EXHIBIT D

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
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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 | Redmond.gov
MS: 2SPL | 15670 NE 85th St | PO Box 97010 | Redmond, WA 98052

Scott Reynolds

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

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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.

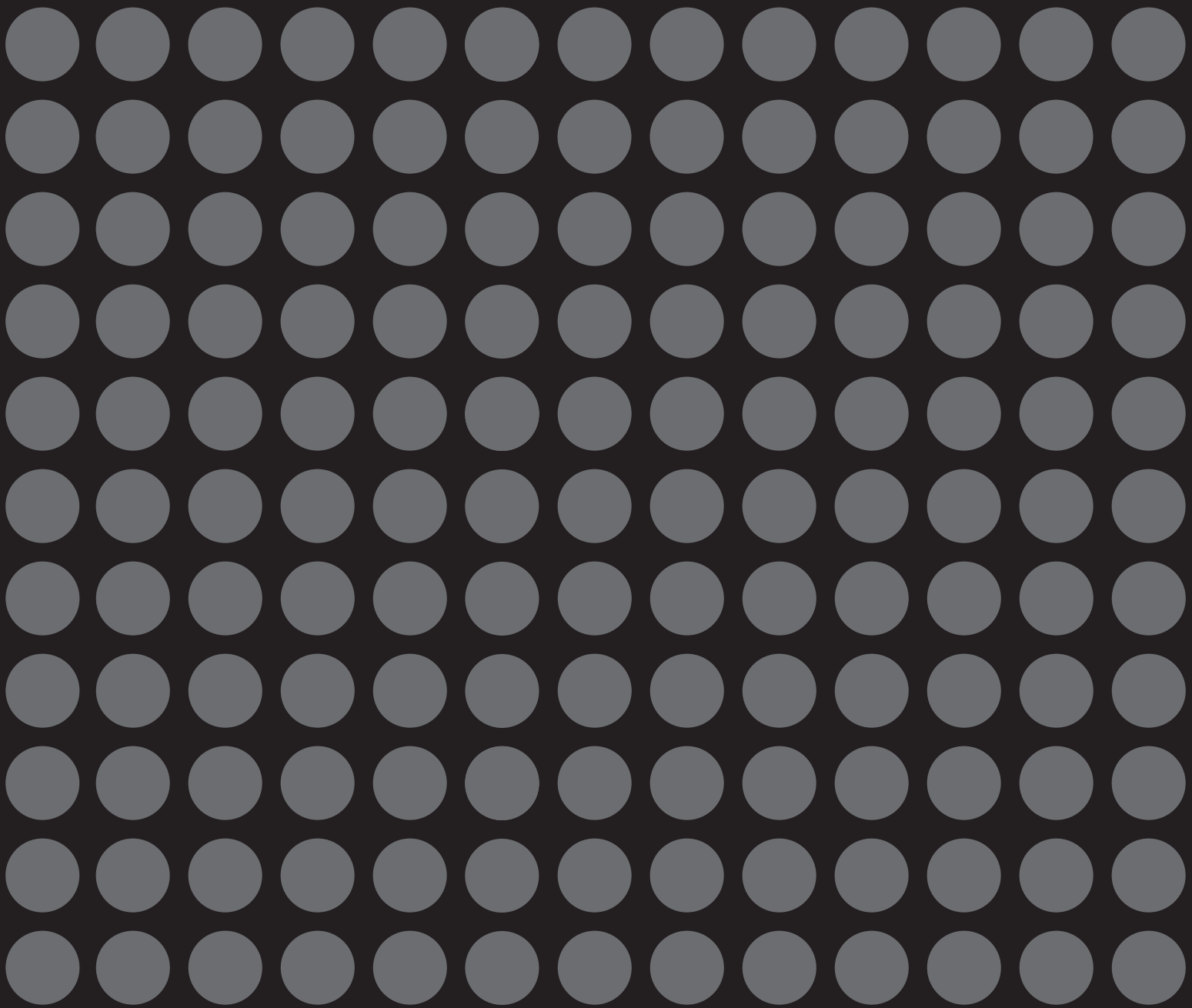
Thank you for your consideration.

Sincerely,

Eugene Zakhareyev
Redmond resident

The Appearance of Fairness Doctrine

in Washington State



MRSC

The Appearance of Fairness Doctrine in Washington State

MRSC
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www.MRSC.org

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.

Contents

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,*[1] *and must appear to be conducted by impartial decision-makers*.[2]

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.

[1] *Smith v. Skagit Co.*, 75 Wn.2d 715, 740, 453 P.2d 832 (1969).

[2] *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*:[3]

> 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

[3] 78 Wn.2d 858, 480 P.2d 489 (1971).

planning commission and its hearing procedures.[4]

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*[5] 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:

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[4] *Chrobuck v. Snohomish Co.*, 78 Wn.2d 858, 480 P.2d 489 (1971).

[5] 80 Wn.2d 518, 524, 495 P.2d 1358 (1972).

- **Financial Gain** – In *Swift v. Island County*,[6] 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.[7] (But where property is too far away to be directly benefitted by rezone, no violation occurs.)[8]

- **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.[9] (But past employment of an official by a rezone applicant is not a violation.)[10]

- **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).[11]

- **Associational or Membership Ties** – Any "entangling influences impairing the ability to be or remain impartial."[12]

- **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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[6] 87 Wn.2d. 348, 552 P.2d 175 (1976).

[7] *Buell, supra*.

[8] *Byers v. The Board of Clallam County Commissioners*, 84 Wn.2d 796, 529 P.2d 823 (1974).

[9] *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).

[10] *Narrowsview, supra*.

[11] *Fleming v. Tacoma*, 81 Wn.2d 292, 502 P.2d 327 (1972).

[12] *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.)[13]

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."[14]

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?[15]

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[13] *Chrobuck, supra*.

[14] *Buell* at 523.

[15] *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.[16]

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* then 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).

[16]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.[17]

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,"[18] determining where to place a highway interchange.[19]

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.[20]

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[17] *Raynes, supra*. at 249.

[18] *Westside Hilltop Survival Committee v. King County*, 96 Wn.2d 171, 179, 634 P.2d 862 (l981).

[19] *Harris v. Hornbaker*, 98 Wn.2d 650, 658 P.2d 1219 (1983).

[20] *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.[21] If the proceedings seem similar to judicial proceedings then they probably warrant the special protections called for by the appearance of fairness doctrine.

[21]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

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.

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.

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.

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.

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*.

◖ 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).

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

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

◖ 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).

◖ 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.

◖ Does the doctrine apply to *street vacations*?

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

◖ 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.

◖ 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.

◖ 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).

◖ 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).

◖ 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.

◖ 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.

◖ 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.

◖ 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.

◖ 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.

◖ 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.

◖ 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.

◖ 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.)

◖ 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.

◖ 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.

◖ 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.

◖ 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.

◖ 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.

◖ 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.

◖ *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.

◖ 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.

◖ 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.

◖ 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).

◖ 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.

◖ 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
Smith v. Skagit County, 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.
State ex. rel. Beam v. Fulwiler, 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.
Chrobuck v. Snohomish County, 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.
Buell v. Bremerton, 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 *Chestnut Hill Co. v. Snohomish County*. Action by city council rezoning property on planning commission recommendation improper.
Fleming v. Tacoma, 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 *Lillians v. Gibbs*.
Anderson v. Island County, 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.
Narrowsview Preservation Association v. Tacoma, 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
Byers v. The Board of Clallam County Commissioners, 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.
Seattle v. Loutsis Investment Co., Inc., 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 *Fleming v. Tacoma*.
King County Water District No. 54 v. King County Boundary Review Board, 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.
Swift, et al. v. Island County, et al., 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.
Milwaukee R.R. v. Human Rights Commission, 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.
Fleck v. King County, 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.
SAVE (Save a Valuable Environment) v. Bothell, 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
Polygon v. Seattle, 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.
Hill v. Dept. L & 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.
City of Bellevue v. King County Boundary Review Board, 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 ...."
Evergreen School District v. School District Organization, 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.
Hayden v. Port Townsend, 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.
Somer v. Woodhouse, 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
Westside Hilltop Survival Committee v. King County, 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.
Hoquiam v. PERC, 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.
Dorsten v. Port of Skagit County, 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.
Harris v. Hornbaker, 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.
Medical Disciplinary Board v. Johnston, 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
Side v. Cheney, 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.
Zehring v. Bellevue, 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 (*Zehring v. Bellevue*, 99 Wn.2d 488 (1983), where it held doctrine had been violated.)
West Main Associates v. Bellevue, 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.
Snohomish County Improvement Alliance v. Snohomish County, 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.
Raynes v. Leavenworth, 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 *Fleming v. Tacoma*, 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.
Trepanier v. Everett, 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
State v. Post, 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.
Jones v. King Co., 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.
Lake Forest Park v. State, 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.
Bjarnson v. Kitsap Co., 78 Wn. App. 840 (1995)	County Commissioner/ Rezone and planned unit development	Member of decision-making body had *ex parte* 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.
Opal v. Adams Co., 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 *ex parte* contact with proponents of project during pendency of application.	While *ex parte* 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.)

PUBLIC HEARING PROCEDURES	**WHY IS THIS DONE?**
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.

From:	Eugene Zakhareyev
To:	Planning Commission; Jodi L. Daub
Subject:	Additional comments for planning commission: Type III appeal amendments
Date:	Wednesday, April 18, 2018 10:22:32 AM

Respected members of Planning Commission!

To supplement my testimony at the public hearing, I would like to substantiate the points of my testimony in writing.

1. The appeal procedure as it defined today in Redmond Zoning Code does not prevent elected officials from communicating with constituents. The council members should be always aware of potential conflict of interest, and assuming that this specific case is so different that our Council cannot handle the procedure is to under-appreciate our council members.

The fact that some elected officials may feel uncomfortable discussing contentious decisions is not a valid reason for zoning code changes. To get complete perspective on elected officials communications, please check MRSC on doctrine of fairness

- http://mrsc.org/getdoc/52ab8e74-c88d-4aab-9efa-bd320aee18db/The-Appearance-of-Fairness-Doctrine.aspx
- http://mrsc.org/getmedia/04ae5092-48df-4964-91d7-2a9d87cb2b7c/Appearance-Of-Fairness-Doctrine-In-Washington-State.pdf.aspx
- http://mrsc.org/getmedia/1e641718-94a0-408b-b9d9-42b2e1d8180d/Knowing-The-Territory.pdf.aspx#page=18

Those principles apply to all council decisions and deliberations thus the requirements for Type III appeals are not excessive.

2. The appeal procedure as it defined today in RZC allows the residents to appeal the decisions at much lower costs as compared with the court system. The typical land use attorney charges around $300 - $400 per hour with additional fees associated with court appearances; the expert witnesses (should those be required) charge at hundreds dollars per hour. Typical appeal before the Hearing Examiner would cost to the citizen in the area of $15,000-20,000 with typical appeal to the court costing three-four times that. The same cost increases apply to the city representation in court.
The staff mentioned that the residents may choose to represent themselves – however, at the time when the city is represented by qualified legal professional (the City Attorney) self-representation will have direct bearing on the results of the appeal.
The appeal before the Council allows the residents to present the facts to their elected representatives without exorbitant costs that the appeal in court would require.

3. The appeal procedure as it defined today in RZC exists in similar form in many cities around us. As was brought up by Ms. Leiberton at the public hearing, the staff presentation did not provide correct summary of the legislation in the state.
Moreover, the legislation of other cities should not necessarily have direct bearing on Redmond Zoning Code. There are multitude of differences between the cities and emulating other cities legislation never was a significant factor in amending our zoning code so far.

As was stated by Mr. Lee at the public hearing, the main driver behind this amendment is to decrease the liability risks for the city. However, there is value to making the appeal process approachable to the residents as well as directly involving our elected representatives in contentious decisions. It is my sincere belief that this value far outweighs any potential liabilities that may occur in the process.
I respectfully ask the Planning Commission to recommend that the amendments to the zoning code for the appeal procedure of Type III land use applications be rejected.

Thank you for your consideration.

Yours truly,
Eugene Zakhareyev

From:	mleiberton leiberton
To:	Planning Commission; Jodi L. Daub
Cc:	Eugene Zakhareyev; Gary Lee; Scott Reynolds
Subject:	Written Supplemental Testimony by M. Leiberton Re: Level III Appeals
Date:	Wednesday, April 18, 2018 9:14:12 AM
Attachments:	RedmondPermitTypes&DecisionProcessCharts.docx Kirklandpermitteduselowdenres.docx kirkpermuseofficezones.docx BellevueProcessesI&III.docx Kirkchap150ProcessIIAoutline.docx Kirk150processIIAappeal.docx Kirk152ProcessIIBchallenge.docx

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Dear Jodi,

Could you please today provide this to members of the Planning Commission and then confirm that? I believe they plan to review this tonight. Thank you. -Margaret

Dear Commission Members,

As you requested, I am here submitting additional written testimony in addition to my oral testimony of two weeks ago. This testimony suggests that permanent enactment of the temporary ordinance--removing City Council as an appeal body in Level III quasi-judicial review--may not be in our City's best interest. Instead, fear of legal liability could be addressed in other ways. My citizen perspective is enhanced by education and experience as an administrative dean at a women's business school and as a hospital administrator.

Level III appeals to City Council are more an administrative review of an Examiner's decision than strict judicial interpretation and application of law; hence, the term "quasi-judicial."(1) As City Council's primary role is legislative, then a review of the interpretation and quasi-adjudication of legislation is a germane and appropriate Council function. Fear of legal liability could be lessened with the help of good legal counsel. Experienced, knowledgeable, independent Technical Committee ought to collaborate with Legal and Council rather than serve at their behest. The best expertise should support Technical Committee/Planning Department staff so they may properly and persuasively assist (and when clearly appropriate, dissuade) applicants at the start of permit application. Is this not preferable to allowing an erroneous or problematic application to wend its troublesome, legally-liable, cost-incurring, worrisome way through process for 2-3 years?, then on to appeal for who knows how much longer?

Retaining involvement in the permit process (until any time appeal) provides a prime opportunity for Councilmembers to develop a neutral interaction and civil discourse with ALL interested parties to a review. Rather than reflexively and early choosing then publicizing a bias, Council could exercise constraint. Such constraint may enable respectful and enlightening LISTENING to citizens. The appearance of FAIRNESS through the demonstration of goodwill and natural justice toward all would be enhanced. Divisive factions within our community could be assuaged. [My experience as a party to a contentious Level III permit process has convinced me that a better way MUST be possible.]

Retaining City Council as an appeal body in level III review gives the impression of active involvement in administering City code and plans. Council involvement conveys confidence, concern, and desire to administer. Withdrawing from important afffais of City residents, on the other hand, conveys lack of concern, timidity, or failure of engagement.

My written testimony substantiates my oral testimony. Specifically, Exhibit F as originally prepared by Planning staff and/or Redmond's Technical Committee, misled or was incomplete. Exhibit F showed a majority of neighboring cities with no appeal of Hearing Examiner decision to City Council in level III reviews. Bellevue and Kirkland zoning codes suggested this not to be so. (2)

Kirkland and Bellevue zoning codes do show City Council as an appeal body for review of permits similar to Redmond's Type III. Rather than calling their comparable permit review a Type III, Kirkland calls these Level IIA or IIB. Bellevue calls their comparable permit reviews Levels I and III. **Kirkland's Level IIA and IIB reviews are in fact comparable to Type III reviews in Redmond**. **Level I and III permit reviews of Bellevue are comparable to Type III permit reviews in Redmond.** Extensive excerpts of Kirkland's Zoning Code, with relevant sections highlighted, are contained in attachments to this e-mail. Relevant highlighted excerpts from Bellevue's Zoning Code are also attached.

If you have questions, please call me at (425) 401-8434. Thank you.

Margaret Leiberton
17208 NE 22nd Ct., Redmond 98052

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(1)Wikipedia offers definitions of **quasi-judicial body** and **proceedings:** a non-judicial body…. generally of a public administrative agency….obliged to objectively determine facts and draw conclusions…to provide the basis of an official action. Such actions are able to remedy a situation or impose legal penalties, and they may affect the legal rights, duties or privileges of specific parties.
….quasi-judicial proceedings are similar to but not exactly court proceedings. The term also implies that these authorities are not routinely responsible for holding such proceedings and often may have other duties…..an administrative function is… 'quasi-judicial' when there is an obligation to assume a judicial approach and to comply with the basic requirements of natural justice. Thus, 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.

(2)Revisions to Exhibit F (?dated? since my oral testimony) have been noted. My review and testimony addressed only Bellevue and Kirkland codes. The columns in Exhibit F have been revised to reflect my testimony regarding them. It seems reasonable to ask: Would further citizen review and testimony of other city codes lead to more revision of Exhibit F?

Chapter 20.35
REVIEW AND APPEAL PROCEDURES

Sections:

20.35.540 Appeal of Process V decisions

20.35.010 Purpose and scope.

The purpose of this chapter is to establish standard procedures for all land use and related decisions made by the City of Bellevue. The procedures are designed to promote timely and informed public participation, eliminate redundancy in the application, permit review, and appeal processes, minimize delay and expense, and result in development approvals that further City goals as set forth in the Comprehensive Plan. As required by RCW 36.70B.060, these procedures provide for an integrated and consolidated land use permit process. The procedures integrate the environmental review process with the procedures for review of land use decisions and provide for the consolidation of appeal processes for land use decisions. (Ord. 4972, 3-3-97, § 3)

20.35.015 Framework for decisions.

A. Land use decisions are classified into five processes based on who makes the decision, the amount of discretion exercised by the decisionmaker, the level of impact associated with the decision, the amount and type of public input sought, and the type of appeal opportunity.

B. Process I decisions are quasi-judicial decisions made by the Hearing Examiner on project applications. The following types of applications require a Process I decision:

1. Conditional Use Permits (CUPs) and Shoreline Conditional Use Permits;

2. Preliminary Subdivision Approval (Plat); and

3. Planned Unit Development (PUD) Approval; provided, that applications for CUPs, shoreline CUPs, preliminary plats, and PUDs, within the jurisdiction of a Community Council pursuant to RCW 35.14.040, shall require a Process III decision.

C. Process II decisions are administrative land use decisions made by the Director. Threshold determinations under the State Environmental Policy Act (SEPA) made by the Environmental Coordinator and Sign Code variances are also Process II decisions. (See the Environmental Procedures Code, BCC 22.02.034, and Sign Code, BCC 22B.10.180). The following types of applications require a Process II decision:

1. Administrative amendments;

2. Administrative Conditional Use;

3. Design Review;

4. Home Occupation Permit;

5. Interpretation of the Land Use Code;

6. Preliminary Short Plat;

7. Shoreline Substantial Development Permit;

8. Variance and Shoreline Variance;

9. Critical Area Land Use Permits;

10. Master Development Plans;

11. Design and Mitigation Permits required pursuant to Part 20.25M LUC, Light Rail Overlay District; and

12. Land use approvals requiring a threshold determination under SEPA when not consolidated with another land use decision identified in this section.

D. Process III decisions are quasi-judicial decisions made by the City Council. The following types of applications require a Process III decision:

1. Site-specific or project-specific rezone;

2. Conditional Use, Shoreline Conditional Use, Preliminary Plat, and Planned Unit Development projects subject to the jurisdiction of a Community Council pursuant to RCW 35.14.040; and

3. A rezone of any property to the OLB-OS Land Use District designation.

E. Process IV decisions are legislative nonproject 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. The following are Process IV decisions:

1. Consideration of suggestions for amendments to the Comprehensive Plan;

2. Amendments to the text of the Land Use Code or Comprehensive Plan;

3. Amendments to the Comprehensive Plan Map;

4. Amendments to the Zoning Map (rezones) on a Citywide or areawide basis.

F. Process V decisions are administrative land use decisions made by the Director, for which no administrative appeal is available. The following are Process V decisions:

1. Temporary Encampment Permits.

G. Other types of land use applications and decisions made by the Director, including those set forth below, are minor or ministerial administrative decisions, exempt from the above land use processes. Notice and an administrative appeal opportunity are not provided. LUC 20.35.020 through 20.35.070, however, apply to all land use applications.

1. Boundary Line Adjustment;

2. Final Plat (also requires Hearing Examiner approval prior to recording);

3. Final Short Plat;

4. Land Use Exemption;

5. Temporary Use Permit;

6. Vendor Cart Permit;

7. Requests for Reasonable Accommodation as defined by Part 20.30T LUC*;

8. Applications and decisions for activities for which the Director of the Utilities Department has granted an exemption to the “minimum requirements for new development and redevelopment” pursuant to BCC 24.06.065.C. (Ord. 6197, 11-17-14, §§ 26, 27, 28; Ord. 6102, 2-27-13, § 6; Ord. 5727, 3-19-07, § 3; Ord. 5717, 2-20-07, § 11; Ord. 5683, 6-26-06, § 28; Ord. 5650, 1-3-06, § 3; Ord. 5615, 7-25-05, § 2; Ord. 5587, 3-7-05, § 10; Ord. 5481, 10-20-03, § 15; Ord. 5403, 8-5-02, § 12; Ord. 5328, 11-19-01, § 1; Ord. 5233, 7-17-00, § 2; Ord. 4978, 3-17-97, § 8; Ord. 4972, 3-3-97, § 3)

*Not effective within the jurisdiction of the East Bellevue Community Council.

20.35.020 Pre-application conferences.

A pre-application conference is required prior to submitting an application for Conditional Use or Shoreline Conditional Use Permits, preliminary subdivision approval, planned unit developments, Master Development Plans, Design and Mitigation Permits required pursuant to Part 20.25M LUC, Light Rail Overlay District, and Design Review projects, unless waived by the Director. (Ord. 6102, 2-27-13, § 7; Ord. 5587, 3-7-05, § 11; Ord. 4972, 3-3-97, § 3)

20.35.030 Applications.

A. Who May Apply.

Applications for the various types of land use decisions may be made by the following parties:

1. The property owner, authorized agent of the owner, or Regional Transit Authority authorized by LUC 20.25M.010.C to apply for permits may apply for any type of Process I, Process II, or Process III land use decision.

2. A resident of the dwelling may apply for a Home Occupation Permit.

3. The City Council, the Director of the Development Services Department or the Planning Director may apply for a project-specific or site-specific rezone or for an areawide (Process IV) rezone.

4. The Planning Commission may propose site-specific and non-site-specific amendments to the Comprehensive Plan Map or to the text of the Comprehensive Plan for consideration pursuant to the procedure for consideration of Comprehensive Plan Amendments set forth in LUC 20.30I.130.B.2.

5. City Council, the Planning Commission, or the Director with the concurrence of either body, may initiate an amendment to the text of the Land Use Code.

6. A property owner or authorized agent of a property owner may apply to propose a site-specific amendment to the Comprehensive Plan pursuant to the annual procedure for

consideration of Comprehensive Plan Amendments set forth in LUC 20.30I.130.A.

7. Any person may apply to propose a non-site-specific amendment to the Comprehensive Plan pursuant to the annual procedure for consideration of Comprehensive Plan Amendments set forth in LUC 20.30I.130.A.

8. Any person may request an interpretation of the Land Use Code. In addition, the Director may issue interpretations of the Land Use Code as needed.

B. Submittal Requirements.

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

C. Notice of Complete Application.

1. Within 28 days after receiving a land use permit application, the Director shall mail, fax, or otherwise provide to the applicant a written determination that the application is complete, or that the application is incomplete and what is necessary to make the application complete.

2. If the Director does not provide a written determination within the 28 days, the application shall be deemed complete as of the end of the 28th day.

3. If additional information is needed to make the application complete, within 14 days after an applicant has submitted the information identified by the Director as being needed, the

Director shall notify the applicant whether the application is complete or what additional information is necessary.

4. A land use application is complete for purposes of this section when it meets the submittal requirements established by the Director 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 Director from requesting additional information or studies either at the time of the notice of completeness or subsequently, if new information is required to complete review of the application or substantial changes in the permit application are proposed.

D. Project Timelines.

Subject to Chapter 36.70B RCW, the Director shall establish reasonable and predictable timelines for review of land use applications and shall provide target dates for decisions on such applications. The project timelines established by the Director may be modified for a proposal including a critical areas report as set forth in LUC 20.25H.270. (Ord. 6102, 2-27-13, § 8; Ord. 5790, 12-3-07, § 6; Ord. 5683, 6-26-06, § 29; Ord. 5650, 1-3-06, § 4; Ord. 5481, 10-20-03, § 16; Ord. 5328, 11-19-01, § 2; Ord. 5233, 7-17-00, § 3; Ord. 4972, 3-3-97, § 3)

20.35.035 Method of mailing and publication.

A. Mailing.

For purposes of this chapter, reference to “mailing” shall include either U.S. postal mail or electronic mail. The City shall, however, provide notification by electronic mail only when requested by the recipient, provided nothing in this subsection negates the City’s

responsibility to provide notice by U.S. postal mail where State or local law requires that form of notification.

B. Publication.

For purposes of this chapter, reference to "publication" shall include either publication in the City's official newspaper of record, electronic notification through use of the City's official website, or by inclusion in the City's weekly permit bulletin, provided nothing in this subsection negates the City's responsibility to provide notice by publication in its official newspaper of record where State or local law requires that form of publication. (Ord. 5790, 12-3-07, § 13)

20.35.040 Construction notices.* SHARE

The Director may require construction posting and neighborhood notification for any development on real property. Removal of or failure to post a construction notice required by the Director shall constitute a violation of this section and otherwise is enforceable under Chapter 1.18 BCC. (Ord. 5791, 12-3-07, § 8)

*Code reviser's note: Ordinance 5791 adds these provisions as LUC 20.35.035. This section has been renumbered to prevent duplication of numbering.

20.35.045 Land use decisions – When final. SHARE

When a decision is made to approve, conditionally approve, or deny an application, the applicant shall be notified. Process V decisions and minor or ministerial administrative land use decisions that are not subject to administrative appeal shall be final at the time of the Director's decision that the application conforms to all applicable codes and requirements. Process I decisions are final upon expiration of any applicable City administrative appeal period, or, if appealed, on the date of the City Council's final decision on the application. Process II decisions are final upon expiration of any applicable City administrative appeal period, or, if appealed, on the day following issuance of a final City decision on the administrative appeal. Process III and IV decisions are final on the date of the City Council's final decision or action on the application or proposal, subject to LUC 20.35.355.G, 20.35.365 and 20.35.450 regarding Community Council jurisdiction. (Ord. 5615, 7-25-05, § 3; Ord. 5481, 10-20-03, § 17; Ord. 4972, 3-3-97, § 3)

20.35.070 Appeal of City land use decisions to Superior Court. SHARE

A. General. A final City decision on a land use permit application (Processes I through III and V), except for shoreline permits, may be appealed to Superior Court by filing a land use petition meeting the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040.

Notwithstanding the provisions of this paragraph, the time for filing an appeal of a final Process II land use action that has been merged with a Process I or III application will be tolled until the Process I or III decisions are final. Requirements for fully exhausting City administrative appeal opportunities, if any are available, must be fulfilled. An appeal of a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, or a shoreline variance shall be to the State Shoreline Hearings Board and shall be filed within 21 days as set forth in RCW 90.58.180.

B. A final City action on a legislative nonproject land use proposal (Process IV) may be appealed by petition to the Growth Management Hearings Board as set forth in LUC 20.35.440.C and RCW 36.70A.290. (Ord. 5615, 7-25-05, § 4; Ord. 5089, 8-3-98, § 40; Ord. 4972, 3-3-97, § 3)

20.35.080 Merger of certain decisions. SHARE

A. Process I and III and Process II, Including SEPA Threshold Determinations. When a single project includes a combination of Process I, Process II, including the SEPA threshold determination associated with the Process I or III action and/or Process III land use applications, review of the project shall combine review of the Process I, Process II, and Process III components. A consolidated report setting forth the Process I and/or Process III recommendation of the Director and the Process II decisions will be issued.

B. SEPA Threshold Determination with Process IV or Process V Decisions. The SEPA threshold determination associated with a Process IV or Process V action shall be merged with the Process IV and Process V action, and processed according to the notice, decision, appeal and other procedures set forth in LUC 20.35.400 through 20.35.450 (Process IV) or LUC 20.35.500 through 20.35.540 (Process V). (Ord. 5615, 7-25-05, § 5; Ord. 4972, 3-3-97, § 3)

20.35.085 Appeals of nonland use matters. SHARE

Certain other appealable administrative decisions are made by City departments, including but not limited to decisions pursuant to the City's Traffic Standards Code, Chapter 14.10 BCC; Transportation Improvement Program, Chapter 22.16 BCC; the School Impact Fees for Issaquah School District No. 411, Chapter 22.18 BCC; the Sewer Code, Chapter 24.04 BCC; the Storm and Surface Water Utility Code, Chapter 24.06 BCC; the Sign Code, Chapter 22B.10 BCC; and the Environmental Procedures Code, Chapter 22.02 BCC. These types of non-Land Use Code appeals are heard and decided by the City Hearing Examiner. When associated with a consolidated Land Use permit application, the appeal will be heard in conjunction with any appeal on the Land Use application. In some cases, the relevant code modifies the appeal process slightly compared to Land Use Code appeals. (See e.g., Transportation Improvement Program: only applicant may appeal.) In such cases, and as to those codes only, the procedures governing other appeals shall control. In all cases, however, the final City decision on the administrative appeal is made by the Hearing Examiner. Information on non-Land Use Code appeals is available from the department administering the relevant code and from the City Hearing Examiner. (Ord. 4978, 3-17-97, § 9; Ord. 4972, 3-3-97, § 3)

20.35.100 Process I: Hearing Examiner quasi-judicial decisions. SHARE

A. LUC 20.35.100 through 20.35.150 contain the procedures the City will use in implementing Process I. This process begins with a complete application, followed by notice to the public of the application and a public comment period, during which time an informational meeting will be held. If required by the State

Environmental Policy Act (SEPA) a threshold determination will be issued by the Environmental Coordinator. The threshold determination may be issued in conjunction with issuance of the Director's recommendation on the application. If an Environmental Impact Statement (EIS) is required, however, the threshold determination will be issued early and the EIS will be completed prior to issuance of the Director's recommendation. If the requirement to prepare an EIS or a supplemental EIS is appealed by the applicant, that appeal will also be resolved prior to issuance of the Director's recommendation.

B. Following issuance of the Director's recommendation, a public hearing will be held before the City Hearing Examiner. If a SEPA Determination of Nonsignificance (DNS) was issued (no EIS required) and an appeal of the DNS has been filed, the appeal hearing on the DNS will be combined with the public hearing on the Director's recommendation. Following the public hearing, the Hearing Examiner will issue a written report which will set forth a decision to approve, approve with modifications, or deny the application. The Examiner's report will also include a final City decision on any DNS or other Process II appeal.

C. The decision of the Hearing Examiner on a Process I application is appealable to the City Council. The City Council action deciding the appeal and approving, approving with modifications, or denying a project is the final City decision on a Process I application. (Ord. 4972, 3-3-97, § 3)

20.35.120 Notice of application.

A. Notice of application shall be provided, pursuant to the requirements of this section, within 14 days of issuance of the notice of completeness for an application for a Process I land use decision. See additional noticing requirements in LUC 20.45A.110 for preliminary subdivisions (plats).

B. The Director shall provide notice of the application as follows:

1. Publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed in a newspaper of general circulation in the City;

2. Mailed notice to owners of real property within 500 feet of the project site including the following information:

a. The date of application;

b. The project description and location;

c. The types of City permits or approvals applied for;

d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits or approvals required, related permits from other agencies or jurisdictions not included in the City permit process, the dates for any public meetings or public hearings, identification of any studies requested for application review, any existing environmental documents that apply to the project, and a statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation;

3. Mailed notice of the application including at least the information required in subsection A.1 of this section to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested regular notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

C. The applicant shall provide notice of the application as follows:

1. Posting of two signs or placards on the site or in a location immediately adjacent to the site that provides visibility to motorists using adjacent streets. The Director shall establish standards for size, color, layout, design, wording, placement, and timing of installation and removal of the signs or placards. (Ord. 5718, 2-20-07, §§ 1, 3; Ord. 5481, 10-20-03, § 18; Ord. 5089, 8-3-98, § 41; Ord. 4972, 3-3-97, § 3)

20.35.125 Minimum comment period. SHARE

A. The Notice of Application shall provide a minimum comment period of 14 days. The Director's recommendation on a Process I application will not be issued prior to the expiration of the minimum comment period.

B. Comments should be submitted to the Director as early in the review of an application as possible and should be as specific as possible.

C. The Director may accept and respond to public comments at any time prior to the closing of the public hearing record.

D. For projects requiring review under the State Environmental Policy Act (SEPA), a single comment letter may be submitted to the Director or the Environmental Coordinator addressing environmental impacts as well as other issues subject to review under the approval criteria for the Process I decision. (Ord. 4972, 3-3-97, § 3)

20.35.127 Public meetings. SHARE

A public meeting is required for all Process I applications. The Director may require the applicant to participate in the meeting to inform citizens about the proposal. Public meetings shall be held as early in the review process as possible for Process I applications. Notice of the public meeting shall be provided in the same manner as required for notice of the application. The public meeting notice will be combined with the notice of application whenever possible. (Ord. 4972, 3-3-97, § 3)

20.35.130 Director's recommendation. SHARE

A written report of the Director making a recommendation to the Hearing Examiner for approval, approval with conditions or with modifications, or for denial shall be prepared. The Director's recommendation shall be based on the applicable Land Use Code decision criteria, shall include any conditions necessary to ensure consistency with City development regulations, and may include any mitigation measures proposed under the provisions of the State Environmental Policy Act (SEPA). (Ord. 4972, 3-3-97, § 3)

20.35.135 Public notice of Director's recommendation. SHARE

A. Notice of Recommendation, SEPA Determination, and Hearing Examiner Hearing.

1. Public Notice of the availability of the Director's recommendation shall be published in a newspaper of general circulation. If a Determination of Significance (DS) was issued by the Environmental Coordinator, the notice of the Director's recommendation shall state whether an EIS or Supplemental EIS was prepared or whether existing environmental documents were adopted. If a Determination of Nonsignificance (DNS) is issued, the DNS may be issued and published in conjunction with the

Director's recommendation except as provided in the Environmental Procedures Code, BCC 22.02.031 and 22.02.160. The notice of recommendation shall also include the date of the Hearing Examiner public hearing for the application, which shall be scheduled no sooner than 14 days following the date of publication of the notice.

2. The Director shall mail notice of the recommendation and public hearing to each owner of real property within 500 feet of the project site.

3. The Director shall mail notice to each person who submitted comments during the comment period or at any time prior to the publication of the notice of recommendation.

4. The Director shall mail notice to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested regular notice of land use decisions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

5. See additional noticing requirements in LUC 20.45A.110 for preliminary subdivisions (plats). (Ord. 5718, 2-20-07, §§ 1, 4; Ord. 5481, 10-20-03, § 19; Ord. 4972, 3-3-97, § 3)

20.35.137 Hearing Examiner public hearing.

A. Participation in Hearing.

Any person may participate in the Hearing Examiner public hearing on the Director's recommendation by submitting written comments to the Director prior to the hearing or

by submitting written comments or making oral comments at the hearing.

B. Transmittal of File.

The Director 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 Director or the Environmental Coordinator. The file shall also include information to verify that the requirements for notice to the public (notice of application, notice of SEPA decision, and notice of Director's recommendation) have been met.

C. Hearing Record.

The Hearing Examiner shall create a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording of each hearing. (Ord. 4972, 3-3-97, § 3)

20.35.140 Hearing Examiner decision.

A. Criteria for Decision.

The Hearing Examiner shall approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the Bellevue City Code. The applicant carries 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 deny the application.

B. Limitation on Modification.

If the Hearing Examiner requires a modification which results in a proposal not reasonably foreseeable from the description of the

proposal contained in the public notice provided pursuant to LUC 20.35.135, the Hearing Examiner shall conduct a new hearing on the proposal as modified.

C. Conditions.

The Hearing Examiner may include conditions to ensure a proposal conforms to the relevant decision criteria.

D. Written Decision of the Hearing Examiner.

The Hearing Examiner shall within 10 working days following the close of the record distribute a written report supporting the decision. The report shall contain the following:

1. The decision of the Hearing Examiner; and

2. Any conditions included as part of the decision; and

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

4. A statement explaining the process to appeal the decision of the Hearing Examiner to the City Council.

E. Distribution.

The Office of the Hearing Examiner shall mail the written decision, bearing the date it is mailed, to each person who participated in the public hearing. (Ord. 4972, 3-3-97, § 3)

20.35.150 Appeal of Hearing Examiner decision.

A. A Process I decision of the Hearing Examiner may be appealed to the City Council as follows:

1. Who May Appeal. The decision of the Hearing Examiner may be appealed by any person who participated in the public hearing as provided for in LUC 20.35.137, or by the applicant or the City.

2. Form of Appeal. A person appealing the decision of the Hearing Examiner must file with the City Clerk a written statement of the findings of fact or conclusions which are being appealed and must pay a fee, if any, as established by ordinance or resolution. The written statement must be filed together with an appeal notification form available from the Office of the City Clerk.

3. Time and Place to Appeal. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City Clerk no later than 14 days following the date the decision of the Hearing Examiner was mailed.

4. Hearing Required. The City Council shall conduct a closed record appeal hearing in order to decide upon an appeal of the decision of the Hearing Examiner. The decision on any such appeal shall be made within such time as is required by applicable state law.

5. Public Notice of Appeal Hearing.

a. Content of Notice. The City Clerk shall prepare a notice of an appeal hearing containing the following:

i. The name of the appellant, and if applicable the project name, and

ii. The street address of the subject property, and a description in nonlegal terms sufficient to identify its location, and

iii. A brief description of the decision of the Hearing Examiner which is being appealed, and

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

b. Time and Provision of Notice. The City Clerk shall mail notice of the appeal hearing on an appeal of the decision of the Hearing Examiner no less than 14 days prior to the appeal hearing to each person entitled to participate in the appeal pursuant to LUC 20.35.150.A.6.a.

6. Closed Record Hearing on Appeal to City Council.

a. Who May Participate. The applicant, the appellant, the applicable Department Director, or representative of these parties may participate in the appeal hearing.

b. How to Participate. A person entitled to participate may participate in the appeal hearing by: (1) Submitting written argument on the appeal to the City Clerk no later than the date specified in the City Council's Rules of Procedure; or (2) making oral argument on the appeal to the City Council at the appeal hearing. Argument on the appeal is limited to information contained in the record developed before the Hearing Examiner and must specify the findings or conclusions which are the subject of the appeal, as well as the relief requested from the Council.

c. Hearing Record. The City Council shall make an electronic sound recording of each appeal hearing.

7. City Council Decision on Appeal.

a. Criteria. The City Council may grant the appeal or grant the appeal with modifications if the appellant has carried the burden of proof and the City Council finds that the decision of the Hearing Examiner is not supported by material and

substantial evidence. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner.

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

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

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

B. Following resolution of any Process I appeal, the City Council shall take final action to approve, approve with modifications, or deny the project.

1. 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.

2. Findings of Fact 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 ordinance approving or approving with modifications the application. The City Council may by reference adopt some or all of the findings and conclusions of the Hearing Examiner.

C. 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.

D. Effect of Decision.

The decision of the City Council on the application is the final decision of the City and may be appealed to Superior Court as provided in LUC 20.35.070, except that an appeal of a shoreline conditional use decision shall be filed with the State Shoreline Hearings Board as set forth in RCW 90.58.180.

E. Commencement of Activity.

Subject to LUC 20.35.070 the applicant may commence activity or obtain other required approvals authorized by the Process I decision the day following the effective date of the ordinance approving the project or approving it with modifications. Activity commenced prior to the expiration of the full appeal period, LUC 20.35.070, is at the sole risk of the applicant. (Ord. 5089, 8-3-98, § 42; Ord. 4978, 3-17-97, § 10; Ord. 4972, 3-3-97, § 3)

20.35.200 Process II: Administrative decisions. SHARE

A. LUC 20.35.200 through 20.35.250 contain the procedures the City will use in implementing Process II. A Process II land use decision is an administrative decision made by the Director of the Development Services Department. Process II applications go through a period of public notice and an opportunity for public comment. An informational meeting may be held for projects of significant impact or for projects involving major changes to the expected pattern of development in an area. The Director then makes a decision based upon the decision criteria set forth in the Code for each type of Process II application. Public notice of the decision is provided, along with an opportunity for administrative appeal of the decision.

B. If required by the State Environmental Policy Act (SEPA), a threshold determination will be issued by the Environmental Coordinator. The threshold determination is also a Process II decision, except as set forth in LUC 20.35.015.C, and may be issued in conjunction with the Director's decision on the accompanying land use decision. If an Environmental Impact Statement (EIS) is required, however, the threshold determination will be issued early and the EIS will be completed prior to the issuance of the accompanying land use decision. If the requirement to prepare an EIS or a supplemental EIS is appealed

by the applicant, that appeal will be resolved prior to the issuance of the land use decision. (See BCC 22.02.031 and 22.02.160 regarding timing of issuance of the threshold determination.)

C. Process II decisions of the Director and SEPA threshold determinations are final decisions, effective on the day following the expiration of any associated administrative appeal period, except that for projects where no person or entity submitted comments prior to the date the final decision was issued pursuant to LUC 20.35.250.A.1, the Process II decision is a final decision effective on the date of issuance. If an administrative appeal is filed by a person or entity that submitted comments prior to the date the final decision was issued as set forth in LUC 20.35.250.A.1, the decision is not final until the appeal is heard and decided by the City Hearing Examiner, the Shoreline Hearings Board pursuant to LUC 20.35.250.B and RCW 90.58.180, or the Growth Management Hearings Board pursuant to LUC 20.35.250.C and RCW 36.70A.290.

D. Where no person or entity has submitted comments prior to the date the final decision was issued, as set forth in LUC 20.35.250.A.1, the City may issue project permits during the appeal period, provided the applicant submits a waiver of appeal statement to the City. Nothing in this provision shall require the City, however, to issue project permits prior to the expiration of the appeal period. (Ord. 5790, 12-3-07, § 12; Ord. 5615, 7-25-05, § 6; Ord. 5233, 7-17-00, § 4; Ord. 4972, 3-3-97, § 3)

20.35.210 Notice of application.

A. Notice of application for Process II land use decisions shall be provided within 14 days of issuance of a notice of completeness as follows:

Table 20.35.210.A

Application Type	Publish	Mail	Sign
Administrative Amendment	X	X	X
Administrative Conditional Use	X	X	X
Design Review	X	X	X
Home Occupation Permit	X	X	
Interpretation of Land Use Code	X		
Preliminary Short Plat	X	X	X
Shoreline Substantial Development Permit	X	X	
Variance, Shoreline Variance	X	X	
Critical Areas Land Use Permit	X	X	

Table 20.35.210.A

Application Type	Publish	Mail	Sign
Land Use approvals requiring SEPA Review when not consolidated with another land use decision, as provided for in LUC 20.35.015.C.12	X		
Master Development Plan	X	X	X

1. For Process II decisions not included in Table 20.35.210.A, notice of application shall be provided by publication and mailing.

2. When required by Table 20.35.210.A, publishing shall include publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed, in a newspaper of general circulation in the City.

3. Mailing shall include mailed notice to owners of real property within 500 feet of the project site including the following information:

a. The date of application;

b. The project description and location;

c. The types of City permit(s) or approval(s) applied for;

d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits required, related permits from other agencies or jurisdictions not included in the City permit process, the dates for any public meetings or public hearings, identification of any studies requested for application review, any existing environmental documents that apply to the project, and a statement of the preliminary

determination, if one has been made, of those development regulations that will be used for project mitigation.

4. If signs are required, two signs or placards shall be posted by the applicant on the site or in a location immediately adjacent to the site that provides visibility to motorists using adjacent streets. The Director shall establish standards for size, color, layout, design, wording, placement, and timing of installation and removal of the signs or placards.

5. Mailings shall also include mailing notice of the application including at least the information required in subsection A.1 of this section to each person who has requested such notice for the calendar year and paid any fee as established by the Director. This mailing shall also include all members of a Community Council and a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested notice of land use activity. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient. (Ord. 6197, 11-17-14, § 29; Ord. 5718, 2-20-07, §§ 1, 5; Ord. 5683, 6-26-06, § 30; Ord. 5587, 3-7-05, § 12; Ord. 5481, 10-20-03, § 20; Ord. 5089, 8-3-98, § 43; Ord. 4972, 3-3-97, § 3)

20.35.225 Minimum comment period.

A. The Notice of Application shall provide a minimum comment period of 14 days. The Director's decision on a Process II application will not be issued prior to the expiration of the minimum comment period.

B. Comments should be submitted to the Director as early in the review of an application as possible and should be as specific as possible.

C. The Director may accept and respond to public comments at any time prior to making the Process II decision.

D. For projects requiring review under the State Environmental Policy Act (SEPA), a single comment letter may be submitted to the Director or the Environmental Coordinator addressing environmental impacts as well as other issues subject to review under the approval criteria for the Process II decision. (Ord. 4972, 3-3-97, § 3)

20.35.227 Public meetings. SHARE

The Director may require the applicant to participate in a public meeting to inform citizens about a proposal; provided, that a public meeting shall be required for every Design and Mitigation Permit submitted pursuant to Part 20.25M LUC. When required, public meetings shall be held as early in the review process as possible for Process II applications. For projects located within the boundaries of a Community Council, the public meeting may be held as part of that Community Council's regular meeting or otherwise coordinated with that Council's meeting schedule. Notice of the public meeting shall be provided in the same manner as required for notice of the application. The public meeting notice will be combined with the notice of application whenever possible. (Ord. 6102, 2-27-13, § 9; Ord. 4972, 3-3-97, § 3)

20.35.230 Director's decision. SHARE

A written record of the Process II decision shall be prepared in each case. The record may be in the form of a staff report, letter, the permit itself, or other written document and shall indicate whether the application has been approved, approved with conditions or denied. The Director's decision shall be based on the applicable Land Use Code decision criteria, shall include any conditions to ensure consistency with City development regulations, and may include mitigation measures proposed under the provisions of the State Environmental Policy Act (SEPA). (Ord. 4972, 3-3-97, § 3)

20.35.235 Notice of decision. SHARE

A. Public notice of all Process II decisions shall be published in a newspaper of general circulation.

B. The Director shall mail notice of the decision to each person who submitted comments during the public comment period or at any time prior to issuance of the decision.

C. The Director shall mail notice to each person who has requested such notice and paid any fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood groups, community clubs, and other citizens' groups who have requested regular notice of land use decisions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient. (Ord. 5481, 10-20-03, § 21; Ord. 4972, 3-3-97, § 3)

20.35.250 Appeal of Process II decisions. SHARE

A. Process II decisions, except for shoreline permits and SEPA Threshold Determinations on Process IV or Process V actions, may be appealed as follows:

1. Who May Appeal. The project applicant or any person who submitted written comments

prior to the date the decision was issued may appeal the decision.

2. Form of Appeal. A person appealing a Process II decision must file a written statement setting forth:

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

b. A concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria;

c. The specific relief requested; and

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

The written statement must be filed together with an appeal notification form available from the Office of the City Clerk. The appellant must pay such appeal fee, if any, as established by ordinance or resolution at the time the appeal is filed.

3. Time and Place to Appeal. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City Clerk no later than 5:00 p.m. on the 14th day following the date of publication of the decision of the Director; except that if the Director's decision is consolidated with a threshold Determination of Nonsignificance under the State Environmental Policy Act for which a comment period pursuant to WAC 197-11-340 must be provided, the appeal period for the consolidated decision shall be 21 days.

B. Shoreline Permit Appeals.

An appeal of a Shoreline Substantial Development Permit or a shoreline variance shall be to the State Shoreline Hearings Board and shall be filed within 21 days as set forth in RCW 90.58.180.

C. SEPA Threshold Determinations on Process IV and Process V Actions.

1. Process IV. An appeal of a SEPA threshold determination on a Process IV action shall be filed together with an appeal of the underlying Process IV action. The appeal shall be by petition to the Growth Management Hearings Board and shall be filed within the 60-day time period set forth in RCW 36.70A.290.

2. Process V. An appeal of a SEPA threshold determination on a Process V action shall be filed together with an appeal of the underlying Process V action. The appeal shall be as set forth in LUC 20.35.070 and 20.35.540.

D. Notice of Appeal Hearing.

If a Process II decision is appealed, a hearing before the City Hearing Examiner shall be set and notice of the hearing shall be mailed to the appellant, the applicant, and all parties of record by the applicable Department Director. Notice shall be mailed no less than 14 days prior to the appeal hearing; except that if the Process II decision has been consolidated with a recommendation on a Process I or Process III application, any appeal of the Process II decision shall be consolidated with the Process I or Process III public hearing. No separate notice of a Process II appeal need be provided if the public hearing has already been scheduled for the Process I or Process III component of an application.

E. Hearing Examiner Hearing.

The Hearing Examiner shall conduct an open record hearing on a Process II appeal. The appellant, the applicant, and the City shall be designated parties to the appeal. Each party may participate in the appeal hearing by presenting testimony or calling witnesses to present testimony. 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.

F. Hearing Examiner Decision on Appeal.

Within 10 working days after the close of the record for the Process II appeal, the Hearing Examiner shall issue a decision to grant, grant with modifications, or deny the appeal. The Examiner may grant the appeal or grant the appeal with modification if:

1. The appellant has carried the burden of proof; and

2. The Examiner finds that the Process II decision is not supported by a preponderance of the evidence.

The Hearing Examiner shall accord substantial weight to the decision of the applicable Department Director and the Environmental Coordinator.

G. Appeal of Hearing Examiner Decision.

A final decision by the Hearing Examiner on a Process II application may be appealed to Superior Court as set forth in LUC 20.35.070.

H. Time Period to Complete Appeal Process.

In all cases except where the parties to an appeal have agreed to an extended time

period, the administrative appeal process shall be completed within 90 days from the date the original administrative appeal period closed. Administrative appeals shall be deemed complete on the date of issuance of the Hearing Examiner's decision on the appeal. (Ord. 6197, 11-17-14, § 30; Ord. 5615, 7-25-05, § 7; Ord. 4972, 3-3-97, § 3)

20.35.300 Process III: City Council quasi-judicial decisions. SHARE

LUC 20.35.300 through 20.35.365 contain the procedures the City will use in implementing Process III. The process is similar to Process I, except that the Hearing Examiner makes a recommendation to the City Council following the public hearing. The City Council acts as the final decisionmaker even when no appeal of the Hearing Examiner recommendation is filed. (Ord. 4972, 3-3-97, § 3)

20.35.320 Notice of application. SHARE

A. Notice of application shall be provided, pursuant to the requirements of this section, within 14 days of issuance of the notice of completeness for an application for a Process III land use decision. See additional noticing requirements in LUC 20.45A.110 for preliminary subdivisions (plats).

B. The Director shall provide notice of the application as follows:

1. Publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed in a newspaper of general circulation in the City.

2. Mailed notice to owners of real property within 500 feet of the project site including the following information:

a. The date of application;

b. The project description and location;

c. The types of City permits or approvals applied for;

d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits or approvals required; related

permits from other agencies or jurisdictions not included in the City permit process; the dates for any public meetings or public hearings; identification of any studies requested for application review; any existing environmental documents that apply to the project; and a statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation.

3. Mailed notice of the application including at least the information required in paragraph A.1 of this section to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested regular notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

C. The Applicant shall provide notice of the application as follows:

1. Posting of two signs or placards on the site or in a location immediately adjacent to the site that provides visibility to motorists using adjacent streets. The Director shall establish standards for size, color, layout, design, wording, placement, and timing of installation and removal of the signs or placards. (Ord. 5718, 2-20-07, §§ 1, 6; Ord. 5481, 10-20-03, § 22; Ord. 5089, 8-3-98, § 44; Ord. 4972, 3-3-97, § 3)

20.35.325 Minimum comment period.

A. The Notice of Application shall provide a minimum comment period of 14 days. The Director's recommendation on a Process III application will not be issued prior to the expiration of the minimum comment period.

B. Comments should be submitted to the Director as early in the review of an application as possible and should be as specific as possible.

C. The Director may accept and respond to public comments at any time prior to the closing of the public hearing record.

D. For projects requiring review under the State Environmental Policy Act (SEPA), a single comment letter may be submitted to the Director or the Environmental Coordinator addressing environmental impacts as well as other issues subject to review under the approval criteria for the Process III decision. (Ord. 4972, 3-3-97, § 3)

20.35.327 Public meetings. SHARE

A. A public meeting is required for all Process III applications. The Director may require the applicant to participate in the meeting to inform citizens about the proposal. Public meetings shall be held as early in the review process as possible for Process III applications. Notice of the public meeting shall be provided in the same manner as required for notice of the application. The public meeting notice will be combined with the notice of application whenever possible.

B. Community Council Meetings. If an application is within the jurisdiction of a Community Council pursuant to Chapter 35.14 RCW, the public meeting shall be held as part of that Community Council's regular meeting. The meeting may be conducted according to the Community Council's rules for a courtesy public hearing or otherwise coordinated with that Council's meeting schedule. (Ord. 4972, 3-3-97, § 3)

20.35.330 Director's recommendation. SHARE

A written report of the Director making a recommendation to the City Council for approval, approval with conditions or with modifications, or for denial shall be prepared. The Director's recommendation shall be based on the applicable Land Use Code decision criteria, shall include any conditions to ensure consistency with City development regulations, and may include any mitigation measures proposed under the provisions of the State Environmental Policy Act (SEPA). (Ord. 4972, 3-3-97, § 3)

20.35.335 Public notice of Director's recommendation. SHARE

Notice of Recommendation, SEPA determination, and Hearing Examiner hearing.

A. Public notice of the availability of the Director's recommendation shall be published in a newspaper of general circulation. If a Determination of Significance (DS) was issued by the Environmental Coordinator, the notice of the Director's recommendation shall state whether an Environmental Impact Statement (EIS) or Supplemental EIS was prepared or whether existing environmental documents were adopted. If a Determination of Nonsignificance (DNS) is issued, the DNS may be issued and published in conjunction with the Director's recommendation. The notice of recommendation shall also include the date of the Hearing Examiner public hearing for the application, which shall be scheduled no sooner than 14 days following the date of publication of the notice.

B. The Director shall mail notice of the recommendation and public hearing to each owner of real property within 500 feet of the project site.

C. The Director shall mail notice to each person who submitted comments during the comment period or at any time prior to the publication of the notice of recommendation.

D. The Director shall mail notice to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood associations, community clubs, or other citizens' groups who have requested notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

E. See additional noticing requirements in LUC 20.45A.110 for preliminary subdivisions (plats). (Ord. 5718, 2-20-07, §§ 1, 7; Ord. 5481, 10-20-03, § 23; Ord. 4972, 3-3-97, § 3)

20.35.337 Hearing Examiner public hearing.

A. Participation in Hearing.

Any person may participate in the Hearing Examiner public hearing on the Director's recommendation by submitting written comments to the Director prior to the hearing or by submitting written comments or making oral comments at the hearing.

B. Transmittal of File.

The Director 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 Director or the Environmental Coordinator. The file shall also include information to verify that the requirements for notice to the public (notice of application, notice of SEPA decision, and notice of Director's recommendation) have been met.

C. Hearing Record.

The Hearing Examiner shall create for the City Council a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording of each hearing. (Ord. 4972, 3-3-97, § 3)

20.35.340 Hearing Examiner recommendation. SHARE

A. Criteria for Recommendation.

The Examiner shall recommend approval or approval with conditions or modification if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the Bellevue City Code. The applicant carries 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 recommend denial of the application.

B. Limitation on Modification.

If the Hearing Examiner recommends a modification which results in a proposal not reasonably foreseeable from the description of the proposal contained in the public notice provided pursuant to LUC 20.35.335, the Hearing Examiner shall conduct a new hearing on the proposal as modified.

C. Conditions.

The Hearing Examiner may include conditions to ensure the proposal conforms to the relevant decision criteria.

D. Written Recommendation of the Hearing Examiner.

The Hearing Examiner shall within 10 working days following the close of the record distribute a written report including a recommendation on the public hearing. The report shall contain the following:

1. The recommendation of the Hearing Examiner; and

2. Any conditions included as part of the recommendation; and

3. Findings of facts upon which the recommendation, including any conditions, was based and the conclusions derived from those facts; and

4. A statement explaining the process to appeal the recommendation of the Hearing Examiner; and

5. The date on which the matter has been scheduled for consideration by the City Council and information on how to find out whether the Examiner's recommendation has been appealed.

E. Distribution.

The Office of the Hearing Examiner shall mail the written recommendation, bearing the date it is mailed, to each person who participated in the public hearing. (Ord. 4972, 3-3-97, § 3)

20.35.350 Appeal of Hearing Examiner recommendation.

A. A Process III recommendation of the Hearing Examiner may be appealed to the City Council as follows:

1. Who May Appeal. The recommendation of the Hearing Examiner may be appealed by any person who participated in the public hearing as provided for in LUC 20.35.337, or by the applicant or the City.

2. Form of Appeal. A person appealing the recommendation of the Hearing Examiner must file with the City Clerk a written statement of the findings of fact or conclusions which are being appealed and must pay a fee, if any, as established by ordinance or resolution. The written statement must be filed together with an appeal notification form available from the Office of the City Clerk.

3. Time and Place to Appeal. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be

received by the City Clerk no later than 14 days following the date the recommendation of the Hearing Examiner was mailed.

4. Hearing Required. The City Council shall conduct a closed record appeal hearing and shall decide upon an appeal of the recommendation of the Hearing Examiner prior to or in conjunction with taking final action on the application pursuant to LUC 20.35.355. The decision on any appeal of the Hearing Examiner's recommendation and final action on the application shall be made within such time as is required by applicable state law.

5. Public Notice of Appeal Hearing.

a. Content of Notice. The City Clerk shall prepare a notice of an appeal hearing containing the following:

i. The name of the appellant, and if applicable the project name, and

ii. The street address of the subject property, and a description in nonlegal terms sufficient to identify its location, and

iii. A brief description of the recommendation of the Hearing Examiner which is being appealed, and

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

b. Time and Provision of Notice. The City Clerk shall mail notice of the appeal hearing on an appeal of the recommendation of the Hearing Examiner no less than 14 days prior to the appeal hearing to each person entitled to

participate in the appeal pursuant to LUC 20.35.350.A.6.a.

6. Closed Record Hearing on Appeal to City Council.

a. Who May Participate. The applicant, the appellant, the applicable Department Director, or representatives of these parties may participate in the appeal hearing.

b. How to Participate. A person entitled to participate may participate in the appeal hearing by: (1) Submitting written argument on the appeal to the City Clerk no later than the date specified in the City Council's Rules of Procedure; or (2) making oral argument on the appeal to the City Council at the appeal hearing. Argument on the appeal is limited to information contained in the record developed before the Hearing Examiner and must specify the findings or conclusions which are the subject of the appeal, as well as the relief requested from the Council.

c. Hearing Record. The City Council shall make an electronic sound recording of each appeal hearing.

7. City Council Decision on Appeal.

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

weight to the recommendation of the Hearing Examiner.

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

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

d. Required Vote. A vote to grant the appeal or grant the appeal with modifications must be by a majority vote of the membership of the City Council. Any other vote constitutes denial of the appeal. (Ord. 5089, 8-3-98, § 45; Ord. 4978, 3-17-97, § 11; Ord. 4972, 3-3-97, § 3)

20.35.355 City Council decision on the application.

A. General.

The City Council shall, at a public meeting, consider and take final action on each Process III application. If an appeal of the Hearing Examiner recommendation was filed, the City Council will consolidate and integrate the appeal hearing and decision into their consideration of the application.

B. Elements to be Considered.

The City Council shall not accept new information, written or oral, on the application, but shall consider the following in deciding upon an application:

1. The complete record developed before the Hearing Examiner; and

2. The recommendation of the Hearing Examiner; and

3. The comments of a Community Council with jurisdiction pursuant to Chapter 35.14 RCW; and

4. The City Council decision on any appeal of the recommendation of the Hearing Examiner.

C. Decision.

The City Council shall either:

1. Approve the application, incorporating its decision on any appeal pursuant to LUC 20.35.350; or

2. Approve the application with modifications, also incorporating its decision on any appeal pursuant to LUC 20.35.350; or

3. Remand the application to the Hearing Examiner and the Director for an additional hearing limited to specific issues identified by the Council; or

4. Deny the application.

D. Ordinance.

1. 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 criteria under which the application was made.

2. Findings of Fact 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 ordinance approving or approving with modifications the application. The City Council may by reference adopt some or all of the findings and conclusions of the Hearing Examiner.

E. 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. Any other vote constitutes a denial of the application.

F. Distribution.

The City Clerk shall mail a letter, bearing the date it is mailed, indicating the content of the final decision of the City to any person who participated in the public hearing before the Hearing Examiner on the application.

G. Effect of Decision.

1. The decision of the City Council on the application is the final decision of the City and may be appealed to Superior Court as provided in LUC 20.35.070.

2. For City Council decisions that are subject to the jurisdiction of a Community Council pursuant to RCW 35.14.040, the decision of the City Council shall be final upon the earlier of the date of Community Council action or upon the end of the 60th day following City Council action.

H. Commencement of Activity.

Subject to LUC 20.35.365 and 20.35.070 the applicant may commence activity or obtain other required approvals authorized by the Process III decision the day following the effective date of the ordinance approving the project or approving it with modifications. Activity commenced prior to the expiration of the full appeal period, LUC 20.35.070, is at the sole risk of the applicant. (Ord. 5481, 10-20-03, § 24; Ord. 4972, 3-3-97, § 3)

20.35.365 Community Council review and decision.

A. If the City Council approves, or approves with modifications, an application within the jurisdiction of a Community Council pursuant to RCW 35.14.040, that approval is not effective within the jurisdiction of the

Community Council until the Community Council votes to approve the ordinance, or the Community Council fails to disapprove the ordinance within 60 days of the enactment of that ordinance.

B. The applicable Department Director shall prepare and distribute notice of the public hearing at which the Community Council will take action in accordance with the Community Council's Rules of Procedure.

C. The decision of the Community Council may be appealed to Superior Court as provided for in state law under the Land Use Petition Act, Chapter 36.70C RCW. (Ord. 5089, 8-3-98, § 46; Ord. 4972, 3-3-97, § 3)

20.35.400 Process IV: City Council legislative actions. SHARE

LUC 20.35.400 through 20.35.450 contain the procedures the City shall use to make legislative land use decisions (Process IV actions). The process shall include a public hearing, held by either the Planning Commission or City Council, and action by the City Council. Review under the State Environmental Policy Act (SEPA) and the Bellevue Environmental Procedures Code may be required. An action by a Community Council may also be required, in which case the Community Council may hold a courtesy public hearing at any time prior to the City Council action. (Ord. 5790, 12-3-07, § 10; Ord. 4972, 3-3-97, § 3)

20.35.410 Planning Commission procedure. SHARE

A. General.

Process IV proposals may be introduced to the Planning Commission, which may schedule study sessions as needed to consider the proposal. Prior to making a recommendation, the Planning Commission shall schedule a public hearing. After the public hearing, and after any further study sessions as may be needed, the Planning Commission shall transmit its recommendation to the City Council through the applicable Department Director and the City Clerk. Alternatively, the City Council may conduct its own process and hold its own public hearing when the proposal is for a change to the text of the Land Use Code, provided a finding of necessity is made.

B. Criteria.

The Planning Commission may recommend the Council adopt or adopt with modifications a proposal if it complies with the applicable decision criteria of the Bellevue City Code or

Land Use Code. In all other cases, the Planning Commission shall recommend denial of the proposal.

C. Limitation on Modification.

If the Planning Commission recommends a modification which results in a proposal not reasonably foreseeable from the notice provided pursuant to LUC 20.35.420, the Planning Commission shall conduct a new public hearing on the proposal as modified.

D. Required Vote.

A vote to recommend adoption of the proposal or adoption with modification must be by a majority vote of the Planning Commission members present and voting. (Ord. 5790, 12-3-07, § 11; Ord. 5650, 1-3-06, § 5; Ord. 4972, 3-3-97, § 3)

20.35.415 Notice of application.

A. The Director shall provide notice of the application as follows:

1. Publication of a brief description of the action or approval requested; if the application involves specific property, the street address of the subject property; name of the applicant and project name; date of application; and location where the complete application file may be reviewed in a newspaper of general circulation in the City.

2. If the proposal involves specific property, rather than an areawide or zonewide change, notice of the application containing at least the information in subsection A.1 of this section shall be mailed to each owner of real property within 500 feet of any boundary of the subject property.

3. The Director shall mail notice containing at least the information in subsection A.1 of this section to each person who has requested

such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood associations, community clubs, or other citizens' groups who have requested notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

4. If the proposal involves specific property, rather than an areawide or zonewide change, two signs or placards shall be posted by the applicant on the site or in a location immediately adjacent to the site that provides visibility to motorists using the adjacent streets. The Director shall establish standards for size, color, layout, design, wording, placement, and timing of installation and removal of the signs or placards. (Ord. 5718, 2-20-07, §§ 1, 8; Ord. 5481, 10-20-03, § 25)

20.35.420 Public hearing notice.

A. Content.

When the Planning Commission or City Council has scheduled a public hearing on a Process IV proposal, the applicable Department Director shall prepare a notice containing the following information:

1. The name of the applicant, and, if applicable, the project name;

2. If the application involves specific property, the street address of the subject property;

3. A brief description of the action or approval requested;

4. The date, time and place of the public hearing; and

5. A statement of the right of any person to participate in the public hearing as provided for in LUC 20.35.430.

B. Provision of Notice.

1. The applicable Department Director shall provide for notice of the public hearing to be published in a newspaper of general circulation in the City at least 14 days prior to the date of the public hearing.

2. If the proposal involves specific property, rather than an areawide or zonewide change, two signs or placards shall be posted by the applicant on the site or in a location immediately adjacent to the site that provides visibility to motorists using the adjacent streets. The Director shall establish standards for size, color, layout, design, wording, placement, and timing of installation and removal of the signs or placards.

3. If the proposal involves specific property, rather than an areawide or zonewide change, notice of the public hearing shall be mailed to each owner of real property within 500 feet of any boundary of the subject property.

4. The Director shall mail notice to each person who has requested such notice and paid any fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood groups, community clubs, and other citizens' groups who have requested regular notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

5. The Director shall mail notice to each person who submitted comments during the

comment period or at any time prior to the publication of the notice of public hearing. (Ord. 5718, 2-20-07, §§ 1, 9; Ord. 5481, 10-20-03, § 26; Ord. 5089, 8-3-98, § 47; Ord. 4972, 3-3-97, § 3)

20.35.430 Public hearing. SHARE

A. Participation.

Any person may participate in the public hearing by submitting written comments to the applicable Department Director prior to the hearing or by submitting written or making oral comments to the Planning Commission or the Council at the hearing. All written comments received by the applicable Department Director shall be transmitted to the Planning Commission or City Council not later than the date of the public hearing.

B. Hearing Record.

The Planning Commission or City Council shall compile written minutes of each hearing. (Ord. 4972, 3-3-97, § 3)

20.35.435 Community Council courtesy hearing. SHARE

A. If the proposal is subject to jurisdiction of a Community Council pursuant to RCW 35.14.040, the Community Council may hold a courtesy public hearing at any time prior to the City Council action. Comments from the Community Council on the proposal may be forwarded to the Planning Commission or directly to the City Council.

B. The applicable Department Director shall prepare and distribute notice for the courtesy hearing as set forth in the Community Council Rules of Procedure. (Ord. 4972, 3-3-97, § 3)

20.35.440 City Council action. SHARE

A. General.

The City Council shall consider at a public meeting each recommendation transmitted by the Planning Commission and each proposal before the Council at the Council's own direction. The Council shall take legislative action on the proposal in accordance with state law.

B. City Council Action.

The City Council may take one of the following actions:

1. Adopt an ordinance or resolution adopting the proposal or adopting the proposal with modifications; or

2. Adopt a motion denying the proposal; or

3. 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.

C. Effect of City Council Action.

The action of the City Council on a Process IV 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). (Ord. 4972, 3-3-97, § 3)

20.35.450 Community Council review and action.

A. If the City Council adopts, or adopts with modifications, a proposal within the jurisdiction of a Community Council pursuant to RCW 35.14.040, that action is not effective within the jurisdiction of the Community Council until the Community Council votes to approve the ordinance or resolution, or the Community Council fails to disapprove the ordinance or resolution within 60 days of the enactment of that ordinance or resolution.

B. Notice.

The applicable Department Director shall prepare and distribute notice of the public meeting at which the Community Council will take action as provided for in the Rules of Procedure of the Community Council. (Ord. 4972, 3-3-97, § 3)

20.35.500 Process V: Administrative decisions with no administrative appeal. SHARE

A. This section through LUC 20.35.540 contain the procedures the City will use in implementing Process V. A Process V land use decision is an administrative decision made by the Director of the Development Services Department. Process V applications go through a period of public notice and an opportunity for public comment. A public meeting may be held for Process V applications where required for each type of Process V application. The Director then makes a decision based upon the decision criteria set forth in the Code for each type of Process V application. Public notice of the decision is provided, but there is no opportunity for administrative appeal of the decision.

B. If required by the State Environmental Policy Act (SEPA), a threshold determination will be issued by the Environmental Coordinator. The threshold determination for an underlying Process V application is also a Process V decision, and may be issued in conjunction with the Director's decision on the accompanying land use decision. If an Environmental Impact Statement (EIS) is required, however, the threshold determination will be issued early and the EIS will be completed prior to the issuance of the accompanying land use decision. If the requirement to prepare an EIS or a supplemental EIS is appealed by the applicant, that appeal will be resolved prior to the issuance of the land use decision. (Ord. 5615, 7-25-05, § 8)

20.35.510 Notice of application. SHARE

A. Notice of application for Process V land use decisions shall be provided within 14 days of issuance of a notice of completeness pursuant to the requirements of this section. See additional noticing requirements in LUC 20.30U.122 for Temporary Encampment Permits.

B. The Director shall provide notice of the application as follows:

1. Publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed, in a newspaper of general circulation in the City.

2. Mailed notice to owners of real property within 500 feet of the project site including the following information:

a. The date of application;

b. The project description and location;

c. The types of City permit(s) or approval(s) applied for;

d. The Director may, but need not, include other information to the extent

known at the time of notice of application, such as: the identification of other City permits required, related permits from other agencies or jurisdictions not included in the City permit process, the dates for any public meetings, identification of any studies requested for application review, any existing environmental documents that apply to the project, and a statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation.

3. Mailed notice of the application including at least the information required in paragraph B.2 of this section to each person who has requested such notice for the calendar year and paid any fee as established by the Director. This mailing shall also include all members of a Community Council and a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested notice of land use activity. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient. (Ord. 5718, 2-20-07, § 10; Ord. 5615, 7-25-05, § 9)

20.35.520 Minimum comment period.

A. The Notice of Application shall provide a minimum comment period of 14 days. The Director's decision on a Process V application will not be issued prior to the expiration of the minimum comment period.

B. Comments should be submitted to the Director as early in the review of an application as possible and should be as specific as possible.

C. The Director may accept and respond to public comments at any time prior to making the Process V decision.

D. For projects requiring review under the State Environmental Policy Act (SEPA), a single comment letter may be submitted to the Director or the Environmental Coordinator addressing environmental impacts as well as other issues subject to review under the approval criteria for the Process V decision. (Ord. 5615, 7-25-05, § 10)

20.35.525 Public meetings. SHARE

The Director may require the applicant to participate in a public meeting to inform citizens about a proposal. When required, public meetings shall be held as early in the review process as possible for Process V applications. For projects located within the boundaries of a Community Council, the public meeting may be held as part of that Community Council's regular meeting or otherwise coordinated with that Council's meeting schedule. Notice of the public meeting shall be provided in the same manner as required for notice of the application. The public meeting notice will be combined with the notice of application whenever possible. (Ord. 5615, 7-25-05, § 11)

20.35.530 Director's decision. SHARE

A written record of the Process V decision shall be prepared in each case. The record may be in the form of a staff report, letter, the permit itself, or other written document and shall indicate whether the application has been approved, approved with conditions or denied. The Director's decision shall be based on the applicable Land Use Code decision criteria, shall include any conditions to ensure consistency with such decision criteria and with City development regulations, and may include mitigation measures proposed under the provisions of the State Environmental Policy Act (SEPA). (Ord. 5615, 7-25-05, § 12)

20.35.535 Notice of decision. SHARE

A. Public notice of all Process V decisions shall be published in a newspaper of general circulation.

B. The Director shall mail notice of the decision to each person who submitted comments during the public comment period or at any time prior to issuance of the decision and who provided an adequate address for mailing.

C. The Director shall mail notice to each person who has requested such notice and paid any fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood groups, community clubs, and other citizens' groups who have requested regular notice of land use decisions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient. (Ord. 5615, 7-25-05, § 13)

20.35.540 Appeal of Process V decisions. SHARE

The Director of the Development Services Department's decision regarding a Process V application may be appealed to Superior Court pursuant to LUC 20.35.070. An appeal of a SEPA Threshold Determination on a Process V action shall be filed together with an appeal of the underlying Process V action. (Ord. 5615, 7-25-05, § 14)

20.35.030 Applications.

A. Who May Apply. ...

Disclaimer: The City Clerk's Office has the official version of the Bellevue Land Use Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

Mobile Version

150.65 Hearing Examiner's Decision

1. General – After considering all of the information, testimony and comments submitted on the matter, the Hearing Examiner shall issue a written decision either:

    a. Granting the application; or

    b. Modifying and granting the application; or

    c. Denying the application.

150.70 Effect of the Decision

The applicant may not engage in any activity based on the decision granting the application until the time to appeal has expired. If the decision is appealed, the applicant may not engage in any activity based on the decision granting the application until the City issues a final decision on the matter. If the decision of the Hearing Examiner is not appealed, that decision is the final decision of the City.

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150.80 Appeals

1. Who May Appeal – The decision of the Hearing Examiner may be appealed by:

    a. The applicant; and

    b. Any person who submitted written or oral testimony or comments to the Hearing Examiner on the application. A party who signed a petition may not appeal unless such party also submitted independent written comments or information.

2. Time To Appeal/How To Appeal – The appeal, in the form of a letter of appeal, must be delivered to the Planning and Building Department within 14 calendar days following the date of distribution of the Hearing Examiner's decision; provided, that the appeal letter must be delivered to the Planning and Building Department within 21 calendar days of the date of distribution of the Hearing Examiner's decision if state or local rules adopted pursuant to SEPA allow for public comment on a declaration of nonsignificance issued on the proposed development activity; and provided further, that if the fourteenth or twenty-first day, as applicable,

of the appeal period falls on a Saturday, Sunday, or legal holiday, the appeal period shall be extended through the next day on which the City is open for business. It must contain:

a. A clear reference to the matter being appealed; and

b. A statement of the specific factual findings and conclusions of the Hearing Examiner disputed by the person filing the appeal.

3. Fee – The person filing the appeal shall include with the letter of appeal the fee established by ordinance.

4. Jurisdiction – Appeals from the decision of the Hearing Examiner will be considered and decided upon by the City Council.

(Ord. 4491 § 3, 2015; Ord. 4193 § 1, 2009; Ord. 3814 § 1, 2001)

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150.85 Notice of Consideration of the Appeal

1. Contents – The Planning Official shall prepare a notice of the appeal containing the following:

a. The file number and a brief written description of the matter being appealed.

b. A statement of the scope of the appeal including a summary of the specific factual findings and conclusions disputed in the letter of appeal.

c. The time and place of the consideration of the appeal by the City Council.

d. A statement of who may participate in the appeal.

e. A statement of how to participate in the appeal.

2. Distribution – At least 14 calendar days before the City Council's consideration of the appeal, the Planning Official shall distribute this notice, or a summary thereof, to each person entitled to appeal the decision under KZC 150.80(1).

(Ord. 4286 § 1, 2011; Ord. 4193 § 1, 2009; Ord. 3954 § 1, 2004; Ord. 3814 § 1, 2001)

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150.90 Participation in the Appeal

Only those persons entitled to appeal the decision under KZC 150.80(1) who file an appeal under KZC 150.80(2) may participate in the appeal; provided, that the applicant may submit a written response to an appeal filed by an appellant, regardless of whether the applicant filed an appeal. These persons may participate in either or both of the following ways:

1. By submitting written arguments to the City Council prior to the commencement of the City Council's consideration of the appeal.

2. By appearing in person, or through a representative, at the City Council's consideration of the appeal and providing oral or written arguments directly to the City Council. The City Council shall allow each side (proponents and opponents) to speak for a maximum of 10 minutes each.

(Ord. 4121 § 1, 2008; Ord. 4072 § 1, 2007; Ord. 3814 § 1, 2001)

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150.95 Nature of the Appeal and Scope of the Appeal

The appeal will be a closed record appeal. The scope of the appeal is limited to the specific factual findings and conclusions disputed in the letter of appeal, and City Council may only consider arguments on these factual findings and conclusions. The appeal will be considered only on the record developed in the hearing before the Hearing Examiner. No new evidence may be presented.

(Ord. 4121 § 1, 2008)

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150.100 Staff Report on the Appeal

1. Contents – The Planning Official shall prepare a staff report on the appeal containing the following:

   a. The staff report prepared for the public hearing before the Hearing Examiner.

   b. The written decision of the Hearing Examiner.

   c. All written testimony and comments submitted to the Hearing Examiner.

   d. A summary of the testimony, comments and discussion at the hearing of the Hearing Examiner and a statement of the availability of the electronic sound recording of the hearing.

   e. The letter of appeal.

f. All written arguments received by the Planning and Building Department from persons entitled to participate in the appeal and within the scope of the appeal.

g. An analysis of the specific factual findings and conclusions disputed in the letter of appeal.

2. Distribution – The Planning Official shall distribute the staff report as follows:

a. Prior to the City Council's consideration of the appeal, the staff report will be distributed to each member of the City Council.

b. At least seven (7) calendar days before the City Council's consideration of the appeal, the staff report will be distributed to:

1) The applicant;

2) The person who filed the appeal; and

3) Any person who received the Hearing Examiner's decision.

(Ord. 4491 § 3, 2015; Ord. 4193 § 1, 2009; Ord. 3814 § 1, 2001)

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150.105 City Council Consideration of the Appeal

1. General – City Council shall hold a closed record appeal procedure on the appeal.

2. Consideration Declared Open – The consideration of the appeal by the City Council is open to the public.

(Ord. 3814 § 1, 2001)

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150.120 Continuation of the Consideration of the Appeal

City Council may continue their consideration if, for any reason, they are unable to receive all of the comments on the appeal or if City Council determines that they need more information within the scope of the appeal. If, during their consideration, the time and place of the next consideration of the matter is announced, no further notice of that consideration need be given.

(Ord. 3814 § 1, 2001)

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150.125 Decision on the Appeal

Within 60 calendar days of the date the letter of appeal was filed under KZC 150.80 and after considering all arguments within the scope of the appeal submitted by persons entitled to participate in the appeal, the City Council shall, by motion approved by a majority of its total membership, take one (1) of the following actions:

1. If City Council determines that disputed findings of fact and conclusions of the Hearing Examiner are the correct findings of fact and conclusions, the Council shall affirm the decision.

2. If City Council determines that the disputed findings of fact and conclusions of the Hearing Examiner are not correct and that correct findings of fact and conclusions do not support the decision of the Hearing Examiner, the Council shall modify or reverse the decision.

3. In all other cases, the Council shall direct the Hearing Examiner to hold a rehearing on the matter. The motion may limit the scope of the matters to be considered at this rehearing. The provisions of KZC 150.25 through 150.70 apply to a rehearing under this subsection. In the event the City Council orders a rehearing on the matter, this shall constitute a special circumstance under RCW 36.70B.140. The Hearing Examiner shall hold the rehearing within 28 calendar days of the date the City Council orders the rehearing, and the time limits and other pertinent requirements of this chapter shall apply to the rehearing.

4. Notice of Decision

    a. General – Following the final decision of the City Council, the Planning Official shall prepare a notice of the City's final decision on the application.

5. Effect – The decision of City Council is the final decision of the City.

(Ord. 4193 § 1, 2009; Ord. 3954 § 1, 2004)

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150.130 Judicial Review

The action of the City in granting or denying an application under this chapter may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in the King County Superior Court. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the City. For more information on the judicial review process for land use decision, see Chapter 36.70C RCW.

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Chapter 152 – PROCESS IIB

Sections:

152.05 User Guide

he/she owns.

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152.45 Open Record Hearing

1. General – The Hearing Examiner shall hold an open record hearing on each application.

2. Hearing Declared Open – The hearings of the Hearing Examiner are open to the public.

3. Effect – The hearing of the Hearing Examiner is the hearing for City Council.

152.70 Recommendation by the Hearing Examiner

1. General – After considering all of the information, testimony and comments submitted on the matter, the Hearing Examiner shall issue a written recommendation to the City Council to either:

   a. Grant the application; or

   b. Modify and grant the application; or

   c. Deny the application.

   b. Any challenge to the Hearing Examiner's recommendation filed under KZC 152.85 and received by the Planning and Building Department before the Hearing Examiner's recommendation is sent to the members of City Council.

(Ord. 4491 § 3, 2015; Ord. 4193 § 1, 2009; Ord. 3954 § 1, 2004; Ord. 3814 § 1, 2001)

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152.85 Challenge to the Hearing Examiner's Recommendation

1. Who May Challenge – The recommendation of the Hearing Examiner may be challenged by:

   a. The applicant; and

   b. Any person who submitted written or oral testimony to the Hearing Examiner on the application. A party who signed a petition may not challenge unless such party also submitted independent written comments or information.

2. Contents of a Challenge – The challenge must be in writing and contain a statement of the factual findings and conclusions made by the Hearing Examiner that are contested. The challenge will be considered only on the record developed in the hearing before the Hearing Examiner.

3. How and When To File a Challenge

a. The challenge may be filed by delivering it to the Planning and Building Department, together with the fee established by ordinance, within seven (7) calendar days of the date of distribution of the Hearing Examiner's recommendation on the application; provided, that if the seventh day falls on a Saturday, Sunday, or legal holiday, the seventh day of the challenge period shall be extended through the next day on which the City is open for business.

b. The person filing the challenge shall, prior to delivery under subsection (3)(a) of this section, mail or personally deliver a copy of the challenge and a notice of the deadline for responding to the challenge as established in subsection (3)(c) of this section to those persons described in subsection (1) of this section. Proof of delivery by mail or personal delivery shall be by affidavit attached to the copy of the challenge letter filed with the Planning and Building Department pursuant to subsection (3)(a) of this section.

c. Any person receiving a copy of the challenge letter, pursuant to subsection (3)(b) of this section, may file a written response to the challenge. Such response shall be submitted to the Planning and Building Department within seven (7) calendar days after the day the challenge letter was filed with the Planning and Building Department.

d. Any person filing a response pursuant to this section shall mail or personally deliver a copy of the response to those persons described in subsection (1) of this section. Proof of delivery by mail or personal delivery shall be by affidavit attached to the copy of the response to the challenge letter filed with the Planning and Building Department pursuant to subsection (3)(a) of this section.

(Ord. 4491 § 3, 2015; Ord. 4193 § 1, 2009; Ord. 3814 § 1, 2001)

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152.90 City Council Action

1. General – The City Council shall consider the application at a scheduled meeting within 45 calendar days of the date of issuance of the Hearing Examiner's recommendations on the proposal.

2. City Council Decision – After consideration of the entire matter on the record before the Hearing Examiner, the City Council shall, by motion, approved by a majority of the total membership, take one (1) of the following actions:

a. Adopt an ordinance or resolution to either:

1) Grant the application; or

2) Modify and grant the application; or

3) Deny the application.

b. If the City Council concludes, based on a challenge to the recommendation or its own review of the recommendation, that the record compiled by the Hearing Examiner is incomplete or inadequate for the City Council to make a decision on the application, the City Council may by motion remand the matter to the Hearing Examiner with the directions to reopen the hearing and provide supplementary findings and conclusions on the matter or matters specified in the motion. Any remand under this section shall constitute a special circumstance under RCW 36.70B.140. The motion may limit the scope of the issues to be considered at this rehearing. In the event of a remand, the Hearing Examiner shall hold the rehearing within 28 calendar days of the date of the City Council motion, and the time limits and other pertinent requirements of this chapter shall apply to the rehearing.

3. Decisional Criteria – The City Council shall use the criteria listed in KZC 152.70(3) in deciding upon the application.

4. Conditions and Restrictions – The City Council shall include in the ordinance or resolution granting the application any conditions and restrictions they determine are necessary to eliminate or minimize any undesirable effects of granting the application. Any conditions and restrictions that are imposed become part of the decision.

5. Findings of Fact and Conclusion – The City Council shall include in their ordinance or resolution:

a. A statement of the facts presented to City Council that support the decision, including any conditions and restrictions that they impose; and

b. The City Council's conclusions based on those facts.

6. Effect – Subject to the provision of KZC 152.100, the ordinance or resolution of City Council is the final decision of the City.

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152.100 Action and Jurisdiction of the Houghton Community Council

The Houghton Community Municipal Corporation is a separate municipal entity, under Chapter 35.14 RCW, existing within the Houghton neighborhood of the City. The governing body of the Houghton Community Municipal Corporation is the Houghton Community Council. If the application is within the disapproval jurisdiction of the Houghton Community Council, the provisions of this section apply to that application.

1. Houghton Community Council Public Meeting – The Houghton Community Council may hold a public meeting, which will be informal in nature, to obtain comments from the public and others on the application, and the following provisions shall apply:

a. The public meeting shall be scheduled at the earliest practicable time, based on the schedule of the Houghton Community Council, that will allow for fair and informed deliberation, compliance with all notice requirements and the orderly processing of the application.

b. The notice under KZC 152.30 shall include the time, place and other pertinent information about the public meeting.

c. The Planning Official shall provide a copy of the staff report prepared under KZC 152.35 to each member of the Houghton Community Council prior to the public meeting.

d. After the Houghton Community Council receives comments and information at the public meeting, it may make any recommendations on the application, in writing, that it deems appropriate.

e. The Hearing Examiner shall consider any recommendation on the application from the Houghton Community Council that the Hearing Examiner receives within four (4) calendar days following the close of the hearing of the Hearing Examiner, and the City Council shall consider any recommendation from the Houghton Community Council that the City Council receives before the City Council first considers the application.

f. Neither the lack of a Houghton Community Council quorum at the public meeting nor the lack of a recommendation from the Houghton Community Council in any way affects the jurisdiction of the Hearing Examiner and the City Council under this chapter or the jurisdiction of the Houghton Community Council under subsection (2) of this section.

2. Disapproval Jurisdiction – If the City Council approves an application within the disapproval jurisdiction of the Houghton Community Council, that approval shall become effective only upon:

a. Approval by a majority of the entire membership of the Houghton Community Council. Such approval shall be by resolution; or

b. Failure of the Houghton Community Council to disapprove the application within 60 calendar days after City Council adopts the ordinance or resolution granting the application. The vote to disapprove the application must be approved by resolution by a majority of the entire membership of the Community Council.

(Ord. 4072 § 1, 2007; Ord. 3954 § 1, 2004)

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152.110 Judicial Review

The action of the City in granting or denying an application under this chapter may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in the King County Superior Court. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the City. The date of the final decision of the City is the date of passage of the City Council ordinance or resolution constituting the City's final decision unless such City Council decision is subject to the disapproval jurisdiction of the Houghton Community Council, in which case the petition for judicial review must be filed within 21 calendar days of the date of approval or disapproval action by the Houghton Community Council. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW.

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Chapter 150 – PROCESS IIA

Sections:

150.05 User Guide

Various places in this code indicate that certain developments, activities or uses are permitted only if approved using Process IIA. This chapter describes Process IIA.

If you are interested in obtaining approval for something through Process IIA or if you wish to participate in a decision that will be made using this process, you should read this chapter. However, this chapter only applies if another provision of the code specifically states that a decision will be made using Process IIA. Please review KMC Title 20 for additional information regarding the City's processing of project permits.

In addition, please refer to KZC 150.10 to see if that section applies.

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15.20 Permitted Uses

SHARE

Permitted Uses Table – Low Density Residential Zones (RS, RSX, RSA, WD II, PLA 3C, PLA 6E, PLA 16)

(See also KZC 15.30, Density/Dimensions Table, and KZC 15.40, Development Standards Table)

		Required Review Process: I = Process I, Chapter 145 KZC IIA = Process IIA, Chapter 150 KZC IIB = Process IIB, Chapter 152 KZC None = No Required Review Process NP = Use Not Permitted # = Applicable Special Regulations (listed after the table)						
Use		**RS**	**RSX**	**RSA**	**WD II**	**PLA 3C**	**PLA 6E**	**PLA 16**
15.20.010	Attached Dwelling Units	NP	NP	NP	NP	I 1	NP	NP
15.20.020	Church	2, 3, 4c	2, 4c	2, 4c, 13	NP	IIA 4c	2, 4c	IIA
15.20.030	Commercial Equestrian Facility	NP	NP	NP	NP	NP	NP	IIB 5
15.20.040	Commercial Recreation Area and Use	NP	NP	NP	NP	NP	NP	IIB 6
15.20.050	Community Facility	2, 3, 4b	2, 4b	2, 4b	IIA 4b	IIA 4b	2	IIA

Permitted Uses Table – Low Density Residential Zones (RS, RSX, RSA, WD II, PLA 3C, PLA 6E, PLA 16)

(See also KZC 15.30, Density/Dimensions Table, and KZC 15.40, Development Standards Table)

Use		Required Review Process: I = Process I, Chapter 145 KZC IIA = Process IIA, Chapter 150 KZC IIB = Process IIB, Chapter 152 KZC None = No Required Review Process NP = Use Not Permitted # = Applicable Special Regulations (listed after the table)						
		RS	**RSX**	**RSA**	**WD II**	**PLA 3C**	**PLA 6E**	**PLA 16**
15.20.060	Detached Dwelling Unit	None 8, 9	None	None 8, 9	None 8, 11	None	None 8	None 7, 8
15.20.070	Golf Course	IIA 4b, 12	IIA 4b, 12	IIA 4b, 12, 13	NP	NP	NP	NP
15.20.080	Government Facility	2, 3, 4b	2, 4b	2, 4b	IIA 4b	IIA 4b	2	IIA
15.20.090	Mini-School or Mini-Day-Care Center	I 4a, 4b, 14, 15, 16, 18	I 4a, 4b, 14, 15, 16, 18	I 4a, 4b, 13, 14, 15, 16, 18	NP	I 4a, 4b, 14, 15, 16, 18	None 15, 16, 17, 18, 19	None 15, 16, 17, 18, 19
15.20.100	Piers, Docks, Boat Lifts and Canopies Serving Detached Dwelling Unit	NP	NP	I 10	10	NP	NP	NP
15.20.110	Public Park	Development standards will be determined on a case-by-case basis. See KZC 45.50.						

Permitted Uses Table – Low Density Residential Zones (RS, RSX, RSA, WD II, PLA 3C, PLA 6E, PLA 16)

(See also KZC 15.30, Density/Dimensions Table, and KZC 15.40, Development Standards Table)

Use		**Required Review Process:** I = Process I, Chapter 145 KZC IIA = Process IIA, Chapter 150 KZC IIB = Process IIB, Chapter 152 KZC None = No Required Review Process NP = Use Not Permitted # = Applicable Special Regulations (listed after the table)						
		RS	**RSX**	**RSA**	**WD II**	**PLA 3C**	**PLA 6E**	**PLA 16**
15.20.120	Public Utility	2, 3, 4b	2, 4b	2, 4b	IIA 4b	IIA 4b	2	IIA
15.20.130	School or Day-Care Center	2, 3, 4, 14, 16, 18, 20	2, 4, 14, 16, 18, 20	2, 4, 13, 14, 16, 18, 20	NP	IIA 4, 14, 16, 18, 20	2, 4, 14, 16, 18, 20	IIA 16, 17, 18, 19, 20

Permitted Uses Table – Office Zones

(PO; PR 8.5; PR 5.0; PR 3.6; PR 2.4; PRA 2.4; PR 1.8; PRA 1.8; PLA 5B, PLA 5C; PLA 6B; PLA 15A; PLA 17A)

(See also KZC 30.30, Density/Dimensions Table, and KZC 30.40, Development Standards Table)

Use		**Required Review Process:** I = Process I, Chapter 145 KZC DR = Design Review, Chapter 142 KZC IIA = Process IIA, Chapter 150 KZC None = No Required Review Process IIB = Process IIB, Chapter 152 KZC NP = Use Not Permitted # = Applicable Special Regulations (listed after the table)					
		PO	**PR, PRA**	**PLA 5B**	**PLA 5C**	**PLA 6B**	**PLA 15A**	**PLA 17A**
30.20.010	Assisted Living Facility	NP	None 1, 2, 3, 4	None 2, 3, 4	DR 2, 4, 5	None 2, 3, 4	NP	NP
30.20.020	Boat Launch for Nonmotorized and/or Motorized Boats	NP	NP	NP	NP	NP	I 16	NP
30.20.030	Church	None	I 12	I	DR 5	None	NP	DR
30.20.040	Community Facility	I	I 1, 13	I	DR 5	IIA	IIA 6	DR 14

Permitted Uses Table – Office Zones

(PO; PR 8.5; PR 5.0; PR 3.6; PR 2.4; PRA 2.4; PR 1.8; PRA 1.8; PLA 5B, PLA 5C; PLA 6B; PLA 15A; PLA 17A)

(See also KZC 30.30, Density/Dimensions Table, and KZC 30.40, Development Standards Table)

Use		**Required Review Process:** I = Process I, Chapter 145 KZC DR = Design Review, Chapter 142 KZC IIA = Process IIA, Chapter 150 KZC None = No Required Review Process IIB = Process IIB, Chapter 152 KZC NP = Use Not Permitted # = Applicable Special Regulations (listed after the table)					
		PO	**PR, PRA**	**PLA 5B**	**PLA 5C**	**PLA 6B**	**PLA 15A**	**PLA 17A**
30.20.050	Convalescent Center	I	I 1, 3	I 3	DR 5	I 3	NP	DR
30.20.060	Detached, Attached or Stacked Dwelling Units	NP	None 12	None 31	DR 5	None	IIB 6, 7, 8, 9, 10, 31	DR 11, 31
30.20.070	Detached Dwelling Unit	NP	None 15	NP	None 15	None 15	I 10	None 15
30.20.080	Development containing: Attached or Stacked Dwelling Units; and	NP	NP	NP	NP	NP	17, 18	NP

Permitted Uses Table – Office Zones

(PO; PR 8.5; PR 5.0; PR 3.6; PR 2.4; PRA 2.4; PR 1.8; PRA 1.8; PLA 5B, PLA 5C; PLA 6B; PLA 15A; PLA 17A)

(See also KZC 30.30, Density/Dimensions Table, and KZC 30.40, Development Standards Table)

Use		**Required Review Process:** I = Process I, Chapter 145 KZC DR = Design Review, Chapter 142 KZC IIA = Process IIA, Chapter 150 KZC None = No Required Review Process IIB = Process IIB, Chapter 152 KZC NP = Use Not Permitted # = Applicable Special Regulations (listed after the table)						
		PO	**PR, PRA**	**PLA 5B**	**PLA 5C**	**PLA 6B**	**PLA 15A**	**PLA 17A**
	Restaurant or Tavern; and Marina							
30.20.090	Development Containing Stacked or Attached Dwelling Units and Office Uses	NP	None 12, 19, 20	None 19, 20, 21	DR 5, 19, 20	None 19, 20	NP	NP
30.20.100	Funeral Home or Mortuary	None	I 12, 22	NP	NP	I	NP	NP
30.20.110	Government Facility	I	I 1, 13	I	DR 5	IIA	IIA 6	DR 14
30.20.120*	Reserved							

Permitted Uses Table – Office Zones

(PO; PR 8.5; PR 5.0; PR 3.6; PR 2.4; PRA 2.4; PR 1.8; PRA 1.8; PLA 5B, PLA 5C; PLA 6B; PLA 15A; PLA 17A)

(See also KZC 30.30, Density/Dimensions Table, and KZC 30.40, Development Standards Table)

Use		**Required Review Process:** I = Process I, Chapter 145 KZC DR = Design Review, Chapter 142 KZC IIA = Process IIA, Chapter 150 KZC None = No Required Review Process IIB = Process IIB, Chapter 152 KZC NP = Use Not Permitted # = Applicable Special Regulations (listed after the table)						
		PO	**PR, PRA**	**PLA 5B**	**PLA 5C**	**PLA 6B**	**PLA 15A**	**PLA 17A**
30.20.130	Hospital Facility	IIA	NP	NP	NP	NP	NP	NP
30.20.140	Marina	NP	NP	NP	NP	NP	IIB 25	NP
30.20.150	Mini-School or Mini-Day-Care Center	None 26, 27, 28	None 1, 26, 28, 29	None 26, 27, 28, 30	DR 5, 26, 27, 28	None 26, 27, 28, 30	NP	DR 26, 28, 29
30.20.160	Nursing Home	I	I 1, 3	I 3	DR 5	I 3	NP	DR

Permitted Uses Table – Office Zones

(PO; PR 8.5; PR 5.0; PR 3.6; PR 2.4; PRA 2.4; PR 1.8; PRA 1.8; PLA 5B, PLA 5C; PLA 6B; PLA 15A; PLA 17A)

(See also KZC 30.30, Density/Dimensions Table, and KZC 30.40, Development Standards Table)

Use		**Required Review Process:** I = Process I, Chapter 145 KZC DR = Design Review, Chapter 142 KZC IIA = Process IIA, Chapter 150 KZC None = No Required Review Process IIB = Process IIB, Chapter 152 KZC NP = Use Not Permitted # = Applicable Special Regulations (listed after the table)						
		PO	**PR, PRA**	**PLA 5B**	**PLA 5C**	**PLA 6B**	**PLA 15A**	**PLA 17A**
30.20.170	Office Uses	None 20, 33	None 12, 20, 33	None 20, 33	DR 5, 20, 33	None 20, 33	IIB 6, 7, 8, 9, 10	DR 20
30.20.180	Passenger Only Ferry Terminal	NP	NP	NP	NP	NP	I 16	NP
30.20.190	Piers, Docks, Boat Lifts and Canopies Serving Detached, Attached or Stacked Dwelling Units	NP	NP	NP	NP	NP	I 16	NP
30.20.200	Piers, Docks, Boat Lifts and Canopies Serving Detached Dwelling Unit	NP	NP	NP	NP	NP	I 16	NP

Permitted Uses Table – Office Zones

(PO; PR 8.5; PR 5.0; PR 3.6; PR 2.4; PRA 2.4; PR 1.8; PRA 1.8; PLA 5B, PLA 5C; PLA 6B; PLA 15A; PLA 17A)

(See also KZC 30.30, Density/Dimensions Table, and KZC 30.40, Development Standards Table)

Use		**Required Review Process:** I = Process I, Chapter 145 KZC DR = Design Review, Chapter 142 KZC IIA = Process IIA, Chapter 150 KZC None = No Required Review Process IIB = Process IIB, Chapter 152 KZC NP = Use Not Permitted # = Applicable Special Regulations (listed after the table)						
		PO	**PR, PRA**	**PLA 5B**	**PLA 5C**	**PLA 6B**	**PLA 15A**	**PLA 17A**
30.20.210	Public Access Pier, Public Access Facility, or Boardwalk	NP	NP	NP	NP	NP	IIB	NP
30.20.220	Public Park	See KZC 45.50 for required review process.						
30.20.230	Public Utility	I	I 1	I	DR 5	IIA	IIA 6	DR 14
30.20.240	Restaurant or Tavern	None 34	I 12, 22, 24, 34	NP	NP	NP	NP	NP
30.20.245*	Retail Establishment including Grocery Store, Drug Store, Laundromat, Dry Cleaners, Barber Shop, or Shoe Repair Shop	None 23	I 12, 22, 23, 24	NP	NP	NP	NP	NP

Permitted Uses Table – Office Zones

(PO; PR 8.5; PR 5.0; PR 3.6; PR 2.4; PRA 2.4; PR 1.8; PRA 1.8; PLA 5B, PLA 5C; PLA 6B; PLA 15A; PLA 17A)

(See also KZC 30.30, Density/Dimensions Table, and KZC 30.40, Development Standards Table)

Use		**Required Review Process:** I = Process I, Chapter 145 KZC DR = Design Review, Chapter 142 KZC IIA = Process IIA, Chapter 150 KZC None = No Required Review Process IIB = Process IIB, Chapter 152 KZC NP = Use Not Permitted # = Applicable Special Regulations (listed after the table)						
		PO	**PR, PRA**	**PLA 5B**	**PLA 5C**	**PLA 6B**	**PLA 15A**	**PLA 17A**
30.20.250*	Retail Establishment other than those specifically listed, limited, or prohibited in this zone, selling goods or providing services	NP	I 12, 24, 35, 36, 39	NP	NP	NP	NP	NP
30.20.260*	Retail Establishment providing banking or related financial service	None 23	I 12, 24	NP	NP	NP	NP	NP
30.20.270	School or Day-Care Center	None 26, 27, 28	None 1, 26, 28, 29, 37	None 26, 27, 37, 38	DR 5, 26, 27, 28, 32	None 26, 27, 28	NP	DR 26, 28, 29

Permitted Uses Table – Office Zones

(PO; PR 8.5; PR 5.0; PR 3.6; PR 2.4; PRA 2.4; PR 1.8; PRA 1.8; PLA 5B, PLA 5C; PLA 6B; PLA 15A; PLA 17A)

(See also KZC 30.30, Density/Dimensions Table, and KZC 30.40, Development Standards Table)

Use		**Required Review Process:** I = Process I, Chapter 145 KZC DR = Design Review, Chapter 142 KZC IIA = Process IIA, Chapter 150 KZC None = No Required Review Process IIB = Process IIB, Chapter 152 KZC NP = Use Not Permitted # = Applicable Special Regulations (listed after the table)						
		PO	**PR, PRA**	**PLA 5B**	**PLA 5C**	**PLA 6B**	**PLA 15A**	**PLA 17A**
30.20.280	Tour Boat	NP	NP	NP	NP	NP	I 16	NP
30.20.290	Water Taxi	NP	NP	NP	NP	NP	I 16	NP

Permitted Uses (PU) Special Regulations:

PU-17. Development must be consistent with an approved Master Plan. The Master Plan must address all properties within PLA 15A and PLA 15B, which are owned by the applicant. The Master Plan will be approved in two stages:

a. The first stage will result in approval of a Preliminary Master Plan using Process IIB, Chapter 152 KZC. The Preliminary Master Plan shall consist of at least the following:

1) A site plan which diagrammatically shows the general location, shape and use of the major features of development.

2) A written description of the planned development which discusses the elements of the site plan and indicates the maximum number of dwelling units and their probable size; the maximum area to be developed with nonresidential uses; the maximum size of moorage facilities and the maximum number of moorage slips; the maximum and minimum number of parking stalls; and the schedule of phasing for the Final Master Plan.

In approving the Preliminary Master Plan, the City shall determine the appropriate review process for the Final Master Plan. The City may determine that the Final Master Plan be reviewed using Process IIA, Chapter 150 KZC, if the Preliminary Master Plan shows the placement, approximate dimensions and uses of all structures, vehicular and pedestrian facilities, open space and other features of development. Otherwise, the Final Master Plan shall be reviewed using Process IIB, Chapter 152 KZC.

b. The second stage will result in approval of a Final Master Plan using Process IIA, Chapter 150 KZC, or Process IIB, Chapter 152 KZC, as established by the Preliminary Master Plan. The Final Master Plan shall set forth a detailed development plan which is consistent with the Preliminary Master Plan. Each phase of the Master Plan shall set forth a schedule for obtaining building permits for and construction of that phase. **Back to Table**

RZC 21.76.050 PERMIT TYPES AND PROCEDURES

See Ordinance No. 2902 for Interim Regulations, Effective December, 16, 2017

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
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 short plats meeting certain criteria.	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 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)[2]	Yes, Hearing Examiner	Yes, City Council	Yes, Planning Commission

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
Decision Maker	Appropriate Department	Technical Committee	Hearing Examiner (or Landmarks Commission)[2]	City Council	City Council	City Council
Administrative Appeal Body	Hearing Examiner (Hearing Examiner decision on appeal may be appealed to Superior Court.)	Hearing Examiner[1] (Hearing Examiner decision on appeal may be appealed to Superior Court.)	City Council[1]	None (decision appealable to Superior Court)	None (decision appealable to Superior Court)	None (decision appealable to Superior Court)
TABLE NOTES: 1. Shoreline Substantial Development Permits, Shoreline Variances, and Shoreline Conditional Use Permits are appealable directly to the State Shorelines Hearings Board. 2. Landmarks Commission makes decisions for Certificate of Appropriateness Level III permits.						

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	
Alteration of Geologic Hazard Areas	III	
Binding Site Plan	II	
Boundary Line Adjustment	I	
Building Permit	I	RMC 15.06
Certificate of Appropriateness Level I	I	
Certificate of Appropriateness Level II	II	
Certificate of Appropriateness Level III	III	
Clearing and Grading Permit	I	RMC 15.24
Comprehensive Plan Map and/or Policy Amendment	VI	
Conditional Use Permit	III	
Development Agreement	V	
Electrical Permit	I	RMC 15.12
Essential Public Facility	IV	
Extended Public Area Use Permit	I	RMC 12.08
Flood Zone Permit	I	RMC 15.04
Historic Landmark Designation	III	

Home Business	I	
Hydrant Use Permit	I	RMC 13.16.020
International Fire Code Permit	I	RMC 15.06
Master Planned Development See RZC 21.76.070.P	II, III, IV or V	
Mechanical Permit	I	RMC 15.14
Plat Alteration	V	
Plat Vacation	V	
Plumbing Permit	I	RMC 15.16
Preliminary Plat	III	
Reasonable Use Exception See RZC 21.76.070.U	I,II, III, IV or V	
Right-of-Way 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.