



## TECHNICAL COMMITTEE REPORT

**To:** Planning Commission

**From:** Technical Committee

**Staff Contacts:** Gary Lee, Senior Planner, 425-556-2418  
Scott Reynolds, Planner, 425-556-2409

**Date:** March 14, 2018

**File Numbers:** LAND-2018-00121 and SEPA-2018-00238

**Project Name:** Redmond Zoning Code Amendment: Appeals to City Council

**Reasons the Proposal should be Adopted:** The Technical Committee recommends approving the amendment to allow Councilmembers to engage with community members regarding quasi-judicial decisions and improve the timelines of the permit review and appeals process by removing the City Council as the appeal body for Type III permits.

### I. APPLICANT PROPOSAL

#### A. APPLICANT

City of Redmond

#### B. BACKGROUND AND REASON FOR PROPOSAL

The City of Redmond Zoning Code, Section 21.76 Review Procedures lists the administrative appeal bodies that are appropriate to each permit type. Please see Exhibit C attached to this report for permit types and appeal bodies. Currently, City Council is the primary administrative appeal body for Type III permits.

A Type III process is a quasi-judicial review. Decisions regarding Type III process is made by the Hearing Examiner. Appeals of Type III decisions are made to the City Council. Appeal decisions of the City Council may be appealed to King County Superior Court. Please see Exhibit C attached to this report for examples of Type III permits, and Exhibit A for the administrative procedures.

All appeals for Shoreline Substantial Development Permits, Shoreline Variances, and Shoreline Conditional Use Permits are appealable directly to the State Shorelines Hearing Board and do not follow the process listed above. Please see Exhibit A.

The proposed amendment removes the City Council as the appeal body for Type III permits. Any appeal of a Type III permit would then be heard by King County Superior Court, or by the State Shorelines Hearing Board as noted above. The updated appeal process is typical for surrounding communities as shown in Exhibit F.

The proposal is similar to Ordinance 2889 (Exhibit D) which was approved by City Council on June 20, 2017. The recent ordinance removed City Council as an appeal body for Type I & II permits and changed Conditional Use permits to Type III from Type IV permits.

On December 5, 2017, an interim ordinance was passed (Ordinance 2902) and a public hearing was held on December 16, 2017 (Exhibit E). The interim ordinance temporarily removed City Council as an administrative appeal body for Type III permits for six-month time period (Revised Code of Washington 36.70A.390 & 35A.63.220). The interim ordinance requires the code change to go through the Type VI process for formal adoption of this ordinance therefore this proposed amendment is before you.

Technical Committee's analysis and recommendation on this topic is provided below.

## **II. RECOMMENDATION**

The Technical Committee recommends amending the Zoning Code to make the interim amendments adopted under Ordinance 2902 permanent, in order to remove the City Council as the administrative appeal body for Type III permits. The Technical Committee recommends the Zoning Code amendment due to concerns regarding legal exposure of City Council during quasi-judicial proceedings and to streamline the review and appeals process.

The Technical Committee has considered this issue and recommends that removing City Council from the quasi-judicial review process would provide a benefit by removing elected officials from quasi-judicial appeals, reduce staff processing time and simplify City Council responsibilities. In addition, this approach would avoid the need for Council to abstain from discussion with community members regarding topics that could be appealed to them. The rest of this report describes the analysis for this recommendation and alternatives to this recommendation. Exhibit A contains the Technical Committee recommended amendments. The green and red text highlight the proposed changes.

### III. PRIMARY ISSUES CONSIDERED AND ALTERNATIVES

The primary issues considered for this amendment were to improve the permit review and appeals process, allow the Council to be able to engage in discussions with community members throughout the permitting process regarding Type III permits instead of having to abstain from discussion with community members regarding topics that could be appealed to them. In addition this amendment could provide a more rapid final conclusion to the appeals process.

### IV. SUPPORTING ANALYSIS

#### A. EXISTING CONDITION, PROPOSAL, ALTERNATIVES AND FACTORS CONSIDERED

Existing condition. RZC.21.76 governs review procedures. As mentioned in section I.B. of this report, currently City Council is the first appeal body for Type III and King County Superior Court is the appeal body for all City Council decisions including Type IV - VI.

Proposal. The Technical Committee recommends that the appeal body be changed from the City Council to King County Superior Court for Type III permits.

The proposed code amendment would remove the City Council as an appeal body for Type III permits. Most jurisdictions have King County Superior Court as an administrative appeal body for Type III permits as documented in Exhibit F. Currently, if the City Council hears an appeal hearing, it is possible that the City Council's ruling may be appealed to the King County Superior Court. In the event that the King County Superior Court overturns the City Council's decision, it is possible, depending on the circumstances, that the Superior Court may impose financial judgments against the City.

City Council in their discussions preceding this direction to proceed with the proposed amendments focused on their desire to be able to have ongoing conversations with their constituents which are precluded when they are engaged in a quasi-judicial action such as an appeal. In this way they can also better understand through direct and ongoing communication which better informs them in identifying subsequent legislative/policy changes that may be appropriate.

Staff believes that limiting the appeals process to superior court for Type III permits will remove the City from unnecessary risk, potentially speeds the review process in the event of an appeal, and also allows the public to have one less process to exhaust before receiving a final judgement. An appeals process is a time intensive action for the City Council and staff. Having the administrative appeal could be detrimental to both property owners with issued land use permits and the public that wish to exhaust administrative remedies before receiving a final judgment by the Superior Court.

Alternatives.

1. The City could choose to not permanently incorporate the proposed amendment into the Zoning Code. This approach would run the current interim Ordinance 2902 to expire and then fall back to the City's current appeal process. The Technical Committee believes the current Zoning Code does not benefit the City, residents, or developers as much as the proposed code amendment.
2. The City could choose to modify aspects of the proposed Zoning Code amendment. Staff considered these issues and believes that the proposal is a balanced approach as presented and is in keeping with the general direction provided by the City Council.

**B. COMPLIANCE WITH CRITERIA FOR CODE AMENDMENTS**

Redmond Comprehensive Plan Policies PI-16 directs the City to take several considerations into account as part of the decision on proposed amendments to the Comprehensive Plan. Items 1 through 5 apply to all proposed amendments. The following is an analysis of how this proposal complies with the requirements for amendments.

**1. Consistency with Growth Management Act (GMA), State of Washington Department of Commerce Procedural Criteria, VISION 2040 or its successor, and the King County Countywide Planning Policies.**

The proposed amendments are consistent with the Growth Management Act, Department of Commerce Procedural Criteria, Vision 2040 and King County Countywide Planning Policies. The proposed amendments seek to further specify and streamline existing code language for appeal processes.

**2. Consistency with the Redmond Comprehensive Plan.**

The proposed amendments are consistent with the following policies:

- PI-3 – Treat all members of the public fairly; respect and consider all citizen input as an important component of the planning and implementation process.
- PI-4 – Promote as part of Comprehensive Plan updates and implementation a culture of dialogue and partnership among residents, property owners, the business community, organizations, other interested citizens and City officials.
- PI-19 – Prepare and maintain development regulations that implement Redmond's Comprehensive Plan and include all significant development requirements. Ensure that the development regulations are clearly written, avoid duplicative or inconsistent requirements, and can be efficiently and effectively carried out.

- PI-20 – Ensure that Redmond’s development review process provides applicants and the community a high degree of certainty and clarity in timelines and standards, and results in timely and predictable decision making on development applications.

**3. Potential general impacts to the natural environment, such as impacts to critical areas and other natural resources, including whether development will be directed away from environmentally critical areas and other natural resources.**

The proposal is unlikely to have any adverse impacts on the natural environment. The proposed code amendment is procedural by nature.

**4. Potential general impacts to the capacity of public facilities and services. For land use related amendments, whether public facilities and services can be provided cost-effectively and adequately at the proposed density/intensity.**

The proposal is unlikely to have any significant impacts to the capacity of public facilities and services. The proposed code amendment is procedural by nature, and does not affect the cost effectiveness of public facilities/services or the density/intensity of a development.

**5. Potential general economic impacts, such as impacts for business, residents, property owners, or City Government.**

The proposal is not anticipated to have any adverse significant economic impact on business, residents, property owners, or City Government. The proposal has a potential to decrease appeal timelines and provide for quicker final determinations.

**6. For issues that have been considered within the last four annual updates, whether there has been a change in circumstances that makes the proposed amendment appropriate or whether the amendment is needed to remedy a mistake.**

The issue addressed in this proposal has not been considered in the last four annual updates. The proposed code amendment is intended to streamline the review/appeal process, and provide the City with more protection.

## **V. AUTHORITY AND ENVIRONMENTAL, PUBLIC AND AGENCY REVIEW**

### **A. Amendment Process**

Redmond Zoning Code (RZC) 21.76 requires that amendments to the Zoning Code and Comprehensive Plan be reviewed under the Type VI process. Under this process, the Planning Commission conducts a study session(s), an open record hearing(s) on the proposed amendment, and makes a recommendation to the City Council. The City Council is the decision-making body for this process.

**B. Subject Matter Jurisdiction**

The Redmond Planning Commission and the Redmond City Council have subject matter jurisdiction to hear and decide whether to adopt the proposed amendment.

**C. Washington State Environmental Policy Act (SEPA)**

A SEPA checklist was prepared and an Exemption was issued for this non-project action on March 6, 2018, per WAC 197-11-800(19)(b).

**D. 60-Day State Agency Review**

State agencies were sent 60-day notice of this proposed amendment on March 5, 2018. Staff has requested a 14-day expedited review of the proposed code changes by the WA St. Department of Commerce.

**E. Public Involvement**

The public has opportunities to comment on the proposed amendment through the Planning Commission review process and public hearing which will be held on April 4, 2018. Public notice of the hearing was published in the Seattle Times on March 14, 2018. Notice of the Planning Commission hearing was posted in City Hall and the Redmond Library. Notice of the hearing is given on the Planning Commission agendas and extended agendas. Based off Planning Commission's ongoing commitment to increase public outreach, staff has reached out the community via email. The responses have been put together to this date under Exhibit G.

**F. Appeals**

RZC 21.76 identifies Zoning Code and Comprehensive Plan Amendments as a Type VI permit. Final action is by the City Council. The action of the City Council on a Type VI proposal may be appealed by filing a petition with the Growth Management Hearing Board pursuant to the requirements of the Board.

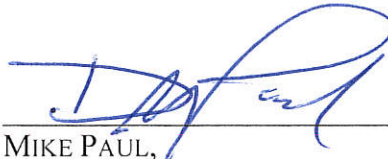
## VI. LIST OF EXHIBITS

- Exhibit A: Recommended Zoning Code Amendments
- Exhibit B: SEPA Exemption
- Exhibit C: Permit Type & Permit Classification Chart
- Exhibit D: Ordinance 2889 - Type I & Type II appeal updates and CUP to Type III
- Exhibit E: Ordinance 2902 – Interim Ordinance for Type III appeals
- Exhibit F: Neighboring Community Standards
- Exhibit G: Public Comment Received

**Conclusion in Support of Recommendation:** The Technical Committee has found the proposal to be in compliance with the Redmond Zoning Code, Redmond Comprehensive Plan, Redmond Municipal Code, and State Environmental Policy Act (SEPA).



KAREN ANDERSON,  
Director  
Planning and Community Development



MIKE PAUL,  
Deputy Director  
Public Works Department

## EXHIBIT A

**21.76.050 PERMIT TYPES AND PROCEDURES**

- A. **Purpose.** The purpose of this chapter is to provide detailed administrative review procedures for applications and [land use permits](#) classified as Types I through VI.
- B. **Scope.** Land use and [development](#) decisions are classified into six processes 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 input sought, and the type of appeal opportunity generally as follows:


Table 21.76.050A Permit Types						
	Permit Type					
	Type I Administrative	Type II Administrative	Type III Quasi-Judicial	Type IV Quasi-Judicial	Type V Quasi-Judicial	Type VI Legislative
<b>TABLE NOTES:</b> <ol style="list-style-type: none"> <li>Shoreline Substantial Development Permits, Shoreline Variances, and Shoreline Conditional Use Permits are appealable directly to the State <a href="#">Shorelines</a> Hearings Board.</li> <li>Landmarks Commission makes decisions for Certificate of Appropriateness Level III permits.</li> </ol>						
Level of Impact and Level of Discretion Exercised by decision maker	 <p>Potential for greatest level of impact due to changes in regulation or policy. Greatest level of discretion.</p>					
Input Sought	Minimal—generally no public notice required. No public hearing.	Notice of Application provided. No public hearing. Neighborhood meeting only required for <a href="#">short plats</a> meeting certain criteria.	Notice of Application provided. Neighborhood meeting <a href="#">may</a> be required. Public hearing is required.	Notice of Application provided. Neighborhood meeting may be required. Public hearing is required.	Notice of Application provided. Neighborhood meeting may be required. Public hearing is required.	Notice of Public Hearing provided.

Table 21.76.050A Permit Types						
	Permit Type					
	Type I Administrative	Type II Administrative	Type III Quasi-Judicial	Type IV Quasi-Judicial	Type V Quasi-Judicial	Type VI Legislative
Public Hearing prior to Decision?	No	No	Yes, Hearing Examiner (or Landmarks Commission) <sup>2</sup>	Yes, Hearing Examiner	Yes, <a href="#">City Council</a>	Yes, Planning Commission
Decision Maker	Appropriate Department	<a href="#">Technical Committee</a>	Hearing Examiner (or Landmarks Commission) <sup>2</sup>	City Council	City Council	City Council
Administrative Appeal Body	Hearing Examiner (Hearing Examiner decision on appeal may be appealed to Superior Court.)	Hearing Examiner <sup>1</sup> (Hearing Examiner decision on appeal may be appealed to Superior Court.)	<del>City Council</del> <sup>4</sup> <a href="#">None (decision appealable to Superior Court)</a> <sup>1</sup>	None (decision appealable to Superior Court)	None (decision appealable to Superior Court)	None (decision appealable to Superior Court)

C. **Classification of Permits and Decisions - Table.** The following table sets forth the various applications required and classifies each application by the process used to review and decide the application.

Type I - RZC 21.76.050.F:	Administrative Approval, Appropriate Department is Decision Maker
Type II - RZC 21.76.050.G:	Administrative Approval, Review and Decision by Technical Committee and Design Review Board or Landmarks Commission*
Type III - RZC 21.76.050.H:	Quasi-Judicial, Decision by Hearing Examiner or Landmarks and Heritage Commission*
Type IV - RZC 21.76.050.I:	Quasi-Judicial, Recommendation by Hearing Examiner, Decision by City Council
Type V - RZC 21.76.050.J:	Quasi-Judicial, Decision by City Council
Type VI - RZC 21.76.050.K:	Legislative, recommendation by Planning Commission, Decision by City Council

\*for properties with a Designation of Historic Significance, please refer to RZC [21.76.060.H](#), *Landmarks and Heritage Commission Determination/Decisions*.

**Table 21.76.050B  
Classification of Permits and Decisions**

Permit Type	Process Type	RMC Section (if applicable)
Administrative Interpretation	I	
Administrative Modification	II	
<a href="#">Alteration</a> of Geologic Hazard Areas	III	
<a href="#">Binding Site Plan</a>	II	
<a href="#">Boundary Line Adjustment</a>	I	
<a href="#">Building Permit</a>	I	RMC 15.06
Certificate of Appropriateness Level I	I	
Certificate of Appropriateness Level II	II	
Certificate of Appropriateness Level III	III	
Clearing and <a href="#">Grading</a> Permit	I	RMC 15.24
<a href="#">Comprehensive Plan</a> Map and/or Policy Amendment	VI	
Conditional Use Permit	III	
Development Agreement	V	
Electrical Permit	I	RMC 15.12
<a href="#">Essential Public Facility</a>	IV	
Extended Public Area Use Permit	I	RMC 12.08
Flood Zone Permit	I	RMC 15.04
<a href="#">Historic Landmark</a> Designation	III	
<a href="#">Home Business</a>	I	
Hydrant Use Permit	I	RMC 13.16.020
International Fire Code Permit	I	RMC 15.06
<a href="#">Master Planned Development</a> See RZC <a href="#">21.76.070.P</a>	II, III, IV or V	
Mechanical Permit	I	RMC 15.14
<a href="#">Plat</a> Alteration	V	
Plat Vacation	V	
Plumbing Permit	I	RMC 15.16
<a href="#">Preliminary Plat</a>	III	
Reasonable Use Exception See RZC <a href="#">21.76.070.U</a>	I, II, III, IV or V	
<a href="#">Right-of-Way</a> Use Permit	I	RMC 12.08
Sewer Permit	I	RMC 13.04
Permit Type	Process Type	RMC Section (if applicable)
Shoreline Conditional Use Permit	III	
Shoreline Exemption	I	
Shoreline Substantial Development Permit	II	
Shoreline Variance	III	
Short Plat	II	

<a href="#">Sign</a> Permit/Program	I	
<a href="#">Site</a> Plan Entitlement	II	
Special Event Permit	I	RMC 10.60
<a href="#">Structure</a> Movement Permit I-IV	I	RMC 15.22
<a href="#">Temporary Use</a> Permit (Long-Term)	V	
Temporary Use Permit (Short-Term)	I	
<a href="#">Tree Removal</a> Permit	I	
Variance	III	
Water Permit	I	RMC 13.08
Willows Rose Hill Demonstration Project	III	
<a href="#">Wireless Communication Facility Permit</a> I	I	
Wireless Communication Facility Permit II	II	
Zoning Code Amendment-Zoning Map (consistent with Comprehensive Plan)	IV	
Zoning Code Amendment (text)	VI	
Zoning Code Amendment (that requires a Comprehensive Plan Amendment)	VI	

- D. **Permits and Actions Not Listed.** If a permit or land use action is not listed in the table in RZC 21.76.050.C, *Classification of Permits and Decisions*, the [Administrator shall](#) make a determination as to the appropriate review procedure based on the most analogous permit or land use action listed.
- E. **Consolidated Permit and Appeal Process.**
- Where this Code requires more than one land use permit for a given development, all permit applications (except Type I applications) may be submitted for review collectively according to the consolidated review process established by this section.
  - Where two or more land use applications for a given development are submitted for consolidated review, the review shall be conducted using the highest numbered process type applicable to any of the land use applications, provided that each land use application shall only be subject to the relevant decision criteria applicable to that particular [development application](#). For example, a development proposal that includes a Type II application and a Type III application shall be reviewed using the Type III process, but the Type II application shall be decided based on the relevant decision criteria applicable to the Type II application. If two or more land use applications are consolidated for review, the highest application review and decision timeframe as outlined within RZC [21.76.040.D](#) shall apply.
  - When the consolidated process established by this section is used, the [City](#) shall issue single, consolidated notices, staff reports, and decision documents encompassing all of the land use applications under review. Except as provided in subsection E.5 below, the applications shall be considered in a single, consolidated open record public hearing and shall be subject to no more than one consolidated [closed record appeal](#).
  - Where a development requires more than one land use permit but the [applicant](#) elects not to submit all applications for consolidated review, applications may be submitted and processed sequentially, provided that the permit subject to the highest numbered process type must be submitted and obtained first, followed by the other permits in sequence from the highest numbered type to the lowest.

5. Where a development proposal requires a zoning map amendment, the zoning map amendment must be considered and approved by the Hearing Examiner and City Council before any hearing is held or decision is made on any related application for a conditional use permit, [subdivision](#), variance, master planned development, site plan entitlement, or other similar quasi-judicial or administrative action. This subsection is intended to be a “procedural requirement” applicable to such actions as contemplated by RCW 58.17.070.
6. All appeals of project permit decisions for a single project shall be consolidated and heard together in a single appeal, [using the highest level appeals process](#), except for appeals of environmental Determinations of Significance. Where a Determination of Significance (DS) is appealed, the appeal shall be heard by the Hearing Examiner using the Type II review process prior to any consideration of the underlying application. Where a Determination of Non-Significance (DNS) or the adequacy of an Environmental Impact Statement (EIS) is appealed, the hearing on the appeal shall be consolidated with any open record public hearing to be conducted on the underlying application.

**F. Type I Review.**

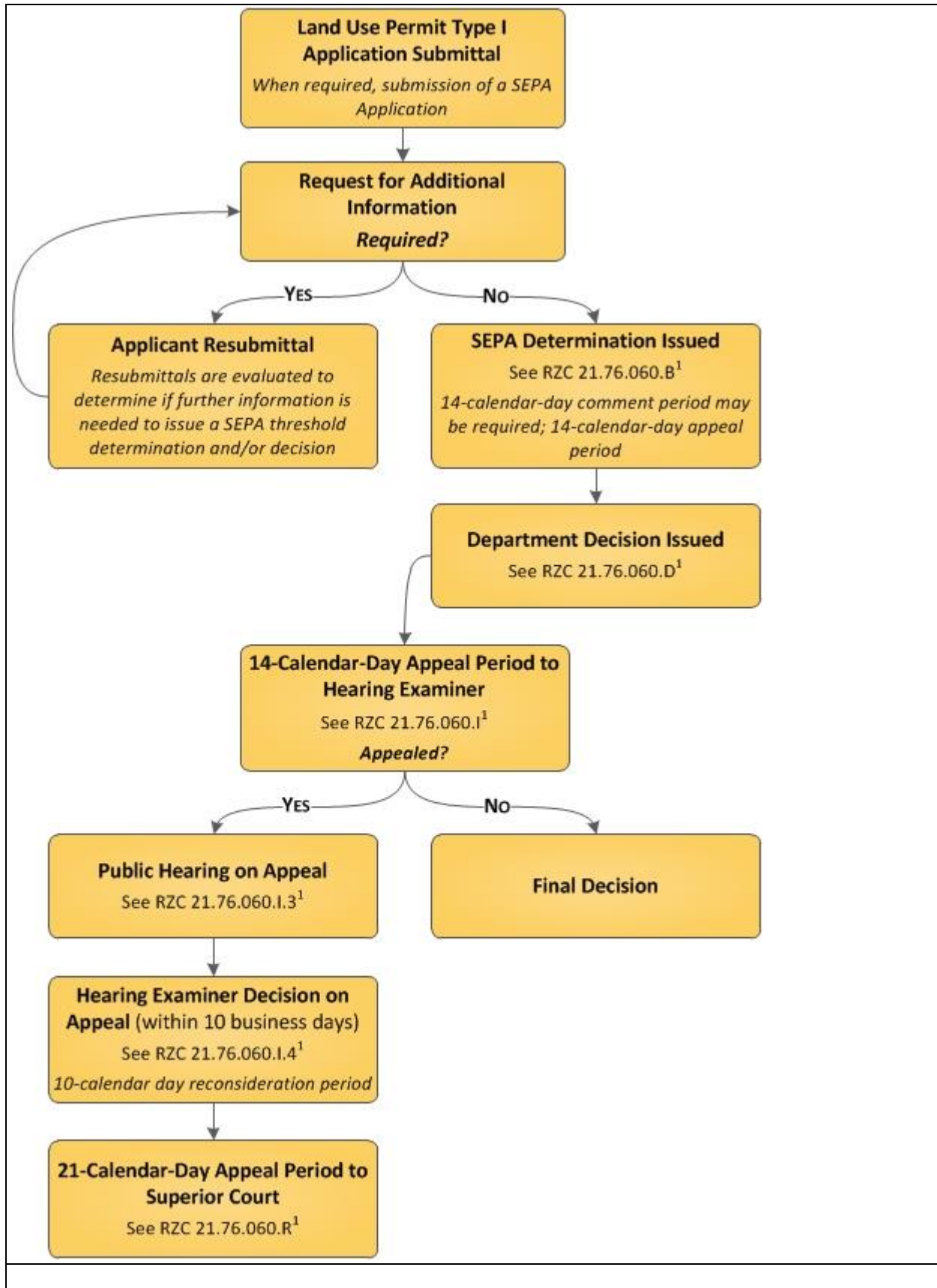
1. Overview of Type I Review. A Type I process is an administrative review and decision by the appropriate department director or designee. These are applications which are categorically exempt from review under the [State Environmental Policy Act \(SEPA\)](#) or permits for which environmental review has been completed in connection with another application. Appeals of Type I decisions are made to the Hearing Examiner in an [open record hearing](#). Appeal decisions of the Hearing Examiner may be appealed to the King County Superior Court. Type I reviews are exempt from the procedures of RZC [21.76.040](#), *Time Frames for Review*.
2. Process Flow Chart. The flow chart below in Figure 21.76.050A depicts the process that will be used to review a typical Type I land use permit. The process may vary for [individual](#) permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC [21.76.060](#), *Process Steps and Decision Makers*.

Figure Notes:

1. Link to RZC [21.76.060](#)

**Figure 21.76.050A**

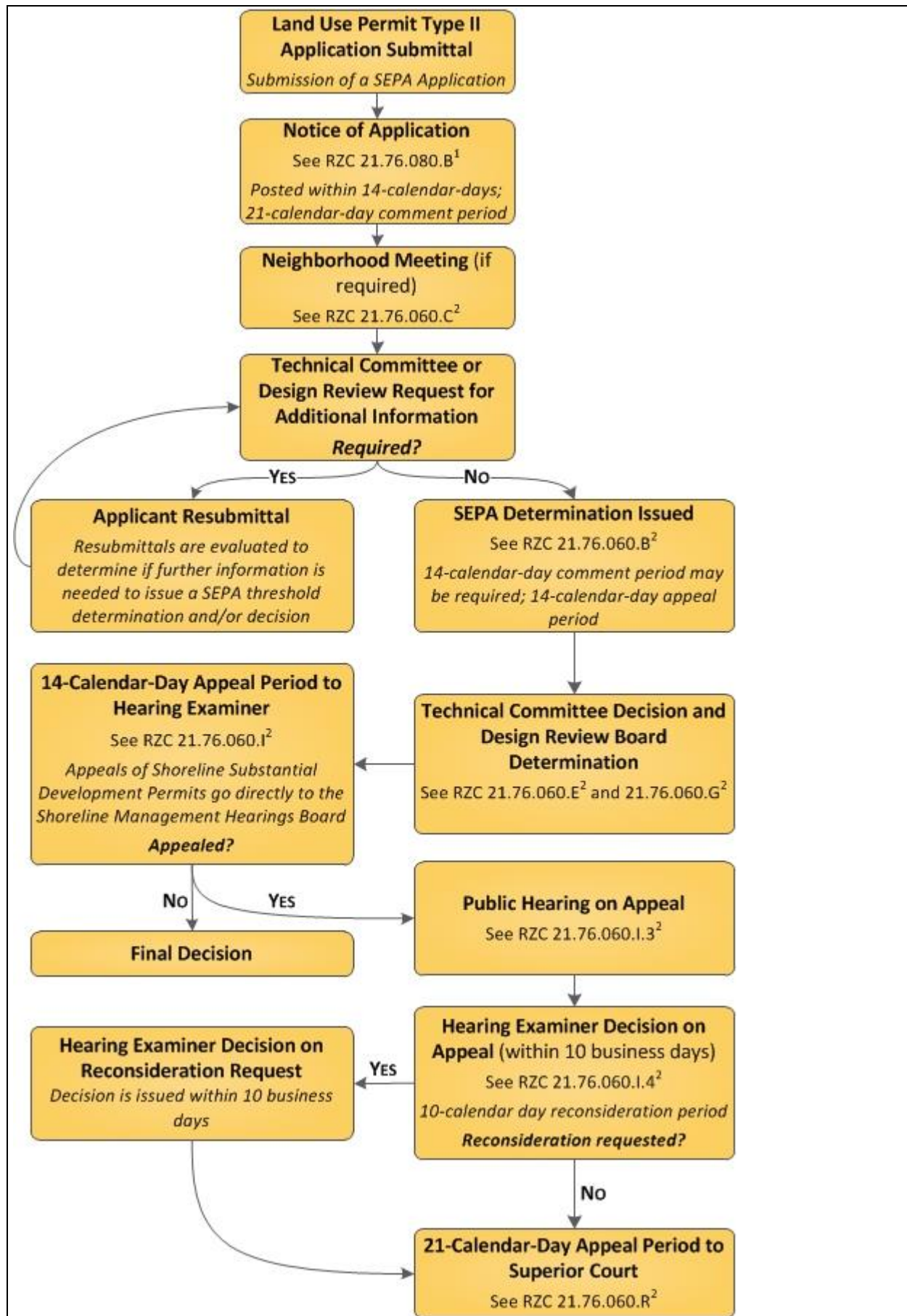
**Flow Chart for Type I Process**



**G. Type II Review.**

1. Overview of Type II Review. A Type II process is an administrative review and decision by the Technical Committee and, when required, by the Design Review Board or the Landmarks and Heritage Commission. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. Except for Certificates of Appropriateness related to historic structures, public notification is provided at the application and decision stages of review. Environmental review is conducted, when required. Appeals of Type II decisions are made to the Hearing Examiner in an open record hearing. Appeal decisions of the Hearing Examiner may be appealed to the King County Superior Court.
2. Process Flow Chart. The flow chart below in Figure 21.76.050B generally depicts the process that will be used to review a typical Type II land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC [21.76.060](#), *Process Steps and Decision Makers*, and RZC [21.76.080](#), *Notices*.

**Figure 21.76.050B**  
**Flow Chart for Type II Process**



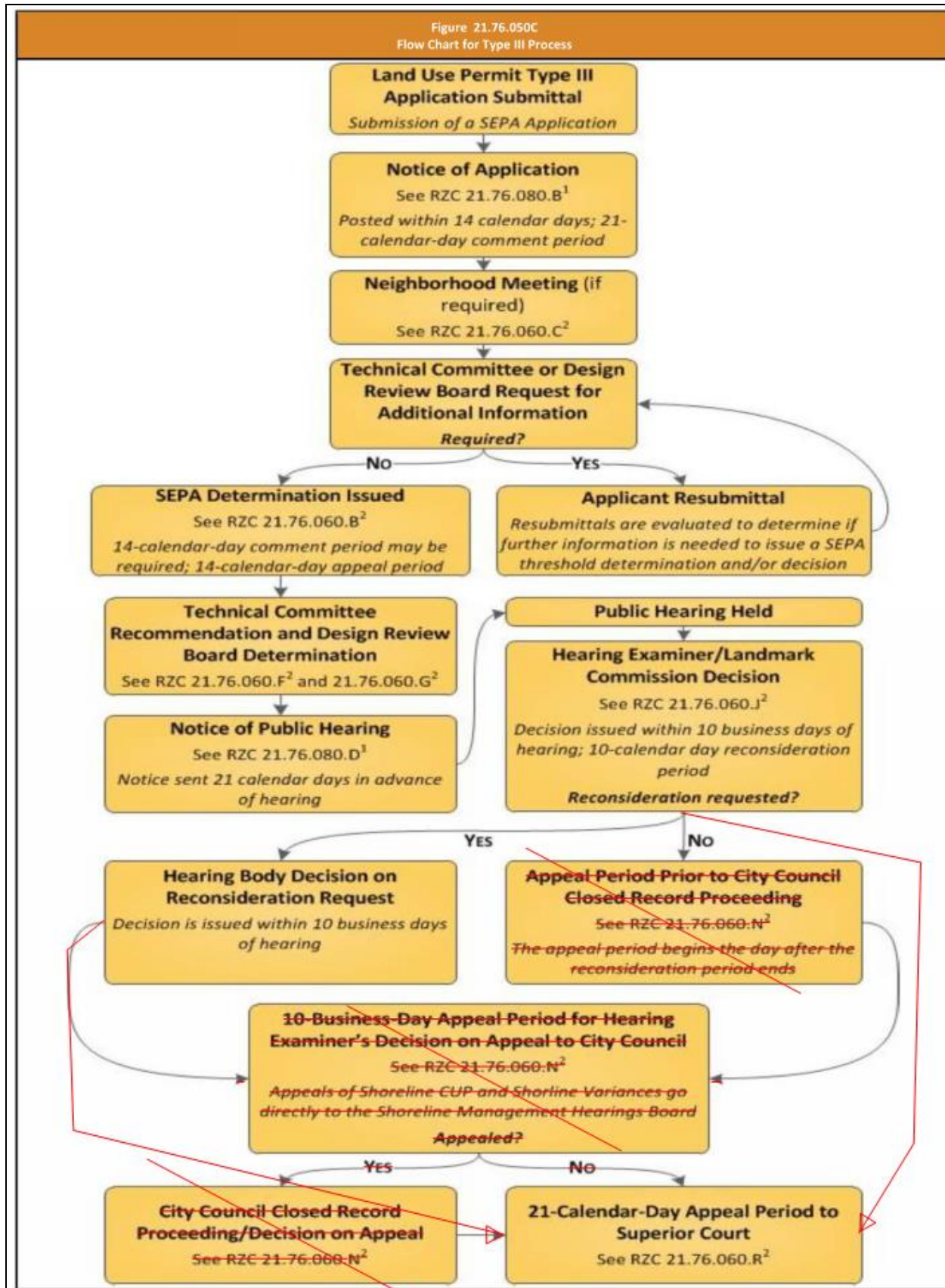
## Figure Notes:

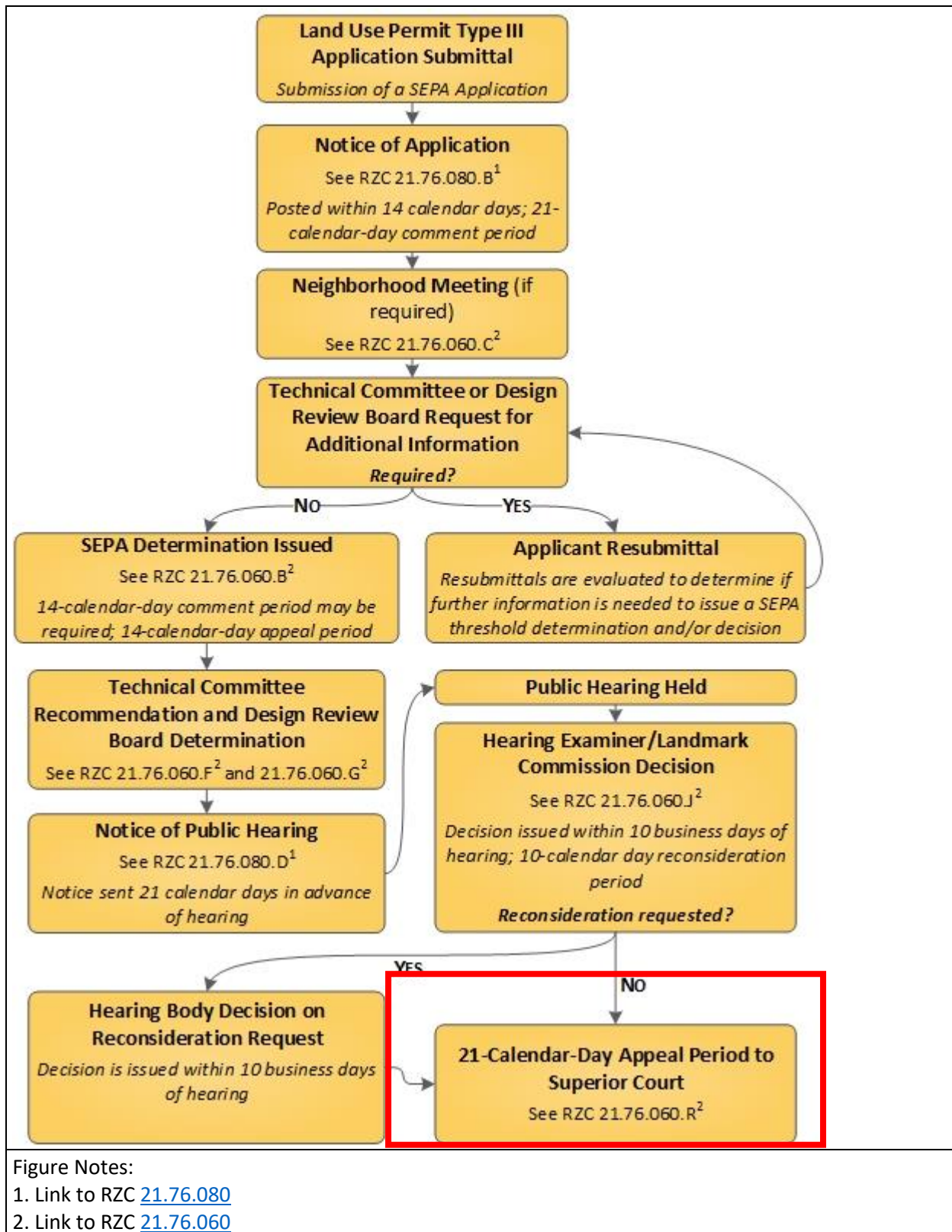
1. Link to RZC 21.76.080
2. Link to RZC 21.76.060

**H. Type III Review.**

1. Overview of Type III Review. A Type III process is a quasi-judicial review and decision made by the Hearing Examiner or, in the case of Level III Certificates of Appropriateness on which a hearing is to be held under 70-090(4)(b) and in the case of Historic Landmark Designations for removal of Historic Landmark Designations, by the Landmarks and Heritage Commission. Environmental review is conducted when required. The Hearing Examiner (or the Landmarks and Heritage Commission on the applications described in the preceding sentence) holds an open record public hearing on a Type III application after receiving a recommendation from the Technical Committee and, when required, the Design Review Board. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. Public notification is provided at the application, public hearing, and decision stages of application review. The Hearing Examiner (or the Landmarks and Heritage Commission on the applications described above) makes a decision after considering the recommendation of the Technical Committee and Design Review Board and the public testimony received at the open record public hearing. Decisions of the Hearing Examiner (or the Landmarks and Heritage Commission on the applications described above) are appealable to the **King County Superior Court** ~~City Council~~, which considers the appeal in a closed record appeal proceeding. ~~The City Council's decision may be appealed to the King County Superior Court.~~
2. Process Flow Chart. The flow chart below in Figure 21.76.050C generally depicts the process that will be used to review a typical Type III land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC [21.76.060](#), *Process Steps and Decision Makers*, and RZC [21.76.080](#), *Notices*.

**Figure 21.76.050C**  
**Flow Chart for Type III Process**





#### I. Type IV Review.

1. Overview of Type IV Review. A Type IV review is a quasi-judicial review and recommendation made by the Hearing Examiner and a decision made by the City

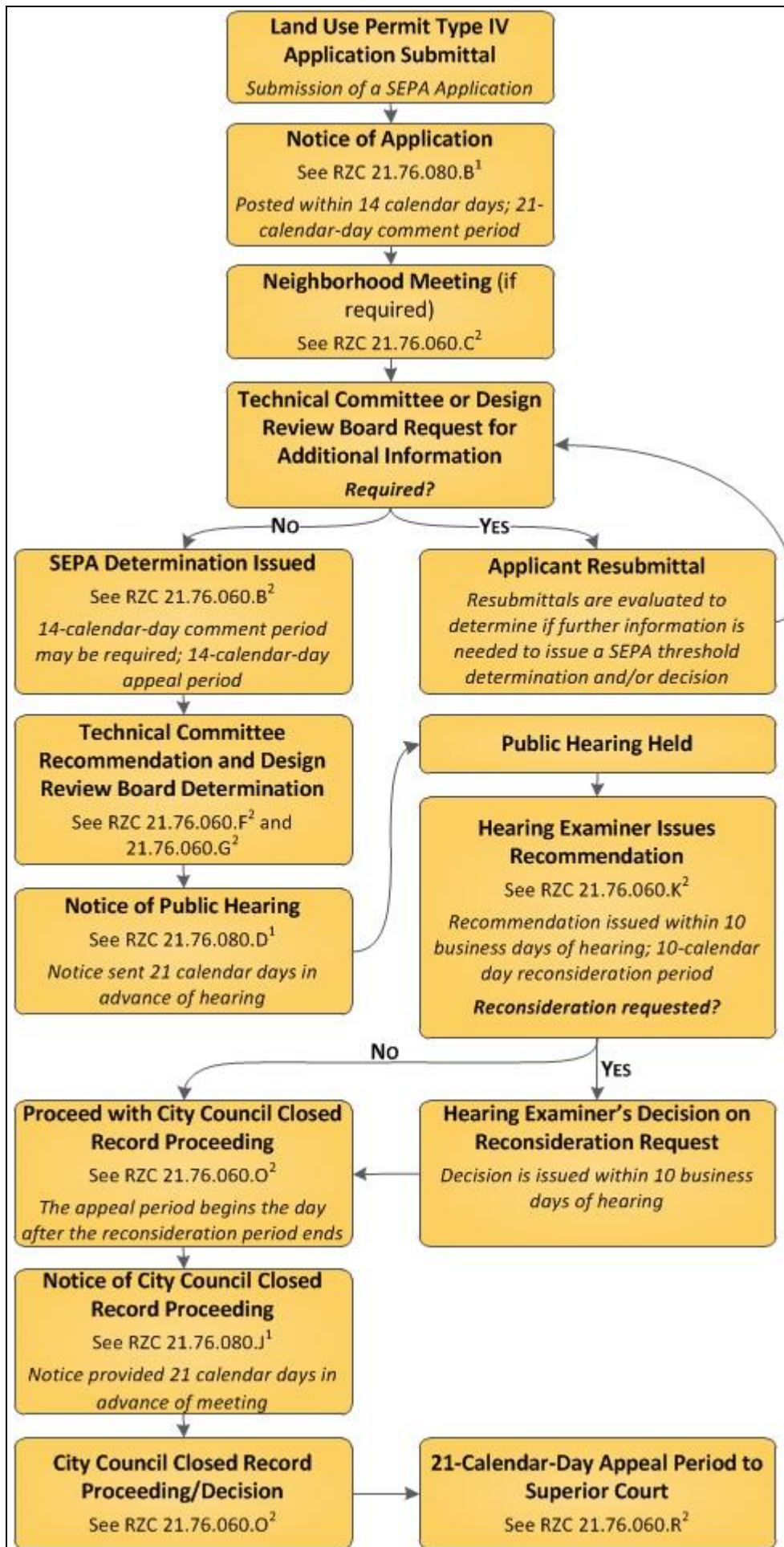
Council. Environmental review is conducted when required. At an open record public hearing, the Hearing Examiner considers the recommendation of the Technical Committee and, when required, the Design Review Board, as [well](#) as public testimony. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. The Hearing Examiner makes a recommendation to the City Council, which considers the recommendation in a closed record proceeding and makes a final decision. Public notification is provided at the application, public hearing, and decision stages of application review. There is no administrative appeal. The City Council's decision may be appealed to the King County Superior Court.

2. Process Flow Chart. The flow chart below in Figure 21.76.050D generally depicts the process that will be used to review a typical Type IV land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC [21.76.060](#), *Process Steps and Decision Makers*, and RZC [21.76.080](#), *Notices*.

Figure Notes:

1. Link to RZC [21.76.080](#)
2. Link to RZC [21.76.060](#)

**Figure 21.76.050D**  
**Flow Chart for Type IV Process**



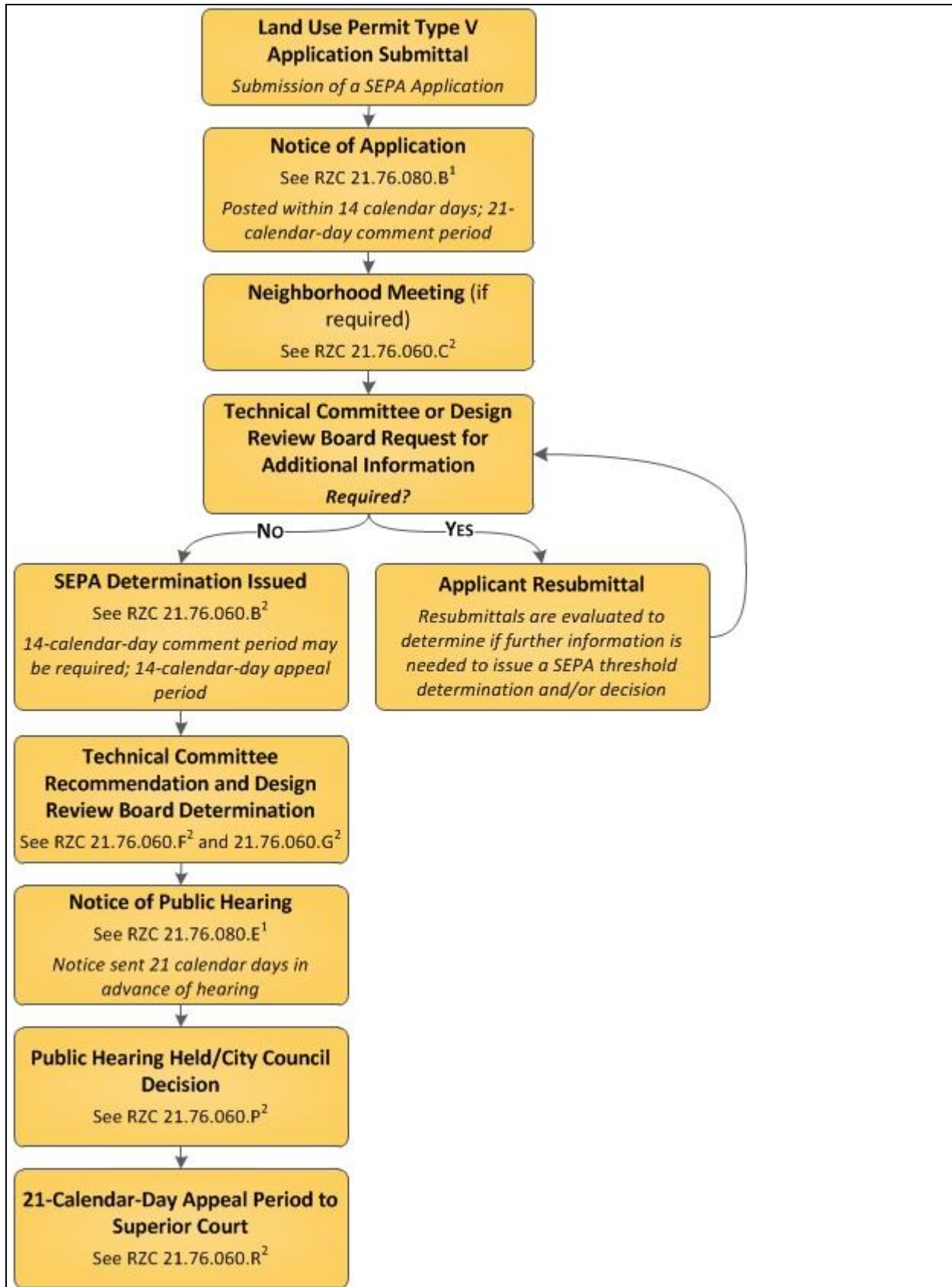
**J. Type V Review.**

1. Overview of Type V Review. A Type V review is a quasi-judicial review and decision made by the City Council. Environmental review is conducted when required. The Technical Committee (and Design Review Board, if required) makes a recommendation to the City Council. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. The City Council shall hold a public hearing on the application prior to making a decision. Public notification is provided at the application, public hearing, and decision stages of application review. There is no opportunity for an administrative appeal. Appeals of City Council decisions are made to King County Superior Court.
2. Process Flow Chart. The flow chart below in Figure 21.76.050E generally depicts the process that will be used to review a typical Type V land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC [21.76.060](#), *Process Steps and Decision Makers*, and RZC [21.76.080](#), *Notices*.

**Figure Notes:**

1. Link to RZC [21.76.080](#)
2. Link to RZC [21.76.060](#)

**Figure 21.76.050E**  
**Flow Chart for Type V Process**



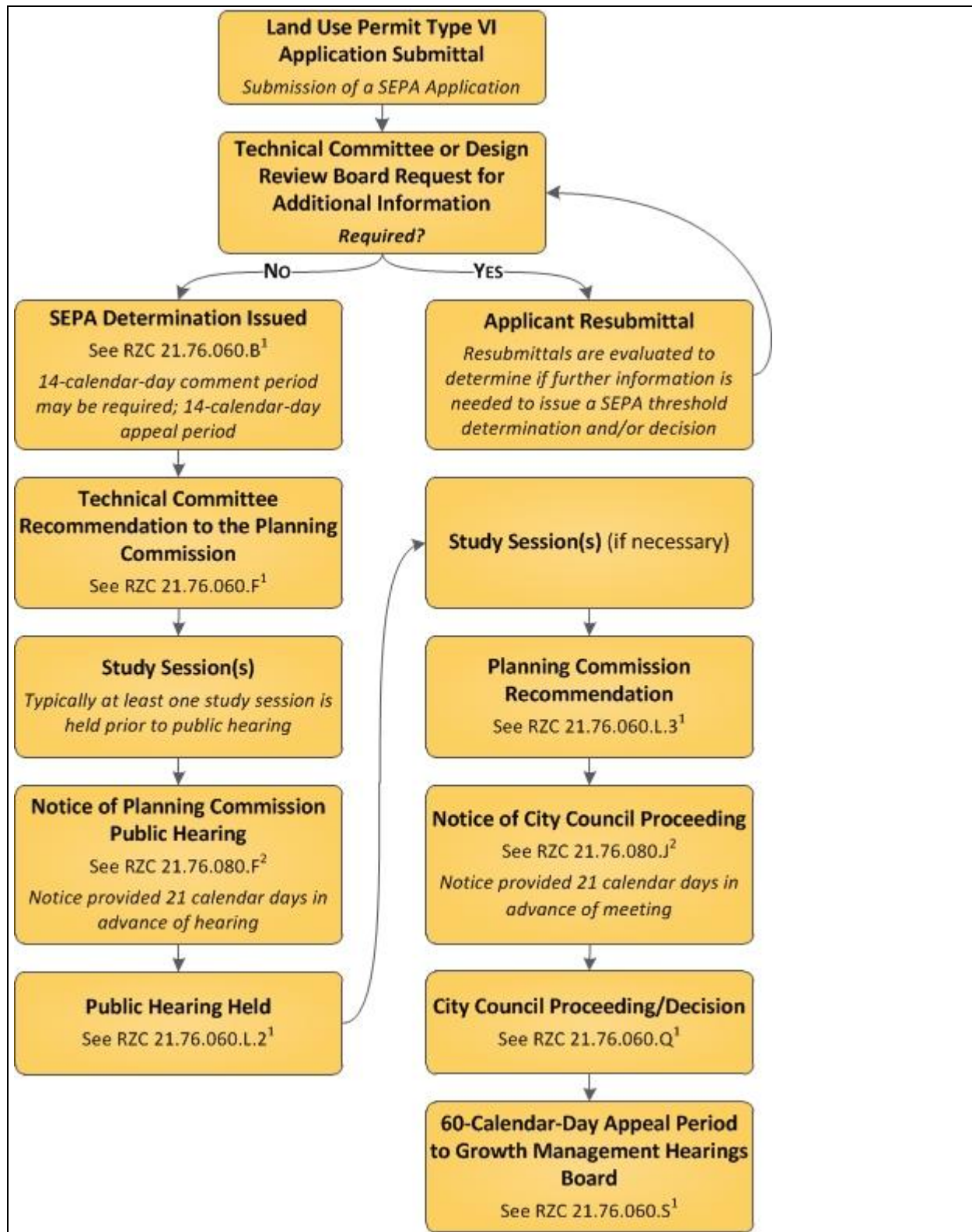
**K. Type VI Review.**

1. Overview of Type VI Review. A Type VI review is for legislative land use decisions made by the City Council under its authority to establish policies and regulations regarding future private and public development and management of public lands. Environmental review is conducted when required. The Planning Commission holds at least one open record public hearing and makes a recommendation to the City Council. The City Council may hold an additional public hearing or hearings at its option. The City Council makes a final decision. The City Council's decision may be appealed to the Central Puget Sound [Growth](#) Management Hearings Board. Type VI reviews are exempt from the procedures of RZC [21.76.040](#), *Time Frames for Review*.
2. Process Flow Chart. The flow chart below in Figure 21.76.050F generally depicts the process that will be used to review a typical Type VI land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC [21.76.060](#), *Process Steps and Decision Makers*, and RZC [21.76.080](#), *Notices*.

**Figure Notes:**

1. Link to RZC [21.76.060](#)
2. Link to RZC [21.76.080](#)

**Figure 21.76.050F**  
**Flow Chart for Type VI Process**



**RZC 21.76 Review Procedures****21.76.060 PROCESS STEPS AND DECISION MAKERS**

- A. **Purpose.** The purpose of this section is to provide an explanation of each of the procedural steps set forth in the process flow charts in RZC [21.76.050](#), *Permit Types and Procedures*.
- B. **Environmental Review Under the [State Environmental Policy Act \(SEPA\)](#).**
  1. All applications [shall](#) be reviewed under the [State Environmental Policy Act \(SEPA\)](#) unless categorically exempt under SEPA. The [City's](#) environmental procedures are set forth in [RZC 21.70](#), *State Environmental Policy Act (SEPA) Procedures*.
  2. Threshold Determinations. The [Administrator](#) shall issue the threshold determination after the minimum comment period for the Notice of Application and prior to the decision on the application. The threshold determination shall be mailed and posted in the same manner as the Notice of Application. The threshold determination shall also be sent to agencies with jurisdiction, if any, and the Washington State Department of Ecology. There is a 14-day comment period for certain threshold determinations as provided in WAC 197-11-340. Any comments received shall be addressed in the [Technical Committee](#) decision or recommendation on the application, which shall include the final threshold determination (DNS or DS) issued by the Administrator.
  3. Optional DNS Process. For projects where there is a reasonable basis for determining that significant adverse impacts are unlikely, a preliminary DNS [may](#) be issued with the Notice of Application. The comment period for the DNS and the Notice of Application shall be combined. The Notice of Application shall state that the [City](#) expects to issue a DNS for the proposal and that this may be the only opportunity to comment on the environmental impacts of the proposed project. After the close of the comment period, the Technical Committee shall review any comments and issue the final DNS in conjunction with its decision or recommendation on the application.
  4. Determination of Significance. If a Determination of Significance (DS) is issued, and an Environmental Impact Statement (EIS) is required, the EIS will be completed prior to issuance of the Technical Committee/Design Review Board decision or recommendation. If the requirement to prepare an EIS or a Supplemental EIS is appealed by the [applicant](#), that appeal must be resolved prior to issuance of the Technical Committee/Design Review Board decision or recommendation.
- C. **Neighborhood Meetings.**
  1. The purpose of neighborhood meetings is to:
    - a. Provide a forum for interested [individuals](#) to meet with the applicant to learn about the proposal and the applicable process early in the review process;
    - b. Provide an opportunity for meaningful public input;
    - c. Provide a dialogue between the applicant, citizens, and City whereby issues can be identified and discussed; and
    - d. Provide an opportunity for applicants to address concerns generated by individuals and incorporate possible changes.
  2. Required Neighborhood Meeting: A neighborhood meeting shall be required for the following:
    - a. [Essential Public Facility](#).
    - b. [Master Planned Development](#).
    - c. [Preliminary Plat](#).
    - d. [Short plats](#) that meet any of the following criteria:
      - i. propose three or more [lots](#).
      - ii. have [critical areas](#) on-site, or

- iii. are forested (75 percent [tree](#) canopy).
  - e. As otherwise required within the RZC.
  - f. In addition, the Technical Committee may require a neighborhood meeting on any Type III, IV or V application.
- 3. Where a neighborhood meeting is required, it shall be conducted by the applicant within 45 days of the termination of the Notice of Application comment period. The applicant shall notify the City of the date and time of the meeting. At least one representative from City staff shall be in attendance. The applicant shall mail notice of the neighborhood meeting to the same individuals to whom notice is required for the Notice of Application, a minimum of 21 days in advance of the meeting. The applicant shall provide the City with an affidavit of mailing. The neighborhood meeting shall be required to take place prior to the Technical Committee decision or recommendation. In certain circumstances, the Technical Committee may choose to hold the neighborhood meeting, in which case the City shall mail the notice of neighborhood meeting as described above. A sign-in sheet shall be provided at the meetings, giving attendees the option of establishing themselves as a [party of record](#).
- 4. Additional Neighborhood Meetings. In order to provide an opportunity for applicants to address concerns generated by interested parties, applicants are encouraged to hold an additional neighborhood meeting (or meetings) to provide interested parties with additional information, proposed changes to plans, or provide further resolution of issues. If the applicant holds additional meetings, there shall be no specific requirements for notice or City attendance. However, the City shall make effort to attend meetings where appropriate and when the applicant has notified the City that additional meetings are taking place. Any persons attending additional neighborhood meetings who have not established themselves as a party of record, and who wish to do so, must contact the City directly.

**D. Director Decisions on Type I Reviews.**

- 1. Type I Decision Makers. Decisions on Type I applications are made by the appropriate department director or designee.
- 2. Decision Criteria. The decision of the department director shall be based on the criteria for the application set forth in this code, or in the applicable uniform or international code in the case of [building](#) and fire-related permits. The decision shall include any conditions necessary to ensure consistency with the applicable [development](#) regulations. The department director may consult with the Technical Committee, the Design Review Board, or the Landmarks and Heritage Commission on any Type I application, but the final decision-making authority on such applications remains with the department director.
- 3. Decision. A written record of the director's decision shall be prepared in each case and may be in the form of a staff report, letter, the permit itself, or other written document indicating approval, approval with conditions, or denial. The decision shall be mailed as provided in RZC [21.76.080.G](#), *Notice of Final Decision*. See RZC [21.68.200.C.7.a](#) for decisions on Shoreline Exemptions.
- 4. Appeal. Type I decisions may be appealed to the Hearing Examiner as provided in RZC [21.76.060.I](#), *Appeals to Hearing Examiner on Type I and II Permits*. All decisions are final upon expiration of the appeal period or, if appealed, upon the date of issuance of the Hearing Examiner's final decision on the appeal. Appeal decisions of the Hearing Examiner may be appealed to the King County Superior Court as provided RZC [21.76.060.M](#).

**E. Technical Committee Decisions on Type II Reviews.**

1. **Decision.** Decisions on Type II applications are made by the Technical Committee. The decision of the Technical Committee shall be based on the criteria for the application set forth in the RZC, and shall include any conditions necessary to ensure consistency with the applicable development regulations.
2. **Record.** A written record of the Technical Committee's decision shall be prepared in each case and may be in the form of a staff report, letter, the permit itself, or other written document indicating approval, approval with conditions, or denial. All parties of record shall be notified of the final decision.
3. **Design Review Board and Landmarks and Heritage Commission Review.** When design review or review of a Certificate of Appropriateness is required, the decision of the Design Review Board or Landmarks and Heritage Commission shall be included with the Technical Committee decision.
4. **Appeal.** Type II decisions (except shoreline permits) may be appealed to the Hearing Examiner as provided in RZC 21.76.060.I, *Appeals to Hearing Examiner on Type I and Type II Permits*. All decisions are final upon expiration of the appeal period or, if appealed, upon issuance of the Hearing Examiner's final decision on the appeal. Appeal decisions of the Hearing Examiner may be appealed to the King County Superior Court as provided in RZC 21.76.060.M.

**F. Technical Committee Recommendations on Type III, IV, V and VI Reviews.** The Technical Committee shall make a recommendation to the Hearing Examiner on all Type III and Type IV reviews, a recommendation to the City Council on all Type V Reviews, and a recommendation to the Planning Commission for all Type VI reviews. The Technical Committee's recommendation shall be based on the decision criteria for the application set forth in the RZC, and shall include any conditions necessary to ensure consistency with the City's development regulations. Based upon its analysis of the application, the Technical Committee may recommend approval, approval with conditions or with modifications, or denial. A written report of the Technical Committee's recommendation shall be prepared and transmitted to the Hearing Examiner along with the recommendation of the Design Review Board and/or Landmarks and Heritage Commission where applicable.

**G. Design Review Board Determinations on Type II, III, IV and V Reviews.** When design review is required by the Design Review Board, the Design Review Board shall consider the application at an open public meeting of the Board in order to determine whether the application complies with Article III, Design Standards. The Design Review Board's determination shall be given the effect of a final decision on design standard compliance for Type II applications, shall be given the effect of a recommendation to the Hearing Examiner on a Type III or Type IV application, and the effect of a recommendation to the City Council on a Type V application. The Design Review Board's determination shall be included with the written report that contains the Technical Committee recommendation or decision. The Design Review Board's determination may be appealed in the same manner as the decision of the applicable decision maker on the underlying [land use permit](#).

**H. Landmarks and Heritage Commission Determination/Decisions.** The Landmarks and Heritage Commission as specified below shall review all applications requiring a Level II or Level III Certificate of Appropriateness and all applications for [Historic Landmark](#) Designation.

1. When review of a Level II Certificate is required, the Redmond Landmarks and Heritage Commission shall consider the application at an open public meeting using the review process for the application in RZC [21.76.050.C](#) in order to determine whether the application complies with the criteria set forth in [RZC 21.30](#), *Historic and Archeological*

[Resources](#), and King County Code Chapter 20.62. Based upon its analysis of the application, the Landmarks and Heritage Commission may approve the application, approve it with conditions or modifications, or deny the application. The Landmarks and Heritage Commission's determination shall be included with the written report that contains the Technical Committee recommendation or decision. Conditions based on the Landmarks and Heritage Commission's determination may be appealed to the Hearing Examiner in the same manner as the Technical Committee decision.

2. When review of a Level II Certificate of Appropriateness requiring a public hearing (see RZC [21.30.050.D.2](#)) or review of a Level III Certificate of Appropriateness is required, the Redmond Landmarks and Heritage Commission shall hold an open record public hearing on the application using a Type III process as provided in RZC 21.76.060.J. The Landmarks and Heritage Commission shall determine whether the application complies with the criteria set forth in RZC [21.30.050.E](#) of the RZC. Based upon its analysis of the application, the Landmarks and Heritage Commission may approve the application, approve it with conditions or modifications, or deny the application. The decision of the Landmarks and Heritage Commission may be appealed to the [King County Superior Court](#). ~~Redmond City Council in a closed record appeal proceeding pursuant to RZC 21.76.060.N.~~
  3. The King County Landmarks Commission, acting as the Redmond Landmarks and Heritage Commission, shall review and make determinations on all applications for Historic Landmark Designation or [removal](#) of a Historic Landmark Designation. When the King County Landmarks Commission reviews a Historic Landmark Designation nomination or the removal of a Historic Landmark Designation, the King County Landmarks Commission will follow the procedures set forth in King County Code Chapter 20.62, including the holding of an [open record hearing](#) on the application. Applications shall be decided based on the criteria in King County Code Chapter 20.62. The decision of the King County Landmarks Commission on a Historic Landmark Designation or removal of a Historic Landmark Designation shall be a final decision appealable to the [King County Superior Court](#). ~~Redmond City Council in a closed record appeal proceeding pursuant to RZC 21.76.060.N.~~
- I. Appeals to Hearing Examiner on Type I and Type II Permits.**
1. Overview. For Type I and Type II permits, the Hearing Examiner acts as an appellate body, conducting an open record appeal hearing when a decision of a department director (Type I) or the Technical Committee (Type II) is appealed. The Hearing Examiner's decision on the appeal may be further appealed to the King County Superior Court.
  2. Commencing an Appeal. Type I and II decisions may be appealed as follows:
    - a. Who May Appeal. Any party of record may appeal the decision.
    - b. Form of Appeal. A person appealing a Type I or II decision must submit a completed appeal form which sets forth:
      - i. Facts demonstrating that the person is adversely affected by the decision;
      - ii. A concise statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria;
      - iii. The specific relief requested; and
      - iv. Any other information reasonably necessary to make a decision on the appeal.

- c. Time to Appeal. The written appeal and the appeal fee, if any, must be received by the Redmond City Clerk's [Office](#) no later than 5:00 p.m. on the fourteenth day following the date the decision of the Technical Committee/Design Review Board Decision is issued.
    - d. Shoreline Permit Appeals must be submitted to the Shoreline Hearings Board. See RZC [21.68.200](#).C.6.b.
  3. Hearing Examiner Public Hearing on Appeal. The Hearing Examiner shall conduct an open record hearing on a Type I or Type II appeal. Notice of the hearing shall be given as provided in RZC [21.76.080](#).H. The appellant, applicant, owner(s) of property subject to the application, and the City shall be designated parties to the appeal. Only designated parties may participate in the appeal hearing by presenting testimony or calling witnesses to present testimony and by providing exhibits. Interested persons, groups, [associations](#), or other entities who have not appealed may participate only if called by one of the parties to present information, provided that the Examiner may allow nonparties to present relevant testimony if allowed under the Examiner's rules of procedure. 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.
  4. Hearing Examiner Decision on Appeal. Within 10 business days after the close of the record for the Type I or II appeal, the Hearing Examiner shall issue a written decision to grant, grant with modifications, or deny the appeal. The decision on appeal shall be mailed to all parties of record. The Hearing Examiner shall accord substantial weight to the decision of the department director (Type I) or Technical Committee (Type II). The Hearing Examiner may grant the appeal or grant the appeal with modifications if the Examiner determines that the appellant has carried the burden of proving that the Type I or II decision is not supported by a preponderance of the evidence or was clearly erroneous.
  5. Request for Reconsideration. Any designated party to the appeal who participated in the hearing may file a written request with the Hearing Examiner for reconsideration within 10 business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure or fact. The Hearing Examiner shall act within 10 business days after the filing of the request for reconsideration by either denying the request or issuing a revised decision. The decision on the request for reconsideration and/or issuing a revised decision shall be sent to all parties of record.
  6. Appeal. A Hearing Examiner Decision on a Type I or Type II appeal may be appealed to the King County Superior Court as provided in RZC 21.76.060.M.
- J. Hearing Examiner and Landmarks and Heritage Commission Final Decisions on Type III Reviews.**
1. Overview. For Type III reviews, the Hearing Examiner (or the Landmarks and Heritage Commission on Level II Certificates of Appropriateness that require a public hearing under RZC [21.30.050](#).D.2 and on Level III Certificates of Appropriateness) makes a final decision after receiving the recommendation of the Technical Committee and holding an open record public hearing. The Hearing Examiner's (or Landmarks and Heritage Commission's) decision may be appealed to the [King County Superior Court](#) ~~City Council and considered by the Council in a closed record appeal proceeding.~~
  2. Public Hearing. The Hearing Examiner (or Landmarks and Heritage Commission on the applications specified above) shall hold an open record public hearing on all Type III permits. The open record public hearing shall proceed as follows:

- a. Notice of the hearing shall be given as provided in RZC [21.76.080.D](#).
  - b. Any person may participate in the Hearing Examiner's (or Landmarks and Heritage Commission's) public hearing on the Technical Committee's recommendation by submitting written comments prior to or at the hearing, or by providing oral testimony and exhibits at the hearing.
  - c. The [Administrator](#) shall transmit to the Hearing Examiner (or Landmarks and Heritage Commission) a copy of the department file on the application, including all written comments received prior to the hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application and Notice of SEPA Threshold Determination) have been met.
  - d. The Hearing Examiner (or Landmarks and Heritage Commission) shall create a complete record of the public hearing, including all exhibits introduced at the hearing and an electronic sound recording of each hearing.
3. Authority. The Hearing Examiner (or Landmarks and Heritage Commission) shall approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the RZC. The applicant bears the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner (or Landmarks and Heritage Commission) shall deny the application.
4. Conditions. The Hearing Examiner (or Landmarks and Heritage Commission) may include conditions to ensure a proposal conforms to the relevant decision criteria.
5. Decision. The Hearing Examiner (or Landmarks and Heritage Commission) shall issue a written report supporting the decision within 10 business days following the close of the record. The report supporting the decision shall be mailed to all parties of record. The report shall contain the following:
  - a. The decision of the Hearing Examiner (or Landmarks and Heritage Commission); and
  - b. Any conditions included as part of the decision; and
  - c. Findings of fact upon which the decision, including any conditions, was based and the conclusions derived from those facts; and
  - d. A statement explaining the process to appeal the decision of the Hearing Examiner (or Landmarks and Heritage Commission) to the [King County Superior Court](#) ~~City Council~~.
6. Request for Reconsideration. Any party of record may file a written request with the Hearing Examiner (or Landmarks and Heritage Commission) for reconsideration within 10 business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure, law, or fact. No new evidence may be submitted in support of or in opposition to a request for reconsideration. The Hearing Examiner shall act within 10 business days after the filing of the request for reconsideration by either denying the request or issuing a revised decision. The decision on the request for reconsideration and/or the revised decision shall be sent to all parties of record.
7. Appeal. Except for Shoreline Conditional Use Permits, [Shoreline Substantial Development Permits](#), or Shoreline Variances, a Hearing Examiner or Landmarks and Heritage Commission decision may be appealed to the [King County Superior Court](#) ~~City Council as provided in RZC 21.76.060.M~~. Shoreline Conditional Use Permits, [Shoreline](#)

**Substantial Development Permits**, and Shoreline Variances may be appealed to the Shoreline Hearings Board as provided **for** in **RZC 21.68.200.C.6.b and RZC 21.68.200.C.6.c**.

**K. Hearing Examiner Recommendations on Type IV Reviews.**

1. Overview. For Type IV reviews, the Hearing Examiner makes a recommendation to the City Council after receiving the recommendation of the Technical Committee and holding an open record public hearing. The City Council considers the Hearing Examiner's recommendation in a closed record proceeding.
2. Hearing Examiner Public Hearing. The Hearing Examiner shall hold an open record public hearing on all Type IV permits. The open record public hearing shall proceed as follows:
  - a. Notice of the hearing shall be given as provided in RZC [21.76.080.D](#).
  - b. Any person may participate in the Hearing Examiner's public hearing on the Technical Committee's recommendation by submitting written comments to the Technical Committee prior to the hearing, by submitting written comments at the hearing, or by providing oral testimony and exhibits at the hearing.
  - c. The Administrator shall transmit to the Hearing Examiner a copy of the department file on the application, including all written comments received prior to the hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application and Notice of SEPA Threshold Determination) have been met.
  - d. 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.
3. Hearing Examiner Authority. The Hearing Examiner shall make a written recommendation to approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the RZC. The applicant bears the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner shall make a recommendation to deny the application.
4. Conditions. The Hearing Examiner may include conditions in the recommendation to ensure a proposal conforms to the relevant decision criteria.
5. Recommendation. The Hearing Examiner shall issue a written report supporting the recommendation within 10 business days following the close of the record. The report shall contain the following:
  - a. The recommendation of the Hearing Examiner; and
  - b. Any conditions included as part of the recommendation; and
  - c. Findings of fact upon which the recommendation, including any conditions, was based and the conclusions derived from those facts.
6. Mailing of Recommendation. The [office](#) of the Hearing Examiner shall mail the written recommendation, bearing the date it is mailed, to each person included in the parties of record. The Administrator will provide notice of the Council meeting at which the recommendation will be considered to all parties of record.
7. Request for Reconsideration. Any party of record may file a written request with the Hearing Examiner for reconsideration within 10 business days of the date of the Hearing Examiner's recommendation. The request shall explicitly set forth alleged errors of procedure, law, or fact. No new evidence may be submitted as part of a request for

reconsideration. The Hearing Examiner shall act within 10 business days after the filing of the request for reconsideration by either denying the request or issuing a revised decision. The decision on the request for reconsideration and/or revised decision shall be sent to all parties of record.

8. All Hearing Examiner recommendations on Type IV permits shall be transmitted to the City Council for final action, as provided in RZC 21.76.060.O.

**L. Planning Commission Recommendations on Type VI Reviews.**

1. Overview. For Type VI proposals, the Planning Commission makes a recommendation to the City Council after holding at least one open record public hearing. The Planning Commission may also hold one or more study sessions prior to making the recommendation. The City Council considers the Planning Commission's recommendation and takes final action by ordinance.
2. Planning Commission Public Hearing. The Planning Commission shall hold at least one open record public hearing. The hearing shall proceed as follows:
  - a. Notice of the public hearing shall be given as provided in RZC [21.76.080.F](#).
  - b. Any person may participate in the public hearing by submitting written comment to the applicable department director prior to the hearing or by submitting written or making oral comments to the Planning Commission at the hearing. All written comments received by the applicable department director shall be transmitted to the Planning Commission no later than the date of the public hearing.
  - c. The Administrator shall transmit to the Planning Commission a copy of the department file on the application, including all written comments received prior to the hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application, as required; Notice of SEPA Determination) have been met.
  - d. The Planning Commission shall record and compile written minutes of each hearing.
3. Recommendation. The Planning Commission may recommend that the City Council adopt, or adopt with modifications, a proposal if it complies with the applicable decision criteria in RZC [21.76.070](#), *Land Use Actions and Decision Criteria*. In all other cases, the Planning Commission shall recommend denial of the proposal. The Planning Commission's recommendation shall be in writing and shall contain the following:
  - a. The recommendation of the Planning Commission; and
  - b. Any conditions included as part of the recommendation; and
  - c. Findings of fact upon which the recommendation, including any conditions, was based and the conclusions derived from those facts.
4. Additional Hearing on Modified Proposal. If the Planning Commission recommends a modification which results in a proposal not reasonably foreseeable from the notice provided pursuant to RZC [21.76.080.F](#), the Planning Commission shall conduct a new public hearing on the proposal as modified. The Planning Commission shall consider the public comments at the hearing in making its final recommendation.
5. 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.
6. All Planning Commission recommendations shall be transmitted to the City Council for final action as provided in RZC 21.76.060.Q.

**M. Appeals to King County Superior Court on Type I and II Reviews.**

1. Overview. Except for Shoreline Substantial Development Permits, all decisions of the Hearing Examiner on Type I and II appeals may be appealed to the King County Superior Court.
  2. Commencing an Appeal. Hearing Examiner decisions on Type I and II appeals permits above may be appealed to the King County Superior Court.
  3. The Hearing Examiner's decision on an appeal from the Applicable Department or Technical Committee on a Type I or II review is the final decision of the City and (except for Shoreline Conditional Use Permits and Shoreline Variances) may be appealed to the King County Superior Court as provided in RZC 21.76.060.R.
  4. Shoreline Substantial Development Permits and Shoreline Variances must be appealed to the Shoreline Hearings Board. See RZC [21.68.200.C.6.b](#) and [21.68.200.C.6.c](#).
- N. **Appeals ~~to the City Council~~ to King County Superior Court on Type III Reviews and from King County Landmark Commission Decisions.**
1. Overview. Except for, [Shoreline Substantial Development Permits](#), Shoreline Conditional Use Permits, and Shoreline Variances reviews may be appealed to [the King County Superior Court](#) ~~City Council~~. All decisions of the [Hearing Examiner](#), Redmond Landmarks and Heritage Commission on Level II Certificates of Appropriateness that require a public hearing, and Level III Certificates of Appropriateness, and all decisions of the King County Landmarks Commission on Historic Landmark Designations and removal of Historic Landmark Designations may be appealed to the [King County Superior Court](#) ~~City Council~~.
  2. Commencing an Appeal. [The decision of the Hearing Examiner, Redmond Landmarks and Heritage Commission or the King County Landmarks Commission listed above in \(N\)\(1\) are the final decision of the City and may be appealed to the King County Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter 36.70C. The petition for review must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040.](#) ~~Hearing Examiner decisions on Type III permits and decisions of the Redmond Landmarks and Heritage Commission and King County Landmarks Commission on matters described in subsection N.1 above may be appealed to the City Council as follows:~~
    - a. ~~Who May Appeal. The following parties may appeal:~~
      - i. ~~The applicant;~~
      - ii. ~~The owner(s) of property subject to the application;~~
      - iii. ~~City staff;~~
      - iv. ~~In the case of Type III decisions, any person who established themselves as a party of record prior to or at the public hearing; and~~
      - v. ~~In the case of decisions by the Redmond Landmarks and Heritage Commission or the King County Landmarks Commission specified in subsection N.1 above, any person who established themselves as a party of record prior to or at the public hearing.~~
    - b. ~~Form of Appeal. A person appealing a Type III decision by the Hearing Examiner or the decisions of the Redmond Landmarks Commission or King County Landmarks Commission described in subsection N.1 must submit a completed appeal form which sets forth:~~
      - i. ~~Facts demonstrating that the person is adversely affected by the decision;~~

- ii. ~~A concise statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria;~~
  - iii. ~~The specific relief requested; and~~
  - iv. ~~Any other information reasonably necessary to make a decision on the appeal~~
- c. ~~Time to Appeal. The written appeal and the appeal fee, if any, must be received by the Redmond City Clerk's Office no later than 5:00 p.m. 10 business days following the expiration of the Hearing Examiner's (or Landmarks and Heritage Commission's) reconsideration period.~~
- d. ~~City Council Decision on Appeal~~
  - i. ~~Criteria. The City Council may grant the appeal or grant the appeal with modifications if the appellant proves that the decision of the Hearing Examiner regarding Type III is not supported by a preponderance of the evidence or is clearly erroneous. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner or Landmarks and Heritage Commission.~~
  - ii. ~~Conditions. The City Council may impose conditions as part of the granting of an appeal or granting of an appeal with modification to ensure conformance with the criteria under which the application was made.~~
  - iii. ~~Findings. The City Council shall adopt findings and conclusions which support its decision on the appeal.~~
  - iv. ~~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. A tie vote shall be decided by the vote of the Mayor. Any other vote constitutes denial of the appeal.~~
  - v. ~~Notice of Decision on Appeal. Notice of Decision on Appeal shall be provided pursuant to RZC 21.76.080.G, Notice of Final Decision.~~
- 3. ~~Hearing Examiner decisions on a Type III review or the Redmond Landmarks and Heritage Commission or King County Landmarks Commission on those matters specified in subsection N.1 is the final decision of the City and (except for Shoreline Conditional Use Permits and) may be appealed to the City Council as provided in RZC 21.76.060.R. Shoreline Conditional Use Permits, Shoreline Substantial Development Permits, and Shoreline Variances must be appealed to the Shoreline Hearings Board. See RZC 21.68.200.C.6.b and 21.68.200.C.6.c~~
- 4. ~~Shoreline Conditional Use Permits must be appealed to the Shoreline Hearings Board. See RZC 21.68.200.C.6.b and 21.68.200.C.6.c~~
- O. **City Council Decisions on Type IV Reviews.**
  - 1. Overview. The City Council considers all Hearing Examiner recommendations on Type IV permits in a closed record proceeding. Decisions of the City Council on Type IV permits may be appealed to the King County Superior Court as provided in RZC 21.76.060.R.
  - 2. City Council Decision.
    - a. The Administrator shall transmit to the City Council a copy of the department file on the application, including all written comments received prior to and during the open record hearing and information reviewed by or relied upon by the Hearing Examiner. The file shall also include information to verify that the

requirements for notice to the public (Notice of Application, Notice of Public Hearing, and Notice of SEPA Determination) have been met.

- b. The City Council shall conduct a closed record proceeding. Notice of the closed record proceeding shall be provided as outlined within RZC [21.76.080.J](#), *Notice of Closed Record Appeal Proceeding on Type IV and City Council Proceeding on Type VI Reviews*. The City Council shall not accept new information, written or oral, on the application, but shall consider the following in deciding upon an application:
  - i. The complete record developed before the Hearing Examiner; and
  - ii. The recommendation of the Hearing Examiner.
- c. The City Council shall either:
  - i. Approve the application; or
  - ii. Approve the application with modifications; or
  - iii. Deny the application, based on findings of fact and conclusions derived from those facts which support the decision of the Council.
- d. Form of Decision. All City Council decisions on Type IV reviews shall be in writing. All decisions approving a Type IV application shall require passage of an ordinance. Decisions denying Type IV applications shall not require passage of an ordinance. Decisions on Type IV applications shall include:
  - i. Findings and Conclusions. The City Council shall include findings of fact and conclusions derived from those facts which support the decision of the Council, including any conditions, in the decision on the application. The City Council may, by reference, adopt some or all of the findings and conclusions of the Hearing Examiner.
  - ii. Conditions. The City Council may, based on the record, include conditions in any ordinance approving or approving with modifications any conditional use permit, essential public facilities permit, or master planned [development application](#) in order to ensure conformance with the approval criteria specified in the code or process under which the application was made. For Zoning Map Amendments that are consistent with the [Comprehensive Plan](#), conditions of approval shall not be included in the ordinance, but shall be included in a separate development agreement approved concurrently with the ordinance.
  - iii. Required Vote. The City Council shall adopt an ordinance which approves or approves with modifications the application by a majority vote of the membership of the City Council. Decisions to deny a Type IV application shall require a majority vote of those Council members present and voting.
  - iv. Notice of Decision. Notice of the City Council Decision shall be provided as outlined within RZC [21.76.080.G](#), *Notice of Final Decision*

**P. City Council Decisions on Type V Reviews.**

- 1. Overview. For Type V reviews, the City Council makes a final decision after receiving the recommendation of the Technical Committee and the recommendation of the Design Review Board (if required) and after holding an open record public hearing. The City Council's decision is appealable to the King County Superior Court as provided in RZC 21.76.060.R.
- 2. City Council Open Record Public Hearing.

- a. Notice. Notice of the City Council's open record public hearing shall be given as provided in RZC [21.76.080.E](#).
  - b. Transmittal of File. The Administrator shall transmit to the City Council a copy of the department file on the application, including all written comments received prior to the City Council open record public hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application, Notice of Public Hearing, and Notice of SEPA Determination) have been met.
  - c. Participation. Any person may participate in the City Council public hearing on the Technical Committee's recommendation by submitting written comments prior to the hearing or at the hearing by providing oral testimony and exhibits at the hearing. The Council shall create a complete record of the open record public hearing, including all exhibits introduced at the hearing and an electronic sound recording of the hearing.
- 3. City Council Decision.
  - a. Options. The City Council shall, at the open record public hearing, consider and take final action on each Type V application. The final action may take place in the same meeting as the public hearing. The City Council shall either:
    - i. Approve the application; or
    - ii. Approve the application with modifications or conditions; or
    - iii. Deny the application.
  - b. Form of Decision. The City Council's decision shall be in writing and shall include the following:
    - i. Findings and Conclusions. The City Council shall include findings of fact and conclusions derived from those facts which support the decision of the Council, including any conditions, in the decision approving the application or approving the application with modifications or conditions. The City Council may by reference adopt some or all of the findings and conclusions of the Technical Committee.
    - ii. Conditions. The City Council may, based on the record, include conditions in any ordinance approving or approving with modifications an application in order to ensure conformance with the approval criteria specified in the code or process under which the application was made.
    - iii. Notice of the Decision shall be provided as outlined within RZC Notice of the Decision shall be provided as outlined within RZC [21.76.080.G](#), *Notice of Final Decision*.

**Q. City Council Decisions on Type VI Reviews.**

- 1. Overview. The City Council shall consider and take action on all Planning Commission recommendations on Type VI reviews. The City Council may take action with or without holding its own public hearing. Any action of the City Council to adopt a Type VI proposal shall be by ordinance.
- 2. City Council Action.
  - a. Notice of City Council Proceeding. Notice shall be provided in accordance with RZC [21.76.080.J](#).
  - b. Initial Consideration by Council. The City Council shall consider at a public proceeding each recommendation transmitted by the Planning Commission. The Council may take one of the following actions:

- i. Adopt an ordinance adopting the recommendation or adopt the recommendation with modifications; or
  - ii. Adopt a motion denying the proposal; or
  - iii. Refer the proposal back to the Planning Commission for further proceedings, in which case the City Council shall specify the time within which the Planning Commission shall report back to the City Council with a recommendation; or
  - iv. Decide to hold its own public hearing to take further public testimony on the proposal or in order to consider making a modification of the proposal that was not within the scope of the alternatives that could be reasonably foreseen from the notice of the Planning Commission public hearing provided under RZC [21.76.080.F](#).
- c. Public Hearing and Decision. If the Council determines to hold its own public hearing, notice shall be provided; and the hearing shall be conducted in the same manner as was provided for the Planning Commission hearing on the proposal. After conducting the public hearing, the City Council shall render a final decision on the proposal as provided in subsection P.2.b.i or P.2.b.ii above.
- R. **Appeal of Council and Hearing Examiner Decisions on Types I - V Reviews to Superior Court.** The decision of the decision maker listed in RZC 21.76.050A for ~~The decision of the City Council or Hearing Examiner on~~ Type I - V permits or reviews is the final decision of the City and may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter 36.70C. No action to obtain judicial review may be commenced unless all rights of administrative appeal provided by the RZC or state law have been exhausted. Decision types which provide for no administrative appeal (Types III through VI) may be directly appealed to the King County Superior Court. The petition for review must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040.
- S. **Appeal of Council Decisions on Type VI Reviews to [Growth](#) Board.** The action of the City Council on a Type VI 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).
- T. **Appeal of Shoreline [Master Plan](#) Amendments and Decisions.** Appeal of Shoreline [Master Plan](#) amendments and decisions must be made to the Shoreline Hearings Board.  
([Ord. 2652](#); [Ord. 2709](#); [Ord 2889](#))



# EXHIBIT B

## STATE ENVIRONMENTAL POLICY ACT (SEPA) DETERMINATION OF SEPA EXEMPTION

ATTACHMENT E

For more information about this project visit [www.redmond.gov/landuseapps](http://www.redmond.gov/landuseapps)

**March 6, 2018**

**PROJECT NAME:** RZC 21.76 Zoning Code Amend

**SEPA FILE NUMBER:** SEPA-2018-00238

**PROJECT DESCRIPTION:**

Amend Redmond Zoning Code Section 21.76 to remove the City Council as the Administrative Appeal Body in the Type III Permit Process.

**PROJECT LOCATION:** City-wide

**SITE ADDRESS:**

**APPLICANT:** CITY OF REDMOND

**LEAD AGENCY:** City of Redmond

THE LEAD AGENCY FOR THIS PROPOSAL HAS DETERMINED THAT THE PROPOSAL IS CATEGORICALLY EXEMPT FROM THRESHOLD DETERMINATION AND EIS REQUIREMENTS PURSUANT TO 197-11-800 (19)(b)

**Table 21.76.050B**  
**Classification of Permits and Decisions**

Permit Type	Process Type	RMC Section (if applicable)
Administrative Interpretation	I	
Administrative Modification	II	
<u>Alteration</u> of Geologic Hazard Areas	III	
<u>Binding Site Plan</u>	II	
<u>Boundary Line Adjustment</u>	I	
<u>Building Permit</u>	I	RMC 15.06
Certificate of Appropriateness Level I	I	
Certificate of Appropriateness Level II	II	
Certificate of Appropriateness Level III	III	
Clearing and <u>Grading</u> Permit	I	RMC 15.24
<u>Comprehensive Plan</u> Map and/or Policy Amendment	VI	
Conditional Use Permit	III	
Development Agreement	V	
Electrical Permit	I	RMC 15.12
<u>Essential Public Facility</u>	IV	
Extended Public Area Use Permit	I	RMC 12.08
Flood Zone Permit	I	RMC 15.04
<u>Historic Landmark</u> Designation	III	
<u>Home Business</u>	I	
Hydrant Use Permit	I	RMC 13.16.020
International Fire Code Permit	I	RMC 15.06
<u>Master Planned Development</u> See RZC <a href="#">21.76.070.P</a>	II, III, IV or V	
Mechanical Permit	I	RMC 15.14
<u>Plat</u> Alteration	V	
Plat Vacation	V	
Plumbing Permit	I	RMC 15.16
<u>Preliminary Plat</u>	III	
Reasonable Use Exception See RZC <a href="#">21.76.070.U</a>	I,II, III, IV or V	
<u>Right-of-Way</u> Use Permit	I	RMC 12.08
Sewer Permit	I	RMC 13.04
Permit Type	Process Type	RMC Section (if applicable)
Shoreline Conditional Use Permit	III	
Shoreline Exemption	I	
Shoreline Substantial Development Permit	II	
Shoreline Variance	III	
Short Plat	II	
<u>Sign</u> Permit/Program	I	
<u>Site</u> Plan Entitlement	II	
Special Event Permit	I	RMC 10.60
<u>Structure</u> Movement Permit I-IV	I	RMC 15.22
<u>Temporary Use</u> Permit (Long-Term)	V	
Temporary Use Permit (Short-Term)	I	
<u>Tree Removal</u> Permit	I	
Variance	III	
Water Permit	I	RMC 13.08
Willows Rose Hill Demonstration Project	III	

## ATTACHMENT E

Wireless Communication Facility Permit I	I	
Wireless Communication Facility Permit II	II	
Zoning Code Amendment-Zoning Map (consistent with Comprehensive Plan)	IV	
Zoning Code Amendment (text)	VI	
Zoning Code Amendment (that requires a Comprehensive Plan Amendment)	VI	

CODE

**CITY OF REDMOND  
ORDINANCE NO. 2889**

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, AMENDING REDMOND ZONING CODE 21.76, REVIEW PROCEDURES, TO REMOVE THE CITY COUNCIL AS AN APPEALS BODY FROM TYPE I AND TYPE II PERMITS; AND REDUCING CONDITIONAL USE PERMITS FROM A TYPE IV TO A TYPE III REVIEW

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WHEREAS, the City of Redmond Zoning Code (RZC) Section 21.76 Review Procedures lists the administrative appeal bodies that are appropriate to each permit type; and

WHEREAS, RZC 21.76 identifies Type I and Type II permits as administrative review; and

WHEREAS, RZC 21.76 identifies Type III and Type IV permits as a quasi-judicial review; and

WHEREAS, appeals for administrative Type I and Type II permits are adjudicated by a Hearing Examiner, whose ruling may be appealed in a closed record hearing; and

WHEREAS, the City Council is the second appeal body for Type I and Type II permits; and

WHEREAS, the primary issues the Technical Committee considered for this amendment were to improve the permit review and appeals process and allow the City Council to be able to engage in discussion with community members; and

WHEREAS, a SEPA Determination of Non-Significance was issued on March 1, 2017; and

WHEREAS, a public hearing on the proposed amendments was held by the Planning Commission on March 22, 2017, and concluded on April 12, 2017.

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

Section 1.      Classification.      This ordinance is of a general and permanent nature and shall become a part of the City Code.

Section 2.      Amendment of Section 21.76 "Review Procedures".      Section 21.76, Review Procedures, is hereby amended as shown in the attached Exhibit 1.

Section 3.      Severability.      If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4.      Effective date.      This ordinance shall become effective five days after its publication, or publication of a summary thereof, in the city's official newspaper, or as otherwise provided by law.

ADOPTED by the Redmond City Council this 20<sup>th</sup> day of June,  
2017.

CITY OF REDMOND


  
JOHN MARCHIONE, MAYOR

ATTEST:

  
MICHELLE M. HART, MMC, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

  
JAMES HANEY, CITY ATTORNEY

FILED WITH THE CITY CLERK:	June 6, 2017
PASSED BY THE CITY COUNCIL:	June 20, 2017
SIGNED BY THE MAYOR:	June 23, 2017
PUBLISHED:	June 26, 2017
EFFECTIVE DATE:	July 1, 2017
ORDINANCE NO. 2889	

YES: BIRNEY, CARSON, MARGESON, MYERS, PAHDYE, SHUTZ, STILIN

## ARTICLE V REVIEW PROCEDURES

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### RZC 21.76 REVIEW PROCEDURES

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- A. **How to Use This Chapter.** This chapter sets forth the procedural steps for each of the six processes which the City of Redmond uses to review development applications. In navigating this chapter, the user should:
1. First, determine the application that is required for the development the user is interested in by either reviewing descriptions of the various permit types found in RZC 21.76.050, *Permit Types and Procedures*, or by contacting the Development Services Center.
  2. Second, determine which process applies to the development application the user is interested in by using the table set forth in RZC 21.76.050.C, *Classification of Permits and Decisions - Table*.
  3. Third, determine the steps involved in processing the development application by consulting the flow chart for the selected process type in Figures 76.3 through 76.8.
  4. Fourth, determine the application submittal requirements by consulting RZC 21.76.030, *Application Requirements*.
  5. Fifth, review the detailed explanations of the steps set forth in the flow chart by reviewing RZC 21.76.060.
  6. Finally, review the land use actions and decision criteria set forth in RZC 21.76.070, *Land Use Actions and Decision Criteria*, in order to determine whether any of the criteria for any of the specific uses described in that section must be met.

Effective on: 4/16/2011

### 21.76.020 Overview of the Development Process

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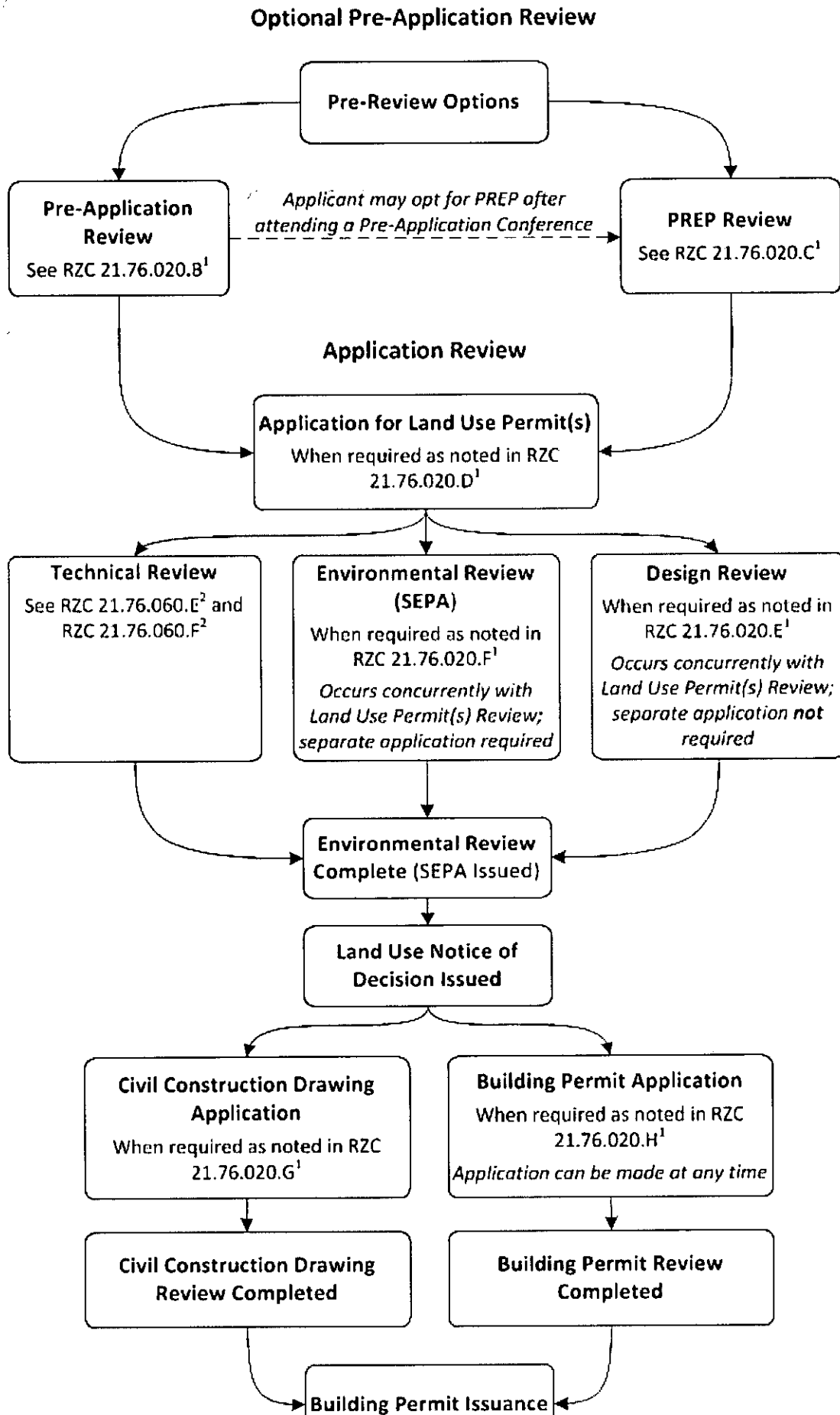
- A. **Purpose.** The purpose of this chapter is to provide a general overview of the development application review process. Detailed administrative review procedures for applications and land use actions classified as Type I through Type VI are outlined in RZC 21.76.050, *Permit Types and Procedures*.
1. **Process Flow Chart.** The flow chart in Figure 21.76.020A below generally depicts the overall review process for development. The process may vary for individual permits based upon the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only.

Figure Notes:

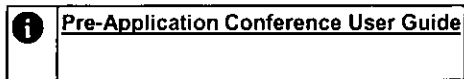
Link to RZC 21.76.020

Link to RZC 21.76.060

**Figure 21.76.020A**  
**Process Flow Chart-Overall Reviews of Development Applications**



## B. Pre-Application Conferences.



1. Purpose. The purpose of a pre-application conference is to provide applicants with the opportunity to meet with technical review staff prior to submitting an application, in order to review the proposed action, to become familiar with City policies, plans, and development requirements. Pre-application conferences are optional, but recommended for Type II-VI land use permits. Pre-application conferences may be requested for Type I applications. Pre-application procedures and submittal requirements shall be determined by the Administrator and available in the Redmond Development Services Center.
2. Design Review. When design review is required, a pre-application conference with the Design Review Board is recommended.
3. Limitations. It is impossible for the conference to be an exhaustive review of all potential issues. The discussions at the conference shall not bind or prohibit the City's future application or enforcement of all applicable regulations.

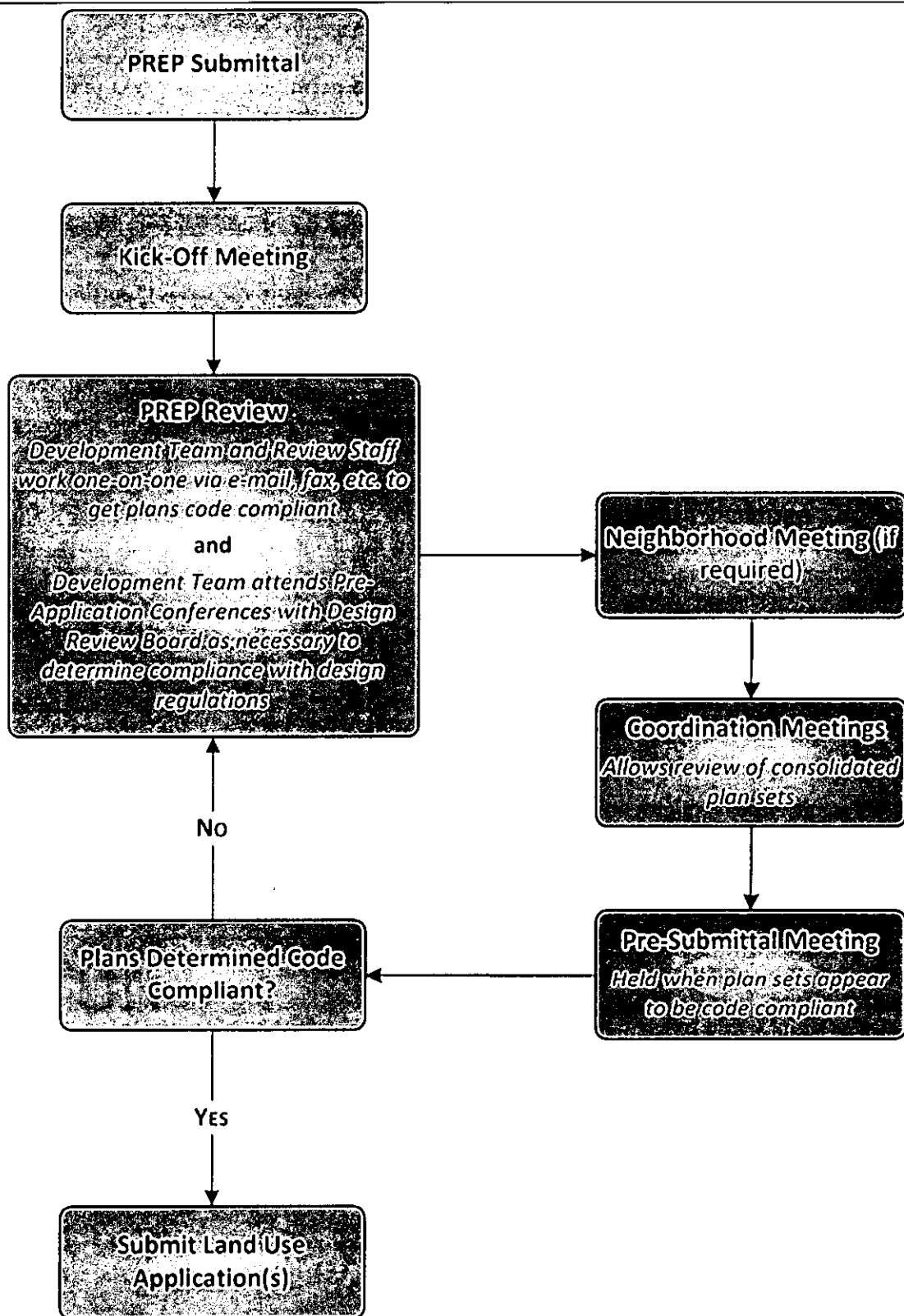
## C. Pre-Review Entitlement Process (PREP).

1. Purpose. The purpose of the PREP process is to:
  - a. Assist applicants to prepare a code-compliant land use application;
  - b. Eliminate the City's need to request additional information that causes resubmittals, resubmittal fees, and further City review, and that extends project approval dates;
  - c. Approve or recommend approval of land use applications following one Technical Committee review; and
  - d. Reduce time frames for approval of land use applications by expediting issue resolution through one-on-one collaboration between applicants and City staff.
2. Overview. PREP review is an optional process for certain land use permits which requires applicants to work collaboratively with review staff and the Design Review Board (if required) to achieve a code compliant submittal prior to permit application. For PREP, an application must already be code-compliant and in approvable form to be considered complete. Upon submittal of the land use application, completion of environmental review and public notification takes place. Pending any changes that may result from public and/or environmental review, the Technical Committee will move forward to issue its decision or recommendation at the first Technical Committee and Design Review Board meetings following submittal of the land use application.
3. Eligibility. Any land use permit that is subject to resubmittal fees according to the adopted fee schedule is eligible for review under the PREP process.
4. Relationship to Pre-Application Meetings. Pre-application meetings are intended as a onetime meeting with review staff to obtain an overview of applicable regulations and process.

Applicants may choose to attend a pre-application meeting and opt in to the PREP process if they so desire.

5. Submittal Requirements. Applicants must submit the PREP Kickoff Meeting Submittal Form and required materials, along with the required fee, in order to initiate PREP review.
6. Memorandum of Understanding. After the PREP Kickoff Meeting and prior to beginning project review, the applicant must sign a Memorandum of Understanding in a form approved by the Administrator that:
  - a. Provides a description of the proposed project;
  - b. Identifies the applicant's project team and primary contact;
  - c. Declares turnaround time commitments for the applicant and the Development Services staff;
  - d. States requests for deviation from code requirements;
  - e. Identifies Development Services review staff assigned to the project;
  - f. Describes requirements for staying in PREP;
  - g. Describes vesting procedures; and
  - h. Describes Design Review Board procedures, if applicable.
7. Process Flow Chart. The flow chart in Figure 21.76.020B below generally depicts the PREP process. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only.

**Figure 21.76.020B**  
**Process Flow Chart-PREP**

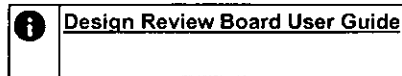


**D. Land Use Permit Review Generally.**

1. Purpose. The purpose of this section is to establish general procedures for reviewing all land use permit applications. The purpose of the land use permit review process is to determine compliance with the City's applicable development regulations, Comprehensive Plan provisions, as well as applicable RCW (Revised Code of Washington), and WAC (Washington Administrative Code) regulations. This section is not intended to include:
  - a. Requirements for compliance with the City's building and construction codes, RMC Title 15, *Buildings and Construction*, determined during building permit review, or
  - b. Requirements for civil construction drawing approval as described in RZC 21.76.020.G, *Civil Construction Drawing Review*.
2. Applicability. Review and approval of one or more land use permits is generally required for any public, semipublic or private proposal for new construction or exterior modification to a building or site, including multifamily, commercial, industrial, utility construction, expansion or exterior remodeling of structures, parking, or landscaping. Other actions requiring a land use permit include interior tenant improvements that propose additional square footage (such as a mezzanine), master plans, proposed development within the Shoreline Jurisdiction, subdivision of land or modification to property boundaries, construction of telecommunication facilities, modifications to historic landmarks and proposed variances or modifications from adopted code standards, such as site requirements, critical area regulations and shoreline regulations. Land use approval is also required for any proposed modification to the RZC (including the Zoning Map) or Comprehensive Plan (including the Comprehensive Land Use Map. Land use permit approval is not required for the following:
  - a. Signs not associated with a historic landmark or a historic design district;
  - b. Tenant improvements not associated with a historic landmark and not encompassing or triggering modification to the exterior of an existing building or site.
3. Site Plan Required. Where modifications to a site are proposed or required, a site plan shall be submitted as part of all permit and project approval applications with the information required in RZC 21.76.030.D, *Submittal Requirements*. Additional information may be required to conduct an adequate review. Each application shall be reviewed for compliance with the requirements in this chapter. Site plans shall be reviewed as part of the application approval process unless otherwise provided in this chapter.
4. Procedures. All applications shall be reviewed using the procedures set forth for the Type I through Type VI review processes in RZC 21.76.050, *Permit Types and Procedures*.
5. Decision.
  - a. The approval authority shall approve, approve with conditions, or deny the application based upon the applicable decision criteria. The approval authority may grant final approval subject to any conditions it feels necessary to protect and promote the health, safety, and general welfare of the community.
  - b. Such conditions may include, but are not limited to the following: the requirement of easements, covenants, and dedications; "fees-in-lieu-of"; the installation, maintenance and bonding of improvements, such as streets, landscaping, sewer, water, storm drainage,

underground wiring, sidewalks, and trails; and the recording of any conditions to achieve the objectives of the Redmond Zoning Code with the King County Department of Records and Elections.

#### E. Design Review.



6.

1. Purpose. The purpose of design review is to:

- a. Encourage and promote the public health, safety, and general welfare of the citizens of Redmond, including the development and coordination of municipal growth and services;
- b. Supplement the City's land use regulations in order to promote a coordinated development of the undeveloped areas of the City, and conserve and restore natural beauty and other natural resources;
- c. Encourage originality, flexibility, and innovation in site planning and development, including the architecture, landscaping, and graphic design of proposed developments in relation to the City or design area as a whole;
- d. Discourage monotonous, drab, and unsightly developments and to promote the orderliness of community growth, and the protection and enhancement of property values for the community as a whole and as they relate to each other;
- e. Aid in ensuring that structures, signs, and other improvements are properly related to their sites and the surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping and ensuring that proper attention is given to exterior appearances of structures, signs and other improvements;
- f. Protect the heritage of the City by ensuring that historic resources retain integrity, ensuring that developments adjacent to historic landmarks are compatible, and by encouraging design that is appropriate to historic design districts;
- g. Protect and enhance the City's pleasant environments for living and working, and thus support and stimulate business and industry, and promote the desirability of investment and occupancy in business and other properties;
- h. Stabilize and improve property values and prevent blight areas to help provide an adequate tax base to the City to enable it to provide required services to its citizens; and
- i. Foster civic pride and community spirit by reason of the City's favorable environment and thus promote and protect the peace, health, and welfare of the City and its citizens.

2. Applicability. Compliance with RZC Article II, Design Standards, shall be required for all applications requiring a building permit for exterior modifications, new construction and signs, projects requiring a Level II or III Certificate of Appropriateness, and any private or public development within the Shoreline Jurisdiction. The following are exempt from this requirement:

- a. One- and two-unit residential structures unless the structure is a historic landmark; and
- b. Tenant improvements not associated with a historic landmark or not encompassing modifications to the exterior of an existing building.

3. Review Authority.

- a. The Design Review Board shall have design review authority over all applications not exempt under subsection E.2 above that require a building permit and that have a total valuation of \$50,000 or more, except for the following:
  - i. Signs (other than sign programs); and
  - ii. Commercial buildings located within the Industrial (I) zone, unless the site is located in areas of high public visibility such as arterials.
- b. The Landmarks and Heritage Commission shall have design review authority over designated historic landmarks as outlined in RZC 21.76.060.H, 21.76.060.J, and 21.76.060.M.
- c. The Administrator shall have design review authority on all building permit applications that have a total valuation of less than \$50,000 and are not specifically exempt from design review in subsection E.2 above.
- d. For projects reviewed by the Administrator that are not in compliance with the applicable design standards, the Administrator may refer the application to the Design Review Board for consultation. For Level I Certificates of Appropriateness, the Administrator may consult with or use the authority of the King County Historic Preservation Officer or other preservation expert with similar qualifications.

4. Procedure. Design review requiring review and decision by the Design Review Board shall be conducted as provided in RZC 21.76.060.G.

F. **State Environmental Policy Act (SEPA) Review.** All applications shall be reviewed under the State Environmental Policy Act unless categorically exempt. The City's environmental review procedures are set forth in RZC 21.70, *State Environmental Policy Act (SEPA) Procedures*.

G. **Civil Construction Drawing Review.**

1. Purpose. The purpose of this section is to establish procedures for reviewing civil construction drawings for site improvements. Civil construction drawings are detailed engineering documents that are required for improvements to a particular site. Civil construction drawings are reviewed through the Coordinated Civil Review Process.
2. Applicability. Civil Construction Drawing Review shall be required for all proposals that require construction or modification of streets, sidewalks, storm drainage, utilities, or any other surface or subsurface improvements that may be required.
3. Procedures.
  - a. After approval of the land use permit, civil construction drawings, if required, shall be submitted for review and approval, prior to issuance of a building permit or clearing and grading permit. Civil construction drawings may be submitted prior to approval of the land use permit, subject to Technical Committee approval.

- b. The submittal requirements for civil construction drawings are available at the Development Services Center, as well as in the development permit approval documents.
- c. Civil construction drawings shall be approved only after review and approval of a land use permit application has been issued by the appropriate decision making body. Civil construction drawings shall be reviewed to determine compliance with the approved land use permit.
- d. Civil construction drawings shall be approved only upon completion of the environmental review process required under the State Environmental Policy Act (SEPA).

**H. Building Permit Review.**

- 1. Purpose. The purpose of this section is to establish procedures and requirements for administering and enforcing building and construction codes.
- 2. Applicability. A building permit shall be obtained whenever required under the International Building Code or International Residential Code, as adopted in RMC Chapter 15.08, Building Code.
- 3. Scope. This section shall govern all building and construction codes procedures and shall control in the event there are conflicts with other administrative, procedural and enforcement sections of the Redmond Zoning Code.
- 4. Procedures.
  - a. All land use permits required by the RZC must be obtained before any building or construction permit may be issued.
  - b. The Administrator shall review building permit applications for signs and may, at the Administrator's option, submit such applications to the Technical Committee and the Design Review Board for review.
  - c. All building and construction permits shall comply with the approved land use permit(s), if a land use permit is required.
  - d. Building permits may only be approved when the approval of the civil construction drawings, if required, has been granted.
- 5. Complete Applications and Compliance Review. Upon the submittal of all required documents and fees for construction and/or final application approval, the appropriate City department shall review such submittals to determine if the application is complete. The appropriate department shall determine compliance with all requirements, standards, and conditions of any previous or preliminary approvals before making a decision on the application.
- 6. Preconstruction Conference. Prior to undertaking any clearing, grading or construction, or any other improvements authorized by preliminary or final approval, the applicant or his representative shall meet with the Technical Committee, or individual departments, regarding City standards and procedures, conditions of approval, and the proposed scheduling of development.
- 7. Performance Assurance. Performance assurance may be required as provided in RZC 21.76.090.F, *Performance Assurance*.

(Ord. 2803)

Effective on: 4/16/2011

## **21.76.030 APPLICATION REQUIREMENTS**

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- A. **Purpose.** The purpose of this section is to describe the requirements for making application for review, including pre-application conferences, submittal requirements, and fees.
- B. **Where to Apply.** Applications for development permits and other land use actions shall be made to the Redmond Development Services Center.
- C. **Who May Apply.** The property owner or any agent of the owner with authorized proof of agency may apply for a permit or approval under the type of process specified.
- D. **Submittal Requirements.**
1. The Administrator shall specify submittal requirements needed for an application to be complete. Submittal requirements for each permit application shall be available in the Development Services Center. At a minimum the following shall be submitted:
    - a. General application form, including signature by the property owner, or person having authorization to sign on behalf of the property owner;
    - b. Applicable fees;
    - c. Environmental checklist (if not exempt);
    - d. Applicable signatures, stamps or certifications;
    - e. All required items stated in the applicable application submittal requirements handout.
  2. Specific submittal requirements may be waived if determined to be unnecessary for review of an application. Alternatively, the Administrator may require additional material when the Administrator determines, after a determination of completeness is issued, that such information is needed to adequately assess the proposed project.
  3. Submittal requirements for short subdivision and preliminary plat applications are set forth in RZC Article IV, Land Division.
- E. **Application and Inspection Fees.**
1. Fee Schedule.
    - a. The schedule of fees adopted pursuant to this section shall govern assessment of fees to cover costs incurred by the City in considering action on land use and development applications. This schedule is available in the Redmond Development Services Center.
    - b. With respect to land use permit applications, building inspection, electrical, mechanical, and plumbing permit fees, the Administrator (Director of Planning and Community Development) is hereby authorized to promulgate fee schedules and to revise periodically the same as needed in light of costs of administering said permit systems, subject to approval of the City Council by resolution. With respect to clearing and grading, and site construction and inspection permit fees, the Director of the Department of Public Works is hereby authorized to promulgate fee schedules and to revise periodically the same as needed in light of costs of administering said permit systems, subject to approval of the City Council by resolution. Said Directors may alternatively elect

to utilize the fee schedule set forth in the applicable uniform code when such code has been adopted by ordinance.

2. Fee Administration.

- a. An application fee consisting of the appropriate itemized costs from the fee schedule shall be collected from the applicant and receipted by the City prior to taking any action on an application. A final inspection fee, consisting of the appropriate components from the fee schedule, shall be collected from the applicant and receipted by the City prior to undertaking any steps to check plans or construction drawings, inspect improvements, or authorize final project approval or occupancy.
- b. If at any time an applicant withdraws an application from the approval process prior to final approval, those itemized costs not incurred to any extent by the City shall be refunded as determined by the Administrator.
- c. In the event that actions of an applicant result in the repetition of the reviews, inspections, and other steps in the approval process, those items repeated shall be charged to and paid by the applicant according to the fee schedule prior to any further processing of the application by the City.
- d. Applicants seeking approval of multiple applications which are processed simultaneously, whereby single review costs are reduced, shall be charged the larger of the itemized costs from the fee schedule or as determined by the Administrator. The fee for any inspection shall be the larger of the totals computed on a per lot, per acre, or per application basis. The fee for any single application shall be the smaller of the totals computed on a per lot, per acre, or per application basis.

3. Fee Exemptions.

- a. When a City department applies for a permit required by RZC Article, *Zone-Based Regulations*; RZC Article I, *Citywide Regulations*; RMC Chapter 15.08, *Building Code*; and RZC Article V, *Review Procedures*, the department shall not be required to pay application fees. Where an application will require substantial review time or expenditures, the Administrator may require that the department applying for the permit reimburse the departments reviewing the application for some or all of the time and costs expended in the review.
- b. For housing projects that meet the requirements of this subsection, application fees shall not be required for any permit required by RZC Article, *Zone-Based Regulations*; RZC Article I, *Citywide Regulations*; RMC Chapter 15.08, *Building Code*; and RZC Article V, *Review Procedures*.
  - i. The housing will be ultimately owned by households earning 60 percent of the King County median family income adjusted for household size, nonprofit organizations, or public agencies.
  - ii. The housing will remain affordable to households earning 60 percent or less of the King County median family income adjusted for household size for at least five years. The Administrator may condition the project for a longer period of time if needed to recover the community's investment.

- iii. The housing will help meet an unfulfilled portion of Redmond's affordable housing targets.
  - iv. The location will meet Redmond's policies and zoning for the proposed housing type and density.
  - v. The proposal will result in a benefit to the community.
  - vi. The waiver will not result in an unacceptable adverse impact on the service providers funded by the fees proposed for a waiver.
- c. For environmental restoration or enhancement projects that meet the requirements of this subsection, application fees shall not be required for any permit required by RZC Article, *Zone-Based Regulations*; RZC Article I, *Citywide Regulations*; RMC Chapter 15.08, *Building Code*; and RZC Article V, *Review Procedures*.
- i. The project will be carried out by nonprofit organizations, volunteer groups, or other persons or groups demonstrating similar intent.
  - ii. The applicant shall demonstrate that the primary purpose of the project is environmental restoration or enhancement.
  - iii. The project will help meet an unfulfilled habitat restoration need identified by the City.
  - iv. The project and its location shall meet all applicable policies and regulations.
  - v. The proposal will result in a benefit to the community.
  - vi. The waiver will not result in an unacceptable adverse impact on the service providers funded by the fees proposed for a waiver.
- d. Temporary use permit applications for off-site construction employee parking are exempt from the payment of application fees if all of the following requirements are met:
- i. The construction site where the construction employees will be working is located in the Downtown or Overlake neighborhoods.
  - ii. The developer/general contractor is responsible for providing/organizing transportation for construction employees between the parking site and construction site.
  - iii. The developer/general contractor is responsible for obtaining any necessary lease/permission from the property owner to park on the off-site parking location.
- e. Any request for a fee waiver shall be made in writing when the application is filed.
- f. The Administrator may condition a waiver to ensure the project will meet the requirements of this subsection or to lessen impacts on the service providers funded by the fees that are waived.

Effective on: 4/16/2011

## 21.76.040 TIME FRAMES FOR REVIEW

i	Permit Processing Timelines User Guide
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- A. **Purpose.** The purpose of this chapter is to comply with RCW 36.70B.070 and 36.70B.080, which require that a time frame be established to ensure applications are reviewed in a timely and predictable manner. This chapter establishes the time frame and procedures for a determination of completeness and final decision for Type II, III, IV and V reviews, except where the review involves a development agreement or a land use permit for which a development agreement is required. No time frames are established by this chapter for Type I or Type VI reviews or for the review of development agreements or land use permits for which a development agreement is required. See also, RZC 21.68.200, *Shoreline Administration and Procedures*.
- B. **Computing Time.** Unless otherwise specified, all time frames are indicated as calendar days, not working days. For the purposes of computing time, the day the determination or decision is rendered shall not be included. The last day of the time period shall be included unless it is a Saturday, Sunday, or a day designated by RCW 1.16.050 or by the City's ordinances as a legal holiday, in which case it also is excluded, and the time period concludes at the end of the next business day.
- C. **Complete Application Review Time Frame.** The following procedures shall be applied to new applications to which this chapter applies.
1. Applications shall only be accepted during a scheduled appointment and deemed complete only when all materials are provided in accordance with the applicable application submittal requirements brochure. For applications deemed complete, a determination of completeness shall be issued. For applications deemed incomplete, a determination of incompleteness will be issued identifying the items necessary to complete the application. The applicant has 90 days to submit the required items to the City. While RCW 36.70B.070 requires that a determination of completeness or incompleteness be issued within 28 days after the application is filed, the City makes every effort to issue such determinations sooner than required, and maybe able to issue a determination on the same day as the application is filed.
  2. If a determination of completeness or a determination of incompleteness is not issued within the 28 days, the application shall be deemed complete at the end of the twenty-eighth (28<sup>th</sup>) day.
  3. When a determination of incompleteness has been issued advising an applicant that additional items must be submitted before an application can be considered complete, the applicant shall be notified within 14 days after receipt of such additional items whether the application is then complete or whether additional items are still needed.
  4. An application is complete for purposes of this section when it meets the submittal requirements established by the Administrator and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the Administrator from requesting additional information or studies either at the time of the determination of completeness or subsequently, if new information is required to complete review of the application or substantial changes in the permit application are proposed.
  5. To the extent known by the City, other agencies with jurisdiction over the project permit application shall be identified in the City's determination of completeness required by subsection C.1 of this section.

**D. Application Review and Decision Time Frame.**

1. Decisions on Type II, III, IV or V applications, except applications for short plat approval, preliminary plat approval, or final plat approval, applications for development agreements and applications for land use permits for which a development agreement is required, shall not exceed 120 days, unless the Administrator makes written findings that a specified amount of additional time is needed for processing of a specific complete land use application or unless the applicant and the City agree, in writing, to an extension. Decisions on short plat approval and final plat approval shall not exceed 30 days and decisions on preliminary plat approval shall not exceed 90 days. 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 pursuant to RZC 21.76.040.C, *Complete Application Review Time Frame*, and shall only include the time during which the City can proceed with review of the application.
2. Appeals. The time period for consideration and decision on appeals shall not exceed:
  - a. Ninety (90) days for an open record appeal hearing; and
  - b. Sixty (60) days for a closed record appeal;
  - c. The parties may agree in writing to extend these time periods. Any extension of time must be mutually agreed upon by the applicant and the City in writing.
3. Exemptions. The time limits established in this title do not apply if a project permit application:
  - a. Requires approval of the siting of an essential public facility as provided in RCW 36.70A.200;
  - b. Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete.
4. See also RZC 21.68.200, *Shoreline Administration and Procedures*.

**E. Calculating Decision Time Frame.** In determining the number of days that have elapsed after the City has notified the applicant that the application is complete for purposes of calculating the time for issuance of the decision, the following periods shall be excluded:

1. Any period during which the applicant has been requested by the City to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the City notifies the applicant of the need for additional information until the earlier of the date the City determines whether the additional information satisfies the request for information or 14 days after the date the information has been provided to the City;
2. If the City determines that the information submitted by the applicant is insufficient, it shall notify the applicant of the deficiencies, and the procedures under subsection E.1 of this section shall apply as if a new request for information had been made;
3. Any period during which an Environmental Impact Statement is being prepared following a Determination of Significance pursuant to RCW Chapter 43.21C, or if the City and the applicant in writing agree to a time period for completion of an Environmental Impact Statement;
4. Any period for administrative appeals of project permits, if an open record appeal hearing or a closed record appeal, or both, are allowed.


## 5. (Ord. 2652)

Effective on: 4/28/2012

**21.76.050 PERMIT TYPES AND PROCEDURES**

- A. **Purpose.** The purpose of this chapter is to provide detailed administrative review procedures for applications and land use permits classified as Types I through VI.
- B. **Scope.** Land use and development decisions are classified into six processes 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 input sought, and the type of appeal opportunity generally as follows:

**Table 21.76.050A**  
**Permit Types**

	Permit Type					
	Type I Administrative	Type II Administrative	Type III Quasi- Judicial	Type IV Quasi- Judicial	Type V Quasi-Judicial	
<b>TABLE NOTES:</b> 1. Shoreline Substantial Development Permits, Shoreline Variances, and Shoreline Conditional Use Permits are appealable directly to the State <u>Shorelines</u> Hearings Board. 2. Landmarks Commission makes decisions for Certificate of Appropriateness Level III permits.						
Level of Impact and Level of Discretion Exercised by decision maker						
	Least level of impact or change to policy/regulation. Least level of discretion.					Potential for greatest level of impact due to changes in regulation or policy. Greatest level of discretion.
Input Sought	Minimal-generally no public notice required. No public hearing.	Notice of Application provided. No public hearing. Neighborhood meeting only required for <u>short plats</u> meeting certain criteria.	Notice of Application provided. Neighborhood meeting <u>may</u> be required. Public hearing is required.	Notice of Application provided. Neighborhood meeting may be required. Public hearing is required.	Notice of Application provided. Neighborhood meeting may be required. Public hearing is required.	Notice of Public Hearing provided.
Public Hearing prior to Decision?	No	No	Yes, Hearing Examiner (or Landmarks Commission) <sup>2</sup>	Yes, Hearing Examiner	Yes, <u>City</u> Council	Yes, Planning Commission
Decision Maker	Appropriate Department	<u>Technical Committee</u>	Hearing Examiner (or Landmarks Commission) <sup>2</sup>	City Council	City Council	City Council
Administrative Appeal Body	Hearing Examiner (Hearing Examiner decision on appeal may be appealed to)	Hearing Examiner <sup>1</sup> (Hearing Examiner decision on appeal may be appealed to)	City Council <sup>1</sup>	None (decision appealable to Superior Court)	None (decision appealable to Superior Court)	None (decision appealable to Superior Court)

**Table 21.76.050A**  
**Permit Types**

Permit Type						
Type I Administrative	Type II Administrative	Type III Quasi-Judicial	Type IV Quasi-Judicial	Type V Quasi-Judicial		
City Council Superior Court)	to City-Council Superior Court)					

C. **Classification of Permits and Decisions - Table.** The following table sets forth the various applications required and classifies each application by the process used to review and decide the application.

Type I - RZC 21.76.050.F:	Administrative Approval, Appropriate Department is Decision Maker
Type II - RZC 21.76.050.G:	Administrative Approval, Review and Decision by Technical Committee and Design Review Board or Landmarks Commission*
Type III - RZC 21.76.050.H:	Quasi-Judicial, Decision by Hearing Examiner or Landmarks and Heritage Commission*
Type IV - RZC 21.76.050.I:	Quasi-Judicial, Recommendation by Hearing Examiner, Decision by City Council
Type V - RZC 21.76.050.J:	Quasi-Judicial, Decision by City Council
Type VI - RZC 21.76.050.K:	Legislative, recommendation by Planning Commission, Decision by City Council
*for properties with a Designation of Historic Significance, please refer to RZC 21.76.060.H, <i>Landmarks and Heritage Commission Determination/Decisions.</i>	

**Table 21.76.050B**  
**Classification of Permits and Decisions**

Permit Type	Process Type	RMC Section (if applicable)
Administrative Interpretation	I	
Administrative Modification	II	
<u>Alteration</u> of Geologic Hazard Areas	III	
<u>Binding Site Plan</u>	II	
<u>Boundary Line Adjustment</u>	I	
<u>Building Permit</u>	I	RMC 15.06

ATTACHMENT E  
Attachment B

Certificate of Appropriateness Level I	I	
Certificate of Appropriateness Level II	II	
Certificate of Appropriateness Level III	III	
Clearing and <u>Grading</u> Permit	I	RMC 15.24
<u>Comprehensive Plan</u> Map and/or Policy Amendment	VI	
Conditional Use Permit	IVIII	
Development Agreement	V	
Electrical Permit	I	RMC 15.12
<u>Essential Public Facility</u>	IV	
Extended Public Area Use Permit	I	RMC 12.08
Flood Zone Permit	I	RMC 15.04
<u>Historic Landmark</u> Designation	III	
<u>Home Business</u>	I	
Hydrant Use Permit	I	RMC 13.16.020
International Fire Code Permit	I	RMC 15.06
<u>Master Planned Development</u> See RZC <u>21.76.070.P</u>	II, III, IV or V	
Mechanical Permit	I	RMC 15.14
<u>Plat</u> Alteration	V	
Plat Vacation	V	
Plumbing Permit	I	RMC 15.16
<u>Preliminary Plat</u>	III	
Reasonable Use Exception See RZC <u>21.76.070.U</u>	I,II, III, IV or V	
<u>Right-of-Way</u> Use Permit	I	RMC 12.08
Sewer Permit	I	RMC 13.04
Permit Type	Process Type	RMC Section (if applicable)
Shoreline Conditional Use Permit	III	
Shoreline Exemption	I	
Shoreline Substantial Development Permit	II	
Shoreline Variance	III	

Short Plat	II	
Sign Permit/Program	I	
Site Plan Entitlement	II	
Special Event Permit	I	RMC 10.60
Structure Movement Permit I-IV	I	RMC 15.22
Temporary Use Permit (Long-Term)	V	
Temporary Use Permit (Short-Term)	I	
Tree Removal Permit	I	
Variance	III	
Water Permit	I	RMC 13.08
Willows Rose Hill Demonstration Project	III	
Wireless Communication Facility Permit I	I	
Wireless Communication Facility Permit II	II	
Zoning Code Amendment-Zoning Map (consistent with Comprehensive Plan)	IV	
Zoning Code Amendment (text)	VI	
Zoning Code Amendment (that requires a Comprehensive Plan Amendment)	VI	

D. **Permits and Actions Not Listed.** If a permit or land use action is not listed in the table in RZC 21.76.050.C, *Classification of Permits and Decisions*, the Administrator shall make a determination as to the appropriate review procedure based on the most analogous permit or land use action listed.

E. **Consolidated Permit and Appeal Process.**

1. Where this Code requires more than one land use permit for a given development, all permit applications (except Type I applications) may be submitted for review collectively according to the consolidated review process established by this section.
2. Where two or more land use applications for a given development are submitted for consolidated review, the review shall be conducted using the highest numbered process type applicable to any of the land use applications, provided that each land use application shall only be subject to the relevant decision criteria applicable to that particular development application. For example, a development proposal that includes a Type II application and a Type III application shall be reviewed using the Type III process, but the Type II application shall be decided based on the relevant decision criteria applicable to the Type II application. If two or more land use applications are consolidated for review, the highest application review and decision timeframe as outlined within RZC 21.76.040.D shall apply.
3. When the consolidated process established by this section is used, the City shall issue single, consolidated notices, staff reports, and decision documents encompassing all of the land use

applications under review. Except as provided in subsection E.5 below, the applications shall be considered in a single, consolidated open record public hearing and shall be subject to no more than one consolidated closed record appeal.

4. Where a development requires more than one land use permit but the applicant elects not to submit all applications for consolidated review, applications may be submitted and processed sequentially, provided that the permit subject to the highest numbered process type must be submitted and obtained first, followed by the other permits in sequence from the highest numbered type to the lowest.
5. Where a development proposal requires a zoning map amendment, the zoning map amendment must be considered and approved by the Hearing Examiner and City Council before any hearing is held or decision is made on any related application for a conditional use permit, subdivision, variance, master planned development, site plan entitlement, or other similar quasi-judicial or administrative action. This subsection is intended to be a "procedural requirement" applicable to such actions as contemplated by RCW 58.17.070.
6. All appeals of project permit decisions for a single project shall be consolidated and heard together in a single appeal, except for appeals of environmental Determinations of Significance. Where a Determination of Significance (DS) is appealed, the appeal shall be heard by the Hearing Examiner using the Type II review process prior to any consideration of the underlying application. Where a Determination of Non-Significance (DNS) or the adequacy of an Environmental Impact Statement (EIS) is appealed, the hearing on the appeal shall be consolidated with any open record public hearing to be conducted on the underlying application.

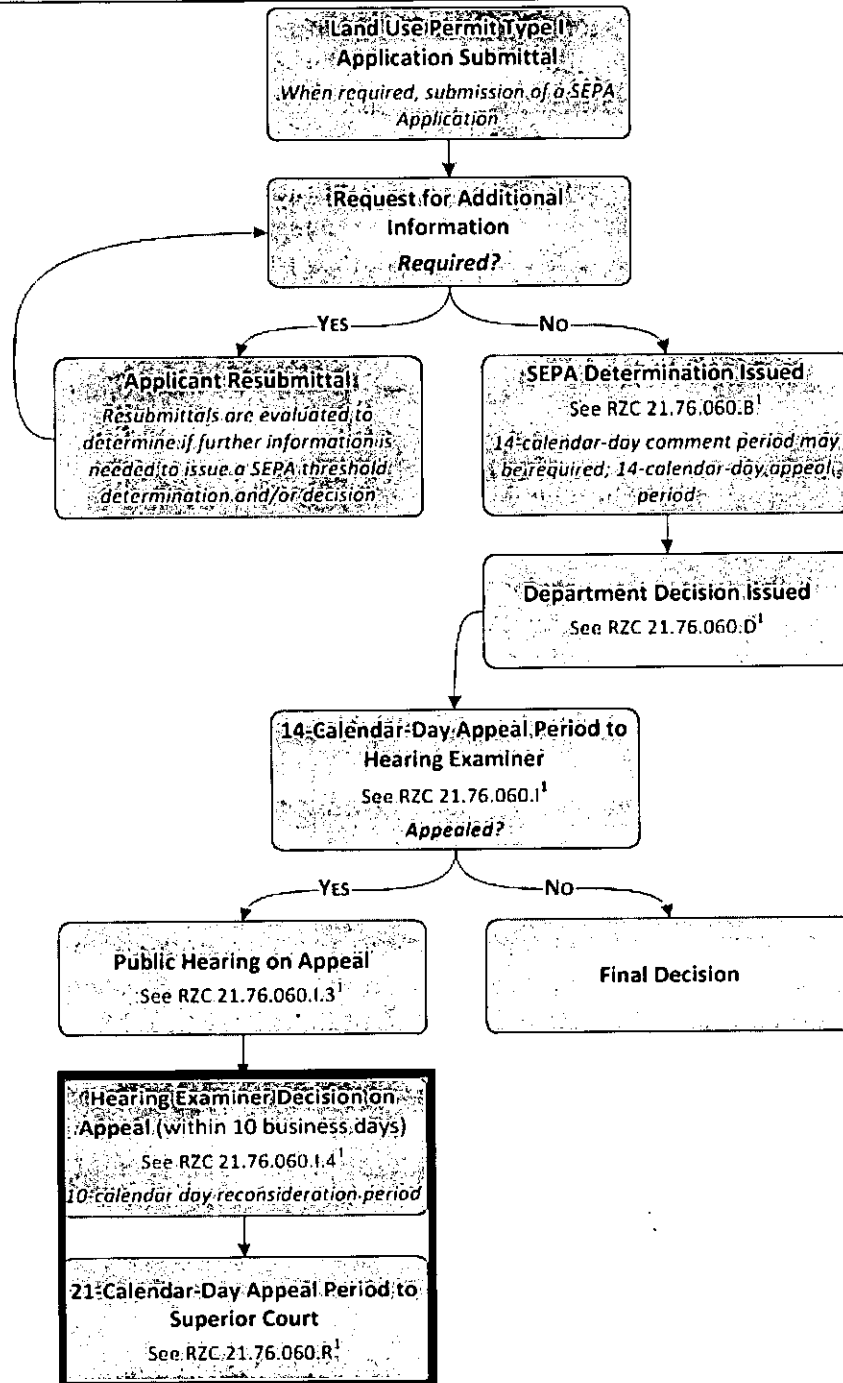
#### F. Type I Review.

1. Overview of Type I Review. A Type I process is an administrative review and decision by the appropriate department director or designee. These are applications which are categorically exempt from review under the State Environmental Policy Act (SEPA) or permits for which environmental review has been completed in connection with another application. Appeals of Type I decisions are made to the Hearing Examiner in an open record hearing. Appeal decisions of the Hearing Examiner may be appealed to the ~~City Council in a closed record appeal proceeding~~ the King County Superior Court. Type I reviews are exempt from the procedures of RZC 21.76.040, *Time Frames for Review*.
2. Process Flow Chart. The flow chart below in Figure 21.76.050A depicts the process that will be used to review a typical Type I land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC 21.76.060, *Process Steps and Decision Makers*.

Figure Notes:

Link to RZC 21.76.060

**Figure 21.76.050A**  
**Flow Chart for Type I Process**



### G. Type II Review.

1. Overview of Type II Review. A Type II process is an administrative review and decision by the Technical Committee and, when required, by the Design Review Board or the Landmarks and Heritage Commission. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. Except for Certificates of Appropriateness related to historic structures, public notification is provided at the application and decision stages of review. Environmental review is conducted, when required. Appeals of Type II

decisions are made to the Hearing Examiner in an open record hearing. Appeal decisions of the Hearing Examiner may be appealed to the ~~City Council~~ **King County Superior Court**.

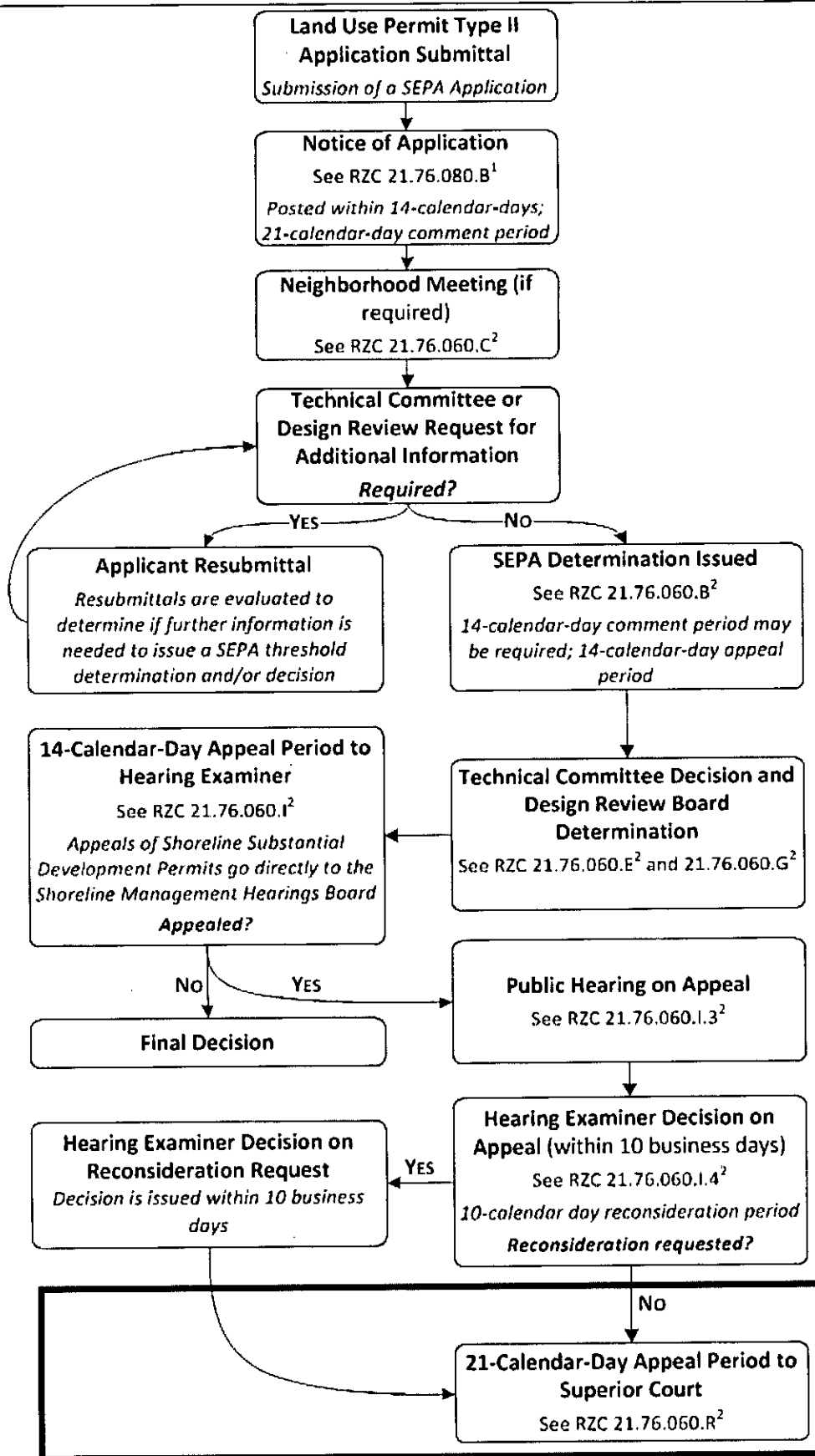
2. Process Flow Chart. The flow chart below in Figure 21.76.050B generally depicts the process that will be used to review a typical Type II land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC 21.76.060, *Process Steps and Decision Makers*, and RZC 21.76.080, *Notices*.

Figure Notes:

[Link to RZC 21.76.080](#)

[Link to RZC 21.76.060](#)

**Figure 21.76.050B**  
**Flow Chart for Type II Process**



#### H. Type III Review.

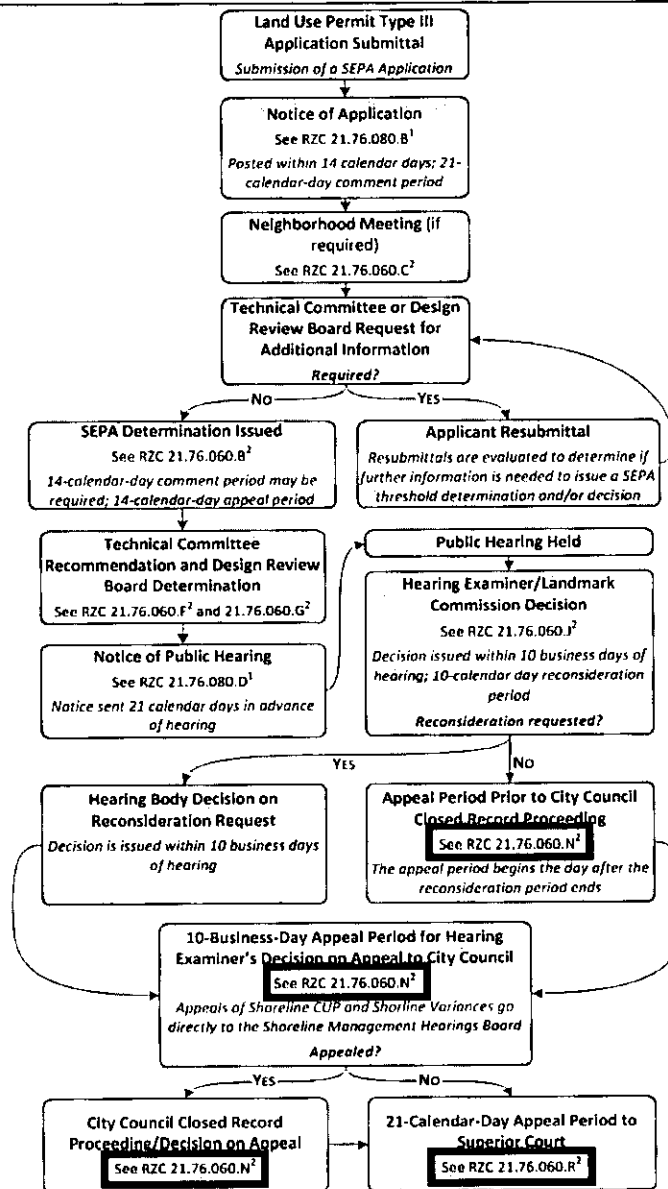
1. Overview of Type III Review. A Type III process is a quasi-judicial review and decision made by the Hearing Examiner or, in the case of Level III Certificates of Appropriateness on which a hearing is to be held under 70-090(4)(b) and in the case of Historic Landmark Designations for removal of Historic Landmark Designations, by the Landmarks and Heritage Commission. Environmental review is conducted when required. The Hearing Examiner (or the Landmarks and Heritage Commission on the applications described in the preceding sentence) holds an open record public hearing on a Type III application after receiving a recommendation from the Technical Committee and, when required, the Design Review Board. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. Public notification is provided at the application, public hearing, and decision stages of application review. The Hearing Examiner (or the Landmarks and Heritage Commission on the applications described above) makes a decision after considering the recommendation of the Technical Committee and Design Review Board and the public testimony received at the open record public hearing. Decisions of the Hearing Examiner (or the Landmarks and Heritage Commission on the applications described above) are appealable to the City Council, which considers the appeal in a closed record appeal proceeding. The City Council's decision may be appealed to the King County Superior Court.
2. Process Flow Chart. The flow chart below in Figure 21.76.050C generally depicts the process that will be used to review a typical Type III land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC [21.76.060](#), *Process Steps and Decision Makers*, and RZC [21.76.080](#), *Notices*.

Figure Notes:

Link to RZC [21.76.080](#)

Link to RZC [21.76.060](#)

**Figure 21.76.050C**  
**Flow Chart for Type III Process**



## I. Type IV Review.

1. Overview of Type IV Review. A Type IV review is a quasi-judicial review and recommendation made by the Hearing Examiner and a decision made by the City Council. Environmental review is conducted when required. At an open record public hearing, the Hearing Examiner considers the recommendation of the Technical Committee and, when required, the Design Review Board, as well as public testimony. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. The Hearing Examiner makes a recommendation to the City Council, which considers the recommendation in a closed record proceeding and makes a final decision. Public notification is provided at the application, public hearing, and decision stages of application review. There is no administrative appeal. The City Council's decision may be appealed to the King County Superior Court.

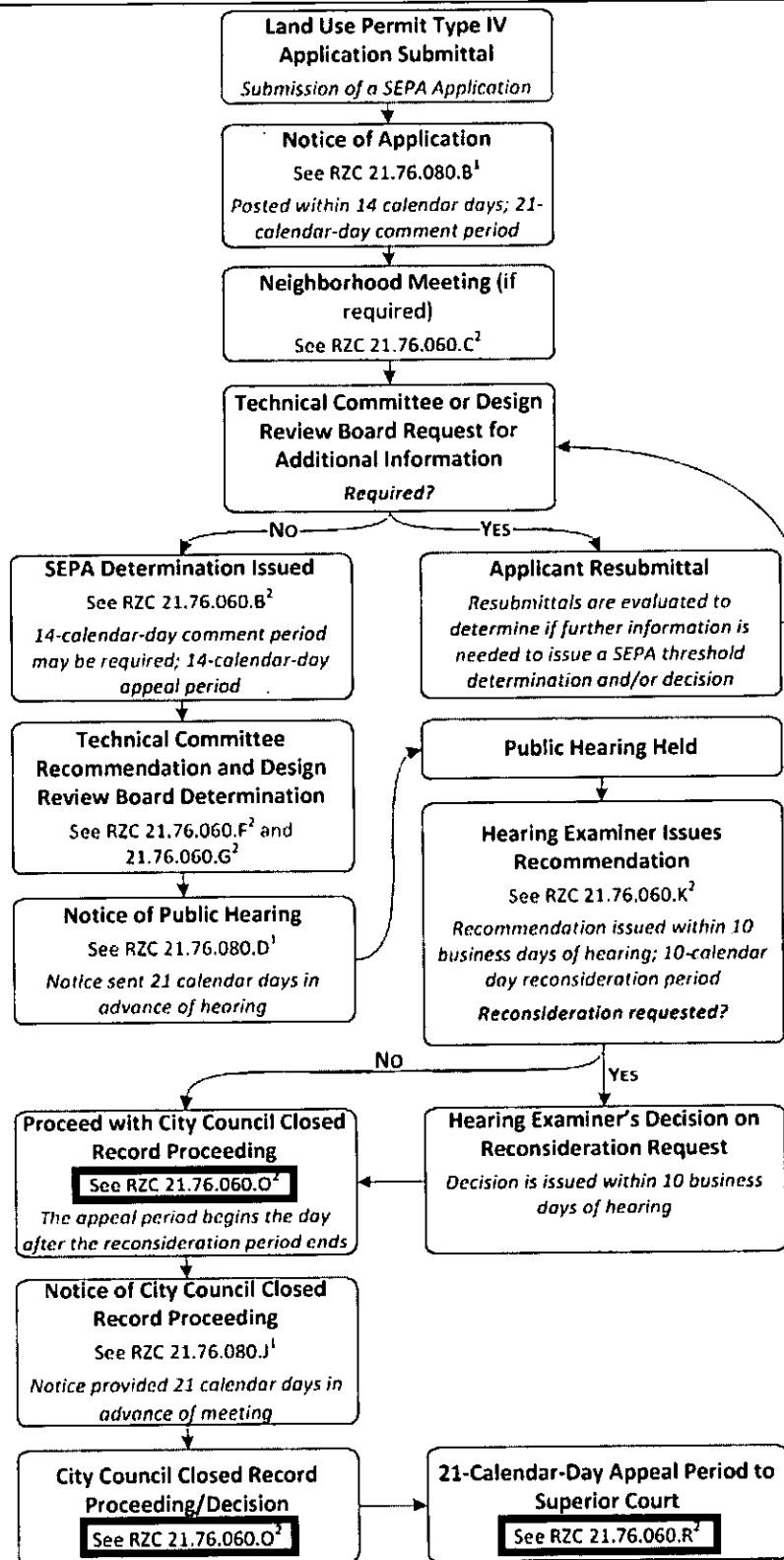
2. Process Flow Chart. The flow chart below in Figure 21.76.050D generally depicts the process that will be used to review a typical Type IV land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC [21.76.060](#), *Process Steps and Decision Makers*, and RZC [21.76.080](#), *Notices*.

Figure Notes:

Link to RZC [21.76.080](#)

Link to RZC [21.76.060](#)

**Figure 21.76.050D**  
**Flow Chart for Type IV Process**



J. Type V Review.

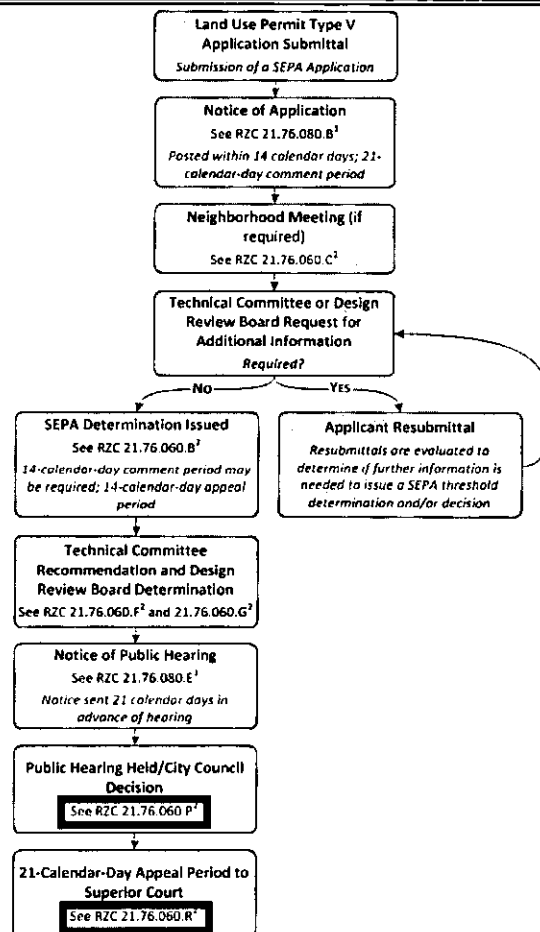
1. Overview of Type V Review. A Type V review is a quasi-judicial review and decision made by the City Council. Environmental review is conducted when required. The Technical Committee (and Design Review Board, if required) makes a recommendation to the City Council. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. The City Council shall hold a public hearing on the application prior to making a decision. Public notification is provided at the application, public hearing, and decision stages of application review. There is no opportunity for an administrative appeal. Appeals of City Council decisions are made to King County Superior Court.
2. Process Flow Chart. The flow chart below in Figure 21.76.050E generally depicts the process that will be used to review a typical Type V land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC 21.76.060, *Process Steps and Decision Makers*, and RZC 21.76.080, *Notices*.

Figure Notes:

Link to RZC 21.76.080

Link to RZC 21.76.060

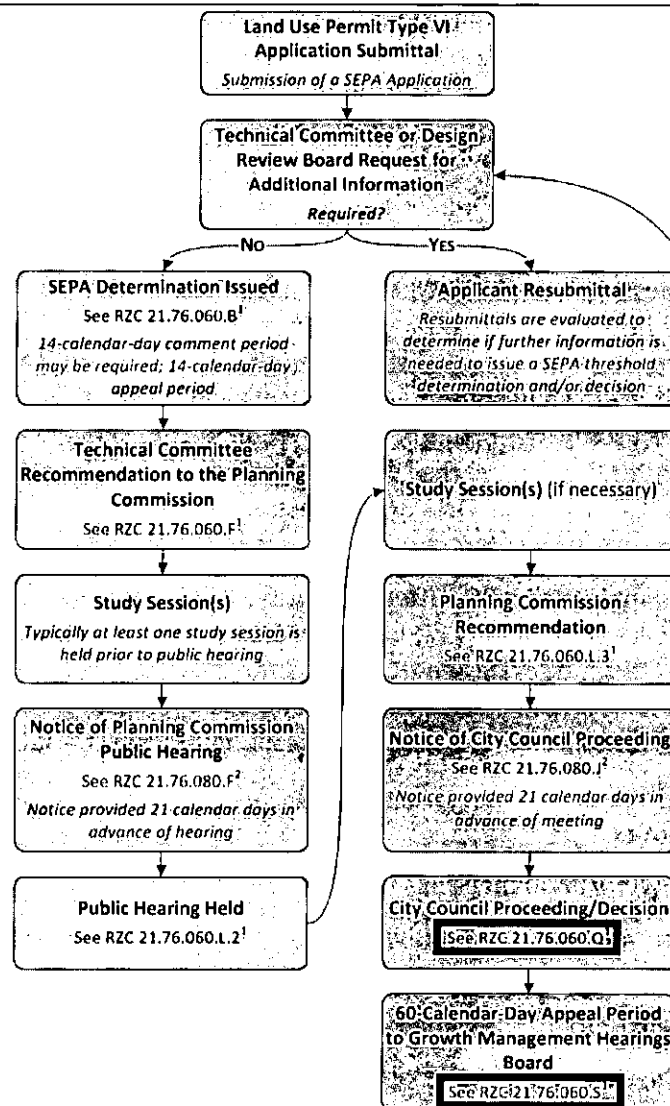
**Figure 21.76.050E**  
**Flow Chart for Type V Process**



**K. Type VI Review.**

1. Overview of Type VI Review. A Type VI review is for legislative land use decisions made by the City Council under its authority to establish policies and regulations regarding future private and public development and management of public lands. Environmental review is conducted when required. The Planning Commission holds at least one open record public hearing and makes a recommendation to the City Council. The City Council may hold an additional public hearing or hearings at its option. The City Council makes a final decision. The City Council's decision may be appealed to the Central Puget Sound Growth Management Hearings Board. Type VI reviews are exempt from the procedures of RZC 21.76.040, *Time Frames for Review*.
2. Process Flow Chart. The flow chart below in Figure 21.76.050F generally depicts the process that will be used to review a typical Type VI land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC 21.76.060, *Process Steps and Decision Makers*, and RZC 21.76.080, *Notices*.

**Figure Notes:**Link to RZC 21.76.060Link to RZC 21.76.080**Figure 21.76.050F**  
**Flow Chart for Type VI Process**



(Ord. 2652)

Effective on: 4/28/2012

## 21.76.060 PROCESS STEPS AND DECISION MAKERS

- A. **Purpose.** The purpose of this section is to provide an explanation of each of the procedural steps set forth in the process flow charts in RZC 21.76.050, *Permit Types and Procedures*.
- B. **Environmental Review Under the State Environmental Policy Act (SEPA).**
  1. All applications shall be reviewed under the State Environmental Policy Act (SEPA) unless categorically exempt under SEPA. The City's environmental procedures are set forth in RZC 21.70, *State Environmental Policy Act (SEPA) Procedures*.
  2. Threshold Determinations. The Administrator shall issue the threshold determination after the minimum comment period for the Notice of Application and prior to the decision on the

application. The threshold determination shall be mailed and posted in the same manner as the Notice of Application. The threshold determination shall also be sent to agencies with jurisdiction, if any, and the Washington State Department of Ecology. There is a 14-day comment period for certain threshold determinations as provided in WAC 197-11-340. Any comments received shall be addressed in the Technical Committee decision or recommendation on the application, which shall include the final threshold determination (DNS or DS) issued by the Administrator.

3. Optional DNS Process. For projects where there is a reasonable basis for determining that significant adverse impacts are unlikely, a preliminary DNS may be issued with the Notice of Application. The comment period for the DNS and the Notice of Application shall be combined. The Notice of Application shall state that the City expects to issue a DNS for the proposal and that this may be the only opportunity to comment on the environmental impacts of the proposed project. After the close of the comment period, the Technical Committee shall review any comments and issue the final DNS in conjunction with its decision or recommendation on the application.
4. Determination of Significance. If a Determination of Significance (DS) is issued, and an Environmental Impact Statement (EIS) is required, the EIS will be completed prior to issuance of the Technical Committee/Design Review Board decision or recommendation. If the requirement to prepare an EIS or a Supplemental EIS is appealed by the applicant, that appeal must be resolved prior to issuance of the Technical Committee/Design Review Board decision or recommendation.

**C. Neighborhood Meetings.**

1. The purpose of neighborhood meetings is to:
  - a. Provide a forum for interested individuals to meet with the applicant to learn about the proposal and the applicable process early in the review process;
  - b. Provide an opportunity for meaningful public input;
  - c. Provide a dialogue between the applicant, citizens, and City whereby issues can be identified and discussed; and
  - d. Provide an opportunity for applicants to address concerns generated by individuals and incorporate possible changes.
2. Required Neighborhood Meeting: A neighborhood meeting shall be required for the following:
  - a. Essential Public Facility.
  - b. Master Planned Development.
  - c. Preliminary Plat.
  - d. Short plats that meet any of the following criteria:
    - i. propose three or more lots.
    - ii. have critical areas on-site, or
    - iii. are forested (75 percent tree canopy).
  - e. As otherwise required within the RZC.

- f. In addition, the Technical Committee may require a neighborhood meeting on any Type III, IV or V application.
3. Where a neighborhood meeting is required, it shall be conducted by the applicant within 45 days of the termination of the Notice of Application comment period. The applicant shall notify the City of the date and time of the meeting. At least one representative from City staff shall be in attendance. The applicant shall mail notice of the neighborhood meeting to the same individuals to whom notice is required for the Notice of Application, a minimum of 21 days in advance of the meeting. The applicant shall provide the City with an affidavit of mailing. The neighborhood meeting shall be required to take place prior to the Technical Committee decision or recommendation. In certain circumstances, the Technical Committee may choose to hold the neighborhood meeting, in which case the City shall mail the notice of neighborhood meeting as described above. A sign-in sheet shall be provided at the meetings, giving attendees the option of establishing themselves as a party of record.
4. Additional Neighborhood Meetings. In order to provide an opportunity for applicants to address concerns generated by interested parties, applicants are encouraged to hold an additional neighborhood meeting (or meetings) to provide interested parties with additional information, proposed changes to plans, or provide further resolution of issues. If the applicant holds additional meetings, there shall be no specific requirements for notice or City attendance. However, the City shall make effort to attend meetings where appropriate and when the applicant has notified the City that additional meetings are taking place. Any persons attending additional neighborhood meetings who have not established themselves as a party of record, and who wish to do so, must contact the City directly.

**D. Director Decisions on Type I Reviews.**

1. Type I Decision Makers. Decisions on Type I applications are made by the appropriate department director or designee.
2. Decision Criteria. The decision of the department director shall be based on the criteria for the application set forth in this code, or in the applicable uniform or international code in the case of building and fire-related permits. The decision shall include any conditions necessary to ensure consistency with the applicable development regulations. The department director may consult with the Technical Committee, the Design Review Board, or the Landmarks and Heritage Commission on any Type I application, but the final decision-making authority on such applications remains with the department director.
3. Decision. A written record of the director's decision shall be prepared in each case and may be in the form of a staff report, letter, the permit itself, or other written document indicating approval, approval with conditions, or denial. The decision shall be mailed as provided in RZC 21.76.080.G, Notice of Final Decision. See RZC 21.68.200.C.7.a for decisions on Shoreline Exemptions.
4. Appeal. Type I decisions may be appealed to the Hearing Examiner as provided in RZC 21.76.060.I, *Appeals to Hearing Examiner on Type I and II Permits*. All decisions are final upon expiration of the appeal period or, if appealed, upon the date of issuance of the Hearing Examiner's final decision on the appeal. Appeal decisions of the Hearing Examiner may be appealed to the City Council King County Superior Court ~~in a closed record~~ appeal proceeding as provided RZC 21.76.060.M.

**E. Technical Committee Decisions on Type II Reviews.**

1. **Decision.** Decisions on Type II applications are made by the Technical Committee. The decision of the Technical Committee shall be based on the criteria for the application set forth in the RZC, and shall include any conditions necessary to ensure consistency with the applicable development regulations.
2. **Record.** A written record of the Technical Committee's decision shall be prepared in each case and may be in the form of a staff report, letter, the permit itself, or other written document indicating approval, approval with conditions, or denial. All parties of record shall be notified of the final decision.
3. **Design Review Board and Landmarks and Heritage Commission Review.** When design review or review of a Certificate of Appropriateness is required, the decision of the Design Review Board or Landmarks and Heritage Commission shall be included with the Technical Committee decision.
4. **Appeal.** Type II decisions (except shoreline permits) may be appealed to the Hearing Examiner as provided in RZC 21.76.060.I, *Appeals to Hearing Examiner on Type I and Type II Permits*. All decisions are final upon expiration of the appeal period or, if appealed, upon issuance of the Hearing Examiner's final decision on the appeal. Appeal decisions of the Hearing Examiner may be appealed to the ~~City Council in a closed record appeal~~ King County Superior Court proceeding as provided in RZC 21.76.060.M.

**F. Technical Committee Recommendations on Type III, IV, V and VI Reviews.** The Technical Committee shall make a recommendation to the Hearing Examiner on all Type III and Type IV reviews, a recommendation to the City Council on all Type V Reviews, and a recommendation to the Planning Commission for all Type VI reviews. The Technical Committee's recommendation shall be based on the decision criteria for the application set forth in the RZC, and shall include any conditions necessary to ensure consistency with the City's development regulations. Based upon its analysis of the application, the Technical Committee may recommend approval, approval with conditions or with modifications, or denial. A written report of the Technical Committee's recommendation shall be prepared and transmitted to the Hearing Examiner along with the recommendation of the Design Review Board and/or Landmarks and Heritage Commission where applicable.

**G. Design Review Board Determinations on Type II, III, IV and V Reviews.** When design review is required by the Design Review Board, the Design Review Board shall consider the application at an open public meeting of the Board in order to determine whether the application complies with Article III, Design Standards. The Design Review Board's determination shall be given the effect of a final decision on design standard compliance for Type II applications, shall be given the effect of a recommendation to the Hearing Examiner on a Type III or Type IV application, and the effect of a recommendation to the City Council on a Type V application. The Design Review Board's determination shall be included with the written report that contains the Technical Committee recommendation or decision. The Design Review Board's determination may be appealed in the same manner as the decision of the applicable decision maker on the underlying land use permit.

**H. Landmarks and Heritage Commission Determination/Decisions.** The Landmarks and Heritage Commission as specified below shall review all applications requiring a Level II or Level III Certificate of Appropriateness and all applications for Historic Landmark Designation.

1. When review of a Level II Certificate is required, the Redmond Landmarks and Heritage Commission shall consider the application at an open public meeting using the review process for the application in RZC 21.76.050.C in order to determine whether the application complies with the criteria set forth in RZC 21.30, Historic and Archeological Resources, and King County Code Chapter 20.62. Based upon its analysis of the application, the Landmarks and Heritage Commission may approve the application, approve it with conditions or modifications, or deny the application. The Landmarks and Heritage Commission's determination shall be included with the written report that contains the Technical Committee recommendation or decision. Conditions based on the Landmarks and Heritage Commission's determination may be appealed to the Hearing Examiner in the same manner as the Technical Committee decision.
2. When review of a Level II Certificate of Appropriateness requiring a public hearing (see RZC 21.30.050.D.2) or review of a Level III Certificate of Appropriateness is required, the Redmond Landmarks and Heritage Commission shall hold an open record public hearing on the application using a Type III process as provided in RZC 21.76.060.J. The Landmarks and Heritage Commission shall determine whether the application complies with the criteria set forth in RZC 21.30.050.E of the RZC. Based upon its analysis of the application, the Landmarks and Heritage Commission may approve the application, approve it with conditions or modifications, or deny the application. The decision of the Landmarks and Heritage Commission may be appealed to the Redmond City Council in a closed record appeal proceeding pursuant to RZC 21.76.060.MN.
3. The King County Landmarks Commission, acting as the Redmond Landmarks and Heritage Commission, shall review and make determinations on all applications for Historic Landmark Designation or removal of a Historic Landmark Designation. When the King County Landmarks Commission reviews a Historic Landmark Designation nomination or the removal of a Historic Landmark Designation, the King County Landmarks Commission will follow the procedures set forth in King County Code Chapter 20.62, including the holding of an open record hearing on the application. Applications shall be decided based on the criteria in King County Code Chapter 20.62. The decision of the King County Landmarks Commission on a Historic Landmark Designation or removal of a Historic Landmark Designation shall be a final decision appealable to the Redmond City Council in a closed record appeal proceeding pursuant to RZC 21.76.060.MN.

**I. Appeals to Hearing Examiner on Type I and Type II Permits.**

1. Overview. For Type I and Type II permits, the Hearing Examiner acts as an appellate body, conducting an open record appeal hearing when a decision of a department director (Type I) or the Technical Committee (Type II) is appealed. The Hearing Examiner's decision on the appeal may be further appealed to the City Council in a closed record appeal proceeding.
2. Commencing an Appeal. Type I and II decisions may be appealed as follows:
  - a. Who May Appeal. Any party of record may appeal the decision.
  - b. Form of Appeal. A person appealing a Type I or II decision must submit a completed appeal form which sets forth:
    - i. Facts demonstrating that the person is adversely affected by the decision;
    - ii. A concise statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria;

- iii. The specific relief requested; and
  - iv. Any other information reasonably necessary to make a decision on the appeal.
  - c. Time to Appeal. The written appeal and the appeal fee, if any, must be received by the Redmond City Clerk's Office no later than 5:00 p.m. on the fourteenth day following the date the decision of the Technical Committee/Design Review Board Decision is issued.
  - d. Shoreline Permit Appeals must be submitted to the Shoreline Hearings Board. See RZC 21.68.200.C.6.b.
3. Hearing Examiner Public Hearing on Appeal. The Hearing Examiner shall conduct an open record hearing on a Type I or Type II appeal. Notice of the hearing shall be given as provided in RZC 21.76.080.H. The appellant, applicant, owner(s) of property subject to the application, and the City shall be designated parties to the appeal. Only designated parties may participate in the appeal hearing by presenting testimony or calling witnesses to present testimony and by providing exhibits. Interested persons, groups, associations, or other entities who have not appealed may participate only if called by one of the parties to present information, provided that the Examiner may allow nonparties to present relevant testimony if allowed under the Examiner's rules of procedure. 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.
4. Hearing Examiner Decision on Appeal. Within 10 business days after the close of the record for the Type I or II appeal, the Hearing Examiner shall issue a written decision to grant, grant with modifications, or deny the appeal. The decision on appeal shall be mailed to all parties of record. The Hearing Examiner shall accord substantial weight to the decision of the department director (Type I) or Technical Committee (Type II). The Hearing Examiner may grant the appeal or grant the appeal with modifications if the Examiner determines that the appellant has carried the burden of proving that the Type I or II decision is not supported by a preponderance of the evidence or was clearly erroneous.
5. Request for Reconsideration. Any designated party to the appeal who participated in the hearing may file a written request with the Hearing Examiner for reconsideration within 10 business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure or fact. The Hearing Examiner shall act within 10 business days after the filing of the request for reconsideration by either denying the request or issuing a revised decision. The decision on the request for reconsideration and/or issuing a revised decision shall be sent to all parties of record.
6. Appeal. A Hearing Examiner Decision on a Type I or Type II appeal may be appealed to the ~~City Council~~ King County Superior Court as provided in RZC 21.76.060.M.
- J. Hearing Examiner and Landmarks and Heritage Commission Final Decisions on Type III Reviews.**
1. Overview. For Type III reviews, the Hearing Examiner (or the Landmarks and Heritage Commission on Level II Certificates of Appropriateness that require a public hearing under RZC 21.30.050.D.2 and on Level III Certificates of Appropriateness) makes a final decision after receiving the recommendation of the Technical Committee and holding an open record public hearing. The Hearing Examiner's (or Landmarks and Heritage Commission's) decision may be

appealed to the City Council and considered by the Council in a closed record appeal proceeding.

2. Public Hearing. The Hearing Examiner (or Landmarks and Heritage Commission on the applications specified above) shall hold an open record public hearing on all Type III permits. The open record public hearing shall proceed as follows:
  - a. Notice of the hearing shall be given as provided in RZC 21.76.080.D.
  - b. Any person may participate in the Hearing Examiner's (or Landmarks and Heritage Commission's) public hearing on the Technical Committee's recommendation by submitting written comments prior to or at the hearing, or by providing oral testimony and exhibits at the hearing.
  - c. The Administrator shall transmit to the Hearing Examiner (or Landmarks and Heritage Commission) a copy of the department file on the application, including all written comments received prior to the hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application and Notice of SEPA Threshold Determination) have been met.
  - d. The Hearing Examiner (or Landmarks and Heritage Commission) shall create a complete record of the public hearing, including all exhibits introduced at the hearing and an electronic sound recording of each hearing.
3. Authority. The Hearing Examiner (or Landmarks and Heritage Commission) shall approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the RZC. The applicant bears the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner (or Landmarks and Heritage Commission) shall deny the application.
4. Conditions. The Hearing Examiner (or Landmarks and Heritage Commission) may include conditions to ensure a proposal conforms to the relevant decision criteria.
5. Decision. The Hearing Examiner (or Landmarks and Heritage Commission) shall issue a written report supporting the decision within 10 business days following the close of the record. The report supporting the decision shall be mailed to all parties of record. The report shall contain the following:
  - a. The decision of the Hearing Examiner (or Landmarks and Heritage Commission); and
  - b. Any conditions included as part of the decision; and
  - c. Findings of fact upon which the decision, including any conditions, was based and the conclusions derived from those facts; and
  - d. A statement explaining the process to appeal the decision of the Hearing Examiner (or Landmarks and Heritage Commission) to the City Council.
6. Request for Reconsideration. Any party of record may file a written request with the Hearing Examiner (or Landmarks and Heritage Commission) for reconsideration within 10 business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure, law, or fact. No new evidence may be submitted in support of or

in opposition to a request for reconsideration. The Hearing Examiner shall act within 10 business days after the filing of the request for reconsideration by either denying the request or issuing a revised decision. The decision on the request for reconsideration and/or the revised decision shall be sent to all parties of record.

7. Appeal. Except for Shoreline Conditional Use Permits or Shoreline Variances, a Hearing Examiner or Landmarks and Heritage Commission decision may be appealed to the City Council as provided in RZC 21.76.060.M. Shoreline Conditional Use Permits and Shoreline Variances may be appealed to the Shoreline Hearings Board as provided in RZC 21.68.200.C.6.c.

**K. Hearing Examiner Recommendations on Type IV Reviews.**

1. Overview. For Type IV reviews, the Hearing Examiner makes a recommendation to the City Council after receiving the recommendation of the Technical Committee and holding an open record public hearing. The City Council considers the Hearing Examiner's recommendation in a closed record proceeding.
2. Hearing Examiner Public Hearing. The Hearing Examiner shall hold an open record public hearing on all Type IV permits. The open record public hearing shall proceed as follows:
  - a. Notice of the hearing shall be given as provided in RZC 21.76.080.D.
  - b. Any person may participate in the Hearing Examiner's public hearing on the Technical Committee's recommendation by submitting written comments to the Technical Committee prior to the hearing, by submitting written comments at the hearing, or by providing oral testimony and exhibits at the hearing.
  - c. The Administrator shall transmit to the Hearing Examiner a copy of the department file on the application, including all written comments received prior to the hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application and Notice of SEPA Threshold Determination) have been met.
  - d. 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.
3. Hearing Examiner Authority. The Hearing Examiner shall make a written recommendation to approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the RZC. The applicant bears the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner shall make a recommendation to deny the application.
4. Conditions. The Hearing Examiner may include conditions in the recommendation to ensure a proposal conforms to the relevant decision criteria.
5. Recommendation. The Hearing Examiner shall issue a written report supporting the recommendation within 10 business days following the close of the record. The report shall contain the following:
  - a. The recommendation of the Hearing Examiner; and
  - b. Any conditions included as part of the recommendation; and

- c. Findings of fact upon which the recommendation, including any conditions, was based and the conclusions derived from those facts.
  6. Mailing of Recommendation. The office of the Hearing Examiner shall mail the written recommendation, bearing the date it is mailed, to each person included in the parties of record. The Administrator will provide notice of the Council meeting at which the recommendation will be considered to all parties of record.
  7. Request for Reconsideration. Any party of record may file a written request with the Hearing Examiner for reconsideration within 10 business days of the date of the Hearing Examiner's recommendation. The request shall explicitly set forth alleged errors of procedure, law, or fact. No new evidence may be submitted as part of a request for reconsideration. The Hearing Examiner shall act within 10 business days after the filing of the request for reconsideration by either denying the request or issuing a revised decision. The decision on the request for reconsideration and/or revised decision shall be sent to all parties of record.
  8. All Hearing Examiner recommendations on Type IV permits shall be transmitted to the City Council for final action, as provided in RZC 21.76.060.NO.
- L. Planning Commission Recommendations on Type VI Reviews.**
1. Overview. For Type VI proposals, the Planning Commission makes a recommendation to the City Council after holding at least one open record public hearing. The Planning Commission may also hold one or more study sessions prior to making the recommendation. The City Council considers the Planning Commission's recommendation and takes final action by ordinance.
  2. Planning Commission Public Hearing. The Planning Commission shall hold at least one open record public hearing. The hearing shall proceed as follows:
    - a. Notice of the public hearing shall be given as provided in RZC 21.76.080.F.
    - b. Any person may participate in the public hearing by submitting written comment to the applicable department director prior to the hearing or by submitting written or making oral comments to the Planning Commission at the hearing. All written comments received by the applicable department director shall be transmitted to the Planning Commission no later than the date of the public hearing
    - c. The Administrator shall transmit to the Planning Commission a copy of the department file on the application, including all written comments received prior to the hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application, as required; Notice of SEPA Determination) have been met.
    - d. The Planning Commission shall record and compile written minutes of each hearing.
  3. Recommendation. The Planning Commission may recommend that the City Council adopt, or adopt with modifications, a proposal if it complies with the applicable decision criteria in RZC 21.76.070, Land Use Actions and Decision Criteria. In all other cases, the Planning Commission shall recommend denial of the proposal. The Planning Commission's recommendation shall be in writing and shall contain the following:
    - a. The recommendation of the Planning Commission; and

- b. Any conditions included as part of the recommendation; and
  - c. Findings of fact upon which the recommendation, including any conditions, was based and the conclusions derived from those facts.
4. Additional Hearing on Modified Proposal. If the Planning Commission recommends a modification which results in a proposal not reasonably foreseeable from the notice provided pursuant to RZC 21.76.080.F, the Planning Commission shall conduct a new public hearing on the proposal as modified. The Planning Commission shall consider the public comments at the hearing in making its final recommendation.
  5. 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.
  6. All Planning Commission recommendations shall be transmitted to the City Council for final action as provided in RZC 21.76.060.PQ.
- M. ~~Appeals to City Council~~ King County Superior Court on Type I and II Reviews, ~~and III Reviews and from King County Landmark Commission Decisions.~~**
1. Overview. Except for Shoreline Substantial Development Permits, ~~Shoreline Conditional Use Permits, and Shoreline Variances,~~ all decisions of the Hearing Examiner on Type I and II appeals ~~and all decisions of the Hearing Examiner on Type III permits~~ may be appealed to the ~~City Council~~ King County Superior Court. All decisions of the Redmond Landmarks and Heritage Commission on Level II Certificates of Appropriateness that require a public hearing, and Level III Certificates of Appropriateness, and all decisions of the King County Landmarks Commission on Historic Landmark Designations and removal of Historic Landmark Designations may also be appealed to the City Council. The City Council will make a final decision on such matters in a closed record appeal proceeding in which no new evidence may be submitted.
  2. Commencing an Appeal. Hearing Examiner decisions on Type I and II appeals ~~and on Type III permits and decisions of the Redmond Landmarks and Heritage Commission and King County Landmarks Commission on matters described in subsection M.1 above~~ may be appealed to the ~~City Council~~ King County Superior Court as follows:
    - a. Who May Appeal. The following parties may appeal:
      - i. The applicant;
      - ii. The owner(s) of property subject to the application;
      - iii. City staff;
      - iv. In the case of Type I or II decisions, any party who appealed the department director's or Technical Committee's decision to the Hearing Examiner;
      - ~~v. In the case of Type III decisions, any person who established themselves as a party of record prior to or at the public hearing; and~~
      - vi. In the case of decisions by the Redmond Landmarks and Heritage Commission or the King County Landmarks Commission specified in subsection M.1 above, any person who established themselves as a party of record prior to or at the public hearing.

- b. Form of Appeal. A person appealing a Type I ~~or~~ II, ~~or~~ III decision by the Hearing Examiner or the decisions of the Redmond Landmarks Commission or King County Landmarks Commission described in subsection M.1 must submit a completed appeal form which sets forth:
    - i. Facts demonstrating that the person is adversely affected by the decision;
    - ii. A concise statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria;
    - iii. The specific relief requested; and
    - iv. Any other information reasonably necessary to make a decision on the appeal.
  - c. Time to Appeal. The written appeal and the appeal fee, if any, must be received by the Redmond City Clerk's Office no later than 5:00 p.m. 10 business days following the expiration of the Hearing Examiner's (or Landmarks and Heritage Commission's) reconsideration period.
- ~~3. Closed Record Appeal Proceeding Before City Council.~~
- ~~a. Notice. Notice of the closed record appeal proceeding shall be given as provided in RZC 21.76.080.I.~~
  - ~~b. Conduct of the Appeal Proceeding.~~
    - ~~i. Who May Participate. The applicant, owner(s) of property subject to the application, appellant, the applicable department director, or representatives of these parties may participate in the appeal proceeding.~~
    - ~~ii. How to Participate. A person entitled to participate may participate in the appeal proceeding by:~~
      - ~~A. Submitting written argument on the appeal to the City Clerk no later than two business days prior to the scheduled City Council meeting; or~~
      - ~~B. Making oral argument on the appeal to the City Council at the closed record appeal proceeding. Argument on the appeal is limited to information contained in the record developed before the Hearing Examiner or Landmarks and Heritage Commissions, and must specify the findings or conclusions which are the subject of the appeal, as well as the relief requested from the Council.~~
    - ~~iii. Hearing Record. The City Council shall make an electronic sound recording of each appeal proceeding.~~
    - ~~iv. Testimony. Testimony or other evidence and information not presented to the Hearing Examiner or Landmarks and Heritage Commissions shall not be considered. The decision by the City Council shall be made only on the basis of facts presented at the open record hearing before the Hearing Examiner or Landmarks and Heritage Commissions.~~
  - ~~c. City Council Decision on Appeal.~~
    - ~~i. Criteria. The City Council may grant the appeal or grant the appeal with modifications if the appellant proves that the decision of the Hearing Examiner or Landmarks and Heritage Commission is not supported by a preponderance of the evidence or is clearly~~

~~erroneous. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner or Landmarks and Heritage Commission.~~

- ~~ii. Conditions. The City Council may impose conditions as part of the granting of an appeal or granting of an appeal with modification to ensure conformance with the criteria under which the application was made.~~
  - ~~iii. Findings. The City Council shall adopt findings and conclusions which support its decision on the appeal.~~
  - ~~iv. 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. A tie vote shall be decided by the vote of the Mayor. Any other vote constitutes denial of the appeal.~~
  - ~~v. Notice of Decision on Appeal. Notice of Decision on Appeal shall be provided pursuant to RZC 21.76.080.G, Notice of Final Decision.~~
4. ~~The City Council's Hearing Examiner decision on an appeal from the Hearing Examiner Applicable Department or Technical Committee on a Type I ~~or~~, II, ~~or~~ III review ~~or~~ the Redmond Landmarks and Heritage Commission ~~or~~ King County Landmarks Commission on those matters specified in subsection M.1 is the final decision of the City and (except for Shoreline Conditional Use Permits and Shoreline Variances) may be appealed to the King County Superior Court as provided in RZC 21.76.060.QR.~~
5. ~~Shoreline Substantial Development Permits, Shoreline Conditional Use Permits, and Shoreline Variances must be appealed to the Shoreline Hearings Board. See RZC 21.68.200.C.6.b and 21.68.200.C.6.c.~~

**N. Appeals to the City Council on Type III Reviews and from King County Landmark Commission Decisions.**

- 1. Overview. Except for Shoreline Conditional Use Permits and Shoreline Variances reviews may be appealed to City Council. All decisions of the Redmond Landmarks and Heritage Commission on Level II Certificates of Appropriateness that require a public hearing, and Level III Certificates of Appropriateness, and all decisions of the King County Landmarks Commission on Historic Landmark Designations and removal of Historic Landmark Designations may be appealed to the City Council.**
- 2. Commencing an Appeal. Hearing Examiner decisions on Type III permits and decisions of the Redmond Landmarks and Heritage Commission and King County Landmarks Commission on matters described in subsection N.1 above may be appealed to the City Council as follows:**
  - a. Who May Appeal. The following parties may appeal:**
    - i. The applicant;**
    - ii. The owner(s) of property subject to the application;**
    - iii. City staff;**
    - iv. In the case of Type III decisions, any person who established themselves as a party of record prior to or at the public hearing; and**

- v. In the case of decisions by the Redmond Landmarks and Heritage Commission or the King County Landmarks Commission specified in subsection M.1 above, any person who established themselves as a party of record prior to or at the public hearing.
  - b. Form of Appeal. A person appealing a Type III decision by the Hearing Examiner or the decisions of the Redmond Landmarks Commission or King County Landmarks Commission described in subsection N.1 must submit a completed appeal form which sets forth:
    - i. Facts demonstrating that the person is adversely affected by the decision;
    - ii. A concise statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria;
    - iii. The specific relief requested; and
    - iv. Any other information reasonably necessary to make a decision on the appeal.
  - c. Time to Appeal. The written appeal and the appeal fee, if any, must be received by the Redmond City Clerk's Office no later than 5:00 p.m. 10 business days following the expiration of the Hearing Examiner's (or Landmarks and Heritage Commission's) reconsideration period.
  - d. City Council Decision on Appeal.
    - i. Criteria. The City Council may grant the appeal or grant the appeal with modifications if the appellant proves that the decision of the Hearing Examiner regarding Type III is not supported by a preponderance of the evidence or is clearly erroneous. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner or Landmarks and Heritage Commission.
    - ii. Conditions. The City Council may impose conditions as part of the granting of an appeal or granting of an appeal with modification to ensure conformance with the criteria under which the application was made.
    - iii. Findings. The City Council shall adopt findings and conclusions which support its decision on the appeal.
    - iv. 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. A tie vote shall be decided by the vote of the Mayor. Any other vote constitutes denial of the appeal.
    - v. Notice of Decision on Appeal. Notice of Decision on Appeal shall be provided pursuant to RZC 21.76.080.G, *Notice of Final Decision*.
3. Hearing Examiner decisions on a Type III review or the Redmond Landmarks and Heritage Commission or King County Landmarks Commission on those matters specified in subsection N.1 is the final decision of the City and (except for Shoreline Conditional Use Permits and) may be appealed to the City Council as provided in RZC 21.76.060.R.

**4. Shoreline Conditional Use Permits must be appealed to the Shoreline Hearings Board. See RZC 21.68.200.C.6.b and 21.68.200.C.6.c.**

**NQ. City Council Decisions on Type IV Reviews.**

- Overview. The City Council considers all Hearing Examiner recommendations on Type IV permits in a closed record proceeding. Decisions of the City Council on Type IV permits may be appealed to the King County Superior Court as provided in RZC 21.76.060.QR.
- City Council Decision.
  - a. The Administrator shall transmit to the City Council a copy of the department file on the application, including all written comments received prior to and during the open record hearing and information reviewed by or relied upon by the Hearing Examiner. The file shall also include information to verify that the requirements for notice to the public (Notice of Application, Notice of Public Hearing, and Notice of SEPA Determination) have been met.
  - b. The City Council shall conduct a closed record proceeding. Notice of the closed record proceeding shall be provided as outlined within RZC 21.76.080.J, *Notice of Closed Record Appeal Proceeding on Type IV and City Council Proceeding on Type VI Reviews*. The City Council shall not accept new information, written or oral, on the application, but shall consider the following in deciding upon an application:
    - i. The complete record developed before the Hearing Examiner; and
    - ii. The recommendation of the Hearing Examiner.
  - c. The City Council shall either:
    - i. Approve the application; or
    - ii. Approve the application with modifications; or
    - iii. Deny the application, based on findings of fact and conclusions derived from those facts which support the decision of the Council.
  - d. Form of Decision. All City Council decisions on Type IV reviews shall be in writing. All decisions approving a Type IV application shall require passage of an ordinance. Decisions denying Type IV applications shall not require passage of an ordinance. Decisions on Type IV applications shall include:
    - i. Findings and Conclusions. The City Council shall include findings of fact and conclusions derived from those facts which support the decision of the Council, including any conditions, in the decision on the application. The City Council may, by reference, adopt some or all of the findings and conclusions of the Hearing Examiner.
    - ii. Conditions. The City Council may, based on the record, include conditions in any ordinance approving or approving with modifications any conditional use permit, essential public facilities permit, or master planned development application in order to ensure conformance with the approval criteria specified in the code or process under which the application was made. For Zoning Map Amendments that are consistent with the Comprehensive Plan, conditions of approval shall not be included in the ordinance, but shall be included in a separate development agreement approved concurrently with the ordinance.

- iii. Required Vote. The City Council shall adopt an ordinance which approves or approves with modifications the application by a majority vote of the membership of the City Council. Decisions to deny a Type IV application shall require a majority vote of those Council members present and voting.
- iv. Notice of Decision. Notice of the City Council Decision shall be provided as outlined within RZC 21.76.080.G, *Notice of Final Decision*.

**OP. City Council Decisions on Type V Reviews.**

1. Overview. For Type V reviews, the City Council makes a final decision after receiving the recommendation of the Technical Committee and the recommendation of the Design Review Board (if required) and after holding an open record public hearing. The City Council's decision is appealable to the King County Superior Court as provided in RZC 21.76.060.QR.
2. City Council Open Record Public Hearing.
  - a. Notice. Notice of the City Council's open record public hearing shall be given as provided in RZC 21.76.080.E.
  - b. Transmittal of File. The Administrator shall transmit to the City Council a copy of the department file on the application, including all written comments received prior to the City Council open record public hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application, Notice of Public Hearing, and Notice of SEPA Determination) have been met.
  - c. Participation. Any person may participate in the City Council public hearing on the Technical Committee's recommendation by submitting written comments prior to the hearing or at the hearing by providing oral testimony and exhibits at the hearing. The Council shall create a complete record of the open record public hearing, including all exhibits introduced at the hearing and an electronic sound recording of the hearing.
3. City Council Decision.
  - a. Options. The City Council shall, at the open record public hearing, consider and take final action on each Type V application. The final action may take place in the same meeting as the public hearing. The City Council shall either:
    - i. Approve the application; or
    - ii. Approve the application with modifications or conditions; or
    - iii. Deny the application.
  - b. Form of Decision. The City Council's decision shall be in writing and shall include the following:
    - i. Findings and Conclusions. The City Council shall include findings of fact and conclusions derived from those facts which support the decision of the Council, including any conditions, in the decision approving the application or approving the application with modifications or conditions. The City Council may by reference adopt some or all of the findings and conclusions of the Technical Committee.

- ii. Conditions. The City Council may, based on the record, include conditions in any ordinance approving or approving with modifications an application in order to ensure conformance with the approval criteria specified in the code or process under which the application was made.
- iii. Notice of the Decision shall be provided as outlined within RZC Notice of the Decision shall be provided as outlined within RZC 21.76.080.G, *Notice of Final Decision*.

**PQ. City Council Decisions on Type VI Reviews.**

1. Overview. The City Council shall consider and take action on all Planning Commission recommendations on Type VI reviews. The City Council may take action with or without holding its own public hearing. Any action of the City Council to adopt a Type VI proposal shall be by ordinance.
2. City Council Action.
  - a. Notice of City Council Proceeding. Notice shall be provided in accordance with RZC 21.76.080.J.
  - b. Initial Consideration by Council. The City Council shall consider at a public proceeding each recommendation transmitted by the Planning Commission. The Council may take one of the following actions:
    - i. Adopt an ordinance adopting the recommendation or adopt the recommendation with modifications; or
    - ii. Adopt a motion denying the proposal; or
    - iii. Refer the proposal back to the Planning Commission for further proceedings, in which case the City Council shall specify the time within which the Planning Commission shall report back to the City Council with a recommendation; or
    - iv. Decide to hold its own public hearing to take further public testimony on the proposal or in order to consider making a modification of the proposal that was not within the scope of the alternatives that could be reasonably foreseen from the notice of the Planning Commission public hearing provided under RZC 21.76.080.F.
  - c. Public Hearing and Decision. If the Council determines to hold its own public hearing, notice shall be provided; and the hearing shall be conducted in the same manner as was provided for the Planning Commission hearing on the proposal. After conducting the public hearing, the City Council shall render a final decision on the proposal as provided in subsection P.2.b.i or P.2.b.ii above.

**QR. Appeal of Council & Hearing Examiner Decisions on Types I - V Reviews to Superior Court.** The decision of the City Council or Hearing Examiner on Type I - V permits or reviews is the final decision of the City and may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter 36.70C. No action to obtain judicial review may be commenced unless all rights of administrative appeal provided by the RZC or state law have been exhausted. The petition for review must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040.

- RS. Appeal of Council Decisions on Type VI Reviews to Growth Board.** The action of the City Council on a Type VI 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).
- ST. Appeal of Shoreline Master Plan Amendments and Decisions.** Appeal of Shoreline Master Plan amendments and decisions must be made to the Shoreline Hearings Board.

## **RZC 21.76 REVIEW PROCEDURES**

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### **21.76.070 LAND USE ACTIONS AND DECISION CRITERIA**

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#### **K. Conditional Use Permit.**

1. Purpose. The purpose of this section is to establish the criteria that the City will use in making a decision upon an application for a Conditional Use Permit. A conditional use is a use which may be appropriate on a specific parcel of land within a given zoning district under certain conditions, but which is not appropriate on all parcels within the same zoning district. A Conditional Use Permit allows the City to consider the appropriateness of the use on a specific parcel in terms of compatibility with other uses in the same zone and vicinity and to impose conditions to ensure such compatibility.
2. Scope. A Conditional Use Permit shall be required for any land use designated as requiring a Conditional Use Permit in the applicable permitted use chart, unless otherwise noted in the chart.
3. Phasing. A project may be developed in phases. If more than three years have lapsed since final approval of the project, uncompleted divisions shall be subject to the current City standards.
4. Decision Criteria. The City may approve or approve with modifications the conditional use only if the applicant demonstrates that:
  - a. The conditional use is consistent with the RZC and the Comprehensive Plan;
  - b. The conditional use is designed in a manner which is compatible with and responds to the existing or intended character, appearance, quality of development, and physical characteristics of the subject property and immediate vicinity;
  - c. The location, size, and height of buildings, structures, walls and fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties;
  - d. The type of use, hours of operation, and appropriateness of the use in relation to adjacent uses minimize unusual hazards or characteristics of the use that would have adverse impacts;
  - e. The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;
  - f. The conditional use will be supported by adequate public facilities or services, and will not adversely affect public services to the surrounding area or conditions are established to mitigate adverse impacts on such facilities.

CODE

**CITY OF REDMOND  
ORDINANCE NO. 2902**

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON ADOPTING INTERIM LAND USE REGULATIONS AND OFFICIAL CONTROLS PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390 BY (1) AMENDING THE APPEAL PROCESS FOR TYPE III DECISIONS OUTLINED IN REDMOND ZONING CODE CHAPTER 21.76; (2) ESTABLISHING A DATE FOR PUBLIC HEARING; AND (3) ESTABLISHING AN EFFECTIVE DATE

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WHEREAS, the City of Redmond Zoning Code (RZC) Section 21.76 Review Procedures lists the administrative appeal bodies that are appropriate to each permit type; and

WHEREAS, RZC 21.76 identifies Type III permits as a quasi-judicial review; and

WHEREAS, RZC 21.76.050A identifies the Hearing Examiner or Landmarks Commission as the Decision Maker; and

WHEREAS, RZC 21.76.050A identifies the City Council as the Administrative Appeal Body for Type III permits; and

WHEREAS, pursuant to RCW 36.70B.110(9), the City is not required to provide for an administrative appeals process; and

WHEREAS, it is the Council's intention to make all Type III decisions appealable to the Superior Court except for Shoreline Substantial Development Permits, Shoreline Variances, and

Shoreline Conditional Use Permits which are appealable to the State Shorelines Hearings Board; and

WHEREAS, by removing the Council from the appeals process for Type III decisions, the Council may interact and advocate on those topics that may be implicated in a Type III decision.

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

Section 1.      Classification.      This ordinance is of a general and permanent nature and shall become a part of the City Code.

Section 2.      Amendment of Sections.      RZC 21.76.050, "Permit Types and Procedures," and RZC 21.76.060 "Review Procedures", is hereby amended as shown in the attached Exhibit 1.

Section 3.      Setting of Public Hearing.      A public hearing is hereby set on this interim zoning ordinance for January 16, 2018, such date being within at least sixty (60) days of the adoption of this ordinance. The interim zoning ordinance is further directed to the Planning Commission for its consideration and recommendation regarding adoption of an appropriate change to the City's zoning codes.


Section 4.      Severability.      If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 5. Effective date. This ordinance takes effect and is in full force five (5) days after its passage, approval, and publication of an approved summary of the title as provided by law.

ADOPTED by the Redmond City Council this 5<sup>th</sup> day of December,  
2017.

CITY OF REDMOND

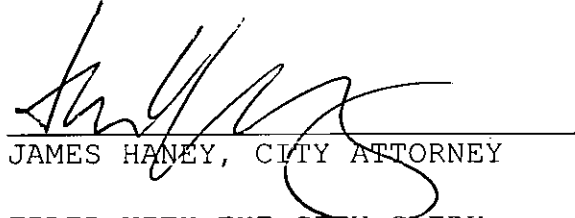
  
JOHN MARCHIONE, MAYOR

ATTEST:

  
MICHELLE M. HART, MMC, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

  
JAMES HANEY, CITY ATTORNEY

FILED WITH THE CITY CLERK:	November 21, 2017
PASSED BY THE CITY COUNCIL:	December 5, 2017
SIGNED BY THE MAYOR:	December 8, 2017
PUBLISHED:	December 11, 2017
EFFECTIVE DATE:	December 16, 2017
ORDINANCE NO. 2902	

YES: BIRNEY, CARSON, MARGESON, MYERS, PADHYE, SHUTZ, STILIN

## EXHIBIT A

**21.76.050 PERMIT TYPES AND PROCEDURES**

- A. **Purpose.** The purpose of this chapter is to provide detailed administrative review procedures for applications and land use permits classified as Types I through VI.
- B. **Scope.** Land use and development decisions are classified into six processes 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 input sought, and the type of appeal opportunity generally as follows:

**Table 21.76.050A****Permit Types**


Permit Type						
	Type I Administrative	Type II Administrative	Type III Quasi-Judicial	Type IV Quasi-Judicial	Type V Quasi-Judicial	Type VI Legislative
<b>TABLE NOTES:</b> <ol style="list-style-type: none"> <li>Shoreline Substantial Development Permits, Shoreline Variances, and Shoreline Conditional Use Permits are appealable directly to the State <u>Shorelines</u> Hearings Board.</li> <li>Landmarks Commission makes decisions for Certificate of Appropriateness Level III permits.</li> </ol>						
Level of Impact and Level of Discretion Exercised by decision maker	 <p>Least level of impact or change to policy/regulation. Least level of discretion.</p> <p>Potential for greatest level of impact due to changes in regulation or policy. Greatest level of discretion.</p>					
Input Sought	Minimal- generally no public notice required. No public hearing.	Notice of Application provided. No public hearing. Neighborhood meeting only required for <u>short plats</u> meeting certain criteria.	Notice of Application provided. Neighborhood meeting <u>may</u> be required. Public hearing is required.	Notice of Application provided. Neighborhood meeting may be required. Public hearing is required.	Notice of Application provided. Neighborhood meeting may be required. Public hearing is required.	Notice of Public Hearing provided.

Table 21.76.050A Permit Types						
	Permit Type					
	Type I Administrative	Type II Administrative	Type III Quasi-Judicial	Type IV Quasi-Judicial	Type V Quasi-Judicial	Type VI Legislative
Public Hearing prior to Decision?	No	No	Yes, Hearing Examiner (or Landmarks Commission) <sup>2</sup>	Yes, Hearing Examiner	Yes, City Council	Yes, Planning Commission
Decision Maker	Appropriate Department	<u>Technical Committee</u>	Hearing Examiner (or Landmarks Commission) <sup>2</sup>	City Council	City Council	City Council
Administrative Appeal Body	Hearing Examiner (Hearing Examiner decision on appeal may be appealed to Superior Court.)	Hearing Examiner <sup>1</sup> (Hearing Examiner decision on appeal may be appealed to Superior Court.)	City Council <sup>3</sup> <u>None (decision appealable to Superior Court)<sup>1</sup></u>	None (decision appealable to Superior Court)	None (decision appealable to Superior Court)	None (decision appealable to Superior Court)

C. **Classification of Permits and Decisions - Table.** The following table sets forth the various applications required and classifies each application by the process used to review and decide the application.

Type I - RZC 21.76.050.F:	Administrative Approval, Appropriate Department is Decision Maker
Type II - RZC 21.76.050.G:	Administrative Approval, Review and Decision by Technical Committee and Design Review Board or Landmarks Commission*
Type III - RZC 21.76.050.H:	Quasi-Judicial, Decision by Hearing Examiner or Landmarks and Heritage Commission*
Type IV - RZC 21.76.050.I:	Quasi-Judicial, Recommendation by Hearing Examiner, Decision by City Council
Type V - RZC 21.76.050.J:	Quasi-Judicial, Decision by City Council
Type VI - RZC 21.76.050.K:	Legislative, recommendation by Planning Commission, Decision by City Council

\*for properties with a Designation of Historic Significance, please refer to RZC 21.76.060.H, *Landmarks and Heritage Commission Determination/Decisions*.

**Table 21.76.050B**  
**Classification of Permits and Decisions**

Permit Type	Process Type	RMC Section (if applicable)
Administrative Interpretation	I	
Administrative Modification	II	
<u>Alteration</u> of Geologic Hazard Areas	III	
<u>Binding Site Plan</u>	II	
<u>Boundary Line Adjustment</u>	I	
<u>Building Permit</u>	I	RMC 15.06
Certificate of Appropriateness Level I	I	
Certificate of Appropriateness Level II	II	
Certificate of Appropriateness Level III	III	
Clearing and <u>Grading Permit</u>	I	RMC 15.24
<u>Comprehensive Plan Map</u> and/or Policy Amendment	VI	
Conditional Use Permit	III	
Development Agreement	V	
Electrical Permit	I	RMC 15.12
<u>Essential Public Facility</u>	IV	
Extended Public Area Use Permit	I	RMC 12.08
Flood Zone Permit	I	RMC 15.04
<u>Historic Landmark Designation</u>	III	
<u>Home Business</u>	I	
Hydrant Use Permit	I	RMC 13.16.020
International Fire Code Permit	I	RMC 15.06
<u>Master Planned Development</u> See RZC <u>21.76.070.P</u>	II, III, IV or V	
Mechanical Permit	I	RMC 15.14
<u>Plat</u> Alteration	V	
Plat Vacation	V	
Plumbing Permit	I	RMC 15.16
<u>Preliminary Plat</u>	III	
Reasonable Use Exception See RZC <u>21.76.070.U</u>	I, II, III, IV or V	
<u>Right-of-Way</u> Use Permit	I	RMC 12.08
Sewer Permit	I	RMC 13.04
Permit Type	Process Type	RMC Section (if applicable)
Shoreline Conditional Use Permit	III	
Shoreline Exemption	I	
Shoreline Substantial Development Permit	II	
Shoreline Variance	III	
Short Plat	II	

<u>Sign</u> Permit/Program	I	
<u>Site</u> Plan Entitlement	II	
Special Event Permit	I	RMC 10.60
<u>Structure</u> Movement Permit I-IV	I	RMC 15.22
<u>Temporary Use</u> Permit (Long-Term)	V	
<u>Temporary Use</u> Permit (Short-Term)	I	
<u>Tree Removal</u> Permit	I	
Variance	III	
Water Permit	I	RMC 13.08
Willows Rose Hill Demonstration Project	III	
Wireless Communication Facility Permit I	I	
Wireless Communication Facility Permit II	II	
Zoning Code Amendment-Zoning Map (consistent with Comprehensive Plan)	IV	
Zoning Code Amendment (text)	VI	
Zoning Code Amendment (that requires a Comprehensive Plan Amendment)	VI	

D. **Permits and Actions Not Listed.** If a permit or land use action is not listed in the table in RZC 21.76.050.C, *Classification of Permits and Decisions*, the Administrator shall make a determination as to the appropriate review procedure based on the most analogous permit or land use action listed.

E. **Consolidated Permit and Appeal Process.**

- Where this Code requires more than one land use permit for a given development, all permit applications (except Type I applications) may be submitted for review collectively according to the consolidated review process established by this section.
- Where two or more land use applications for a given development are submitted for consolidated review, the review shall be conducted using the highest numbered process type applicable to any of the land use applications, provided that each land use application shall only be subject to the relevant decision criteria applicable to that particular development application. For example, a development proposal that includes a Type II application and a Type III application shall be reviewed using the Type III process, but the Type II application shall be decided based on the relevant decision criteria applicable to the Type II application. If two or more land use applications are consolidated for review, the highest application review and decision timeframe as outlined within RZC 21.76.040.D shall apply.
- When the consolidated process established by this section is used, the City shall issue single, consolidated notices, staff reports, and decision documents encompassing all of the land use applications under review. Except as provided in subsection E.5 below, the applications shall be considered in a single, consolidated open record public hearing and shall be subject to no more than one consolidated closed record appeal.
- Where a development requires more than one land use permit but the applicant elects not to submit all applications for consolidated review, applications may be submitted and processed sequentially, provided that the permit subject to the highest numbered process type must be submitted and obtained first, followed by the other permits in sequence from the highest numbered type to the lowest.

5. Where a development proposal requires a zoning map amendment, the zoning map amendment must be considered and approved by the Hearing Examiner and City Council before any hearing is held or decision is made on any related application for a conditional use permit, subdivision, variance, master planned development, site plan entitlement, or other similar quasi-judicial or administrative action. This subsection is intended to be a “procedural requirement” applicable to such actions as contemplated by RCW 58.17.070.
6. All appeals of project permit decisions for a single project shall be consolidated and heard together in a single appeal, using the highest level appeals process, except for appeals of environmental Determinations of Significance. Where a Determination of Significance (DS) is appealed, the appeal shall be heard by the Hearing Examiner using the Type II review process prior to any consideration of the underlying application. Where a Determination of Non-Significance (DNS) or the adequacy of an Environmental Impact Statement (EIS) is appealed, the hearing on the appeal shall be consolidated with any open record public hearing to be conducted on the underlying application.

**F. Type I Review.**

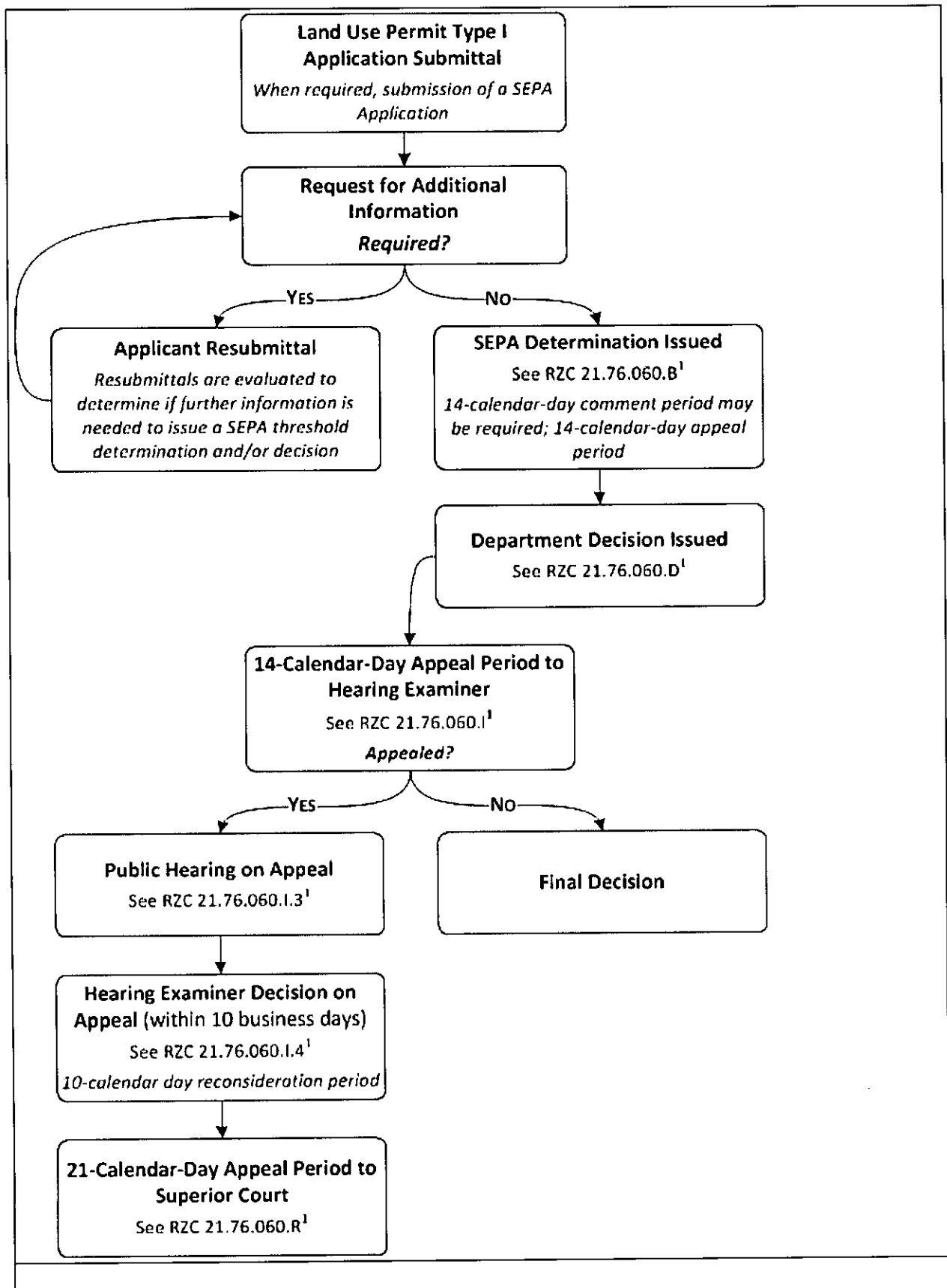
1. Overview of Type I Review. A Type I process is an administrative review and decision by the appropriate department director or designee. These are applications which are categorically exempt from review under the State Environmental Policy Act (SEPA) or permits for which environmental review has been completed in connection with another application. Appeals of Type I decisions are made to the Hearing Examiner in an open record hearing. Appeal decisions of the Hearing Examiner may be appealed to the King County Superior Court. Type I reviews are exempt from the procedures of RZC 21.76.040, *Time Frames for Review*.
2. Process Flow Chart. The flow chart below in Figure 21.76.050A depicts the process that will be used to review a typical Type I land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC 21.76.060, *Process Steps and Decision Makers*.

**Figure Notes:**

1. Link to RZC 21.76.060

**Figure 21.76.050A**

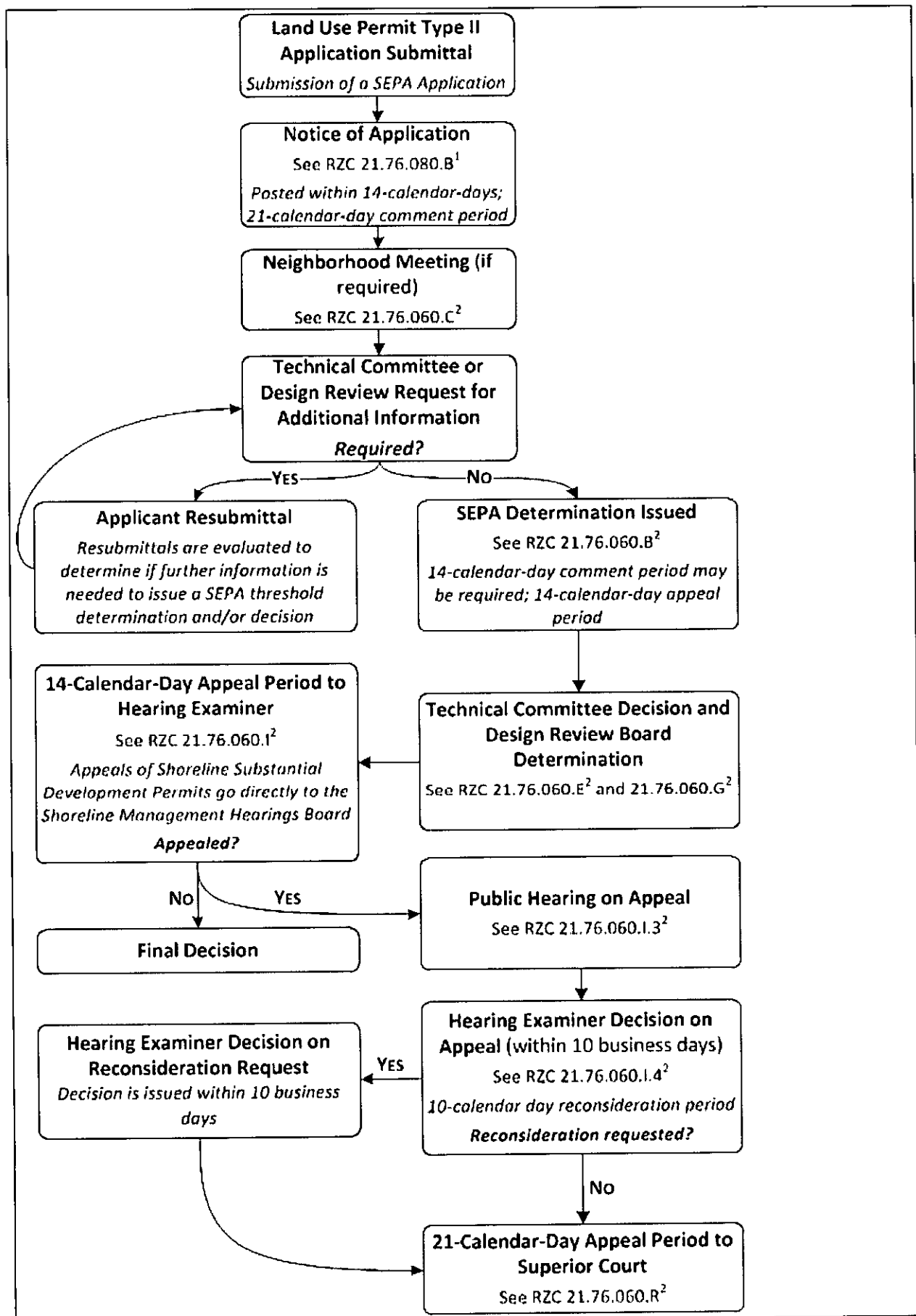
**Flow Chart for Type I Process**



**G. Type II Review.**

1. Overview of Type II Review. A Type II process is an administrative review and decision by the Technical Committee and, when required, by the Design Review Board or the Landmarks and Heritage Commission. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. Except for Certificates of Appropriateness related to historic structures, public notification is provided at the application and decision stages of review. Environmental review is conducted, when required. Appeals of Type II decisions are made to the Hearing Examiner in an open record hearing. Appeal decisions of the Hearing Examiner may be appealed to the King County Superior Court.
2. Process Flow Chart. The flow chart below in Figure 21.76.050B generally depicts the process that will be used to review a typical Type II land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC 21.76.060, *Process Steps and Decision Makers*, and RZC 21.76.080, *Notices*.

**Figure 21.76.050B**  
**Flow Chart for Type II Process**



**Figure Notes:**

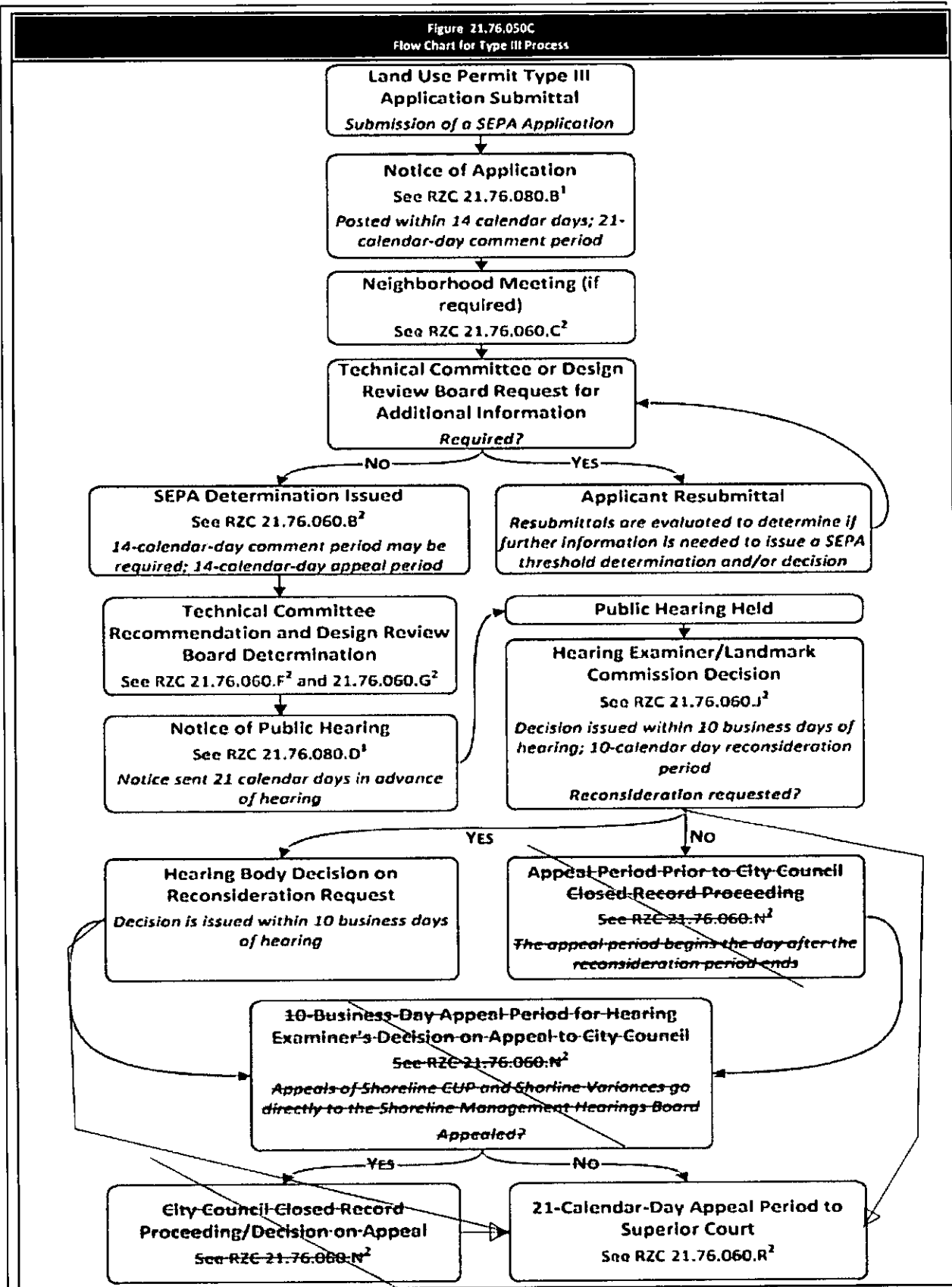
1. Link to RZC 21.76.080
2. Link to RZC 21.76.060

**H. Type III Review.**

1. Overview of Type III Review. A Type III process is a quasi-judicial review and decision made by the Hearing Examiner or, in the case of Level III Certificates of Appropriateness on which a hearing is to be held under 70-090(4)(b) and in the case of Historic Landmark Designations for removal of Historic Landmark Designations, by the Landmarks and Heritage Commission. Environmental review is conducted when required. The Hearing Examiner (or the Landmarks and Heritage Commission on the applications described in the preceding sentence) holds an open record public hearing on a Type III application after receiving a recommendation from the Technical Committee and, when required, the Design Review Board. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. Public notification is provided at the application, public hearing, and decision stages of application review. The Hearing Examiner (or the Landmarks and Heritage Commission on the applications described above) makes a decision after considering the recommendation of the Technical Committee and Design Review Board and the public testimony received at the open record public hearing. Decisions of the Hearing Examiner (or the Landmarks and Heritage Commission on the applications described above) are appealable to the King County Superior Court ~~City Council~~, which considers the appeal in a closed record appeal proceeding. ~~The City Council's decision may be appealed to the King County Superior Court.~~
2. Process Flow Chart. The flow chart below in Figure 21.76.050C generally depicts the process that will be used to review a typical Type III land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC 21.76.060, *Process Steps and Decision Makers*, and RZC 21.76.080, *Notices*.

**Figure 21.76.050C**  
**Flow Chart for Type III Process**

Figure 21.76.050C  
Flow Chart for Type III Process



**Figure Notes:**

1. Link to RZC [21.76.080](#)
2. Link to RZC [21.76.060](#)

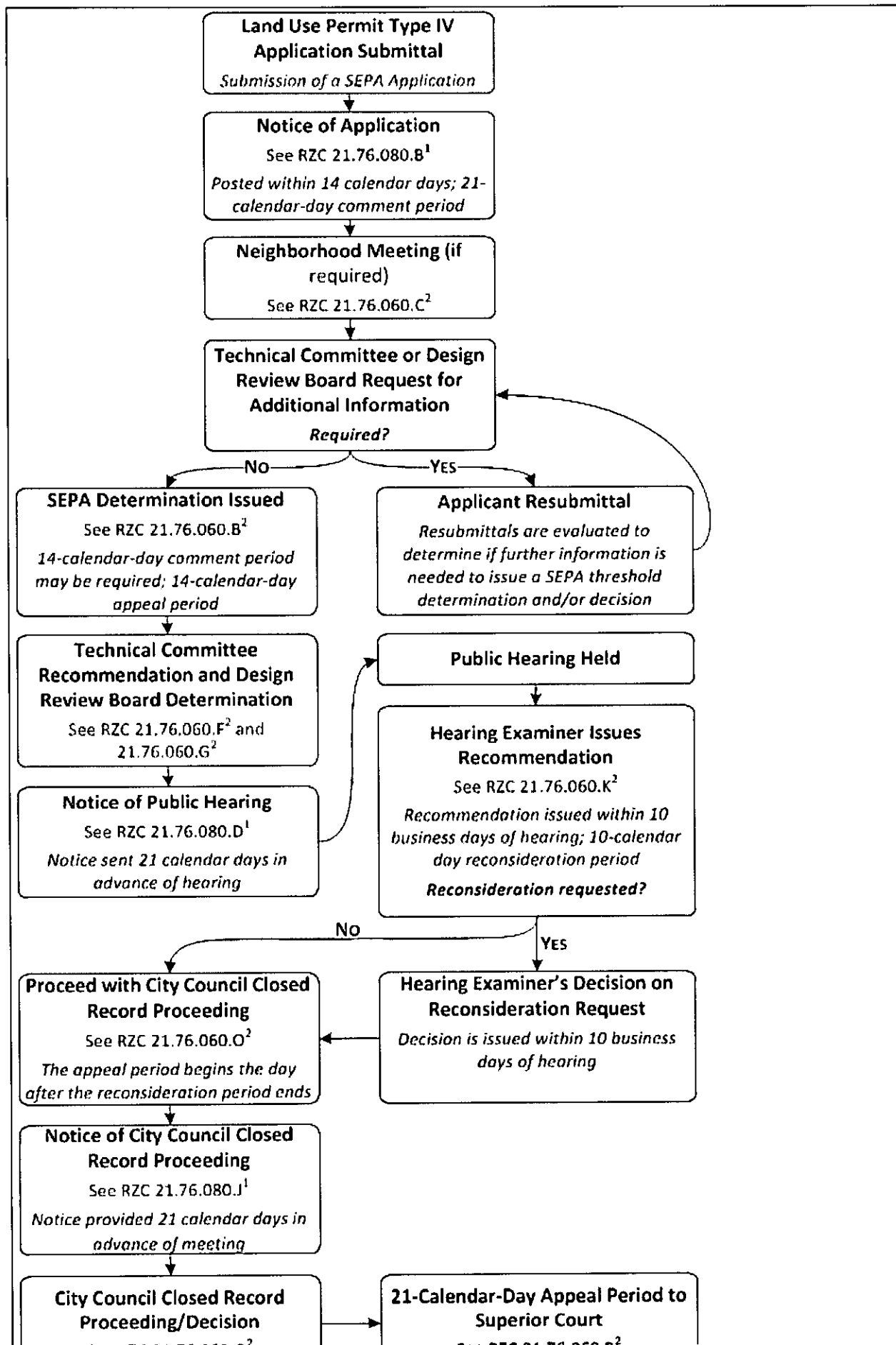
**I. Type IV Review.**

1. Overview of Type IV Review. A Type IV review is a quasi-judicial review and recommendation made by the Hearing Examiner and a decision made by the City Council. Environmental review is conducted when required. At an open record public hearing, the Hearing Examiner considers the recommendation of the Technical Committee and, when required, the Design Review Board, as well as public testimony. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. The Hearing Examiner makes a recommendation to the City Council, which considers the recommendation in a closed record proceeding and makes a final decision. Public notification is provided at the application, public hearing, and decision stages of application review. There is no administrative appeal. The City Council's decision may be appealed to the King County Superior Court.
2. Process Flow Chart. The flow chart below in Figure 21.76.050D generally depicts the process that will be used to review a typical Type IV land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC [21.76.060](#), *Process Steps and Decision Makers*, and RZC [21.76.080](#), *Notices*.

**Figure Notes:**

1. Link to RZC [21.76.080](#)
2. Link to RZC [21.76.060](#)

**Figure 21.76.050D****Flow Chart for Type IV Process**



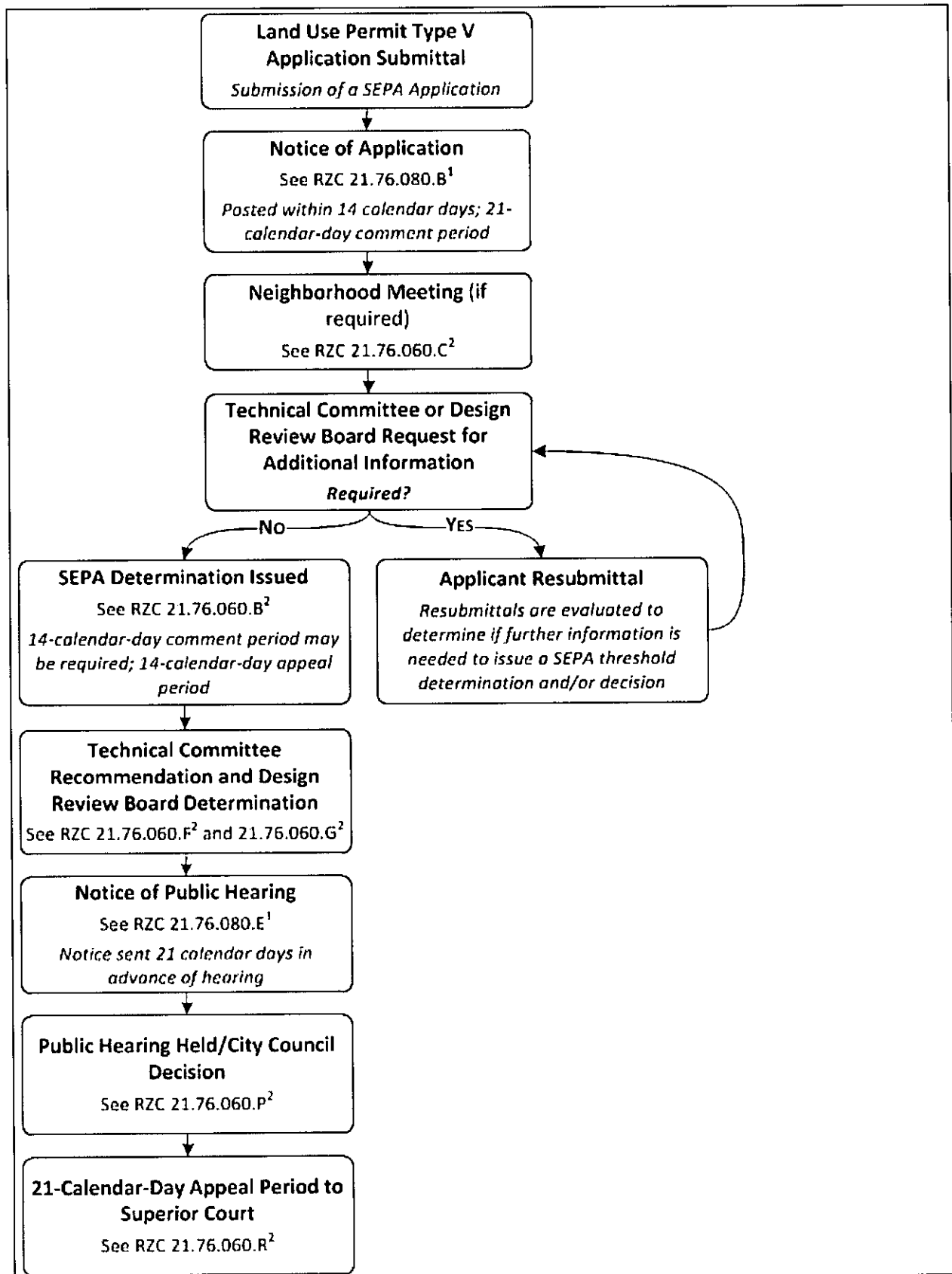
**J. Type V Review.**

1. Overview of Type V Review. A Type V review is a quasi-judicial review and decision made by the City Council. Environmental review is conducted when required. The Technical Committee (and Design Review Board, if required) makes a recommendation to the City Council. Depending on the application, the Technical Committee may require a neighborhood meeting to obtain public input. The City Council shall hold a public hearing on the application prior to making a decision. Public notification is provided at the application, public hearing, and decision stages of application review. There is no opportunity for an administrative appeal. Appeals of City Council decisions are made to King County Superior Court.
2. Process Flow Chart. The flow chart below in Figure 21.76.050E generally depicts the process that will be used to review a typical Type V land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC 21.76.060, *Process Steps and Decision Makers*, and RZC 21.76.080, *Notices*.

**Figure Notes:**

1. Link to RZC 21.76.080
2. Link to RZC 21.76.060

**Figure 21.76.050E****Flow Chart for Type V Process**



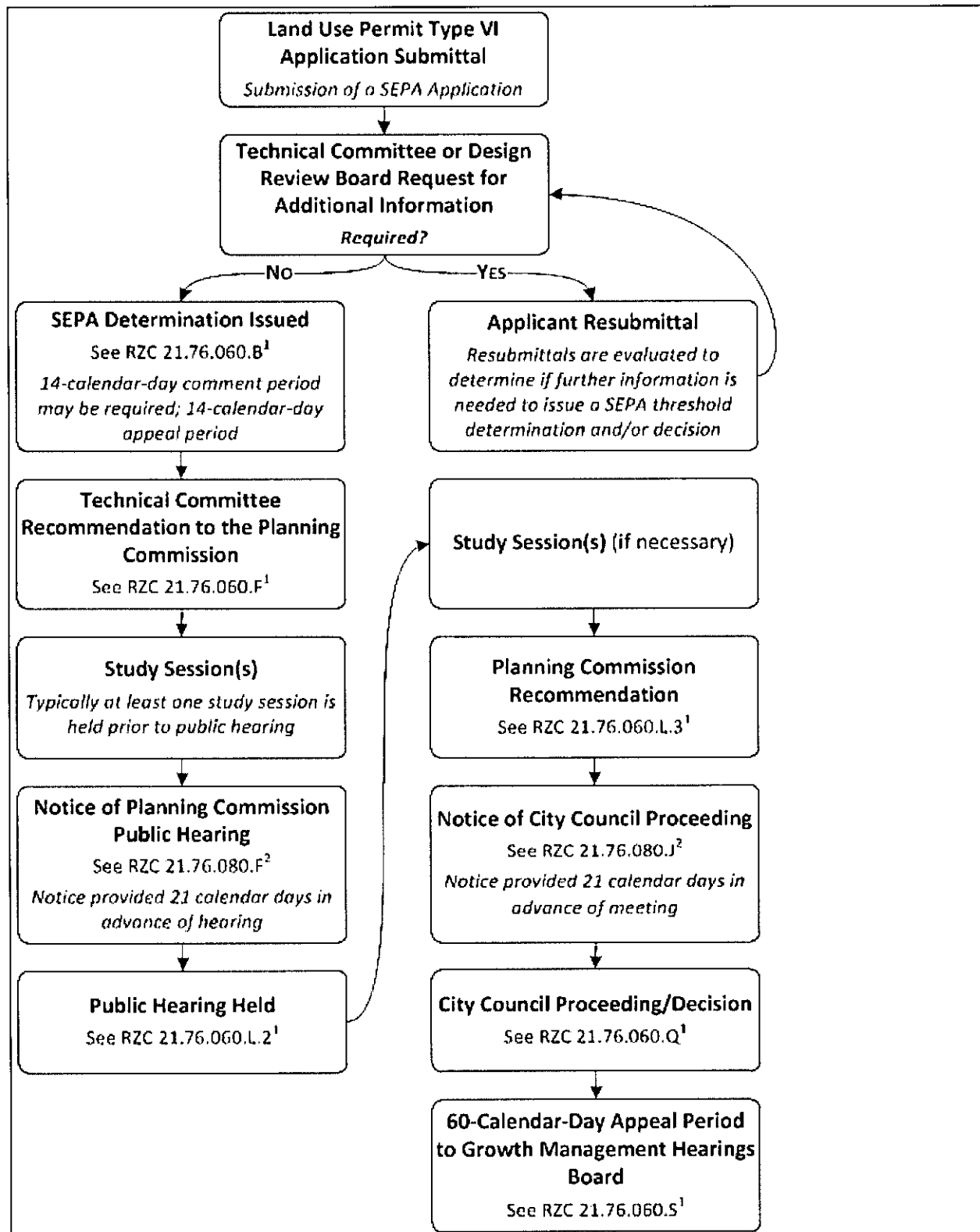
**K. Type VI Review.**

1. Overview of Type VI Review. A Type VI review is for legislative land use decisions made by the City Council under its authority to establish policies and regulations regarding future private and public development and management of public lands. Environmental review is conducted when required. The Planning Commission holds at least one open record public hearing and makes a recommendation to the City Council. The City Council may hold an additional public hearing or hearings at its option. The City Council makes a final decision. The City Council's decision may be appealed to the Central Puget Sound Growth Management Hearings Board. Type VI reviews are exempt from the procedures of RZC [21.76.040](#), *Time Frames for Review*.
2. Process Flow Chart. The flow chart below in Figure 21.76.050F generally depicts the process that will be used to review a typical Type VI land use permit. The process may vary for individual permits based on the nature and complexity of the issues involved. This flow chart is therefore provided for general reference only. More detail on each of the steps is provided in RZC [21.76.060](#), *Process Steps and Decision Makers*, and RZC [21.76.080](#), *Notices*.

**Figure Notes:**

1. Link to RZC [21.76.060](#)
2. Link to RZC [21.76.080](#)

**Figure 21.76.050F**  
**Flow Chart for Type VI Process**



**RZC 21.76 Review Procedures****21.76.060 PROCESS STEPS AND DECISION MAKERS**

- A. **Purpose.** The purpose of this section is to provide an explanation of each of the procedural steps set forth in the process flow charts in RZC 21.76.050, *Permit Types and Procedures*.
- B. **Environmental Review Under the State Environmental Policy Act (SEPA).**
  1. All applications shall be reviewed under the State Environmental Policy Act (SEPA) unless categorically exempt under SEPA. The City's environmental procedures are set forth in RZC 21.70, *State Environmental Policy Act (SEPA) Procedures*.
  2. Threshold Determinations. The Administrator shall issue the threshold determination after the minimum comment period for the Notice of Application and prior to the decision on the application. The threshold determination shall be mailed and posted in the same manner as the Notice of Application. The threshold determination shall also be sent to agencies with jurisdiction, if any, and the Washington State Department of Ecology. There is a 14-day comment period for certain threshold determinations as provided in WAC 197-11-340. Any comments received shall be addressed in the Technical Committee decision or recommendation on the application, which shall include the final threshold determination (DNS or DS) issued by the Administrator.
  3. Optional DNS Process. For projects where there is a reasonable basis for determining that significant adverse impacts are unlikely, a preliminary DNS may be issued with the Notice of Application. The comment period for the DNS and the Notice of Application shall be combined. The Notice of Application shall state that the City expects to issue a DNS for the proposal and that this may be the only opportunity to comment on the environmental impacts of the proposed project. After the close of the comment period, the Technical Committee shall review any comments and issue the final DNS in conjunction with its decision or recommendation on the application.
  4. Determination of Significance. If a Determination of Significance (DS) is issued, and an Environmental Impact Statement (EIS) is required, the EIS will be completed prior to issuance of the Technical Committee/Design Review Board decision or recommendation. If the requirement to prepare an EIS or a Supplemental EIS is appealed by the applicant, that appeal must be resolved prior to issuance of the Technical Committee/Design Review Board decision or recommendation.
- C. **Neighborhood Meetings.**
  1. The purpose of neighborhood meetings is to:
    - a. Provide a forum for interested individuals to meet with the applicant to learn about the proposal and the applicable process early in the review process;
    - b. Provide an opportunity for meaningful public input;
    - c. Provide a dialogue between the applicant, citizens, and City whereby issues can be identified and discussed; and
    - d. Provide an opportunity for applicants to address concerns generated by individuals and incorporate possible changes.
  2. Required Neighborhood Meeting: A neighborhood meeting shall be required for the following:
    - a. Essential Public Facility.
    - b. Master Planned Development.
    - c. Preliminary Plat.
    - d. Short plats that meet any of the following criteria:
      - i. propose three or more lots.
      - ii. have critical areas on-site, or

- iii. are forested (75 percent tree canopy).
    - e. As otherwise required within the RZC.
    - f. In addition, the Technical Committee may require a neighborhood meeting on any Type III, IV or V application.
  - 3. Where a neighborhood meeting is required, it shall be conducted by the applicant within 45 days of the termination of the Notice of Application comment period. The applicant shall notify the City of the date and time of the meeting. At least one representative from City staff shall be in attendance. The applicant shall mail notice of the neighborhood meeting to the same individuals to whom notice is required for the Notice of Application, a minimum of 21 days in advance of the meeting. The applicant shall provide the City with an affidavit of mailing. The neighborhood meeting shall be required to take place prior to the Technical Committee decision or recommendation. In certain circumstances, the Technical Committee may choose to hold the neighborhood meeting, in which case the City shall mail the notice of neighborhood meeting as described above. A sign-in sheet shall be provided at the meetings, giving attendees the option of establishing themselves as a party of record.
  - 4. Additional Neighborhood Meetings. In order to provide an opportunity for applicants to address concerns generated by interested parties, applicants are encouraged to hold an additional neighborhood meeting (or meetings) to provide interested parties with additional information, proposed changes to plans, or provide further resolution of issues. If the applicant holds additional meetings, there shall be no specific requirements for notice or City attendance. However, the City shall make effort to attend meetings where appropriate and when the applicant has notified the City that additional meetings are taking place. Any persons attending additional neighborhood meetings who have not established themselves as a party of record, and who wish to do so, must contact the City directly.
- D. Director Decisions on Type I Reviews.**
- 1. Type I Decision Makers. Decisions on Type I applications are made by the appropriate department director or designee.
  - 2. Decision Criteria. The decision of the department director shall be based on the criteria for the application set forth in this code, or in the applicable uniform or international code in the case of building and fire-related permits. The decision shall include any conditions necessary to ensure consistency with the applicable development regulations. The department director may consult with the Technical Committee, the Design Review Board, or the Landmarks and Heritage Commission on any Type I application, but the final decision-making authority on such applications remains with the department director.
  - 3. Decision. A written record of the director's decision shall be prepared in each case and may be in the form of a staff report, letter, the permit itself, or other written document indicating approval, approval with conditions, or denial. The decision shall be mailed as provided in RZC 21.76.080.G, *Notice of Final Decision*. See RZC 21.68.200.C.7.a for decisions on Shoreline Exemptions.
  - 4. Appeal. Type I decisions may be appealed to the Hearing Examiner as provided in RZC 21.76.060.I, *Appeals to Hearing Examiner on Type I and II Permits*. All decisions are final upon expiration of the appeal period or, if appealed, upon the date of issuance of the Hearing Examiner's final decision on the appeal. Appeal decisions of the Hearing Examiner may be appealed to the King County Superior Court as provided RZC 21.76.060.M.

**E. Technical Committee Decisions on Type II Reviews.**

1. **Decision.** Decisions on Type II applications are made by the Technical Committee. The decision of the Technical Committee shall be based on the criteria for the application set forth in the RZC, and shall include any conditions necessary to ensure consistency with the applicable development regulations.
2. **Record.** A written record of the Technical Committee's decision shall be prepared in each case and may be in the form of a staff report, letter, the permit itself, or other written document indicating approval, approval with conditions, or denial. All parties of record shall be notified of the final decision.
3. **Design Review Board and Landmarks and Heritage Commission Review.** When design review or review of a Certificate of Appropriateness is required, the decision of the Design Review Board or Landmarks and Heritage Commission shall be included with the Technical Committee decision.
4. **Appeal.** Type II decisions (except shoreline permits) may be appealed to the Hearing Examiner as provided in RZC 21.76.060.I, *Appeals to Hearing Examiner on Type I and Type II Permits*. All decisions are final upon expiration of the appeal period or, if appealed, upon issuance of the Hearing Examiner's final decision on the appeal. Appeal decisions of the Hearing Examiner may be appealed to the King County Superior Court as provided in RZC 21.76.060.M.

**F. Technical Committee Recommendations on Type III, IV, V and VI Reviews.** The Technical Committee shall make a recommendation to the Hearing Examiner on all Type III and Type IV reviews, a recommendation to the City Council on all Type V Reviews, and a recommendation to the Planning Commission for all Type VI reviews. The Technical Committee's recommendation shall be based on the decision criteria for the application set forth in the RZC, and shall include any conditions necessary to ensure consistency with the City's development regulations. Based upon its analysis of the application, the Technical Committee may recommend approval, approval with conditions or with modifications, or denial. A written report of the Technical Committee's recommendation shall be prepared and transmitted to the Hearing Examiner along with the recommendation of the Design Review Board and/or Landmarks and Heritage Commission where applicable.

**G. Design Review Board Determinations on Type II, III, IV and V Reviews.** When design review is required by the Design Review Board, the Design Review Board shall consider the application at an open public meeting of the Board in order to determine whether the application complies with Article III, Design Standards. The Design Review Board's determination shall be given the effect of a final decision on design standard compliance for Type II applications, shall be given the effect of a recommendation to the Hearing Examiner on a Type III or Type IV application, and the effect of a recommendation to the City Council on a Type V application. The Design Review Board's determination shall be included with the written report that contains the Technical Committee recommendation or decision. The Design Review Board's determination may be appealed in the same manner as the decision of the applicable decision maker on the underlying land use permit.

**H. Landmarks and Heritage Commission Determination/Decisions.** The Landmarks and Heritage Commission as specified below shall review all applications requiring a Level II or Level III Certificate of Appropriateness and all applications for Historic Landmark Designation.

1. When review of a Level II Certificate is required, the Redmond Landmarks and Heritage Commission shall consider the application at an open public meeting using the review process for the application in RZC 21.76.050.C in order to determine whether the application complies with the criteria set forth in RZC 21.30, Historic and Archeological

Resources, and King County Code Chapter 20.62. Based upon its analysis of the application, the Landmarks and Heritage Commission may approve the application, approve it with conditions or modifications, or deny the application. The Landmarks and Heritage Commission's determination shall be included with the written report that contains the Technical Committee recommendation or decision. Conditions based on the Landmarks and Heritage Commission's determination may be appealed to the Hearing Examiner in the same manner as the Technical Committee decision.

2. When review of a Level II Certificate of Appropriateness requiring a public hearing (see RZC 21.30.050.D.2) or review of a Level III Certificate of Appropriateness is required, the Redmond Landmarks and Heritage Commission shall hold an open record public hearing on the application using a Type III process as provided in RZC 21.76.060.J. The Landmarks and Heritage Commission shall determine whether the application complies with the criteria set forth in RZC 21.30.050.E of the RZC. Based upon its analysis of the application, the Landmarks and Heritage Commission may approve the application, approve it with conditions or modifications, or deny the application. The decision of the Landmarks and Heritage Commission may be appealed to the King County Superior Court. ~~Redmond City Council in a closed record appeal proceeding pursuant to RZC 21.76.060.N.~~
  3. The King County Landmarks Commission, acting as the Redmond Landmarks and Heritage Commission, shall review and make determinations on all applications for Historic Landmark Designation or removal of a Historic Landmark Designation. When the King County Landmarks Commission reviews a Historic Landmark Designation nomination or the removal of a Historic Landmark Designation, the King County Landmarks Commission will follow the procedures set forth in King County Code Chapter 20.62, including the holding of an open record hearing on the application. Applications shall be decided based on the criteria in King County Code Chapter 20.62. The decision of the King County Landmarks Commission on a Historic Landmark Designation or removal of a Historic Landmark Designation shall be a final decision appealable to the King County Superior Court. ~~Redmond City Council in a closed record appeal proceeding pursuant to RZC 21.76.060.N.~~
- I. **Appeals to Hearing Examiner on Type I and Type II Permits.**
1. Overview. For Type I and Type II permits, the Hearing Examiner acts as an appellate body, conducting an open record appeal hearing when a decision of a department director (Type I) or the Technical Committee (Type II) is appealed. The Hearing Examiner's decision on the appeal may be further appealed to the City Council in a closed record appeal proceeding.
  2. Commencing an Appeal. Type I and II decisions may be appealed as follows:
    - a. Who May Appeal. Any party of record may appeal the decision.
    - b. Form of Appeal. A person appealing a Type I or II decision must submit a completed appeal form which sets forth:
      - i. Facts demonstrating that the person is adversely affected by the decision;
      - ii. A concise statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria;
      - iii. The specific relief requested; and
      - iv. Any other information reasonably necessary to make a decision on the appeal.

- c. Time to Appeal. The written appeal and the appeal fee, if any, must be received by the Redmond City Clerk's Office no later than 5:00 p.m. on the fourteenth day following the date the decision of the Technical Committee/Design Review Board Decision is issued.
    - d. Shoreline Permit Appeals must be submitted to the Shoreline Hearings Board. See RZC 21.68.200.C.6.b.
  3. Hearing Examiner Public Hearing on Appeal. The Hearing Examiner shall conduct an open record hearing on a Type I or Type II appeal. Notice of the hearing shall be given as provided in RZC 21.76.080.H. The appellant, applicant, owner(s) of property subject to the application, and the City shall be designated parties to the appeal. Only designated parties may participate in the appeal hearing by presenting testimony or calling witnesses to present testimony and by providing exhibits. Interested persons, groups, associations, or other entities who have not appealed may participate only if called by one of the parties to present information, provided that the Examiner may allow nonparties to present relevant testimony if allowed under the Examiner's rules of procedure. 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.
  4. Hearing Examiner Decision on Appeal. Within 10 business days after the close of the record for the Type I or II appeal, the Hearing Examiner shall issue a written decision to grant, grant with modifications, or deny the appeal. The decision on appeal shall be mailed to all parties of record. The Hearing Examiner shall accord substantial weight to the decision of the department director (Type I) or Technical Committee (Type II). The Hearing Examiner may grant the appeal or grant the appeal with modifications if the Examiner determines that the appellant has carried the burden of proving that the Type I or II decision is not supported by a preponderance of the evidence or was clearly erroneous.
  5. Request for Reconsideration. Any designated party to the appeal who participated in the hearing may file a written request with the Hearing Examiner for reconsideration within 10 business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure or fact. The Hearing Examiner shall act within 10 business days after the filing of the request for reconsideration by either denying the request or issuing a revised decision. The decision on the request for reconsideration and/or issuing a revised decision shall be sent to all parties of record.
  6. Appeal. A Hearing Examiner Decision on a Type I or Type II appeal may be appealed to the King County Superior Court as provided in RZC 21.76.060.M.
- J. **Hearing Examiner and Landmarks and Heritage Commission Final Decisions on Type III Reviews.**
1. Overview. For Type III reviews, the Hearing Examiner (or the Landmarks and Heritage Commission on Level II Certificates of Appropriateness that require a public hearing under RZC 21.30.050.D.2 and on Level III Certificates of Appropriateness) makes a final decision after receiving the recommendation of the Technical Committee and holding an open record public hearing. The Hearing Examiner's (or Landmarks and Heritage Commission's) decision may be appealed to the King County Superior Court ~~City Council and considered by the Council in a closed record appeal proceeding.~~
  2. Public Hearing. The Hearing Examiner (or Landmarks and Heritage Commission on the applications specified above) shall hold an open record public hearing on all Type III permits. The open record public hearing shall proceed as follows:

- a. Notice of the hearing shall be given as provided in RZC 21.76.080.D.
  - b. Any person may participate in the Hearing Examiner's (or Landmarks and Heritage Commission's) public hearing on the Technical Committee's recommendation by submitting written comments prior to or at the hearing, or by providing oral testimony and exhibits at the hearing.
  - c. The Administrator shall transmit to the Hearing Examiner (or Landmarks and Heritage Commission) a copy of the department file on the application, including all written comments received prior to the hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application and Notice of SEPA Threshold Determination) have been met.
  - d. The Hearing Examiner (or Landmarks and Heritage Commission) shall create a complete record of the public hearing, including all exhibits introduced at the hearing and an electronic sound recording of each hearing.
3. Authority. The Hearing Examiner (or Landmarks and Heritage Commission) shall approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the RZC. The applicant bears the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner (or Landmarks and Heritage Commission) shall deny the application.
4. Conditions. The Hearing Examiner (or Landmarks and Heritage Commission) may include conditions to ensure a proposal conforms to the relevant decision criteria.
5. Decision. The Hearing Examiner (or Landmarks and Heritage Commission) shall issue a written report supporting the decision within 10 business days following the close of the record. The report supporting the decision shall be mailed to all parties of record. The report shall contain the following:
  - a. The decision of the Hearing Examiner (or Landmarks and Heritage Commission); and
  - b. Any conditions included as part of the decision; and
  - c. Findings of fact upon which the decision, including any conditions, was based and the conclusions derived from those facts; and
  - d. A statement explaining the process to appeal the decision of the Hearing Examiner (or Landmarks and Heritage Commission) to the King County Superior Court City Council.
6. Request for Reconsideration. Any party of record may file a written request with the Hearing Examiner (or Landmarks and Heritage Commission) for reconsideration within 10 business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure, law, or fact. No new evidence may be submitted in support of or in opposition to a request for reconsideration. The Hearing Examiner shall act within 10 business days after the filing of the request for reconsideration by either denying the request or issuing a revised decision. The decision on the request for reconsideration and/or the revised decision shall be sent to all parties of record.
7. Appeal. Except for Shoreline Conditional Use Permits, Shoreline Substantial Development Permits, or Shoreline Variances, a Hearing Examiner or Landmarks and Heritage Commission decision may be appealed to the King County Superior Court City Council as provided in RZC 21.76.060.M. Shoreline Conditional Use Permits, Shoreline

**Substantial Development Permits**, and Shoreline Variances may be appealed to the Shoreline Hearings Board as provided for in **RZC 21.68.200.C.6.b and RZC 21.68.200.C.6.c**.

**K. Hearing Examiner Recommendations on Type IV Reviews.**

1. Overview. For Type IV reviews, the Hearing Examiner makes a recommendation to the City Council after receiving the recommendation of the Technical Committee and holding an open record public hearing. The City Council considers the Hearing Examiner's recommendation in a closed record proceeding.
2. Hearing Examiner Public Hearing. The Hearing Examiner shall hold an open record public hearing on all Type IV permits. The open record public hearing shall proceed as follows:
  - a. Notice of the hearing shall be given as provided in RZC 21.76.080.D.
  - b. Any person may participate in the Hearing Examiner's public hearing on the Technical Committee's recommendation by submitting written comments to the Technical Committee prior to the hearing, by submitting written comments at the hearing, or by providing oral testimony and exhibits at the hearing.
  - c. The Administrator shall transmit to the Hearing Examiner a copy of the department file on the application, including all written comments received prior to the hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application and Notice of SEPA Threshold Determination) have been met.
  - d. 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.
3. Hearing Examiner Authority. The Hearing Examiner shall make a written recommendation to approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the RZC. The applicant bears the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner shall make a recommendation to deny the application.
4. Conditions. The Hearing Examiner may include conditions in the recommendation to ensure a proposal conforms to the relevant decision criteria.
5. Recommendation. The Hearing Examiner shall issue a written report supporting the recommendation within 10 business days following the close of the record. The report shall contain the following:
  - a. The recommendation of the Hearing Examiner; and
  - b. Any conditions included as part of the recommendation; and
  - c. Findings of fact upon which the recommendation, including any conditions, was based and the conclusions derived from those facts.
6. Mailing of Recommendation. The office of the Hearing Examiner shall mail the written recommendation, bearing the date it is mailed, to each person included in the parties of record. The Administrator will provide notice of the Council meeting at which the recommendation will be considered to all parties of record.
7. Request for Reconsideration. Any party of record may file a written request with the Hearing Examiner for reconsideration within 10 business days of the date of the Hearing Examiner's recommendation. The request shall explicitly set forth alleged errors of procedure, law, or fact. No new evidence may be submitted as part of a request for

reconsideration. The Hearing Examiner shall act within 10 business days after the filing of the request for reconsideration by either denying the request or issuing a revised decision. The decision on the request for reconsideration and/or revised decision shall be sent to all parties of record.

8. All Hearing Examiner recommendations on Type IV permits shall be transmitted to the City Council for final action, as provided in RZC 21.76.060.O.

**L. Planning Commission Recommendations on Type VI Reviews.**

1. Overview. For Type VI proposals, the Planning Commission makes a recommendation to the City Council after holding at least one open record public hearing. The Planning Commission may also hold one or more study sessions prior to making the recommendation. The City Council considers the Planning Commission's recommendation and takes final action by ordinance.
2. Planning Commission Public Hearing. The Planning Commission shall hold at least one open record public hearing. The hearing shall proceed as follows:
  - a. Notice of the public hearing shall be given as provided in RZC 21.76.080.F.
  - b. Any person may participate in the public hearing by submitting written comment to the applicable department director prior to the hearing or by submitting written or making oral comments to the Planning Commission at the hearing. All written comments received by the applicable department director shall be transmitted to the Planning Commission no later than the date of the public hearing.
  - c. The Administrator shall transmit to the Planning Commission a copy of the department file on the application, including all written comments received prior to the hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application, as required; Notice of SEPA Determination) have been met.
  - d. The Planning Commission shall record and compile written minutes of each hearing.
3. Recommendation. The Planning Commission may recommend that the City Council adopt, or adopt with modifications, a proposal if it complies with the applicable decision criteria in RZC 21.76.070, *Land Use Actions and Decision Criteria*. In all other cases, the Planning Commission shall recommend denial of the proposal. The Planning Commission's recommendation shall be in writing and shall contain the following:
  - a. The recommendation of the Planning Commission; and
  - b. Any conditions included as part of the recommendation; and
  - c. Findings of fact upon which the recommendation, including any conditions, was based and the conclusions derived from those facts.
4. Additional Hearing on Modified Proposal. If the Planning Commission recommends a modification which results in a proposal not reasonably foreseeable from the notice provided pursuant to RZC 21.76.080.F, the Planning Commission shall conduct a new public hearing on the proposal as modified. The Planning Commission shall consider the public comments at the hearing in making its final recommendation.
5. 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.
6. All Planning Commission recommendations shall be transmitted to the City Council for final action as provided in RZC 21.76.060.Q.

**M. Appeals to King County Superior Court on Type I and II Reviews.**

1. Overview. Except for Shoreline Substantial Development Permits, all decisions of the Hearing Examiner on Type I and II appeals may be appealed to the King County Superior Court.
  2. Commencing an Appeal. Hearing Examiner decisions on Type I and II appeals permits above may be appealed to the King County Superior Court as follows:
    - a. Who May Appeal. The following parties may appeal:
      - i. The applicant;
      - ii. The owner(s) of property subject to the application;
      - iii. City staff; and
      - iv. In the case of Type I or II decisions, any party who appealed the department director's or Technical Committee's decision to the Hearing Examiner.
    - b. Form of Appeal. A person appealing a Type I or II decision by the Hearing Examiner or the decisions of the Redmond Landmarks Commission or King County Landmarks Commission described in subsection M.1 must submit a completed appeal form which sets forth:
      - i. Facts demonstrating that the person is adversely affected by the decision;
      - ii. A concise statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria;
      - iii. The specific relief requested; and
      - iv. Any other information reasonably necessary to make a decision on the appeal.
    - c. Time to Appeal. The written appeal and the appeal fee, if any, must be received by the Redmond City Clerk's Office no later than 5:00 p.m. 10 business days following the expiration of the Hearing Examiner's (or Landmarks and Heritage Commission's) reconsideration period.
  3. The Hearing Examiner's decision on an appeal from the Applicable Department or Technical Committee on a Type I or II review is the final decision of the City and (except for Shoreline Conditional Use Permits and Shoreline Variances) may be appealed to the King County Superior Court as provided in RZC 21.76.060.R.
  4. Shoreline Substantial Development Permits and Shoreline Variances must be appealed to the Shoreline Hearings Board. See RZC 21.68.200.C.6.b and 21.68.200.C.6.c.
- N. Appeals to the City Council on Type III Reviews and from King County Landmark Commission Decisions.**
1. Overview. Except for, **Shoreline Substantial Development Permits**, Shoreline Conditional Use Permits, and Shoreline Variances reviews may be appealed to the King County Superior Court ~~City Council~~. All decisions of the Redmond Landmarks and Heritage Commission on Level II Certificates of Appropriateness that require a public hearing, and Level III Certificates of Appropriateness, and all decisions of the King County Landmarks Commission on Historic Landmark Designations and removal of Historic Landmark Designations may be appealed to the King County Superior Court ~~City Council~~.
  2. Commencing an Appeal. The decision of the Redmond Landmarks and Heritage Commission or the King County Landmarks Commission listed above in (N)(1) are the final decision of the City and may be appealed to the King County Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter

**36.70C. The petition for review must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW**

**36.70C.040.** ~~Hearing Examiner decisions on Type III permits and decisions of the Redmond Landmarks and Heritage Commission and King County Landmarks Commission on matters described in subsection N.1 above may be appealed to the City Council as follows:~~

- a. ~~Who May Appeal. The following parties may appeal:~~
  - i. ~~The applicant;~~
  - ii. ~~The owner(s) of property subject to the application;~~
  - iii. ~~City staff;~~
  - iv. ~~In the case of Type III decisions, any person who established themselves as a party of record prior to or at the public hearing; and~~
  - v. ~~In the case of decisions by the Redmond Landmarks and Heritage Commission or the King County Landmarks Commission specified in subsection N.1 above, any person who established themselves as a party of record prior to or at the public hearing.~~
- b. ~~Form of Appeal. A person appealing a Type III decision by the Hearing Examiner or the decisions of the Redmond Landmarks Commission or King County Landmarks Commission described in subsection N.1 must submit a completed appeal form which sets forth:~~
  - i. ~~Facts demonstrating that the person is adversely affected by the decision;~~
  - ii. ~~A concise statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria;~~
  - iii. ~~The specific relief requested; and~~
  - iv. ~~Any other information reasonably necessary to make a decision on the appeal~~
- c. ~~Time to Appeal. The written appeal and the appeal fee, if any, must be received by the Redmond City Clerk's Office no later than 5:00 p.m. 10 business days following the expiration of the Hearing Examiner's (or Landmarks and Heritage Commission's) reconsideration period.~~
- d. ~~City Council Decision on Appeal~~
  - i. ~~Criteria. The City Council may grant the appeal or grant the appeal with modifications if the appellant proves that the decision of the Hearing Examiner regarding Type III is not supported by a preponderance of the evidence or is clearly erroneous. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner or Landmarks and Heritage Commission.~~
  - ii. ~~Conditions. The City Council may impose conditions as part of the granting of an appeal or granting of an appeal with modification to ensure conformance with the criteria under which the application was made.~~
  - iii. ~~Findings. The City Council shall adopt findings and conclusions which support its decision on the appeal.~~
  - iv. ~~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. A tie vote shall be decided by the vote of the Mayor. Any other vote constitutes denial of the appeal.~~

~~v. **Notice of Decision on Appeal.** Notice of Decision on Appeal shall be provided pursuant to RZC 21.76.080.G, *Notice of Final Decision*.~~

3. ~~Hearing Examiner decisions on a Type III review or the Redmond Landmarks and Heritage Commission or King County Landmarks Commission on those matters specified in subsection N.1 is the final decision of the City and (except for Shoreline Conditional Use Permits and) may be appealed to the City Council as provided in RZC 21.76.060.R.~~ **Shoreline Conditional Use Permits, Shoreline Substantial Development Permits, and Shoreline Variances must be appealed to the Shoreline Hearings Board. See RZC 21.68.200.C.6.b and 21.68.200.C.6.c**
  4. ~~Shoreline Conditional Use Permits must be appealed to the Shoreline Hearings Board. See RZC 21.68.200.C.6.b and 21.68.200.C.6.c~~
- O. **City Council Decisions on Type IV Reviews.**
1. Overview. The City Council considers all Hearing Examiner recommendations on Type IV permits in a closed record proceeding. Decisions of the City Council on Type IV permits may be appealed to the King County Superior Court as provided in RZC 21.76.060.R.
  2. City Council Decision.
    - a. The Administrator shall transmit to the City Council a copy of the department file on the application, including all written comments received prior to and during the open record hearing and information reviewed by or relied upon by the Hearing Examiner. The file shall also include information to verify that the requirements for notice to the public (Notice of Application, Notice of Public Hearing, and Notice of SEPA Determination) have been met.
    - b. The City Council shall conduct a closed record proceeding. Notice of the closed record proceeding shall be provided as outlined within RZC 21.76.080.J, *Notice of Closed Record Appeal Proceeding on Type IV and City Council Proceeding on Type VI Reviews*. The City Council shall not accept new information, written or oral, on the application, but shall consider the following in deciding upon an application:
      - i. The complete record developed before the Hearing Examiner; and
      - ii. The recommendation of the Hearing Examiner.
    - c. The City Council shall either:
      - i. Approve the application; or
      - ii. Approve the application with modifications; or
      - iii. Deny the application, based on findings of fact and conclusions derived from those facts which support the decision of the Council.
    - d. Form of Decision. All City Council decisions on Type IV reviews shall be in writing. All decisions approving a Type IV application shall require passage of an ordinance. Decisions denying Type IV applications shall not require passage of an ordinance. Decisions on Type IV applications shall include:
      - i. Findings and Conclusions. The City Council shall include findings of fact and conclusions derived from those facts which support the decision of the Council, including any conditions, in the decision on the application. The City Council may, by reference, adopt some or all of the findings and conclusions of the Hearing Examiner.
      - ii. Conditions. The City Council may, based on the record, include conditions in any ordinance approving or approving with modifications

any conditional use permit, essential public facilities permit, or master planned development application in order to ensure conformance with the approval criteria specified in the code or process under which the application was made. For Zoning Map Amendments that are consistent with the Comprehensive Plan, conditions of approval shall not be included in the ordinance, but shall be included in a separate development agreement approved concurrently with the ordinance.

- iii. Required Vote. The City Council shall adopt an ordinance which approves or approves with modifications the application by a majority vote of the membership of the City Council. Decisions to deny a Type IV application shall require a majority vote of those Council members present and voting.
- iv. Notice of Decision. Notice of the City Council Decision shall be provided as outlined within RZC 21.76.080.G, *Notice of Final Decision*

**P. City Council Decisions on Type V Reviews.**

- 1. Overview. For Type V reviews, the City Council makes a final decision after receiving the recommendation of the Technical Committee and the recommendation of the Design Review Board (if required) and after holding an open record public hearing. The City Council's decision is appealable to the King County Superior Court as provided in RZC 21.76.060.R.
- 2. City Council Open Record Public Hearing.
  - a. Notice. Notice of the City Council's open record public hearing shall be given as provided in RZC 21.76.080.E.
  - b. Transmittal of File. The Administrator shall transmit to the City Council a copy of the department file on the application, including all written comments received prior to the City Council open record public hearing and information reviewed by or relied upon by the Administrator. The file shall also include information to verify that the requirements for notice to the public (Notice of Application, Notice of Public Hearing, and Notice of SEPA Determination) have been met.
  - c. Participation. Any person may participate in the City Council public hearing on the Technical Committee's recommendation by submitting written comments prior to the hearing or at the hearing by providing oral testimony and exhibits at the hearing. The Council shall create a complete record of the open record public hearing, including all exhibits introduced at the hearing and an electronic sound recording of the hearing.
- 3. City Council Decision.
  - a. Options. The City Council shall, at the open record public hearing, consider and take final action on each Type V application. The final action may take place in the same meeting as the public hearing. The City Council shall either:
    - i. Approve the application; or
    - ii. Approve the application with modifications or conditions; or
    - iii. Deny the application.
  - b. Form of Decision. The City Council's decision shall be in writing and shall include the following:
    - i. Findings and Conclusions. The City Council shall include findings of fact and conclusions derived from those facts which support the decision of the Council, including any conditions, in the decision approving the application or approving the application with modifications or

conditions. The City Council may by reference adopt some or all of the findings and conclusions of the Technical Committee.

- ii. Conditions. The City Council may, based on the record, include conditions in any ordinance approving or approving with modifications an application in order to ensure conformance with the approval criteria specified in the code or process under which the application was made.
- iii. Notice of the Decision shall be provided as outlined within RZC Notice of the Decision shall be provided as outlined within RZC 21.76.080.G, *Notice of Final Decision*.

**Q. City Council Decisions on Type VI Reviews.**

- 1. Overview. The City Council shall consider and take action on all Planning Commission recommendations on Type VI reviews. The City Council may take action with or without holding its own public hearing. Any action of the City Council to adopt a Type VI proposal shall be by ordinance.
- 2. City Council Action.
  - a. Notice of City Council Proceeding. Notice shall be provided in accordance with RZC 21.76.080.J.
  - b. Initial Consideration by Council. The City Council shall consider at a public proceeding each recommendation transmitted by the Planning Commission. The Council may take one of the following actions:
    - i. Adopt an ordinance adopting the recommendation or adopt the recommendation with modifications; or
    - ii. Adopt a motion denying the proposal; or
    - iii. Refer the proposal back to the Planning Commission for further proceedings, in which case the City Council shall specify the time within which the Planning Commission shall report back to the City Council with a recommendation; or
    - iv. Decide to hold its own public hearing to take further public testimony on the proposal or in order to consider making a modification of the proposal that was not within the scope of the alternatives that could be reasonably foreseen from the notice of the Planning Commission public hearing provided under RZC 21.76.080.F.
  - c. Public Hearing and Decision. If the Council determines to hold its own public hearing, notice shall be provided; and the hearing shall be conducted in the same manner as was provided for the Planning Commission hearing on the proposal. After conducting the public hearing, the City Council shall render a final decision on the proposal as provided in subsection P.2.b.i or P.2.b.ii above.

- R. Appeal of Council and Hearing Examiner Decisions on Types I - V Reviews to Superior Court.** The decision of the decision maker listed in RZC 21.76.050A for the decision of the City Council or Hearing Examiner on Type I - V permits or reviews is the final decision of the City and may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter 36.70C. No action to obtain judicial review may be commenced unless all rights of administrative appeal provided by the RZC or state law have been exhausted. **Decision types which provide for no administrative appeal (Types III through VI) may be directly appealed to the King County Superior Court.** The petition for review must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040.

- S. **Appeal of Council Decisions on Type VI Reviews to Growth Board.** The action of the City Council on a Type VI 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).
- T. **Appeal of Shoreline Master Plan Amendments and Decisions.** Appeal of Shoreline Master Plan amendments and decisions must be made to the Shoreline Hearings Board.  
(Ord. 2652; Ord. 2709; Ord 2889)

# EXHIBIT F

ATTACHMENT E

Community	Appeals to	Code Section
Issaquah	City Hearing Examiner	IMC 18.04.250-2
Redmond	City Council - Superior Court	RZC 21.76.050
Renton	City Council	RMC 4-8-080-G
Bellevue	Superior Court	BCC 20.35.365.C
Woodinville	Superior Court	WMC 21.83.020(5)
Kirkland	Superior Court	KZC 152.110
King County	Superior Court	KCC 20.20.020
Bothell	Superior Court	BMC 11.04.003.B.14
Mercer Island	Superior Court	MUDC 19.15.010.E
Newcastle	Superior Court	NMC 19.07.030
Sammamish	Superior Court	SMC 20.05.020

**Scott Reynolds**

---

**From:** Mike Hubbard <mhubbard@capstone-partners.com>  
**Sent:** Wednesday, February 21, 2018 11:33 AM  
**To:** David Lee  
**Subject:** RE: Type III Administrative Appeals Body

Hi David. As a practical matter, if this is enacted, very few applicants would appeal a hearing examiner decision. Too costly and too lengthy. In my view, the council acts as a check and balance on the hearing examiner in the current format. A good thing. Post change, this dynamic could change. I am not sure I understand the council members representation interests of constituents in this case so I may not fully understand the issue.

My two cents.

Mike

**Mike Hubbard**  
Capstone Partners  
601 Union #4200  
Seattle, WA 98101  
206-652-3364  
206-953-6089 (c)  
[www.capstone-partners.com](http://www.capstone-partners.com)

---

**From:** David Lee [mailto:dlee@redmond.gov]  
**Sent:** Wednesday, February 14, 2018 5:48 PM  
**To:** David Lee <dlee@redmond.gov>  
**Subject:** Type III Administrative Appeals Body

Dear Recipient,

You are receiving this email due to your involvement in development within the City of Redmond or you have commented on Interim Ordinance 2902. Specifically, you have been identified as a project manager, property owner, or architect of record for a Type III permit. The City is currently reviewing the City Council's role as the appeal body for a Type III permit.

On June 20, 2017, the Redmond City Council adopted Ordinance No. 2889, which amended Section 21.76 of the Redmond Zoning Code. This action removed the City Council as an appeal body for all Type I and Type II permits and reduced the review type for Conditional Use Permits from a Type IV to a Type III review. City Council Members have raised the question of whether they should be the appeal body for Type III permits, as they would like to be able to advocate freely for their constituents without creating a potential conflict of interest.

Currently, the City Council is the primary administrative appeal body for Type III permits. A Type III process is a quasi-judicial review. Decisions regarding Type III process are made by the Hearing Examiner and appeals of Type III decisions are made to the City Council. Appeal decisions of the City Council may be appealed to the King County Superior Court. Type III permits, such as Conditional Use Permits, are enumerated in the Redmond Zoning Code in Table 21.76.050B and include:

- Alteration of Geologic Hazard Areas
- Certificate of Appropriateness Level III
- Conditional Use Permit

- Historic Landmark Designation
- Master Planned Development (RZC 21.76.070P)
- Preliminary Plat
- Reasonable Use Exception (RZC 21.76.070U)
- Variance
- Willows Rose Hill Demonstration Project

There are two other Type III permits, the Shoreline Conditional Use Permit and the Shoreline Variance Permit, which are the exception to the rule. Following an appeal to the City Council, rather than be appealed to Superior Court they are appealable to the State Shorelines Hearing Board.

The proposed ordinance removes the City Council as the appeal body for Type III permits. Any appeal of a Type III permit would then be heard by King Council Superior Court, or by the State Shorelines Hearing Board as noted above.

An interim ordinance was passed on this subject (Ordinance 2902) on December 5, 2017 which requires the proposed amendment to go before the Planning Commission, prior to formal adoption.

We are seeking any feedback regarding the proposed changes prior to the start of the Planning Commission's formal review. Planning Commission is expected to start review of this proposal on March 14, 2018. Please let us know your thoughts!

Sincerely,  
David Lee



**David Lee**

Senior Planner | City of Redmond

☎: 425.556.2462 | ✉: [dlee@redmond.gov](mailto:dlee@redmond.gov) | [Redmond.gov](http://Redmond.gov)

MS: 2SPL | 15670 NE 85<sup>th</sup> St | PO Box 97010 | Redmond, WA 98052

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**Scott Reynolds**

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**From:** Eugene Zakhareyev <eugenez@outlook.com>  
**Sent:** Thursday, February 15, 2018 8:29 PM  
**To:** David Lee  
**Subject:** Re: Type III Administrative Appeals Body  
**Attachments:** Appearance-Of-Fairness-Doctrine-In-Washington-State.pdf;  
 AppealOrdinanceComments.pdf

Hi David,

Hope you are well.

Please find my comments attached (I have already submitted them via the council). Would appreciate if you could let me know when the planning commission will have the discussion of the proposed change, as I'd also like to comment in person.

Thanks much!  
 Eugene

---

**From:** David Lee <dlee@redmond.gov>  
**Sent:** Wednesday, February 14, 2018 5:47:53 PM  
**To:** David Lee  
**Subject:** Type III Administrative Appeals Body

Dear Recipient,

You are receiving this email due to your involvement in development within the City of Redmond or you have commented on Interim Ordinance 2902. Specifically, you have been identified as a project manager, property owner, or architect of record for a Type III permit. The City is currently reviewing the City Council's role as the appeal body for a Type III permit.

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Currently, the City Council is the primary administrative appeal body for Type III permits. A Type III process is a quasi-judicial review. Decisions regarding Type III process are made by the Hearing Examiner and appeals of Type III decisions are made to the City Council. Appeal decisions of the City Council may be appealed to the King County Superior Court. Type III permits, such as Conditional Use Permits, are enumerated in the Redmond Zoning Code in Table 21.76.050B and include:

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- Willows Rose Hill Demonstration Project

There are two other Type III permits, the Shoreline Conditional Use Permit and the Shoreline Variance Permit, which are the exception to the rule. Following an appeal to the City Council, rather than be appealed to Superior Court they are appealable to the State Shorelines Hearing Board.

The proposed ordinance removes the City Council as the appeal body for Type III permits. Any appeal of a Type III permit would then be heard by King Council Superior Court, or by the State Shorelines Hearing Board as noted above.

An interim ordinance was passed on this subject (Ordinance 2902) on December 5, 2017 which requires the proposed amendment to go before the Planning Commission, prior to formal adoption.

We are seeking any feedback regarding the proposed changes prior to the start of the Planning Commission's formal review. Planning Commission is expected to start review of this proposal on March 14, 2018. Please let us know your thoughts!

Sincerely,  
David Lee



**David Lee**

Senior Planner | City of Redmond

☎: 425.556.2462 | ✉: [dlee@redmond.gov](mailto:dlee@redmond.gov) | [Redmond.gov](http://Redmond.gov)

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January 15, 2018

Redmond Mayor and City Council Members:

**RE: Public Hearing on Ordinance Reclassifying the Appeal Body for all Type III**

Please find my comments in lieu of in-person testimony for a public hearing scheduled for January 16, 2018 on an “Ordinance Reclassifying the Appeal Body for all Type III Quasi-Judicial Land Use Permits”.

The only reason for this action listed in staff report is as follows: *“City Council Members have raised the question of whether they should be the appeal body for Type III permits, as they would like to be able to advocate for their constituents without creating a conflict of interest and, thus; possibly endangering their ability to hear the appeal”*.

However, there is nothing today to preclude elected officials from discussing the matters with their constituents. The Appearance of Fairness Doctrine specifically allows the elected officials to interact with their constituents (unless quasi-judicial proceedings are pending):

**RCW 42.36.020**

Members of local decision-making bodies.

No member of a local decision-making body may be disqualified by the appearance of fairness doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body.

Combined with the fact that the matter becomes “pending” only after the actual appeal is filed with the city council, there is no legal reason preventing council members from engaging with the public.

The Municipal Research and Services Center (MRSC) issued document specifically discussing Appearance of Fairness Doctrine that also discusses the communications of elected officials with the public:

**May a councilmember meet with a constituent on matters of interest to the constituent?**

Yes, as long as there is no discussion of quasi-judicial matters pending before the council. See RCW 42.36.020; *West Main Associates v. City of Bellevue*, 49 Wn.App 513, 742 P.2d 1266 (1987).

**How is it determined whether a matter is pending?**

"Pending" means after the time the initial application is filed or after the time an appeal is filed with the city council. Thus, if a matter would come before the council only by appeal from a decision by the hearing examiner or planning commission, it is not considered pending with respect to city councilmembers until an appeal is filed. It would, however, be pending with respect to the hearing examiner or planning commissioners.

I have attached the document for the convenience of the Council.

This question was brought up before the council in the past (at the Council Meeting on May 6th, 2014), and Redmond City Attorney, Mr. Haney confirmed that the council members may interact with the constituents at their discretion until the matter is pending.

Type III decisions have important consequences for the public and our elected representatives should act as appeal body in this process. This ensures that our council members are accountable to their constituents by bringing contentious projects to light in a public setting and provides additional level of public scrutiny.

Since there no other issues with the process in the staff report, and per this report there are no fiscal impacts of no action option, I ask the respected Council to take no action, so that the City Council remains the appeal body for Type III permits. I would also appreciate that the incorrect staff assertion is disproved by the City Attorney for the record.

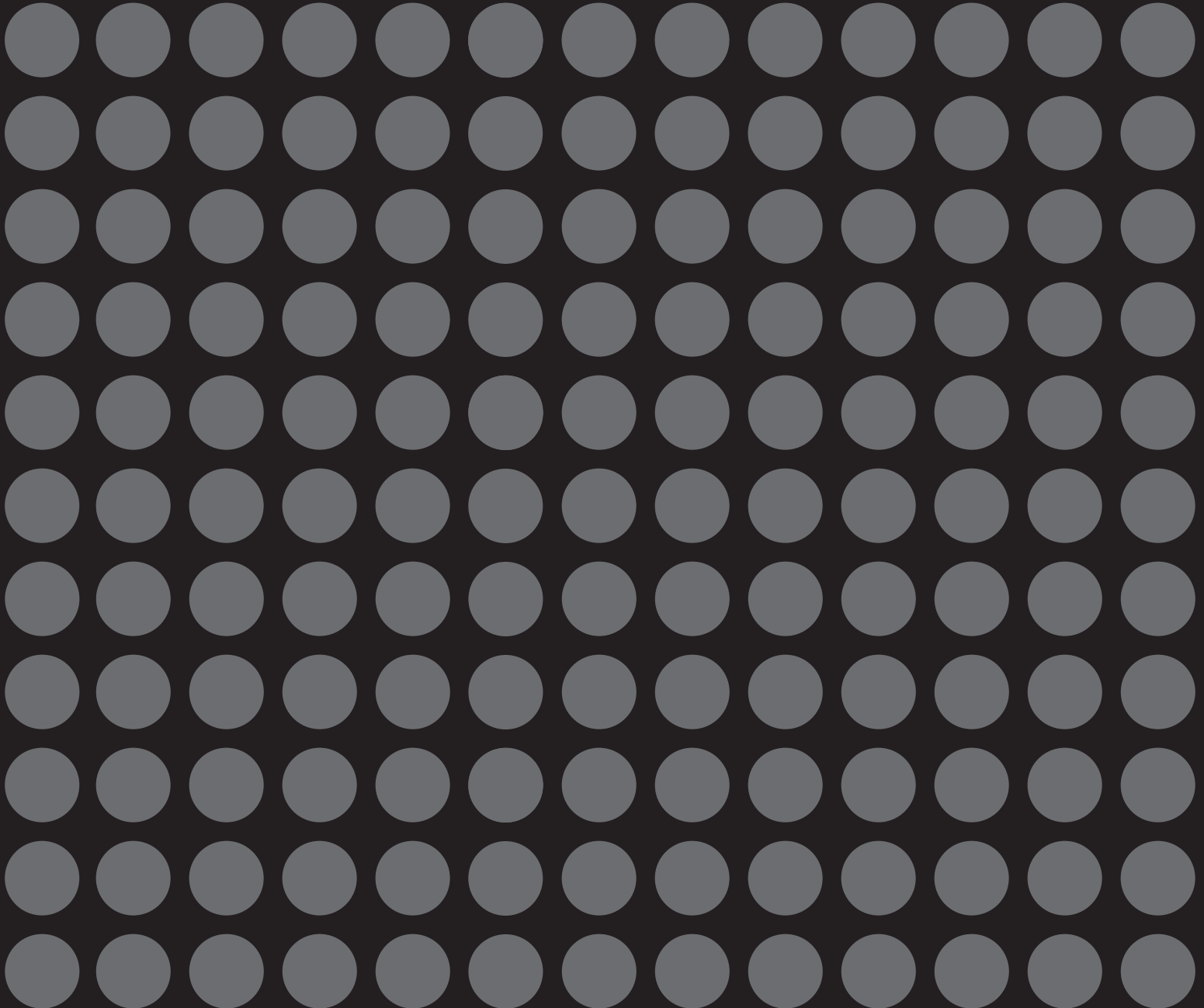
Thank you for your consideration.

Sincerely,

Eugene Zakhareyev  
Redmond resident

# The Appearance of Fairness Doctrine

## in Washington State



### **The Appearance of Fairness Doctrine in Washington State**

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April 2011  
\$30

## **Preface**

This publication is designed to provide an overview of the appearance of fairness doctrine as it is applied in Washington State.

All municipal officials in Washington face concerns about making sure that meetings and hearings are conducted in a fair manner. This publication is intended to serve as a resource and convenient handbook for elected and appointed municipal officials.

It reviews how the appearance of fairness doctrine developed in Washington State – first by court-made law, and later by state legislation – and provides a number of suggestions for assuring compliance with the law. It also contains a section on commonly asked questions, and includes sample checklists for conducting hearings. The appendix contains the full text of the appearance of fairness statutes, samples of meeting procedures for quasi-judicial hearings, and an outline of cases that illustrate how the doctrine has been applied in Washington.

Special acknowledgement is given to Pamela James, Legal Consultant, for her work in preparing this publication. Appreciation is also given to Holly Stewart for her excellent work in designing and preparing the document for publication. Special thanks to Paul Sullivan, Legal Consultant, and Connie Elliot, Research Associate, who reviewed the draft and provided helpful advice.

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# Introduction to the Appearance of Fairness Doctrine

The appearance of fairness doctrine is a rule of law requiring government decision-makers to conduct non-court hearings and proceedings in a way that is fair and unbiased in both appearance and fact. It was developed as a method of assuring that due process protections, which normally apply in courtroom settings, extend to certain types of administrative decision-making hearings, such as rezones of specific property. The doctrine attempts to bolster public confidence in fair and unbiased decision-making by making certain, in both appearance and fact, that parties to an argument receive equal treatment.

Judicially established in Washington State in 1969, the doctrine requires public hearings that are adjudicatory or quasi-judicial in nature meet two requirements: hearings must be *procedurally fair*,<sup>1</sup> and must appear to be conducted by impartial decision-makers.<sup>2</sup>

In 1982, the Washington State Legislature codified the portion of the appearance of fairness doctrine that applies to land use proceedings. The next sections will address how Washington courts have defined the doctrine, the statutory provisions of the doctrine, types of proceedings to which the doctrine applies, recognized violations of the doctrine, and suggestions for compliance.

The appearance of fairness doctrine is designed to guarantee that strict procedural requirements are followed so that quasi-judicial hearings are not only fair, but also appear to be fair. The goal of the doctrine is to instill and maintain confidence in the fairness of government proceedings.

---

<sup>1</sup>*Smith v. Skagit Co.*, 75 Wn.2d 715, 740, 453 P.2d 832 (1969).

<sup>2</sup>*Buell v. Bremerton*, 80 Wn.2d 518, 523, 495 P.2d 1358 (1972).

# History of the Doctrine in Washington State

## Court-Developed Doctrine

The appearance of fairness doctrine developed in Washington in the context of zoning hearings. In several 1969 cases, the Washington State Supreme Court invalidated local land use regulatory actions because either the hearings appeared unfair, or public officials with apparently improper motives or biases failed to disqualify themselves from the decision-making process. The court decided that the strict fairness requirements of impartiality and procedural fairness mandated in judicial hearings should be applied when administrative bodies hold quasi-judicial hearings that affect individual or property rights.

This application reflected the court's belief in the importance of maintaining public confidence in land use regulatory processes. As stated in *Chrobuck v. Snohomish County*:<sup>3</sup>

Circumstances or occurrences arising within such processes that, by their appearance, undermine and dissipate confidence in the exercise of zoning power, however innocent they might otherwise be, must be scrutinized with care and with the view that the evils sought to be remedied lie not only in the elimination of actual bias, prejudice, improper influence or favoritism, but also in the curbing of conditions that, by their very existence, create suspicion, generate misinterpretation, and cast a pall of partiality, impropriety, conflict of interest or prejudgment over the proceedings to which they relate.

Washington courts have consistently contrasted the differences between the political process, which is designed to be responsive to public opinion, and the judicial process, which is designed to ensure that disputes are resolved according to sound legal principles. The *Chrobuck* court stated the doctrine in this manner:

... public officers impressed with the duty of conducting a fair and impartial fact-finding hearing upon issues significantly affecting individual property rights as well as community interests, must so far as practicable, consideration being given to the fact that they are not judicial officers, be open minded, objective, impartial and free of entangling influences or the taint thereof. . . . They must be capable of hearing the weak voices as well as the strong. To permit otherwise would impair the requisite public confidence in the integrity of the

---

<sup>3</sup>78 Wn.2d 858, 480 P.2d 489 (1971).

planning commission and its hearing procedures.<sup>4</sup>

## Legislation Not Subject to Appearance of Fairness Doctrine

Our courts have not imposed the appearance of fairness doctrine on legislative or political proceedings. This is probably due to the recognition that legislators most often act in policy-making roles and are often influenced by their personal predilections and biases as well as those of the people they represent. Because legislators are expected to respond to variations in public opinion, frequent informal contact between elected officials and the public is recognized as necessary for the on-going business of democratic government. The elaborate procedural safeguards imposed by courts are not necessary for legislative proceedings because, ultimately, it is the voters who protect the process of legislation.

## The Importance of Impartial Decision-Makers

As developed in case law, the appearance of fairness doctrine is intended to protect against actual bias, prejudice, improper influence, or favoritism. It is also aimed at curbing conditions that create suspicion, misinterpretation, prejudgment, partiality, and conflicts of interest. If an action is subject to the appearance of fairness doctrine, then all legally required public hearings, as well as the participating public officials, will be scrutinized for apparent fairness.

From the earliest Washington cases, our courts have demanded that decision-makers who determine rights between specific parties must act and make decisions in a manner that is free of the suspicion of unfairness. The courts have been concerned with “entangling influences” and “personal interest” which demonstrate bias, and have invalidated local land use decisions because either the hearings appeared unfair or public officials with apparently improper motives failed to disqualify themselves from the decision-making process.

In *Buell v. Bremerton*<sup>5</sup> the state supreme court identified three major categories of bias that it recognized as grounds for the disqualification of decision-makers who perform quasi-judicial functions: personal interest, prejudgment of issues, and partiality.

### Personal Interest

Personal interest exists when someone stands to gain or lose because of a governmental decision. Our courts have found personal interest to exist in the following situations:

---

<sup>4</sup>*Chrobuck v. Snohomish Co.*, 78 Wn.2d 858, 480 P.2d 489 (1971).

<sup>5</sup>80 Wn.2d 518, 524, 495 P.2d 1358 (1972).

- **Financial Gain** – In *Swift v. Island County*,<sup>6</sup> the condemned conflict arose from the fact that the chairperson of the board of county commissioners was also a stockholder and chairperson of the board of the mortgagee of the affected development.
- **Property Ownership** – In *Buell v. Bremerton* (Appendix B), a planning commission member was disqualified because the value of his land increased due to rezone of property next to his land.<sup>7</sup> (But where property is too far away to be directly benefitted by rezone, no violation occurs.)<sup>8</sup>
- **Employment by Interested Person** – A planning commissioner involved in a rezone decision, was employed by a bank holding a security interest in land, that doubled in value due to the rezone.<sup>9</sup> (But past employment of an official by a rezone applicant is not a violation.)<sup>10</sup>
- **Prospective Employment by Interested Person** – Prospective employment for city councilmember which might appear to be based on his decision (retained as attorney for successful land use applicant).<sup>11</sup>
- **Associational or Membership Ties** – Any “entangling influences impairing the ability to be or remain impartial.”<sup>12</sup>
- **Family or Social Relationships** – Relationships between a decision-maker and parties to a hearing, or non-parties who have an interest in the outcome of the proceeding, should be disclosed and made part of the record.

## Prejudgment of Issues

Although public officials are not prohibited from expressing opinions about general policy, it is inappropriate for decision-makers to be close-minded before they even hear testimony on a contested matter. Decision-makers need to reserve judgment until after all the evidence has been presented.

Impartiality in a proceeding may be undermined by a decision-maker's bias or prejudgment toward a pending application. In *Anderson v. Island County*, the state supreme court overturned a decision because a councilmember had prejudged a particular issue. He had made an unalterable decision before the hearing was held, evidenced by telling the applicant during the hearing that he was “just

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<sup>6</sup>87 Wn.2d. 348, 552 P.2d 175 (1976).

<sup>7</sup>*Buell, supra.*

<sup>8</sup>*Byers v. The Board of Clallam County Commissioners*, 84 Wn.2d 796, 529 P.2d 823 (1974).

<sup>9</sup>*Narrowsview Preservation Association v. Tacoma*, 84 Wn.2d 416, 526 P.2d 897 (1974); *Hayden v. Port Townsend*, 28 Wn. App. 192, 622 P.2d 1291 (1981).

<sup>10</sup>*Narrowsview, supra.*

<sup>11</sup>*Fleming v. Tacoma*, 81 Wn.2d 292, 502 P.2d 327 (1972).

<sup>12</sup>*Save A Valuable Environment (SAVE) v. City of Bothell*, 89 Wn.2d. 862, 576 P.2d 401 (1978).

wasting his time” talking. (By statute, candidates can express opinions on proposed or pending quasi-judicial matters; but once elected to office they are expected to be able to draw the line between general policy and situations in which general policy is applied to specific factual situations.)<sup>13</sup>

## Partiality

Partiality is anathema to fair hearings and deliberations. The existence of hostility or favoritism can turn an otherwise carefully conducted hearing into an unfair proceeding. Partiality can also cost a city incalculable hours of wasted staff time and energy.

For example, in *Hayden v. Pt. Townsend*, 28 Wn. App. 192 (1981), the planning commission chairperson, who advocated a particular rezone for his business, relinquished his position as chair of the hearing, and did not vote or otherwise participate in his official capacity. Nevertheless, an appearance of fairness violation occurred because the planning commission chairperson acted as an advocate of the rezone by joining the hearing audience, acting as an agent of the rezone applicant, questioning witnesses, and advising the acting chairman on procedural matters.

In *Buell v. Bremerton*, an appearance of fairness violation occurred because a planning commission member continued to participate even though the rezone would have been approved without his vote, and the planning commission approval was merely a recommendation to council. In reviewing the continuing participation of the disqualified member, the court found that the “bias of one member infects the actions of other members.” “The importance of the appearance of fairness has resulted in the recognition that it is necessary only to show an interest that might have influenced a member of the commission and not that it actually so affected him.”<sup>14</sup>

Because each fact-situation requires a subjective evaluation, a great deal of confusion is caused by the different applications of the doctrine. No doubt the unpredictable nature of court application of the doctrine helped encourage the legislature to standardize the doctrine's application in land use matters.

While most of the early appearance of fairness cases involved zoning matters, our courts have also applied the doctrine to civil service and other types of administrative proceedings involving quasi-judicial hearings. See attached summary of Washington appearance of fairness cases, Appendix B.

### Test for bias:

- Has the decision been made solely on the basis of matters of record?
- Would a fair-minded person, observing the proceedings, be able to conclude that everyone had been heard who should have been heard?
- Did decision-makers give reasonable faith and credit to all matters presented, according to the weight and force they were reasonably entitled to receive?<sup>15</sup>

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<sup>13</sup>*Chrobuck, supra.*

<sup>14</sup>*Buell* at 523.

<sup>15</sup>*Smith v. Skagit Co., supra.*

# The Statutory Doctrine

## Types of Proceedings to Which it Applies

In 1982, the state legislature enacted what is now chapter 42.36 RCW, codifying the appearance of fairness doctrine. The statutory doctrine applies only to local *quasi-judicial* land use actions, as defined in RCW 42.36.010:

...those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards that determine the legal rights, duties or privileges of specific parties in a hearing or other contested case proceeding.

The primary characteristics of a quasi-judicial matter are that:

- the decision has a greater impact on a limited number of persons or property owner, and has limited impact on the community at large;
- the proceedings are aimed at reaching a fact-based decision by choosing between two distinct alternatives; and
- the decision involves policy application rather than policy setting.

The following types of land use matters meet this definition: subdivisions, preliminary plat approvals, conditional use permits, SEPA appeals, rezones of specific parcels of property, variances, and other types of discretionary zoning permits if a hearing must be held.

The statutory doctrine does **not** apply to the following actions:

- adoption, amendment, or revision of comprehensive plans
- adoption of area-wide zoning ordinances
- adoption of area-wide zoning amendments
- building permit denial.

As a practical matter, if both legislative and adjudicative functions are combined in one proceeding, and any showing of bias is present, the appearance of fairness rules should be followed.

## Basic Requirements of the Statute

### Applies Only to Quasi-Judicial Proceedings

**RCW 42.36.010** – Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies....

The appearance of fairness doctrine applies only to *quasi-judicial* actions of local decision-making bodies when a hearing is required by statute or local ordinance.<sup>16</sup>

Public officials act more like judges than administrators or legislators when they participate in quasi-judicial hearings. This means that they must listen to and evaluate testimony and evidence presented at a hearing; they must determine the existence of facts; they must draw conclusions from facts presented; and then decide whether the law allows the requested action. A quasi-judicial proceeding involves policy *application*, rather than policy *making*.

“Quasi-judicial actions” are defined to include:

...actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding.

The principle characteristics of quasi-judicial proceedings:

- generally have a greater impact on *specific individuals* than on the entire community.
- aimed at arriving at a fact-based decision between two distinct alternatives, i.e., pro or con.
- decision involves policy application rather than policy setting.

The following matters have been determined by the courts to be quasi-judicial if a public hearing must be held: conditional uses, variances, subdivisions, rezoning a specific site, PUD approval, preliminary plat approval, discretionary zoning permits, appeal of a rezone application, other types of zoning changes that involve fact-finding and the application of general policy to a discrete situation.

Before proceeding with a hearing: Determine whether the intended action will produce a general rule or policy that applies to an open class of individuals, interests, or situations (and is thus legislative), or whether it will apply a general rule of policy to specific individuals, interests, or situations (and is therefore quasi-judicial).

<sup>16</sup>RCW 42.36.010; affirmed in *Raynes v. Leavenworth*, 118 Wn.2d 237, 821 P.2d 1204 (1992).

## Does Not Apply to Policy-Making or Legislative Actions

**RCW 42.36.010** – Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

Policy-making is clearly the work of legislative bodies and doesn't resemble the ordinary business of the courts. The doctrine *does not* apply to local legislative, policy-making actions of the type that adopt, amend, or revise comprehensive, community, or neighborhood plans or other land use planning documents. It also does not apply to the passage of area-wide zoning ordinances, or to the adoption of zoning amendments that are of area-wide significance.

Even though a zoning amendment might affect specific individuals, if it applies to an entire zoning district, it will be considered legislative, not quasi-judicial. As the court noted in *Raynes v. Leavenworth*:

The fact that the solution chosen has a high impact on a few people does not alter the fundamental nature of the decision.<sup>17</sup>

The courts have also determined the following matters to be legislative (e.g., political or policy decisions) and therefore not subject to the appearance of fairness doctrine: comprehensive plans, initial zoning decisions, amendments to the text of zoning ordinances, street vacations, revision of a community plan viewed by the court to be “in the nature of a blueprint and policy statement for the future,”<sup>18</sup> determining where to place a highway interchange.<sup>19</sup>

## Special Rules Apply During Elections

**RCW 42.36.050** – A candidate for public office who complies with all provisions of applicable public disclosure and ethics laws shall not be limited from accepting campaign contributions to finance the campaign, including outstanding debts; nor shall it be a violation of the appearance of fairness doctrine to accept such campaign contributions.

During campaigns, candidates for public office are allowed to express their opinions about pending or proposed quasi-judicial actions, even though they may be involved in later hearings on these same actions. Candidates are also allowed to accept campaign contributions from constituents who have quasi-judicial matters pending before the decision-making body as long as candidates comply with applicable public disclosure and ethics laws.<sup>20</sup>

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<sup>17</sup>*Raynes, supra.* at 249.

<sup>18</sup>*Westside Hilltop Survival Committee v. King County*, 96 Wn.2d 171, 179, 634 P.2d 862 (1981).

<sup>19</sup>*Harris v. Hornbaker*, 98 Wn.2d 650, 658 P.2d 1219 (1983).

<sup>20</sup>*Improvement Alliance v. Snohomish Cy.*, 61 Wn.App. 64, 808 P.2d 781 (1991).

## Ex Parte Contacts Are Prohibited

Ex parte literally means “one sided.” Ex parte contact involves a one-sided discussion without providing the other side with an opportunity to respond and state their case.

**RCW 42.36.060** – During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

(1) places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(2) provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication is related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision, if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official, if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

A basic principle of fair hearings is that decisions are made entirely on the basis of evidence presented at the proceedings. All parties to a conflict should be allowed to respond and state their case. Consequently, while a quasi-judicial proceeding is pending, no member of a decision-making body is allowed to engage in *ex parte* (one-sided or outside the record of the hearing) communications with either proponents or opponents of the proceeding.

A decision-maker is allowed to cure a violation caused by an ex parte communication by:

- placing the substance of any oral or written communications or contact on the record; and
- *at each hearing* where action is taken or considered on the subject, (1) making a public announcement of the content of the communication, and (2) allowing involved parties to rebut the substance of the communication.

This rule does not prohibit written correspondence between a citizen and an elected official on the subject matter of a pending quasi-judicial matter, *if the correspondence is made a part of the record of the proceedings.*

## No Disqualification for Prior Participation

**RCW 42.36.070** – Participation by a member of a decision-making body in earlier proceedings that result in an advisory recommendation to a decision-making body shall not disqualify that person from participating in any subsequent quasi-judicial proceeding.

A decision-maker (such as a councilmember who was formerly a planning commission member) who participated in earlier proceedings on the same matter that resulted in an advisory recommendation to another decision-making body (e.g., the city council) is not disqualified from participating in the subsequent quasi-judicial proceedings.

## Challenges Must Be Timely

**RCW 42.36.080** – Anyone seeking to rely on the appearance of fairness doctrine to disqualify a member of a decision-making body from participating in a decision must raise the challenge as soon as the basis for disqualification is made known to the individual. Where the basis is known or should reasonably have been known prior to the issuance of a decision and is not raised, it may not be relied on to invalidate the decision.

If information is disclosed indicating violation of the doctrine, opponents or proponents can decide whether to request disqualification or waive their right to challenge the alleged violation. Challenges based on a suspected violation of the appearance of fairness doctrine have to be raised as soon as the basis for disqualification is made known, or reasonably should have been known, prior to the issuance of the decision, otherwise they cannot be used to invalidate the decision.

## Rule of Necessity

**RCW 42.36.090** – In the event of a challenge to a member or members of a decision-making body which would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law, any such challenged member(s) shall be permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the member or members publicly disclose the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

If members of a decision-making body are challenged as being in violation of the doctrine so that there are not enough members to legally make a decision, the “rule of necessity” allows challenged members to participate and vote. Before voting, though, the challenged officials must publicly state why they would, or might have been, disqualified.

## Fair Hearings Have Precedence

**RCW 42.36.110** – Nothing in this chapter prohibits challenges to local land use decisions where actual violations of an individual's right to a fair hearing can be demonstrated.

Even though some conduct might not violate the statutory provisions of the appearance of fairness doctrine, a challenge could still be made if an unfair hearing actually results. For instance, although RCW 42.36.040 permits candidates to express opinions on pending quasi-judicial matters, if opinion statements made during a campaign reflect an intractable attitude or bias that continues into the post-election hearing process, a court might determine that the right to a fair hearing has been impaired, even if no statutes were violated.

The safest approach: avoid any appearance of partiality or bias.

Because it is often difficult to sort out the many functions of local decision-making bodies, a clear line cannot always be drawn between judicial, legislative, and administrative functions.<sup>21</sup> If the proceedings seem similar to judicial proceedings then they probably warrant the special protections called for by the appearance of fairness doctrine.

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<sup>21</sup>See *Buell v. Bremerton*, *supra*. in which the court determined that participation was likely to influence other members and affect their actions.

## Guidelines for Avoiding Fairness Violations

Officials who participate in quasi-judicial hearings need to:

- become familiar with fair-hearing procedures;
- be aware of personal and employment situations that might form the basis for a challenge;
- strive to preserve an atmosphere of fairness and impartiality – even if a given decision may seem to be a foregone conclusion;
- evaluate whether a financial interest or bias would limit ability to function as an impartial decision-maker;
- make sure decisions are made solely on the basis of matters of record;
- make sure that ex parte contacts are avoided; and
- make sure the information about the contact is placed on the record, if ex parte contacts occur.

One method of ensuring fair hearings is to adopt policies and rules for quasi-judicial matters. Some municipalities have adopted rules requiring that a decision maker respond to questions prior to commencement of a quasi-judicial hearing. (Sample policies are contained in Appendix C.)

### The Test for Fairness

Would a fair minded person in attendance at this hearing say (1) that everyone was heard who should have been heard, and (2) that the decision-maker was impartial and free from outside influences?

### Officials Who Are Subject to the Doctrine

The doctrine applies to all local decision-making bodies including:

- members of governing board or council;
- hearing examiners;
- planning commissions;
- boards of adjustment;
- civil service boards; and
- any other body that determines the legal rights, duties or privileges of specific parties in a hearing or other contested case proceeding.

## Officials and Employees Who Are Not Subject to the Doctrine

Department heads, planning department staff, and other municipal officials who don't conduct hearings or engage in quasi-judicial decision-making functions are not subject to the doctrine. *(Although exempt from the doctrine's ex parte contact prohibition, they might still be subject to its other requirements to make sure that all hearings are fair. RCW 42.36.110.)*

## Actions That Are Exempt from the Doctrine

Purely legislative matters, such as:

- the adoption, amendment, or revision of a comprehensive, community, or neighborhood plan;
- adoption of area-wide zoning ordinances; and
- adoption of zoning amendments of area-wide significance.

## Remedy for Violation of the Doctrine

A decision-maker who has had *ex parte* contacts is allowed, by statute, to cure the violation by publicly stating the nature and substance of the contact on the record of the hearing *and* by advising the parties of any *ex parte* contact and giving each party a chance to respond *at each* subsequent hearing at which the matter is considered.

The statutory doctrine requires a suspected violation to be raised at the time of the hearing, otherwise any objection will be considered waived. However, if there is no opportunity for the parties to respond to the disclosure of the contact, then the violation can't be cured, and the decision-maker should disqualify him or herself from the rest of the proceedings.

A disqualified decision-maker may not vote and, perhaps more importantly, *may not participate in the hearing and deliberation process, even if not voting.*

If a violation is proved, the challenged decision will be invalidated. A new hearing must be conducted without the participation of the disqualified decision-maker. Because the result of conducting a new hearing is often eventual reinstatement of the original decision, the practical result of an invalidation is often tremendous delay and duplicative work for all the parties.

## Commonly Asked Questions

### ❶ How does a local government decide whether a matter is *quasi-judicial*?

Quasi-judicial actions are defined by state statute to be: “...those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards *which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding.*” RCW 42.36.010.

### ❷ Which land use matters are *legislative actions*?

Legislative actions include adoption, amendment, or revision of comprehensive, community, or neighborhood plans or other land use planning documents, or adoption of zoning ordinances or amendments that are of area-wide significance. See RCW 42.36.010.

### ❸ What is an *ex parte* communication?

An ex parte communication is a one-sided discussion between a decision-maker and the proponent or opponent of a particular proposal that takes place outside of the formal hearing process on a quasi-judicial matter. No member of a decision-making body is allowed to engage in ex parte communication when quasi-judicial matters are pending.

### ❹ How is it determined whether a matter is *pending*?

“Pending” means after the time the initial application is filed or after the time an appeal is filed with the local government. Thus, if a matter would come before the decision-maker *only* by appeal from a decision by the hearing examiner or planning commission, it is not considered pending with respect to councilmembers or until an appeal is filed. It would, however, be pending with respect to the hearing examiner or planning commissioners.

### ❺ Is a council hearing on the adoption of an area-wide *zoning ordinance* subject to the appearance of fairness doctrine?

No. Even though it requires a public hearing and affects individual landowners, this type of proceeding is *legislative* rather than *adjudicatory* or *quasi-judicial*.

❶ **Is a *rezone hearing* subject to the doctrine?**

Yes. The decision to change the zoning of particular parcels of property is adjudicatory and the appearance of fairness doctrine applies. (See *Leonard v. City of Bothell*, 87 Wn. 2d 847, 557 P.2d 1306 (1976).

❷ **Is an *annexation* subject to the appearance of fairness doctrine?**

No. An annexation is a legislative action and not a quasi-judicial action.

❸ **Does the appearance of fairness doctrine apply to *preliminary plat approval*?**

Yes, preliminary plat approval is quasi-judicial in nature and must be preceded by a public hearing. Therefore, it is subject to the doctrine of appearance of fairness. See *Swift v. Island County*, 87 Wn.2d 348, 552 P.2d 175 (1976).

❹ **Does the appearance of fairness doctrine apply to a *final plat approval*?**

A public hearing is not required for final plat approval. The doctrine only applies to quasi-judicial land use matters for which a hearing is required by law.

❺ **Does the doctrine apply to *street vacations*?**

No. Even though a hearing is held, this is a legislative policy decision, not an adjudicatory matter.

❻ **Which *local officials* are subject to the doctrine?**

According to RCW 42.36.010, council members, planning commission members, board of adjustment members, hearing examiners, zoning adjusters, or members of boards participating in quasi-judicial hearings that determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding” are all subject to the doctrine.

❼ **Are any local government *officials or employees exempt* from the appearance of fairness rule?**

Even though required to make decisions on the merits of a particular case, department heads and staff persons are not subject to the appearance of fairness rules.

❶ **If a decision-maker announces before the hearing has even been held that her/his *mind is already made up* on a matter, what should be done?**

The member should disqualify her/himself. (See *Chrobuck v. Snohomish County*, 78 Wn.2d 858, 480 P.2d 489 (1971).

❷ **May a decision-maker *meet with a constituent* on matters of interest to the constituent?**

Yes, as long as there is no discussion of quasi-judicial matters pending before the council. See RCW 42.36.020; *West Main Associates v. City of Bellevue*, 49 Wn.App 513, 742 P.2d 1266 (1987).

❸ **May the *city council and planning commission meet jointly* to consider a presentation by a developer?**

If no specific application has been filed by the developer, the council probably may meet jointly with the planning commission to consider a proposal by a developer. The appearance of fairness doctrine has been held by the courts to apply only to situations arising during the *pendency* of an action. If no application has been filed, no action is pending before the city. But if a formal application for a rezone has been filed, a joint meeting would probably violate the doctrine.

❹ **May councilmembers meet with a developer *prior* to an application for a project?**

Yes, if no application has been filed. A member of a decision-making body is not allowed to engage in ex parte communications with opponents or proponents of a proposal *during the pendency of a quasi-judicial proceeding* unless certain statutory conditions are met. In *West Main Associates v. Bellevue*, 49 Wn. App. 513, 742 P.2d 1266 (1987), the court indicated that ex parte communications were not prohibited until an actual appeal has been filed with the city council relating to a quasi-judicial matter.

❺ **May decision-makers *discuss a quasi-judicial matter outside of council chambers*?**

If a situation occurs in which communication with a decision-maker occurs outside of the local government's hearing process, the decision-maker should place the substance of the written or oral communication on the record, make a public announcement of the content of the communication, and allow persons to rebut the substance of the communication. Failure to follow these steps could result in an overturning of the decision, should it ever be challenged in court.

**❖ Is there an appearance of fairness problem if a *planning commission member owns property within an area proposed for rezone*?**

It would violate the appearance of fairness doctrine if a planning commission member who owns property in the area to be rezoned participates in the hearing and/or votes. In the leading case on this issue, *Buell v. Bremerton*, 80 Wn.2d 518, 495 P.2d 1358 (1972), a planning commissioner owned property adjacent to an area to be rezoned. The court determined that the commissioner's self-interest was sufficient to invalidate the entire proceeding.

**❖ May a planning commission member who has *disqualified himself on a rezone action*, discuss the application with other planning commission members?**

A planning commission member who has disqualified himself on a specific action should not attempt to discuss the application with other planning commission members either inside or outside of the hearing process. See *Hayden v. Port Townsend*, 28 Wn. App. 192, 622 P.2d 1291 (1981).

**❖ If a councilmember has disqualified herself from participation in a council hearing because she is an applicant in a land use matter, may she *argue her own application in writing before the council*?**

Our courts have ruled that once a member relinquishes his or her position for purposes of the doctrine, he or she should not participate in the hearing. A disqualified decision-maker should not join the hearing audience, act on behalf of an applicant, or interact in any manner with the other members. See *Hayden v. Port Townsend*, 28 Wn. App. 192, 622 P.2d 1291 (1981).

**❖ May a *relative of a decision-maker, who is also a developer, act as an agent for that decision-maker in presenting the proposal to council*?**

Yes, a relative would be allowed to act as the agent in these circumstances.

**❖ May the *spouse of a disqualified decision-maker* testify at the quasi-judicial hearing?**

If the decision-maker disqualifies him or herself on a quasi-judicial issue coming before the council, his/her spouse may testify as long as the councilmember leaves the room and does not attempt to vote or participate in the deliberations.

**❖ May a decision-maker vote on a legislative issue if her *husband is a planner for the local government* and the issue could indirectly affect his work?**

Yes. If the vote is on a legislative matter, then the appearance of fairness doctrine does not apply.

**❶ May a *city staff person* present a development proposal to the planning commission and city council *on behalf of a developer* who is also a city councilmember?**

The staff member can present a report and recommendation to the council or planning commission on behalf of the city. It is not appropriate for city staff to present both the city and the developer's position.

**❷ In a situation in which the *chairman of the planning commission is a realtor and represents a client* wishing to purchase property in an area of the city that is being considered for a rezone, may the chairman participate in the hearing and vote on the rezone application?**

The fact that the chairman is a realtor does not in itself disqualify him from participation in rezone hearings. However, his representation of a client wanting to purchase property in the area being considered for a rezone constitutes sufficient reason for disqualification from participation.

**❸ Will a violation of the appearance of fairness doctrine invalidate a decision, even if the *vote of the "offender" was not necessary to the decision*?**

Yes. Our courts have held that it is immaterial whether the vote of the offender was or was not necessary to the decision.

**❹ Are *contacts between a decision-maker and city staff members* considered to be *ex parte* contacts prohibited by the appearance of fairness doctrine?**

The role of a local government department is to create a neutral report on a proposal and issue a recommendation to grant or deny a proposal that is subject to further appeal or approval. Contacts with staff would only be prohibited if the department involved is a party to quasi-judicial action before the council or board.

**❺ May a councilmember participate in a vote on *leasing city property to an acquaintance*?**

Because the lease of city property is not a quasi-judicial matter and does not involve a public hearing, the appearance of fairness doctrine does not apply. (Note: There could be a potential conflict of interest question if the councilmember is likely to reap financial gain from the lease arrangements.)

**❶ May a *councilmember who is running for mayor* state opinions during the campaign regarding quasi-judicial matters that are pending before the council and that will be decided before the election?**

RCW 42.36.040 provides that “expression of an opinion by a person subsequently elected to a public office, on any pending or proposed quasi-judicial actions” is not a violation of the appearance of fairness doctrine. However, this statute has never been interpreted by any appellate court, and it is unclear how it applies to an *incumbent* councilmember who might speak during his or her campaign (for mayor in this case) concerning a quasi-judicial matter that will be decided by the current council before the upcoming election. It would be best for the councilmember running for mayor not to speak on the pending matter. To do so could compromise the fairness of the hearing on the matter. RCW 42.36.110 operates to protect the right to a fair hearing despite compliance with other requirements of chapter 42.36 RCW. Although RCW 42.36.040 clearly allows *non*-incumbents running for office to speak on such a matter, the rights of the parties to a fair hearing might outweigh the right of an incumbent to speak out.

**❷ A *councilmember who is also chair of the local housing authority* would like to participate in a hearing at which the council is asked to review a proposed low-income housing project. If she can't participate as a councilmember, can she make her views known as a private citizen?**

Because the council will be meeting as a quasi-judicial body, the appearance of fairness doctrine is implicated. Consequently, the councilmember should not only refrain from participation and voting on the issue but should also physically leave the room when the remaining councilmembers discuss the matter. This removes any potential claim that the councilmember has attempted to exert undue influence over the other councilmembers.

**❸ If a councilmember is disqualified from participation on appearance of fairness grounds and *discusses the issue with another councilmember*, may the second councilmember still participate and vote?**

If the first councilmember is disqualified, then any discussion between the disqualified member and the other councilmember could be construed as an *ex parte* communication. If the content of the conversation is placed on the record according to the requirements of RCW 42.36.060, the other member could probably participate.

**❹ May a *councilmember attend a planning commission hearing on a quasi-judicial matter*?**

Although RCW 42.36.070 provides that participation by a member of a decision-making body in an earlier proceeding that results in an advisory recommendation to a decision-making body does not disqualify that person from participating in any subsequent quasi-judicial proceeding, such participation could potentially affect the applicant's right to a fair hearing. RCW 42.36.110 provides:

Nothing in this chapter prohibits challenges to local land use decisions where actual violation of an individuals' right to a fair hearing can be demonstrated.

Out of perhaps an excess of caution, this office generally recommends that city councilmembers not attend planning commission hearings on quasi-judicial matters because it is possible that their attendance might give rise to a challenge based on the appearance of fairness doctrine. We are not aware of any court decisions in which such a challenge has been adjudicated.

❶ **Can a candidate for municipal office *accept campaign contributions* from someone who has a matter pending before the council?**

Yes. Candidates may receive campaign contributions without violating the doctrine. RCW 42.36.050; *Improvement Alliance v. Snohomish Co.*, 61 Wn.App. 64, 808 P.2d 781 (1991). However, contributions must be reported as required by public disclosure law. Chapter 42.17 RCW.

❷ **Aren't elected officials supposed to be able to *interact with their constituents*?**

Absolutely. Accountability is a fundamental value in our representative democracy and requires public officials to be available to interact with their constituents. The statute addresses this by limiting the doctrine to quasi-judicial actions and excluding legislative actions.

❸ **Can a quorum be lost through *disqualification* of members under the appearance of fairness doctrine?**

No. If a challenge to a member, or members of a decision-making body would prevent a vote from occurring, then the challenged member or members may participate and vote in the proceedings provided that they first disclose the basis for what would have been their disqualification. This is known as the “doctrine of necessity” and is codified in RCW 42.36.090.

❹ **What should a decision-maker do if an *appearance of fairness challenge* is raised?**

The challenged decision-maker should either refrain from participation or explain why the basis for the challenge does not require him or her to refrain.

❺ **Are there any *limitations* on raising an appearance of fairness challenge?**

Yes. Any claim of a violation must be made “as soon as the basis for disqualification is made known to the individual.” If the violation is not raised when it becomes known, or when it reasonably should have been known, the doctrine cannot be used to invalidate the decision. RCW 42.36.080.

❶ **If a violation is proved, what is the *remedy*?**

The remedy for an appearance of fairness violation is to invalidate the local land use regulatory action. The result is that the matter will need to be reheard. Damages, however, cannot be imposed for a violation of the doctrine. See *Alger v. City of Mukilteo*, 107 Wn. 2d 541, 730 P.2d 1333 (1987).

❷ **Does the appearance of fairness doctrine prohibit a decision-maker from *reviewing and considering written correspondence* regarding matters to be decided in a quasi-judicial proceeding?**

No. Decision-makers can accept written correspondence from anyone *provided* the correspondence is disclosed and made part of the record of the quasi-judicial proceeding. RCW 42.36.060.

❸ **What *local government department oversees application* of the appearance of fairness doctrine?**

No person or body has the authority to oversee application of the appearance of fairness doctrine to members of a decision-making body. It is up to the individual members to determine whether the doctrine applies to them in a particular situation and to disqualify themselves if it does. Some local governing bodies have established rules that allow the votes of the membership to disqualify a member in the event of an appearance of fairness challenge. A governing body probably has the authority to establish such a rule based upon its statutory authority to establish rules of conduct.

## Appendix A

### **Chapter 42.36 RCW**

#### **Laws/Statutes Designed to Promote Fairness and Openness in Government**

- **Chapter 42.17 RCW – PUBLIC DISCLOSURE ACT**
- **Chapter 42.30 RCW – OPEN PUBLIC MEETINGS ACT**
- **Chapter 42.36 RCW – APPEARANCE OF FAIRNESS DOCTRINE - LIMITATIONS**  
*(Full Text Follows)*



**Chapter 42.36 RCW**  
**APPEARANCE OF FAIRNESS DOCTRINE – LIMITATIONS**

**RCW 42.36.010**

**Local land use decisions.**

Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

**RCW 42.36.020**

**Members of local decision-making bodies.**

No member of a local decision-making body may be disqualified by the appearance of fairness doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body.

**RCW 42.36.030**

**Legislative action of local executive or legislative officials.**

No legislative action taken by a local legislative body, its members, or local executive officials shall be invalidated by an application of the appearance of fairness doctrine.

**RCW 42.36.040**

**Public discussion by candidate for public office.**

Prior to declaring as a candidate for public office or while campaigning for public office as defined by RCW 42.17.020(5) and (25) no public discussion or expression of an opinion by a person subsequently elected to a public office, on any pending or proposed quasi-judicial actions, shall be a violation of the appearance of fairness doctrine.

**RCW 42.36.050**

**Campaign contributions.**

A candidate for public office who complies with all provisions of applicable public disclosure and ethics laws shall not be limited from accepting campaign contributions to finance the campaign, including outstanding debts; nor shall it be a violation of the appearance of fairness doctrine to accept such campaign contributions.

**RCW 42.36.060****Quasi-judicial proceedings – Ex parte communications prohibited, exceptions.**

During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

(1) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and

(2) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

**RCW 42.36.070****Quasi-judicial proceedings - Prior advisory proceedings.**

Participation by a member of a decision-making body in earlier proceedings that result in an advisory recommendation to a decision-making body shall not disqualify that person from participating in any subsequent quasi-judicial proceeding.

**RCW 42.36.080****Disqualification based on doctrine - Time limitation for raising challenge.**

Anyone seeking to rely on the appearance of fairness doctrine to disqualify a member of a decision-making body from participating in a decision must raise the challenge as soon as the basis for disqualification is made known to the individual. Where the basis is known or should reasonably have been known prior to the issuance of a decision and is not raised, it may not be relied on to invalidate the decision.

**RCW 42.36.090****Participation of challenged member of decision-making body.**

In the event of a challenge to a member or members of a decision-making body which would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law, any such challenged member(s) shall be permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the member or members publicly disclose the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

**RCW 42.36.100****Judicial restriction of doctrine not prohibited - Construction of chapter.**

Nothing in this chapter prohibits the restriction or elimination of the appearance of fairness doctrine by the appellate courts. Nothing in this chapter may be construed to expand the appearance of fairness doctrine.

**RCW 42.36.110****Right to fair hearing not impaired.**

Nothing in this chapter prohibits challenges to local land use decisions where actual violations of an individual's right to a fair hearing can be demonstrated.



Appendix B  
**Summary of Washington Appearance  
of Fairness Doctrine Cases**



## Summary of Washington Appearance of Fairness Doctrine Cases

Case	Body/Action	Conflict	Decision
<i>Smith v. Skagit County</i> , 75 Wn.2d 715, 453 P.2d 832 (1969)	Planning Commission/ Rezone	Planning commission met with proponents and excluded opponents in executive session.	Violation of appearance of fairness doctrine. Amendments to zoning ordinance to create an industrial zone were void - cause remanded to the superior court for entry of such a decree.
<i>State ex. rel. Beam v. Fulwiler</i> , 76 Wn.2d 313, 456 P.2d 322 (1969)	Civil Service Commission/Appeal from discharge of civil service employee (chief examiner of commission)	Challenge to hearing tribunal composed of individuals who investigated, accused, prosecuted, and would judge the controversy involved.	An appellate proceeding before the commission would make the same persons both prosecutor and judge and the tribunal must, therefore, be disqualified. A fair and impartial hearing before an unbiased tribunal is elemental to the concepts of fundamental fairness inherent in administrative due process.
<i>Chrobuck v. Snohomish County</i> , 78 Wn.2d 858, 480 P.2d 489 (1971)	Planning Commission - Board of County Commissioners/ Comprehensive plan amendment and rezone	Chairman of planning commission and chairman of county commissioners visited Los Angeles with expenses paid by petitioner. Chairman of county commissioners announced favorable inclination prior to hearing. New planning commission member previously testified on behalf of petitioner and signed advertisement to that effect, then participated to some extent at commission hearings but disqualified himself from voting.	Violation of appearance of fairness doctrine. Rezone set aside - land returned to original designation. Planning commission functions as an administrative or quasi-judicial body. Note: Cross-examination may be required if both parties have attorneys.
<i>Buell v. Bremerton</i> , 80 Wn.2d 518, 495 P.2d 1358 (1972)	Planning Commission/ Rezone	Chairman of planning commission owned property adjoining property to be rezoned. Property could have been indirectly affected in value.	Violation of appearance of fairness doctrine. Overrules <i>Chestnut Hill Co. v. Snohomish County</i> . Action by city council rezoning property on planning commission recommendation improper.
<i>Fleming v. Tacoma</i> , 81 Wn.2d 292, 502 P.2d 327 (1972)	City Council/Rezone	Attorney on council employed by the successful proponents of a zoning action two days after decision by city council.	Violation of appearance of fairness doctrine. Rezone ordinance invalid. Overrules <i>Lillians v. Gibbs</i> .
<i>Anderson v. Island County</i> , 81 Wn.2d 312, 501 P.2d 594 (1972)	Board of County Commissioners/Rezone	Chairman of county commission was former owner of applicant's company. Chairman told opponents at public hearing they were wasting their time talking.	Violation of appearance of fairness doctrine. Reversed and remanded for further proceedings.
<i>Narrowsview Preservation Association v. Tacoma</i> , 84 Wn.2d 416, 526 P.2d 897 (1974)	Planning Commission/ Rezone	Member of planning commission was a loan officer of bank which held mortgage on property of applicant. Member had no knowledge his employer held the mortgage on the property.	Appearance of fairness doctrine violation; thus zoning ordinance invalid. Court also held, however, acquaintances with persons or casual business dealings insufficient to constitute violation of doctrine.

Case	Body/Action	Conflict	Decision
<i>Byers v. The Board of Clallam County Commissioners</i> , 84 Wn.2d 796, 529 P.2d 823 (1974)	Planning Commission/Adoption of interim zoning ordinance	Members owned property 10-15 miles from area zoned and there was no indication that such property was benefited directly or indirectly by rezone.	No violation of appearance of fairness doctrine. Ordinance held invalid on other grounds.
<i>Seattle v. Loutsis Investment Co., Inc.</i> , 16 Wn. App. 158, 554 P.2d 379 (1976)	City/Certiorari to review findings of public use and necessity by court in condemnation action	Alleged illegal copy made of a key to the condemned premises and unauthorized entries by city employees and other arbitrary conduct by city employees violated appearance of fairness doctrine.	Court held appearance of fairness doctrine applies only to hearings and not to administrative actions by municipal employees. Cites <i>Fleming v. Tacoma</i> .
<i>King County Water District No. 54 v. King County Boundary Review Board</i> , 87 Wn.2d 536, 554 P.2d 1060 (1976)	Boundary Review Board/Assumption by city of water district	Alleged ex parte conversations between member of the board and persons associated with Seattle Water District and Water District No. 75 about the proposed assumption by city of Water District No. 54.	No appearance of fairness violation. Record does not indicate conversations took place and court could not conclude there was any partiality or entangling influences which would affect the board member in making the decision.
<i>Swift, et al. v. Island County, et al.</i> , 87 Wn.2d 348, 552 P.2d 175 (1976)	Board of County Commissioners/Overruling planning commission and approving a preliminary plat	A county commissioner was a stockholder and chairman of the board of a savings and loan association that had a financial interest in a portion of the property being platted.	Violated appearance of fairness doctrine.
<i>Milwaukee R.R. v. Human Rights Commission</i> , 87 Wn.2d 802, 557 P.2d 307 (1976)	State Human Rights Commission Special Hearing Tribunal/Complaint against railroad for alleged discrimination	Member of hearing tribunal had applied for a job with the commission.	The board's determination held invalid because it had appearance of unfairness.
<i>Fleck v. King County</i> , 16 Wn. App. 668, 558 P.2d 254 (1977)	Administrative Appeals Board/permit to install fuel tank	Two members of the board were husband and wife.	Fact that two members of board were husband and wife created appearance of fairness problem.
<i>SAVE (Save a Valuable Environment) v. Bothell</i> , 89 Wn.2d 862, 576 P.2d 401 (1978)	Bothell Planning Commission/Rezone	Planning commission members were executive director and a member of the board of directors, respectively, of the chamber of commerce which actively promoted the rezone.	Violation of appearance of fairness. Trial court found that the proposed shopping center, which would be accommodated by the rezone, would financially benefit most of the chamber of commerce members and their support was crucial to the success of the application. The planning commission members' associational ties were sufficient to require application of the doctrine.

Case	Body/Action	Conflict	Decision
<i>Polygon v. Seattle</i> , 90 Wn.2d 59, 578 P.2d 1309 (1978)	City of Seattle, Superintendent of Buildings/Application for building permit denied	Announced opposition to the project by the mayor, and a statement allegedly made by the superintendent, prior to the denial, that because of the mayor's opposition, he would announce that the permit application would be denied.	The appearance of fairness doctrine does not apply to administrative action, except where a public hearing is required by law. The applicable fairness standard for discretionary administrative action is actual partiality precluding fair consideration.
<i>Hill v. Dept. L &amp; I</i> , 90 Wn.2d 276, 580 P.2d 636 (1978)	Board of Industrial Insurance Appeals/Appeal by industrial insurance claimant	The chairman of the appeals board had been supervisor of industrial insurance at the time the claim had been closed.	No violation of appearance of fairness doctrine. The chairman submitted his uncontroverted affidavit establishing lack of previous participation or knowledge of the case.
<i>City of Bellevue v. King County Boundary Review Board</i> , 90 Wn.2d 856, 586 P.2d 470 (1978)	Boundary Review Board/Approval of annexation proposal	Use of interrogatories on appeal to superior court to prove bias of board members.	Holding that the use of such extra-record evidence was permissible under the specific circumstances present, the majority opinion observed: "Our appearance of fairness doctrine, though relating to concerns dealing with due process considerations, is not constitutionally based ...."
<i>Evergreen School District v. School District Organization</i> , 27 Wn. App. 826, 621 P.2d 770 (1980)	County Committee on School District Organization/Adjustment of school district boundaries	Member of school district board that opposed transfer of property to the proponent school district participated as a member of the county committee on school district organization.	Decision to adjust school district boundaries is a discretionary, quasi-legislative determination to which the appearance of fairness doctrine does not apply.
<i>Hayden v. Port Townsend</i> , 28 Wn. App. 192, 622 P.2d 1291 (1981)	Planning Commission/Rezone	Planning commission chairman, who was also branch manager of S & L that had an option to purchase the site in question, stepped down as chairman but participated in the hearing as an advocate of the rezone.	Participation of planning commission chairman as advocate of rezone violated appearance of fairness doctrine.
<i>Somer v. Woodhouse</i> , 28 Wn. App. 262, 623 P.2d 1164 (1981)	Department of Licensing/Adoption of administrative rule	During two rules hearings, the Director of the Department of Licensing sat at the head table with the representatives of an organization that was a party to the controversy, some of whom argued for adoption of the rule proposed by the department. The minutes of the rules hearings also bore the name of the same organization.	The appearance of fairness doctrine is generally not applicable to a quasi-legislative administrative action involving rule-making.

Case	Body/Action	Conflict	Decision
<i>Westside Hilltop Survival Committee v. King County</i> , 96 Wn.2d 171, 634 P.2d 862 (1981)	County Council/ Comprehensive plan amendment	Prior to modification of the comprehensive plan, there were ex parte contacts between one or two councilmembers and officials of the proponent corporation, and two councilmembers had accepted campaign contributions in excess of \$700 from employees of the proponent corporation. These councilmembers actively participated in, and voted for, adoption of the ordinance modifying the comprehensive plan to allow construction of an office building on a site previously designated as park and open space.	Comprehensive plans are advisory only, and a local legislative body's action to determine the contents of such a plan is legislative rather than adjudicatory. Legislative action in land use matters is reviewed under the arbitrary and capricious standard and is not subject to the appearance of fairness doctrine.
<i>Hoquiam v. PERC</i> , 97 Wn.2d 481, 646 P.2d 129 (1982)	Public Employment Relations Commission (PERC)/Unfair labor practice complaint	Member of PERC was partner in law firm representing union.	Law firm's representation of the union did not violate the appearance of fairness doctrine where commissioner, who was a partner in the law firm representing the union, disqualified herself from all participation in the proceedings.
<i>Dorsten v. Port of Skagit County</i> , 32 Wn. App. 785, 650 P.2d 220 (1982)	Port Commission/Increase of moorage charges at public marina	Alleged prejudgment bias of commissioner who was an owner or part owner of a private marina in competition with the port's marina.	The port's decision was legislative rather than judicial and the appearance of fairness doctrine did not apply.
<i>Harris v. Hornbaker</i> , 98 Wn.2d 650, 658 P.2d 1219 (1983)	Board of County Commissioners/Board's determination of a freeway interchange - adoption of six-year road plan	Alleged prejudgment bias of certain county commissioners.	Deciding where to locate a freeway interchange is a legislative rather than an adjudicatory decision, the appearance of fairness doctrine does not apply.
<i>Medical Disciplinary Board v. Johnston</i> , 99 Wn.2d 466, 663 P.2d 457 (1983)	Medical Disciplinary Board/Revocation of medical license	Challenge to the same tribunal combining investigative and adjudicative functions, and the practice of assigning a single assistant attorney general as both the board's legal advisor and prosecutor.	The appearance of fairness doctrine is not necessarily violated in such cases. The facts and circumstances in each case must be evaluated to determine whether a reasonably prudent disinterested observer would view the proceeding as a fair, impartial, and neutral hearing and, unless shown otherwise, it must be presumed that the board members performed their duties properly and legally. (In a concurring opinion, Justices Utter, Dolliver, and Dimmick asserted that the majority's analysis of the appearance of fairness doctrine merely reiterates the requirements of due process and thereby causes unnecessary confusion.) (In a dissenting opinion, Justices Rosellini and Dore argued that the combination of investigative, prosecutorial, and adjudicative functions within the same tribunal constitutes an appearance of fairness violation.)

Case	Body/Action	Conflict	Decision
<i>Side v. Cheney</i> , 37 Wn. App. 199, 679 P.2d 403 (1984)	Mayor/Promotion of police officer to sergeant	Mayor passed over first-listed officer on civil service promotion list who had also filed for election for position of mayor.	Appearance of fairness doctrine does not apply to mayor who did not act in role comparable to judicial officer. Mayor's promotion decision was not a quasi-judicial decision.
<i>Zehring v. Bellevue</i> , 103 Wn.2d 588, 694 P.2d 638 (1985)	Planning Commission/Design review	Member of commission committed himself to purchase stock in proponent corporation before hearing held in which commission denied reconsideration of its approval of building design.	Appearance of fairness doctrine does not apply to design review. Doctrine only applies where a public hearing is required and no public hearing is required for design review. Court vacates its decision in earlier case ( <i>Zehring v. Bellevue</i> , 99 Wn.2d 488 (1983), where it held doctrine had been violated.)
<i>West Main Associates v. Bellevue</i> , 49 Wn. App. 513, 742 P.2d 1266 (1987)	City Council/Denial of application for design approval	Councilmember attended meeting held by project opponents and had conversation with people at meeting, prior to planning director's decision and opponent's appeal of that decision to council.	Appearance of fairness doctrine prohibits ex parte communications between public, quasi-judicial decision-makers only where communication occurs while quasi-judicial proceeding is pending. Since communication at issue occurred one month prior to appeal of planning director's decision to the council, it did not occur during the pendency of the quasi-judicial proceeding and doctrine was thus not violated.
<i>Snohomish County Improvement Alliance v. Snohomish County</i> , 61 Wn. App. 64, 808 P.2d 781 (1991)	County Council/Denial of application for rezone approval	Two councilmembers received campaign contributions during pendency of appeal.	Contributions were fully disclosed. The contributions were not ex parte communications as there was no exchange of ideas. RCW 42.36.050 provides that doctrine is not violated by acceptance of contribution.
<i>Raynes v. Leavenworth</i> , 118 Wn.2d 237, 821 P.2d 1204 (1992)	City Council/Amendment of zoning code	Councilmember was real estate agent for broker involved in sale of property to person who was seeking amendment of zoning code. Councilmember participated in council's consideration of proposed amendment.	Text amendment was of area-wide significance. Council action thus was legislative, rather than quasi-judicial. Appearance of fairness doctrine does not apply to legislative action. Limits holding of <i>Fleming v. Tacoma</i> , 81 Wn.2d 292, 502 P.2d 327 (1972) through application of statutory appearance of fairness doctrine (RCW 42.36.010), which restricts types of decisions classed as quasi-judicial.
<i>Trepanier v. Everett</i> , 64 Wn. App. 380, 824 P.2d 524 (1992)	City Council/Determination that environmental impact statement not required for proposed zoning ordinance	City both proposed new zoning code and acted as lead agency for SEPA purposes in issuing determination of nonsignificance (DNS).	Person who drafted new code was different from person who carried out SEPA review. In addition, there was no showing of bias, or circumstances from which bias could be presumed, in council's consideration of legislation proposed by executive.

Case	Body/Action	Conflict	Decision
<i>State v. Post</i> , 118 Wn.2d 596, 837 P.2d 599 (1992)	Community Corrections Officer/Preparation of presentence report	Presentence (probation) officer is an agent of the judiciary; that officer's alleged bias is imparted to judge.	Probation officer is not the decisionmaker at sentencing hearing; judge is. Appearance of fairness does not apply to probation officer. In addition, no actual or potential bias shown.
<i>Jones v. King Co.</i> , 74 Wn. App. 467, __P.2d__ (1994)	County Council/Area- wide rezone	Action has a high impact on a few people; therefore, it should be subject to appearance of fairness doctrine.	Area-wide rezoning constitutes legislative, rather than quasi-judicial action under RCW 42.36.010 regardless of whether decision has a high impact on a few people or whether local government permits landowners to discuss their specific properties.
<i>Lake Forest Park v. State</i> , 76 Wn. App. 212, __P.2d__ (1994)	Shorelines Hearings Board/Shoreline substantial development permit	Reconsideration of the record allegedly prejudiced the SHB against the city.	When acting in a quasi-judicial capacity, judicial officers must be free of any hint of bias. However, a party claiming an appearance of fairness violation cannot indulge in mere speculation, but must present specific evidence of personal or pecuniary interest.
<i>Bjarnson v. Kitsap Co.</i> , 78 Wn. App. 840 (1995)	County Commissioner/ Rezone and planned unit development	Member of decision-making body had <i>ex parte</i> communications during pendency of rezone.	Improper conduct of member was cured if remaining members of board conduct a rehearing and there is no question of bias or the appearance of bias of remaining members.
<i>Opal v. Adams Co.</i> , 128 Wn.2d 869 (1996)	County Commissioner/ Adequacy of environmental impact statement for unclassified use permit for regional landfill	Member of decision-making body had numerous <i>ex parte</i> contact with proponents of project during pendency of application.	While <i>ex parte</i> contacts are improper unless disclosed, any violation of the Appearance of Fairness Doctrine was harmless since the purpose of disclosure is to allow opponents to rebut, and this was fully addressed by opponents in the public hearings.

**Notes:**

Adapted from a chart originally prepared by Lee Kraft, former City Attorney of Bellevue.

Court decisions may have rested on grounds other than appearance of fairness doctrine alone.

Appendix C  
**Sample Council Meeting Procedures  
for Quasi-Judicial Meetings**



## **Snohomish County Website**

### **Appearance of Fairness Doctrine**

Why can't County Council members talk to constituents about local land use issues (except in a formal public hearing)?

The appearance of fairness doctrine restricts county council members from discussing the merits of certain types of land use matters that will or could be heard by the council on appeal from the county Hearing Examiner.

In hearing such land use appeals, the county council acts in a quasi-judicial capacity, that is like a court, and the council is therefore required to follow certain Constitutional due-process rules. Specifically, the courts have ruled that discussions about a pending case should occur only at a formal public hearing where all interested parties have an equal opportunity to participate.

Citizens, however, are welcome to discuss any issue with the county council's staff. Please call 425-388-3494.

## City of Poulsbo Council Rules of Procedure

**5.3 VOTES ON MOTIONS:** Each member present shall vote on all questions put to the Council except on matters in which he or she has been disqualified for a conflict of interest or under the appearance of fairness doctrine. Such member shall disqualify himself or herself prior to any discussion of the matter and shall leave the Council Chambers. When disqualification of a member or members results or would result in the inability of the Council at a subsequent meeting to act on a matter on which it is required by law to take action, any member who was absent or who had been disqualified under the appearance of fairness doctrine may subsequently participate, provided such member first shall have reviewed all materials and listened to all tapes of the proceedings in which the member did not participate.

**6.2 CONFLICT OF INTEREST/APPEARANCE OF FAIRNESS**

Prior to the start of a public hearing the Chair will ask if any Councilmember has a conflict of interest or Appearance of Fairness Doctrine concern which could prohibit the Councilmember from participating in the public hearing process. A Councilmember who refuses to step down after challenge and the advice of the City Attorney, a ruling by the Mayor or Chair and/or a request by the majority of the remaining members of the Council to step down is subject to censure. The Councilmember who has stepped down shall not participate in the Council decision nor vote on the matter. The Councilmember shall leave the Council Chambers while the matter is under consideration, provided, however, that nothing herein shall be interpreted to prohibit a Councilmember from stepping down in order to participate in a hearing in which the Councilmember has a direct financial or other personal interest.

**7.7 COMMENTS IN VIOLATION OF THE APPEARANCE OF FAIRNESS DOCTRINE:**

The Chair may rule out of order any comment made with respect to a quasi-judicial matter pending before the Council or its Boards or Commissions. Such comments should be made only at the hearing on a specific matter. If a hearing has been set, persons whose comments are ruled out of order will be notified of the time and place when they can appear at the public hearing on the matter and present their comments.

**10.4 DISCLOSURE, AVOIDING THE APPEARANCE OF IMPROPRIETY:** While state statutory provisions regarding the Appearance of Fairness Doctrine govern our conduct in quasi judicial matters, Councilmembers will also attempt to avoid even the appearance of impropriety in all of our actions. When we are aware of an issue that might reasonably be perceived as a conflict, and even if we are in doubt as to its relevance, we will reveal that issue for the record. We pledge that we will step down when required by the Appearance of Fairness Doctrine, that is, when an objective person at a Council meeting would have reasonable cause to believe that we could not fairly participate.

# City of Des Moines Council Rules of Procedure

## APPEARANCE OF FAIRNESS DOCTRINE

### **RULE 15.** Appearance of Fairness Doctrine and its Application.

(a) Appearance of Fairness Doctrine Defined. "When the law which calls for public hearings gives the public not only the right to attend but the right to be heard as well, the hearings must not only be fair but must appear to be so. It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows: Would a disinterested person, having been apprised of the totality of a boardmember's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided." *Zehring v. Bellevue*, 99 Wn.2d 488 (1983).

(b) Types of Hearings to Which Doctrine Applies. The appearance of Fairness Doctrine shall apply only to those actions of the Council which are quasi-judicial in nature. Quasi-judicial actions are defined as actions of the City Council which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents of the adoption of areawide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

RCW 42.36.010. Some examples of quasi-judicial actions which may come before the Council are: rezones or reclassifications of specific parcels of property, appeals from decisions of the Hearing Examiner, substantive appeals of threshold decisions under the State Environmental Protection Act, subdivisions, street vacations, and special land use permits.

(c) Obligations of Councilmembers, Procedure.

(1) Councilmembers should recognize that the Appearance of Fairness Doctrine does not require establishment of a conflict of interest, but whether there is an appearance of conflict of interest to the average person. This may involve the Councilmember or a Councilmember's business associate or a member of the Councilmember's immediate family. It could involve ex parte communications, ownership of property in the vicinity, business dealings with the proponents or opponents before or after the hearing, business dealings of the Councilmember's employer with the proponents or opponents, announced predisposition, and the like.

Prior to any quasi-judicial hearing, each Councilmember should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If the answer is in the affirmative, no matter how remote, the Councilmember should disclose such facts to the City Manager who will seek the opinion of the City Attorney as to whether a potential violation of the Appearance of Fairness Doctrine exists. The City Manager shall communicate such opinion to the Councilmember and to the Presiding Officer.

(2) Anyone seeking to disqualify a Councilmember from participating in a decision on the basis of a violation of the Appearance of Fairness Doctrine must raise the challenge as soon as the basis for disqualification is made known or reasonably should have been made known prior to

the issuance of the decision; upon failure to do so, the Doctrine may not be relied upon to invalidate the decision. The party seeking to disqualify the Councilmember shall state with specificity the basis for disqualification; for example: demonstrated bias or prejudice for or against a party to the proceedings, a monetary interest in outcome of the proceedings, prejudgment of the issue prior to hearing the facts on the record, or ex parte contact. Should such challenge be made prior to the hearing, the City Manager shall direct the City Attorney to interview the Councilmember and render an opinion as to the likelihood that an Appearance of Fairness violation would be sustained in superior court. Should such challenge be made in the course of a quasi-judicial hearing, the Presiding Officer shall call a recess to permit the City Attorney to make such interview and render such opinion.

(3) The presiding Officer shall have sole authority to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. Further, if two (2) or more Councilmembers believe that an Appearance of Fairness violation exists, such individuals may move to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the Presiding Officer or other Councilmembers shall give due regard to the opinion of the City Attorney.

(4) Notwithstanding the request of the Presiding Officer or other Councilmembers, the Councilmember may participate in any such proceeding.

(d) Specific Statutory Provisions.

(1) Candidates for the City Council may express their opinions about pending or proposed quasi-judicial actions while campaigning. RCW 42.36.040.

(2) A candidate for the City Council who complies with all provisions of applicable public disclosure and ethics laws shall not be limited under the Appearance of Fairness Doctrine from accepting campaign contributions to finance the campaign, including outstanding debts. RCW 42.36.050.

(3) During the pendency of any quasi-judicial proceeding, no Councilmember may engage in ex parte (outside the hearing) communications with proponents or opponents about a proposal involved in the pending proceeding, unless the Councilmember: (a) places on the record the substance of such oral or written communications; and (b) provides that a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication shall be made at each hearing where action is taken or considered on the subject. This does not prohibit correspondence between a citizen and his or her elected official if the correspondence is made a part of the record, when it pertains to the subject matter of a quasi-judicial proceeding. RCW 42.36.060.

(e) Public Disclosure File. The City Clerk shall maintain a public disclosure file, which shall be available for inspection by the public. As to elected officials, the file shall contain copies of all disclosure forms filed with the Washington State Public Disclosure Commission.

As to members of the Planning Agency, the file shall contain for each member a disclosure statement. The Planning Agency disclosure statement shall list all real property and all business interests located in the City of Des Moines in which the member or the member's spouse, dependent

children, or other dependent relative living with the member, have a financial interest.

(f) Procedure on Application. Any person making application for any action leading to a quasi-judicial hearing shall be provided with a document containing the following information: (1) the names and address of all members of the City Council, the Planning Agency, and Community Land Use Councils, (2) a statement that public disclosure information is available for public inspection regarding all such members, and (3) a statement that if the applicant intends to raise an appearance of fairness issue, the applicant should do so at least two weeks prior to any public hearing. The applicant shall acknowledge receipt of such document.

## San Juan County

### PUBLIC HEARING PROCEDURES

#### Section 8.1 Appearance of Fairness Doctrine. Definition, Application, Disclosures/Disqualifiers:

- (a) Appearance of Fairness Doctrine Defined. When the law which calls for public hearings gives the public not only the right to attend, but the right to be heard as well, the hearings must not only be fair but must *appear* to be so. It is a situation where appearances are quite as important as substance. Where there is a showing of substantial evidence to raise an appearance of fairness question, the court has stated: It is the possible range of mental impressions made upon the public's mind, rather than the intent of the acting governmental employee, that matters. The question to be asked is this: Would a disinterested person, having been apprised of the totality of a Council Member's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided.

- (b) Types of Hearings to Which the Doctrine Applies. RCW 42.36.010 states:

Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body...which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

Street vacations are typically legislative actions, unless clearly tied to, and integrated into, a site-specific development proposal which is quasi-judicial in nature.

#### Section 8.2 Obligations of Council Members - Procedure.

- (a) Immediate self-disclosure of interests that may appear to constitute a conflict of interest is hereby encouraged. Council Members should recognize that the Appearance of Fairness Doctrine does not require establishment of a conflict of interest, but whether there is an appearance of conflict of interest to the average person. This may involve a Council Member's business associate, or a member of the Council Member's immediate family. It could involve *ex parte* (from one party only, usually without notice to, or argument from, the other party) communications, ownership of property in the vicinity, business dealings with the proponents or opponents before or after the hearing, business dealings of the Council Member's employer with the proponents or opponents, announced predisposition, and the like. Prior to any quasi-judicial hearing, each Council Member should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If the answer is in the affirmative, no matter how remote, the

Council Member should disclose such fact to the County Attorney as to whether a potential violation of the Appearance of Fairness Doctrine exists.

- (b) Anyone seeking to disqualify a Council Member from participating in a decision on the basis of a violation of the Appearance of Fairness Doctrine must raise the challenge as soon as the basis for disqualification is made known, or reasonably should have been made known, prior to the issuance of the decision. Upon failure to do so, the doctrine may not be relied upon to invalidate the decision. The party seeking to disqualify the Council Member shall state, with specificity, the basis for disqualification; for example: demonstrated bias or prejudice for or against a party to the proceedings, a monetary interest in outcome of the proceedings, prejudgment of the issue prior to hearing the facts on the record, or *ex parte* contact. Should such challenge be made prior to the hearing, the Prosecuting Attorney, after interviewing the Council Member, shall render an opinion as to the likelihood that an Appearance of Fairness violation would be sustained in Superior Court. Should such challenge be made in the course of a quasi-judicial hearing, the Council Member shall either excuse him/herself or a recess should be called to permit the Prosecuting Attorney to make such interview and render such opinion.
- (c) In the case of the Council sitting as a quasi-judicial body, the Chair shall have authority to request a Council Member to excuse him/herself on the basis of an Appearance of Fairness violation. Further, if two (2) Council Members believe that an Appearance of Fairness violation exists, such individuals may move to request a Council Member to excuse him/herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the Chair or other Council Members shall give due regard to the opinion of the Prosecuting Attorney.

### **Section 8.3 Specific Statutory Provisions.**

- (a) County Council Members shall not express their opinions about pending or proposed quasi-judicial actions on any such matter which is or may come before the Council.
- (b) County Council Members who comply with all provisions of applicable public disclosure and ethics laws shall not be limited under the Appearance of Fairness Doctrine from accepting campaign contributions to finance the campaign, including outstanding debts. (RCW 42.36.050)
- (c) Members of local decision-making bodies. No member of a local decisionmaking body may be disqualified by the Appearance of Fairness Doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body. (RCW 42.36.020)
- (d) *Ex Parte* communications should be avoided whenever possible. During the pendency of any quasi-judicial proceeding, no Council Member may engage in *ex parte* communications with proponents or opponents about a proposal involved in the pending proceeding, unless the Council Member: (1) places on the record the substance of such oral or written communications concerning the decision or action; and (2) undertakes to assure that a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication shall be made at each hearing where

action is taken or considered on the subject. This does not prohibit correspondence between a citizen and his or her elected official, if the correspondence is made a part of the record, when it pertains to the subject matter of a quasi-judicial proceeding. (RCW 42.36.060)

- (e) Procedure on Application. Any person making application for any action leading to a quasi-judicial hearing before the County Council shall be provided with a document containing the following information: (1) the names and address of all members of the County Council, (2) a statement that public disclosure information is available for public inspection regarding all such Council Members, and (3) a statement that if the applicant intends to raise any appearance of fairness issue, the applicant should do so at least two (2) weeks prior to any public hearing, if the grounds for such issue are then known, and in all cases, no later than before the opening.

# **Spokane County Boundary Review Board – Rules of Procedure**

## **APPEARANCE OF FAIRNESS**

### **Ex Parte Communications**

In accordance with RCW 42.36.060, members shall abstain from any and all communications with persons or governmental or private entities which are, or expected to be, parties to an action before the Board.

This restriction is limited to matters before the Board, or which may come before the Board. If a member receives a letter or other written communication relating to a matter before the Board from a source other than the Boundary Review Board Office, that member shall transmit the material to the Director for inclusion in the record.

Members shall avoid conversations with any party to the action except when such conversation is on the record. It shall be the duty and responsibility of each member to publicly disclose at the earliest opportunity any communication between said member and a party to a matter before the Board.

### **Disclosure**

It shall be the duty and responsibility of each member to disclose at the earliest opportunity any possible ex parte communications thereof to the Chair and Legal Counsel. Upon such disclosure, the member may withdraw from the Board proceedings and shall leave the room in which such proceedings ensue. If a member chooses not to withdraw, the Chair shall, at the earliest opportunity upon the opening of a public hearing, disclose to the parties present the occurrence and nature of the possible violation.

Procedures to be followed by Board/Chair with reference to Appearance of Fairness: Ex-Parte Communications and Disclosure

Upon discovery of the existence of ex-parte communications, the Chair shall, at each and every subsequent hearing on the proposal request that the member:

Place on the record the substance of any written or oral ex-parte communication concerning the decision of action; and

Provide a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related.

## City of Pullman – Quasi-Judicial Hearing Procedures

Information sheet for those attending Quasi-Judicial Public Hearings of the Pullman Planning Commission. For many issues, the Planning Commission is required by law to hold what are known as “quasi-judicial” public hearings. Quasi-judicial hearings involve the legal rights of specific parties and usually pertain to one particular parcel of land. In these cases, the Commission acts like a judge by determining the legal rights, duties, and privileges of specific parties in the hearing (hence the term “quasi-judicial”). The fundamental purpose of a quasi-judicial hearing is to provide the affected parties due process. Due process requires notice of the proceedings and an opportunity to be heard. This information sheet has been prepared to help you understand what the Commission does during the course of these public hearings and why it follows these procedures. (Please note that the provision of a hearing notice to affected parties, while part of the entire process, is not included in the information below because this document addresses only those steps that occur during the public hearing itself.)

<b>PUBLIC HEARING PROCEDURES</b>	<b>WHY IS THIS DONE?</b>
1. The Planning Commission chair opens the hearing.	This step advises everyone present that the hearing is starting.
2. The chair reads the rules of procedure for the hearing. Procedures require administering an oath or affirmation to tell the truth to everyone who speaks. The chair can administer the oath or affirmation to all speakers while reading the rules of procedure or individually to each speaker prior to speaking.	The rules of procedure provide the organizational structure for the hearing process.  The oath is administered to ensure the integrity of the evidence provided.
3. The chair asks questions to disclose any “Appearance of Fairness” issues for Commission members and to allow persons in the audience the opportunity to disclose conflicts affecting Commission members’ abilities to be impartial.	The “Appearance of Fairness” questions are asked so that any Commission member may disclose conflicts, and so that, when appropriate, Commission members may disqualify themselves because of these conflicts.
4. Planning staff presents its “staff report,” in which it summarizes background information and recommendations on the matter under consideration. Often the Commission asks questions of staff following presentation of this report.	The staff report furnishes information to the public and Commission to assist in all participants’ understanding of the matter.
5. The chair requests public testimony. The applicant and other proponents are called first, followed by opponents and neutral parties. Proponents and opponents then have an opportunity to respond. It is likely that time limits will be imposed on this public testimony. When this testimony is concluded, the chair closes the public input portion of the hearing.	Accepting comment from affected parties is a key component of the hearing process.  Time limits are imposed to promote an efficient hearing and to facilitate the presentation of well-organized, concise testimony.
6. The Commission members discuss the merits of the case. Often the Commission asks more questions of staff or witnesses at this time. Sometimes this procedure is combined with step #7 below.	The Commission seeks consensus during this stage of the hearing so that it can proceed to making a final decision.
7. The Commission members formulate a written record of their decision called a “resolution.” First, the Commission members adopt “Findings of Fact” and “Conclusions,” based on the evidence presented at the	The Commission must ensure that it has appropriate documentation citing not just its decision, but also the reasons why it is making this decision. It must be careful to utilize only the evidence presented at the

hearing, in order to provide a written justification for their decision. Although staff usually provides a draft resolution to the Commission before the hearing, the Commission sometimes finds it necessary to prepare additional or different “Findings of Fact” and “Conclusions”; if this occurs, it can take some time because Commission members often must write complex statements. Then, once “Findings of Fact” and “Conclusions” have been adopted, the Commission makes its decision on the matter. The Commission’s decisions are always made in the form of recommendations to the City Council.

hearing, and the evidence used to justify a decision must be substantial in light of the entire record.