;

ii. A concise statement identifying the specific findings of fact or conclusions which are being appealed;

iii. The specific relief requested; and

iv. Any other information reasonably necessary to make a decision on the appeal.

B. The written statement of appeal and appeal fee, if any, must be received by the City Clerk no later than 5:00 p.m. on the 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 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, i~~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 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, i~~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, i~~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. <u>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.</u>

<u>9. Appeal to Growth Management Hearings Board.</u> 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).

**19.65.090 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~~ staffamendment 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.

4~~5~~6. 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~~

~~C~~A. The proposed amendment is the best means for meeting ~~the~~ an identified public benefit~~need~~; and

~~D~~B. 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

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

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

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

~~H~~F. 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

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

~~J~~H. 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.

~~5~~7. 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.~~ 7. 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]

### 19.70.070 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;LOS standard D for the intersection of SW 128th Street and Ambaum Boulevard SW;

4. As mandated by state law, the city of Burien adopts LOS "D" for SR-509 and SR-518 (highways of statewide significance) and an LOS of "E/mitigated" for the segment of SR-509 from First Avenue South to the Burien city limits (highway of regional significance), or whichever LOS is currently adopted by the Washington State Department of Transportation;

~~5. LOS standards C for all other roadway facilities and services.~~ [Ord. 545 § 1, 2010, Ord. 431 § 1, 2005; Ord. 28 § 1(516), 1993]

### 19.80.010 Purpose.

The purpose of this chapter is to promote compliance with this title by establishing enforcement authority, defining violations, and setting standards for initiating the procedures set forth in ~~BMC 8.45~~ Chapter 1.15 BMC, when violations of this title occur. [Ord. 545 § 1, 2010, Ord. 28 § 1(614), 1993]

### 19.80.030 Violations Defined.

No building permit or land use approval in conflict with the provisions of this title shall be issued. *Structures* or *uses* which do not conform to this title, except legal nonconformances specified in BMC 19.55 and approved variances, are violations subject to the enforcement, penalty and abatement provisions of ~~BMC 8.45~~ Chapter 1.15 BMC, including but not limited to:

1. Establishing a *use* not permitted in the zone in which it is located;

2. Constructing, expanding or placing a *structure* in violation of *setback*, *height* and other dimensional standards in this title;

3. Establishing a permitted *use* without complying with applicable development standards set forth in other titles, ordinances, rules or other laws, including but not limited to, road construction, surface water management, the Fire Code, and rules of the department of public health;

4. Failing to carry out or observe conditions of land use or permit approval, including contract development standards;

5. Failing to secure required land use or permit approval prior to establishing a permitted *use*; and

6. Failing to maintain *site improvements*, such as *landscaping*, parking or drainage control facilities as required by this code or other city of Burien ordinances. [Ord. 545 § 1, 2010, Ord. 28 § 1(616), 1993]

| RS Zones<br>USE ⇓ ⇓REGULATIONS | Special Review Process (See Ch. 19.65) | MINIMUMS<br>Lot Area | MINIMUMS<br>SETBACKS<br>Front Setback | MINIMUMS<br>SETBACKS<br>Interior Setback | MAXIMUMS<br>Lot Coverage<br>Building Coverage | MAXIMUMS<br>Lot Coverage<br>Impervious Surface Coverage | MAXIMUMS<br>Height | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.005.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
|---|---|---|---|---|---|---|---|---|---|---|
| | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
| 19.15.005.4<br>*Public Park and Recreation Facilities* | ~~Type 1, if less than 1 acre~~<br><br>~~Type 2, otherwise~~ None. See Spec. Reg. 4 | None. See Spec. Reg. 1 | 30' See Spec. Reg. 3 | 30' See Spec Reg 3 | 35% | RS-A zone: 20%<br><br>RS-12,000 zone: 45%<br><br>RS-7,200 zone: 70%<br>[Ord. 313 §1, 2000] | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Marinas only allowed on public property in excess of two acres.<br><br>2. Lighting for *structures* and fields shall be directed away from *dwelling units*.<br><br>3. *Structures* shall maintain a 50-foot *setback* from *adjoining* lots containing *single detached dwelling units*. The Director may allow *structures* such as playground equipment, ball field backstops and tennis court fences closer than 50 feet if compatible with the surrounding neighborhood and traffic safety considerations.<br><br>4. 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. |
| 19.15.005.5<br>*Cemetery* | ~~Type 3~~<br>Type 2 | None | 30' | 30' | 35% | RS-A zone: 20%<br><br>RS-12,000 zone: 45%<br><br>RS-7,200 zone: 70%<br>[Ord. 313 §1, 2000] | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. *Columbarium or mausoleum structures* must be *setback* 100 feet minimum from *property lines adjoining residential zones*. |

| RS Zones<br>USE ⇓ ⇓REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | MINIMUMS | | | MAXIMUMS | | | | | |
| | | | SETBACKS | | Lot Coverage | | | | | |
| | Special Review Process (See Ch. 19.65) | *Lot Area* | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | *Height* | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.005.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
| 19.15.005.6 *Community Residential Facility - I*[2] | ~~Type 3~~ Type 2 | See Spec. Reg. 1 | 20' | 5' | 35% | RS-A zone: 20%<br><br>RS-12,000 zone: 45%<br><br>RS-7,200 zone: 70%<br>[Ord. 313 §1, 2000] | 35' | B | 1 space for every 2 bedrooms | 1. Minimum *lot area* per *dwelling unit* is:<br>a. 1 acre in the RS-A zone.<br>b. 12,000 s.f. in the RS-12,000 zone.<br>c. 7,200 s.f. in the RS-7,200 zone. |
| 19.15.005.7 *Golf Course* | ~~Type 3~~ Type 2 | None | 30' See Spec. Reg. 1 | 30' See Spec Reg. 1 | 35% | RS-A zone: 20%<br><br>RS-12,000 zone: 45%<br><br>RS-7,200 zone: 70%<br>[Ord. 313 §1, 2000] | 35' | C | 3 spaces per hole, plus 3 spaces per 1,000 s.f. of clubhouse facilities | 1. *Structures*, driving ranges and lighted areas shall maintain a minimum distance of 50 feet from *property lines adjoining residential zones*. |

[2] Amended, Ord. 269, 1999

| RS Zones<br>USE ⇓ | ⇓REGULATIONS | DIRECTIONS: FIRST, read down to find use…THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | MINIMUMS | | | MAXIMUMS | | | | | |
| | | | | SETBACKS | | Lot Coverage | | | | | |
| | | Special Review Process (See Ch. 19.65) | *Lot Area* | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | *Height* | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.005.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
| 19.15.005.8 *Hatchery/Fish Preserve* | | ~~Type 3~~ Type 2 | None. | 30' | 30' | 35% | RS-A zone: 20%<br>RS-12,000 zone: 45%<br>RS-7,200 zone: 70%<br>[Ord. 313 §1, 2000] | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. This use may be further subject to the provisions of KCC Title 25, Shoreline Management Program. |
| 19.15.005.9 *Religious Facility* | | Type 2 | None | 30' | 30' | 35% | RS-A zone: 20%<br>RS-12,000 zone: 45%<br>RS-7,200 zone: 70%<br>[Ord. 313 §1, 2000] | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. *Accessory use* shall comply with the requirements for that *use* listed in this use zone chart (BMC 19.15.005). |

| RS Zones<br>USE ⇓ ⇓REGULATIONS | Special Review Process (See Ch. 19.65) | MINIMUMS<br>Lot Area | MINIMUMS<br>SETBACKS<br>Front Setback | MINIMUMS<br>SETBACKS<br>Interior Setback | MAXIMUMS<br>Lot Coverage<br>Building Coverage | MAXIMUMS<br>Lot Coverage<br>Impervious Surface Coverage | MAXIMUMS<br>Height | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.005.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
|---|---|---|---|---|---|---|---|---|---|---|
| | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
| 19.15.005.10<br>*School* | ~~Type 3~~<br>Type 2 | None | 30' | 30' | 35% | RS-A zone: 20%<br><br>RS-12,000 zone: 45%<br><br>RS-7,200 zone: 70%<br>[Ord. 313 §1, 2000] | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | |
| 19.15.005.11<br>*Senior Citizen Assisted Dwelling Unit*[2] | ~~Type 3~~<br>Type 2 | See Spec. Reg. 1 | 20' | 5' | 35% | RS-A zone: 20%<br><br>RS-12,000 zone: 45%<br><br>RS-7,200 zone: 70%<br>[Ord. 313 §1, 2000] | 35' | B | 0.5 spaces per unit | 1. Minimum *lot area* per *dwelling unit* is:<br>a. 1 acre in the RS-A zone.<br>b. 12,000 s.f. in the RS-12,000 zone.<br>c. 7,200 s.f. in the RS-7,200 zone.<br><br>2. Conversion to another *use* is allowed, provided that all requirements for the new *use* are met, including density limitations. |

[2] Amended, Ord. 269, 1999

| RS Zones<br>USE ⇓ ⇓REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.005.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
| | | | SETBACKS | | Lot Coverage | | | | | |
| | | *Lot Area* | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | *Height* | | | |
| 19.15.005.12<br>*Essential Public Facility* | ~~Type 3~~<br>Type 2 | Development standards shall be determined on a case-by-case basis through the Type 3 review process. | | | | | | | | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts.<br>2. Shall comply with criteria for siting found in the Burien Comprehensive Plan. |
| 19.15.005.13<br>*Community, Cultural or Government Facility* | ~~Type 3~~<br>Type 2 | See Spec. Reg. 1 | 30' | 30' | 35% | RS-A zone: 20%<br>RS-12,000 zone: 45%<br>RS-7,200 zone: 70%<br>[Ord. 313 §1, 2000] | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Minimum *lot area* for a *public agency training facility* is 35 acres. |
| 19.15.005.14<br>*Public Utility* | ~~Type 3~~<br>Type 2 | None | 30' | 30' | 35% | RS-A zone: 20%<br>RS-12,000 zone: 45%<br>RS-7,200 zone: 70%<br>[Ord. 313 §1, 2000] | 20' See Spec. Reg. 1 | D | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. The City Council may approve *height* no greater than 35 feet if the *applicant* shows that no feasible alternative is available.<br>2. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts. |

| RS Zones USE ⇓ / ⇓REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.005.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.005.15 *Personal Wireless Service Facility*[1] | See Chapter 19.50 | | | | | | | | | |
| 19.15.005.16 *Community Garden* | None | None | 20' | 5' | 15% | 25% | 12' | A | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. 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. |

(1) Amended, Ord. 265, 1999

Note: All landscape categories added by Ord. 293, 2000.

| RM Zones<br>USE ⇓ ⇓REGULATIONS | Special Review Process (See Ch. 19.65) | MINIMUMS<br>Lot Area | MINIMUMS<br>SETBACKS<br>Front Setback | MINIMUMS<br>SETBACKS<br>Interior Setback | MAXIMUMS<br>Lot Coverage<br>Building Coverage | MAXIMUMS<br>Lot Coverage<br>Impervious Surface Coverage | MAXIMUMS<br>Height | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.010.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | 6. In the RM-48 zone this height limit may be increased if portions of the structure that exceed the base height limit provide one additional foot of front and interior setback for each foot above the base height limit, but the maximum height may not exceed 75 feet. [Ord. 533 § 1, 2010] |
| 19.15.010.8<br>*Public Park and Recreation Facilities* | ~~Type 1, if less than 1 acre~~<br><br>~~Type 2, otherwise~~ None. See Spec. Reg. 3 | None. | 30' See Spec. Reg. 2 | 30' See Spec Reg. 2 | 60% | 85% | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Lighting for *structures* and fields shall be directed away from *dwelling units*.<br><br>2. *Structures* shall maintain a 50-foot *setback* from *adjoining lots* containing *single detached dwelling units*. The *Director* may allow *structures* such as playground equipment, ball field backstops and tennis court *fences* closer than 50' if compatible with the surrounding neighborhood and traffic safety considerations.<br><br>3. 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. |
| 19.15.010.9<br>*Community Residential Facility* | ~~Type 3~~<br>Type 2 | 5,000 s.f. | 10' | 5' | RM-12 & RM-18 zones: 60%<br><br>RM-24 & RM-48 zone: 70% [Ord. 533 § 1, 2010] | 85%<br><br>RM-48 zone: 90% [Ord. 533 § 1, 2010] | 35'<br><br>RM-48 zone: 60' See Spec Reg.1 [Ord. 533 § 1, 2010] | B | 1 space for every 2 bedrooms | 1. In the RM-48 zone this height limit may be increased if portions of the structure that exceed the base height limit provide one additional foot of front and interior setback for each foot above the base height limit, but the maximum height may not exceed 75 feet. [Ord. 533 § 1, 2010] |

| RM Zones<br>USE ⇓ ⇓REGULATIONS | Special Review Process (See Ch. 19.65) | MINIMUMS<br>Lot Area | MINIMUMS<br>SETBACKS<br>Front Setback | MINIMUMS<br>SETBACKS<br>Interior Setback | MAXIMUMS<br>Lot Coverage<br>Building Coverage | MAXIMUMS<br>Lot Coverage<br>Impervious Surface Coverage | MAXIMUMS<br>Height | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.010.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
|---|---|---|---|---|---|---|---|---|---|---|
| | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
| 19.15.010.13<br>*Senior Citizen Assisted Dwelling Unit* | Type 2 | 5,000 s.f. See Spec. Reg. 1 | 10' | 5' | RM-12 & RM-18 zones: 60%<br><br>RM-24 & RM-48 zone: 70% [Ord. 533 § 1, 2010] | 85%<br><br>RM-48 zone: 90% [Ord. 533 § 1, 2010] | 35'<br><br>RM-48 zone: 60' See Spec Reg.3 [Ord. 533 § 1, 2010] | B | 0.5 spaces per unit | 1. Maximum density per *dwelling unit* is:<br>a. 12 units per acre in the RM-12 zone.<br>b. 18 units per acre in the RM-18 zone.<br>c. 24 units per acre in the RM-24 zone.<br>d. 48 units per acre in the RM-48 zone.<br>Additional density may be allowed in the RM-24 and RM-48 zone if appropriate for the *site* and if zoning code requirements are met without the need for variances or administrative adjustments. [Ord. 533 § 1, 2010]<br><br>2. Chapter 19.17 contains regulations regarding home occupations, and other *accessory uses*, facilities and activities associated with this use.<br><br>3. In the RM-48 zone this height limit may be increased if portions of the structure that exceed the base height limit provide one additional foot of front and interior setback for each foot above the base height limit, but the maximum height may not exceed 75 feet. [Ord. 533 § 1, 2010] |
| 19.15.010.14<br>*Essential Public Facility* | ~~Type 3~~<br>Type 2 | Development standards shall be determined on a case-by-case basis through the Type 3 review process. | | | | | | | | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts.<br><br>2. Shall comply with criteria for siting found in the Burien Comprehensive Plan. |
| 19.15.010.15<br>*Community, Cultural or Government Facility* | ~~Type 3~~<br>Type 2 | 5,000 s.f. | 30' | 30' | 60% | 85% | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | |

| RM Zones<br>USE ⇓ | ⇓REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.010.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
| | | | | SETBACKS | | Lot Coverage | | | | | |
| | | | *Lot Area* | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | *Height* | | | |
| 19.15.010.16 *Public Utility* | | ~~Type 3~~ Type 2 | None | 30' | 30' | 60% | 85% | 35' | D | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts. |
| 19.15.010.17 *Personal Wireless Service Facility*[1] | | See Chapter 19.50 | | | | | | | | | |
| 19.15.010.18 *Community Garden* | | None | None | 10' | 5' | 15% | 25% | 12' | A | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. 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. |

(1) Amended, Ord. 265, 1999

NOTE: All landscape categories added by Ord. 293, 2000.

| CN Zone<br>USE ⇓ ⇓REGULATIONS | Special Review Process (See Ch. 19.65) | MINIMUMS<br>Lot Area | MINIMUMS<br>SETBACKS<br>Front Setback | MINIMUMS<br>SETBACKS<br>Interior Setback | MAXIMUMS<br>Lot Coverage<br>Building Coverage | MAXIMUMS<br>Lot Coverage<br>Impervious Surface Coverage | MAXIMUMS<br>Building Height | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.015.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
|---|---|---|---|---|---|---|---|---|---|---|
| | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
| 19.15.015.6<br>*Public Park and Recreation Facilities* | ~~Type 1, if less than 1 acre~~<br><br>~~Otherwise, Type 2~~<br>None. See Spec. Reg. 3 | None. | 10' See Spec. Reg. 2 | 0' See Spec Reg. 2 | 60% | 85% | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Lighting for *structures* and fields shall be directed away from *dwelling units*.<br><br>2. *Structures* shall maintain a 50-foot *setback* from *adjoining lots* containing *single detached dwelling units*. The *Director* may allow *structures* such as playground equipment, ball field backstops and tennis court *fences* closer than 50' if compatible with the surrounding neighborhood and traffic safety considerations.<br><br>3. 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. |
| 19.15.015.7:<br>*Community, Cultural, Religious or Government Facility*<br>[Ord. 479 § 1, 2007] | ~~Type 3~~<br>Type 2 | None | 10' | 0' | 60% | 85% | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | |

| CN Zone<br>USE ⇓ ⇓REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.015.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.015.8: *Public Utility* | ~~Type 3~~ Type 2 | None | 30' | 30' | 60% | 85% | 35' | D | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts. |
| 19.15.015.9: *Personal Wireless Service Facility*[1] | See Chapter 19.50 | | | | | | | | | |
| 19.15.015.10 *Community Garden* | None | None | 10' | 0' | 15% | 25% | 12' | A | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. 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. |

(1) Amended, Ord. 265, 1999

Note: All landscape categories added by Ord. 293, 2000

| CI Zone<br>USE ⇓ ⇕REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.020.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.020.5<br>*Mixed Use*<br><br>*Senior Citizen Assisted Dwelling Unit*<br><br>*Community Residential Facility* | None | None | 10' | 0' | 70% | 85% | 45' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Shall provide *convenience retail, office* or *eating and drinking establishment uses* on the floor adjacent to a *street*, or if the *site* does not abut a *street*, on floor adjacent to parking lot. *Eating and drinking establishment* is permitted on any floor.<br><br>2. Maximum residential density shall not exceed the highest density allowed by the zoning of an abutting residentially zoned lot. If more than one residentially zoned lot abuts the subject lot, the highest residential zoning density may be used to calculate the maximum residential density. In cases where there is no residentially zoned lot abutting the subject lot, the maximum allowed residential density shall be established by the zoning of the closest residentially zone lot. [Ord. 484 § 1, 2008]<br><br>3. The following are not permitted: auto repair shop, auto sales, *convenience auto service*, drive-through facilities, *pawn shop*, or veterinarian.<br><br>4. Outdoor *use* and storage is limited to *accessory* display and/or storage of goods sold at *retail* on the premises. Outdoor *use* and storage areas shall be limited to five feet in *height* and shall not be located in any required landscape area.<br><br>5. *Senior citizen assisted dwelling unit* or *community residential facility* only allowed as part of a *mixed use* project.<br><br>6. At least 25% of the *gross floor area* must be designed and used for *retail, office* or *eating and drinking establishment uses.* |

| CI Zone<br>USE ⇓ ⇓REGULATIONS | DIRECTIONS: FIRST, read down to find use…THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.020.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
| | | | SETBACKS | | Lot Coverage | | | | | |
| | | *Lot Area* | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | *Building Height* | | | |
| 19.15.020.6<br>*Public Park and Recreation Facilities* | ~~Type 1, if less than 1 acre~~<br><br>~~Otherwise, Type 2~~<br>None. See Spec. Reg. 3 | None. | 10' See Spec. Reg. 2 | 0' See Spec Reg. 2 | 60% | 85% | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Lighting for structures and fields shall be directed away from residential areas.<br><br>2. Structures shall maintain a 50-foot *setback* from *adjoining lots* zoned RS. The *Director* may allow structures such as playground equipment, ball field backstops and tennis court *fences* closer than 50' if compatible with the surrounding neighborhood and traffic safety considerations.<br><br>3. 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. |
| 19.15.020.7<br>*Community, Cultural, Religious or Government Facility*<br>[Ord. 479 § 1, 2007] | ~~Type 3~~<br>Type 2 | None | 10' | 0' | 60% | 85% | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | |

| CI Zone<br>USE ⇓ ⇓REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | MINIMUMS | | | MAXIMUMS | | | | | |
| | | | SETBACKS | | Lot Coverage | | | | | |
| | Special Review Process (See Ch. 19.65) | *Lot Area* | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | *Building Height* | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.020.1 and Chapter 19.17, Miscellaneous Use, Development and Performance Standards) |
| 19.15.020.8<br>*Public Utility* | ~~Type 3~~<br>Type 2 | None | 30' | 30' | 60% | 85% | 35' | D | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts. |
| 19.15.020.9<br>*Personal Wireless Service Facility*[1] | See Chapter 19.50 | | | | | | | | | |
| 19.15.020.10<br>*Community Garden* | None | None | 10' | 0' | 15% | 25% | 12' | A | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. 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. |

(1) Amended, Ord. 265, 1999

Note: All landscape categories added by Ord. 293, 2000

| DC Zone<br>USE ⇩ ⇨ REGULATIONS | DIRECTIONS: FIRST, read down to find use…THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.030.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | *Building Height* | | | |
| 19.15.025.6 *Family Day Care Home I and II* | None | See Special Regulation 1 | | | | | | | | 1. Must comply with requirements of the *primary use*.<br>2. *Family Day Care Home II*: Must provide State certification of safe passenger loading area.<br>3. Use of the *Fee-In-Lieu* of Parking Program in BMC 19.20.040.3.B is an option for this use. |
| 19.15.025.7 *Day Care Center* | None | None | 0' | 0' | 85% | 95% | See Sec. 19.15.025.1 .F | E | See Sec. 19.20.040.3. B [Ord. 531 § 1, 2010] | 1. Must provide State certification of safe passenger loading area. |
| 19.15.025.8 *Religious Facility* [Ord. 479 § 1, 2007] | None | None. | 0' | 0' | 85% | 95% | See Sec. 19.15.025.1 .F | E | See Sec. 19.20.040.3. B [Ord. 531 § 1, 2010] | |
| 19.15.025.9 *Public Utility* | Type 1 | None | 0' | 0' | 85% | 95% | 35 feet | E | See Sec. 19.20.040.3. B [Ord. 531 § 1, 2010] | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts. |
| 19.15.025.10 *Essential Public Facility* | ~~Type 3~~<br>Type 2 | | | | | | | | | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts.<br>2. Shall comply with criteria for siting found in the Burien Comprehensive Plan. |
| 19.15.025.11 *Personal Wireless Service Facility* | See Chapter 19.50 | | | | | | | | | |
| 19.15.025.12 *Community Garden* | None | None | 0' | 0' | 15% | 25% | 12' | A | See Sec. 19.20.040.3. B [Ord. 531 § 1, 2010] | 1. 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. |

| CC Zones<br>USE ⇓ ⇓REGULATIONS | DIRECTIONS: FIRST, read down to find use…THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.035.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.035.2<br>*Retail*<br><br>*Office*<br><br>*Recreational Facility* | None | None | 10' | 0' | 80% | 85% | 35' | C | 3 spaces per 1,000 s.f. of *net floor area.* [Ord. 313 §1, 2000] | 1. The following are not permitted: motor vehicle sales and rental; boat sales and rental; *theater*; *recycling center*; and *self-service storage facility*.<br><br>2. ~~The following requires Type 1 review: Vehicle repair, except as accessory to service station (permitted);~~ Vehicle repair activities must occur inside a building.<br><br>3. For *retail use* in the CC-1 zone, maximum *gross floor area* per *building* is 25,000 s.f. Up to 30,000 s.f. may be approved through a Type 1 review process.<br><br>4. A *kennel* is allowed as an indoor *accessory use* to a veterinarian, provided that noise and odor impacts are adequately mitigated.<br><br>5. Distribution, wholesaling, repair or manufacturing that support the *primary use* are allowed as an *accessory use*.<br><br>6. An *amusement arcade* is allowed as an *accessory use*.<br><br>7. Development of *retail* use on parcel numbers 302304-9037, 302304-9089, 302304-9117, 302304-9271 and 302304-9376 (located east of Sylvester Middle School) must be part of a master site plan that includes property to the east of these lots. The master site plan shall include at least the following elements: coordinated access, site and building design, and signing. Through a Type 1 review the *Director* may approve a master site plan involving two or more parcels that does not include property to the east of these parcels, if the elements above are included in the plan. |

| CC Zones<br>USE ⇓ ⇑REGULATIONS | DIRECTIONS: FIRST, read down to find use…THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.035.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.035.11<br>*Public Utility* | Type 1 | None | 30' | 30' | 80% | 85% | 35' | D | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts. |
| 19.15.035.12<br>*Essential Public Facility* | ~~Type 3~~<br>Type 2 | Development standards shall be determined on a case-by-case basis through the Type 3 review process. | | | | | | | | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts.<br><br>2. Shall comply with criteria for siting found in the Burien Comprehensive Plan. |
| 19.15.035.13<br>*Personal Wireless Service Facility*(1) | See Chapter 19.50 | | | | | | | | | |
| 19.15.035.14<br>Uses permitted in King County Code (KCC) 21A.38.100 Special Overlay District – Commercial/Industrial, In Effect on 4/1/2010 with exception of Adult Entertainment [Ord. 533 § 1, 2010] | None | None | 10' | 0' | 80% | 85% | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Uses are only permitted in the CC-2 zoned area located on both sides of 16th Avenue SW between SW 112th Street and SW 116th Street. |

(1) Amended, Ord. 265, 1999

Note: All landscape categories added by Ord. 293, 2000

| CC Zones<br>USE ⇓ ⇑REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.035.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.035.15 *Community Garden* | None | None | 10' | 0' | 15% | 25% | 12' | A | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. 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. |

| CR Zone<br>USE ⇓ ⇓REGULATIONS | Special Review Process (See Ch. 19.65) | MINIMUMS<br>Lot Area | MINIMUMS SETBACKS<br>Front Setback | MINIMUMS SETBACKS<br>Interior Setback | MAXIMUMS Lot Coverage<br>Building Coverage | MAXIMUMS Lot Coverage<br>Impervious Surface Coverage | MAXIMUMS<br>Building Height | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.040.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
|---|---|---|---|---|---|---|---|---|---|---|
| | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
| 19.15.040.12<br>Indoor Shooting Range | Type 2 | None | 30' | 30' | 85% | 90% | 35' | D | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to mitigating noise impacts and designing the facility to protect non-users outside of the *building* from bullets that may penetrate the outer walls and ceiling of the *use*. |
| 19.15.040.13<br>*Essential Public Facility* | ~~Type 3~~<br>Type 2 | Development standards shall be determined on a case-by-case basis through the Type 3 review process. | | | | | | | | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts.<br>2. Shall comply with criteria for siting found in the Burien Comprehensive Plan. |
| 19.15.040.14<br>*Personal Wireless Service Facility*(1) | See Chapter 19.50 | | | | | | | | | |
| 19.15.040.15<br>*Off-Site Commercial Parking* | None<br>See Special Regulations 1 and 2. | None | 10' | 0' | 85% | 90% | 35' | C | See Sec. 19.20.030.2 | 1. This *use* is limited to property used for new and/or used automotive sales currently or in the twelve (12) month period preceding application.<br>2. This *use* is allowed only until July 12, 2012. After this date, the *use* is illegal and must be removed. |
| 19.15.040.16<br>*Community Garden* | None | None | 10' | 0' | 15% | 25% | 12' | A | See Sec. 19.20.030.2 | 1. 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. |

(1) Amended, Ord. 265, 1999

Note: All landscape categories added by Ord. 293, 2000

| O Zone<br>USE ⇓ ⇓REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.045.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.045.5<br>*Day Care Center* | None | None | 10' | 0' | 70% | 85% | 35' | B | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Must provide State certification of safe passenger loading area. |
| 19.15.045.6<br>*Nursing Home* | None | None | 10' | 0' | 70% | 85% | 35' | B | 1 space for every 4 beds | |
| 19.15.045.7<br>*Public Park and Recreation Facilities* | ~~Type 1, if less than 1 acre~~<br>~~Otherwise, Type 2~~<br>None. See Spec. Reg. 3 | None. | 10'. See Spec. Reg. 2 | 0' See Spec Reg.2 | 70% | 85% | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Lighting for *structures* and fields shall be directed away from residential areas.<br>2. *Structures* shall maintain a 50-foot *setback* from *adjoining lots* zoned RS. The *Director* may allow *structures* such as playground equipment, ball field backstops and tennis court *fences* closer than 50' if compatible with the surrounding neighborhood and traffic safety considerations.<br>3. 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. |
| 19.15.045.8<br>Funeral Home | Type 1 | None | 10' | 0' | 70% | 85% | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | |
| 19.15.045.9<br>*Hospital* | ~~Type 3.~~ Type 2<br>See Spec. Reg. 1 | None | 10' See Spec. Reg. 2 [Ord. 467 § 1, 2007] | 0' See Spec. Reg. 2 [Ord. 467 § 1, 2007] | 70% | 85% | 45' See Spec. Reg. 2 [Ord. 467 § 1, 2007] | B | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. If development is consistent with a Master Plan approved through a Type ~~3~~ 2 review, no land use review process is required.<br>2. For any *hospital* use on a site of 5 acres or greater with an approved Master Plan, the maximum *building height* shall be 95'. Any portion of a *structure* over 45' in height shall be set back an additional 2' from any site boundary for each additional 1' in height above 45'. For the purposes of this special regulation 'site boundary' is defined as the *property lines* defining the exterior boundary of a contiguous *site*. |

| O Zone<br>USE ⇓ ⇓REGULATIONS | Special Review Process (See Ch. 19.65) | MINIMUMS<br>Lot Area | MINIMUMS<br>SETBACKS<br>Front Setback | MINIMUMS<br>SETBACKS<br>Interior Setback | MAXIMUMS<br>Lot Coverage<br>Building Coverage | MAXIMUMS<br>Lot Coverage<br>Impervious Surface Coverage | MAXIMUMS<br>Building Height | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.045.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
|---|---|---|---|---|---|---|---|---|---|---|
| | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
| 19.15.045.10<br>*Community, Cultural, Religious or Government Facility*<br>*School*<br>[Ord. 479 § 1, 2007] | ~~Type 3~~<br>Type 2 | None | 10' | 0' | 70% | 85% | 45' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | |
| 19.15.045.11<br>*Public Utility* | ~~Type 3~~<br>Type 2 | None | 30' | 30' | 70% | 85% | 35' | D | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts. |
| 19.15.045.12<br>*Personal Wireless Service Facility*[1] | See Chapter 19.50 | | | | | | | | | |
| 19.15.045.13<br>*Community Garden* | None | None | 10' | 0' | 15% | 25% | 12' | A | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. 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. |

(1) Amended, Ord. 265, 1999

Note: All landscape categories added by Ord. 293, 2000

| I Zone<br>USE ⇩ ⇨ REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.050.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.050.7: *Community or Religious Facility* [Ord. 479 § 1, 2007] | Type 1 | None | 25' | 0' | 70% | 75% | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | |
| 19.15.050.8 *Government Facility* | Type 1 | None | 25' | 0' | 70% | 75% | See Spec. Reg. 1 | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Maximum *building height* is 35 feet. If at least 50% of the required parking stalls are located under or within the *building*, maximum *building height* is increased to 60 feet. |
| 19.15.050.9 *On-site hazardous waste treatment and storage facility* | Type 1 | None | 25' | See Spec. Reg. 1 | 70% | 75% | 35' | D<br>Also see Spec. Reg. 1 | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Fifty (50) feet if *adjoining* a *residential zone*, otherwise, none. The outer 25 feet of the *setback* must be landscaped with Type I landscaping (as prescribed in BMC 19.25.050.1). [Ord. 523 § 1, 2009].<br><br>2. Must comply with the state siting criteria adopted in accordance with RCW 70.105.210. |
| 19.15.050.10 *Public Park and Recreation Facilities* | ~~Type 1~~ None. See Spec. Reg. 2 | None. | 25' | 0' | 70% | 75% | 35' | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Lighting for *structures* and fields shall be directed away from residential areas.<br><br>2. 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. |
| 19.15.050.11 Public Utility | Type 1 | None | 30' | 30' | 70% | 75% | 35' | D | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts. |

| I Zone<br>USE ⇩ ⇨ REGULATIONS | Special Review Process (See Ch. 19.65) | MINIMUMS<br>Lot Area | MINIMUMS<br>SETBACKS<br>Front Setback | MINIMUMS<br>SETBACKS<br>Interior Setback | MAXIMUMS<br>Lot Coverage<br>Building Coverage | MAXIMUMS<br>Lot Coverage<br>Impervious Surface Coverage | MAXIMUMS<br>Building Height | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.050.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
|---|---|---|---|---|---|---|---|---|---|---|
| | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
| 19.15.050.15<br>*Recycling Center* | Type 2 | None | 25' | See Spec. Reg. 1 | 70% | 75% | 35' | D<br>Also see Spec. Reg. 1 | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Fifty (50) feet if *adjoining* a *residential zone*, otherwise, none. The outer 25 feet of the *setback* must be landscaped with Type I landscaping (as prescribed in BMC 19.25.050.1). [Ord. 523 § 1, 2009].<br>2. Shall mitigate all operational impacts, including noise, odor, visual and health and sanitary impacts.<br>3. May deal only in metal cans, glass, plastic and paper. Other materials may be recycled if the Hearing Examiner determines that the impacts are no greater than those associated with recycling metal cans, glass, plastic or paper. The applicant will have the burden of proof in demonstrating similar impacts. |
| 19.15.050.16<br>Any *use* not listed in the use column of any use zone chart | Type 2 | Development standards shall be determined on a case-by-case basis through the Type 2 review process. | | | | | | | | 1. The proposed *use* shall be compatible with *adjoining uses*. The facility shall be designed, located, constructed and buffered to blend in with its surroundings and mitigate all adverse impacts on *adjoining* properties and the community. Special attention shall be given to minimizing noise, light, glare and traffic impacts.<br>2. *Social card games* are prohibited. |
| 19.15.050.17<br>Essential Public Facility | ~~Type 3~~<br>Type 2 | Development standards shall be determined on a case-by-case basis through the Type 3 review process. | | | | | | | | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts.<br>2. Shall comply with criteria for siting found in the Burien Comprehensive Plan. |

| I Zone<br>USE ⇩ ⇨ REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.050.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.050.18 *Off-site hazardous waste treatment and storage facility* | ~~Type 3~~ Type 2 | None | 50' | 50' | 70% | 75% | 35' | D<br>Also see Spec. Reg. 1 | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. The outer 25 feet of the *setback* must be landscaped with Type I landscaping (as prescribed in BMC 19.25.050.1). [Ord. 523 § 1, 2009].<br>2. Must comply with the state siting criteria adopted in accordance with RCW 70.105.210. |
| 19.15.050.19 *Personal Wireless Service Facility*[1] | See Chapter 19.50 | | | | | | | | | |
| 19.15.050.20 *Adult Entertainment Facility*[2] | None | None | 25' | 0' | 70% | 75% | 35' | C | See Sec. 19.20.030.2 | 1. See Sec. 19.17.030 for additional requirements. |
| 19.15.050.21 *Secure Community Transition Facility* [Ord. 363 § 1, 2002] | ~~Type 3~~ Type 2 | See Section 19.17.110 | | | | | | | | |
| 19.15.050.22 *Community Garden* | None | None | 10' | 0' | 15% | 25% | 12' | A | See Sec. 19.20.030.2 | 1. 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. |

(1) Amended, Ord. 265, 1999
Note: All landscape categories added by Ord. 293, 2000
(2) Amended, Ord. 291, 2000

| SPA-1: Old Burien<br>USE ⇩ ⇨REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | MINIMUMS | | | MAXIMUMS | | | | | |
| | | | SETBACKS | | Lot Coverage | | | | | |
| | Special Review Process (See Ch. 19.65) | *Lot Area* | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | *Building Height* | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.055.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| 19.15.055.5<br>*Family Day Care Home I and II* | None | See Special Regulation 1 | | | | | | | | 1. Must comply with requirements of the *primary use*.<br>2. *Family Day Care Home II*: Must provide State certification of safe passenger loading area.<br>3. Use of the Fee-In-Lieu Parking Program in BMC 19.20.040.3.B is an option for this use. |
| 19.15.055.6<br>*Day Care Center* | None | None | 0' | 0' | 85% | 85% | 2 stories | E | See Sec. 19.20.040.3.B [Ord. 531 §1, 2010] | 1. Must provide State certification of safe passenger loading area. |
| 19.15.055.7<br>*Mixed Use* | Type 1 | None | 0' | 0' | 85% | 85% | 3 stories | E | See Sec. 19.20.040.3.B [Ord. 531 §1, 2010] | 1. Maximum residential density is 24 *dwelling units* per acre.<br>2. Shall provide *retail* and/or *eating and drinking establishment uses* on the floor adjacent to a *street*, or if the *site* does not abut a *street*, on floor adjacent to parking lot.<br>3. At least 25% of the *gross floor area* must be designed and used for *retail, office* and/or *eating and drinking establishment uses*. |
| 19.15.055.8<br>*Public Park and Recreation Facilities* | ~~Type 1~~<br>None. See Spec. Reg. 2 | None. See Spec. Reg. 1 | 0' | 0' | 80% | 85% | 3 stories | E | See Sec. 19.20.040.3.B [Ord. 531 §1, 2010] | 1. Lighting for *structures* and fields shall be directed away from residential areas.<br>2. 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. |

| SPA-1: Old Burien<br>USE ⇩ ⇩REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.055.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.055.9<br>*Government Facility*<br>*Private Club*<br>*Religious Facility* | Type 1 | None | 0' | 0' | 80% | 85% | 3 stories | E | See Sec. 19.20.040.3. B [Ord. 531 §1, 2010] | |
| 19.15.055.10<br>*Public Utility* | Type 1 | None | 20' | 30' | 80% | 85% | 3 stories | E | See Sec. 19.20.040.3. B [Ord. 531 §1, 2010] | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts. |
| 19.15.055.11<br>*Essential Public Facility* | ~~Type 3~~<br>Type 2 | Development standards shall be determined on a case-by-case basis through the Type 3 review process. | | | | | | | | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts.<br>2. Shall comply with criteria for siting found in the Burien Comprehensive Plan. |
| 19.15.055.12<br>*Personal Wireless Service Facility* | See Chapter 19.50 | | | | | | | | | |
| 19.15.050.22<br>*Community Garden* | None | None | 0' | 0' | 15% | 25% | 12' | A | See Sec. 19.20.040.3. B [Ord. 531 §1, 2010] | 1. 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. |

Note: All landscape categories added by Ord. 293, 2000

SPA 2: Ruth Dykeman

## Section 19.15.060—Special Planning Area 2: Ruth Dykeman Children's Center

**PURPOSE AND INTENT:** The Special Planning Area 2 (SPA-2) zone implements the Special Planning Area 2 Comprehensive Plan designation. The purpose of this zone is to establish and preserve areas for the Ruth Dykeman Children's Center and the special uses associated with the Center's activities. The intent is to provide for continued residential, home-based and community-based programs and services to families and children of the community through the activities of the Ruth Dykeman Children's Center. Due to the unique nature and location of the Ruth Dykeman property, all use and development must be consistent with a City-approved Master Plan for the property.

**ONLY THOSE USES LISTED ON THE FOLLOWING USE ZONE CHARTS MAY BE ALLOWED IN THE SPA 2 ZONE, SUBJECT TO MEETING ALL APPLICABLE REQUIREMENTS OF THE ZONING CODE. THE FOLLOWING SPECIAL REGULATIONS APPLY TO ALL USES IN THE SPA -2 ZONE. BE SURE TO CHECK THE APPLICABLE USE ZONE CHART FOR ADDITIONAL REQUIREMENTS THAT PERTAIN TO SPECIFIC USES. WHERE A SPECIAL REGULATION BELOW CONFLICTS WITH A SPECIAL REGULATION IN A USE ZONE CHART FOR A SPECIFIC USE, THE USE ZONE CHART SHALL APPLY.**

### 19.15.060.1: SPECIAL REGULATIONS:

A. All *uses* and development in SPA-2 must be consistent with a City-approved Master Plan for the entire zone. The Master Plan must be approved through a Type ~~3~~ 2 review. Modifications to the approved Master Plan may be allowed as follows:

i. Minor modifications may be approved by the *Director*. The following are minor modifications, if the *Director* determines that the modification will not have significantly more or different impact on the surrounding neighborhood than does the present development:

a. An increase of 20% or less in the *gross floor area* of any approved *primary* or *accessory use*.

b. An increase of 20% or less in the number of beds.

c. Up to 20% increase or decrease in the number of approved parking spaces.

ii. Major modifications may be approved through a Type I review process. Major modifications are those modifications that do not comply with Section 19.15.060.1.a.i above.

B. The *primary use* allowed in the zone is *community residential facility*. Any use listed in the Office zone (Section 19.15.045) may be allowed as an *accessory use* if it supports the *primary use*. *Religious facilities* are also allowed as a *primary use*. [Ord. 479 §1, 2007]

C. Development standards, such as *lot* coverage, *building height*, landscaping, signing and parking are established as part of the approved Master Plan. The standards in the Office zone (Section 19.15.045) shall be used as a guideline.

D. There shall be a minimum 20-foot landscape strip between SPA –2 and any *adjoining* RS zones.

| SPA-3 GATEWAY<br>USE ⇓ ⇑REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.065.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.065.8<br>*Public Park and Recreation Facilities* | None | None. | 5' | 0' | 85% | 90% | 3 Stories | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Lighting for *structures* and fields shall be directed away from residential areas. |
| 19.15.065.9<br>*Government Facility*<br>*Private Club*<br>*Religious Facility*<br>Funeral Home | Type 1 | None | 5' | 0' | 85% | 90% | 3 Stories | C | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | |
| 19.15.065.10<br>Public Utility | Type 1 | None | 30' | 30' | 85% | 90% | 3 Stories | D | See Sec. 19.20.030.2 [Ord. 292 § 6, 2000] | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts. |
| 19.15.065.11<br>*Essential Public Facility* | ~~Type 3~~<br>Type 2 | Development standards shall be determined on a case-by-case basis through the Type 3 review process. | | | | | | | | 1. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts.<br>2. Shall comply with criteria for siting found in the Burien Comprehensive Plan. |
| 19.15.065.12<br>*Nursing Home* | None | None | 5' | 0' | 85% | 90% | 3 Stories | B | 1 space for every 4 beds | |

| SPA-3 GATEWAY<br>USE ⇓ ⇓REGULATIONS | DIRECTIONS: FIRST, read down to find use…THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | MINIMUMS | | | MAXIMUMS | | | | | |
| | | | SETBACKS | | Lot Coverage | | | | | |
| | Special Review Process (See Ch. 19.65) | *Lot Area* | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | *Building Height* | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.065.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| 19.15.065.13<br>*Personal Wireless Service Facility* | See Chapter 19.50 | | | | | | | | | |
| 19.15.065.14<br>*Off-Site Commercial Parking* | None. See Special Regulations 1 and 2. | None | 5' | 0' | 85% | 90% | 3 stories | C | See Sec. 19.20.030.2 | 1. This *use* is limited to property used for new and/or used automobile sales currently or in the twelve (12) month period preceding application.<br>2. This *use* is allowed only until July 1, 2012. After this date, the *use* is illegal and must be removed. |
| 19.15.065.15<br>*Community Garden* | None | None | 5' | 0' | 15% | 25% | 12' | A | See Sec. 19.20.030.2 | 1. 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. |

Note: All landscape categories added by Ord. 293, 2000

| AI Zone<br>USE ⇩ ⇨ REGULATIONS | DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.070.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.070.8<br>Any *use* not listed in the use column of any use zone chart | Type 2 | Development standards shall be determined on a case-by-case basis through the Type 2 review process. | | | | | | | | 1. The proposed *use* shall be compatible with *adjoining uses*.<br>2. The facility shall be designed, located, constructed and buffered to blend in with its surroundings and mitigate all adverse impacts on *adjoining* properties and the community. Special attention shall be given to minimizing noise, light, and glare impacts. |
| 19.15.070.9<br>*Adult Entertainment Facility* | Type 2 | None | 10' | 10' | None | See BMC 19.15.070.1.E. | 45' See BMC 19.15.070.1 | F | See Section 19.20.030.2. | 1. See Sec. 19.17.030 for additional requirements. |
| 19.15.070.10<br>*Secure Community Transition Facility* | Type 2 | See Section 19.17.110 | | | | | | | | |
| 19.15.070.11<br>*Personal Wireless Service Facility* | See BMC 19.50 for specific requirements. | | | | | | | | | |
| 19.15.010.18<br>*Community Garden* | None | None | 10' | 10' | 15% | 25% | 12' | A | See Section 19.20.030.2. | 1. 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. |

| PR Zone<br>USE ⇩ ⇩ REGULATIONS | DIRECTIONS: FIRST, read down to find use…THEN, across for REGULATIONS | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Special Review Process (See Ch. 19.65) | MINIMUMS | | | MAXIMUMS | | | Landscape Category (See Ch. 19.25) | Minimum Required Parking Spaces (See Ch. 19.20) | Special Regulations (See also Section 19.15.030.1 and Miscellaneous Use, Development and Performance Standards Ch. 19.17) |
| | | *Lot Area* | *SETBACKS* | | Lot Coverage | | *Building Height* | | | |
| | | | *Front Setback* | *Interior Setback* | *Building Coverage* | *Impervious Surface Coverage* | | | | |
| 19.15.030.13 *Community, Cultural or Government Facility* | Type 2 | None | 20' | 10' | 70% | 85% | 35' | C | See Sec. 19.20.030.2 | |
| 19.15.030.14 Public Utility | Type 2 | None | 30' | 30' | 35% | 70% | 20' See Spec. Reg. 1 | D | See Sec. 19.20.030.2 | 1. The Hearing Examiner may approve height no greater than 35 feet if the applicant shows that no feasible alternative is available.<br><br>2. Shall be designed, located, constructed and buffered to blend in with their surroundings and minimize adverse impacts on adjacent properties. Special attention shall be given to minimizing noise, light and glare impacts. |
| 19.15.030.15 *Personal Wireless Service Facility* | See Chapter 19.50 | | | | | | | | | |
| 19.15.030.16 *Community Garden* | None | None | 20' | 5' | 15% | 25% | 12' | A | See Sec. 19.20.030.2 | 1. 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. |