www.burlingtonwa.gov

Next Ordinance No. 1836
Next Resolution No. 14-2016

CITY COUNCIL AGENDA
City Hall, 833 South Spruce Street
7:00 p.m. December 8, 2016

CALL TO ORDER: Mayor Sexton
Council Members: Aslett, Bieche, J. DeGloria, R. DeGloria, Edmundson, Loving and Montgomery
Staff: Blaine, Bloodgood, Dempsey, Erickson, Harrison, Hawes, Brad Johnson, Brittany Johnson, L. Johnson, Moser, Pulst, Schwetz, Sherwood, Sinclair, Van Wieringen, Ward, Yengoyan, and Zitkovich.

MINUTES: City Council Meeting November 22, 2016

AUDIT OF BILLS:

PUBLIC COMMENTS:

COUNCIL COMMENTS:

MAYOR'S UPDATE:

PROCLAMATION:

SPECIAL PRESENTATION: Mayor Recognition – Burlington Rotary
Police Officer Recognition – Bill Van Wieringen, Police Chief

OFFICERS REPORTS: **TBD**

UNFINISHED BUSINESS:

CONSENT AGENDA: **2017 Lodging Tax Grant Funding Agreements (Items #1 - #12)**

NEW BUSINESS:

1) Donation of the Garl Family Bible to the City of Burlington
2) Donation of a Hisonic HS210 Public Address System to the City of Burlington
3) Discussion regarding the status of the Sterling Motor Inn
4) Ordinance revising BMC 13.08.080 relating to Delinquent Sewer Charge
5) Ordinance amending Chapter 3.64.010 of the BMC regarding authorizing the payment of claims or other obligations by check pursuant to RCW 35A.40.020
6) Ordinance eliminating BMC 3.28.130 regarding revolving accounts
7) Amendments to BMC titles 14, 16 and 17 to implement the requirement of the updated Department of Ecology National Pollutant Discharge Elimination System (NPDES) permit
8) 2017 – 2022 Capital Improvement Plan
9) Franchise Agreement with Skagit County for Sewer System Facilities
10) Lease Agreement with Mei Fong Chinn & Wallen Chinn to lease property for public parking
11) Addendum to the Burlington Library Foundation Interlocal Agreement for reimbursement of 2016 Quidditch Festival expenses
12) Professional Services Agreement with Lana Reichert of Skagit County Investigations, LLC
13) Professional Services Fiber Agreement with Mt. Baker Cable, LLC
14) Senior Services: 2017 Interlocal Agreement with Skagit County to provide Senior Services at the Burlington Senior Center
15) Discussion regarding date of second City Council Meeting in December
16) Discussion regarding 2017 Council Committees Appointments

Next Regular Council Meeting: December 22, 2016 *Americans with Disabilities Act Accommodations Provided upon Request*

Next Ordinance No. 1836
Next Resolution No. 14-2016

FUTURE WORKSHOP:

EXECUTIVE SESSION:

- An Executive Session may be held to discuss Personnel, Litigation, and/or Land Acquisition.

ADJOURNMENT:

MEETINGS:

1) PARKS & RECREATION ADVISORY BOARD:	Monday **December 5, 2016** 5:30 p.m. Parks & Recreation, 900 E Fairhaven
2) LIBRARY BOARD:	Tuesday **December 6, 2016** 6:00 p.m. Library, 820 E Washington Ave
3) AUDIT & FINANCE COMMITTEE:	Thursday **December 8, 2016** 4:00 p.m. City Hall, 833 S Spruce Street

Annual Tree Lighting – 6:00 p.m. Wednesday, December 7th, 2016 at Alpha Park

City Offices will be closed on December 23rd & 26th, 2016 for the Holidays

December 2016

December 2016

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

January 2017

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Nov 27 - Dec 3	Nov 27	28	29	30	Dec 1	2	3
Dec 4 - 10	4	5 5:30pm Parks Board (Parks & Rec Dept) - Judy Sheahan	6 6:00pm Library Board (Library)	7	8 4:00pm Audit & Finance Committee (City Hall) 7:00pm Council Meeting	9	10
Dec 11 - 17	11	12	13 4:00pm Public Safety Committee (Public Safety Building)	14	15	16	17
Dec 18 - 24	18	19	20 4:00pm Public Works Committee (Engineering Conf Room)	21 1:00pm SKAT Board (Burlington City Hall) 7:00pm 9:00pm Planning Commission (City Council Chambers)	22 4:00pm Audit & Finance (City Hall) 7:00pm Council Meeting	23 CITY OFFICES CLOSED	24
Dec 25 - 31	25	26 CITY OFFICES CLOSED	27	28 9:00am 10:00am Downtown Burlington Association (Visitor Information Center/Chamber of	29	30	31

January 2017

January 2017

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February 2017

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Jan 1 - 7	Jan 1, 17	2	3	4	5	6	7
		5:30pm Parks Board (Parks & Rec Dept) - Judy Sheahan	6:00pm Library Board (Library)				
Jan 8 - 14	8	9	10	11	12	13	14
			4:00pm Public Safety Committee (Public Safety Building) 5:00pm 6:00pm Historical Preservation Board (		4:00pm Audit & Finance Committee (City Hall) 7:00pm Council Meeting		
Jan 15 - 21	15	16	17	18	19	20	21
			4:00pm Public Works Committee (Engineering Conf Room)	1:00pm SKAT Board (Burlington City Hall) 7:00pm 9:00pm Planning Commission (City Council Chambers)			
Jan 22 - 28	22	23	24	25	26	27	28
				9:00am 10:00am Downtown Burlington Association (Visitor Information Center/Chamber of	4:00pm Audit & Finance (City Hall) 7:00pm Council Meeting		
Jan 29 - Feb 4	29	30	31	Feb 1	2	3	4

COUNCIL CHAMBERS **CITY HALL** **BURLINGTON, WA**

November 22, 2016

CALL TO ORDER:

Mayor Steve Sexton called the meeting to order at 7:00 p.m., with the Pledge of Allegiance. Council members present: Bill Aslett, Tonya Bieche, J. DeGloria, R. DeGloria, Edie Edmundson, Chris Loving, and Ted Montgomery. Staff present: Bryan Harrison, Geoff Hawes, Brittany Johnson, Leif Johnson, Bill Van Wieringen, Sarah Ward, and Levon Yengoyan.

MINUTES:

A motion was made to approve the minutes of the November 10, 2016 council meeting by **Councilors R. DeGloria/Loving.** All in favor; motion carried.

AUDIT OF BILLS:

A motion was made by **Councilors R. DeGloria/Aslett** to approve Accounts Payable checks numbered 34570 – 34679 in the amount of $651,815.07; November 15th payroll checks numbered 34546 – 34569 in the amount of $392,519.75. All in favor; motion carried.

PUBLIC COMMENTS:

Clara Garl – 11157 Gardner Rd – commented that she was an ambassador for Burlington history and that the City of Burlington needs to invest in the future by preserving the past. **Ms. Garl** stated that she is in support of the historic Carnegie Library becoming a museum of Burlington history. This would provide educational opportunities and inspiration for Burlington youth and will provide a place of cultural engagement for the community. **Ms. Garl** commented that a museum would provide education, research opportunities, and attract visitors to downtown Fairhaven.

Larry Gilbert – 552 Lupine Lane – commented that he is in support of a history meeting being located in Burlington in the Carnegie Library building. **Mr. Gilbert** shared some historical facts relating to Burlington and his experience at the Sedro Woolley History Museum and how that museum is managed.

Duane Stowe – 16508 Peterson Rd – Thanked the council and administration for the new parking lot on Fairhaven. Thanked the City engineering department for their hard work on the project. **Mr. Stowe** commented that the parking lot has revolutionized the downtown area. **Mr. Stowe** added that he agreed that the Carnegie Library is a gem for the town and would be a great location for a museum about Burlington's history.

COUNCIL COMMENTS:

There were no Council Comments.

November 22, 2016

MAYOR'S UPDATE:

Mayor Sexton reviewed the ongoing process regarding the Sterling Motor Inn and the events regarding the Sterling Motor Inn that took place last week. He stated he was proud of City staff and that **City Administrator Bryan Harrison, City Attorney Leif Johnson, Police Chief Bill Van Wieringen, Fire Marshal Kelly Blaine, and Fire Chief Levon Yengoyan** were outstanding throughout the event. The City staff along with other agencies formulated a plan to make the transition simple and softer for the tenants involved. There were some conversations with Skagit County, but the City ended up handling the process on their own with contributions from many other non-profit agencies. The plan was executed better than expected.

OFFICER'S REPORTS:

Public Works Director Marv Pulst updated the council on the results of grant applications that were submitted several months ago. The applications were for TIB funds and included the East West Connecter Road on Walnut to Burlington Blvd, the five-way intersection at Cherry St and Fairhaven, and George Hopper overlay. The City received no funding for the applications, as did all of Skagit County. There was one project awarded in Whatcom County and other projects statewide, but none locally. The engineering department will continue to push for other funding sources for these projects. The engineering staff worked hard on the applications for the TIB funds and they were done well. **Pulst** reported that the Gages Slough Culvert project on Fairhaven is complete and final touches are occurring. **Pulst** reported that the streets department was busy working on improvements at the Senior Center to the Meals on Wheels loading area. The Streets, Parks, and Buildings & Grounds crew worked together to complete an updated concrete loading area.

City Administrator Bryan Harrison reported that the CRS (Community Rating System) which means that the residents of Burlington will maintain the 25% flood insurance discount. The Planning, Building, and Public Works department did a great job working together to get this accomplished and were very successful. **Administrator Harrison** reminded everyone of the event being held at Cascade Mall on Wednesday, November 30th, 4:00 p.m. – 9:00 p.m. to thank all of the first responders who responded to the incident at Cascade Mall. There were over 200 invitations sent to first responders. **Administrator Harrison** reported that the fifth report from Public Defense Supervisor, Eileen Farley is due. The final report will be instructing cities to implement any changes or improvements needed to be made to the cities' public defense program. **Administrator Harrison** asked council to consider the possibility of holding a second meeting in December to take care of final documents that may need to be addressed prior to the end of 2016. Council may make a recommendation to reschedule or cancel the second meeting at the December 8th council meeting.

City Attorney Leif Johnson asked the council add an agenda item that would be a resolution to authorize the City to address the emergency conditions at the Sterling Motor Inn and further ratifies actions already taken by the Mayor and City staff to assist the occupants of the Sterling Motor Inn to safely vacate the premises.

A motion was made to add the proposed resolution as agenda item # 5 by **Councilors Aslett/Bieche.** All in favor; motion carried.

UNFINISHED BUSINESS:
There was no Unfinished Business.

CONSENT AGENDA:
There was no Consent Agenda.

NEW BUSINESS:

PUBLIC HEARING: 2017 REVENUE SOURCES AND CONSIDERATION OF PROPERTY TAX REVENUES
Director of Budget & Accounting Renee Sinclair stated that Washington State statute requires a property tax levy to be done annually by November 30th. The proposed ordinance reflects a 0% increase from previous year. There is an approximately $21,000 increase due to new construction in Burlington. **Councilor Aslett** added that the property tax increases that are due to mid-year construction will not produce increased revenue until 2018.

Mayor Sexton opened the Public Hearing.

No public comments were made.

A motion to close the Public Hearing was made by **Councilors J. DeGloria/Edmundson.** All in favor; motion carried.

Councilor Aslett shared his concerns regarding the predictability of the anticipated revenues. He stated that it should in 2017 the council needs to make an honest effort to educate citizens on revenue sources. He added that he will not advocate an increase without further discussion and education with citizens.

A motion was made to adopt the proposed property tax ordinance raising the property tax levy rate by 0% for 2016, for 2017 collection by **Councilors Edmundson/J. DeGloria.** All in favor; motion carried.

PUBLIC HEARING: ORDINANCE REGARDING BMC CHAPTER 5.12.070: 2% WATER UTILITY TAX LEVY

Director of Budget & Accounting Renee Sinclair explained that the proposed ordinance is suspending the 2% Water Utility Tax that is currently in the BMC for 2017; the tax is currently suspended until December 31, 2016. Council can either approved the ordinance suspending the tax or allow the tax to be implemented beginning January 1, 2017.

Mayor Sexton opened the Public Hearing.

No public comments were made.

A motion to close the Public Hearing was made by **Councilors J. DeGloria/Bieche.** All in favor; motion carried.

Discussion ensued among council members and staff regarding the history of the tax, Skagit County cities who implement the tax, and the amount of revenue the tax could provide to the City of Burlington, and the priority of council to have an open discussion with citizens regarding revenue sources prior to any changes being made.

A motion was made to approve the proposed ordinance suspending the 2% utility tax on water sales through December 31, 2017 and authorize the Mayor's signature by **Councilors Aslett/Montgomery.** All in favor; motion carried.

PUBLIC HEARING: PROPOSED 2017 BUDGET

Director of Budget & Accounting Renee Sinclair stated that the budget ordinance has been updated to review the changes to current expense, which include $20,000 for the Carnegie Library evaluation and $12,000 to lease parking lot property in Downtown Fairhaven. There has been a change to the arterial street fund and reduced the transfer by 40%. City staff reviewed the impacts that not receiving the TIB grant funding had on the budget.

Mayor Sexton opened the Public Hearing.

No public comments were made.

A motion to close the Public Hearing was made by **Councilors R. DeGloria/Loving.** All in favor; motion carried.

A motion was made to approve the proposed 2017 budget ordinance and adopt the 2017 budget and authorize the Mayor's signature on the budget ordinance by **Councilors Loving/Edmundson.**

QUOTE TO REWIRE STAFF AREA AT THE PARKS & RECREATION BUILDING, 900 E FAIRHAVEN AVE

IT Manager Geoff Hawes stated that the project includes rewiring the staff area at the Burlington Parks and Recreation building and to add additional data jacks. The staff networking cable is slow and causing the staff inability to access server files. The newly installed camera system has a slow bandwidth which is preventing staff from viewing recordings. The project is being funded in 2016 by utilizing funds that were originally budgeted for the rewiring of the police department. Discussion followed regarding the bidding process.

A motion was made to approve the quote from Interconnect Systems for the rewiring of the staff are at the Burlington Parks & Recreation building and authorize the Mayor's signature by **Councilors Bieche/R. DeGloria.** All in favor; motion carried.

RESOLUTION TO EXERCISE THE AUTHORITY GRANTED BY RCW 38.52 TO ADDRESS THE EMERGENCY CONDITIONS THAT EXISTS AT THE STERLING MOTOR INN

City Attorney Leif Johnson thanked the staff and the Mayor for their efforts in responding to the situation at the Sterling Motor Inn. **Johnson** reviewed the resolution and the processes that took place to obtain the Sterling Motor Inn and reviewed the results of methamphetamine testing that was conducted as part of the process; methamphetamine testing results were contamination levels that were above the state standard for cleanup. This was a threat to public safety and health and the process of removing occupants was expedited to address the contamination issues. The purpose of this resolution is to ratify the actions that were taken by City staff and to establish a closing period of when the emergency will end. There are currently 3 – 4 rooms occupied, but the occupants should be moved out by next week. Discussion ensued regarding the lack of support Skagit County provided the City regarding the Sterling Motor Inn and the public health issue. Skagit County did provide staff, but no financial resources. **Johnson** stated that the City made the decision to evacuate the Sterling Motor Inn based on violations of Fire and Building codes. **Mayor Sexton** stated that there was disappointment in the room last Thursday evening, after all day meetings with Skagit County Public Health; that the county attorneys chose to use the RCW for legal security themselves, rather than the safety of the most vulnerable. The City made

the right call to protect the occupants of the Sterling Motor Inn and provide them with a safe place to go. **Councilor Edmundson** commented that she was impressed with the strong leadership of the City. **Mayor Sexton** commented on the great work of the staff to make the process of evacuating less stressful for the tenants; he stated that Community Resource Officer Mike Lumpkin and Officer Stacy Wilson were playing with the kids and made the approach to the transition a positive one. **City Administrator Bryan Harrison** commented that the occupants were told to leave everything they own, leave their home, take a shower and leave with donated clothes. The City staff and other agencies did an excellent job making this process as comfortable as possible.

A motion was made to pass resolution to exercise the authority granted by RCW 38.52 to address the emergency conditions that exists at the Sterling Motor Inn by **Councilors Edmundson/Aslett.** All in favor; motion carried.

ADJOURNMENT:

Mayor Sexton adjourned the meeting at 8:03 p.m.

Renee Sinclair	Steve Sexton
Director of Budget & Accounting	Mayor

DRAFT

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

CONSENT AGENDA - December 8, 2016

1. **Agreement with Skagit Valley Tulip Festival -** Website upgrade and printing, marketing, and distribution of the 2017 Official Skagit Valley Tulip Festival Brochure: $6,800
2. **Agreement with American Legion Memorial Post #91 –** Cost associated with creating a history museum to protect and display artifacts and marketing museum to potential visitors/tourist: $4,000
3. **Agreement with Burlington Chamber of Commerce –** Berry Dairy Days Festival marketing: $8,000
4. **Agreement with Burlington Chamber of Commerce –** Harvest Festival marketing: $8,000
5. **Agreement with Burlington Chamber of Commerce –** Operation of the Burlington Visitor's Information Center: $117,000
6. **Agreement with Celtic Arts Foundation –** Marketing of Highland Games & Celtic Festival: $2,500
7. **Agreement with Children's Museum of Skagit County –** Marketing of the museum: $35,000
8. **Agreement with Children's Museum of Skagit County –** 2nd Annual Winter Wonderland: $50,000
9. **Agreement with Lincoln Theatre Foundation –** Marketing of events: $4,000
10. **McIntyre Hall Performing Arts Center –** Marketing of McIntyre Hall and Events Center: $15,000
11. **Skagit River Bald Eagle Awareness Team –** Marketing of Skagit River Bald Eagle Festival & Interpretive Center: $5,000
12. **Skagit Valley Genealogical Society –** Marketing and Operation of the Skagit Valley Genealogical Society O'Canada! Genealogical Seminar Weekend - $1,250

RECOMMENDATION

Motion to approve Consent Agenda items #1 - #12 and authorize the Mayor's signature on agreements.

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***SKAGIT VALLEY TULIP FESTIVAL*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with the website upgrade and printing, marketing and distribution of the 2017 Official Skagit Valley Tulip Festival Brochure to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Skagit Valley Tulip Festival website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Skagit Valley Tulip Festival 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $6,800 from 2017 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will <u>not</u> be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Cindy Verge, Executive Director
Skagit Valley Tulip Festival
PO Box 1784
Mount Vernon, WA 98273

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By_____
STEVE SEXTON, Mayor

SKAGIT VALLEY TULIP FESTIVAL

By _____
Cindy Verge, Executive Director
Tax ID 91-1662982

Attest:

By_____
Renee Sinclair, Director of Budget and Accounting / City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: A. 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: Skagit Valley Tulip Festival

2. This report covers:
   Event/Activity Name: Website upgrade and marketing for the 2017 Skagit Valley Tulip Festival to potential tourists residing more than 50 miles from Burlington.
   Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 6,800

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
   _____ Local attendees
   _____ Tourists (from more than 50 miles away)
   _____ Total

5. Estimated total attendance for event or activity:
   1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
   2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
   3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

   (Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
   (Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.
   _____ Locally booked
   _____ Booked by "tourists" (more than 50 miles away)
   _____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***AMERICAN LEGION MEMORIAL POST #91*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with creating a history museum to protect and display artifacts from as far back as the Civil War and marketing the museum to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The American Legion Memorial Post #91 website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The American Legion Memorial Post #91 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $4,000 from 2017 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will <u>not</u> be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. <u>REPORTS AND INFORMATION:</u>

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Bryan Mellor, Commander
American Legion Memorial Post #91
721 E Fairhaven Avenue
Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By_____
STEVE SEXTON, Mayor

AMERICAN LEGION MEMORIAL POST #91

By_____
Bryan Mellor, Commander
Tax ID 91-6075451

Attest:

By_____
Renee Sinclair, Director of Budget and Accounting / City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: **A.** 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: American Legion Memorial Post #91

2. This report covers:
   Event/Activity Name: Military Historic Museum facility improvements and marketing to potential tourists residing more than 50 miles from Burlington.
   Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 4,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
   _____ Local attendees
   _____ Tourists (from more than 50 miles away)
   _____ Total

5. Estimated total attendance for event or activity:
   1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
   2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
   3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

   (Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
   (Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.
   _____ Locally booked
   _____ Booked by "tourists" (more than 50 miles away)
   _____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***BURLINGTON CHAMBER OF COMMERCE*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with Berry Dairy Days Festival marketing to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Burlington Chamber of Commerce website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Burlington Chamber of Commerce 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $8,000 from 2017 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will <u>not</u> be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. <u>REPORTS AND INFORMATION:</u>

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Linda Jones, President/CEO
Burlington Chamber of Commerce
PO Box 1087
Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By_____
STEVE SEXTON, Mayor

BURLINGTON CHAMBER OF COMMERCE

By_____
Linda Jones, President/CEO
Tax ID 91-1019001

Attest:

By_____
Renee Sinclair, Director of Budget and Accounting / City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: **A.** 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: Burlington Chamber of Commerce

2. This report covers:
   Event/Activity Name: Berry Dairy Days Festival marketing to potential tourists residing more than 50 miles from Burlington.
   Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 8,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
   _____ Local attendees
   _____ Tourists (from more than 50 miles away)
   _____ Total

5. Estimated total attendance for event or activity:
   1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
   2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
   3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

   (Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
   (Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.
   _____ Locally booked
   _____ Booked by "tourists" (more than 50 miles away)
   _____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***BURLINGTON CHAMBER OF COMMERCE*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with Harvest Festival marketing to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Burlington Chamber of Commerce website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Burlington Chamber of Commerce 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $8,000 from 2017 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will <u>not</u> be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. <u>REPORTS AND INFORMATION:</u>

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Linda Jones, President/CEO
Burlington Chamber of Commerce
PO Box 1087
Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By _____
STEVE SEXTON, Mayor

BURLINGTON CHAMBER OF COMMERCE

By _____
Linda Jones, President/CEO
Tax ID 91-1019001

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting / City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: **A.** 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: Burlington Chamber of Commerce

2. This report covers:
   Event/Activity Name: Harvest Festival marketing to potential tourists residing more than 50 miles from Burlington.
   Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 8,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
   _____ Local attendees
   _____ Tourists (from more than 50 miles away)
   _____ Total

5. Estimated total attendance for event or activity:
   1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
   2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
   3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

   (Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
   (Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.
   _____ Locally booked
   _____ Booked by "tourists" (more than 50 miles away)
   _____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***BURLINGTON CHAMBER OF COMMERCE*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with operation of the Burlington Visitor's Center located at 520 E Fairhaven Avenue, Burlington, WA, implementation of tourism marketing strategies, and operation and marketing of special events to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Burlington Chamber of Commerce website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Burlington Chamber of Commerce 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $117,000 from 2017 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for

payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted

to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. <u>REPORTS AND INFORMATION:</u>

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;

- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Linda Jones, President/CEO
Burlington Chamber of Commerce
PO Box 1087
Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By_____
STEVE SEXTON, Mayor

BURLINGTON CHAMBER OF COMMERCE

By_____
Linda Jones, President/CEO
Tax ID 91-1019001

Attest:

By_____
Renee Sinclair, Director of Budget and Accounting / City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: **A.** 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: Burlington Chamber of Commerce

2. This report covers:
   Event/Activity Name: Operations of the Burlington Visitor's Information Center and marketing and operation of special events to potential tourists residing more than 50 miles from Burlington.
   Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 117,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
   _____ Local attendees
   _____ Tourists (from more than 50 miles away)
   _____ Total

5. Estimated total attendance for event or activity:
   1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
   2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
   3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

   (Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
   (Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.
   _____ Locally booked
   _____ Booked by "tourists" (more than 50 miles away)

_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***CELTIC ARTS FOUNDATION*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with direct marketing of the Skagit Valley Highland Games and Celtic Festival to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Celtic Arts Foundation website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Celtic Arts Foundation 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $2,500 from 2017 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will <u>not</u> be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. REPORTS AND INFORMATION:

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Skye Richendrfer, Executive Director
Celtic Arts Foundation
PO Box 1342
Mount Vernon, WA 98273

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By_____
STEVE SEXTON, Mayor

CELTIC ARTS FOUNDATION

By_____
Skye Richendrfer, Executive Director
Tax ID 91-1878785

Attest:

By_____
Renee Sinclair, Director of Budget and Accounting
/ City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: **A.** 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: Celtic Arts Foundation

2. This report covers:
   Event/Activity Name: Marketing for the 2017 Skagit Valley Highland Games and Celtic Festival to potential tourists residing more than 50 miles from Burlington.
   Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 2,500

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
   _____ Local attendees
   _____ Tourists (from more than 50 miles away)
   _____ Total

5. Estimated total attendance for event or activity:
   1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
   2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
   3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

   (Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
   (Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.
   _____ Locally booked
   _____ Booked by "tourists" (more than 50 miles away)
   _____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***CHILDREN'S MUSEUM OF SKAGIT COUNTY*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with marketing of the Children's Museum of Skagit County to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Children's Museum of Skagit County website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Children's Museum of Skagit County 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $35,000 from 2017 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will <u>not</u> be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. <u>REPORTS AND INFORMATION:</u>

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Cate Anderson, Executive Director
Children's Museum of Skagit County
550 Cascade Mall Drive
Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By_____
STEVE SEXTON, Mayor

CHILDREN'S MUSEUM OF SKAGIT COUNTY

By_____
Cate Anderson, Executive Director
Tax ID 91-2081180

Attest:

By_____
Renee Sinclair, Director of Budget and Accounting / City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: **A.** 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: Children's Museum of Skagit County

2. This report covers:
   Event/Activity Name: Marketing for the Children's Museum of Skagit County visitors and new events to potential tourists residing more than 50 miles from Burlington.
   Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 35,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
   _____ Local attendees
   _____ Tourists (from more than 50 miles away)
   _____ Total

5. Estimated total attendance for event or activity:
   1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
   2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
   3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

   (Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
   (Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.
   _____ Locally booked
   _____ Booked by "tourists" (more than 50 miles away)
   _____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***CHILDREN'S MUSEUM OF SKAGIT COUNTY*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with marketing and/or operations of the Children's Museum of Skagit County 2nd Annual Winter Wonderland event in December 2017 to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Children's Museum of Skagit County website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Children's Museum of Skagit County Winter Wonderland 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $50,000 from 2017 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will <u>not</u> be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. <u>REPORTS AND INFORMATION:</u>

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Cate Anderson, Executive Director
Children's Museum of Skagit County
550 Cascade Mall Drive
Burlington, WA 98233

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By_____
STEVE SEXTON, Mayor

CHILDREN'S MUSEUM OF SKAGIT COUNTY

By_____
Cate Anderson, Executive Director
Tax ID 91-2081180

Attest:

By_____
Renee Sinclair, Director of Budget and Accounting / City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: **A.** 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: Children's Museum of Skagit County

2. This report covers:
   Event/Activity Name: Marketing and/or operations for the 2nd Annual Children's Museum of Skagit County Winter Wonderland Festival to potential tourists residing more than 50 miles from Burlington.
   Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 50,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
   _____ Local attendees
   _____ Tourists (from more than 50 miles away)
   _____ Total

5. Estimated total attendance for event or activity:
   1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
   2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
   3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

   (Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
   (Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.
   _____ Locally booked
   _____ Booked by "tourists" (more than 50 miles away)
   _____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***LINCOLN THEATRE CENTER FOUNDATION*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with marketing of Lincoln Theatre events to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Lincoln Theatre website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Lincoln Theatre Center Foundation 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $4,000 from 2017 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will <u>not</u> be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. <u>REPORTS AND INFORMATION:</u>

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Roger Gietzen, Executive Director
Lincoln Theatre Center Foundation
PO Box 2312
Mount Vernon, WA 98273

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By_____
STEVE SEXTON, Mayor

LINCOLN THEATRE CENTER FOUNDATION

By_____
Roger Gietzen, Executive Director
Tax ID 94-3052481

Attest:

By_____
Renee Sinclair, Director of Budget and Accounting / City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: **A.** 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: Lincoln Theatre Center Foundation

2. This report covers:
   Event/Activity Name: Expanding marketing for Lincoln Theatre live performances to potential tourists residing more than 50 miles from Burlington.
   Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 4,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
   _____ Local attendees
   _____ Tourists (from more than 50 miles away)
   _____ Total

5. Estimated total attendance for event or activity:
   1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
   2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
   3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

   (Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
   (Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.
   _____ Locally booked
   _____ Booked by "tourists" (more than 50 miles away)
   _____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***MCINTYRE HALL PERFORMING ARTS CENTER / SKAGIT VALLEY COLLEGE*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with marketing of the McIntyre Hall concerts, events and venue to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include regional and statewide promotion of the events and of McIntyre Hall as a rental venue for weddings, reunions, receptions, conferences, meetings, etc. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The McIntyre Hall website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The McIntyre Hall's 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $15,000 from 2017 fiscal year Lodging tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for

payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted

to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. <u>REPORTS AND INFORMATION:</u>

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;

- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Nida Tautvydas, Executive Director
McIntyre Hall Performing Arts Center
2501 East College Way
Mount Vernon, WA 98273

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By_____
STEVE SEXTON, Mayor

MCINTYRE HALL PERFORMING ARTS CENTER

By_____
Nida Tautvydas, Executive Director
Tax ID 91-0822539

Attest:

By_____
Renee Sinclair, Director of Budget and Accounting / City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: **A.** 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: McIntyre Hall and Performing Arts Center

2. This report covers:
Event/Activity Name: Marketing of the McIntyre Hall concerts, events and venue to potential tourists residing more than 50 miles from Burlington.
Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 15,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees

_____ Tourists (from more than 50 miles away)

_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by "tourists" (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***SKAGIT RIVER BALD EAGLE AWARENESS TEAM*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with marketing of the Skagit River Bald Eagle Festival and Interpretive Center to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include brochures, radio and print advertising, electronic communication, website and social media.

The Skagit River Bald Eagle Festival / Skagit River Bald Eagle Interpretive Center website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Skagit River Bald Eagle Awareness Team 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $5,000 from 2017 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will <u>not</u> be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. <u>REPORTS AND INFORMATION:</u>

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;
- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

Judy Hemenway, Treasurer
Skagit River Bald Eagle Awareness Team
PO Box 571
Concrete, WA 98237

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By_____
STEVE SEXTON, Mayor

SKAGIT RIVER BALD EAGLE AWARENESS TEAM

By_____
Judy Hemenway, Treasurer
Tax ID 94-3147213

Attest:

By_____
Renee Sinclair, Director of Budget and Accounting / City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: **A.** 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: Skagit River Bald Eagle Awareness Team

2. This report covers:
   Event/Activity Name: Marketing for the Skagit River Bald Eagle Festival and Interpretive Center to potential tourists residing more than 50 miles from Burlington.
   Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 5,000

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):
   _____ Local attendees
   _____ Tourists (from more than 50 miles away)
   _____ Total

5. Estimated total attendance for event or activity:
   1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
   2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
   3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

   (Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
   (Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.
   _____ Locally booked
   _____ Booked by "tourists" (more than 50 miles away)
   _____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

AGREEMENT

THIS AGREEMENT made and entered into on this _____ day of_____ _____, 2016, by and between the ***CITY OF BURLINGTON,*** (hereafter referred to as the "City") and the ***SKAGIT VALLEY GENEALOGICAL SOCIETY*** (hereinafter referred to as "Recipient").

WITNESSETH:

WHEREAS, the City is an eligible municipality entitled to levy, collect and distribute a hotel occupancy tax, as authorized by Chapter 67.28 RCW; and

WHEREAS, the Recipient provides and performs promotional functions, activities and events that enhance tourism activities as set forth in the attached City of Burlington 2017 Lodging Tax Grant Application; and

WHEREAS, the City desires to provide proceeds from the hotel occupancy tax during the 2017 fiscal year to the Recipient to perform qualified services for the City; and

WHEREAS, the Services included in this Agreement are consistent with promoting the interests of the City; and

WHEREAS, the City and the Recipient are desirous of entering into an Agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Recipient do mutually agree as follows:

1. TERM:

The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

2. SERVICES TO BE PROVIDED BY THE PARTIES:

This grant is for costs associated with marketing and operation of the Skagit Valley Genealogical Society 'O Canada!' Genealogical Seminar Weekend event to potential visitors / tourists traveling for business or pleasure either (a) away from their place of residence or business and staying overnight in paid accommodations; (b) to a place fifty miles or more one way from their place of residence or business for the day or staying overnight; and/or (c) from another country or state outside of their place of residence or their business. Marketing will include regional and statewide promotion of the event of Skagit Valley Genealogical Society as an inclusion in the Skagit Valley Tulip Festival brochure. Marketing will include brochures, flyers, posters and print advertising, electronic communication, website and social media.

The Skagit Genealogical Society website, and any brochures or print media paid for with these funds, must include a listing of and link to Burlington lodging establishments. A condition of approval for payment will require providing copies of advertising, expenditures and web links that clearly demonstrates compliance with the terms included in this section.

The Skagit Valley Genealogical Society's 2017 City of Burlington Lodging Tax funding application is attached to this contract as Attachment "A" and serves as a reference to depict the type of tourism promotion activities anticipated to be implemented under this Agreement.

3. FUNDS:

a. The City grants to the Recipient the sum of $1,250 from 2017 fiscal year Lodging Tax proceeds for the purposes of funding the services to be provided in paragraph 2 above.

b. The funds granted herein are to be used as specifically set forth in paragraph 2 above, as well as in conformance with the requirements set forth in this paragraph 3 and as otherwise stated in this Agreement. If the Recipient has any question about the use of the funds and whether such use complies with this Agreement and/or state law, the Recipient should contact the City Administrator for clarification of use prior to incurring the expense to be submitted to the City for payment. The last chance to submit documentation for

payment of funds for the 2017 fiscal year will be noon the first Friday of January, 2018.

c. The funds granted herein by the City are from the funds generated by hotel-motel (lodging) taxes. These funds may be used solely for paying for tourism promotion. Tourism promotion is defined as: Activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies and facilities; and marketing and/or operation of special events and festivals designed to attract tourists.

d. The funds granted herein will not be used in any way contrary to the specified uses set forth in paragraph 2 above of this Agreement, including, but not limited to, the following:

   i. To purchase, construct, or improve capital facilities or equipment without prior written approval from the City;

   ii. To fund activities that target the generation of business for any single specific private business entity;

   iii. For promotional hosting, including but not limited to the payment of lodging for individuals within a fifty mile radius of the City of Burlington;

   iv. For cash bonuses or gifts; and/or

   v. For any purpose that would violate the following as the same exist now or may be hereafter amended:

      (a) RCW 67.28.1815;

      (b) Article 8, Section 7 of the Washington State Constitution;

      (c) For any specific expense that would otherwise be prohibited from payment by the City.

e. The payment of grant funds shall be paid upon the presentation of a bill and necessary documentation as described in paragraphs 2 and 3. Such bill, along with supporting documentation, should be submitted

to the City by the first Wednesday of the month for payment during that month.

f. The Recipient recognizes the City cannot make payment to the Recipient from the funds granted until the actual services have been performed, or costs incurred, as defined herein. In no event shall the City pay for services in advance of such performance.

g. All payments shall be based upon copies of original pay stubs, invoices and/or other applicable supporting documentation, complete with an explanation of the expenditure. Said documentation shall contain itemization for each service or costs being submitted by the Recipient for payment. The City reserves the right to request additional documentation, satisfactory to the City Director of Budget and Accounting, before payment is made pursuant to this Agreement. Payment and/or reimbursement will only be made for such expenses that comply with this Agreement and/or state law.

h. The Recipient shall have a fiduciary duty to the City with respect to the revenue provided by this Agreement.

4. <u>REPORTS AND INFORMATION:</u>

a. The Recipient shall provide to the City documentation of expenditures, as outlined in paragraphs 2 and 3 above and maintain complete and accurate financial records for each expenditure of funds.

b. State law requires that local jurisdictions that receive Lodging Tax revenues under RCW 67.28.1816 must submit an annual economic impact report. To assist with this reporting requirement the City of Burlington will require that recipients of City of Burlington Lodging Tax Funds provide the following information related to the funded event:

- Estimated number of tourists, persons traveling over 50 miles to the destination and staying for the day only;
- Estimated number of persons remaining at the destination overnight in paid accommodations;
- Estimated number of persons remaining at the destination in unpaid accommodations;
- Estimated increase in retail sales (within Burlington City limits) attributable to the event;

- Any other measurements that demonstrate the positive impact of increased tourism attributable to the festival or event.

The City shall submit an annual report / Expenditure Report Worksheet to the recipient on or before January 10, 2018 (draft Report form attached as Attachment "B" to this Agreement for informational purposes). This report must be completed and returned to the City Administrator on or before January 31, 2018.

5. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial records and other components of the work and services provided and undertaken as a part of the Agreement. The Recipient shall make such records available for inspection by the City upon request by the City Director of Budget and Accounting.

6. INDEPENDENT RELATIONSHIP:

The City and Recipient intend that an independent contractual relationship be created by this Agreement. The Recipient, or any of its employees, agents or contractors, is not considered to be an employee of the City for any purpose, and neither the Recipient nor any employee, agent or contractor of the Recipient shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Recipient specifically represents and stipulates that the Recipient is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that Recipient is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

7. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

8. DEFENSE & INDEMNITY AGREEMENT:

The Recipient agrees to defend, indemnify and save harmless the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Recipient, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Recipient fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the immediate suspension or termination of this Agreement.

10. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes, amendments and/or modifications to the Agreement. Any and all agreed changes, amendments and/or modifications shall be in writing and signed by each of the parties.

11. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

12. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

13. NO THIRD PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third party beneficiary or other rights whatsoever hereunder.

14. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior written consent of the other party.

15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

16. VENUE:

In the event that any dispute arises over this Agreement, the venue of any legal action shall be that of Skagit County, Washington.

17. ATTORNEY FEES AND COSTS:

In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled to, in addition to other relief, their costs, plus reasonable attorney fees as determined by the Court.

18. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

19. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Administrator
833 South Spruce Street
Burlington, WA 98233
(360) 755-0531

With copies to the City Attorney.

Any notices to be sent to Recipient shall be sent to the following address:

John Hayes, President
Skagit Genealogical Society
PO Box 715
Conway, WA 98238

20. HEADINGS:

The headings of the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

21. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

22. AUTHORITY.

Each individual executing this Agreement on behalf of the City and the Recipient represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Recipient.

IN WITNESS WHEREOF, the City and the Recipient have executed this Agreement, consisting of ten (10) pages plus Attachments "A" and "B", as of the _____ day of _____ , 20___.

CITY OF BURLINGTON

By _____
STEVE SEXTON, Mayor

SKAGIT VALLEY GENEALOGICAL SOCIETY

By _____
John Hayes, President
Tax ID 91-1359846

Attest:

By _____
Renee Sinclair, Director of Budget and Accounting / City Clerk

Approved as to Form:

By: _____
LEIF JOHNSON, City Attorney

Approved as to Content:

By: _____
BRYAN W. HARRISON
City Administrator

ATTACHMENT: **A.** 2017 Lodging Tax Grant Application
B. Expenditure Report Worksheet

ATTACHMENT B

DRAFT Event or Tourism Facility Lodging Tax Expenditure Report Worksheet

Festivals, special events and tourism-related activities

Official Report Form is due: January 31, 2018

1. Organization: Skagit Valley Genealogical Society

2. This report covers:
Event/Activity Name: Marketing of the Skagit Genealogical Society O'Canada Genealogy Seminar Weekend event to potential tourists residing more than 50 miles from Burlington.

Dates: _____

3. Total Lodging Tax funds allocated to promotion of this event/activity $ 1,250

4. Estimated total event attendance or user count for the event/activity (Describe methodology used to determine this figure.):

_____ Local attendees

_____ Tourists (from more than 50 miles away)

_____ Total

5. Estimated total attendance for event or activity:

1. Traveled without staying: _____ (number of people who traveled more than 50 miles and stayed for the day only)
2. Overnight (paid): _____ (number of people who stayed overnight in paid accommodations)
3. Overnight (unpaid): _____ (number of people who stayed overnight in unpaid accommodations

(Describe methodology used to determine these figures.)

6. Estimated total room nights generated _____
(Describe methodology used to determine this figure.)

7. Number of conferences/weddings/conventions/etc.

_____ Locally booked
_____ Booked by "tourists" (more than 50 miles away)
_____ TOTAL

8. Any other information that demonstrates the impacts of the festival, event or tourism-related activity (please describe):

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 1

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Bryan Harrison, City Administrator

Subject: Donation of the Garl Family bible to the City of Burlington

Attachments: Letter of Acknowledgement of Donation

Public Hearing Required: YES ( ) NO (X)

SUMMARY

The grandson of Abraham and Annie Garl, Douglas Johnson, has donated the circa 1890 Garl Family bible originally belonging to his grandparents.

RECOMMENDATION

Motion to accept the donation of the Garl family bible from Douglas Johnson to the City of Burlington.

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

November 7, 2016

Douglas Johnson
1913 – 34th Avenue W.
Seattle, WA 98199

Dear Mr. Johnson,

Thank you for the donation of your family bible. The circa 1890 bible originally belonging to your grandparents, Abraham and Annie Garl will be a treasured keepsake for the City of Burlington. The Garl family contributions made to our community were significant and valued. On behalf of the City, we are pleased to accept your donation. Because of donors like you, the City is better able to serve the citizens of Burlington.

It would be our pleasure to acknowledge your donation at a public City Council meeting on Thursday, December 8 which begins at 7:00pm. If you would like to attend the meeting, please contact Burlington's City Administrator, Bryan Harrison to coordinate details: (360) 755-0535, x3 or bryanwh@burlingtonwa.gov. Be sure to let us know if you would prefer not to be acknowledged in this way.

If necessary for tax or other purposes, please also consider this letter acknowledgment of your donation. The City makes no representation of the value of the donation.

Thank you again for your donation.

Sincerely,

Edie Edmundson, Chairperson
Burlington Historic Preservation Advisory Board

Bryan Harrison, City Administrator
City of Burlington

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 2

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Bryan Harrison, City Administrator

Subject: Donation of a Hisonic HS210 Public Address System to the City of Burlington

Attachments: Letter of Acknowledgement of Donation

Public Hearing Required: YES ( ) NO (X)

SUMMARY

George and Dorothy Fowler have donated a Hisonic HS210 Public Address System. The PA along with its microphone and other accessories will be a useful tool for the City.

RECOMMENDATION

Motion to accept the donation of the Garl Hisconic HS210 PA System from George & Dorothy Fowler to the City of Burlington

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

November 7, 2016

George and Dorothy Fowler
1229 Memorial Hwy, #11
Mount Vernon, WA 98273

Dear Mr. and Mrs. Fowler,

Thank you for the donation of the Hisonic HS210 public address system. The PA along with its microphone and other accessories will be a useful tool to the advisory board in our efforts to preserve Burlington's history and to educate the community about its roots. Because of donors like you, the City is better able to serve the citizens of Burlington.

It would be our pleasure to acknowledge your donation at a public City Council meeting on Thursday, December 8 which begins at 7:00pm. If you would like to attend the meeting, please contact Burlington's City Administrator, Bryan Harrison to coordinate details: (360) 755-0535, x3 or bryanwh@burlingtonwa.gov. Be sure to let us know if you would prefer not to be acknowledged in this way.

If necessary for tax or other purposes, please also consider this letter acknowledgment of your donation. The City makes no representation of the value of the donation.

Thank you again for your donation.

Sincerely,

Edie Edmundson

Edie Edmundson, Chairperson
Burlington Historic Preservation Advisory Board

Bryan Harrison, City Administrator
City of Burlington

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 3

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016 Subject: Discussion regarding the Sterling Motor Inn

Leif Johnson, City Attorney

Attachments: _____ Public Hearing Required: YES ( ) NO (X)

SUMMARY

Discussion regarding the status of the Sterling Motor Inn.

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 4

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Subject: Ordinance revising BMC 13.08.080 relating to Delinquent Sewer Charge

Renee Sinclair, Director of Budget & Accounting

Attachments: Proposed Ordinance

Public Hearing Required: YES ( ) NO (X)

SUMMARY

BMC 13.08.080 currently establishes a penalty of $5.00 per month for delinquent sewer accounts. RCW 57.08.081(3) and RCW 36.94.150 only allow for a penalty of this type to be charged by districts and counties, not cities. Therefore, it is advisable to amend the ordinance to remove this penalty from the BMC in order to maintain consistency with the applicable RCW.

RECOMMENDATION

Motion to approve the proposed ordinance to remove the penalty for delinquent sewer accounts of $5.00 per month and authorize the Mayor's signature.

ORDINANCE NO. XXXX

AN ORDINANCE AMENDING CHAPTER 13.08.080 OF THE MUNICIPAL CODE AND ORDINANCE 1182 REGARDING PAYMENT DUE DATES AND CHARGES FOR SEWERAGE SERVICE AND TH PENALTIES FOR LATE PAYMENT THEREOF.

WHEREAS, the City of Burlington passed Ordinance No. 1182 on February 14, 1991 setting forth payment due dates and charges for sewerage services and the penalties for late payment thereof; and

WHEREAS, Ordinance No. 1182 is currently published as Burlington Municipal Code 13.08.080; and

WHEREAS, RCW 57.08.081(3) and RCW 36.94.150 do not authorize a late penalty for delinquent sewer accounts to be imposed by cities; and

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

Section 1. Ord. No. 1182, enacted 1991, as codified at section 13.08.080 of the Burlington Municipal Code is amended to read as follows:

13.08.080 Payment – Due date – Delinquency penalty.

All of the foregoing charges for sewerage services and those hereafter fixed by the council shall be paid on or before 30 days after the date of billing as shown upon the city's billing statement, and if not so paid, ~~a penalty of $5.00 per month will be made on each delinquent account. Additionally,~~ interest shall be charged against each delinquent account at a rate of eight percent per annum.

Section 2. Effective Date.

This Ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

INTRODUCED AND PASSED and approved at a regular meeting of the City Council this 8th day of December 2016.

CITY OF BURLINGTON

_____

Steve Sexton, Mayor

ATTEST:

_____

Renee Sinclair, Director of Budget & Accounting

APPROVED AS TO FORM

_____

Leif Johnson, City Attorney

Filed with the City Clerk: 11/28/2016
Passed by the City Council: 12/XX/2016
Signed by the Mayor: 12/XX/2016
Published: 12/XX/2016

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 5

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Renee Sinclair, Director of Budget & Accounting

Subject: Ordinance amending Chapter 3.64.010 of the BMC and Ordinance 1732 regarding authorizing the payment of claims or other obligations by check pursuant to RCW 35A.40.020

Attachments: Proposed Ordinance

Public Hearing Required: YES ( ) NO (X)

SUMMARY

BMC 3.64.010 currently establishes a process of payment of claims or obligations of the City of Burlington. Ordinance No. 1732, passed on January 27, 2011, establishes that the checks drawn for payment of such claims or obligations shall be drawn from Bank of America. The City no longer uses Bank of America as its public depository; this ordinance needs to be updated to reflect that change. This change will allow the Finance Director or designee to choose the public depository that best suits the needs of the City, subject to general requirements of RCW 39.58.

RECOMMENDATION

Motion to approve the proposed ordinance allowing the Finance Director or designee to choose the public depository that best suits the needs of the City and authorize the Mayor's signature.

ORDINANCE NO. XXXX

AN ORDINANCE AMENDING CHAPTER 3.64.010 OF THE MUNICIPAL CODE AND ORDINANCE 1732 REGARDING AUTHORIZING THE PAYMENT OF CLAIMS OR OTHER OBLIGATIONS BY CHECK PURSUANT TO RCW 35A.40.020.

WHEREAS, the City of Burlington passed Ordinance No. 1732 on January 27, 2011 authorizing the payment of claims or other obligations by check pursuant to RCW 35A.40.020; and

WHEREAS, Ordinance No. 1732 is currently published as Burlington Municipal Code 3.64.010; and

WHEREAS, Bank of America is identified as the City's public depository; and

WHEREAS, the City of Burlington no longer uses Bank of America as it's public depository.

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

Section 1. Ord. No. 1732, enacted 2011, as codified at section 3.64.010 of the Burlington Municipal Code is amended to read as follows:

3.64.010 Payment of claims or obligations of the city.

Pursuant to RCW 35A.40.020, payment of claims or obligations of the city shall be by check. The qualified public depository, whereon such checks are to be drawn, shall be Bank of America designated by the Finance Director or designee. The city officers authorized to sign checks shall be the mayor, mayor pro tem, finance director and accounting manager. Two signatures will be required on all checks. (Ord. 1732 § 1, 2011).

Section 2. Effective Date.

This Ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

INTRODUCED AND PASSED and approved at a regular meeting of the City Council this 8th day of December, 2016.

CITY OF BURLINGTON

_____

Steve Sexton, Mayor

ATTEST:

_____

Renee Sinclair, Director of Budget & Accounting

APPROVED AS TO FORM

_____

Leif Johnson, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Signed by the Mayor:
Published:

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 6

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Renee Sinclair, Director of Budget & Accounting

Subject: Ordinance eliminating BMC 3.28.130 regarding revolving accounts

Attachments: Proposed Ordinance

Public Hearing Required: YES ( ) NO (X)

SUMMARY

BMC 3.28.130 currently establishes a revolving account for the advance payments of travel expenses for City staff. The City no longer requires such a fund in order to efficiently manage travel expenses for employees because Department Heads have been issued City credit cards that may be used in advance for travel expenses. This fund is no longer required for City operations and it is prudent to eliminate this revolving account.

RECOMMENDATION

Motion to approved the proposed ordinance eliminating the revolving account for advance payments of travel expenses and authorize the Mayor's signature.

ORDINANCE NO. XXXX

AN ORDINANCE REPEALING ORDINANCE NO. 1146 REGARDING THE ESTABLISHMENT OF A REVOLVING FUND FOR ADVANCE PAYMENTS OF TRAVEL EXPENSES.

WHEREAS, the City of Burlington passed Ordinance No. 1146 on September 14, 1989 establishing a revolving fund for the advance payments of travel expense; and

WHEREAS, Ordinance No. 1146 is currently published as Burlington Municipal Code 3.28.130 A-C; and

WHEREAS, the City Council of the City of Burlington hereby finds that such a revolving fund is no longer necessary for the efficient operation of the City of Burlington; and

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

Section 1. Repealer.

The following is hereby repealed:

A. Ord. No. 1146, enacted 1989, as codified at section 3.28.130 of the Burlington Municipal Code, entitled:

   AN ORDINANCE for the City of Burlington creating a revolving fund for advance payments of travel expenses; authorizing transfer of $1,000.00 from the general fund to the revolving fund and setting forth a method for approval of disbursements from said revolving fund.

Section 2. Effective Date.

This Ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

INTRODUCED AND PASSED and approved at a regular meeting of the City Council this 8th day of December 2016.

CITY OF BURLINGTON

_____

Steve Sexton, Mayor

ATTEST:

_____

Renee Sinclair, Director of Budget & Accounting

APPROVED AS TO FORM

_____

Leif Johnson, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Signed by the Mayor:
Published:

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 7

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Brad Johnson, Senior Planner

Subject: Amendments to Burlington Municipal Code titles 14, 16 and 17 to implement the requirement of the updated Department of Ecology National Pollutant Discharge Elimination System (NPDES) permit.

Attachments: Staff Report with supporting exhibits

Ordinance with four attached exhibits

Planning Commission Decision

Public Hearing Required: YES ( ) NO (X)

SUMMARY

Amendments to titles 14, 16 and 17 BMC to implement the updated Department of Ecology NPDES permit.

RECOMMENDATION

Motion to accept the Planning Commission's recommendation and adopt the proposed amendments to titles 14, 16 and 17 BMC.

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1932

CITY COUNCIL STAFF REPORT

To: Burlington City Council

From: Brad Johnson, Senior Planner

Date: November 28, 2016

Subject: Storm-water and LID Code Revisions

Summary

The City's storm-water system is regulated by a "National Pollutant Discharge Elimination System" (NPDES) permit issued by the Washington State Department of Ecology (DOE). NPDES permits are intended to implement, and ensure compliance with, State and federal water quality laws. The Department of Ecology has issued a new NPDES permit which became effective on August 1, 2013. This updated permit contains a number of new conditions which will change the way the City manages storm-water and regulates development. The updated NPDES permit requires the City to update its storm-water and development regulations by January 1, 2017.

In order to implement the updated NPDES permit the City is required to adopt, by reference, the current version of DOE's "Storm-water Manual for Western Washington". This manual contains detailed prescriptive and performance based design requirements for storm-water systems. In addition the City is required to review, and update, our zoning and development regulations to ensure that "Low Impact Development" (LID) is permitted and encouraged. "LID" describes a form of development, or a system of development techniques, that minimize storm-water runoff by reducing impervious surface coverage and increasing the amount of water that is infiltrated on-site. The overall objective is to more closely mimic natural drainage conditions and reduce the amount of storm-water generated by new development.

In order to implement the changes required by the updated NPDES permit, the Planning Department and the City's Engineering Department have drafted updates and revisions to the City's Municipal Code. Specifically, changes are proposed to Title 14 BMC to adopt the current DOE storm-water manual, and Titles 16 and 17 BMC to ensure LID is incorporated into new development proposals.

The following documents are attached for your review:

1. AWC "Fact Sheets" – These bulletins were prepared by the Association of Washington Cities (AWC) and provide a good explanation of what the City is required to change and why.

2. Department of Ecology Low Impact Development Toolkit – This document identifies the basic process we were required to follow in reviewing and revising our code (begins on page 17)

3. City of Burlington Critical Areas Audit – The Planning Department created this document to track all of our critical area amendments throughout the comprehensive plan update effort. While storm-water regulations aren't specifically addressed in the GMA, there are many overlaps, so we have applied this framework to the storm-water code update. The table identifies the area or topic we are required to address, the applicable regulatory requirements, whether or not the requirement is currently addressed by BMC, and if not, the nature of proposed amendment. The table also identifies the technical guidance or scientific information that was used to support the code change. Each topic, or change, has been assigned a "change tracking number", these numbers correspond to the comment bubbles that appear in the underline and strike through code amendments attached to this memo so the justification for each code amendment can be easily determined.

4. Draft amendments to title 17 BMC – Changes have been made throughout the code, most notably new definitions have been provided for things like "impervious surface", "low impact development", and "permeable paving"; maximum impervious surface limits have been added to most zones; minor revisions have been made to the parking, site design, and landscaping chapters; and items have been added to the permit submittal requirements in chapter 17.68 BMC.

5. Draft amendments to title 16 BMC – Changes have been made to the platting section to impose specific standards on the design of private streets and roads. Changes have also been made to require easements for storm-water maintenance and inspection purposes.

6. Draft amendments to title 14 BMC – Changes have been made to adopt the current DOE storm-water manual.

7. State Environmental Policy Act (SEPA) checklist

8. SEPA Threshold Determination

In order to comply with the requirements of the updated NPDES permit, the City must take action to adopt these standards by the end of the year. Therefore, the Planning Department respectfully requests that the City Council accept the Planning Commission's recommendation and adopt the proposed amendments to the Burlington Municipal Code. Please let me know if we can provide any additional information or clarification.

STAFF REPORT
EXHIBIT "1"
AWC FACT SHEETS

STAFF REPORT EXHIBIT "1-A"

AWC Association of Washington Cities | Washington State Association of Counties

June 2013

What is happening with Low Impact Development (LID) regulations that I need to know about?

Ecology's NPDES municipal stormwater permits are requiring a large number of municipalities throughout Washington State to integrate LID into their development codes and standards within the next few years.

Until recently, LID was seen as an alternate approach to stormwater management. The current regulatory framework evolved around traditional stormwater management practices including detention ponds, pipes, and swales. However, under new stormwater permits issued by the Department of Ecology (Ecology), LID will no longer be the alternative approach, but will become the preferred method for stormwater management.

Q. When does this affect Western Washington municipalities?

Answer. It depends whether your jurisdiction is a Phase I or Phase II permittee. To find out whether your jurisdiction is a Phase I or Phase II permittee, please visit www.ecy.wa.gov/programs/wq/stormwater/municipal/MuniStrmWtrPermList.html

Phase I

The new Phase I permit came into effect on August 1, 2013 and relevant jurisdictions must fully implement LID site requirements and development codes by June 30, 2015. Phase I includes the cities of Seattle and Tacoma, and the counties of Clark, King, Pierce, Snohomish, as well as the Port of Seattle and Port of Tacoma.

Phase II

The Western Washington Phase II permit became effective on August 1, 2013. Phase II jurisdictions must integrate the new requirements at the time of their next scheduled Growth Management Act (GMA) Comprehensive Plan update. Most Phase II communities have until December 31, 2016, although a few jurisdictions have deadlines into 2017 and 2018. Phase II includes 82 cities, including Bellingham, Bremerton and Bellevue, and portions of five counties (King, Pierce, Snohomish, Kitsap and Whatcom.)

Q. When does this affect Eastern Washington municipalities?

Answer. The Eastern Washington Phase II permit becomes effective on August 1, 2014. Jurisdictions in Eastern Washington must allow LID as a viable stormwater management technique and must identify local feasibility criteria for infiltrating some runoff. This applies to all regulated small municipal stormwater systems which includes 18 cities and portions of six counties, including Spokane, Ellensburg, and Yakima.

The implementation of LID requirements in Eastern Washington is an incremental approach with a strong focus on identifying what will work in local conditions in different areas of Eastern Washington. Ecology will continue to work with jurisdictions and industry members to evaluate the results through 2019 before expanding to more prescriptive requirements.

Q. How will the new Western Washington LID requirements affect existing plans, codes, ordinances, and other regulations?

Answer. LID integration in Western Washington will involve reviewing and possibly updating existing plans, land development codes and ordinances. Updates may involve adding language or removing existing language that creates a barrier to LID implementation. A wide variety of codes, ordinances, and other regulations may be affected and each jurisdiction has the flexibility to identify what needs to be reviewed and updated. The good news is that numerous jurisdictions have already begun the work to review ordinances and identify barriers to LID. Their experiences, including lessons learned, are captured in an excellent guidance document entitled "Integrating LID into Local Codes: A Guidebook for Local Governments". (see Fact Sheet #4: Resources or visit: www.psp.wa.gov/downloads/LID_Guidebook/20120731_LIDguidebook.pdf. This document is cited in the Ecology permits as the guidance for reviewing and revising codes and ordinances.

Jurisdictions should look for ways to facilitate how developers select and use LID best management practices (BMPs) and LID principles in designing stormwater site plans. For example, bioretention will be more effective if it is coupled with modifications to road widths and parking standards. A great place to start is to look at the following types of regulations for opportunities to remove barriers to LID implementation, as well as considering the addition of new requirements, including:

- Subdivision ordinances
- Short plat ordinances
- Clearing and grading ordinances
- Stormwater ordinances
- Road standards
- Parking standards

- Utility requirements
- Landscaping ordinances
- Critical areas ordinances
- Road maintenance
- Park maintenance
- Public facilities maintenance
- Other land development and construction ordinances

Q. Where can I go for additional regulatory information?

Answer. Stormwater guidance manuals for Eastern and Western Washington explain the BMPs that need to be integrated. While the manuals are for guidance purposes, they are directly referenced in NPDES stormwater permit documents.

Western Washington Manual - *Stormwater Management Manual for Western Washington*

- Updated in late 2012 to match the NPDES permit requirements. Changes from the 2005 version include:
  - New standards for using LID to manage stormwater, either through the use of listed LID BMPs or the achievement of an hydrologic LID performance standard.
  - Revised guidance on designing infiltration facilities.
  - New and revised BMPs for stormwater source control and treatment as well as for construction.
  - Update and guidance on using the Western Washington Hydrology Model.
- The manual is available at: www.ecy.wa.gov/programs/wq/stormwater/manual.html

Eastern Washington Manual

- Eastern Washington permittees are developing an Eastern Washington LID guidance manual funded by an Ecology grant.
- The Stormwater Management Manual for Eastern Washington will be updated during the 2014-2019 permit term, in part to include LID BMPs and guidance from the Eastern Washington LID Manual.
- The 2004 (current) Eastern Washington manual is available at: www.ecy.wa.gov/programs/wq/stormwater/easternmanual/manual.html

STAFF REPORT EXHIBIT "1-B"

AWC Association of Washington Cities
Washington State Association of Counties
June 2013

Cost and planning considerations

Sweeping changes in stormwater regulations - specifically, new requirements for Low Impact Development (LID) - have city and county officials throughout Washington asking themselves the same question: "What is this going to cost us?" Given the budget realities that local governments currently face, this question is both timely and fair. Knowing what to expect in terms of costs will help cities and counties prepare for these changes.

This fact sheet - and other resources - will help answer this and other questions your jurisdiction may have. Note that regulations vary geographically from Western Washington (WWA) and Eastern Washington (EWA) to factor in regional differences.

Western Washington

Q. How much will it cost my jurisdiction to comply with new stormwater/ LID requirements?
Answer. It depends. Costs will vary depending on how big or small a jurisdiction is, whether or not it has already begun the process of integrating LID codes, standards, and plans, as well as many other factors. While costs for initial transition to LID will be higher, cities and counties can expect long-term costs to be lower.

Although no formula currently exists, the following cost considerations should be taken into account. These include:

- Regulatory transition costs: the review and update of ordinances and plans, regulations and standards; changes to permitting procedures; tracking and reporting, and staffing for inspection and maintenance
- Staff training: staff in various departments will need training to understand the new LID requirements; to review and permit LID project proposals, and; to design, install, and maintain LID facilities

It is worth noting that numerous studies have shown that LID methods can cost less to install, have lower operations and maintenance costs, and provide more cost-effective stormwater management and water-quality services than conventional practices.

Q. What areas of government services will be affected?
Answer. Some departments and programs will be affected more than others. Those that can expect the greatest amount of change include public works and planning/permitting/building. Others that will be impacted to a lesser degree include parks and fire/safety. A quick synopsis of what these departments and programs can expect follows.

Public works departments will need to integrate LID into public works projects and codes addressing stormwater runoff. Staff will need training to inspect LID projects to ensure that they were built as designed and are functioning properly. LID projects will also need to be maintained, both for city/county owned facilities and for facilities maintained by the jurisdiction. Public works staff will likely need training on maintaining LID facilities using new skills and equipment.

Planning/permitting/building will need to integrate LID requirements into development plans, codes, rules, and standards. Site plan review processes will need to be updated to reflect changes. Other codes, rules, and standards that will likely need updating include: zoning and subdivision codes; clearing and grading ordinances; street and parking standards and; stormwater and landscaping standards. Staff will likely need training on LID.

LID should be integrated into existing planning efforts and processes such as the Growth Management Act (GMA) update of comprehensive plans and critical areas ordinances. In many cases, integrating LID into local codes is consistent with actions called for in local salmon recovery plans and watershed plans, resulting in multiple benefits.

Fire and safety officials need to be involved with code and standard updates around street widths, access for emergency response, street layout within subdivisions, and street surfacing materials.

Parks staff will likely need training to assist with inspection and maintenance of vegetated stormwater best management practices (BMPs) like bioretention facilities.

Q. What support will my jurisdiction receive to help with compliance of these new requirements?
Answer. Ecology has developed a comprehensive LID Training Plan that will help jurisdictions get relevant staff trained appropriately. These trainings will address the municipal needs around LID training, from design and engineering to operations and maintenance, land use and stormwater code updates, hydrologic modeling, and others.

Eastern Washington

Question: How will the costs differ for Eastern Washington cities and counties compared to those in Western Washington?
Answer. Costs to local governments in EWA will be significantly lower than in WWA. Only a few jurisdictions will need to modify stormwater codes, and many will rely on the feasibility criteria in the Eastern Washington LID Guidance Manual. This manual, which is expected to be available by fall of 2013, funded by an Ecology grant and is designed to meet the December 2017 permit requirement.

Q: Will Eastern Washington cities and counties need staff training through the Ecology training program?
Answer. Yes, the training program is designed to help prepare and take input from EWA cities, counties and consultants for future LID requirements. Trainings will include developing and sharing information on siting and designing and maintaining LID facilities in local conditions for different areas of EWA.

What resources are available?

Numerous resources exist and others are in development to assist local governments with their transition to adopting the new requirements.

Code Integration

- Integrating LID into Local Codes: A Guidebook for Local Governments. Designed to help local government staff integrate LID requirements into local codes and standards. Available at: www.psp.wa.gov/downloads/LID_Guidebook/20120731_LIDguidebook.pdf
- Model ordinances developed as part of the development of the local codes guidebook. Model ordinances developed for 1) Grading, land clearing and tree cutting; 2) Off-street parking, 3) Planned unit development and 4) Site assessment. Available at: www.psp.wa.gov/LID_GLG.php
- Additional resources are available at the Association of Washington Cities' website: www.awcnet.org

Tools for estimating costs and benefits

- www.werf.org/bmpcost – A spreadsheet-based tool to help users identify and combine capital and ongoing maintenance costs for stormwater BMPs and LID.
- www.udfcd.org/downloads/software/BMP-REALCOST_v1.0.zip – A spreadsheet-based tool that analyzes the life cycle costs of BMPs for planning purposes.
- http://greenvalues.cnt.org/national/calculator.php - An online tool to help determine performance, costs and benefits of LID.

STAFF REPORT EXHIBIT "1-C"

AWC Association of Washington Cities | Washington State Association of Counties

June 2013

LID is coming! What does it mean to my jurisdiction?

Low Impact Development (LID) is now the preferred method for managing stormwater in urban areas of Western Washington and and is expanding to Eastern Washington urban areas in the near future. New NPDES stormwater requirements issued by the Department of Ecology (Ecology) means that municipalities will need to integrate LID into stormwater management plans upon expiration of current stormwater permits. This new requirement will affect local government activities, policies, and processes in various ways, and each jurisdiction will be responsible for making the necessary preparations.

Here are some tips for preparing your jurisdiction for the new LID requirements:

1. Identify budget needs

Making the transition to LID may introduce transitional costs for local governments, including costs for reporting, internal procedure and design criteria changes, new tools and equipment, and additional staffing. Private developers may also incur costs for formally integrating LID as part of the standard development process.

Jurisdictions will need to consider the costs that may be incurred from the new LID requirements and identify opportunities for financing these costs in upcoming budget deliberations. See Fact Sheet #3 "Cost and Planning Considerations" for more detailed information.

2. Find out your jurisdiction's timeline

Timeline

Western Washington municipalities must integrate new permit requirements by:

- **June 30, 2015:** Phase I cities and counties (Western WA only)
- **Dec 31, 2016:** Most Phase II Western WA municipalities
- **June 30, 2017:** Cities of Kelso, Longview, and Centralia and Cowlitz County
- **June 30, 2018:** City of Aberdeen

Eastern Washington municipalities must implement the new permit requirements by December 31, 2017.

See Fact Sheet #2 "Regulation - What do I Need to Know?" for more detailed information about timelines, or go online to www.ecy.wa.gov/programs/wq/stormwater/municipal/index.html

3. Effective planning starts now

- Identify project team and lead staff for ordinance work
- Determine staffing needs and impacts for implementing requirements
- Determine budget needs and impacts to support transition and ongoing implementation
- Facilitate interdepartmental coordination when incorporating these new LID requirements to ensure consideration of the most effective and efficient organizational approach

See Fact Sheet #3 "Cost and Planning Considerations" for more detailed information.

4. Incorporate LID sooner rather than later

Starting the planning process now now will provide sufficient time and flexibility to engage your community and identify best strategies. The benefits of starting now are:

- Start slowly to allow time to see what works for your jurisdiction
- Educating development community stakeholders early can ease the transition to LID
- Planning ahead for difficulties can ensure that you meet your permit deadlines on time
- Facilitating interdepartmental coordination ensures efficiencies across departments
- Benefit from the experience of other jurisdictions
- Use resources available through Ecology to help train staff

5. Review your jurisdiction's regulations and begin integrating LID efforts

Removing barriers to the implementation of LID through planning, code and ordinance updates is an important step in preparing for these permit revisions. Existing local codes, comprehensive plans, ordinances, and regulations may be affected, such as:

- Subdivision ordinances
- Zoning ordinances
- Clearing and grading ordinances
- Landscaping ordinances
- Utility requirements
- Road and parking standards

Early review of your jurisdiction's regulations and assessment of necessary changes can facilitate LID integration across codes and can reveal opportunities for additional efficiencies.

6. Encourage your jurisdiction to get training

To prepare your jurisdiction, it is important to identify which staff will be affected by the new requirements and schedule them for trainings. Ecology is providing tools to make the transition easier.

The new LID requirements will affect a variety of local government staff, including:

- Planning departments
- Public Works staff
- Operations and maintenance crews
- Capital project design teams

7. Engage the community

LID approaches will change how development occurs. It is critical for local governments to employ public outreach strategies that engage the community early and often around how LID works, the important role it plays in managing stormwater, and its multiple benefits. Efforts should be tailored specifically to the local community as requirements vary across the state.

STAFF REPORT
EXHIBIT "2"
DOE LID TOOLKIT

Low Impact Development

Code Update and Integration Toolkit

Worksheets and resources to help Phase II jurisdictions integrate Low Impact Development into local codes, rules, standards, and other enforceable documents

DEPARTMENT OF ECOLOGY
State of Washington

STAFF REPORT
EXHIBIT "2"

JULY 2014

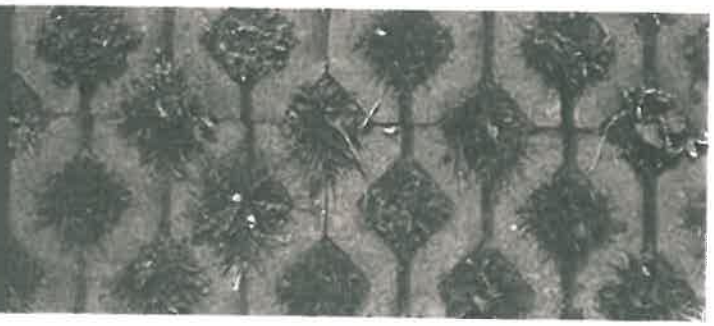


Table of Contents

Introduction 3

About this toolkit 3

How to use this toolkit 3

Implementation Worksheet for Integrating LID into Local Codes 5

Purpose of the Worksheet 5

Step 1 – {Who} Assemble the Project Team 6

Step 2 – {What} Understand General Topics to Address 7

Step 3 – {Where} Review Existing Codes and Standards 11

Step 4 – {Fill the gaps} Amend Existing Codes and Develop New Codes 13

Step 5 – {Review and Adopt} Public Review and Adoption Process 14

Step 6 – {Implement} Ensure Successful Implementation 15

Review Form Example Template 16

Topic: Site Planning and Assessment 16

Topic: Healthy Soils 16

Topic: Landscaping, Native Vegetation, and Street Landscaping 17

Topic: Hard and Impervious Surfaces 18

Topic: Bulk and Dimensional Considerations 18

Topic: Clearing and Grading 19

Topic: Street and Roads 20

Topic: Parking 21

Topic: Design Guidelines and Standards 22

Topic: Stormwater Management and Maintenance 22

Topic: Subdivision and Planned Unit Development (PUD) 23

Topic: Critical Areas and Shoreline Management 23

Subtopic Focus Sheets 24

Purpose 24

Focus on Site Planning and Assessment 25

Focus on Healthy Soils 26

Focus on Landscaping, Native Vegetation, and Street Landscaping 27

Focus on Hard and Impervious Surfaces 28

Focus on Bulk and Dimensional Considerations 29

Focus on Clearing and Grading 31

Focus on Streets and Roads 32

Focus on Parking 35

Focus on Design Guidelines and Standards 37
Focus on Stormwater Management and Maintenance 38
Focus on Subdivision and Planned Unit Development (PUD) 39
Focus on Critical Areas and Shoreline Management 40
Code and Ordinance References (Western and Eastern WA) 41
Communicating with Your Elected Officials and City Managers (Western WA) 43
Communicating with Your Elected Officials and City Managers (Eastern WA) 47
Resource List for Jurisdiction Staff 52
General LID Resources 52
LID Integration into Codes 52
LID Case Studies 53
Barriers to Implementing LID 53

Introduction

About this toolkit

The new Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) general permits require widespread adoption of Low Impact Development (LID) techniques into local development codes. These new practices and codes require significant changes in the way the private development community plans, designs, and builds sites, as well as the way the public sector enforces, operates, maintains, and inspects stormwater facilities.

To help jurisdictions comply with the new NPDES permits, the Washington State Department of Ecology is offering eight **LID Code Update and Integration** trainings throughout the state. These trainings are designed to help Western Washington Phase II jurisdictions update and revise their codes to require and allow for the use of LID. In Eastern Washington, trainings will provide an opportunity for Phase II jurisdictions to voluntarily update their codes and better understand how to incorporate LID into future projects.

This toolkit was assembled to accompany these **LID Code Update and Integration** trainings. The following pages provide jurisdictional staff with tools such as worksheets, sample codes, and other resources to ease the integration process of LID into local codes, rules, standards, and other enforceable documents.

How to use this toolkit

This toolkit is organized into six sections designed to assist jurisdictional staff and streamline the code update process:

- **Implementation Worksheet for Integrating LID into Local Codes** – This checklist identifies the six steps described in the *Integrating LID into Local Codes: A Guidebook for Local Governments,* and provides a list of easy to follow actions for each of the steps.
- **Code Review Form Template** - This form provides a template for tracking the review process for integrating LID into local codes, rules, standards, and other enforceable documents.
- **Subtopic Focus Sheets**- These focus sheets provide additional information on the importance of each subtopic and include questions to consider during the review process. These sheets should be used in conjunction with the **Code Review Form.**

- **Code and Ordinance References** – This section provide examples of regional and national codes and ordinances divided by relevance for Eastern and Western Washington jurisdictions.
- **Communicating with Your Elected Officials and City Managers** – This section provides tips and talking points for engaging elected officials and city managers in the code update and adoption process.
- **Resource List for Jurisdiction Staff** – This list includes other relevant resources developed to help jurisdictions integrate LID including case studies.

Implementation Worksheet for Integrating LID into Local Codes

Six Steps to LID Integration

Purpose of the Worksheet

The purpose of this checklist is to identify key concepts from *Integrating LID into Local Codes: A Guidebook for Local Governments*[1] ("the Guidebook") for Phase II municipal stormwater managers in Washington as they incorporate low impact development (LID) into local codes, rules, standards, and other enforceable documents. The checklist identifies the six steps described in the Guidebook and provides a list of easy to follow actions for each of the steps. The six steps are:

Step 1 – {Who} Assemble the Project Team
Step 2 – {What} Understand General Topics to Address
Step 3 – {Where} Review Existing Codes and Standards
Step 4 – {Fill the Gaps} Amend Existing Codes and Develop New Codes
Step 5 – {Review and Adopt} Public Review and Adoption Process
Step 6 – {Implement} Ensure Successful Implementation

[1] Puget Sound Partnership, 2012, Integrating LID into Local Codes: A Guidebook for Local Governments, prepared by AHBL for the Puget Sound Partnership, July 2012.

Step 1 – {Who} Assemble the Project Team

Who should be part of your Project Team?

A comprehensive project team of key internal team members and potential key external stakeholders is critical to the process of integrating and adopting LID into local codes. The initial review and update of existing codes and regulations will largely be conducted by internal team members. External stakeholders will be involved in providing comments and feedback on the proposed changes to help facilitate the adoption process. Certain external stakeholders may also be involved in the initial review state. In addition, consider involving participants (internal and external) who have expressed reservations about LID as they will help the team identify and address concerns and barriers early in the process. The size of your team will vary depending on the size of your jurisdiction and the extent of your required updates.

☐ Designate a project team lead

Internal Team (review & update codes)

☐ Identify internal team members involved in the following:

- Public Works (stormwater, street, grading and site work, public buildings)
  - Stormwater engineering review
  - Streets/roads engineering
  - Public facility operations
  - Maintenance and inspection
- Planning
  - Development review
  - Policy
  - Construction inspection
- Fire and public safety (police) (street widths, access for emergency response, street layouts, and street surfacing)
- Building Department (green roofs, minimal excavation foundations, rainwater re-use systems)
  - Inspection and review

☐ Consider adding an internal team member from each of the following:

- Council members or commissioners, including planning commission
- City manager or equivalent
- Natural resources
- Parks department
- Legal department

External Stakeholders (comment & facilitate approval process)

☐ Consider involving external stakeholders from groups such as:

- State/local health department
- Utility providers (water, sewer, etc.)
- Agencies owning and maintaining streets (County, WSDOT)
- Site designers/engineers
- Major property owners/developers
- Citizen's or neighborhood groups
- Environmental groups
- Special districts

☐ Fill in the following table with your project team:

Name	Job title	Department	Contact Information	Role on Team

☐ Bring the internal project team up to a common level of understanding of LID and the code update objectives by attending trainings and using the resources listed in the *Guidebook*

Step 2 – {What} Understand General Topics to Address

What topics should your project team review?

Once the project team is assembled and a common level of understanding of LID has been established among internal project team members, the next step is to establish a work program that identifies **what** topics of a jurisdiction's codes, policies, standards, and enforceable documents need to be updated to integrate LID. Topics will vary from jurisdiction to jurisdiction. Examples of topic areas that affect the use of LID are described in the table below (see Table 1. Major Topic Areas, Associated Review Categories, and Recommended Subtopics). The table should be modified to suit the needs of each jurisdiction. Once the table is complete, the topic areas and subtopics will be used to review existing code, policies, standards, and enforceable documents in Step 4.

Review Categories

The Western Washington National Pollutant Discharge Elimination System (NPDES) Phase II Permit (Phase II Permit) requires your report to the Washington Department of Ecology (Ecology) to be organized into the following three review categories:

- Measures to minimize impervious surfaces
- Measures to minimize loss of native vegetation
- Other measures to minimize stormwater runoff

The Guidebook provides a list of major topic areas that should be reviewed. Each of these major topic areas falls into one or more of the review categories outlined in the NPDES Phase II Permit (see graphic above). Recommended subtopics for review are identified under each of the major topic areas listed below.

☐ Review and modify the table below to identify additional topics areas and subtopics that may be relevant to your jurisdiction. Each topic area and subtopic listed in the table below will help you identify areas of your code (and other documents) that need to be updated to integrate LID. **(See Subtopic Focus Sheets to learn more about each subtopic)**

Table 1. Major Topic Areas, Associated Review Categories, and Recommended Subtopics

Site Planning and Assessment	- Building locations - Parking area locations - Stormwater treatment/flow control BMP/facility locations - (add subtopic as necessary)
Healthy Soils	- Protecting and restoring healthy soil - Compost amendments - Compaction - (add subtopic as necessary)
Landscaping, Native Vegetation, and Street Landscaping	- Tree preservation - Screening - Landscaping requirements for street frontages - Landscaping requirements for parking lots - (add subtopic as necessary)
Hard and Impervious Surfaces	- Maximum impervious surface allowances - Shared driveways - Minimum driveway width - Use of permeable pavement for driveways - Two-track driveway design - (add subtopic as necessary)
Bulk and Dimensional Considerations	- Building setbacks - Height limits - Maximum square footage - Clustering - (add subtopic as necessary)
Clearing and Grading	- Protecting existing infiltration - Conserving native vegetation/soils - Construction sequencing - (add subtopic as necessary)

Streets and Roads	
	- Travel lane widths - Right-of-way (ROW) widths - Use of permeable pavement for streets and roads - Placement of utilities under paved areas in the ROW - Required turn around area (e.g., Fire, USPS) - Sidewalk widths - Sidewalk slope - Minimum cul-de-sac radius - Alternatives to cul-de-sacs - (add subtopic as necessary)
Parking	
	- Minimum/maximum parking ratios - Use of permeable pavement for parking lots (e.g., parking stalls, driving aisles) - Parking stall dimensions - Driving aisle dimensions - Off-street parking regulations - (add subtopic as necessary)
Design Guidelines and Standards	
	- Trees and bioretention - Continuous curb requirements - Curb radii - (add subtopic as necessary)
Stormwater Management and Maintenance	
	- Maintenance provisions - Inspection access (covenants, easements) - Enforcement - (add subtopic as necessary)
Subdivision and Planned Unit Development	
	- Individual open space requirements - Passive vs. active open space requirements - Opportunities for Performance Based Designs (PUDs) - (add subtopic as necessary)
Critical Areas and Shoreline Management	
	- Allowance of LID best management practices (BMPs) in critical areas/shorelines when compatible - (add subtopic as necessary)
(Add Topic Area as necessary)	
- (Add review category symbol(s))	- (Add subtopics as necessary)

Note – the discussion of topic areas and subtopics in Step 2 will typically include comments from various team members on specific jurisdictional codes and documents. The team lead (or designee) should take notes during the Step 2 discussions to expedite the review process in Step 3.

Step 3 – {Where} Review Existing Codes and Standards

Where are the gaps?

Once your internal team members identify **what topics** should be addressed to fully integrate LID in Step 2, the next step is to determine **where those topics occur** in a jurisdiction's policies, regulatory code, and standards. This step focuses on the review of codes and standards against the identified topics from Step 2 to determine where changes are needed for LID integration of LID. You may want to consider reviewing the LID report submitted to Ecology as part of your 2011 Annual Report to revisit barriers to LID that your jurisdiction has already identified.

☐ Develop a list of codes, rules, standards, and enforceable documents for review (**Complete Table 2. Document Review – Existing Codes and Standards below**). Examples include:

- Comprehensive or Planning Documents
  - Stormwater Comprehensive or Management Plans
  - City or County-wide Comprehensive Plan
- Standard Details
  - Standard Plans and Specifications
- Engineering and Street Standards
- Development Design Guidelines and Requirements
- Zoning, Development, and Subdivision Code
  - Street and Sidewalk Use
  - Stormwater Code
  - Land Use Code
  - Building Code
  - Mechanical Code
  - Plumbing Code
  - Housing Code
  - Subdivision Code
  - Grading Code
  - Fire Code
  - LID Code
  - Tree and Vegetation Management Requirements
  - Landscaping Requirements
  - Right-of-Way Requirements

Look at the Subtopic Focus Sheets for further detail

☐ Assign internal team members specific documents to conduct an initial review using the topics identified in Step 2 and fill out a review form for **each** code, rule, standard, or enforceable document from the list you have created above (**See Review Form**)

☐ When reviewing each code, rule, standard, or enforceable document, make sure to reference the following LID Considerations:

Document Name	LID Considerations
Comprehensive or Planning Documents	- Goals and policies should promote LID - Goals and policies that present barriers to LID should be modified or removed - Policies that support dual use of landscaping or open space and LID should be added - Policies should support minimizing impervious areas
Subdivision Code	- Allow or require use of LID, where feasible - Include measures to preserve on-site natural features, native vegetation, open space, sensitive environmental areas - Encourage clustering and minimizing impervious areas - Require applicants to conduct LID Site Analysis - Include soil testing for individual facility design
Zoning Code	- Include native vegetation retention standards based on land use and density - Include plant lists, replanting standards, management plan specifications, and maintenance requirements for vegetation - Include tree protection, conservation, and planting standards - Promote preservation of open space where possible - Include impervious surface standards for a range of zoning classifications - Include building footprint, height limits, and setbacks that help meet density goals - Site Plan Review Code should include LID site analysis components - Parking Code should allow permeable/pervious surfaces in parking areas and should look for opportunities to reduce the number and/or size of parking spaces - Encourage clustering development
Engineering and Street Standards	- Outline construction sequencing methods, phasing, and/or bonding for protecting LID BMPs during construction - Include maintenance responsibilities for any LID BMPs - Include provisions for including LID on small residential sites where flow control and/or treatment of stormwater may not be required - Eliminate requirement for approval of variances or deviations to accommodate LID in the public right-of-way - Should not present a barrier to LID (for example, require curb and gutter on all streets) - Include standard to minimize impervious surface and provide opportunity to manage stormwater using LID techniques - Should not conflict with other goals or code (such as International Fire Code, native vegetation retention, minimizing site disturbance)
Standard Details	- Include street sections that shows LID facilities, parking lanes, driving lanes, and sidewalks - Include cul-de-sac plan that includes pervious sidewalks and bioretention islands or other LID facilities - Include details for curb cuts, vertical curb with breaks - Include location of hydrants and other utilities within an LID road right-of-way - Include landscape planting templates for sidewalks and curb extensions, - Include plans and details for LID facilities incorporated into curb extensions, bioretention facilities, swales, permeable pavement, and other LID facilities

- ☐ Meet with others on your internal team to discuss the review results
- ☐ Finalize review forms based on input from your internal team
- ☐ Consider presenting your results to Council or external stakeholders
- ☐ Fill in the following table with your list of documents and the date that the initial and final reviews were completed (this information is useful to track so that it can be incorporated into your report to Ecology):

Table 2. Document Review – Existing Codes and Standards

Document Name	Date	Initial Review Completed	Final Review Completed	Name & Title

Step 4 – {Fill the gaps} Amend Existing Codes and Develop New Codes

Take steps to FILL THE GAPS

After the project team identifies **where** there are gaps and barriers in existing codes and standards, the next step is to **fill the gaps** and remove any barriers by amending existing codes and developing new code language.

- ☐ Refer to the LID considerations listed under Step 3, the subtopic focus sheets, and the examples in the step 4 of the Guidebook to redline and update each code, standard, and enforceable document to integrate LID
- ☐ Update the Review Form to reflect what actions were taken to address gaps and barriers
  - Amend existing code
  - Develop new code
  - Decided not to incorporate any changes (and why)
- ☐ Fill in Table 3. Address the gaps with your list of documents and the actions that were taken to address gaps and barriers (this information is useful to track so that it can be incorporated into your report to Ecology):

Table 3. Addressing the Gaps

Document Name	Brief Summary of Revisions Made

☐ Consider presenting your results to Council or external stakeholders

Step 5 – {Review and Adopt} Public Review and Adoption Process

Make sure that codes and standards have been thoroughly reviewed before starting the adoption process

Once the project team has developed new codes or modified existing codes and standards to **fill the gaps** in addressing LID, the next step is to **review and adopt** the new codes and standards. Each jurisdiction has their own process for reviewing and adopting codes and standards, so only the basic steps are provided here.

☐ Understand the amendment process schedule

☐ Begin amendment process early to allow for rounds of internal and external review

Internal Review:

☐ Department Managers should review proposed changes to the standards

☐ Planning commissions should be briefed on the proposed changes to the standards

External Review:

☐ **Stakeholder input:** Provide an informal review opportunity for external team members and stakeholders (identified in Step 1) of proposed code changes prior to adoption. Provide background information and proposed code changes. Make any changes to amendments based on input.

☐ **Public Review:** Conduct a formal public review according to your jurisdiction's specific formal public review process. Consider using a variety of outreach and communication tools to reach different target audiences.

Step 6 – {Implement} Ensure Successful Implementation

Implement the changes

After the new regulations have completed the public review and adoption process and standards have been administratively updated, the next step is to **implement** the new regulations and standards successfully.

- ☐ Identify and prioritize a list of implementation needs including training, internal and external outreach, application materials, enforcement mechanisms, and any other needs identified by the team
- ☐ Create a timeline to ensure that staff have adequate time to address LID project review, implementation, and ongoing maintenance
- ☐ Consider sharing training resources and successful approaches with other local jurisdictions
- ☐ Train internal staff on key changes to codes, rules, standards, and enforceable documents
- ☐ Train external applicants, designers, and contractors on key changes to codes, rules, standards, and enforceable documents
- ☐ Review and revise application materials, permit review bulletins, process flow charts, and permitting information available to the public

Review Form Example Template

Name of Document/Code/Policy Reviewed:_____

Purpose of Review Form: The purpose of this review form is to provide a template for tracking the review process for integrating low Impact Development (LID) into local codes, rules, standards, and other enforceable documents. A separate form is recommended for each code chapter (or subsection) and document that is reviewed. The form is organized into the major topic categories identified in *Integrating LID into Local Codes: A Guidebook for Local Governments*. Recommended subtopics for review are identified under each of the major topic categories. Refer to the **Subtopic Focus Sheets** for more information on the importance of each subtopic and questions to consider during the review process. A similar form was successfully used by the City of Seattle and the City of Arlington during their review processes. This form is not required to be used for permit compliance and can be modified, as needed, to incorporate additional review topics or tracking items.

Step 2—{WHAT}		Step 3—{WHERE}				Step 4—{Fill the GAPS}
WHAT topics did you review?		WHERE are the gaps?				What steps have you taken to FILL THE GAPS?
Topic/Sub Topics	*Topic Reviewed*	*Conflict/Gap Identified*	*Section/Page Reference*	*Summary of Existing Text*	*Summary of Conflict/Gap*	*Steps Taken*
Topic: Site Planning and Assessment						
Building locations	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Parking area locations	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Stormwater treatment/flow control BMP/facility locations	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Topic: Healthy Soils						
Protecting and restoring healthy soil	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Step 2—{WHAT}		Step 3—{WHERE}				Step 4—{Fill the GAPS}
WHAT topics did you review?		WHERE are the gaps?				What steps have you taken to FILL THE GAPS?
Topic/Sub Topics	*Topic Reviewed*	*Conflict/Gap Identified*	*Section/Page Reference*	*Summary of Existing Text*	*Summary of Conflict/Gap*	*Steps Taken*
Compost amendments	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Compaction	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Topic: Landscaping, Native Vegetation, and Street Landscaping

Tree preservation	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Screening	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Landscaping requirements for street frontages	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Landscaping requirements for parking lots	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Step 2—{WHAT}		Step 3—{WHERE}				Step 4—{Fill the GAPS}
WHAT topics did you review?		WHERE are the gaps?				What steps have you taken to FILL THE GAPS?
Topic/Sub Topics	*Topic Reviewed*	*Conflict/Gap Identified*	*Section/Page Reference*	*Summary of Existing Text*	*Summary of Conflict/Gap*	*Steps Taken*
Topic: Hard and Impervious Surfaces						
Maximum impervious surface allowances	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Shared driveways	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Minimum driveway width	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Use of permeable pavement for driveways & driveway encroachments	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Two-track driveway design	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Topic: Bulk and Dimensional Considerations						
Building setbacks	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Step 2—{WHAT}		Step 3—{WHERE}				Step 4—{Fill the GAPS}
WHAT topics did you review?		WHERE are the gaps?				What steps have you taken to FILL THE GAPS?
Topic/Sub Topics	*Topic Reviewed*	*Conflict/Gap Identified*	*Section/Page Reference*	*Summary of Existing Text*	*Summary of Conflict/Gap*	*Steps Taken*
Height limits	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Maximum square footage	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Clustering	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Topic: Clearing and Grading

Protecting existing infiltration	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Conserving native vegetation/soils	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Construction sequencing	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Step 2—{WHAT}		Step 3—{WHERE}				Step 4—{Fill the GAPS}
WHAT topics did you review?		WHERE are the gaps?				What steps have you taken to FILL THE GAPS?
Topic/Sub Topics	*Topic Reviewed*	*Conflict/Gap Identified*	*Section/Page Reference*	*Summary of Existing Text*	*Summary of Conflict/Gap*	*Steps Taken*
Topic: Street and Roads						
Travel lane widths	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Right-of-way (ROW) widths	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Use of permeable pavement for streets and roads	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Placement of utilities under paved areas in the ROW	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Required turn around area (e.g., Fire, USPS)	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Sidewalk widths	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Sidewalk slope	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Step 2—{WHAT}		Step 3—{WHERE}				Step 4—{Fill the GAPS}
WHAT topics did you review?		WHERE are the gaps?				What steps have you taken to FILL THE GAPS?
Topic/Sub Topics	*Topic Reviewed*	*Conflict/Gap Identified*	*Section/Page Reference*	*Summary of Existing Text*	*Summary of Conflict/Gap*	*Steps Taken*
Use of permeable pavement for sidewalks	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Minimum cul-de-sac radius	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Alternatives to cul-de-sacs	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Topic: Parking

Minimum/maximum parking ratios	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Use of permeable paving	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Parking stall dimensions	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Driving aisle dimensions	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Step 2—{WHAT}		Step 3—{WHERE}				Step 4—{Fill the GAPS}
WHAT topics did you review?		WHERE are the gaps?				What steps have you taken to FILL THE GAPS?
Topic/Sub Topics	*Topic Reviewed*	*Conflict/Gap Identified*	*Section/Page Reference*	*Summary of Existing Text*	*Summary of Conflict/Gap*	*Steps Taken*
Off-street parking regulations	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Topic: Design Guidelines and Standards

Trees and bioretention	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Continuous curb requirements	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Curb radii	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Topic: Stormwater Management and Maintenance

Maintenance Provisions	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Inspection Access (covenants easements)	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Step 2—{WHAT}		Step 3—{WHERE}				Step 4—{Fill the GAPS}
WHAT topics did you review?		WHERE are the gaps?				What steps have you taken to FILL THE GAPS?
Topic/Sub Topics	*Topic Reviewed*	*Conflict/Gap Identified*	*Section/Page Reference*	*Summary of Existing Text*	*Summary of Conflict/Gap*	*Steps Taken*
Enforcement	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Topic: Subdivision and Planned Unit Development (PUD)

Individual open space requirements	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Passive vs. active open space requirements	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :
Opportunities for Performance Based Designs	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Topic: Critical Areas and Shoreline Management

Sub Topic	*Topic Reviewed*	*Conflict/Gap Identified*	*Section/Page Reference*	*Summary of Existing Text*	*Summary of Conflict/Gap*	*What steps have you taken to FILL THE GAPS?*
Allowance of LID BMPs in critical areas/shorelines when compatible	☐ Yes ☐ No ☐ Does not apply	☐ Yes ☐ No ☐ Does not apply				☐ Amended existing code ☐ Developed new code ☐ Decided not to incorporate any changes If you decided not to incorporate any changes, explain why :

Additional Notes:

Subtopic Focus Sheets

Purpose

Purpose of Subtopic Focus Sheets: The purpose of these subtopic focus sheets is to provide additional information on the importance of each subtopic and questions to consider during the review process. These subtopic focus sheets are organized into the major topic categories identified in *Integrating LID into Local Codes: A Guidebook for Local Governments* and should be used in conjunction with the example **Review Form**. Use of these subtopic focus sheets is not required for permit compliance.

Integrating LID into Local Codes

Focus on Site Planning and Assessment

Subtopic	Why is this important?	What should I consider during my review?
Building locations	Locating buildings away from critical areas and soils that provide effective infiltration to preserve and protect these areas and provide potential locations for infiltrating LID facilities	- Can the code be revised to require that buildings are located away from critical areas and preserve soils with good infiltration potential for stormwater management?
Parking area locations	Locating parking areas to minimize site grading can preserve natural water courses, native vegetation, and native soils on site	- Can the code be revised to encourage positioning parking areas near the entrance to the site to reduce long driveways? - Are there any incentives to developers to provide parking within garages rather than surface parking lots?
Stormwater treatment/flow control BMP/facility locations	Infiltrating LID facilities should be constructed in soils that have good infiltration potential. Stormwater management facilities should be located along the natural drainage path to reduce site grading and maintain natural hydrology of the site.	- Can the code be revised to require infiltrating LID facilities in areas with good infiltration potential? - Can the code include a site planning approach that emphasizes prioritizing the location of stormwater management facilities on site?

Integrating LID into Local Codes

Focus on Healthy Soils

Subtopic	Why is this important?	What should I consider during my review?
Protecting and restoring healthy soil	Protecting soils during construction activities will preserve their ability to absorb and infiltrate and disperse stormwater runoff	- Is a soil management plan in place that identifies soil protection zones and describes quantities of compost amendment? - Are protection areas required to be fenced?
Compost amendments	Compost can be used to amend soil and provide additional nutrients that aid in uptake of pollutants	- Can code be revised to require amendment of disturbed soils? - Could compost be provided to incentivize small projects?
Compaction	The infiltration potential is reduced when soils are compacted, resulting in lower infiltration rates and increased runoff and erosion	- Can the code be revised to include types of equipment for clearing and grading that minimize compaction of soils? - Can clearing, grading, and soil disturbance outside the building footprint be limited or restricted? - Consider requiring contractors to reestablish permeability of soils that have been compacted by construction vehicles.

Resources:

Building Soil: Guidelines and Resources for Implementing Soil Quality and Depth BMP T5.13: http://www.buildingsoil.org/

Integrating LID into Local Codes

Focus on Landscaping, Native Vegetation, and Street Landscaping

Subtopic	Why is this important?	What should I consider during my review?
Tree preservation	Trees provide flow control by intercepting stormwater. Currently, many codes focus on preservation of significant or heritage trees instead of conifers.	- Are there regulatory controls over tree clearance and removal of mature trees/forest stands? - Can the code be revised to place greater emphasis on preservation of conifers? - Can the code include strategies to orient retained vegetation and open space to disconnect impervious surfaces?
Screening	Codes typically focus on screening in terms of aesthetics (reducing visual impacts), but screening can also emphasize native vegetation preservation or replanting, which can improve stormwater infiltration and dispersion.	- Can the screening requirements be revised to include provisions for retaining native vegetation or replanting? - Can vegetation planted within LID facilities count towards site, parking, or perimeter screening requirements?
Landscaping requirements for street frontages	Codes often only include requirements for street trees, not LID or other vegetation between the sidewalk and the street.	- Can the street frontage code be revised to include other landscaping between the sidewalk and the street? - Can vegetation planted within LID facilities count towards open space or landscaping requirements?
Landscaping requirements for parking lots	Codes may not include landscaping requirements for parking lots. Trees can provide flow control by intercepting stormwater, reduce the heat island effect, and also results in a reduction in total impervious area.	- Are minimum tree canopy or vegetation requirements specified for parking lots?

Integrating LID into Local Codes

Focus on Hard and Impervious Surfaces

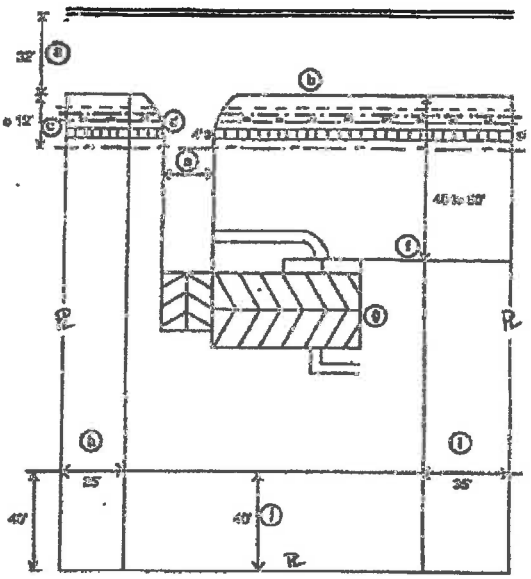
Subtopic	Why is this important?	What should I consider during my review?
Maximum impervious surface allowances	High impervious surface allowances result in larger volumes of stormwater runoff.	- Does the code include maximum impervious surface limits for different land use types? - Can the maximum impervious surface limits be reduced in residential areas? - Can a portion of the impervious surface be designated as non-pollution generating impervious surface?
Shared driveways	Individual driveways account for a large portion of the total impervious area (up to 20 percent) in residential areas. Shared driveways can reduce overall lot impervious surface coverage.	- Are shared (or common) driveways for multiple single-family dwellings, multi-family structures, and/or commercial development allowed? - Can the use of shared driveways (for up to 4 or 6 houses) be incorporated?
Minimum driveway width	A modest reduction in driveway width requirements can result in a significant reduction in total impervious area.	- Is a minimum driveway width specified? - Can the minimum driveway width be reduced to 9 feet or less (one lane), 18 feet (two lanes), or 16 feet (shared driveway)?
Use of permeable pavement for driveways	Permeable pavement is applicable to low-volume, low-traffic surfaces, and allows for infiltration of stormwater.	- Are alternative surfaces (other than conventional concrete or asphalt) allowed? - Can the code be revised to include incentives for use permeable pavement for driveways?
Two-track driveway design	Providing a pervious strip in a standard driveway design can reduce impervious surface.	- Is a two-track driveway design allowed?

Integrating LID into Local Codes

Focus on Bulk and Dimensional Considerations

Subtopic	Why is this important?	What should I consider during my review?
Building setbacks	Front yard setbacks (which dictate how far houses must be from the street) can extend driveway length and increase the impervious coverage of the lot. Side yard setbacks and wide frontages increase the total road length and overall impervious coverage.	- Can setback distances be minimized in residential areas to increase flexibility in regard to house location? (See Figure 12.1 for the geometry of a typical 1-acre lot) - Can frontage areas requirements be reduced in open space residential developments? - Are irregular lot shapes (e.g., pie, flag, zipper, angled z) allowed? (See Figure 12.2 for examples of irregular lot shapes)
Height limits	Limiting building height can result in increased building footprints. Encouraging developers to build up, instead of out, can help meet density goals and reduce impervious coverage.	- Can the maximum building height be increased if building footprints are reduced?
Maximum square footage	Large building footprints result in less available area for LID facilities and native vegetation/ landscape retention.	- Can code be revised to incentivize or encourage minimizing building footprints?
Clustering	Clustering of buildings in subdivisions can reduce the total site footprint and help maintain natural hydrologic characteristics of the site.	- Are cluster development designs allowed? - Are cluster development designs allowed "by right" (no special permit or zoning variance required)? - Are flexible site design criteria available for developers that utilize cluster design options?

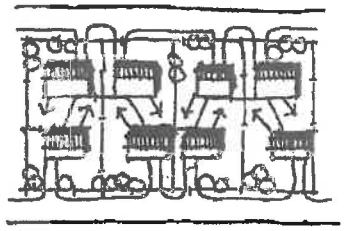
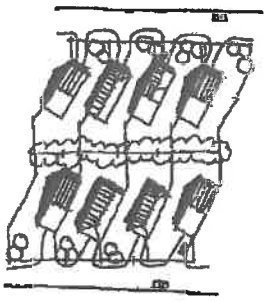
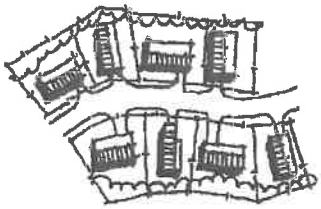
Figure 12.1: Geometry of a Typical One Acre Lot (Schueler, 1995)



LEGEND

- a minimum street width
- b minimum lot frontage
- c minimum right-of-way, one side of the street, not including pavement
- d minimum sidewalk width
- e minimum driveway width
- f minimum front yard setback
- g maximum lot footprint
- h side yard setback
- i side yard setback
- j rear yard setback

Figure 12.2: Nontraditional Lot Designs (ULI, 1992)

Zipper Lots	Angled Z-Lots	Alternative Lot Widths
		

Integrating LID into Local Codes

Focus on Clearing and Grading

Subtopic	Why is this important?	What should I consider during my review?
Protecting existing infiltration	Protecting existing infiltration rates will preserve natural hydrologic characteristics of the site.	- Do clearing and grading regulations include provisions for minimizing site disturbance and protecting native vegetation and soils?
Conserving native vegetation/soils	Native vegetation and soils provide natural stormwater management and pollutant removal.	- Is there an existing ordinance that requires or encourages the preservation of natural vegetation? - Is wholesale clearing (mass grading) or sites prohibited or limited? - Are developments required to set aside an undeveloped portion of the site? - Are there specific native vegetation retention standards based on land use and density? - Is there any incentive to developers or landowners to conserve land (open space design, density bonuses, stormwater credits, or lower property tax rates)? - Does the native vegetation definition (or other code section) include minimum tree density, minimum retention requirements, protecting native vegetation areas, replanting requirements, soil amendment standards, management plan specifications, and maintenance requirements?
Construction sequencing	Proper construction sequencing can minimize construction impacts on future LID facilities by reducing potential for soil erosion and compaction.	- Does the code include methods for effective construction sequencing to minimize site disturbance and soil compaction? - Do engineering and street standards outline construction sequencing and practices for protecting pervious areas and LID BMPs during construction? - Can the code be revised to limit clearing to the building footprint and area needed for maneuvering machinery?

Integrating LID into Local Codes

Focus on Streets and Roads

Subtopic	Why is this important?	What should I consider during my review?
Travel lane widths	Travel lanes are often wider than necessary to provide safe access for larger vehicles. Impervious surface coverage can be reduced by narrowing minimum travel lane widths.	- What minimum travel lane widths are required based on street classification? - Is the travel lane wider than required by the fire department or other emergency responders? - Can street widths be reduced for local access streets? - Are narrower pavement widths allowed along sections of roadway where there are no houses, building, or intersections, and where on-street parking is not anticipated? - Are queuing lanes (i.e., cars wait between parked cars while the approaching traffic passes) allowed? (See Figure 1.2 for examples of queuing lanes)
Right-of-way (ROW) widths	ROW width (and impervious surface coverage) can be reduced by narrowing travel lane widths, revising sidewalk requirements, and reducing grass border areas	- Can the minimum ROW width be reduced or include flexibility for LID considerations? (See Figure 3.2 for examples of narrower ROW design options for residential streets) - Can sidewalks be placed on one side of the street only in low-density residential areas? - Can alternate pedestrian networks (e.g., trails through common areas) be substituted for sidewalks?
Use of permeable pavement for streets and roads	Use of permeable pavement on streets and roads provides stormwater infiltration and reduces stormwater runoff.	- Can permeable pavement be used for road shoulders, parking lanes, and emergency parking areas? - Does the code require or encourage use of permeable pavement for future street/road resurfacing projects?
Placement of utilities under paved areas in the ROW	Utilities and storm drains located within the paved section of the ROW result in fewer conflicts for installation of roadside LID BMPs.	- Does the code allow utilities to be placed under the paved section of the ROW?
Required turnaround area (e.g., Fire, USPS)	Required turnaround radius or street width can conflict with minimizing impervious surfaces	- Is the minimum street section necessary for safe access and emergency response being used?

Subtopic	Why is this Important?	What should I consider during my review?
Sidewalk widths	Reducing sidewalk widths reduces total impervious area and required ROW width.	- What is the minimum sidewalk width allowed? - Can sidewalk width requirements be reduced in areas where LID BMPs are present?
Sidewalk slope	Sidewalks slopes can be adjusted to drain towards a LID BMP or native vegetation area along the roadway instead of directly into the street.	- Does the code contain sidewalk slope direction requirements?
Use of permeable pavement for sidewalks	Use of permeable pavement on sidewalks provides stormwater infiltration and reduces stormwater runoff.	- Is permeable pavement allowed for sidewalks?
Minimum cul-de-sac radius	Reducing minimum cul-de-sac radii can decrease impervious surface.	- What is the minimum cul-de-sac radius? (a radius of 35 feet is optimal, depending on emergency vehicle access needs) - Can a landscaped island be placed in the center of the cul-de-sac and used for stormwater flow control and treatment?
Alternatives to cul-de-sacs	Alternatives turnarounds result in less impervious surface coverage compared to a circular cul-de-sac.	- Can hammerhead (T-shaped) turnarounds or loop roads be used instead of standard cul-de-sacs? (See Figure 4.1 for examples of turnaround options for residential streets and the impervious area associated with each turnaround option)

Figure 4.1: Four Turnaround Options for Residential Streets

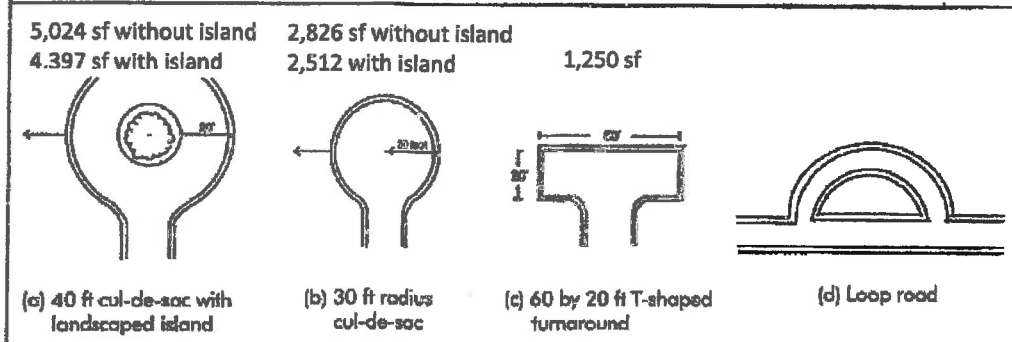


Figure 1.2: A Comparison of Queuing Streets vs. Traditional Streets [Source: Portland (OR) Office of Transportation, 1994]

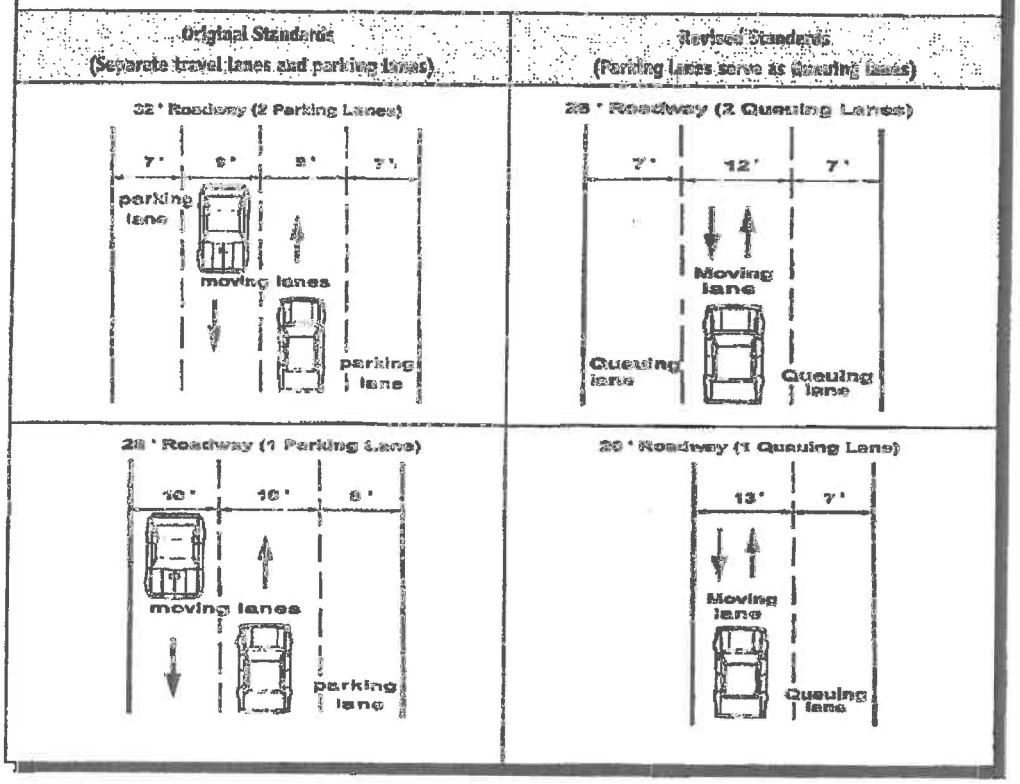
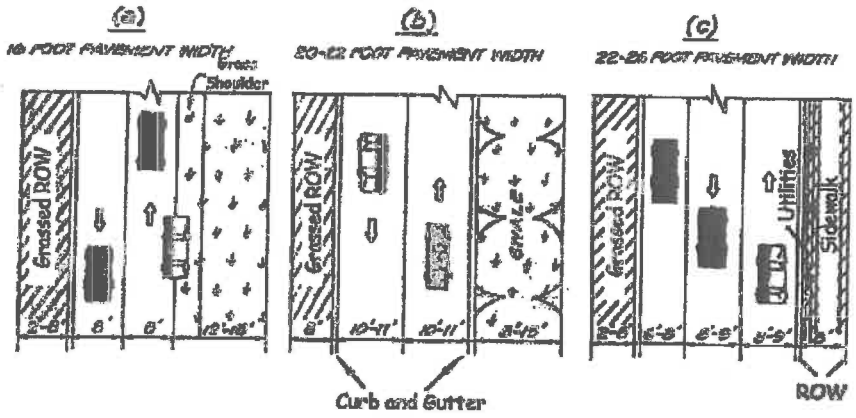


Figure 3.2: Potential Design Options for Narrower ROW on Residential Streets (Schueler, 1995)

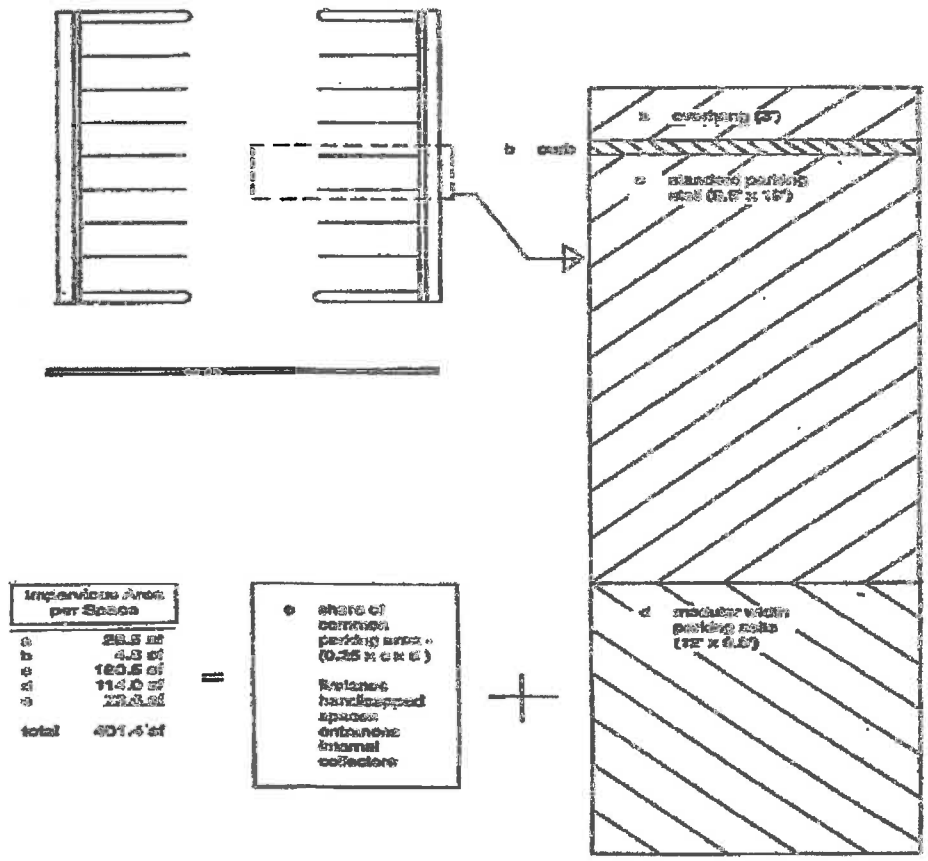


Integrating LID into Local Codes

Focus on Parking

Subtopic	Why is this important?	What should I consider during my review?
Minimum parking ratios	Adjusting minimum parking ratios can reduce the amount of impervious surface and ensure that you are not requiring more parking than is needed.	- What is your minimum parking ratio for the following: o Professional office building o Shopping center o Single family home - Can the number of required parking spaces be reduced due to shared parking, proximity to transit, car sharing, etc.?
Maximum parking ratios	Establishment of a maximum parking ratio can be an effective strategy for reducing large and underutilized parking areas.	- Are the parking requirements set as maximum or median (rather than minimum) requirements? - Can a maximum number of parking spaces be specified?
Permeable paving use	Permeable pavement is applicable to low-volume, low-traffic surfaces, and allows for infiltration of stormwater.	- Can permeable pavement be used for parking areas, parking lanes, and/or parking spaces? - Can permeable pavement be incentivized for spillover (infrequently used) parking areas?
Parking stall dimensions	Impervious surface area can be reduced with compact spaces/narrowing of the parking space, reduced length, reduced width.	- What is the minimum stall length and width for a standard parking space? (See Figure 8.1 for a breakdown of the total impervious area needed to support a single parking stall) - Can the parking stall length and/or width be reduced? - Are a fixed percentage of stalls (15 to 35%) assigned to compact cars?
Driving aisle dimensions	A reduction in driving aisle width can have a significant impact in overall impervious surface coverage.	- Is the driving aisle wider than required by the fire department or other emergency responders? - Can one-way aisles be used in conjunction with angled parking stalls instead of two-way aisles?
Off-street parking regulations	Focused on establishing a minimum number of off-street parking spaces based on specific land uses or zones.	- Can mechanisms be integrated to reduce parking requirements (e.g., shared parking, proximity to transit, car share, etc.)? - Can structured or tuck-under parking be incentivized?

Figure 8.1: The total impervious area needed to support a single parking stall.



A parking stall is supported by a larger parking space that includes the (a) overhang, (b) curb, (c) stall, (d) parking aisle needed to get into the stall, and (e) the stall's share of common parking area, such as entrances, internal collectors, fire lanes and handicapped parking spaces. When these extra features are added in, the approximately 180 ft² needed for each parking stall increases to over 400 square feet.

Source of above figure (Figure 8.1 - The total impervious area needed to support a single parking stall): Center for Watershed Protection (1998), Better Site Design: A Handbook for Changing Development Rules in Your Community

Integrating LID into Local Codes

Focus on Design Guidelines and Standards

Subtopic	Why is this important?	What should I consider during my review?
Trees and bioretention	Some street trees are not compatible for use in bioretention areas due to variable moisture conditions.	- Are specific street tree species included in the design guidelines and standards? - Can flexibility be incorporated to allow alternative tree species that are compatible with bioretention and can also meet similar street tree aesthetic requirements?
Continuous curb requirements	Continuous curb requirements do not allow flexibility in street design, making integration of roadside bioretention difficult.	- Are conventional curbs and gutters required? - Can the curb and gutter requirement be eliminated or adjusted to allow the use of curb cuts (breaks that allow runoff to flow into bioretention cells) or "invisible" curbs (flush with the road surface)?
Curb radii	Curb radii requirements may restrict use of LID BMPs adjacent to roadways and sidewalks.	- Are minimum curb radii requirements specified for street intersections or pedestrian bulbs? - Can curb radii requirements be reduced to provide additional space for LID BMPs?

Integrating LID into Local Codes

Focus on Stormwater Management and Maintenance

Subtopic	Why is this important?	What should I consider during my review?
Maintenance Provisions	In order to maintain the benefits of LID facilities over time, clearly written maintenance standards and procedures need to be in place.	- Does the adopted stormwater manual outline maintenance standards and/or procedures?
Inspection Access (covenants, easements)	A jurisdiction's code may require a covenant or easement agreement for the construction of a stormwater facility. The agreement may require the facility owner to perform certain maintenance activities and grants the jurisdiction limited authority to access the site (through an easement or agreement) for facility inspection, maintenance, or repair work.	- Does the code allow access to inspect, maintain, and repair the facility if a private property owner fails to maintain the facility?
Enforcement	Enforcement is necessary to proper construction procedures and long-term maintenance of LID BMPs.	- Does the code include mechanisms to ensure reimbursement for any maintenance activities conducted? - Are public easements, maintenance covenants, or other legal agreements required? - Are incentives (reduction in stormwater fees) provided for private property owners that meet their maintenance requirements?

Integrating LID into Local Codes

Focus on Subdivision and Planned Unit Development (PUD)

Subtopic	Why is this important?	What should I consider during my review?
Individual open space requirements	Open space requirements typically specify a percentage of area that is required to be set aside in a subdivision. This can result in a reduction in the amount of impervious area within a development.	- Does a minimum percentage of open space have to be managed in a natural condition? - Can the open space requirement be increased? - Are open space areas required to be consolidated into larger units?
Passive vs. active open space requirements	Active recreation areas include playgrounds, ball fields, pools, and skate parks which involve large impervious or pollution-generating pervious areas. Passive recreation areas include undeveloped or minimally developed areas such as rustic picnic areas, benches, and trails. Integrating LID into subdivision codes can allow designers to count bioretention areas, dispersion areas, and other conserved open space toward passive open space requirements.	- Are allowable and prohibited uses for open space defined? - Can LID BMPs such as bioretention count towards passive open space requirements? - Are native vegetation areas that integrate pervious passive recreation areas, stormwater dispersion facilities, and/or stormwater restoration projects allowed?
Opportunities for Performance Based Designs/PUDs	Performance based designs (often called PUDs) allow for flexibility to cluster uses in exchange for increased open space, and to increase opportunities for implementing LID techniques.	- Are PUDs required for high density areas, such as city centers? - Are native vegetation and maximum impervious surface standards for PUDs and high density dwellings specified?

Integrating LID into Local Codes

Focus on Critical Areas and Shoreline Management

Subtopic	Why is this important?	What should I consider during my review?
Allowance of LID BMPs in critical areas/shorelines when compatible	Some regulations may not allow for LID techniques within critical areas, shorelines, sensitive areas, or their associated buffers; however, if designed and maintained properly, LID facilities located within or adjacent to these areas can have a positive impact on these areas.	- Are allowable or prohibited uses of buffers defined? - Are LID BMPs allowed within or adjacent to critical areas/shoreline/sensitive area/wetland buffers? - Can native vegetation associated with LID BMPs be used to meet buffer enhancement requirements?

Code and Ordinance References

This document provides a selection of model ordinances along with examples of existing code language to help jurisdictions in Washington State integrate LID into local codes, rules, standards, and other enforceable documents. The example codes and ordinances are divided by relevance for Western and Eastern Washington jurisdictions.

For Western WA Jurisdiction Staff

- Model Ordinance - Off Street Parking
  www.psp.wa.gov/downloads/LID_Guidebook/Parking_Draft.pdf
- Model Subdivision Ordinance
  www.pca.state.mn.us/index.php/view-document.html?gid=7429
- Landscaping Requirements examples (not considered to be "model code language," but provided as examples of existing code language on this topic):
  - City of Bothell Municipal Code, Chapter 12.18 – Tree Retention and Landscaping: www.codepublishing.com/WA/Bothell
  - City of Edmonds Community Development Code, Chapter 20.13 – Landscaping Requirements: www.codepublishing.com/wa/edmonds
  - City of Poulsbo Municipal Code, Section 18.90.050 – Site Planning and Design: www.codepublishing.com/wa/poulsbo
- Parking code examples (not considered to be "model code language," but provided as examples of existing code language on this topic):
  - City of Auburn Municipal Code, Chapter 18.52 – Off-street Parking and Loading: www.codepublishing.com/wa/auburn
  - City of Bothell Municipal Code, Chapter 12.16 – Parking, Loading, Transit Access, and Pedestrian Circulation: www.codepublishing.com/WA/Bothell
  - City of Olympia Municipal Code, Chapter 18.38 – Parking and Loading: www.codepublishing.com/wa/olympia
  - LID-Specific Code Chapter (Snohomish County, Chapter 30.63C – Low Impact Development) www.codepublishing.com/wa/snohomishcounty
- Local Regulation Assistance Project (Puget Sound Partnership 2005-2008):
  - Town of Coupeville (2008 recipient; adopted many of the recommendations to Chapter 16 – Development Regulations): https://library.municode.com/index.aspx?clientId=16301
  - City of Lake Stevens (2008 recipient; adopted many of the recommendations to Chapter 14 – Land Use Code): www.codepublishing.com/WA/LakeStevens
  - City of Marysville (2005 recipient; adopted many of the recommendations to Title 12 – Streets and Sidewalks, Title 14 – Water and Sewers, Title 19 – Zoning, and Title 20 – Subdivisions): www.codepublishing.com/wa/marysville

- City of Mill Creek (2008 recipient; adopted many of the recommendations to Chapter 15 – Buildings and Construction, Chapter 16 – Subdivisions and Plats, and Chapter 17 – Zoning): www.codepublishing.com/wa/millcreek
- City of Port Orchard (2006 recipient; adopted many of the recommendations to Title 16 – Land Use Regulatory Code): www.codepublishing.com/WA/PortOrchard

For Eastern WA Jurisdiction Staff

- Model Water Use Conservation Ordinance, 2010
  www.cmap.illinois.gov/documents/10180/11537/model_water_use_conservation_ordinance.pdf/e28c8492-b127-4466-a9fb-439501c939de
- Parking code examples (not considered to be "model code language," but provided as examples of existing code language on this topic):
  - City of Spokane Municipal Code, Chapter 17C.230 – Parking and Loading: https://beta.spokanecity.org/smc
  - City of Yakima Municipal Code, Chapter 15.06 – Off-street Parking and Loading: www.codepublishing.com/WA/yakima
  - Spokane County Zoning Code, Section 14.802 – Off-street Parking and Loading Standards: www.spokanecounty.org/data/buildingandplanning/lud/documents/Zone%20Code%202008%20for%20internet.pdf

Communicating with Your Elected Officials and City Managers

Western Washington

Elected officials and city managers play an important role in the code update and adoption process, therefore it is critical to engage them early and keep them updated as the process progresses. This handout provides: 1) key information that your elected officials and city managers need to know about LID and the code update process, and 2) a step-by-step approach to what your elected officials and city managers need to know, and how they can support the process. The information presented below is organized based on the 6 steps in *Integrating LID into Local Codes: A Guidebook for Local Governments.*

General tips to get their attention and keep it:

1. Make contact early in the project, and at key milestones as the project progresses.
2. Be concise and to the point.
3. Focus on key implications for internal and external stakeholders. Both positive outcomes and potential areas of conflict.
4. Remind elected officials what LID is, why it is important, and why codes are being updated each time you speak with them.
5. Be prepared to propose ways that elected officials and city managers can support the process.

General information about what they need to know:

Each elected official or city manager will have a different level of knowledge about the LID code update process. Below are suggested talking points on the NPDES permit requirements, followed by web links for additional information on why we are doing LID.

Code updates – where we are today:

- Codes are being reviewed and updated to integrate changes required by the new Washington State Department of Ecology NPDES Western Washington Municipal Stormwater Permit. These changes are required and each jurisdiction is obligated to comply by the deadlines.
  - Your jurisdiction is part of the Phase II permit which went into effect on August 1, 2013.
  - LID will be required to be evaluated by project applicants for use on new development, redevelopment, and infrastructure projects like roads and parking lots.

- Most Phase II jurisdictions will need to implement changes adopted and effective by December 31, 2016. (Variations to this deadline apply to: Lewis & Clark Counties' deadline is 6/30/17; New permittees' deadline is 12/31/17; and city of Aberdeen's deadline is 6/30/18)
- There are potential budget and work plan implications.

- As part of these updates, LID will be required to be evaluated first for managing stormwater runoff.
  - LID will be required to be evaluated by project applicants for use on new development, redevelopment, and infrastructure projects like roads and parking lots.
  - If LID is not feasible, justification will need to be provided

LID -- why we are doing it

- For talking points regarding why we are doing LID, please visit: www.awcnet.org/portals/0/documents/lid/TalkPointsWhyDoingLID0513.pdf
- For a complete list of LID resources for elected officials and city managers, please visit: http://www.awcnet.org/TrainingEducation/LowImpactDevelopment.aspx

The Six Steps: What elected officials and city managers need to know and how they can get involved.

Step 1 {Who} Assemble the Project Team

Step 1 involves assembling a comprehensive team of key internal staff and potential key external stakeholders to assist with the process of integrating LID into local codes.

What elected officials and city managers need to know:

1. The code update process is a big undertaking that requires significant staff time and multiple staff.
   - To support the code review and updates, internal team members may include staff from the planning, public works, parks, fire and public safety, and building departments. Optional team members from city council, planning commission, and legal department departments.
   - To provide comment and facilitate the approval process, external stakeholders may include State/local health department, utility providers, agencies owning and maintaining streets, site designers and engineers, major property owners and developers, citizen's or neighborhood groups, environmental groups, and special districts.

- Getting this variety of professionals and stakeholders at the table together and up front in the process is critical to identifying issues and solutions that will in turn save time and frustration at the end of the process.

How elected officials and city managers can support the process:

1. Encourage and support (and allow time for) staff participation.
2. Bring resistant parties on board by showing top down support for the process.
3. Identify and reach out to key stakeholders.
4. Ask for support in recruiting internal team members and external stakeholders to participate in the code update process.

Step 2 {What} Understand General Topics to Address & Step 3 {Where} Review Existing Codes and Standards

Step 2 establishes a work program that identifies what topics of a jurisdiction's codes, policies, standards, and enforceable documents, and operating procedures need to be updated to integrate LID. Step 3 identifies where the topics for review occur.

What elected officials and city managers need to know:

1. Examples of the types of codes, policies, standards, enforceable documents, and operating procedures that you have identified as needing to be updated.
2. Who and what kinds of projects the code updates are likely to affect (positively or negatively).
3. Any possible areas of concern, complexity, conflict, etc. at this stage of the project.

How elected officials and city managers can support the process:

1. Take specific questions or concerns to external stakeholders or external team members and provide feedback.
2. Provide consultation and comment on certain sections of code.
3. Help resolve any issues or internal debates/conflict, where appropriate.

Step 4 {FILL THE GAPS} Amend Existing Codes and Develop New Codes

Step 4 fills in the gaps and addresses the barriers in existing codes and standards by amending existing codes and developing new code language.

What elected officials and city managers need to know:

1. Briefings on the extent of and kinds of amendments that are being proposed, including examples of revised language.

2. Details on how the code updates are likely to affect people or projects (positively or negatively).
3. Any problems and proposed corrective actions at this stage of the project.

How elected officials and city managers can support the process:

1. Provide consultation and comment on certain code sections or policies.
2. Take specific questions or concerns to external stakeholders or external team members and provide feedback.
3. Help resolve any possible issues, where appropriate.

Step 5 {REVIEW & ADOPT} Public Review and Adoption Process

Step 5 reviews and adopts the new codes and standards. Each jurisdiction has its own process for reviewing and adopting codes and standards.

What elected officials and city managers need to know:

1. The plan and timeline for public review.
2. The types of internal staff and external stakeholders required for review of updated code language.
3. Potential adoption challenges and solutions.

How elected officials and city managers can support the process:

1. Help to engage external team members, stakeholders, and the public in the review process.
2. Help by being an advocate for code update process and LID.

Step 6 {IMPLEMENT} Ensure Successful Implementation

Step 6 implements the new regulations and standards.

What elected officials and city managers need to know:

1. The timing and extent of the resources needed for the successful implementation of the code updates, including issues such as staffing, equipment, training, and outreach.

How elected officials and city managers can support the process:

1. Get involved in public outreach and/or public project that include LID components.
2. Reach out to neighboring jurisdictions to identify possible collaborations such as sharing of staff trainings, lessons learned, and maintenance equipment.

Communicating with Your Elected Officials and City Managers

Eastern Washington

Elected officials and city managers play an important role in any code update and adoption process, therefore it is critical to engage them early and keep them updated as the process progresses. This handout provides: 1) key information that your elected officials and city managers need to know about LID and the code update process, and 2) a step-by-step approach to what your elected officials and city managers need to know, and how they can support the process. The information presented below is organized based on the six steps described in *Integrating LID into Local Codes: A Guidebook for Local Governments.* It also provides general information about the Eastern Washington Phase II permit that became effective on August 1, 2014 and the requirement to allow LID as a viable stormwater management technique. Although code updates are not specifically required in Eastern Washington at this time, allowing for LID will likely involve code updates.

General tips to get their attention and keep it:

- Make contact early in the project, and at key milestones as the project progresses.
- Be concise and to the point.
- Focus on key implications for internal and external stakeholders. Both positive outcomes and potential areas of conflict.
- Remind elected officials what LID is, why it is important, and why codes are being updated each time you speak with them.
- Be prepared to propose ways that elected officials and city managers can support the process.

General information about what they need to know:

Each elected official or city manager will have a different level of knowledge about the LID code update process. Below are suggested talking points on the NPDES permit requirements, followed by web links for additional information on why we are doing LID.

Code updates – where we are today:

The Eastern Washington Phase II permit became effective on August 1, 2014.The Washington Department of Ecology is encouraging jurisdictions to expand their stormwater management techniques to enable developers to use and allow innovative approaches to managing stormwater. Jurisdictions in Eastern Washington will have to comply with the following new permit requirements by December 31, 2017:

- Implement a policy of encouraging project proponents to maintain natural drainages to the maximum extent possible, including reducing the total amount of impervious surfaces.
- Allow non-structural preventative actions and source reduction approaches such as LID techniques, measures to minimize the creation of impervious surfaces, and measures to minimize the disturbance of native soils and vegetation.
- Require projects approved to retain runoff generated on-site for, at a minimum, the 10-year, 24-hour rainfall event or a local equivalent.

Although code updates are not specifically required in Eastern Washington at this time, allowing LID as a viable stormwater management technique will likely involve code updates.

The implementation of LID requirements in Eastern Washington is an incremental approach with a strong focus on harmonizing the stormwater management techniques across jurisdictions in Eastern Washington. The Washington State Department of Ecology will continue to work with jurisdictions and industry members to evaluate the results of new permit requirements before expanding to more prescriptive requirements.

LID – why we are doing it:

- For talking points regarding why we are doing LID, please visit: www.awcnet.org/portals/0/documents/lid/TalkPointsWhyDoingLID0513.pdf
- For a complete list of LID resources for elected officials and city managers, please visit: http://www.awcnet.org/TrainingEducation/LowImpactDevelopment.aspx

The Six Steps: What elected officials and city managers need to know and how they can get involved.

Step 1 {Who} Assemble the Project Team

Step 1 involves assembling a comprehensive team of key internal staff and potential key external stakeholders to assist with the review of local codes and procedures to assess the need to revise regulations or processes to better allow LID. This team will also assist with the process of integrating LID into local codes if deemed necessary.

What elected officials and city managers need to know:

1. The code update process is a big undertaking that requires significant staff time and multiple staff.
   - To support the code review and updates, internal team members should include staff from the planning, public works, parks, fire and public safety, and building departments. Optional team members from city council, planning commission, and legal department departments.
   - To provide comment and facilitate the approval process, external stakeholders may include State/local health department, utility providers, agencies owning and maintaining streets, site designers and engineers, major property owners and developers, citizen's or neighborhood groups, environmental groups, and special districts.
   - Getting this variety of professionals and stakeholders at the table together and early in the process is critical to identifying issues and solutions that will save time and frustration at the throughout the update.

How elected officials and city managers can support the process:

1. Encourage and support (and allow time for) staff participation.
2. Bring resistant parties on board by showing top down support for the process.
3. Identify and reach out to key stakeholders.
4. Ask for support in recruiting internal team members and external stakeholders to participate in the code update process.

Step 2 {What} Understand General Topics to Address & Step 3 {Where} Review Existing Codes and Standards

Step 2 establishes a work program that identifies what topics of a jurisdiction's codes, policies, standards, enforceable documents, and operating procedures need to be reviewed and possibly updated to integrate LID. Step 3 identifies where the topics for review occur.

What elected officials and city managers need to know:

1. Examples of the types of codes, policies, standards, enforceable documents, and operating procedures that you have identified as needing to be updated.
2. Who and what kinds of projects the code updates are likely to affect (positively or negatively).
3. Any possible areas of concern, complexity, conflict, etc. at this stage of the project.

How elected officials and city managers can support the process:

1. Take specific questions or concerns to external stakeholders or external team members and provide feedback.
2. Provide consultation and comment on certain sections of code.
3. Help resolve any possible issues or internal debates/conflict, where appropriate.

Step 4 {FILL THE GAPS} Amend Existing Codes and Develop New Codes

Step 4 fills in the gaps and addresses the barriers in existing codes and standards by amending existing codes and developing new code language.

What elected officials and city managers need to know:

1. Briefings on the extent of and kinds of amendments that are being proposed, including examples of revised language.
2. Details on how the code updates are likely to affect people or projects (positively or negatively).
3. Any problems and proposed corrective actions at this stage of the project.

How elected officials and city managers can support the process:

1. Provide consultation and comment on certain code sections or policies.
2. Take specific questions or concerns to external stakeholders or external team members and provide feedback.
3. Help resolve any issues, where appropriate.

Step 5 {REVIEW & ADOPT} Public Review and Adoption Process

Step 5 reviews and adopts the new codes and standards. Each jurisdiction has its own process for reviewing and adopting codes and standards.

What elected officials and city managers need to know:

1. The plan and timeline for public review.
2. The types of internal staff and external stakeholders required for review of updated code language.
3. Potential adoption challenges and solutions.

How elected officials and city managers can support the process:

1. Help to engage external team members, stakeholders, and the public in the review process.
2. Help by being an advocate for code update process and LID.

Step 6 {IMPLEMENT} Ensure Successful Implementation

Step 6 implements the new regulations and standards.

What elected officials and city managers need to know:

1. The timing and extent of the resources needed for the successful implementation of the code updates, including issues such as staffing, equipment, training, and outreach.

How elected officials and city managers can support the process:

1. Get involved in public outreach and/or public project that include LID components.
2. Reach out to neighboring jurisdictions to identify possible collaborations such as sharing of staff trainings, lessons learned, and maintenance equipment.

Resource List for Jurisdiction Staff

This resource list was developed to help jurisdictions in Washington State integrate LID into local codes, rules, standards, and other enforceable documents. Resources are divided into the following categories: General LID Resources, LID Integration into Codes, LID Case Studies, and Barriers to Implementing LID.

General LID Resources

- Better Site Design Manual– divided into Part 1 and Part 2 (Center for Watershed Protection 1998)
  www.cwp.org/online-watershed-library?view=docman
- Central Coast Low Impact Development Initiative (LIDI) website
  www.centralcoastlidi.org/Central_Coast_LIDI/Home.html
- Green Stormwater Infrastructure (GSI) Program Overview and Annual Report (Seattle Public Utilities 2013)
  www.seattle.gov/util/groups/public/@spu/@drainsew/documents/webcontent/01_028743.pdf
- LID Administrative Tools and Guidance video (Herrera Environmental Consultants 2014)
  www.youtube.com/watch?v=Oz4OT-SX3nQ&feature=youtube_gdata
- LID Manual for Michigan, Chapter 4, Integrating LID at the Community Level (Southeast Michigan Council of Governments 2008)
  www.semcog.org/uploadedfiles/programs_and_projects/water/stormwater/lid/lid_manual_chapter4.pdf

LID Integration into Codes

- Integrating LID into Local Codes: A Guidebook for Local Governments (Puget Sound Partnership 2012)
  www.psp.wa.gov/downloads/LID_Guidebook/20120731_LIDguidebook.pdf
- Integrating LID into Local Development Codes: Lessons Learned (University of California, Davis 2012)
  www.drycreekconservancy.org/documents_downloads/LID_PDFs/1B_InglisLessonsLearnedCodeUpdates_Final_PP03.pdf
- LID Guidance Manuals and LID Code Review (University of Texas 2011)
  www.tceq.texas.gov/waterquality/nonpoint-source/projects/statewide-low-impact-development-workshops
- Massachusetts Low Impact Development Toolkit (Metropolitan Area Planning Council 2010)
  www.mapc.org/sites/default/files/LID_Local_Codes_Checklist.pdf

LID Case Studies

- Seattle 2010 NPDES Phase 1 Municipal Stormwater Permit, Program Evaluation, pp. 31-34 (Seattle Public Utilities 2010)
  www.seattle.gov/util/groups/public/@spu/@drainsew/documents/webcontent/01_012401.pdf
- EPA Green Infrastructure Case Studies: Municipal Policies for Managing Stormwater for Green Infrastructure, pp. 25-30 (Environmental Protection Agency [EPA] 2010)
  http://water.epa.gov/polwaste/green/upload/gi_case_studies_2010.pdf
- Water Quality Scorecard, pp. 43-49 (EPA 2009)
  http://epa.gov/smartgrowth/pdf/2009_1208_wq_scorecard.pdf

Barriers to Implementing LID

- Benefits of LID: How LID Can Protect Your Community's Resources (EPA 2012)
  http://water.epa.gov/polwaste/green/upload/bbfs1benefits.pdf
- Terminology of LID: Distinguishing LID from Other Techniques that Address Community Growth Issues (EPA 2012)
  http://water.epa.gov/polwaste/green/upload/bbfs2terms.pdf
- Costs of LID: LID Saves Money and Protects Your Community's Resources (EPA 2012)
  http://water.epa.gov/polwaste/green/upload/bbfs3cost.pdf
- Aesthetics of LID: LID Technologies Can Benefit Your Community's Visual Environment (EPA 2012)
  http://water.epa.gov/polwaste/green/upload/bbfs4aesthetics.pdf
- Effectiveness of LID: Proven LID Technologies Can Work for Your Community (EPA 2012)
  http://water.epa.gov/polwaste/green/upload/bbfs5effectiveness.pdf
- Maintenance of LID: Communities are Easily Managing LID Practices (EPA 2012)
  http://water.epa.gov/polwaste/green/upload/bbfs6maintenance.pdf
- Encouraging LID: Incentives Can Encourage Adoption of LID Practices in Your Community (EPA 2012)
  http://water.epa.gov/polwaste/green/upload/bbfs7encouraging.pdf

STAFF REPORT
EXHIBIT "3"
CODE AUDIT

STAFF REPORT EXHIBIT "3"

City of Burlington 2016 Comprehensive Plan Update
Critical Areas Audit

1. Stormwater and Low Impact Development

Tracking number	Topic or Requirement	Why is this required?	Does this apply to Burlington? (If not, why)	Is this requirement addressed by existing code provisions? (If so where)	Summary of required amendments or additions, if any	BAS Literature or agency guidance consulted	Notes
1.1	Building locations – locate buildings away from critical areas and natural drainage features	NPDES permit & RCW 36.70A.070(1)	Yes	Yes – chapter 15.15 BMC requires that buildings be located away from critical areas	None	N/A	N/A
1.2	Parking area locations – reduce driveway lengths where possible	NPDES permit & RCW 36.70A.070(1)	Yes	Partially - provision in code does allow zero setback for garages facing an alley; however, code requirement is 20 feet in other places which may require excessive paving	Amended front setback requirements to permit 17 foot setback. This setback is consistent with minimum dimension for a parking space. Amend code to allow residential small lot developments to use 10 setbacks with alley access.	(1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7) (2) City of Burlington. Parking Requirements, Comparison Survey. September 2016 (BAS-27)	Note: Reviewed the required parking stall dimensions for seven other jurisdictions. Front setback can be reduced to 17 feet. Compatibility with existing development can be addressed by making this provision applicable to new land divisions only
1.3	Storm-water treatment facility location	NPDES permit & RCW 36.70A.070(1)	Yes	No	Amended application requirements for land use permits	Washington State Department of Ecology. Low Impact	Note: As a long term solution we should develop a clearing and

					(BMC 17.68.150) to require a soils report and require plans to show locations of LID features and infiltration areas	Development, Code Update and Integration Toolkit. July 2014 (BAS-7)	grading code section
1.4	Tree preservation	NPDES permit & RCW 36.70A.070(1)	Yes	Yes – BMC 17.50.040.B requires that significant trees and shrubs be retained and protected during development	None	Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7)	Note: As a long term solution we should develop a clearing and grading code section
1.5	Screening	NPDES permit & RCW 36.70A.070(1)	Yes	No	Added additional provisions to BMC 17.50.040 to (a) specify that landscaped areas can be used for storm-water infiltration and treatment, (b) specify that storm-water facilities landscaped in accordance with requirements of chapter can be counted towards applicable area requirements, and (c) require that at least half the vegetation be indigenous to the northwest and include at least 25 percent of trees be coniferous evergreen species	(1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7) (2) Puget Sound Partnership. Integrating LID into Local Codes: A Guidebook for Local Governments. Tacoma, Washington. July 2012 (pages 66 & 73) (BAS-11) (3) Puget Sound Partnership. Low Impact Development, Technical Guidance Manual for Puget	Suggest reviewing a number of different jurisdictions to determine exact specifications and species mix requirements. Also, may be necessary to specifically exempt street trees from requirement due to limitations and desirability of certain species for other reasons

						Sound. WSU Puyallup Research & Exetension Center, Puyallup Washington. December 2012 (BAS-26)	
1.6	Street frontage landscaping requirements	NPDES permit & RCW 36.70A.070(1)	Yes	Yes – BMC 17.50.060 does not prohibit any form of landscaping in street frontages unless it interferes with utilities	None		Note: The changes outlined above in 1.5 will also apply to street frontages
1.7	Parking lot landscaping	NPDES permit & RCW 36.70A.070(1)	Yes	Partially – BMC 17.50.080.B & E establish minimum requirements for parking lot landscaping.	None (change 1.5 above addresses species mix and use of native plants and trees)	(1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7) (2) Puget Sound Partnership. Integrating LID Into Local Codes: A Guidebook for Local Governments. Tacoma, Washington. July 2012 (pages 66 & 73) (BAS-11)	
1.8	Maximum Impervious surface limits	NPDES permit & RCW 36.70A.070(1)	Yes	No	Amend chapters 17.15, 17.21, 17.24, 17.36, and 17.39 to establish specific impervious surface limits as follows: R3: 70%	(1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7)	PSP guidance document provided examples from three jurisdictions that meet current standards. The recommended

					R2: 60% R1-6: 40% R1-7.6: 40% R1-8.4: 40% R1-9.6: 40% C1: 80% C2: 80% M-1 & BP: 80% - Also amended chapter 17.06 BMC to include a definition for "impervious surface" and amend small lot development provisions (BMC 17.15.055) to limit impervious surfaces to 60%	(2) Puget Sound Partnership. Integrating LID into Local Codes: A Guidebook for Local Governments. Tacoma, Washington. July 2012 (pages62, 64, & 70)) (BAS-11)	code changes are based on these examples.
1.9	Shared driveways	NPDES permit & RCW 36.70A.070(1)	Yes	No	Amended chapter 17.54 BMC to create new private road standards. These standards will adopt by ordinance a previous administrative interpretation that created a shared driveway classification for roads serving four or fewer dwelling units – also amended title 16 to incorporate these design regulations into the plating requirements	(1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7)	This provision is consistent with existing (not yet adopted) road standards specified in administrative rule 3-04. This should be codified in code.

1.10	Minimum driveway width	NPDES permit & RCW 36.70A.070(1)	Yes	Yes – BMC does not currently specify a minimum driveway width			Note: If the change noted above definitions section should be amended to differentiate between "driveway" and a "shared driveway" which would allow driveways serving a single family home to comply so long as they met the parking dimension standard.
1.11	Permeable driveway paving	NPDES permit & RCW 36.70A.070(1)	Yes	No	Amended BMC 17.54.050 to require the inclusion of permeable paving or other LID features in the design and construction of commercial parking areas and amended 17.54.060 to allow require permeable paving material for driveways - also amend chapter 17.06 to include a definition for "permeable paving" consistent with agency guidance	(1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7) (2) Puget Sound Partnership. Integrating LID Into Local Codes: A Guidebook for Local Governments. Tacoma, Washington. July 2012 (pages62, 64, & 70)) (BAS-11) (3) Puget Sound Partnership. Low Impact Development, Technical Guidance	Note: zoning code should also include cross references to engineering standards or codes. Also, we should probably adopt the LID technical manual by reference, either in the engineering code or in the zoning code.

						Manual for Puget Sound. WSU Puyallup Research & Exetension Center, Puyallup Washington. December 2012 (BAS-26)	
1.12	Two track driveway design	NPDES permit & RCW 36.70A.070(1)	Yes	No	Amended 17.54.060 to allow two track driveway design	(1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7) (2) Puget Sound Partnership. Integrating LID Into Local Codes: A Guidebook for Local Governments. Tacoma, Washington. July 2012 (pages62, 64, & 70)) (BAS-11) (3) Puget Sound Partnership. Low Impact Development, Technical Guidance Manual for Puget Sound. WSU Puyallup Research & Exetension Center, Puyallup Washington. December 2012 (BAS-26)	Note: For a long term solution we should adopt a street and road design manual

1.13	Building setbacks	NPDES permit & RCW 36.70A.070(1)	Yes	Partially – see explanation above, with change 1.2	N/A	N/A	Same as change 1.2
1.14	Height limits	NPDES permit & RCW 36.70A.070(1)	Yes	Partially – Height limit in R-1 & R-2 zones is consistent with most other jurisdictions and C-1, C-2, and M-1 zones allow 45 feet plus an additional foot of height for every foot of setback that is provided (BMC 13.36.040, 17.39.040, & 17.42.050).	B-P zone does not the same setback for height allowance as the C-1, C-2, and M-1 zones. Amended these zones so the same height provisions and language is used for all four zones - also, R-3 zone restricts height to 30 feet which is less than R-1 zone – amended R-3 zone to allow 35 feet for consistency with R-1 and R-2 zones - encourages more efficient site utilization. Also added code provisions allowing an additional 15 feet of height in the C-1, C-2, M-1 and BP zones where parking is located under the building. This would reduce storm-water runoff and encourage more efficient site utilization	(1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7)	
1.15	Maximum square footage	NPDES permit & RCW 36.70A.070(1)	Yes	Yes R-1, R-2, and R-3 zones all	None	N/A	Note: This requirement

				establish maximum coverage limits and have significant setback requirements (BMC 17.15.060.C, 17.21.050.B, 17.24.050.C, & 17.24.050.G). Similar restrictions are not appropriate for commercial and industrial zone and interfere with urban design objectives in historic downtown core.			partially addressed by impermeable surface limits that will be established with change 1.8.
1.16	Clustering	NPDES permit & RCW 36.70A.070(1)	Yes	Yes – partially - BMC 17.15.060. allows clusters and flexible plat design but does not allow open space to be used for LID	Amended BMC 17.15.060 to allow modifications to the dimensional standards for lots and allow averaging of impervious surface and building coverage between building lots and open space tracts	N/A	During comprehensive plan update we may want to include a density bonus for clustered developments, but not without carefully considering what would be gained in exchange
1.17	Protecting existing infiltration	NPDES permit & RCW 36.70A.070(1)	Yes	No	Amended chapters 17.50 and 17.68 to require soils data and to require that existing infiltration areas be identified on plans and drawings	See change 1.3	As a long term solution we should develop a clearing and grading code chapter, or at the very least some sort of design manual
1.18	Conserving native vegetation and soils	NPDES permit & RCW 36.70A.070(1)	Yes	Partially - preservation is already addressed	See changes 1.3, 1.5 and 1.17	See changes 1.5 and 1.3	

				(see change 1.4)			
1.19	Construction sequencing	NPDES permit & RCW 36.70A.070(1)	Yes	No	Public Works Change – adoption of DOE manual will address this	N/A	N/A
1.20	Travel lane widths	NPDES permit & RCW 36.70A.070(1)	Yes	No	Create new design standards section in chapter 17.54 BMC and reference in title 16 BMC (plats) – change adopts specific road dimensions and design specifications from previous administrative decision		Note: BMC 12.28.150 should be amended to fully incorporate design standards and specifications for public and private roads and account for reduced paving widths where appropriate. Should also codify and incorporate administrative rule 3-04.
1.21	Right-of-way widths	NPDES permit & RCW 36.70A.070(1)	Yes	No	See change 1.20	(1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7)	
1.22	Use of permeable paving for streets and roads	NPDES permit & RCW 36.70A.070(1)	Yes	No	Design standards section in chapter 17.54 BMC specifies use of permeable pavement or other LID features unless infeasible – also amended definitions section to include definition of "impermeable	Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7)	Coordinate with Engineering on road design standards and paving requirements in chapter 12.28 BMC

					surface" and "permeable pavement" – referenced new design standard in title 16 BMC (plats) – also amended 17.54 BMC to require permeable paving and LID for parking lots and drive aisles		
1.23	Placement of utilities under paved areas in ROW	NPDES permit & RCW 36.70A.070(1)	Yes	Yes – Public Works indicates there are no prohibitions against doing so and if LID features were present utilities would be laced under paved areas.	N/A	N/A	
1.24	Required turnaround	NPDES permit & RCW 36.70A.070(1)	Yes	No – Public Works indicates that required turn-arounds are probably the minimum necessary	N/A	N/A	
1.25	Sidewalk widths	NPDES permit & RCW 36.70A.070(1)	Yes	Partially – required sidewalk width is 5 feet (BMC 17.54.090.C.2). Sidewalks can't be any narrower without compromising pedestrian circulation objectives.	As noted in change 1.21, standards should be adjusted to allow detached paths in low density zone (R1-9.6) and specify that sidewalks are only needed on one side when homes only adjoin one side of the road and not at all	Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7)	

					for joint access driveways.		
1.26	Use of permeable pavement for sidewalks	NPDES permit & RCW 36.70A.070(1)	Yes	No	Change BMC 17.54.090.C and chapter 12.28 BMC to require permeable paving unless it's not feasible	Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7)	Note: Should be integrated with effort to develop street and road design guidelines as a long term solution
1.27	Sidewalk slope	NPDES permit & RCW 36.70A.070(1)	Yes	Yes – Public Works indicates there are no prohibitions against sloping a sidewalk towards landscaping or LID features	Amended chapter 17.54 BMC to specify that when sidewalks adjoin planting or infiltration areas they should be sloped to drain towards such areas	N/A	
1.28	Minimum cul-de-sac radius	NPDES permit & RCW 36.70A.070(1)	See 1.24	See 1.24	N/A		
1.29	Alternatives to cul-de-sacs	NPDES permit & RCW 36.70A.070(1)	Yes	Yes – Burlington permits a variety of turn-around styles including hammer-heads and other designs that minimize impermeable surfaces	N/A	N/A	
1.30	Minimum parking ratios	NPDES permit & RCW 36.70A.070(1)	Yes	Partially – Surveyed the parking requirements of seven other Puget Sound and southwest Washington jurisdictions. For three of the four land uses used in the comparison,	(1) Amended BMC 17.54.010.C .a to clarify that two tandem spaces can be counted as two parking spaces. Currently they count as only 1.5. (2) Amended BMC 17.54.010.B to allow existing on-	1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7) (2) City of Burlington. Parking Requirements,	

				Burlington's requirements were less than the comparable jurisdictions. The forth use was nearly equal. Also BMC 17.54.010.C provides a number of parking exemptions for uses in the City's Downtown Special Planning Area; however several minor changes could be made.	street parking spaces adjoining a proposed development site to be credited against parking requirements.	Comparison Survey. September 2016 (BAS-27)	
1.31	Maximum parking ratios	NPDES permit & RCW 36.70A.070(1)	Yes	No	Add provision to BMC 17.54.020 stating that for any use requiring 20 or more parking spaces, the total parking provided shall not exceed 120% of the requirement	1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7) (2) City of Burlington. Parking Requirements, Comparison Survey. September 2016 (BAS-27)	Note: This action is consistent with agency guidance and should be implemented; however, it is not anticipated to have a significant effect as the total lot coverage and impervious surface limits will achieve similar results.
1.32	Permeable paving for parking areas	NPDES permit & RCW 36.70A.070(1)	Yes	No	See change 1.11	See change 1.11	See change 1.11
1.33	Parking stall dimensions	NPDES permit & RCW 36.70A.070(1)	Yes	No	Surveyed seven other jurisdictions, to assess typical stall size requirements. BMC 17.54.080.D can be amended to allow	1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit.	

					compact stall dimensions of 8'x15' and reduce standard stall depth to 17' (for 90 degree space) alter other parking configurations proportionally. Also recommend altering BMC 17.54.010.C so that all new spaces in the downtown special planning area can be designed using compact standard	July 2014 (BAS-7) (2) City of Burlington. Parking Requirements, Comparison Survey. September 2016 (BAS-27)	
1.34	Driving aisle width	NPDES permit & RCW 36.70A.070(1)	Yes	Yes – The drive aisle widths prescribed by BMC 17.54.080.D are less than the average of the other seven jurisdictions surveyed; however, Bellingham, Vancouver, and Auburn all have smaller dimensions for some parking configurations – no changes recommended	N/A	1) Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7) (2) City of Burlington. Parking Requirements, Comparison Survey. September 2016 (BAS-27)	
1.35	Off-street parking regulations	NPDES permit & RCW 36.70A.070(1)	Yes	Partially – BMC 17.54.030 grants significant reductions for shared parking but changes could be	As noted in change 1.14 amended C-1, C-2, M-1, and BP zones to allow an additional 15 feet of of height when	1) Washington State Department of Ecology. Low Impact Development, Code Update and	

				made to provide incentives for covered parking and reductions	parking is located under the building. Also implemented the changes outlined in change 1.30	Integration Toolkit. July 2014 (BAS-7)	
1.36	Trees and bio-retention	NPDES permit & RCW 36.70A.070(1)	Yes	No	(1) Amended BMC 17.50.040 to add a provision which specifies that trees and plants located within or adjacent to a storm-water facility be capable of withstanding the hydrologic and soil conditions unique to the planting area. (2) Add requirement to BMC 17.50.040 that the landscape architect responsible for the planting plan consult with the storm-water engineer and the PSP's technical manual to ensure appropriate species are selected and planting conditions are specified.		Note: The Streets Department has requested that we evaluate street frontage landscaping requirements to ensure suitable tree species and planting conditions to prevent sidewalk and road damage. This could be addressed by adopted a street design manual as discussed elsewhere in this audit and by identifying suitable trees species or creating a list of pre-approved species.
1.37	Continuous curbing	NPDES permit & RCW 36.70A.070(1)	Yes	No	Public Works indicates no requirements		
1.38	Curb radius	NPDES permit & RCW 36.70A.070(1)	Yes	No	Public Works indicates no		Coordinate with Engineering

					requirements		
1.39	Maintenance provisions	NPDES permit & RCW 36.70A.070(1)			Amended title16 BMC (platting) to require easements for maintenance and inspection when storm-water facilities and LID features are created		Coordinate with Engineering Note: recommend adopting PSP manual maintenance provisions – review other jurisdictions and consult with engineering
1.40	Inspection access	NPDES permit & RCW 36.70A.070(1)	Yes	No	See change 1.39	Washington State Department of Ecology. Low Impact Development, Code Update and Integration Toolkit. July 2014 (BAS-7)	
1.41	Enforcement	NPDES permit & RCW 36.70A.070(1)	Yes	Yes – Public Works indicates title 14 already allows enforcement			Coordinate with Engineering
1.42	Individual open space requirements	NPDES permit & RCW 36.70A.070(1)	Yes	Yes –Title 16 does not require open space for subdivisions and does not prohibit increases in open space. BMC 17.15.060.G.4 requires that open space provided for cluster developments be consolidated into open blocks	N/A	N/A	Note: requiring open space for subdivisions above and beyond what is required for the protection of critical areas is contrary to GMA urbanization and sprawl prevention goals. The proposed code changes will limit total impervious surfaces, achieving the same objective
1.43	Passive v active	NPDES permit &	Yes	Yes – Title 15 BMC	N/A	N/A	

	open space	RCW 36.70A.070(1)		does not require active recreation, all open space areas may be passive and the other changes contemplated through this review will limit total impervious surfaces			
1.44	Opportunities for performance based designs	NPDES permit & RCW 36.70A.070(1)	Yes	Yes, partially - BMC 17.15.060.G.4 allows clustered site layouts and various building types and lot sizes. BMC 17.15.055 allows for the creation of residential small lots offering even greater variability; however, no provision in clustering regulations to allow LID in open space tracts	Amended BMC 17.15.060.G to allow averaging of lot coverage between building lots and open spaces tracts – also amended to allow LID in open space tracts	N/A	
1.45	Allowance of LID features in critical area buffers	NPDES permit & RCW 36.70A.070(1)	Yes	Yes – BMC 15.15.060.B allows low impact uses that do not impair buffer functions, which could, include LID features and restoration planting	N/A	N/A	Note: as part of broader comprehensive plan update critical areas code should be simplified and exemptions and permitted uses more clearly identified. Code appears to have been adopted from Skagit County and

							excessive for a small, developed city with limited critical area.
1.46	Make LID the preferred and commonly used approach to storm-water management	NPDES permit	Yes	No -	Created new code section in BMC 17.45.100 to require the inclusion of LID in project designs and plans and specify that it shall be the preferred and commonly used approach – also provides cross reference to title 14 and DOE manual		

STAFF REPORT
EXHIBIT "4"
TITLE 17 AMENDMENTS

STAFF REPORT
EXHIBIT "4"

Title 17

ZONING

Chapters:

17.03 General Provisions
17.06 Definitions
17.09 District Establishment, Maps and Boundaries
17.12 Land Uses
17.15 R-1 Land Use District
17.18 Repealed
17.21 R-2 Two-family Residence District
17.24 R-3 Multifamily Residence District
17.27 R-S Semi-Public District
17.28 OSP Open Space, Parks and Agriculture District
17.30 MR-NB Medium Density Residential and Neighborhood Business District
17.33 B-1 Business District
17.36 C-1 General Commercial District
17.39 C-2 Heavy Commercial District
17.42 M-1 Industrial District
17.43 Business Park District
17.45 Supplemental Development Standards
17.48 Performance Standards
17.50 Landscaping
17.51 Superseded
17.54 ~~Off-street~~Access, Parking and Loading
17.57 Repealed
17.58 Repealed
17.60 Public Utilities
17.63 Signs
17.66 Nonconforming Structures, Land and Uses
17.67 Essential Public Facilities
17.68 The Land Use Permit Process – Framework for Decisionmaking
17.69 Design Review Board
17.70 Agricultural Heritage Credit Program
17.72 Repealed
17.75 Repealed
17.76 Planning Commission
17.78 Board of Adjustment
17.81 Repealed
17.84 Enforcement of the Zoning Code
17.87 Violation – Penalty

Comment [BH31]: BI – chapter amended to include private access requirements for streets and roads

17.06.420 *Repealed.*
17.06.430 Home occupation.
17.06.440 Hospital.
17.06.450 Hotel.
17.06.455 Impervious surface
17.06.460 Inoperable vehicle.
17.06.470 Junk storage.
17.06.480 Junk yard.
17.06.490 Kennel.
17.06.500 Land use.
17.06.510 Land use permit.
17.06.515 Lattice tower.
17.06.520 Lot.
17.06.530 Lot, corner.
17.06.540 Lot depth.
17.06.550 Lot, interior.
17.06.560—555 Lot width.
17.06.560 Low impact development
17.06.565 Macro facility.
17.06.570 Mailed notice.
17.06.580 *Repealed.*
17.06.590 Manufactured home.
17.06.592 Marijuana processor.
17.06.594 Marijuana producer.
17.06.596 Marijuana retailer.
17.06.600 Mean depth.
17.06.602 Medical cannabis collective garden.
17.06.605 Medical service.
17.06.606 Micro facility.
17.06.608 Mini facility.
17.06.610 Mobile home.
17.06.620 Mobile home park.
17.06.622 Monopole I.
17.06.624 Monopole II.
17.06.625 Motion picture theater, adult.
17.06.630 Nonconforming structure.
17.06.640 Nonconforming use.
17.06.645 Office.
17.06.647 Outdoor vending machine.
17.06.650 Parking space.
17.06.660 Permitted use.
17.06.665 Personal and household retail sales and service.
17.06.670 Primary use (or principal use).
17.06.680 *Deleted.*
17.06.690 Public hearing.
17.06.692 Related equipment.
17.06.695 Retail sales and service.
17.06.700 Rezone.
17.06.705 Secure community transition facility (SCTF).
17.06.710 Service or storage yard.
17.06.720 *Deleted.*
17.06.730 Setback.
17.06.737 *Repealed.*
17.06.740 *Repealed.*
17.06.750 *Repealed.*
17.06.760 *Repealed.*

17.06.415 Guyed tower.
"Guyed tower" means a wireless communication support structure which is usually over 100 feet tall, which consists of metal crossed strips or bars and is steadied by wire guys in a radial pattern around the tower. Guyed towers are often constructed in rural areas and are used to support antennas and related equipment. (Ord. 1396 § 10, 1999).

17.06.420 Gas station.
Repealed by Ord. 1396. (Ord. 1206 § 2, 1992).

17.06.430 Home occupation.
"Home occupation" means an occupation or profession which is customarily incident to or carried on in a dwelling place and not one in which the use of the premises as a dwelling place is largely incidental to the occupation carried on, and which occupation is carried on by a member of the family residing within the dwelling place. (Ord. 1206 § 2, 1992).

17.06.440 Hospital.
"Hospital" means a building designed and used for the medical and surgical diagnosis, treatment and housing of persons under the care of doctors and nurses. Rest homes, nursing homes, convalescent homes and clinics are not included. (Ord. 1206 § 2, 1992).

17.06.450 Hotel.
"Hotel" means a building or portion thereof designed or used for the transient rental of five or more units for sleeping purposes. A central kitchen and dining room and accessory shops and services catering to the general public can be provided. Not included are institutions housing persons under legal restraint or requiring medical attention or care. (Ord. 1206 § 2, 1992).

17.06.455 Impervious Surface
"Impervious surface" means a hard surface which either prevents or retards the entry of water into the soil mantel as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increase rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, and eaves, walkways, patios, decks (both covered and open slat construction shall both be considered impervious), driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, rockeries and oiled macadam or other surfaces which similarly impede the natural infiltration of surface and storm-water runoff. Open uncovered storm-water retention and detention facilities shall not be considered impervious surfaces for purposes of this definition. For purposes of calculating impervious surface coverage and demonstrating compliance with this title, the following impervious surfaces shall be included at a ratio of 50 percent:

A. "Permeable paving" means pervious concrete, porous asphalt, permeable pavers, grass grid, or other forms of pervious or porous paving material intended to allow the passage of water through the pavement section. Permeable paving often includes an aggregate base that provides structural support and acts as a storm-water reservoir.

B. "Open slatted decking" means a deck surface constructed of boards with intermittent gaps that allow water to pass through to the surface below. Only open uncovered decks installed over a permeable surface shall be included in impervious surface calculations at a 50 percent ratio. Covered decks, or decks installed over an impermeable surface shall be considered an impervious surface an included in all coverage calculations accordingly.

C. "Green roof" or "vegetated roof" means a roof, or a portion of a roof, consisting of waterproofing material, growing medium or soil, and vegetation used in place of or over the top of a conventional roof. Green roofs provide storm-water management by capturing, filtering, and evaporating rainfall.

17.06.460 Inoperable vehicle.
"Inoperable vehicle" means a car, truck or van that cannot be started and moved under its own power. A vehicle that is not currently licensed, including a recreational vehicle or trailer, that is designed for travel on the public roads, is also considered an inoperable vehicle. (Ord. 1206 § 2, 1992).

Comment [BMJ2]: TN – 1 1 – BJ – All jurisdictions seem to use the same definition –adapted definition from City of Redmond

Comment [BMJ3]: TN – 1 1 – BJ – definition from DOE storm-water manual for Western Washington

Comment [BMJ4]: TN – 1 1 – BJ – allowances adapted from City of Kirkland – this is the most straight forward system of accounting for "semi-permeable" surfaces. Other systems use a credit debit method which seems overly complex

Comment [BMJ5]: TN-1 1 - BJ – No definition provided in PSP or DOE guidance materials, used definition from City of Portland storm-water design manual

Formatted: Font: Not Bold

17.06.470 Junk storage.
"Junk storage" means the temporary or permanent storage outdoors of junk, waste, discarded, salvaged or used materials or inoperable vehicles or vehicle parts. This definition shall include, but not be limited to, the storage of used lumber, scrap, metal, tires, household garbage, furniture, and inoperable machinery, and as further defined in the current edition of the Uniform Fire Code. See also chapter 8.12 BMC, Nuisance. (Ord. 1396 § 11, 1999; Ord. 1206 § 2, 1992).

17.06.480 Junk yard.
"Junk yard" means a lot, land or structure, or part thereof, used for the collection, storage and sale of waste paper, rags, scrap metal or discarded material; or for the collecting, dismantling, storage, salvaging or sale of parts of machinery or vehicles not in running condition. (Ord. 1206 § 2, 1992).

17.06.490 Kennel.
More than four dogs and/or one litter of unweened pups constitutes a kennel. (Ord. 1668 § 1, 2009; Ord. 1206 § 2, 1992).

17.06.500 Land use.
"Land use" means the type of use activity occurring on a land parcel or within a building situated upon a land parcel. (Ord. 1206 § 2, 1992).

17.06.510 Land use permit.
"Land use permit" means the document issued to an applicant which records all land use decisions which are made by the city on a land use application. Construction permits are excluded. (Ord. 1206 § 2, 1992).

17.06.515 Lattice tower.
"Lattice tower" means a wireless communication support structure which consists of metal crossed strips or bars to support antennas and related equipment. (Ord. 1396 § 12, 1999).

17.06.520 Lot.
A "lot" in the meaning of this title is a single tract of land, no matter how legally described, whether by metes and bounds and/or by lot or lots and block designation as in a recorded plat, that at the time of applying for a building permit is designated by its owner or developer as the tract to be used, developed or built upon as a unit of land under single ownership or control and assigned to the particular use for which the building permit is being secured. (Ord. 1206 § 2, 1992).

17.06.530 Lot, corner.
"Corner lot" means a lot at the junction of and fronting on two or more intersecting streets. A corner lot has two front and two side yards. (Ord. 1206 § 2, 1992).

17.06.540 Lot depth.
"Lot depth" means the mean dimension of the lot from the front street line to the rear line. (Ord. 1206 § 2, 1992).

17.06.550 Lot, interior.
"Interior lot" means a lot fronting on one street. (Ord. 1206 § 2, 1992).

17.06.~~560~~555 Lot width.
"Lot width" means the dimension of the lot line at the street, or in an irregular shaped lot the dimension across the lot at the building line, or in a corner lot the narrow dimension of the lot at a street or building line. (Ord. 1206 § 2, 1992).

17.06.560 Low impact development.
"Low impact development" or "LID" means a storm-water and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed storm-water management practices that are integrated into a project design. Low impact development features, practices, and techniques include bio-retention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated or green roofs, minimum excavation foundations, and water re-use.

Comment [BPC3]: BI – included a definition since this term is used throughout the code

17.06.565 Macro facility.
"Macro facility" is an attached wireless communication facility which consists of antennas equal to or less than 15 feet in height or a parabolic antenna up to one meter (39.37 inches) in diameter and with an area not more than 100 square feet n the aggregate as viewed from any one point. (Ord. 1396 § 13, 1999).

17.06.570 Mailed notice.
"Mailed notice" means notice mailed to all property owners, commercial lessees and all residents of the area within a specified distance of the boundaries of the site of a proposed action. (Ord. 1206 § 2, 1992).

17.06.580 Major auto repair.
Repealed by Ord. 1396. (Ord. 1206 § 2, 1992).

17.06.590 Manufactured home.
"Manufactured home" means a structure, transportable in one or more sections from its manufacturer, retailer or wholesaler to its destination. A manufactured home is designated primarily for residential occupancy by human beings and the term includes mobile home or modular home. (Ord. 1206 § 2, 1992).

17.06.592 Marijuana processor.
"Marijuana processor" means a person licensed by the State Liquor Control Board to process marijuana into usable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products at wholesale to marijuana retailers. (Ord. 1788 § 2, 2013).

17.06.594 Marijuana producer.
"Marijuana producer" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers. (Ord. 1788 § 3, 2013).

17.06.596 Marijuana retailer.
"Marijuana retailer" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet. (Ord. 1788 § 4, 2013).

17.06.600 Mean depth.
The "mean depth" of a lot is the depth of such lot measured on a line approximately perpendicular to the fronting street and midway between the side lines of such lot. (Ord. 1206 § 2, 1992).

17.06.602 Medical cannabis collective garden.
"Medical cannabis collective garden" or "collective garden" means any place, area or garden where qualifying patients share responsibility and engage in the production, processing, and/or delivery of marijuana/cannabis for medical use as set forth in chapter 69.51A RCW and subject to the limitations therein. (Ord. 1788 § 5, 2013).

17.06.605 Medical service.
"Medical service" means a retail sales and service use in which health care for humans if provided on an outpatient basis including, but not limited to, offices for doctors, dentists, chiropractors, and other health care practitioners. (Ord. 1396 § 15, 1999).

17.06.606 Micro facility.
"Micro facility" means an attached wireless communication facility which consists of antennas equal to or less than four feet in height (except omnidirectional antennas which may be up to six feet in height) and with an area of not

J. Accessory dwelling units shall be permitted as an additional means of providing opportunities for affordable housing in an existing owner occupied residence. The following criteria for approval shall be met in order to establish an accessory dwelling unit:

1. Maintain single-family appearance and character.

2. New entrances only on side or rear.

3. Provide three off-street parking spaces. Parking shall not be located in front of the structure.

4. Location shall be within or attached to the residence; not in detached accessory structures such as guest house or garage unless the lot is in excess of 12,000 square feet in area.

5. The primary dwelling or the accessory dwelling shall be occupied by the owner. The residence must have been owner occupied for at least three years since the construction date. Covenants regarding ownership requirements shall be filed with the county.

6. The immediate neighbors shall be notified and a public hearing shall be held before the board of adjustment.

7. The board shall have the final authority to grant, grant with conditions, or deny the request.

K. Home occupations are allowed subject to compliance with BMC 17.45.080.

L. Heat pumps or other noise-producing mechanical equipment shall not be located within 10 feet of a property line abutting another lot and all equipment shall be equipped with a noise-baffling screen so that there shall be no audible sound at the property line. (Ord. 1396 § 31, 1999; Ord. 1260 § 3, 1994; Ord. 1237 § 3, 1993; Ord. 1221 § 5, 1992; Ord. 1206 § 3, 1992).

17.15.055 Residential small lot.
A. Lot Area. Minimum lot area for one detached dwelling unit shall be 3,000 square feet.

B. Height Limit and Roof Pitch. The basic height limit shall be 20 feet with a maximum of a story and one-half. A pitched roof is required, with a minimum 4:12 for a one story building and 12:12 for a story and one-half building. See BMC 17.06.150 for definition of building height.

C. Structure Depth. The depth of any structure shall not exceed 60 feet, except garages. Decks, balconies, and bay windows shall be excluded from measurement for the purposes of this provision.

D. Yards and Setbacks.

1. Front yard setback ~~shall be twenty~~17 feet ~~unless the adjoining lot has a smaller setback, in which case it shall be no less than 10 feet.~~ The front setback for residential small lots may be reduced to 10 feet through the subdivision or short subdivision process if alley access is provided and setback requirements are noted on the face of the plat.

2. Rear yard setback shall be no less than 10 feet and the sum of the front yard plus the rear yard shall be a minimum of 30 feet.

3. Side setback shall be a minimum of five feet.

~~E. Lot Maximum building cCoverage. Lot coverage shall be limited to 45 percent.~~

~~F. Maximum impervious surface coverage 60 percent~~

~~G~~F. Manufactured homes are prohibited. (Ord. 1502 § 2, 2002).

17.15.060 Area and dimensional regulations.
A. Minimum Lot Requirements.

Comment [BM27]: TN-1.2 – BI – creates incentive for more efficient development and reduces length of required driveway since garages with alley access can be constructed on the rear property line

Comment [BM28]: TN-1.8 – BI

1. Minimum lot area per dwelling unit and minimum lot width at the building line as specified at the beginning of BMC 17.15.020; except that residential small lots may be developed as provided in BMC 17.15.055.

2. Minimum lot width at street line: 30 feet.

3. Minimum mean depth of lot: 80 feet.

4. Access to lots shall be from a dedicated street, unless the director determines that the following conditions exist, and permits access by a permanent private easement:

a. Access by easement would not compromise the goals of the zoning code to provide for adequate light, air and usable open space between structures; and

b. The dedication and improvement of a street is not necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage; and

c. The dedication and improvement of a street is not necessary or desirable in order to provide on-street parking for overflow conditions; and

d. No potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines; and

e. There is no potential for extending the street system; and

f. Minimum width of an easement shall be 30 feet.

B. Minimum Setback Requirements.

1. Front yard ~~minimum mean depth~~setback: ~~20~~ 17 feet

2. Side yard minimum mean width: five feet. The total of the two side yards shall be 15 feet. Side of building means the outer face of any part of the building roof eaves.

3. Rear yard minimum mean depth: 20 feet.

C. Maximum ~~Land Coverage by Buildings~~ and Impervious Surface Coverage.:

1. ~~Total~~Building coverage: 35 percent except that residential small lots may be developed as provided in BMC 17.15.055.

2. ~~Accessory buildings~~Impervious surface coverage: ~~50~~ 40 percent. ~~of rear yard.~~

D. Maximum Building Height. Two and one-half stories, but not more than 35 feet except that churches may exceed this height when approved by plan review (see BMC 17.68.150), except that residential small lots may be developed as provided in BMC 17.15.055.

1. Main buildings: two and one-half stories not to exceed 30 feet.

2. Accessory buildings: one story not to exceed 20 feet.

E. Accessory buildings shall not cover more than 50 percent of the required rear yard setback and shall comply with the following requirements:

Lot Size	Maximum Building Size	Setback	Maximum Eave Height at Minimum Setback Line
Up to 9,600 square feet	640 square feet	5 feet	12 feet

Comment: [BMJ9]: TN-1.2 – BJ – reduces length of required driveway to depth of required parking space reducing the amount of impermeable surfaces – If the justification for a front setback is to provide adequate depth for parking the front setback need not be greater than the required depth for a parking space

Comment: [BMJ10]: TN-1.8 – BJ

Comment: [BMJ11]: BJ – moved from provision above to facilitate implementation of TN-1.8 and reduce the need to render code sections

Lot Size	Maximum Building Size	Setback	Maximum Eave Height at Minimum Setback Line
9,601 – 10,890 square feet (1.4 acre)	10 square feet /100 square feet lot area - 9,600 square feet (760 square feet @ 1/4 acre)	7 feet	12 feet
10,891 – 21,780 square feet (1/2 acre)	1,200 square feet	10 feet	12 feet
21,781 – 43,560 (1 acre)	1,600 square feet	12 feet	12 feet
43,560 (1 acre)	2,000 square feet	15 feet	15 feet

F. Subdivisions shall comply with the following criteria:

1. A detailed landscaping plan shall be submitted.

2. Artist's renderings with both isometric and perspective views and a color plan for the proposed development. Models may be required for large and complex projects.

3. A design review report and recommendation pursuant to chapter 17.69 BMC shall be presented.

4. Common open space, playground and/or park shall be provided for subdivisions larger than 40 units.

G. Cluster developments may be permitted ~~as part of the~~through a subdivision or short subdivision process. ~~The planning commission, when considering a subdivision, may, allow~~For such developments, ~~a reduction of the~~ normally applicable requirements ~~-~~for lot width and lot width and the building line, lot depth~~lot width at building line~~, building and impervious surface coverage, and lot area may be reduced or altered, provided, that

1. Housing types may include single-family detached, townhouses, zero lot line and multifamily. A maximum of eight dwelling units is permitted in a single building.

2. The density of dwellings ~~is~~ shall not be greater than that which would be permitted ~~occur~~ under strict interpretation of the requirements for the underlying zoning classification in which the development is located ~~subject to adopted administrative rules reviewed and approved by the planning commission within six months of the effective date of this section.~~

3. When ~~lot widths and lot areas are decreased, 35 percent lot coverage shall be the maximum permitted for a detached single-family dwelling, and proportional limits on building size may be imposed on other housing types~~the building or impervious surface coverage of individual lots exceeds the permissible limits for the zone in which the development is located, additional open space areas shall be set aside so that the total coverage of all building lots and open space tracts is consistent with coverage limit prescribed by the underlying zone.

4. The resulting subdivision design shall clearly retains a substantial area of continuous, publicly accessible open space, wetlands, areas adjacent to wetlands ~~such as Gages Slough, a lake, wetland, bluffs~~, ravines, steep slopes, wildlife habitat areas, or other critical areas ~~trail on Burlington Hill, or other unique topographic feature, or a conservation area identified by the planning commission. Such open spaces shall be maintained in accordance with their intended use and purpose.~~ Cluster developments may also be authorized if the resulting open space area(s) is used for non-structural low impact development features, such as bio-retention areas, which mimic natural environmental and hydrologic processes. All such low impact development features shall be extensively landscaped using native vegetation.

Comment [BMJ12]: BJ – cleaned up this language and added all dimensional standards, including coverage limits, to permit more flexible designs necessary to implement LID techniques

Comment [BMJ13]: BJ – cleaned up the language so that it reads in a more restrictive fashion – also eliminated the references to administrative rules which have never been created – it's not clear what these rules would have accomplished in any event

Comment [BMJ14]: TN-1.44 and 1.16 – BJ – modified to allow lot coverage to be shifted to open space tracts – this allows high quality soils to be retained in large blocks and permits storm-water to be shifted to these tracts

Comment [BMJ15]: TN-1.44 and 1.16 - BJ – included reference to LID features and bio-retention areas – also revised to included list of SMA critical areas consistent with other regulatory requirements – shifted development restrictions down to provisions "8" and "9".

5. A reduction in lot size of up to 20 percent below the minimum lot size of the underlying zoning shall be permitted. For example, if the underlying zoning has a minimum lot size of 9,600 square feet, the maximum reduction in lot size is 1,920 square feet, or a minimum lot size of 7,680 square feet in a cluster subdivision.

6. A detailed landscaping plan shall be submitted.

7. Artist's renderings with both isometric and perspective views and a color plan for the proposed development. Models may be required for large and complex projects.

8. ~~A design review report and recommendation pursuant to chapter 17.69 BMC, shall be presented.~~[1] Open space areas created through a cluster development shall be placed within separate tracts.

9. Restrictive notes shall be included on the face of the plat, or short plat, limiting the future use and development of open space tracts to uses and developments that are consistent with intended purpose of the open space.

H. Subdivisions shall be required to provide one 10-foot and one five-foot side yard where feasible to maximize the opportunity for vehicle access to the rear yard. (Ord. 1502 § 3, 2002; Ord. 1473 § 1, 2001; Ord. 1431 § 2, 2000; Ord. 1396 § 32, 1999; Ord. 1260 § 4, 1994; Ord. 1237 § 4, 1993; Ord. 1206 § 3, 1992).

Comment [BM316]: BJ – we have no design regulations or design committee so there is no need to have a design report

Comment [BM317]: BJ – ensures open space tracts will be maintained and allows for easier calculations of cumulative lot coverage

Comment [BM318]: BJ – ensures open space areas are not developed

[1] Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

C. Duplexes, more than one per lot;

D. Government facilities;

E. Mobile home parks;

F. Museums;

G. Nursing homes;

H. Religious institutions;

I. Utility substations. (Ord. 1396 § 34, 1999; Ord. 1206 § 3, 1992).

17.21.050 Area and dimensional regulations.
A. Minimum lot area for single-family residence: 6,000 square feet.

Minimum lot area for two-family residence: 7,600 square feet.

Minimum lot width at building line for single-family residence: 60 feet.

Minimum lot width at building line for two-family residence: 70 feet.

B. Maximum building and impervious surface coverage.

1. Building coverage: 40 percent

2. Impervious surface coverage: 60 percent.

~~B~~C. All other area and dimensional regulations shall be the same as for the ~~district~~ R-1 district ~~except maximum land coverage by buildings, which shall be 40 percent.~~ (Ord. 1206 § 3, 1992).

Comment [BJ129]: TN-1 S - BJ

[1] Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

1. Minimum lot area: 6,000 square feet. For a multifamily dwelling the required land area shall be computed as follows: Initial minimum lot size for two units of any size: 6,000 square feet. For each additional unit over two, add 3,000 square feet per unit.

2. Minimum lot dimensions: 60-foot width at front building line, 30-foot minimum width at street line, 80-foot minimum mean depth.

B. Minimum setback requirements: The same as for district R-1.

C. Maximum ~~land coverage~~building and impervious surface coverage: ~~Not more than~~ 70 percent ~~of any lot area may be covered by buildings and or impervious paving materials, and not more than 30 percent of any lot area may be occupied by buildings. A minimum 30 percent of each lot shall be landscaped.~~

D. Maximum building height: ~~Two stories, but not more than 30~~ 35 feet.

E. Interior courts or areas between multifamily dwelling buildings shall have a minimum dimension of 30 feet in one-story buildings, 40 feet in two-story buildings.

F. Maximum Building Dimension. In no instance shall the greatest dimension of a multifamily building exceed 150 feet, measured parallel to exterior building walls.

G. Maximum Building Gross Floor Area. In no instance shall the gross floor area exceed 8,000 square feet for any multifamily building.

H. Maximum Density. Maximum density for any multifamily development shall not exceed 14 units per usable acre, except as provided in chapter 17.70 BMC, Agricultural Heritage Credit Program. Usable acreage is defined as the total site area minus any delineated wetlands or steep slope areas.

I. Cluster developments may be permitted as part of the subdivision process. The planning commission, when considering a subdivision, may allow a reduction of lot width, lot width at building line and lot area; provided, that:

1. Housing types may include single-family detached, townhouses, zero lot line and multifamily. A maximum of eight dwelling units is permitted in a single building.

2. The density of dwellings is not greater than that which would occur under strict interpretation of the requirements for the underlying zoning classification subject to adopted administrative rules reviewed and approved by the planning commission within six months of the effective date of the ordinance codified in this section.

3. When lot widths and lot areas are decreased, 35 percent lot coverage shall be the maximum permitted for a detached single-family dwelling and proportional limits on building size may be imposed on other housing types.

4. The resulting subdivision design clearly retains a substantial area of continuous, public accessible open space such as Gages Slough, a lake, wetland, a bluff, ravine, wildlife habitat area, trail on Burlington Hill, or other unique topographic feature, or a conservation area identified by the planning commission. Such open spaces shall be maintained in accordance with their intended use and purpose.

5. A reduction in lot size of up to 20 percent below the minimum lot size of the underlying zoning shall be permitted. For example, if the underlying zoning has a minimum lot size of 9,600 square feet, the maximum reduction in lot size is 1,920 square feet, or a minimum lot size of 7,680 in a cluster subdivision.

6. A detailed landscaping plan shall be submitted.

7. Artist's renderings with both isometric and perspective views and a color plan for the proposed development. Models may be required for large and complex projects.

Comment [BMJ20]: TN-1 8 – BJ – also last part of this is not needed since it is addressed in the landscaping chapter

Comment [BMJ21]: TN-1 14 – BJ – no need to include both "stories" and "feet" – feet can be quantified stories cannot

A. Cafe, delicatessen or coffee shop, not to exceed 1,000 square feet in gross floor area;

B. Day care facilities as defined by DSHS;

C. Other uses consistent with the intent of the zone. (Ord. 1260 § 10, 1994).

17.30.040 Accessory uses.

A. Outdoor storage that is screened with a solid fence and perimeter landscaping, accessory to the primary use.

B. Telecommunication mini facility, subject to the following requirements:

1. The mini facility may be located on buildings and structures provided that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The mini facility shall be exempt from review by the design review board if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Mini facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 10 feet, or in the case of nonconforming structures the antennas may extend 10 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing nonconforming building and blends in architecturally with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1396 § 38, 1999; Ord. 1260 § 10, 1994).

17.30.050 Supplemental development standards.

A. Uses generating noise levels incompatible with residential occupancy shall not be permitted.

1. Truck loading activities and similar noisy activities shall be limited to 7:00 a.m. to 7:00 p.m.

2. Uses such as music and dance studios shall be conducted in a fully enclosed building and an approved acoustical wall installed to prevent excessive noise at the property line, or if in a mixed use building, to provide a noise barrier between the commercial and residential occupancy. Sound transmission control ratings compatible with mixed uses shall be required in construction.

B. No on-site hazardous substance processing and handling, including medical waste, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use, subject to the requirements of the Uniform Fire Code.

C. Parking located in the setback in front of the building shall be screened and landscaped.

D. Drive-in uses are prohibited.

E. Parking area illumination shall be directed away from residential uses.

F. Assembly uses shall require approval from the planning, police and fire departments for all special events. (Ord. 1396 § 39, 1999; Ord. 1260 § 10, 1994).

17.30.060 Area and dimensional regulations.

A. Minimum Setback Requirements. Existing buildings may be converted to other uses without complying with the setback requirements, and existing nonconforming setbacks may be extended with additions, subject to building code standards.

1. Front yard, minimum mean depth: ~~20~~ 17 feet.

Comment [BM22]: TN-12 – BM -

2. Side yard, minimum mean width: five feet each side.

3. Rear yard, minimum mean depth: 10 feet.

B. Minimum Lot Requirements.

1. Minimum lot area per dwelling unit: 3,000 square feet, except as provided in chapter 17.70 BMC, Agricultural Heritage Credit Program.

2. Minimum lot area for nonresidential use: none required. Nonresidential uses may be added to the residential uses without requiring additional lot area beyond that required for the residential uses.

C. Maximum ~~land coverage by buildings~~building and impervious surface coverage: none ~~required.~~

Comment [BKD25]: B) – changed to use consistent terminology throughout document – no limit in the zone due to historic development pattern and infill objectives – deleted word "required" it doesn't make sense in the context of a limit

D. Maximum building height: two stories, but not more than 35 feet.

E. Maximum building size: 6,500 square feet. (Ord. 1717 § 5, 2010; Ord. 1260 § 10, 1994).

B. Medical service;

C. Other uses not listed may be permitted if the use is determined to be consistent with the intent of the zone and is of the same general character as the uses permitted in BMC 17.33.030. (Ord. 1396 § 43, 1999).

17.33.040 Uses requiring permit.
The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of BMC 17.68.130:

A. Apartments;

B. Arcades;

C. Brewpubs;

D. Taverns;

E. Utility substations. (Ord. 1717 § 7, 2010; Ord. 1396 § 44, 1999; Ord. 1356 § 2, 1997; Ord. 1206 § 3, 1992).

17.33.050 Development standards.
A. Minimum Lot Area.

1. Minimum lot area per dwelling unit: 3,000 square feet, except as provided in chapter 17.70 BMC, Agricultural Heritage Credit Program.

2. Minimum lot area for nonresidential use: none required. Nonresidential uses may be added to the residential uses without requiring additional lot area beyond that required for the residential uses.

B. Minimum lot width: none required.

C. Minimum lot depth: none required.

D. Maximum ~~lot coverage~~building and impervious surface coverage: none ~~required.~~

Comment [BH24]: BJ – see comment 13

E. Maximum building height: four stories not to exceed 45 feet.

F. Minimum yard setbacks:

1. Front: zero feet;

2. Side, interior: none required;

3. Side, street: zero feet;

4. Rear: none required.

G. Maximum front yard setback on Fairhaven Avenue is zero feet. Exceptions:

1. When a wider sidewalk or additional landscaping is approved at the building entrance.

2. When a setback is necessary to maintain the continuity of the street front because of the setback line of the buildings on either side.

H. Maximum Setback Requirement in All Other Locations.

1. Ten feet from the property line on the street side for new construction. If the new construction occurs on a corner lot, the maximum setback shall apply to each boundary line adjacent to a street.

2. Parking shall not be located in the setback in front of the building.

G. Household goods storage, provided the following requirements are met:

1. No more than two main entrances and/or exits to the building and access to the individual storage area shall be from the inside of the building;

2. Landscaping and architectural improvements required to ensure compatibility with present and potential C-1 uses in the vicinity;

3. The site does not front on Burlington Boulevard;

H. Taverns;

I. Utility substations. (Ord. 1717 § 9, 2010; Ord. 1630 § 2, 2007; Ord. 1396 § 49, 1999; Ord. 1365 § 2, 1998; Ord. 1361 § 1, 1998; Ord. 1356 § 4, 1997; Ord. 1322 § 5, 1996; Ord. 1206 § 3, 1992).

17.36.040 Development standards.

A. Minimum Lot Area.

1. Minimum lot area per dwelling unit: 3,000 square feet, except as provided in chapter 17.70 BMC.

2. Minimum lot area for nonresidential use: none required. Nonresidential uses may be added to the residential uses without requiring additional lot area beyond that required for the residential uses.

B. Minimum lot width: none required.

C. Minimum lot depth: none required.

D. Maximum ~~lot~~ building and impervious surface coverage: ~~none required~~

1. Building coverage: none

2. Impervious surface coverage: 80 percent

E. Maximum building height: ~~four stories not to exceed~~ 45 feet.

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line~~,~~ for each foot the building exceeds 45 feet; and

2. An additional 15 feet of building height may be permitted when parking is located under the building.;

F. Minimum yard setbacks:

1. Front: zero feet;

2. Side, interior: none required;

3. Side, street: zero feet;

4. Rear: none required.

G. Maximum front yard setback on Fairhaven Avenue is zero feet.

1. When a wider sidewalk or additional landscaping is approved at the building entrance.

2. When a setback is necessary to maintain the continuity of the street front because of the setback line of the buildings on either side.

H. Maximum Setback Requirement in all Other Locations.

Comment [BMJ25]: TN-1.8 – BJ

Comment [BMJ26]: BJ – no need to limit both stories and height, height can be quantified stories cannot. Also use of both terms makes the height exceptions below potentially contradictory

Formatted: Indent: Left: 0.31"

Comment [BMJ27]: TN-1.4 - BJ

17.39.025 Accessory uses.
A. Telecommunication macro facilities, subject to the following requirements:

1. Macro facilities may be located on buildings and structures provided that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The macro facility shall be exempt from review by the design review board if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Macro facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 15 feet, or in the case of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blend in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1396 § 50, 1999).

17.39.030 Uses requiring conditional use permit.
The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of BMC 17.68.130:

A. Apartments or other multifamily housing types either single purpose or as part of a mixed use development; provided, that an additional criterion for approval is that the site is better suited for housing than commercial development, and the project complies with the plan review criteria in BMC 17.24.020 and 17.24.050, area and dimensional requirements, subsections A, E, F, G, and H;

B. Government facilities, this excludes offices and related uses that are permitted outright;

C. Heliports;

D. Miscellaneous light manufacturing including toys, jewelry, ceramic, musical instruments and similar products, apparel and other finished products made from fabrics, leather, and similar materials, manufacturing of professional, scientific, and controlling instruments such as photo and optical goods, watch and clock manufacturing, and similar products, with retail sales of products manufactured on the premises;

E. Nursing homes;

F. Semi-tractor and trailer sales;

G. Utility substations;

H. Towing service. (Ord. 1396 § 51, 1999; Ord. 1322 § 7, 1996; Ord. 1206 § 3, 1992).

17.39.040 Development standards.
A. Minimum lot area: none required.

B. Minimum lot width: none required.

C. Minimum lot depth: none required.

D. Maximum ~~lot~~ building and impervious surface coverage: ~~none required.~~

1. Building coverage: none

2. Impervious surface coverage: 80 percent

Comment [BM32]: TN 2.8 - BJ

E. Maximum building height: ~~four stories not to exceed~~ 45 feet;~~.~~ except

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line~~,~~ for each foot the building exceeds 45 feet; and~~.~~

2. An additional 15 feet of height may be permitted when parking is located under the building

Formatted: Indent: Left: 0.31"

Comment [BM329]: Tri-1 - Bl

F. Minimum yard setbacks:

1. Front: 0 feet;

2. Side, interior: none required;

3. Side, street: 0 feet;

4. Rear: none required.

G. Maximum Setback Requirement in all Other Locations.

1. Ten feet from the property line on the street side for new construction. If the new construction occurs on a corner lot, the maximum setback shall apply to each boundary line adjacent to a street.

2. Parking shall not be located in the setback in front of the building.

3. Exceptions which may be authorized through the planning commission plan review process include the following list:

a. Drive-in businesses shall have the building setback established as part of the conditional use permit for the drive-in use.

b. Utility easements.

c. When a wider sidewalk or additional landscaping is approved at the building entrance.

d. Architectural design features such as a unique building entrance, outside seating area, pocket park or similar element.

e. Irregularly shaped lots or lots that do not directly abut the right-of-way.

f. Site development that incorporates existing buildings, when needed to preserve existing visual and physical access.

g. Other exceptions consistent with the intent of providing a well defined street edge and pedestrian oriented streetscape.

H. Fences: see BMC 17.45.050.

I. Parking: see chapter 17.54 BMC.

J. Landscaping: see chapter 17.50 BMC.

K. Signs: see chapter 17.63 BMC. (Ord. 1237 § 7, 1993; Ord. 1233 § 4, 1993; Ord. 1206 § 3, 1992).

17.39.050 Supplemental development standards.
A. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use, subject to the requirements of the Uniform Fire Code.

5. New transmission towers and additional height on existing towers shall comply with performance standards for industrial uses adjacent to residential zones, BMC 17.48.110, 17.48.120 and 17.48.130);

L. Utility substations, unless clearly incidental and part of a permitted use;

M. Warehouse sales, open to the public, must have a minimum of 50,000 square feet of floor space. (Ord. 1396 § 55, 1999; Ord. 1206 § 3, 1992).

17.42.050 Development standards.
A. Minimum lot area: none required.

B. Minimum lot width: none required.

C. Minimum lot depth: none required.

D. Maximum ~~lot~~ building and impervious surface coverage ~~zone required~~

1. Building coverage: none

2. Impervious surface coverage 80 percent

E. Maximum building height: 45 feet. except

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line for each foot the building exceeds 45 feet, and~~For those structures that exceed 45 feet, one additional foot of setback shall be provided for each foot the structure exceeds 45 feet.~~

2. An additional 15 feet of height may be permitted when parking is located under the building

F. Minimum yard setbacks:

1. Front: 0 feet;

2. Side, interior: none required;

3. Side, street: 0 feet;

4. Rear: none required.

A 20-foot setback shall be required for any and each yard that abuts, adjoins, or is separated by a street, less than 50 feet in width, any residentially zoned property. This additional setback requirement also applies to residentially zoned property that is unincorporated county land.

G. Fences: see BMC 17.45.050.

H. Parking: see chapter 17.54 BMC.

I. Landscaping: see chapter 17.50 BMC.

J. Signs: see chapter 17.63 BMC.

K. Performance standards: see chapter 17.48 BMC. (Ord. 1233 § 5, 1993; Ord. 1206 § 3, 1992).

17.42.060 Supplemental development standards.
A. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use, subject to the requirements of the Uniform Fire Code.

Comment [BMJ30]: TN-1.8 - BJ

Formatted: Indent: Left: 0.25"

Comment [BMJ31]: BJ – language was slightly different than the same provision in C-1 and C-2 zones – revised for consistency – no change in meaning

Comment [BMJ32]: TN-1.4 - BJ

17.43.080 Development standards.

A. Minimum area to be developed as a business park: 10 acres.

B. Minimum lot area: none required.

C. Minimum lot width: none required.

D. Minimum lot depth: none required.

E. Maximum ~~lot~~ building and impervious surface coverage: ~~none required.~~

1. Building coverage: none

2. Impervious surface coverage: 80 percent

F. Maximum building height: ~~35~~ 45 feet; except:

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line for each foot the building exceeds 45 feet; and ~~Additional height may be allowed if approved by the city council.~~

2. An additional 15 feet of height may be permitted when parking is located under the building

G. Minimum Yard Setbacks.

1. Exterior property lines: Setbacks from the exterior boundary line of the business park shall be comparable to or compatible with those of existing development of adjacent properties; or if adjacent properties are undeveloped, the type of development which may reasonably be expected on such properties given the existing zoning of such properties or the projections of the comprehensive plan. In no event shall such setback be less than 20 feet.

2. Interior property lines: The setbacks within the business park may either be determined at the time of conceptual or site plan approval.

H. Parking: see Chapter 17.54 BMC.

I. Supplemental development standards and performance standards: see Chapters 17.45 and 17.48 BMC.

J. Landscaping: see Chapter 17.50 BMC, a minimum of 15 percent of the business park shall be landscaped.

K. Signs: see Chapter 17.63 BMC.

L. Land use permit process: see Chapter 17.68 BMC.

M. Sidewalks and/or walkways: there may be flexibility in the design of sidewalks or walkways if approved by the city engineer. (Ord. 1260 § 18, 1994).

17.43.090 Supplemental development standards.

A. All activities shall be conducted entirely within a building except as follows:

1. Gas pumps;

2. Refuse containers, provided they are screened from adjoining property and public or private right-of-way;

3. Horticulture activities;

4. Play areas for day care;

5. Outdoor activities as permitted by the contract rezone.

Comment [BH333]: TN-1 8

Comment [BH334]: BI – changed for consistency with M1, C1, and C2 zones allows more efficient use of site to compensate for impervious surface limits

Formatted: Indent: Left: 0"

Comment [BH335]: TN-1 4

Chapter 17.45

SUPPLEMENTAL DEVELOPMENT STANDARDS[1]

Sections:

17.45.010 Preexisting lots.
17.45.015 Mini-lots permitted without setbacks.
17.45.020 Special height restrictions.
17.45.030 Obstructions, generally prohibited.
17.45.040 Marquees.
17.45.050 Fences.
17.45.060 Yards.
17.45.070 Design review guidelines.
17.45.080 Home occupations.
17.45.090 Responsibility for animals.
17.45.100 Outdoor vending machines.
17.45.110 Low Impact Development

Formatted: Space After: 0 pt

Comment [BM335]: TW-1.46 – BJ – added new section

17.45.010 Preexisting lots.
Any lot of any size can be used for a building site, subject to the regulations governing the use district in which it is located, if it was officially recorded in city or county offices as a single lot prior to the adoption of the ordinance codified in this title, provided it has 30-foot frontage on a public street or access to a public street by a 20-foot wide private lane. Once vacant adjacent substandard lots are considered in ownership, they cannot revert to original lots of substandard size subject to the requirements of BMC 17.15.055. (Ord. 1502 § 5, 2002; Ord. 1221 § 6, 1992).

17.45.015 Mini-lots permitted without setbacks.
Subdivision to create zero lot line residences or small lots without yards that meet the underlying zoning district requirements, by either short plat or full subdivision, shall be permitted in the following zoning districts and locations:

A. R-3 multifamily;

B. R-2 duplex;

C. MR-NB medium residential neighborhood business;

D. Permitted duplex dwelling units located in the R-1 single-family zoning district.

This section only applies if the total development site complies with all underlying zoning district development standards and permit conditions. The total development site is defined as the site for which the land use permit is issued authorizing the construction of the dwelling units. This section shall not apply in locations where site access and circulation is provided by a network of private streets. All projects subject to this provision shall be reviewed by the planning commission for compliance with the intent of the code. (Ord. 1584 § 1, 2005).

17.45.020 Special height restrictions.
A. There shall not be anything constructed or reconstructed, and no obstruction permitted to grow, other than a post, column or tree not exceeding one foot square or one foot in diameter, between a height three feet and 10 feet above the established grade within the triangular areas described below, without the express approval of the city engineer:

1. The triangular area formed by a line 20 feet along the right-of-way lines of two intersecting streets, measured from the point of intersection of the right-of-way lines, and the line connecting the two ends of the two 20-foot lines,

2. The triangular area formed by a line 15 feet along the street right-of-way line measured from the point of intersection of the alley right-of-way line and a line 15 feet along the alley right-of-way line measured from the

Square Footage of a Lot within an Integrated Development	Number of Outdoor Vending Machines
15,000 or less	1
15,001 – 30,000	2
30,001 or greater	3

15. Upon removal of an outdoor vending machine, the building and site area where the outdoor vending machine was located shall be repaired to its original condition. (Ord. 1720 § 2, 2010).

17.45.110 Low Impact Development

The following standards and requirements shall apply to any building, development, or construction activities that result in an increase in impervious surface coverage, building coverage, or modifications to existing storm-water management features or facilities. These standards and requirements shall also apply to all activities involving the modification of existing impervious surfaces or the removal of significant quantities of vegetation.

A. All development, building, construction, and grading permit applications shall be provided to the City Engineer for review. No permit shall be issued or approved unless the City Engineer finds the proposal complies with the surface water management regulations in title 14 BMC.

B. All development activities shall be designed and constructed in accordance with the Washington State Department of Ecology's Stormwater Manual for Western Washington.

C. Low impact development shall be the preferred and commonly used approach for all development and construction activities. Low impact development (LID) techniques shall be incorporated into all development proposals unless demonstrated to be infeasible through an engineering analysis.

D. The Department of Ecology's Stormwater Manual for Western Washington and the Puget Sound Partnership's Low Impact Development Technical Guidance Manual for Puget Sound shall be consulted to assess the feasibility of LID techniques, to select appropriate LID measures, and to aid in the design and construction of LID features. All storm-water systems and improvements shall be consistent with title 14 BMC.

Formatted: Font: 10 pt

Formatted: Font: 10 pt

Comment [BMJ37]: TN-1 4/5 – catch all provision to ensure to gaps in regulatory coverage

Formatted: Font: 10 pt

[1] Prior legislation: Ords. 890 §§ 5.1, 5.5, 5.6, 5.7, 5.11 and 979 § 3.

C. Planning Commission Review. Landscape plans for any development subject to a public hearing review, or plan review by the planning commission, under chapter 17.43 BMC, shall be reviewed by the planning commission, who may approve, deny, or approve with conditions, the proposed landscaping. The planning commission may authorize the planning director, or the site plan review committee, to review any landscape plan.

D. Minor Modifications. Any applicant, or the planning director, may request modification of any standard specified under this chapter, subject to the provisions of BMC 17.50.100. (Ord. 1162 § 4, 1990).

17.50.040 General standards.
The following general standards shall apply to all landscaping required under this section:

A. Landscape Materials.

1. Acceptable l~~L~~andscape materials ~~shall be defined as~~include evergreen or deciduous trees, shrubs, and groundcover plants, perennial or annual flowers, and lawn. River rock, driftwood, bark, rockeries, ornamental or decorative walkways (provided both sides abut landscaping), may be included. ~~Suggested plant materials suited to the unique soils, geology, and weather patterns of Burlington shall be available at City Hall.~~ No artificial lawn or plants will be permitted in landscaped areas.

2. At least 50 percent of all vegetation shall be native to the northwest and at least 25 percent of required trees shall be coniferous evergreens.

Formatted: Indent: Left: 0.25"

Comment [BM336]: BJ – we have no list

Comment [BM339]: TN-1 S – BJ

B. Existing Site Vegetation. Significant existing trees and shrubs shall be incorporated into the landscaping as much as possible. "Significant trees" shall be those evergreen and deciduous trees at least six inches in diameter at a point five feet above ground level. The site plan for the project shall include the location of significant trees, and shall identify which trees will be retained on the site. Care shall be taken in the grading and construction process so as not to disturb the roots within the drip line of existing trees to be retained, and to ensure proper irrigation.

C. Erosion Control Plan. The city may require temporary erosion sedimentation control measures as part of the landscape plan for the development. Sloped areas of the site shall be protected during construction, and planted with vines or other ground cover materials that will provide 90 percent coverage within 18 months of planting.

D. Pollution Control. It shall be the responsibility of the property owner to insure that storm runoff from landscaped areas does not contain excessive amounts of fertilizer, insecticides and herbicides that may be harmful to aquatic life, and to take measures to prevent runoff water impacts as required by the Departments of Ecology and Wildlife.

E. Corner Vision. Along street frontages, within 30 feet of a driveway, alley, or street intersection, no shrubs shall be higher than 30 inches and no trees shall have branches or foliage below eight feet above street level.

F. Safety Features/Utilities. Installation of landscape materials shall not obstruct access to fire hydrants, standpipes, sprinkler connections, utility vaults, pedestals, and other public and private utility facilities.

G. Right-of-Way Landscaping. In addition to all other landscaping requirements, the developer shall landscape the unused right-of-way between the front property line(s) and the improved roadway. Where a street is at its ultimate width, unused right-of-way is defined as the area between the property line and the curb or edge of pavement. Landscaping within the right-of-way shall satisfy the corner vision and safety feature provisions of this section. In most cases, low shrubs and ground cover plantings similar to those used on the site will be preferred. Trees should be placed on private property whenever possible. Maintenance of landscaping in the right-of-way shall be the responsibility of the owner of the property adjacent to the right-of-way.

Nothing in this section shall create or imply any interest of the property owner in the right-of-way. At such time as the city, county or state shall need to use the right-of-way, removal of the landscaping shall be the responsibility of the property owner. If such landscaping is not removed, it may be destroyed by the city, county or state.

H. Irrigation/Watering System. An irrigation system, or alternative watering system, shall be required. For smaller projects, an acceptable alternative would be the location of hose bibs in locations where hoses do not have to extend over parking lots or driveways to rear planting areas. The applicant shall contact the Public Utility District or

applicable water purveyor to determine if any backflow prevention device is necessary; if so, such a device will be installed as required. Irrigation may be provided from shallow wells tapping ground water sources.

I. Maintenance. All landscaping and screening areas shall be maintained in a healthy, growing condition. Broken, dead, or dying trees, shrubs, or other plants shall be replaced. All landscaping and screening shall be kept reasonably free of weeds and trash. Any property owner who fails to reasonably maintain landscaping and screening areas will be considered to have committed an offense under this code.

J. Performance Assurance/Bonding. Unless otherwise required by the planning commission, all landscaping and screening required under this chapter shall be installed prior to occupancy of the development. In the event that landscaping improvements cannot be installed prior to application for occupancy, a cash deposit or other assurance acceptable to the city equal to 120 percent of the estimated installation costs shall be required. Such deposit shall be accompanied by a letter which shall stipulate completion of all landscape development no later than six months after the issuance of the certificate of occupancy or date of final approval, whichever is later. If these conditions are not met, the city may use the deposit to perform the landscape development. (Ord. 1162 § 5, 1990).

K. Storm-Water Management

1. Storm-water facilities and low impact development features landscaped in accordance with the requirements of this chapter may be used to meet any applicable minimum landscaping requirements.

2. To the greatest extent possible the planting areas required by this chapter should be used as storm-water infiltration areas or low impact development features.

3. Low impact development features and planting areas used to treat, manage, or infiltrate storm-water should be designed and constructed consistent with the Washington State Department of Ecology's "Stormwater Manual for Western Washington" and the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for Puget Sound".

4. When trees or plants are located within, or adjacent to, an infiltration area the landscape architect shall submit evidence that they have coordinated with the engineer responsible for onsite storm-water management. Based on information provided by the storm-water engineer the landscape architect shall:

a. Specify tree and plant species suitable for the hydrologic and soil conditions anticipated or present in the planting area; and

b. Specify tree and plant species that will not detrimentally affect the ability of the planting area to manage storm-water.

5. Landscaping plans shall identify areas of the site with suitable soils for storm-water infiltration and LID features.

6. Any landscaping areas used for storm-water infiltration, treatment, or storage shall be consistent with title 14 BMC.

Formatted: Indent: Left: 0.25"

Formatted: Indent: Left: 0.5"

Comment [BM340]: TN-1.36

Formatted: Indent: Left: 0.25"

Comment [BM341]: TN-1.17 and 1.18

Comment [BM342]: BJ – clarifies that these areas are storm-water facilities and need to be reviewed by the PW even if landscaped

17.50.050 Minimum area standards.

A. Basic Requirements. The percentage of gross site area to be landscaped is to be regarded as the minimum. In the event that, because of lot configuration, adjacent land uses, or special circumstances, more landscaping is required to meet all requirements of this code, the higher amount of landscaping shall be required. The minimum landscaping area requirements indicated below may include landscaping around buildings, along road frontages, in parking and loading areas, and outdoor recreational use areas, as required in this section. Area within the right-of-way may be used to satisfy up to 20 percent of the minimum requirements.

Zoning Classification	Percent of Gross Site Area
Multifamily (R-3 and R-2)	15

General/Heavy Commercial District (C-1 and C-2)	10
Multifamily in Commercial District	15
Semi-Public (R-S)	15
Business District (B-1)	10
Business Park District (BP)	10
Industrial District (M-1)	5
Commercial Uses in Industrial Districts	10
Short Plats, Subdivisions, and Cluster Developments - see BMC 17.50.050 C and BMC 17.50.060 for requirements	

B. Preexisting Developments/Alterations. Any development existing prior to the adoption of this section which does not satisfy the provisions of this section shall be considered a nonconforming use. Additions or alterations to these nonconforming uses shall require that landscaping be provided, as possible, commensurate with the extent of the alteration of addition, in compliance with the provisions of this section, provided that compliance with BMC 17.50.060 shall be required as a minimum.

C. Phased Projects. Phased projects include but are not limited to shopping centers, large site developments proceeding in phases, subdivisions, cluster developments, and business parks. Before construction permits are issued for the first phase of any phased project, conceptual approval of the landscaping plan for the site as a whole is required.

1. Final approval of the landscaping plan for each phase is required before construction permits are issued for a phase.

2. Landscaping along a frontage road or perimeter screening may be required to be installed in the first phase. Criteria to be considered in the decision include but are not limited to the following:

a. Timing of phases of a project, and

b. Proximity to residential areas.

D. A licensed landscape architect shall be required to prepare the landscaping plans and supervise the installation of landscaping for all new development ~~subject to environmental review~~. This requirement may be waived by the Community Development Director for simple small scale projects with minimal landscaping requirements. (Ord. 1260 § 19, 1994; Ord. 1199 § 1, 1992; Ord. 1162 § 6, 1990).

Comment [BMJ43]: BJ – clarifies when a landscape architect is required previous requirement tied landscape arch to "environmental review" (SEPA). Given the expertise needed to design functional LID features we may want more flexibility to require the involvement of a landscape architect.

17.50.060 Street frontage requirements.
Planting areas along street frontage shall be as follows:

A. Minimum Width. Ten feet. When lot depth is less than 200 feet, the minimum width may be reduced to five percent of the lot depth, but not less than six feet in width.

B. Maximum Spacing. One tree for every 30 feet of road frontage shall be planted, either in groupings or evenly spaced, with ground cover or shrubs used liberally.

C. Plant Varieties. Trees utilized in this area shall be of varieties that do not conflict with underground and overhead utilities. These trees may be selected from the city's suggested list of plant materials, or any approved equivalent, based upon the specific constraints of the site.

D. Street Tree Requirements. Plantings shall also comply with the adopted Burlington tree plan as now or hereafter amended. Where the Burlington tree plan differs from these requirements, the Burlington tree plan shall control. (Ord. 1260 § 20, 1994; Ord. 1162 § 7, 1990).

Chapter 17.54

~~OFF-STREET~~ ACCESS, PARKING AND LOADING

Comment [BM144]: BJ – Because of changes 1.9, 1.20, 1.22 and 1.40 it seems appropriate to rename this chapter

Sections:

17.54.010 General and exceptions.
17.54.020 Required off-street parking – Minimum standards.
17.54.030 Shared parking.
17.54.035 Cooperative parking.
17.54.040 Drive-in businesses.
17.54.050 Off-street parking area development and maintenance.
17.54.060 Development of required off-street parking spaces for one-family dwellings.
17.54.070 Off-street parking lots – Location and screening.
17.54.080 Off-street parking plan design standards.
17.54.090 Pedestrian circulation and access.
17.54.100 Existing off-street parking reduction.
17.54.110 Fractional spaces.
17.54.120 Reserved.
17.54.130 Off-street loading space.

17.54.010 General and exceptions.

A. Off-street parking and loading lots shall be provided in accordance with the following provisions of this chapter for every building hereafter erected, altered, enlarged, or relocated.

1. Any new building, use or structure shall provide the required parking to the standards specified herein.

2. Any parking lot hereafter physically altered shall comply with all of the provisions of this chapter, except that such lot which provides five percent of its area in landscaping shall be deemed to comply with chapter 17.50 BMC.

3. Because there are currently no parking garage structures in Burlington, standards are not included at this time. If an application is filed for a parking garage structure, the standards will need to be adjusted to meet the intent of the code._

B. Parking Quantity Exceptions in General.

1. Parking Exceptions for Landmark Structures. The director may reduce or waive the minimum accessory off-street parking requirements for a use permitted in a landmark structure, considering the following elements:

a. A survey may be required of on-and off-street parking availability.

b. A determination that there is no feasible way to meet parking requirements on the lot.

c. Consideration of the types and scale of uses proposed or practical in the landmark structure and the controls imposed by the landmark designation.

2. Expansion of Existing Nonresidential Uses in Commercial and Business Zones. Additional parking spaces for nonresidential uses shall not be required for the expansion of existing structures if the minimum parking requirement would not be increased by more than 10 percent. If the minimum parking requirement would be increased by more than 10 percent, the parking spaces required for the entire expansion shall be provided. This provision may be used only once for any individual structure.

3. Whenever any existing, nonresidential use in a building is changed to another use in the same building, the requirements of this section shall apply in full to the new use if and only if the change in parking requirements

between the old and new uses is greater than five spaces. Credit for on-street parking spaces that are located along the building's street frontage shall be given.

4. Whenever there is a change from a residential use to a nonresidential use in an existing building, the requirements of this section shall apply in full to the new use; except that the planning commission may determine that a portion of the residential structure cannot be effectively utilized by the proposed commercial use and such area then may be excluded from the gross floor area used to compute the parking requirement.

5. Existing on-street parking spaces abutting a development site may be used to meet the requirements of this chapter, at a rate of one space for every 20 linear feet of abutting street frontage, except:

a. Spaces that are not available, or will not be available, due to roadway design, right-of-way constraints, or future plans shall not be included; and

b. Applicants may be required to provide a parking survey prepared by a qualified professional demonstrating that adequate on-street parking is reasonably available.

Formatted: Indent: Left: 0.56"

Comment [BM345]: TN-1.30 - BJ

C. Parking Quantity Exceptions in the Downtown Special Planning Area, BMC 17.09.070(B).

1. No parking shall be required for new uses to be located in existing structures, or when existing structures are remodeled.

2. No parking shall be required for the first 2,500 square feet of retail sales and service use or other nonresidential use or live-work unit.

3. No parking shall be required for any gross floor area in human service or child care use.

4. No parking shall be required for the addition of one residential unit to an existing building meeting development standards. If two units are added, one space will be required; three units will require two spaces, etc.

5. When an existing nonresidential structure is partially or completely converted to residential use, then no parking space shall be required for the first new dwelling unit; provided, that the lot area is not increased and existing parking is screened and landscaped to the greatest extent practical.

6. If an existing structure does not conform to the development standards for parking, or is occupied by a nonconforming use, when:

a. Dwelling units are added to the structure; or

b. The structure is altered to create additional dwelling units; or

c. The structure is completely converted to residential use, then no parking space need be provided for the first new or added dwelling unit; provided, that the lot area is not increased and existing parking is screened and landscaped to the greatest extent practical.

7. Tandem Parking and Multifamily.

a. Off-street parking for multifamily structures may be provided as tandem parking. ~~A tandem parking space shall equal one and one-half parking spaces and shall meet the minimum size requirements.~~

b. A minimum of one parking space per multifamily dwelling unit is required, whether provided as a regular space or as a tandem space.

Comment [BM346]: TN-1.30 – BJ - a parking space should count as a parking space - the last portion of this provision is redundant as all spaces are required to meet minimum size requirements

D. The required parking and/or loading shall have reasonable access to a public street or alley and a capacity according to the use of the building listed in the following sections.

E. Where a use is not listed, the planning director shall determine the number of required parking and/or loading spaces based upon similar uses for which the requirements are specified.

F. Removal of required parking and/or loading spaces from practical use by obstruction, erection of buildings, or other actions as to reduce the parking and/or loading capacity or usefulness thereof below the minimum requirements established in this chapter is prohibited.

G. "Parking area" includes the parking spaces together with driveways and the access to public street. (Ord. 1630 § 3, 2007).

17.54.020 Required off-street parking – Minimum standards.

A. The number of off-street parking spaces shall be determined for each principal use of the land, building, or structure. For ancillary uses to the principal use, required parking shall be calculated the same as for the principal use, or as otherwise provided for in this chapter. For uses not specifically identified in this chapter, parking shall be provided as specified for the use which, in the opinion of the planning director, is most similar to the use under consideration.

B. The total number of parking spaces provided for any use or development shall not exceed 120 percent of the minimum requirements identified in this section, except:

1. This limitation shall only apply to uses and developments that require 20 or more parking spaces; and

2. This limitation shall not apply to uses and developments where an alternative maximum number is prescribed by Burlington Municipal Code; and

3. Additional spaces may be provided in excess of 120 percent of the minimum requirement provided that any such spaces are located under a building with usable floor space; and

4. This limitation may be waived for publicly owned parking lots; and

5. This limitation may be waived if a traffic and parking study is submitted showing the need for additional parking. Such studies shall be prepared by a licensed engineer, shall be consistent with, and integrated into, any other traffic study prepared for the project, and shall be reviewed by the City Engineer.

Formatted: Indent: Left: 0.25"

Formatted: Indent: Left: 0.5"

Comment [BH347]: TN-1 33 – B1 -

USE	PARKING REQUIREMENT GENERAL
ANIMALS	
Dog day care with no outside runs or kennels	
Kennels, boarding, outside runs	1 space for each 2,000 square feet
Veterinary clinic, animal services, animal hospital with no outside runs or kennels	1 space for each 350 square feet
ASSEMBLY	
Commercial recreation indoors (bowling, swimming, skating, bingo, dancing)	1 space for each 100 square feet of activity area
Commercial recreation outdoors (miniature golf, batting, ball courts)	1 space for each 350 square feet, or 1 per cage, hole, court
Community center, city	1 space for each 550 square feet
Facilities for lectures, meetings, dances, receptions	1 space for each 8 fixed seats or 1 space for each 100 square feet of spectator assembly area not containing fixed seats
Library	1 space for each 80 square feet of floor area of all auditoriums and public meeting rooms; plus 1 space for each 500 square feet of other gross floor area open to the public
Motion picture theatre, motion picture theatre – adult	1 space for each 8 fixed seats or 1 space for each 100 square feet of

e. Lodging uses; and

f. Other similar primarily nighttime or Sunday uses, when authorized by the director.

3. Up to 90 percent of the parking required for a daytime use may be supplied by the off-street parking provided by a nighttime or Sunday use and vice-versa, when authorized by the director, except that this may be increased to 100 percent when the nighttime or Sunday use is a religious facility.

4. The applicant shall show that there is no substantial conflict in the principal operating hours of the uses for which the sharing of parking is proposed. (Ord. 1630 § 3, 2007).

17.54.035 Cooperative parking.
A. Cooperative parking shall be permitted between two or more business establishments which are commercial uses according to the provisions of this section.

B. Up to a 20 percent reduction in the total number of required parking spaces for four or more separate business establishments, 15 percent reduction for three business establishments, and a 10 percent reduction for two commercial uses may be authorized by the director under the following conditions:

1. No reductions to the parking requirement shall be made if the proposed business establishments have already received a reduction through the provisions for shared parking.

2. The business establishments for which the application is being made for cooperative parking shall be located within 800 feet of the parking.

3. The reductions to parking permitted through cooperative parking shall be determined as a percentage of the minimum parking requirement as modified by the reductions permitted through BMC 17.54.010(B) and (C) and 17.54.030.

4. An agreement providing for the cooperative use of parking shall be filed with the director when the facility or area is established as cooperative parking. Cooperative parking privileges shall continue in effect only as long as the agreement to use the cooperative parking remains in force. If the agreement is no longer in force, then parking shall be provided as otherwise required by this chapter. New business establishments seeking to meet parking requirements by becoming part of an existing cooperative arrangement shall provide the director with an amendment to the agreement stating their inclusion in the cooperative parking facility or area. (Ord. 1630 § 3, 2007).

17.54.040 Drive-in businesses.
All banks, savings and loan associations, food dispensing establishments, and other businesses which maintain drive-in facilities which are intended to serve customers who remain in their motor vehicles during business transactions, or are designed in such a manner that customers must leave their automobiles temporarily in a driving lane located adjacent to the facility, shall provide stacking space for the stacking of motor vehicles as follows:

A. Stacking Space. The drive-in facility shall be so located that sufficient stacking space is provided for the handling of motor vehicles using such facility during peak business hours of such facility.

B. Driveway Location. The location of entrances and exits shall be determined by the public works director.

C. Shopping Centers. When located in a shopping center, drive-in facilities shall provide sufficient stacking space to handle peak business demands and shall not in any way obstruct the normal circulation pattern of the shopping center. (Ord. 1630 § 3, 2007).

17.54.050 Off-street parking area development and maintenance.
~~Every parcel of land hereafter used as a public or private off-street parking area shall be developed and maintained as follows:~~

A. ~~The~~ All parking areas ~~on private property~~, including interior driveways and access to a public street, shall be paved with permeable pavement, asphalt concrete, or cement concrete pavement ~~and shall have appropriate bumpers~~

~~guards where needed.~~ All asphalt pavement sections shall have a minimum pavement section consisting of two inches of Class "B" asphalt concrete, two inches of five-eighths-inch minus crushed rock, and six inches of Class "A" bank run gravel or approved equal. All permeable paving concrete pavement sections, or any alternative asphalt pavement sections shall be designed to support the post development traffic loads anticipated due to the intended use.

Comment [BMJ48]: TN-1 1 – BJ -

B. Parking and circulation areas, access roads, and drive aisles shall be designed and constructed with LID features such as permeable pavement, rain gardens, or bio-retention areas unless demonstrated to be infeasible through an engineering analysis.

Formatted: Indent: First line: 0"

C. In determining the feasibility of LID features, an engineering analysis shall be submitted and reviewed by the City Engineer. This analysis should consider site characteristics such as soil and groundwater conditions, and anticipated traffic volumes. The analysis should be consistent with the Department of Ecology's "Stormwater Manual for Western Washington" and the design and site evaluation guidance in the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for Puget Sound". The engineering analysis requirement identified above may be waived by the City Engineer for simple small scale projects when the feasibility of permeable pavement can be easily determined without the need for additional information or analysis, provided that an engineering analysis shall be submitted for all projects involving 20 or more parking spaces.

Comment [BMJ49]: TN-1 1 – BJ -

D. All parking and circulation areas, access roads, and drive aisles shall be designed and constructed in accordance with any applicable requirements in title 14 BMC.

~~B~~E. Parking areas shall be used for automobile parking only, with no sales, unless permitted elsewhere by this title, dead storage, repair work, or dismantling of any kind.

~~C~~F. Outdoor sales areas shall be paved and landscaped in accordance with this title.

~~D~~G. If lighting is provided, it shall be arranged to reflect away from the residential area, also from any public street or highway.

~~E~~H. Drainage facilities for storm-water shall be provided for and be approved by the public works department.

~~F~~I. Ingress and egress shall be approved as to location and design by the public works department.

~~G~~J. Driveways and parking stalls shall be clearly marked.

~~H~~K. Landscaping: see chapter 17.50 BMC.

~~I~~L. For parking lots in excess of 100 spaces the design shall be approved by the planning director. (Ord. 1630 § 3, 2007).

17.54.060 Development of required off-street parking spaces for one-family dwellings.
For parking areas serving single-family dwellings, this section shall apply in lieu of BMC 17.54.050.

A. Required off-street parking spaces for one-family dwellings on separate lots smaller than 15,000 square feet in area shall be paved with permeable pavement, asphalt concrete, or cement concrete. Each required off-street parking space shall be connected to an improved public or private street by a driveway which shall be paved with permeable pavement, asphalt concrete, or cement concrete.

B. Required off-street parking spaces for one-family dwellings on separate lots of 15,000 or more square feet in area shall have an all-weather surface. Each required off-street parking space shall be connected to an improved public or private street by a driveway which shall have an all-weather surface. The construction of the all-weather surface shall be determined by the public works director. (Ord. 1630 § 3, 2007).

C. A note shall be included on the face of subdivisions and short subdivisions identifying any applicable impervious surface limits.

Comment [BMJ50]: TN-1 1

D. Driveways for single family dwellings may utilize a two track design to minimize impervious surface coverage.

Comment [BMJ51]: TN-1 12

appropriate means to ensure continuous use of the parking facilities. Off-street parking for assembly occupancies and fraternal organizations shall be contiguous if more than five spaces are required. Documentation shall require review and approval of the city attorney.

F. Whenever required parking facilities are located off-site, pedestrian facilities shall be provided connecting the satellite parking facility to the development being served, which are safe, durable and adequate to accommodate pedestrian use. (Ord. 1630 § 3, 2007).

17.54.080 Off-street parking plan design standards.

A. Parking stalls shall ~~be a minimum of eight feet six inches in width and 16 feet in length, except when an area (up to a maximum of 20 percent of the lot area) is clearly designated for compact cars only, by painting the word "COMPACT" in upper case block letters using white paint on the pavement, in which case the width may be reduced to eight feet~~ and drive aisles shall be consistent with the dimensions specified in Figure "A" below.

B. ~~When determining the minimum dimensional requirements for standard and compact parking spaces oriented at an angle to the driveway or aisle serving them, Figure A shall be consulted.~~ Up to 30 percent of the parking spaces required by this chapter may be compact spaces, except in the Downtown Special Planning Area where all of the required parking spaces may be compact.

C. Off-street parking lots shall comply with the barrier-free parking space requirements of the Uniform Building Code.

D. The minimum parking space and aisle dimensions for the most common parking angles are shown on chart below. For parking angles other than those shown on the chart, the minimum parking space and aisle dimensions shall be determined by the ~~manager~~Community Development Director and shall be proportional to the dimensions shown below. ~~Regardless of the parking angle, one-way aisles shall be at least 10 feet wide, and two-way aisles shall be at least 20 feet wide. Parking plans for angle parking shall use space widths no less than eight feet six inches for a standard parking space design and eight feet for a compact car parking space design.~~

Figure A
Minimum Parking Stall and Aisle Dimensions

Parking Angle	Stall Width	Curb Length	Stall Depth	Aisle Width		Unit Depth	
				1-Way	2-Way	1-Way	2-Way
0°	8.0* ~~Min. 8.5~~	20.0 ~~22.5~~	8.0 ~~8.5~~	12.0 12.0	20.0 20.0	** 29.0	** 37.0
30°	8.0* Min. 8.5	16.0* 17.0	15.0* 16.5	10.0 10.0	20.0 20.0	** 43.0	** 53.0
45°	8.0* Min. 8.5	11.5* 12.0	17.0* 19.0	12.0 12.0	20.0 20.0	** 50.0	** 58.0
60°	8.0* Min. 8.5	9.5* 10.0	18.0* 20.0	18.0 18.0	20.0 20.0	** 58.0	** 60.0
90°	8.0* Min. 8.5	8.0* 8.5	~~15.0*~~ ~~17.0~~	23.0 23.0	23.0 23.0	** 63.0	** 63.0

*For use with compact stalls only.

**Variable with compact and standard combinations.

E. Any parking spaces abutting a landscaped area on the driver or passenger side of the vehicle shall provide an additional 18 inches above the minimum space width requirement to provide a place to step other than in the

Comment [BMJ52]: TN-1.11 – BJ – the first part of this is redundant since the minimum standards are identified in figure A.

Comment [BMJ53]: TN-1.12 – BJ – this provision acknowledges the size constraints unique to downtown Burlington. This provision does not alter the ratio of allowed compact spaces anywhere else. The need for oversized space will be met by on street parking.

Comment [BMJ54]: BJ – clarification as to who makes the determination and what criteria are applied.

Comment [BMJ55]: BJ – redundant – dimensions are shown below.

Comment [BMJ56]: BJ - These are parallel on-street spaces, no need to specify different compact size spaces.

Comment [BMJ57]: TN-1.13 – BJ – the rest of the dimensions in this chart are consistent with the dimensions required by other jurisdictions but the 90 degree spaces dimensions can be reduced.

17.54.110 Fractional spaces.
When units or measurements determining the number of required parking spaces result in requirements of a fractional space, any fraction up to one-half shall be disregarded, and fractions of one-half or over shall require one parking space. (Ord. 1630 § 3, 2007).

17.54.120 Reserved.
(Ord. 1630 § 3, 2007).

17.54.130 Off-street loading space.
Buildings devoted to retail trade, retail and wholesale food markets, warehouses, supply houses, wholesale and manufacturing trade, hotels, hospitals, laundry, dry cleaning establishments or other buildings where large amounts of goods are received or shipped, shall provide loading and unloading space on the same premises as the building as follows:

A. Building of 6,000 square feet or more of floor area, one off-street loading and unloading space plus one additional off-street loading space for each 20,000 square feet of floor area;

B. Each loading space shall be not less than 10 feet in width, 25 feet in length and 14 feet in height;

C. Loading space, exclusive of driveways and/or corridors leading thereto, shall not be considered as providing off-street parking space. (Ord. 1630 § 3, 2007).

17.54.140 Design standards for private streets and roads.
Private streets and roads created to serve new development, including subdivisions, short subdivisions, binding site plans, and commercial and industrial development, shall be subject to the following standards and requirements:

A. A road maintenance agreement and access easement approved by the City Engineer shall be recorded with Skagit County Auditor's Office.

B. Streets and roads serving up to four dwelling units or carrying a traffic volume of less than xxx average trips per day shall be at least twenty feet in width.

C. Streets and roads serving more than four dwelling units or carrying a traffic volume of less than 750 average trips per day shall be at least 28 feet in width and a sidewalk shall be provided on at least one side in addition to the 28 feet of roadway width.

D. Streets and roads carrying a traffic volume of more than 750 average trips per day shall comply with the design standards and specifications applicable to public streets and roads in chapter 12.28 BMC.

E. Low impact development features such as bio-retention areas, rain gardens, and permeable paving shall be incorporated into the design and construction of all private streets and roads unless demonstrated to infeasible through an engineering analysis. In determining the feasibility of such low impact development features, an engineering analysis shall be submitted and reviewed by the City Engineer. This analysis should consider site characteristics such as soil and groundwater conditions, and anticipated traffic volumes. The analysis should be consistent the Washington State Department of Ecology's "Stormwater Manual for Western Washington" and the design and site evaluation guidance in the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for Puget Sound".

F. All private streets and roads shall be designed and constructed consistent with any applicable requirements in title 14 BMC.

Formatted: Font: 10 pt
Formatted: Font: 10 pt
Formatted: Font: 10 pt

Comment [BM260]: BJ – consult with Public Works
Formatted: Highlight

Comment [BM261]: TN1.9, 1.20, 1.22, 1.26, and 1.40 – BJ – this change implements administrative rule 03-4 and specifies the use of

9. The variance shall not allow a land use which is not permitted under the zoning district in which the property is located.

10. The variance shall not change any regulations or conditions established by conditional use permits or contract rezones.

D. Conditions of Approval. In authorization of a variance, the board of adjustment may attach thereto such conditions regarding the location, character and other features of the proposed structure or use as may be deemed necessary to carry out the spirit and purpose of this title and in the public interest.

E. Floodplain variance and appeals pursuant to chapter 15.15 BMC shall be heard by the board of adjustment, based on the criteria established in chapter 15.15 BMC.

F. Noise ordinance variance requests pursuant to BMC 17.58.120 shall be heard by the board of adjustment, based on the criteria established in BMC 17.58.120. (Ord. 1363 § 2, 1998; Ord. 1221 § 10, 1992).

17.68.150 Plan review, when required, application submittal requirements, review criteria and conditions of approval.

A. Plan review is required for the following:

1. Parking and loading area plans for all developments, except single-family and duplex residential units on existing lots, and the addition of up to five parking spaces in an existing development.

2. Landscaping plans.

3. Determination of proper classifications of land uses not included in the lists of permitted or conditional uses for the zone.

4. Temporary conforming and nonconforming land uses and buildings for more than two weeks and not exceeding one year.

5. ~~Review of new development proposals for consistency with the city of Burlington Design Guidelines, as may be amended and updated over time to reflect the city's comprehensive plan and vision for the future. The review shall not include single family and duplex dwellings on existing lots of record or short subdivisions.~~ Subdivisions and short subdivisions.

Comment [BMJ62]: BJ – we have no design guidelines, however, subdivisions and short subdivisions should be subjected to this review process to ensure we have a regulatory handle on storm water issues during the design phase and approval of preliminary plat.

B. Application submittal requirements include the following:

1. Site plan drawn to an appropriate scale.

2. Boundary lines and dimensions for the property and all proposed lot lines. Future building locations in phased developments shall be indicated.

3. Natural features of the site, including existing significant trees, wetlands areas and special flood risk areas.

4. Location, dimensions and names of all existing or platted streets or alleys, easements, railroad rights-of-way, on or adjacent to the property.

5. Location and dimensions of all existing structures, improvements or utilities to remain, and structures to be removed.

6. Approximate location and size of storm-water ~~retention or detention facilities, and storm drains~~, low impact development features, and infiltration areas.

Comment [BMJ63]: TN-1.3

7. Location and dimensions of all proposed structures and parking lots, to include parking and loading areas, pedestrian circulation and related access ways. Individual parking spaces shall be shown.

8. Service areas for waste disposal, recycling, loading and delivery and location of mail boxes.

9. Architectural drawings including building elevations and sections, building materials, color and type and floor plans.

10. Landscaping plans.

11. Signs, including freestanding and signs located on the building.

12. A soils report prepared by a licensed engineer or geologist identifying areas of the site suitable for storm-water infiltration and low impact development features. This report should be consistent with the Washington State Department of Ecology's Stormwater Manual for Western Washington and the guidance provided in the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for Puget Sound". The City Engineer may waive this requirement for small scale projects where the soil conditions and feasibility of low impact development techniques can be easily ascertained without the need for additional studies or analysis.

13. Any other applicable information required by title 17 BMC.

Comment [BMM64]: TN-15

Comment [BMM65]: BJ – broad requirement to ensure other storm-water and landscaping information is provided with a complete application

D. Review Criteria. Plan review by the planning commission includes compliance with the use and development standards, assuring that appropriate conditions are on the plans and in the recommendations of the director, determining project consistency with current design review guidelines, comprehensive plans, capital facilities and improvement plans, environmental mitigation and concurrency requirements and reasonableness of standards. Review of the site plan includes landscaping, parking and relationship of the proposed project to the public right-of-way from the pedestrian and transportation perspectives.

E. Conditions of Approval. In authorization of a plan review, the planning commission may attach such conditions as may be deemed necessary to carry out the spirit and purpose of this title and in the public interest. (Ord. 1221 § 10, 1992).

17.68.155 Transfer or purchase of development rights.
Repealed by Ord. 1717. (Ord. 1333 § 4, 1997).

17.68.160 Reclassification of property including rezone and contract rezone and zoning ordinance text amendments, initiation of amendments, review criteria and conditions of approval.
A. Initiation of Amendments.

1. Zoning Map.

a. One or more property owners of the property may submit an application requesting a reclassification of the property;

b. The city council, upon its own motion, may request the planning commission to conduct a public hearing on the reclassification of property;

c. The planning commission, as part of a citywide project to implement the comprehensive plan, may upon its own motion call for a public hearing on the reclassification of property.

2. Text.

a. The city council, upon its own motion, may request the planning commission to conduct a public hearing to amend any portion or all of this title;

b. The planning commission may upon its own motion call for a public hearing to amend any portion or all of this title;

c. Any resident or property owner of the city may petition the city to request an amendment to the text of this title.

STAFF REPORT
EXHIBIT "5"
TITLE 16 AMENDMENTS

STAFF REPORT
EXHIBIT "5"

Title 16

SUBDIVISIONS

Chapters:

16.04 General Provisions
16.08 Subdivisions
16.12 Short Plats
16.16 Lot Boundary Adjustments
16.20 Binding Site Plan Approval

Chapter 16.04

GENERAL PROVISIONS

Sections:

16.04.010 Purpose.
16.04.020 Exemptions from platting regulations.
16.04.030 Definitions.
16.04.040 Compliance with state law and land use code.
16.04.050 Effect of noncompliance.

16.04.010 Purpose.
The purpose of this title is to implement the authority granted to the city by chapter 58.17 RCW and to conform to its provisions which govern the platting and subdivision of land, consistent with the city of Burlington comprehensive plan adopted pursuant to chapter 36.70A RCW, the Growth Management Act. (Ord. 1378 § 1, 1998; Ord. 1220 § 2, 1992).

16.04.020 Exemptions from platting regulations.
A. The provisions of this title shall not apply to:

1. Cemeteries and other burial plots while used for that purpose;

2. Divisions of land outside the boundaries of an approved preliminary plat, into lots or tracts each of which is 1/128 of a section of land or larger or five acres or larger if the land is not capable of description as a fraction of a section of land, provided:

a. The division meets the density or lot size zoning requirements for the area involved; provided, that for the purpose of computing the size of any lot which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

b. A survey of the division conducted by a licensed land surveyor is filed with the city. The survey shall be recorded and shall include the following note:

Future development, including but not limited to, clearing and grading, new structures and installation of infrastructure are subject to City of Burlington Development Regulations.

c. Each lot or tract adjoins or has legal access to a public road right-of-way or private road easement;

d. The property owner shall submit a critical area affidavit disclosing the presence or absence of critical areas to ensure that each lot or tract other than a nonbuilding tract contains at least two contiguous acres (referred to as a buildable area) located outside of any regulated critical area and associated setback or buffer and that access to the buildable area is located outside of said setbacks or buffers;

3. A proposed division of land made by testamentary provisions or the laws of descent shall be submitted to the city for review and approval. No building permit shall be issued on a lot created through this process unless the lot meets the requirements of subsection (lot size). Testamentary divisions shall also be subject to the following:

a. Applications for testamentary divisions shall contain a legal description of all proposed lots;

b. Each lot must adjoin or have legal access to a public road right-of-way or private road easement;

c. A note shall be recorded on the title of each lot that puts future purchasers on notice of whether or not the lot was created pursuant to applicable lot size requirements for construction of a single-family dwelling;

4. Divisions of land into lots or tracts classified for industrial or commercial use when the city has approved a binding site plan for the use of the land in accordance with city regulations;

5. A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are to be placed upon the land when a binding site plan has been approved for the use of the land;

6. A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;

7. Divisions of land into lots or tracts if (a) the improvements constructed or to be constructed thereon will be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (b) the city has approved a binding site plan for such land; and (c) the binding site plan contains thereon the following statement:

All development of the land described herein shall be in accordance with the binding site plan, as it may be amended. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest.

8. Divisions of land for use solely for the installation of electric power, natural gas, telephone, water supply, sewer service or city utility facilities of a similar or related nature; provided, however, that any remaining lot must conform with (minimum lot size sections);

9. Division of land by roads or rights-of-way accepted by the city. The city will recognize that a parcel has been divided into separate, legal lots by a state or federal road or highway that divides a parcel of real property after the effective date of the ordinance codified in this section;

10. Divisions of land for the sole purpose of enabling the city or a municipal corporation to acquire land, either by outright purchase or exchange, for port purposes, boat moorage or launching sites, or for park, open space, critical area, conservation, viewpoint, recreational, educational or other public purposes; provided, however, that any remaining lot that is nonconforming with regard to density or size shall be at least of adequate size to accommodate required zoning setbacks.

B. Exemptions provided by this section shall not be construed as exemptions from compliance with other applicable development standards required by the Burlington Municipal Code.

C. Exclusions. The following actions shall not be considered a land division action and are excluded from the provisions of this title:

1. Assessor's office segregations and combinations for tax purposes only;

2. Utility easements;

3. Boundary line adjustments made pursuant to Chapter 16.16 BMC. (Ord. 1628 § 1, 2007; Ord. 1220 § 2, 1992).

16.04.030 Definitions.
As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

A. "Subdivision" is the division or redivision of land into ten or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (F) of this section.

B. "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

C. "Dedication" is the deliberate appropriation of land by an owner for any general and public uses reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon; and the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit.

D. "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

E. "Final plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

F. "Short subdivision" is the division or redivision of land into nine or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership.

G. "Binding site plan" means a drawing to a scale specified by local ordinance which: (a) identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the city in approving the site plan; and (c) contains provisions making any development be in conformity with the site plan.

H. "Short plat" is the map or representation of a short subdivision.

I. "Lot" is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels.

J. "Block" is a group of lots, tracts, or parcels within well defined and fixed boundaries.

K. "Code" is the Burlington Municipal Code.

L. "City engineer" is the Burlington director of public works.

M. "Director" is the Burlington planning director. (Ord. 1503 § 1, 2002; Ord. 1220 § 2, 1992).

16.04.040 Compliance with state law and land use code.
Every division of land shall comply with the provisions of state law and the provisions of this title. They shall conform to the comprehensive plan and all zoning regulations, in effect at the time any preliminary plat is approved. Lots shall be of a size and dimension and have access adequate to satisfy the requirements of this title. Fees for subdivisions shall be adopted by city council resolution. (Ord. 1799 § 24, 2014; Ord. 1220 § 2, 1992).

16.04.050 Effect of noncompliance.
No building permit or other development permit shall be issued for any lot, tract or parcel of land divided in violation of state law or this subtitle, unless the director finds that the public interest will not be adversely affected by the decision. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. (Ord. 1220 § 2, 1992).

Chapter 16.08

SUBDIVISIONS

Sections:

Subchapter I Preliminary Plat Process

16.08.016 Application.
16.08.020 Content of plat.
16.08.022 Distribution of preliminary plats.
16.08.024 Planning commission review.
16.08.026 Council review.
16.08.028 Effect of preliminary plat approval.

Subchapter II Preliminary Plat Consideration

16.08.050 Topographical and surface hazards – Protective improvements.
16.08.052 Dedications required.
16.08.054 Public use and interest.

Subchapter III Review of Final Plat

16.08.064 Filing with city engineer.
16.08.066 Technical standards for final plat.
16.08.068 Certificates required.
16.08.070 Director's action on final plat.
16.08.072 Submission to council.
16.08.074 Council determination.
16.08.078 Resubmission.

Subchapter IV Reserved Land

16.08.082 Land reserved for public use.
16.08.084 Reserved land to show on plat.
16.08.086 No development on reserved land.
16.08.088 Development if not acquired.

Subchapter V Survey Requirements

16.08.092 Registered land surveyor.
16.08.094 Computations – Notes.
16.08.096 Permanent control monuments.
16.08.098 Property contiguous to water.

Subchapter VI Design and Construction Standards

16.08.100 Design standards.
16.08.102 Improvements.
16.08.106 Exceptions.

Subchapter I Preliminary Plat Process

16.08.016 Application.

A. Official filing of an application for subdivision with the director shall be preceded by a preliminary review of the proposed subdivision by the director and the city engineer.

B. Following the review, the subdivider shall submit an application to the planning director. A subdivider shall submit with the application 15 copies of a preliminary plat showing preliminary plans for streets and other improvements including but not limited to water lines, sewer lines, and drainage. Unless the subdivider requests otherwise, at the time of application the application will be processed simultaneously with applications for rezones of or planned unit development upon the property to be subdivided.

C. Applications shall be processed according to the procedures set forth in chapter 17.68 BMC, Land Use Permit Process, and the additional procedures established in this subchapter.

D. A preliminary plat shall be approved, disapproved or returned to the applicant for modification or correction within 90 days from date of filing unless the applicant consents to an extension of the time period. If an environmental impact statement is required as provided in RCW 43.21C.030, the 90-day period shall not include the time required for environmental review. (Ord. 1220 § 2, 1992).

16.08.020 Content of plat.

A. Every preliminary plat shall consist of one or more maps together with written data including the following:

1. The name of the proposed subdivision;

2. North point and scale; the location of existing property lines: streets, building, if any; watercourses and all general features;

3. The legal description of the land contained within the subdivision;

4. The names and addresses of all persons, firms and corporations holding interest in the lands, including easement rights and interest;

5. The proposed names, locations, widths and other dimensions of proposed streets, alleys, easements, parks, lots, building lines, if any, and all other information necessary to interpret the plat, including the location of existing utility and access easements which are to remain;

6. The location of streets in adjoining plats and the approximate location of adjoining utilities and proposed extensions into the plat;

7. The names of adjoining plats;

8. The name, address and telephone number and seal of the registered land surveyor who made the survey or under whose supervision it was made;

9. The date of the survey;

10. All existing monuments and markers located by the survey;

11. The zoning classification applicable to the land within the subdivision;

12. The conditions of or the limitations on dedications, if any, including slope rights;

13. Contour intervals as required, based upon city datum.

B. Any plat submitted that covers only a part of the subdivider's tract shall be accompanied by a sketch showing the proposed future street system in the remainder of the tract so that the street layout of the tract may be considered as a whole.

C. The plat shall comply with the technical requirements of Subchapters V and VI. (Ord. 1220 § 2, 1992).

16.08.022 Distribution of preliminary plats.

If the director determines that the subdivider has met all the application requirements for the preliminary plat and that the preliminary plat contains sufficient elements and data to furnish a basis for its approval or disapproval, the

director shall affix a file number and date of receipt to the application and promptly forward three copies of the plat to the city engineer. The director shall also forward a copy of the preliminary plat to each of the following:

A. Skagit County Health;

B. Puget Power;

C. Building Official;

D. Water District #1;

E. Chief, Fire Department;

F. Chief of Police;

who shall review the preliminary plat and, within 30 days, furnish the director with a report as to the effect of the proposed subdivision upon the public health, safety and general welfare, and containing their recommendations for approval or disapproval of the preliminary plat. The reports of the city engineer and PUD District #1 shall also include a recommendation as to the extent and type of improvements to be provided in dedicated areas and a preliminary estimate of the cost of these improvements. (Ord. 1220 § 2, 1992).

16.08.024 Planning commission review.
The planning commission shall: Conduct the public hearing; review the preliminary plat for conformance with the minimum standards of this chapter; recommend approval on condition, disapproval or cause the public hearing to be continued. Planning commission recommendation shall be based on written findings of fact.

The final recommendation of the planning commission shall be forwarded to the city council at its following meeting. The city council shall approve on condition, disapprove, or continue consideration of the preliminary plat; provided, that if the substantial revisions are required the revised preliminary plat must first be subject to another public hearing. City council final action shall be based on written findings of fact. (Ord. 1220 § 2, 1992).

16.08.026 Council review.
Pursuant to chapter 58.17 RCW, upon receipt of the planning commission's recommendations, the city council shall at its next public meeting set the date for the public meeting at which it may adopt or reject the recommendations. If, after considering the matter at a public meeting, the city council determines that a change is necessary in the planning commission's recommendation, it shall conduct a public hearing and adopt its own recommendations and approve or disapprove the preliminary plat. The public hearing may be held before a committee constituting a majority of the city council, which shall report its recommendations on the matter to the city council for final action by resolution. The city council's decision shall clearly state any conditions of approval imposed, including dedications and the construction of protective improvements. If the preliminary plat is approved, the decision shall include a written finding of fact that the proposed subdivision is in conformity with the applicable provisions of this title. (Ord. 1220 § 2, 1992).

16.08.028 Effect of preliminary plat approval.
A. Approval of the preliminary plat shall constitute authorization for the subdivider to develop the subdivision facilities and improvements as required in the approved preliminary plat upon issuance of the final plat. Development shall be in strict accordance with the plans and specifications as prepared or approved by the city engineer and subject to any conditions imposed by the city council.

B. No subdivision requirements which become effective after the approval of a preliminary plat for a subdivision shall apply to such subdivision unless the city council determines that a change in conditions created a serious threat to the public health or safety.

C. Preliminary plat approval is valid for seven years until December 31, 2014, after which the period will be five years.

D. A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within 10 years of the date of preliminary plat approval if the project is not subject to requirements adopted under Chapter 90.58 RCW and the date of preliminary plat approval is on or before December 31, 2007. (Ord. 1809 § 1, 2015; Ord. 1770 § 1, 2012; Ord. 1220 § 2, 1992).

Subchapter II Preliminary Plat Consideration

16.08.050 Topographical and surface hazards – Protective improvements.
Land having topographical or subsurface conditions hazardous to the health, safety or general welfare of persons or property in or near a proposed subdivision shall not be subdivided unless the construction of protective improvements will eliminate the hazards or unless land subject to the hazard is restricted to uses which will not expose persons or property to the hazard. Protective improvements consistent with the standards established in Subchapter VI shall be constructed, prior to final plat approval unless a performance bond acceptable to the city engineer is filed in lieu of the improvements. (Ord. 1220 § 2, 1992).

16.08.052 Dedications required.
A. Every subdivision shall include adequate provision for dedication of drainage ways, streets, alleys, easements, slope rights, parks and other public open spaces for general purposes as may be required to protect the public health, safety and welfare.

B. Protective improvements and easements to maintain the improvements shall be dedicated at the discretion of the city.

C. Convenient pedestrian and vehicular access to every lot by way of a dedicated street or permanent appurtenant easement shall be provided. Access from a dedicated street shall be required, unless the city engineer determines that the following conditions exist, and permits access by a permanent private easement:

1. Access by easement would not compromise the goals of the Zoning Code to provide for adequate light, air and usable open space between structures; and

2. The dedication and improvement of a street is not necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage; and

3. The dedication and improvement of a street is not necessary or desirable in order to provide on-street parking for overflow conditions; and

4. No potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines; and

5. There is no potential for extending the street system.

6. Private streets and roads shall be consistent with the requirements identified chapter 17.51 BMC.

Comment [BM32]: TN-1.9, 1.20, and 1.22

D. If the city council concludes that the public interest will be served the city council may, in lieu of requiring the dedication to the public of land in a subdivision for protective improvements, drainage ways, streets, alleys, sidewalks, parks and other open space, allow the land to be conveyed to a homeowner's nonprofit maintenance corporation. In that case the subdivider shall, at or prior to the time of filing a final plat for approval, supply the director with copies of articles of incorporation and bylaws of the grantee organization and with evidence of the conveyance or of a binding commitment to convey. The articles of incorporation shall provide that membership in the corporation shall be conditioned upon ownership of land in the subdivision, that the corporation is empowered to assess the land for costs of construction and maintenance of the improvements and property owned by the corporation, and that the assessment shall be a lien upon the land. The city attorney shall review and approve the articles of incorporation and bylaws as to compliance with this provision. The city council may impose other conditions as it deems appropriate to assure that property and improvements owned by the corporation will be adequately constructed and maintained.

E. Any dedication, donation or grant as shown on the face of the plat shall be considered, to all intents and purposes, as a quitclaim deed to the grantee or grantees, for his, her or their use for the purpose intended by the donors or grantors.

F. Dedicated streets and alleys shall meet the requirements of chapter 12.28 BMC. Easements shall meet the design standards of BMC 12.28.150 for access streets, except that the minimum width of an easement shall be 30 feet. (Ord. 1220 § 2, 1992).

G. When new storm-water facilities or LID features are provided to serve the plat an access easement shall be conveyed to the City for purposes of inspection and maintenance.

Comment [BMJ2]: TN-1.40 and 1.39 – BJ -

16.08.054 Public use and interest.
The city council shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall consider all relevant facts to determine whether the public interest will be served by the subdivision and dedication, and if it finds that the proposed plat makes appropriate provision for the public health, safety and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, fire protection facilities, parks, playgrounds, sites for school and schoolgrounds and that the public use and interest will be served by the platting of subdivision, then it shall be approved. If it finds that the proposed plat does not provide the appropriate elements or that the public use and interest will not be served, then the city council may disapprove the proposed plat. Dedication of land to any public body may be required as a condition of subdivision approval and shall be clearly shown on the final plat. The city council shall not as a condition to the approval of any plat require a release from damages to be procured from other property owners. (Ord. 1220 § 2, 1992).

Subchapter III Review of Final Plat

16.08.064 Filing with city engineer.
A. Time of Filing.

1. A final plat meeting all the requirements of chapter 58.17 RCW and of this chapter, shall be filed with the city engineer within three years of the date of preliminary plat approval. As required by RCW 58.17.140, an applicant who files a written request with the city council at least 30 days before the expiration of the three-year period shall be granted one one-year extension upon a showing that the applicant has attempted in good faith to submit the final plat within the three-year period.

2. Within 30 days of the date of filing of the plat, unless the applicant consents to an extension of the time period, final plats shall be approved or disapproved by action of the city council, or returned to the applicant.

B. Submittal Requirements. The following shall be submitted for final plat review:

1. A final plat consistent with the technical requirements of BMC 16.08.066 and Subchapters V and VI;

2. A complete survey of the section or sections in which the plat or replat is located, or as many sections as may be necessary to properly orient the plat within the section or sections;

3. Complete field and computation notes as provided in BMC 16.08.094;

4. A title report from a title company licensed to do business in the state showing the ownership and title of all parties of interest in the subdivision and confirming that title of the lands as described and shown on the final plat is in the name of the owners signing the certificate required in BMC 16.08.066;

5. A guarantee deposit in an amount established by the city engineer sufficient to cover the expense of the city in checking the plat, advertising the ordinance, posting notices. (Ord. 1220 § 2, 1992).

16.08.066 Technical standards for final plat.
A. The final plat shall be prepared upon the best grade of tracing medium and shall be 18 inches by 24 inches in size. The accuracy and completeness of the map shall be the sole responsibility of a registered land surveyor whose seal shall appear on the plat and who shall make field surveys and investigations as necessary to insure that the map

is complete and accurate in every detail. The preparation of the tracing shall be by an experienced draftsman and work shall conform to established standards of workmanship. The final plat shall be presented at a scale not smaller than 100 feet to one inch and shall contain and show the following:

1. The name of the subdivision;

2. The lines, widths and names of all streets, avenues, places, parks or other public property, and the location of monuments marking the same;

3. The length and direction of all lot lines, also the angles made by the lot lines with the street lines;

4. The location of control points and monuments together with all ties;

5. The names of all subdivisions immediately adjacent;

6. The scale and north point;

7. The boundary of the tract as covered by the plat showing courses and distance on the plat;

8. The initial point;

9. All protective improvements and restrictions on uses;

10. All dedications and all conveyances to a homeowner's nonprofit maintenance corporation in lieu of dedication;

11. Any additional information necessary to meet the standards for mapping as set forth in WAC 332-130.

B. In the case of a replat, the lots, blocks, streets, alleys, easements and parks appearing on the original plat shall be shown by dotted lines in their proper position in relation to the new arrangement of the plat, and the new plat shall be shown clearly in solid lines to avoid ambiguity.

C. The description, dedication, acknowledgment, certificates of city and county treasurers, certificates of approval by the city engineer, the city comptroller and the director, and recording certificate, shall be lettered with India ink and shall be substantially in the form set forth in the city engineer subdivision standards. (Ord. 1220 § 2, 1992).

16.08.068 Certificates required.
Each and every final plat, or replat, of any property to be filed for record shall:

A. Contain a statement of approval from the city engineer as to the survey date, the layout of streets, alleys and other rights-of-way, design of bridges, sewage and water systems, and other structures;

B. Be acknowledged by the person filing the plat before the Skagit County auditor or any other officer who is authorized by law to take acknowledgment of deeds, and a certificate of the acknowledgment shall be enclosed or annexed to the plat and recorded with it;

C. Contain a certification from the proper officer or officers in charge of tax collections that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied or discharged;

D. Contain a certificate giving a full and correct description of the lands divided as they appear on the plat, including a statement that the subdivision has been made with the free consent and in accordance with the desires of the owners. If the plat is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, an individual or individuals, religious society or societies or to any corporation, public or private as shown on the plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a

notary public by all parties having any ownership interest in the land subdivided and recorded as part of the final plat. (Ord. 1220 § 2, 1992).

16.08.070 Director's action on final plat.
The city engineer shall refer the final plat to the director who shall review the final plat for substantial conformance to the approved preliminary plat, including any requirements or conditions imposed by the city council, and to the standards established by chapter 58.17 RCW and this chapter. The director shall within 10 days furnish the city engineer with a report regarding the conformance of the plat. The city engineer shall review the final plat for the following:

A. That the proposed final plat bears the certificates and statements of approval required by state law and this chapter;

B. That a title insurance report furnished by the subdivider confirms that title of the land and the proposed subdivision is vested in the name of the owners whose signatures appear on the plat certificate;

C. That the facilities and improvements required to be provided by the subdivider have been completed or alternatively, that the subdivider will provide a bond in a form approved by the city attorney and in an amount commensurate with the cost of improvements remaining to be completed, conditioned upon the construction and installation of improvements within a fixed time set by the city engineer, not to exceed one year after final approval of the plat;

D. That the map is technically correct and accurate as certified by the registered land surveyor responsible for the plat. (Ord. 1220 § 2, 1992).

16.08.072 Submission to council.
A. Pursuant to the requirements of RCW 58.17.150, the city engineer shall not modify the recommendations made in the city council approval of the preliminary plat when making recommendations on the final plat without the consent of the subdivider.

B. If the planning director and the city engineer determine that the requirements of this subtitle are met, the city engineer shall certify that the proposed final plat meets the requirements of chapter 58.17 RCW and this chapter, and shall forward a complete copy of the proposed plat to the city council.

C. If either director determines that the requirements of this chapter have not been met, the final plat shall be returned to the applicant for modification, correction or other action as may be required for approval; provided, that the final plat shall be forwarded to the city council together with the determination of the directors, upon written request of the subdivider. (Ord. 1220 § 2, 1992).

16.08.074 Council determination.
A. The city council shall determine:

1. Whether the final plat is in substantial conformance with the approved preliminary plat;

2. Whether the requirements imposed when the preliminary plat was approved have been met;

3. Whether the bond, if required by the city, is sufficient in its terms to assure completion of improvements; and

4. Whether the requirements of state law and the Burlington Municipal Code which were in effect at the time of preliminary plat approval have been satisfied by the subdivider.

B. The city council shall approve by ordinance, or disapprove, the proposed final plat. If the city council approves the plat, it shall inscribe and execute written approval on the face of the plat, and the city engineer shall transmit the original plat to the Skagit County auditor for filing, and forward one copy to the planning director and one copy to the county assessor. At least one copy of the approved final plat shall be retained in the files of the city engineer.

C. As required by RCW 58.17.170, a subdivision shall be governed by the terms of approval of the final plat and any lots created thereunder shall be deemed to meet lot requirements imposed by the Zoning Code for a period of no less than five years. (Ord. 1220 § 2, 1992).

16.08.078 Resubmission.
A. Any final plat disapproved by the city council or returned to the applicant may, at the subdivider's option, be resubmitted for approval upon satisfaction of the following condition:

1. The subdivider has corrected those deficiencies of the final plat, attachments to it, or improvements, any or all of which caused the final plat to be returned or disapproved;

2. The final plat is resubmitted within the three-year period after the date of approval of the preliminary plat as provided in BMC 16.08.064 or within six months from the date of city council disapproval whichever is later;

3. The final plat was not disapproved by city council with prejudice against resubmission;

4. The subdivider has not accepted any proffered refund of filing fees paid for individual lots.

B. Any subdivision, the final plat of which is disapproved for reasons of nonconformance with the approved preliminary plat and any requirements or conditions attached to it, may be submitted as a preliminary plat, and shall be considered a new and separate application for all intents and purposes. (Ord. 1220 § 2, 1992).

Subchapter IV Reserved Land

16.08.082 Land reserved for public use.
Any public agency with the power to acquire land by condemnation or otherwise for public use may, at any time prior to final approval of a preliminary plat, notify the city council and the subdivider of its intention to acquire some or all of the land in the proposed subdivision for public use, and may request that the city council require its dedication for the use, the public agency may request that the city council require the reservation of the land for a stated period not to exceed the two years following the city council's approval of the final plat, during which time the agency may acquire the land. If the city council finds that the public health, safety, or general welfare will be served, it may require as a conditional precedent to approval of the final plat that the land or that part of it as the city council deems appropriate be designated on the plat as reserved land and that for the period requested or a shorter period as the city council deems sufficient, the reserved land not be developed for uses other than the contemplated public use. A public agency may accelerate the expiration date of a reservation period by filing written notice with the Skagit County auditor of its intention to abandon its right to acquire the reserved land. (Ord. 1220 § 2, 1992).

16.08.084 Reserved land to show on plat.
The subdivider may indicate on the plat that if the reserved land is not acquired for public use, it shall be subdivided and if the subdivider does so the plat shall show the configuration and dimensions of the proposed lots, blocks, streets, easements and like features in the reserved area. (Ord. 1220 § 2, 1992).

16.08.086 No development on reserved land.
No building permit or other development permit shall be issued for improvements on reserved land during the period of reservation unless the public agency has abandoned its rights and except as expressly authorized by the city council at the time the final plat is approved. (Ord. 1220 § 2, 1992).

16.08.088 Development if not acquired.
If the public agency has not acquired or commenced proceedings to acquire the reserved lands within the period set by the city council, the subdivider may proceed to develop land lying within the reserved area in conformity with the final plat. No improvements shall be made upon reserved land which is made available for development until adequate security for development of all required public and protective improvements has been provided. (Ord. 1220 § 2, 1992).

Subchapter V Survey Requirements

16.08.092 Registered land surveyor.
A survey of every proposed subdivision and the preparation of preliminary and final plats of the subdivision shall be prepared by a registered land surveyor who shall certify on the plat that it is a true and correct representation of the lands actually surveyed. All surveys shall conform to standard practices and principles for land surveying. (Ord. 1220 § 2, 1992).

16.08.094 Computations – Notes.
A. The surveyor shall furnish the city engineer with a full set of survey notes which notes shall clearly show:

1. The ties to each permanent monument;

2. At least three durable, distinctive reference points or monuments;

3. Sufficient data to determine readily the bearing and length of each line;

4. The base meridian referred to.

B. A traverse of the boundaries of the subdivision and all lots and blocks shall close within one foot in 5,000 feet, as required by chapter 332-130 WAC.

C. Primary survey control points shall be referenced to section corners and monuments, and corners of adjoining subdivisions, or portions of subdivisions shall be identified and ties shown. (Ord. 1220 § 2, 1992).

16.08.096 Permanent control monuments.
A. Permanent control monuments shall be established at:

1. All controlling corners on the boundaries of the subdivision;

2. The intersections of centerlines of roads within the subdivisions;

3. The beginning and ends of curves on centerlines;

4. All block corners.

B. Permanent control monuments may be placed on the offset lines. The position and type of every permanent monument shall be noted on all plats of the subdivision. Permanent control monuments shall be of a type approved by the city engineer.

C. Permanent control monuments within the streets shall be set after the streets are graded. In the event a final plat is approved before streets are graded, the security deposit to provide for grading shall be sufficient to pay the costs of setting the monuments estimated by the city engineer.

D. Each lot corner shall be marked by a three-quarter-inch galvanized iron pipe, 24 inches in length, or approved equivalent, driven into the ground, set with C cap per the requirements of RCW 58.19.120. (Ord. 1220 § 2, 1992).

16.08.098 Property contiguous to water.
If any land in a subdivision is contiguous to a body of water, a meander line shall be established along the shore at a safe distance back from the ordinary high water mark. Property lying below and beyond the meander line shall be defined by distance along the side property lines extended from the meander line. If the thread of a stream lies within a subdivision or forms the boundary of a subdivision, such thread shall be defined by bearings and distances as it exists at the time of the survey. (Ord. 1220 § 2, 1992).

Subchapter VI Design and Construction Standards

16.08.100 Design standards.
The design of all subdivisions shall conform to the standards set forth in this section and chapter 12.28 BMC:

A. Streets and Alleys.

1. All subdivisions shall be served by one or more streets providing adequate ingress and egress to and from the subdivision.

2. Major streets within each subdivision shall conform with the city's arterial street plan and shall provide for the continuation of major streets which serve property contiguous to the subdivision. Unless warranted by special physical circumstances, streets serving lots on two sides shall be at least 60 feet wide.

3. Street intersections shall be as nearly at right angles as practicable and in no event shall the angle formed be less than 30 degrees.

4. Street networks shall provide ready access for fire and other emergency vehicles and equipment, and routes of escape for inhabitants.

5. Alleys shall be at least 16 feet wide plus such additional width as shall be necessary for an adequate turning radius.

B. Blocks. Blocks shall be designed to assure traffic safety and ease of traffic control and circulation. Blocks shall be identified by letters or numbers.

C. Lots.

1. Every lot shall be provided with convenient vehicular access to a street or to a permanent appurtenant easement which satisfies the requirements of chapter 12.28 BMC except that the minimum width of an easement shall be 30 feet.

2. Lots shall be numbered with reference to blocks.

D. Sidewalks. Design of sidewalk or sidewalk easement in residential subdivisions shall be as required by the city engineer.

E. Drainage – Storm Sewer and Utility Easements.

1. Easements for drainage channels and ways shall be of sufficient width to assure that they may be maintained and improved. Easements for storm sewers shall be provided and shall be of sufficient width and in proper location to permit future installation. Utility easements shall be in accordance with plans and specifications prepared by the appropriate city department.

2. Easements for electric, telephone, water, gas and similar utilities shall be of sufficient width to assure installation and maintenance.

3. Design of storm water systems shall comply with the latest section of the Department of Ecology Stormwater Management Manual.

F. Underground Utility Installation. Subdivisions located adjacent to subdivisions having underground utility lines shall provide underground utility lines including but not limited to those for electricity, telephone, CATV and street lighting. (Ord. 1220 § 2, 1992).

16.08.102 Improvements.
All improvements shall follow the latest edition of the Washington State Department of Transportation Standard Specifications and chapter 12.28 BMC.

A. Streets, Bridges, and Other Construction. All streets, bridges, drains, culverts and other structures and facilities in dedicated areas shall be constructed in accordance with plans and specifications prepared or approved by the city engineer.

B. Street Grading and Surfacing. All dedicated streets shall be graded to their full width with adequate drainage provided prior to acceptance for public use. Grades shall be established by the city engineer and all roadways shall be surfaced according to plans and specifications prepared or approved by the city engineer.

C. Water and Sewers. Water supply facilities adequate to provide potable water from a public supply to each lot within a subdivision shall be installed in conformity with standards adopted by the Skagit County PUD. Each lot shall be provided with a single sanitary sewer system connection approved by the department of public works, unless a shared system is approved by the department of public works. All connections shall conform to applicable city regulations.

D. Service Mains and Fire Hydrants. Prior to the construction of any structure in the subdivision, service mains and fire hydrants shall be installed in accordance with plans and specifications prepared or adopted by the city engineer and in accordance with requirements and standards of the PUD and fire departments. (Ord. 1220 § 2, 1992).

16.08.106 Exceptions.
Exceptions from the design standards and improvement requirements set forth in this subchapter may be authorized by the city council in those instances where it is deemed that hardship, topography or other factual deterrent conditions prevail, and in such manner as it considers necessary to maintain the intent and purpose of the regulations and requirements. Approval by the city council of a preliminary plat on which variations and exceptions are clearly indicated shall constitute authorization of the variations and exceptions. (Ord. 1220 § 2, 1992).

Chapter 16.12

SHORT PLATS

Sections:

16.12.010 Filing of application.
16.12.020 Content of application.
16.12.030 Content of short plat.
16.12.035 Access.
16.12.040 Criteria for approval.
16.12.050 Planning director's decision.
16.12.060 Redivision procedures.

16.12.010 Filing of application.
A. Any person seeking to divide or redivide land situated within the city into nine or fewer lots for the purpose of sale or lease, transfer or ownership, development or financing shall submit an application for approval of a short subdivision to the planning director together with an application fee as established in the Permit Fee Ordinance. The application is subject to procedure requirements, established in the land use permit process. Within 30 days of the date of filing, a short plat shall be approved or disapproved or returned to the applicant, unless the applicant consents to an extension of this time period.

B. A survey of each proposed short subdivision and preparation of the short plat for it shall be made by or under the supervision of a registered land surveyor who shall certify on a short plat that it is a true and correct representation of the lands actually surveyed. (Ord. 1503 § 2, 2002; Ord. 1220 § 2, 1992).

16.12.020 Content of application.
Applications for approval of a short subdivision shall include the following:

A. A plat of the proposed short subdivision containing standard survey data;

B. A vicinity map on which shall be indicated the property to be subdivided;

C. A plot plan, as appropriate, showing the location and dimensions of existing buildings in relation to the proposed short subdivision. The square footage and closure computations of each parcel or lot shall show that each parcel or lot contains at least sufficient footage to meet minimum zoning and health requirements;

D. Legal descriptions of the property to be subdivided and of all proposed lots or divisions;

E. Name and address of owner(s) of the tract;

F. Location of existing roadways, sanitary sewer, storm drain and watermains, if any, together with proposed street improvements. (Ord. 1220 § 2, 1992).

16.12.030 Content of short plat.
A. Every short plat of a short subdivision filed for record must contain:

1. A certificate giving a full correct description of the lands divided as they appear on the short plat, including a statement that the short subdivision has been made with the free consent and in accordance with the desires of the owner or owners.

2. If the short plat includes a dedication, the certificate or a separate written instrument of dedication shall contain the dedication of all streets and other areas to the public, an individual or individuals, religious society or societies or to any corporation, public or private, as shown on the short plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road.

3. Roads not dedicated to the public must be clearly marked on the face of the short plat.

4. All short plats containing a proposed dedication must be accompanied by a title report confirming that the title of the lands as described and shown on the short plat is in the name of the owner signing the certificate or instrument of dedication.

5. A title certificate shall be required for all land divisions.

B. The certificate and instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land subdivided and shall be recorded as part of the final plat. Any dedication, donation, or grant as shown on the face of the short plat shall be considered to all intents and purposes as a quitclaim deed to the grantee or grantees for his, her or their use for the purpose intended by the donors or grantors. (Ord. 1220 § 2, 1992).

16.12.035 Access.
A. Every short plat shall include adequate provisions for dedication of drainage ways, street, alleys, easements, slope rights, parks and other public open spaces for general purposes as may be required to protect the public health, safety and welfare.

B. Protective improvements and easements to maintain the improvements shall be dedicated at the discretion of the city.

C. Convenient pedestrian and vehicular access to every lot by way of a dedicated street or permanent appurtenant easement shall be required.

D. Access to new lots shall be from a dedicated street, unless the director determines that the following conditions exist, and permits access by a permanent private easement:

1. Access by easement would not compromise the goals of the zoning code to provide for adequate light, air and usable open space between structures; and

2. The dedication and improvement of a street is not necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage; and

3. The dedication and improvement of a street is not necessary or desirable in order to provide on-street parking for overflow conditions; and

4. No potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines; and

5. There is no potential for extending the street system.

6. Private streets and roads shall be consistent with the requirements identified chapter 17.54 BMC

Comment [BM13]: TN-1.9, 1.20, and 1.22

E. Dedicated streets and alleys shall meet the improvement requirements of chapter 12.28 BMC. Easements shall meet the design standard of BMC 12.28.150 for access streets, except that the minimum width of an easement shall be 30 feet. (Ord. 1220 § 2, 1992).

16.12.040 Criteria for approval.
A. The planning director shall, after conferring with appropriate officials, use the following criteria to determine whether to grant, condition or deny a short plat:

1. Conformance to the applicable comprehensive plan policies and zoning code provisions;

2. Adequacy of access for vehicles, utilities and fire protection as provided in BMC 16.12.035;

3. Adequacy of drainage, water supply and sanitary sewage disposal;

4. Whether the public use and interests are served by permitting the proposed division of land.

B. If the short subdivision contains a proposed dedication, the planning director shall refer the matter to the city engineer for report and recommendation. The short plat or dedication instrument shall be transmitted to the city council for acceptance of the dedication by ordinance. (Ord. 1220 § 2, 1992).

C. When new storm-water facilities or LID features are provided to serve the plat an access easement shall be conveyed to the City for purposes of inspection and maintenance.

Comment [B[illegible]]: TN-1.40 and 1.39-BJ -

16.12.050 Planning director's decision.

A. If the planning director determines that the requirements of this section are met, or may be met upon compliance with specified conditions, the planning director shall inform the applicant in written findings of the decision to approve the application and the conditions of the approval, if any, and may return the proposed short plat to the applicant for modification or correction. When the planning director has determined that: (1) the short plat contains the certificates, dedication instruments and statements of approval required by state law and this chapter, (2) the short plat and all legal descriptions are technically correct, and (3) review procedures pursuant to chapter 17.68 BMC have been concluded, the short plat shall be filed for record with the Skagit County auditor. Except for purposes of appeal, no short plat or short subdivision granted approval by the planning director shall be deemed to have final approval until filed.

B. The decision of the planning director on a short subdivision is subject to the further review procedures established under land use permit process, chapter 17.68 BMC. (Ord. 1220 § 2, 1992).

16.12.060 Redivision procedures.

Land within a short subdivision may not be further divided within a five-year period immediately following approval and filing of a short plat unless a final plat for such subdivision is approved and filed for record in accordance with the provisions of BMC 16.12.050 and this title. However, any revision of an approved short plat in which the total number of lots is not increased shall not be considered a further division, and shall be approved or disapproved in the manner prescribed in this code. (Ord. 1220 § 2, 1992).

Chapter 16.16

LOT BOUNDARY ADJUSTMENTS

Sections:

16.16.010 Purpose.
16.16.020 Application for approval of lot boundary adjustment.
16.16.030 Criteria for approval.

16.16.010 Purpose.
The purpose of this chapter is to provide a method for summary approval of lot boundary adjustments which do not create any additional lot, tract, parcel, site or division, while insuring that such lot boundary adjustment satisfies public concerns of health, safety, and welfare. (Ord. 1220 § 2, 1992).

16.16.020 Application for approval of lot boundary adjustment.
Anyone seeking an approval by the planning director of a lot boundary adjustment shall file an application as provided in chapter 17.68 BMC, the land use permit process. All applications for lot boundary adjustment shall contain the following:

A. A plan showing the proposed change and containing standard survey data;

B. A plot plan as appropriate showing the location and dimensions of existing structures in relation to the proposed lot boundary adjustment;

C. A legal description of the property involved;

D. Name and address of owner(s) of the property involved;

E. Legal description of the proposed lot boundary adjustment. (Ord. 1220 § 2, 1992).

16.16.030 Criteria for approval.
Lot boundary adjustment shall comply with chapter 58.17 RCW and with the following criteria:

A. No additional lots shall be created. This also refers to redividing already created lots where structures are located on property lines.

B. Lots shall comply with minimum standards of the zoning code.

C. Lots shall comply with the Burlington Municipal Code standards for access.

D. The following statement shall appear on all lot boundary adjustment deeds:

> The above described property will be combined or aggregated with contiguous property owned by the grantee. This lot boundary adjustment is not for the purpose of creating an additional lot.
>
> (Ord. 1220 § 2, 1992).

Chapter 16.20

BINDING SITE PLAN APPROVAL

Sections:

16.20.010 General.
16.20.020 Eligible developments.
16.20.030 Criteria.

16.20.010 General.
The divisions of lands described in BMC 16.20.020 are exempt from compliance with this division if they meet the requirements of BMC 16.20.030. (Ord. 1220 § 2, 1992).

16.20.020 Eligible developments.
The following types of developments are subject to the provisions of this section:

A. A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land;

B. A division of land into lots or parcels located within industrial, commercial or office zones as defined in the zoning code;

C. A division which is made by subjecting a portion of a parcel or tract of land to chapter 64.32 RCW. (Ord. 1220 § 2, 1992).

16.20.030 Criteria.
A division of land is a binding site plan under this section if it meets all of the following criteria:

A. The city council approves a site plan as part of a discretionary zoning or other similar land use permit that involved a public hearing before the planning commission or the city approves a building permit site plan.

B. The site plan is shown to a scale of one inch equals 20 feet.

C. The site plan identifies and shows the areas and locations of all streets, roads, improvements, utilities and open spaces.

D. The site plan contains inscriptions or attachments setting forth all limitations and conditions for the use of land as established by city council.

E. The site plan contains a provision requiring that any development of the subject property be in conformance with the binding site plan.

F. All required public improvements including infrastructure and utilities shall be installed prior to recording the binding site plan, except for phased projects, delays due to weather constraints, or other exceptions approved by the public works director, where the work is bonded or otherwise secured by means provided in BMC 17.68.110 with a 15 percent contingency fund.

G. The site plan shall be filed for record with the county auditor to run with the subject property in compliance with state and county laws and regulations. (Ord. 1339 § 1, 1997; Ord. 1220 § 2, 1992).

H. Access to new lots shall be from a dedicated street, unless the director determines that the following conditions exist, and permits access by a permanent private easement:

1. Access by easement would not compromise the goals of the zoning code to provide for adequate light, air and usable open space between structures; and

2. The dedication and improvement of a street is not necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage; and

3. The dedication and improvement of a street is not necessary or desirable in order to provide on-street parking for overflow conditions; and

4. No potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines; and

5. There is no potential for extending the street system.

6. Private streets and roads shall be consistent with the requirements identified chapter 17.54 BMC.

Comment [BMJE]: TN-1.19, 1.20, and 1.22

I. Public streets and roads shall be designed and constructed in accordance with the standards identified in chapter 12.28 BMC.

Formatted: Indent: Left: 0"

J. When new storm-water facilities or LID features are provided to serve the binding site plan an access easement shall be conveyed to the City for purposes of inspection and maintenance.

Comment [BMJE]: TN-1.40 and 1.99 – Bd -

Formatted: Indent: Left: 0"

STAFF REPORT
EXHIBIT "6"
TITLE 14 AMENDMENTS

STAFF REPORT EXHIBIT "6"

14.800.010 Title. SHARE

This title shall be known as the "surface water management code," and may be cited as such. (Ord. 1273 § 2, 1994).

14.800.020 Purpose. SHARE

A. The provisions of this title shall be liberally construed to accomplish its remedial purposes, which are:

1. To protect, to the greatest extent practical, life, property and the environment from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity;

2. To protect the public interest in drainage and related functions of drainage basins, watercourses and shoreline areas;

3. To protect surface waters, ground waters and other receiving waters from pollution, mechanical damage, excessive flows and other conditions in their drainage basins which will increase the rate of downcutting, streambank erosion, and/or the degree of turbidity, siltation and other forms of pollution, or which will reduce their low flows or low levels to levels which degrade the environment, reduce recharging and ground water, or endanger aquatic and benthic life within these surface waters and receiving waters of the state;

4. To meet the requirements of state and federal law and comply with regulatory standards for the city's municipal storm water; and

5. To fulfill the responsibilities of the city as trustee of the environment for future generations.

B. It is the specific intent of this title to place the obligation of compliance upon the owner/operator of private storm water systems. Nothing contained in this title is intended to be or shall be construed to create or form the basis for liability on the part of the city of Burlington, its utility, officers, employees or agents for any injury or damage resulting from the failure of the owner or operator of any private system to comply with the provisions of this title, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this code by the city of Burlington, its utility, officers, employees or agents. This title is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms. (Ord. 1681 § 1, 2009; Ord. 1273 § 2, 1994).

14.800.030 Scope. SHARE

This title applies to:

A. All grading and drainage and erosion control, whether or not a permit is required; and

B. All new development, redevelopment, land disturbing activities, and construction sites, whether or not a permit is required; and

C. All new and existing discharges directly or indirectly to a public drainage control system; and

D. All new and existing land uses. (Ord. 1708 § 2, 2010; Ord. 1273 § 2, 1994).

14.800.060 Compliance with other laws. SHARE

The requirements of this title are minimum requirements. They do not replace, repeal, abrogate, supersede or affect any other more stringent requirements, rules, regulations, covenants, standards, or restrictions. Where this title imposes requirements which are more protective of human health or the environment than those set forth elsewhere, the provisions of this title shall prevail.

Approvals and permits granted under this title are not waivers of the requirements of any other laws. Compliance is still required with all applicable federal, state and local laws and regulations, including rules promulgated under authority of this title. (Ord. 1273 § 2, 1994).

14.800.080 Authority. SHARE

The public works director shall have authority regarding all provisions of this title pertaining to storm water, drainage, and erosion control, including inspection and enforcement authority for temporary drainage and erosion control measures for all projects that meet or exceed the threshold conditions set forth in BMC 14.802.015.

The public works director is authorized to take actions necessary to implement the provisions and purposes of this title in their respective spheres of authority, including, but not limited to: promulgating and amending rules and regulations, which may include prescribing best management practices ("BMPs"); establishing and conducting inspection programs; establishing and conducting or, as set forth in BMC 14.802.012, requiring responsible parties to conduct monitoring programs, which may include sampling of discharges to or from drainage control facilities, the public drainage control system, or surface water; taking enforcement action; abating nuisances; promulgating guidance and policy documents; and reviewing and approving or disapproving required submittals and applications for approvals and permits. Any powers granted or duties imposed upon

the public works director may be delegated to persons or entities acting in the beneficial interest of or in the employ of the agency.

The public works director is authorized to develop drainage basin plans for managing surface water, drainage water, and erosion within individual subbasins. Compliance with an adopted drainage basin plan may, when approved by the public works director, modify requirements of this title, provided the level of protection for human health, safety, and welfare, the environment, and public or private property will equal or exceed that which would otherwise be achieved. (Ord. 1708 § 3, 2010; Ord. 1661 § 2, 2009; Ord. 1273 § 2, 1994).

14.800.090 City not liable. SHARE

Nothing contained in this title is intended to be nor shall be construed to create or form the basis for any liability on the part of the city, or its officers, employees or agents for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this title, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement of this title, or by reason of any action or inaction on the part of the city related in any manner to the enforcement of this title by its officers, employees or agents.

The director or any employee charged with the enforcement of this title, acting in good faith and without malice on behalf of the city, shall not be personally liable for any damage that may accrue to persons or property as a result of any act required by the city, or by reason of any act or omission in the discharge of these duties. Any suit brought against the public works director or other employee because of an act or omission performed in the enforcement of any provisions of this title, shall be defended by the city.

Nothing in this title shall impose any liability on the city or any of its officers or employees for cleanup or any harm relating to sites containing hazardous materials, wastes or contaminated soil. (Ord. 1273 § 2, 1994).

14.801.010 General. SHARE

For the purpose of this title, the words listed in this chapter shall have the following meanings unless the context clearly indicates otherwise. Terms relating to pollutants and to hazardous wastes, materials, and substances, where not defined in this title, shall be as defined in chapters 173-303, 173-340 WAC, the Uniform Building Code or the Uniform Fire Code including future amendments to those codes. Words used in the singular include the plural, and words used in the plural include the singular. (Ord. 1273 § 2, 1994).

14.801.020 "A". SHARE

"Agency" means any governmental entity or its subdivision.

"AKART" means all known, available, and reasonable methods of prevention, control, and treatment. See also the state Water Pollution Control Act, RCW 90.48.010 and 90.46.520. (Ord. 1681 § 3, 2009; Ord. 1273 § 2, 1994).

14.801.030 "B". SHARE

"Basin plan" means a plan to manage the quality and quantity of storm water in a drainage basin as described in the city of Burlington comprehensive surface water management plan, as now or hereafter amended.

"Best management practice (BMP)" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, structural or managerial practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Nonstructural best management practices are those which require modified or additional operational or behavioral practices, such as sweeping a parking lot or having spill response equipment on site.

Structural best management practices are those which require the construction of a structure or other physical modification on the site. (Ord. 1681 § 4, 2009; Ord. 1273 § 2, 1994).

14.801.040 "C". SHARE

"Cause or contribute" to a violation includes acts or omissions that create a violation, that increase the duration, extent, or severity of a violation, and that aid or abet a violation.

"Civil engineer, licensed" means a person who is licensed by the state of Washington to practice civil engineering.

"Clean Water Act" means the federal Water Pollution Control Act (33 USC 1251 et seq.), and any subsequent amendments thereto.

"Combined sewer" means a system that collects sanitary sewage and storm water in a single sewer system. (Ord. 1681 § 5, 2009; Ord. 1273 § 2, 1994).

14.801.050 "D". SHARE

"Damages" means monetary compensation for harm, loss, costs, or expenses incurred by the city including, but not limited to, costs of abating violations of this title or public nuisances; fines or penalties by the city incurred as a result of a violation of this title; and costs to repair or clean the public drainage control system as a result of a violation. For the purposes of this title, it does not include compensation to any person other than the city.

"Design storm" means a rainfall event used in the analysis and design of drainage facilities.

"Designated receiving waters" means the Skagit River, Padilla Bay and other receiving waters designated by the public works director as having the capacity to receive drainage discharges.

"Detention" refers to temporary storage of drainage water.

"Developed parcel" means a parcel of real property which has been altered by developmental coverage.

Development. See "new development" and "redevelopment."

"Developmental coverage" means all areas within a site planned to be developed or redeveloped including, but not limited to, rooftops; driveways; carports; accessory buildings; parking areas; areas in which soils, slopes and vegetation have been altered; and roadways and other pervious and impervious surfaces.

"Director" means the public works director or engineering director and the director's designees, who may be employees of that department or another city department.

"Discharge point" means the location to which drainage water from a specific site is released.

"Discharge rate" means the rate at which drainage water is released from a specific site. The discharge rate is expressed as volume per unit of time, such as cubic feet per second.

"Drainage basin" means the tributary area through which drainage water is collected, regulated, transported, and discharged to receiving waters.

"Drainage control" means the management of drainage water. Drainage control is accomplished through the collection, conveyance, and discharge of drainage water, controlling the rate of discharge from a site, or separating, treating or preventing the introduction of pollutants.

"Drainage control facility" means any facility, including best management practices, installed or constructed for the purpose of controlling the flow, quantity, and/or quality of drainage water. Drainage control facilities include, but are not limited to, all types of catch basins, pipes, detention/retention ponds, bioswales, and other structural and nonstructural components that handle surface water.

"Drainage control plan" means a plan for collecting, controlling, transporting and disposing of drainage water falling upon, entering, flowing within, and exiting the site, including designs for drainage control facilities. The plan shall contain information as set forth in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

"Drainage control system" means a system to collect, convey and control release of only drainage water. The system may serve public or private property. It includes constructed and/or natural components such as ditches, culverts, streams and drainage control facilities.

"Drainage water" means storm water, snow melt, surface water, surface and irrigation runoff, water from footing drains and other drains approved by the public works director or installed in compliance with this title and rules which may be adopted hereunder. Other water which is not an illicit discharge as defined in BMC 14.802.012 shall be considered drainage water if it drains from the exterior of a building or structure, a pervious or impervious surface, or undeveloped land, or by surface or shallow subsurface flow.

"Dredging" means the excavating of earth materials from land covered by water. The term shall include dredging which maintains an established water depth. (Ord. 1708 § 4, 2010; Ord. 1471 § 1, 2001; Ord. 1330 § 1, 1997; Ord. 1273 § 2, 1994).

14.801.080 "E".

"Erosion" means the wearing away of the ground surface as a result of mass wasting or the movement of wind, water and/or ice.

"Equivalent service unit" means a configuration of impervious surface estimated to contribute an amount of runoff to the city's surface water management system which is approximately equal to that created by the average single-family residential developed parcel in Burlington. One equivalent service unit (ESU) is equivalent to 2,400 square feet of impervious surface area. For purposes of computation of rates, the number of equivalent service units shall be rounded to the nearest tenth. (Ord. 1330 § 2, 1997; Ord. 1273 § 2, 1994).

14.801.070 "F". SHARE

"Fish and wildlife habitat conservation areas" is as defined in the critical areas code, chapter 15.15 BMC.

"Flood prone area" is as defined in the critical areas code, chapter 15.15 BMC. (Ord. 1273 § 2, 1994).

14.801.080 "G". SHARE

"Ground water" means water in a saturated zone or stratum beneath the surface of the land or below a surface water body. (Ord. 1681 § 8, 2009).

14.801.090 "H". SHARE

"Hazardous materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Hyperchlorinated" means water that contains more than 10 milligrams per liter of chlorine. (Ord. 1681 § 7, 2009).

14.801.100 "I". SHARE

"Illicit connection" means any manmade conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains, footing drains, and other similar type connections, that conveys any material not composed entirely of storm water. Examples of illicit connections include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

"Illicit discharge" means any direct or indirect non-storm water discharge to the city's storm drain system, except as expressly defined by BMC 14.802.012(D).

"Impervious surface" means any surface from which most water runs off including, but not limited to, paved streets, graveled or paved areas such as driveways, parking areas, packed earth material, oiled macadam or other treated surfaces, walkways, roof surfaces, patios and formal planters.

"Inspector" means the city inspector, inspection agency, or licensed civil engineer performing the inspection work required by this title. (Ord. 1681 § 8, 2009; Ord. 1273 § 2, 1994).

14.801.130 "L". SHARE

"Land disturbing activity" means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) or the existing topography. Land disturbing activities include but are not limited to demolition, clearing, grading, filling and excavation.

"Land use permit" means a document issued by the department of planning and community development giving permission for development or use of land or street right-of-way in accordance with the zoning code (BMC Title 17).

"Low impact development (LID)" means a storm water management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic functions. (Ord. 1708 § 5, 2010; Ord. 1273 § 2, 1994).

14.801.140 "M". SHARE

"Municipal separate storm sewer system (MS4)" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (A) owned or operated by the city of Burlington; (B) designed or used for collecting or conveying storm water; (C) which is not part of a publicly owned treatment works (POTW). (Ord. 1681 § 9, 2009).

14.801.150 "N". SHARE

"National Pollutant Discharge Elimination System (NPDES) storm water discharge permit" means a permit issued by the Environmental Protection Agency (EPA) (or by the Washington Department of Ecology under authority delegated pursuant to 33 USC 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

"New development" means any of the following activities:

1. Structural development, including construction of a new building or other structure;

2. Expansion or alteration of an existing structure that results in an increase in the footprint of the building or structure;

3. Land disturbing activities;

4. Creation or expansion of impervious surface;

5. Demolition;

6. Subdivision and short subdivision of land as defined in BMC Title 16, Subdivisions;

7. Class IV general forest practices, as defined in WAC 22-16-050, that are conversions from timber land to other uses.

No other forest practices or commercial agriculture are considered new development.

"Non-storm water discharge" means any discharge to the storm drain system that is not composed entirely of storm water.

"NPDES" means National Pollutant Discharge Elimination System, the national program for controlling discharges under the federal Clean Water Act. (Ord. 1881 § 10, 2009; Ord. 1273 § 2, 1994).

14.801.160 "O". SHARE

"Owner" means any person having title to and/or responsibility for, a building or property, including a lessee, guardian, receiver or trustee and the owner's duly authorized agency. (Ord. 1273 § 2, 1994).

14.801.170 "P". SHARE

"Parcel" means the smallest separately segregated unit or plot of land having an identified owner, boundaries, and surface area which constitutes a separate lot or tract capable of being conveyed without further subdivision.

"Person" means an individual, firm, partnership, corporation, municipal corporation, and government, and the individual's or entity's heirs, successors and assigns.

"Plan" means, for the purposes of this title, and unless a different meaning is set forth or clearly required, a graphic or schematic representation, with accompanying notes, schedules, specifications and other related documents.

"Plot plan" is a scaled map of a site and adjacent public rights-of-way showing locations and dimensions of various existing and proposed features, such as buildings, curbs, driveways, sidewalks, trees, grades and drainage patterns.

"Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

"POTW" or "publicly owned treatment works" means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned.

"Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

"Public drainage control system" means a drainage control system owned or used by the city of Burlington serving city streets and adjacent property.

"Public storm drain" means the part of a public drainage control system which is wholly or partially piped, is owned or operated by a public entity, and is designed to carry only drainage water. (Ord. 1661 § 11, 2009; Ord. 1330 § 3, 1997; Ord. 1273 § 2, 1994).

14.801.190 "R". SHARE

"Redevelopment" means, on a site that is already substantially developed (i.e., has 35 percent or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

"Responsible party" means all of the following persons: (A) owners and occupants of property within the city of Burlington; and (B) any person causing or contributing to a violation of the provisions of this title.

"Riparian corridor" is as defined in the critical areas code, chapter 15.15 BMC.

"Rules" means administrative rules promulgated by the public works director in accordance with the State Administrative Procedures Act. (Ord. 1708 § 6, 2010; Ord. 1441 § 1, 2000; Ord. 1273 § 2, 1994).

14.801.200 "S". G SHRE

"Serve" or "service," when used regarding a document, means the procedures set forth in BMC 14.806.030.

"Service drain" means a privately owned and maintained drainage control facility or system which carries only drainage water. Service drains include, but are not limited to, conveyance pipes, catch basin connections, downspout connections, pipes, and subsurface drain connections.

"Shoreline district" means all land regulated by the Shorelines Management Act of 1971 (chapter 90.58 RCW).

"Single-family residential parcel" means a parcel which has been actually developed with a single-family residence.

"Site" means any lot, parcel of land, street or highway right-of-way, or contiguous combination thereof, where a permit for new development, redevelopment, land disturbing activity, or grading has been issued or where any such work is proposed or performed.

"Standard design" is a design approved by the Burlington public works department for drainage and erosion control for a typical site.

Storm Drain. See "public storm drain" and "service drain."

"Storm drainage system" means publicly owned facilities, including the city's municipal separate storm sewer system, by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

"Storm water" means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

"Storm water pollution prevention plan" means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a premises and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable. The plan shall contain elements as set forth in Appendix 1

of the Western Washington Phase II Municipal Stormwater Permit. (Ord. 1708 § 7, 2010; Ord. 1681 § 12, 2009; Ord. 1330 § 4, 1997; Ord. 1273 § 2, 1994).

14.801.220 "U". SHARE

"Uncontaminated" means, for the purposes of this title, not containing sediment or other pollutants or contaminates above natural background levels when referring to surface or ground water; and not containing pollutants or contaminants in levels greater than city-supplied drinking water when referring to potable water.

"Undeveloped parcel" means any parcel of real property which has not been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area which affects the hydraulic properties of the parcel. (Ord. 1330 § 5, 1997; Ord. 1273 § 2, 1994).

14.801.240 "W". SHARE

"Watercourse" means the route, constructed or formed by humans or by natural processes, generally consisting of a channel with bed, banks, or sides, in which surface waters flow, including lakes, bogs, streams, sloughs, and intermittent artificial components (including ditches and culverts) but not including receiving waters.

"Wetland" is as defined in critical areas code, chapter 16.15 BMC. (Ord. 1273 § 2, 1994).

14.802.010 Scope. SHARE

A. General. All new and existing discharges subject to this title as set forth in BMC 14.800.030, all land uses and all new development, redevelopment, and grading shall comply with all requirements of this title unless explicitly exempted by this title or by the director exercising authority granted under this title. The words and phrases used in this chapter shall have the same meaning as defined in chapter 14.801 BMC.

B. Exemptions. The following land uses are exempt from the provisions of this title.

1. Commercial agriculture, including only those activities conducted on lands defined in RCW 84.34.020(2), and production of crops of livestock for wholesale trade;

2. Forest practices regulated under WAC Title 222, except for Class IV general forest practices, as defined in WAC 222-16-050, that are conversions from timber land to other uses;

3. Development undertaken by the Washington State Department of Transportation in state highway right-of-way that complies with the standards found in chapter 173-270 WAC, the Puget Sound Highway Runoff Program; and

4. Any additional exemptions as set forth in Appendix 1, Minimum Technical Requirements for New Development and Redevelopment, of the Western Washington Phase II Municipal Stormwater Permit. (Ord. 1708 § 8, 2010; Ord. 1681 § 13, 2009; Ord. 1273 § 2, 1994).

14.802.012 Prohibited discharges. SHARE

A. Storm Water Discharges to Sanitary and Combined Sewers. In consultation with the local sewage treatment agency, the director may approve discharges of storm water to a public combined sewer or sanitary sewer if other methods of controlling pollutants in the discharge are not adequate or reasonable, and the discharging party certifies that the discharge will not harm the environment and will not overburden or otherwise harm the public combined sewer or sanitary sewer systems. The director shall condition approval of such a discharge on compliance with local pretreatment regulations.

B. Discharges Prohibited to Public Drainage Control Systems. No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants other than storm water. It is unlawful to make illicit discharges, as defined in subsection (C) of this section, either directly or indirectly to a public drainage control system.

C. Illicit Discharges Defined. Except as provided in subsection (D) of this section, all discharges which are not composed entirely of storm water are illicit discharges, as defined in BMC 14.801.100. See BMC 14.806.020 for defenses available to responsible parties.

The following is a partial list, provided for informational purposes only, of common substances which are illicit discharges when allowed to enter a public drainage control system:

1. Trash or debris.

2. Construction materials.

3. Petroleum products including but not limited to oil, gasoline, grease, fuel oil, and heating oil.

4. Antifreeze and other automotive products.

5. Metals in either particulate or dissolved form.

6. Flammable or explosive materials.

7. Radioactive material.

8. Batteries.

9. Acids, alkalis or bases.

10. Paints, stains, resins, lacquers or varnishes.

11. Degreasers and solvents.

12. Drain cleaners.

13. Pesticides, herbicides or fertilizers.

14. Steam cleaning wastes.

15. Soaps, detergents or ammonia.

16. Swimming pool backwash.

17. Chlorine, bromine and other disinfectants.

18. Heated water.

19. Domestic animal wastes.

20. Sewage.

21. Recreational vehicle waste.

22. Animal carcasses.

23. Food wastes.

24. Bark and other fibrous materials.

25. Collected lawn clippings, leaves, or branches.

26. Silt, sediment or gravel.

27. Dyes.

28. Chemicals not normally found in uncontaminated water.

29. Washing of fresh concrete for cleaning and/or finishing purposes or to expose aggregates.

30. Any other process-associated discharge except as otherwise allowed in this section.

31. Any hazardous material or waste not listed above.

D. Allowable Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Diverted stream flows.

2. Rising ground water.

3. Uncontaminated ground water infiltration.

4. Uncontaminated pumped ground water.

5. Foundation drains.

6. Air conditioning condensation.

7. Irrigation water from agricultural sources that is commingled with urban storm water.

8. Springs.

9. Water from crawl space pumps.

10. Footing drains.

11. Flows from riparian habitats and wetlands.

12. Non-stormwater discharges authorized by another NPDES or state waste discharge permit

13~~12~~. Discharges from emergency fire fighting activities.

E. Conditional Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the public works director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and in volumes and velocities controlled to prevent re-suspension of sediments in the storm water system;

2. Lawn watering and other irrigation runoff is permitted but shall be minimized;

3. Dechlorinated swimming pool discharges. These discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and in volumes and velocities controlled to prevent re-suspension of sediments in the storm water system; Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water.

4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of street wash and dust

control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street;

~~5. Non-storm water discharges covered by another NPDES permit; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system;~~

~~5~~6. Other non-storm water discharges. The discharges shall be in compliance with the requirements of a storm water pollution prevention plan (SWPPP) reviewed and approved by the city, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

F. Testing for Illicit Discharges. When the director has reason to believe that any discharge is an illicit discharge, the director may sample and analyze the discharge and recover the costs from a responsible party in an enforcement proceeding. When the discharge is likely to contain illicit discharges on a recurring basis, the director may conduct, or may require the responsible party to conduct, ongoing monitoring at the responsible party's expense.

G. Illicit Connections Prohibited. Any connection identified by the public works director that could convey anything not composed entirely of surface and storm water directly to surface and storm water or ground water is considered an illicit connection. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this section if the person connects a line conveying sewage to the MS4 or allows such a connection to continue. (Ord. 1661 § 14, 2009; Ord. 1273 § 2, 1994).

14.802.013 Requirements for existing discharges and land uses. SHARE

A. General. For all existing discharges directly or indirectly to a public drainage control system, responsible parties shall implement and maintain nonstructural best management practices as specified in rules promulgated by the director. Nonstructural best management practices shall include, but not be limited to, maintenance and source control housekeeping practices such as cleaning of catch basins and detention facilities, sweeping of parking lots, storing oil barrels and other contaminant sources out of the rain, covering material stockpiles, and proper use and storage of hazardous materials.

If the director determines that discharges from a drainage facility are causing or contributing to a water quality problem, such as discharges that cannot be adequately addressed by nonstructural best management practices, including, but not limited to, areas with recurrent spills such as discharges from vehicle maintenance shops or gas stations, then the director may require the responsible party to undertake more stringent or additional best management practices. These best management practices may include structural best management practices or other action necessary to cease causing or contributing to the water quality problem. Structural best management practices include but shall not be limited to constructed facilities such as detention tanks, wet ponds, oil/water separators, grassed swales, roofing and berming of container storage areas, and revised piping systems.

B. Spill Prevention Required. All commercial and industrial responsible parties shall take measures to prevent spills or other accidental introduction of illicit discharges into a public drainage control system. Such measures shall include:

1. Establishment and implementation of plans and procedures to prevent spills and other accidental releases of materials that may contaminate storm water;

2. Implementation of procedures for immediate containment and other appropriate action regarding spills and other accidental releases to prevent contamination of storm water; and

3. Provision of necessary containment and response equipment on site, and training of personnel regarding the procedures and equipment to be used.

The provisions of this subsection may be satisfied by a storm water pollution prevention plan prepared in compliance with the NPDES industrial storm water permit for the site.

The responsible parties shall make the plans and procedures required by this subsection available to the director when requested.

C. Release Notification Requirements. A responsible party must, at the earliest possible time, but in any case within 24 hours of discovery, report to the public works director a spill, release, dumping, or other situation that has contributed or is likely to contribute pollutants to a public drainage control system. This reporting requirement is in addition to, and not instead of, any other reporting requirements under federal, state or local laws.

D. Natural Drainage Patterns. Natural drainage patterns shall be maintained.

E. Obstruction of Watercourses. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. Watercourses shall not be obstructed. (Ord. 1681 § 15, 2009; Ord. 1273 § 2, 1994).

14.802.015 Storm water, drainage, and erosion control requirements. SHARE

A. Stormwater Management Manual Adopted. The ~~2005~~2012 State Department of Ecology Stormwater Management Manual for Western Washington, as amended in 2014. This manual is further defined by Sections one through six of Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit, as now or hereafter amended, is hereby adopted as a technical reference manual hereinafter referred to as the "storm water manual." The city hereby adopts the thresholds, definitions, minimum requirements, and exceptions, adjustments and variance criteria found in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit as the city of Burlington's minimum storm water regulations.

B. Thresholds for Minimum Technical Requirements for Storm Water Control.

1. All new development, redevelopment, and construction sites, regardless of type and regardless of whether or not a permit is required, that meet or exceed the threshold conditions set forth in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit must comply with the minimum technical requirements of said Appendix 1, including the mandatory incorporated provisions of the ~~2005~~-2012 Ecology Stormwater Management Manual for Western Washington as amended in 2014.

2. The city of Burlington requires that all projects, even those that result in land disturbance of less than one acre, adhere to the minimum requirements for erosion and storm water control set forth in Appendix 1 and Appendix 7 of the Western Washington Phase II Municipal Stormwater Permit.

3. For those projects meeting the review thresholds set forth in this section, the applicant shall submit a drainage control plan or storm water site plan pursuant to requirements in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

4. The city of Burlington allows applications for an erosivity waiver as specified in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

C. Standards and Definitions. Unless otherwise specified in this chapter, all standards, definitions, and requirements shall be in accordance with the storm water manual.

D. Flood Prone Areas. Sites within flood prone areas must employ measures to minimize the potential for flooding on the site and for the project to increase the risk of floods on adjacent or nearby properties. Flood control measures shall include those set forth in other titles of the Burlington Municipal Code and rules promulgated thereunder, including but not limited to the critical areas code, chapter 15.15 BMC, and in rules promulgated by the public works director to meet the purposes of this subsection.

E. Natural Drainage Patterns. Natural drainage patterns shall be maintained.

F. Obstruction of Watercourses. Watercourses shall not be obstructed.

G. Low Impact Development – Alternative Standards. The city allows and encourages low impact development (LID) best management practices (BMPs), as an alternative to conventional storm water management systems that rely on detention ponds and closed conveyance. Low impact development is intended to manage runoff close to the source of generation and to mimic predeveloped hydrologic condition of a site. Low impact development is accomplished ~~first~~ through minimizing the impervious surface coverage and loss of vegetation and ~~essand~~ by managing runoff through dispersion, infiltration, evapotranspiration, or a combination of these approaches. Use of LID BMPs may reduce or eliminate the need for conventional detention facilities but does not remove the obligation to comply with the minimum requirements of the storm water manual. A variety of BMPs to minimize impervious surfaces and to manage storm water have been developed and tested for use in Western Washington. ~~These BMPs and the overall LID approach are described in the LID Technical Guidance Manual for Puget Sound (LID manual).~~ (Ord. 1708 § 9, 2010; Ord. 1441 § 2, 2000; Ord. 1273 § 2, 1994).

14.802.020 Scope of drainage control review and application requirements. SHARE

A. Scope of Review. Where drainage and approval are required by BMC 14.802.015, the scope of this review shall at least include the following.

1. Applications for Building and Other Permits. The public works director shall review any application for a building permit or other permit, other than land use permit applications, for compliance with BMC 14.802.015 and to determine whether improvements to the public drainage control system shall be required.

2. The public works director shall review all storm water plans for proposed development activities in accordance with the site planning process and best management practice selection and design criteria as set forth in the storm water manual.

B. Application and Approval Requirements. Drainage control plans for projects subject to review under BMC 14.802.015 shall be reviewed by the public works director. The director may approve those plans which comply with the provisions of this title and rules promulgated hereunder, and may place conditions upon the approval in order to assure compliance with the provisions of this title. Submission of the required drainage control application information shall be a condition precedent to the processing of any of the above-listed permits. Approval of drainage control shall be a condition precedent to issuance of any of the above-listed permits. A storm sewer permit shall be issued to construct on-site and off-site drainage control facilities based on the approved plans. See BMC 14.804.200, Storm sewer permits required.

The public works director may disapprove plans which do not comply with the provisions of this title and rules promulgated hereunder. Disapproved plans shall be returned to the applicant, who may correct and resubmit the plans.

C. Submittal Requirements.

1. Applications shall be prepared and submitted in accordance with provisions of this section, with chapter 14.804 BMC (Storm Sewers) and with associated rules and regulations adopted by the director.

2. The director may require additional information necessary to adequately evaluate applications for compliance with the requirements and purposes of this title and other laws and regulations, including the critical areas code, chapter 15.15 BMC. The director may also require appropriate information about adjoining properties which may be related to, or affected by, the drainage control proposal in order to evaluate effects on the adjacent property. This additional information may be required as a precondition for permit application review and approval.

3. Where an applicant simultaneously applies for more than one of the permits listed in subsection (A) of this section for the same property, the application shall comply with the requirements for the permit which are the most detailed and complete. (Ord. 1708 § 10, 2010; Ord. 1273 § 2, 1994).

14.802.040 Drainage control plan registry. SHARE

The public works director shall maintain a permanent file of all approved drainage control plans. Each plan shall be cataloged according to the property address, legal description of the property and the storm sewer permit number for which the plan is required. See BMC 14.804.200, Storm sewer permits required. Where a drainage control plan covers more than one property, the approved plan shall be cataloged for each property covered by the plan. (Ord. 1708 § 11, 2010; Ord. 1273 § 2, 1994).

14.802.060 Installation of drainage control facilities. SHARE

All privately owned and operated drainage control facilities or systems, whether or not they discharge to a public drainage control system, shall be considered storm sewers and shall be subject to BMC Title 14, the public works department director's rules promulgated under that title, and the public works department's design and installation specifications and permit requirements for storm sewer and drainage control systems.

Storm sewer permits and inspections shall be required for construction, capping, alterations, or repairs of privately owned and operated drainage control systems as provided in BMC Title 14. When the work is ready for inspection, the permittee shall notify the public works director. If the work is not in accordance with plans approved under this title and in accordance with the public works department design and installation specifications, the public works department may order the work stopped by written notice to the persons engaged in performing the work or causing the work to be done, and may require modifications as provided in this title. (Ord. 1273 § 2, 1994).

14.802.070 Modifications of drainage control facilities during construction. SHARE

During construction the public works director may require, or the applicant may request, that the construction of drainage control facilities and associated project designs be modified if physical conditions are discovered on the site which are inconsistent with the assumptions upon which the approval was based, including but not limited to unexpected soil and/or water conditions, weather generated problems, or changes in the design of the improved areas. Modifications shall be submitted to the director for approval prior to implementation.

Any such modifications made during the construction of drainage control facilities shall be recorded on the final approved drainage control plan, a revised copy of which shall be filed by the public works director. (Ord. 1273 § 2, 1994).

14.803.010 Purpose. SHARE

It is the purpose of this chapter to:

A. Provide for the inspection and regulation of public or private storm and surface water system control or detention facilities in order to provide for a properly functioning city storm and surface water drainage system and to protect the public health, safety and welfare;

B. Authorize the storm and surface water utility to inspect storm and surface water system control and drainage control facilities and to require owners of such systems to maintain, operate and repair such systems in conformity with the code and the utility standards and regulations;

C. Authorize the storm and surface water utility to investigate the source of suspected illicit discharges, dumping, and/or illicit connections. (Ord. 1681 § 16, 2009; Ord. 1273 § 2, 1994).

14.803.020 Compliance. SHARE

Each owner or person responsible for the maintenance, operation or repair of detention facilities within the city shall maintain, operate and repair said detention facilities in compliance with the requirements of this code and in compliance with the utility standards and regulations. (Ord. 1273 § 2, 1994).

14.803.030 Responsibility for inspection and maintenance. SHARE

Drainage control facilities required by this title and by the rules adopted hereunder, shall be maintained by the owner or other responsible party. The owner or responsible party shall inspect permanent drainage control facilities at least annually, and shall inspect temporary drainage control facilities and other temporary best management practices or facilities on a schedule sufficient for the facilities to function at design capacity. When an inspection identifies a need for maintenance as defined by standards found in Chapter 4 of Volume V of the storm water manual, maintenance shall be performed in accordance with the following schedule:

A. Within one year for typical maintenance of facilities, except catch basins.

B. Within six months for catch basins.

C. Within two years for maintenance that requires capital construction of less than $25,000.

The public works director may require the responsible party to conduct more frequent inspection and/or maintenance when necessary to ensure functioning at design capacity. (Ord. 1708 § 12, 2010; Ord. 1273 § 2, 1994).

14.803.040 Inspection program. SHARE

The public works director may establish inspection programs to insure compliance with the requirements of this title and accomplishment of its purposes. Inspection programs may be established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; visual inspection of catch basins and detention/retention ponds; video inspection of pipe system; sampling discharges, surface water, ground water, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other best management practices. (Ord. 1471 § 2, 2001; Ord. 1273 § 2, 1994).

14.803.050 Entry for inspection and abatement purposes. SHARE

A. New Installations and Connections. When any new drainage control facility is installed on private property, and when any new connection is made between private property and a public drainage control system or sanitary sewer ~~or combined sewer~~, the property owner shall obtain approval from the Public Works Director ~~of engineering~~. The property owner shall grant the city the right to enter the property at reasonable times and in a reasonable manner pursuant to an inspection program established pursuant to BMC 14.803.040, and to enter the property when the city has a reasonable basis to believe that a violation of this title is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this title.

B. The director, whenever implementing the provisions of the utility's inspection program or whenever he/she has cause to believe that a violation of this code or the utility standards and regulations has been or is being committed, is authorized to inspect during regular working hours and at other reasonable times all drainage control facilities within the city to determine compliance with the provisions of this code and the utility standards and regulations. If a property owner has not granted right of entry under subsection (A) of this section, prior to

making any inspection the director shall present identification credentials, state the reason for the inspection, and request entry.

1. If said property or any building or structure on said property is unoccupied, he/she shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portion thereof and request entry.

2. If, after reasonable effort, the director is unable to locate the owner or such other person(s) having charge or control of the property, and he/she has reason to believe the condition of the detention facility creates an imminent hazard to persons or property, he/she may make entry.

3. Unless entry is consented to by the owner or person(s) in control of said property or portion thereof or unless conditions are reasonably believed to exist which create an imminent hazard, the director, prior to entry, shall obtain a search warrant as authorized by the laws of the state.

4. The director may inspect the drainage control facility without obtaining a search warrant pursuant to subsection (B)(3) of this section if said inspection can be conducted while he/she remains on public property or on other property on which he/she has permission to be. (Ord. 1708 § 13, 2010; Ord. 1681 § 17, 2009; Ord. 1273 § 2, 1994).

14.803.060 Disposal of waste from maintenance activities. SHARE

Disposal of waste from maintenance of drainage and storm water control facilities shall be conducted in accordance with federal, state and local regulations, including the Minimum Functional Standards for Solid Waste Handling, chapter 173-304 WAC, guidelines for disposal of waste materials, and, where appropriate, Dangerous Waste Regulations, chapter 173-303 WAC, including any subsequent amendments to these provisions. (Ord. 1273 § 2, 1994).

14.803.070 Records of installation and maintenance activities. SHARE

When a new drainage control facility is installed, the party having the facility installed shall obtain a copy of the as-built plans from the director of engineering. Responsible parties shall make records of the installation and of all maintenance and repair and shall retain the records for at least 10 years. These records shall be made available to the director during inspection of the facility and at other reasonable times upon request of the director. (Ord. 1273 § 2, 1994).

14.804.170 Definitions. SHARE

A. "Primary drainage system" means a drainage system serving a watershed of 20 acres or greater.

B. "Secondary drainage system" means a drainage system serving a watershed less than 20 acres in size or a watershed with a runoff of three cubic feet per second or less for a storm with a five-year frequency. (Ord. 1273 § 2, 1994).

14.804.180 Plans required. SHARE

Storm sewers and drainage improvements shall require a storm sewer permit with approved engineering plans with the following information:

A. Plan map properly dimensioned and drawn to scale showing the location of the proposed storm sewer, drainage ditches and sewer appurtenances within the street right-of-way. Sewers and drainage ditches shall be stationed and all manholes, catch basins, and appurtenances shall be numbered;

B. Location of existing above and below ground utilities in road right-of-way or adjacent easements;

C. Location and dimensions of utility and drainage easements and location of all existing watercourses, ditches, trunk storm sewers, ponds and retention facilities connected with or adjacent to the proposed drainage facilities;

D. Profiles of storm drains and drainage ditches with the following information:

1. Location and number of all manholes, catch basins and appurtenances,

2. Profile of existing and proposed ground surface and storm drain,

3. Size, slope and length of storm sewers between consecutive manholes,

4. Sewer, manhole, and catch basin invert elevations;

E. Suitable title plate on each drawing with street or sewer name, name and address of the developer, scale, date and the name, address and telephone number and stamp of the registered engineer responsible for the plan preparation;

F. Structural details of any special manholes, catch basins, and appurtenances including drop manholes, retention control manholes, outlet structures, pumping stations, diversion structures, etc. (Ord. 1273 § 2, 1994).

14.804.190 Design criteria. SHARE

A. Storm sewers and drainage facilities shall be designed for a projected life span of 30 years without excessive maintenance. All trunk sewers and collector sewers shall be designed and stamped by a civil engineer registered in the state of Washington unless otherwise approved by the director. Accepted engineering practices shall be employed in the design of all drainage facilities.

B. Storm drainage facilities shall be designed per specifications in the storm water manual. All drainage facilities in public rights-of-way or easements shall have an outfall into an approved drainage system.

C. The minimum requirements for storm drainage facilities shall be as follows:

1. Catch basins or inlets shall be spaced a maximum of 200 feet apart along any street, alley or avenue;

2. The minimum catch basin lateral pipe size shall be 12 inches in diameter and the minimum storm main size shall be 12 inches in diameter;

3. Manholes on trunk sewers shall have a maximum spacing of 400 feet;

4. Construction materials and methods shall be in accordance with Standards and Specifications for Municipal Public Works Construction prepared by the American Public Works Association, latest edition. (Ord. 1708 § 14, 2010; Ord. 1273 § 2, 1994).

14.804.200 Storm sewer permits required. SHARE

A. A storm sewer permit shall be obtained for the construction or alteration of all storm sewer systems, including on-site and off-site installations.

B. To obtain a permit, the applicant shall first file an application in writing on a form furnished by the permit center for that purpose. Every such application shall:

1. Identify and describe the work to be covered by the permit for which application is made;

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed project or work;

3. Be accompanied by plans, diagrams, computations and specifications and other data as required in this title;

4. Be signed by the applicant, or the applicant's authorized agent;

5. Give such other data and information as may be required by the director.

C. The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the director. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the director finds that the work described in an application for a permit and the plans, specifications, and other data filed therewith conform to the requirements of this title and other pertinent laws and ordinances, and that the fees specified in the current fee resolution have been paid, the director shall issue a permit therefor to the applicant.

When the director issues the permit where plans are required, the director shall endorse in writing or stamp the plans and specifications APPROVED. Such approved plans and specifications shall not be changed, modified or altered without authorization from the director, and all work regulated by this title shall be in accordance with the approved plans. (Ord. 1273 § 2, 1994).

14.805.010 Title. SHARE

This chapter shall be known as the storm and surface water utility code. It shall be referred to in this chapter as the "code". (Ord. 1273 § 2, 1994).

14.805.020 Purpose. SHARE

It is the purpose of this code to:

A. Provide for the regulation and management of the storm and surface water system in the utility service area, both public and private, including the construction of new storm and surface water facilities, in order to decrease flood damage to public and private property, conserve historical drainage patterns, protect and preserve open water features, and encourage the development of land in a manner that preserves the water quality of the system, protects wildlife and aquatic habitats, fosters other beneficial uses of the system, and promotes the health, safety and welfare of the citizens of the service area;

B. Establish the authority of the utility regarding the acquisition, design, construction, maintenance, management and operation of the utility system. (Ord. 1273 § 2, 1994).

14.805.030 Territorial application. SHARE

This code and regulations adopted under this chapter shall be in effect throughout the utility service area. (Ord. 1273 § 2, 1994).

14.805.040 Construction – Intent. SHARE

This code is enacted as an exercise of the police power of the city to protect and preserve the public health, safety and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.

It is the purpose of this code and any regulations and procedures adopted hereunder to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code or any regulations or procedures adopted under this chapter.

It is the specific intent of this code and any regulations and procedures adopted under this chapter to place the obligation of complying with its requirements upon the property owner and no provision of this chapter is intended to impose any duty upon the city, the utility or any of their officers, employees or agents. Nothing contained in this code or any regulations and procedures adopted under this chapter is intended to be or shall

be construed to create or form a basis for liability on the part of the city, the utility, its officers, employees or agents, for any injury or damage resulting from the failure of the property owner to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this code or any regulation or procedure adopted under this chapter by the city, the utility, its officers, employees or agents. (Ord. 1273 § 2, 1994).

14.805.050 Definitions. SHARE

The following words and phrases, when used in this chapter, shall have the following meanings:

A. "Comprehensive drainage plan" means the city of Burlington comprehensive surface water management plan, as now or hereafter amended.

B. "Director" means the director of the storm and surface water utility, or the director's designated representative.

C. "Private system" means any element of the storm and surface water system which is not a part of the utility system as defined in this chapter.

D. "Procedure" means a procedure adopted by the utility, by and through the director, to implement a regulation or regulations adopted under this code, or to carry out other responsibilities as may be required by this code or other codes, ordinances or resolutions of the city or other agencies.

E. "Regulation" means any regulation, rule or requirement prepared by the utility and adopted by the city council pursuant to the requirements of this code.

F. "Storm and surface water system" means the entire system within the city, both public and private, naturally existing and artificial, for the drainage, conveyance, detention and storage of storm and surface waters.

G. "Storm and surface water utility system" or "utility system" means those elements of the storm and surface water system of the city:

1. Located on property owned by the utility, or

2. Located on property on which the utility has an easement or other right of use for utility purposes.

H. "Unsafe condition" means any condition on any premises which is a hazard to health, safety and welfare or does or may impair or impede the operation or functioning of any portion of the utility system, or which may cause damage thereto.

I. "Utility" means the storm and surface water utility of the city, as now or hereafter amended.

J. "Utility service area" means that area delineated on that certain "service area map" on file with the public works department, as the same may be hereafter amended.

K. "Natural waters" means all lakes, streams, sloughs, ponds, underground waters, and all other water courses including the storm water and surface water system within the utility service area.

L. "Pollution" means the contamination or other alteration of the physical, chemical or biological properties of any natural waters of the city, including change in temperature, taste, color, turbidity, or odor of the waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life. (Ord. 1273 § 2, 1994).

14.805.060 Powers of the utility.

The utility, under the direction of its director, shall have the power to:

A. Prepare regulations as needed to implement this code, and forward the same to the city council for consideration and adoption, and adopt such procedures as are required to implement the regulations or to carry out other responsibilities of the utility;

B. Administer the acquisition, design, construction, maintenance and operation of the utility system, including capital improvements designated in the comprehensive drainage plan;

C. Administer and enforce this code and all regulations and procedures adopted hereunder relating to the design, construction, maintenance, operation and alteration of the storm water and surface water system including, but not limited to, the quantity, quality and/or velocity of the storm water and surface water conveyed thereby;

D. Inspect private systems as necessary to determine the compliance of such systems with this code and any regulations adopted under this code;

E. Advise the city council, city administrator and other city departments on matters relating to the utility;

F. Review the comprehensive surface water management plan on a regular basis and revise as needed;

G. Review plans, approve or deny, inspect and accept extensions to the system;

H. Establish and enforce regulations to protect and maintain water quality within the storm and surface water system in compliance with water quality standards established by state and/or federal agencies as now adopted or hereafter amended. The city may adopt more stringent water quality standards than those established by federal or state law by ordinance when not precluded by law from so doing;

I. Analyze the cost of services and benefits provided, and the system and structure of fees, charges, fines and other revenues of the utility on a regular basis to ensure an equitable, adequate and stable utility rate and fee structure and to achieve a stable financial position for the utility;

J. Carry out such other responsibilities as required by this code or other related city codes, ordinances and regulations. (Ord. 1273 § 2, 1994).

14.805.070 Comprehensive surface water management plan. SHARE

A comprehensive surface water management plan for the utility shall be adopted by the city council and shall be updated by the council at least every six years. (Ord. 1273 § 2, 1994).

14.805.081 Policy for natural water enunciated. SHARE

The city, in recognition of the state of Washington's interest in the quality of natural waters of the state, some of which lie within the jurisdictional boundaries of the city, proclaims a public policy of working cooperatively with the state government in a joint effort to extinguish the sources of water quality degradation, while at the same time preserving and vigorously exercising city powers to provide that high standard of water quality within the city shall be maintained.

No part of this section is intended to or shall be construed as abrogating the authority or powers of the state of Washington. (Ord. 1273 § 2, 1994).

14.805.085 Discharge of polluting matter in natural water prohibited. SHARE

It is unlawful for any person to throw, drain, run, or otherwise discharge into any of the natural waters of the city, or to cause, permit or suffer to be thrown, drained, run, allowed to seep or otherwise discharged into such

waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters, as provided for in this chapter.

Pollution includes but is not limited to items described in BMC 14.802.012. (Ord. 1681 § 18, 2009; Ord. 1273 § 2, 1994).

14.805.110 Connections, extensions, modifications and alterations to the storm and surface water system – Utility review and approval. SHARE

Applications for use, connection, extension, modification or alteration to the storm and surface water system shall be reviewed by the utility to determine compliance with this code and the regulations and procedures adopted under this chapter. No permit shall be issued or approval given until the utility has determined that such application complies with this code and the regulations and procedures adopted under this chapter. (Ord. 1273 § 2, 1994).

14.805.120 System extension agreements. SHARE

The utility, through its director, is authorized to enter into agreements with private property owners for the construction of facilities which, upon completion and acceptance in writing by the utility, shall become part of the utility system. (Ord. 1273 § 2, 1994).

14.805.130 Latecomer agreements. SHARE

The utility shall have full authority, through its director, to enter into any contract authorized under chapter 35.91 RCW, the Municipal Water and Sewer Facilities Act, including contracts which provide for the reimbursement of owners constructing facilities, commonly known as latecomer agreements. (Ord. 1273 § 2, 1994).

14.805.140 Alternative methods and materials. SHARE

The provisions of this code and regulations and procedures adopted under this chapter are not intended to prevent the use of any material or method of construction not specifically prescribed therein, provided such alternate must be approved by the director as substantially equal to the material or methods provided by the code, regulations or procedures. (Ord. 1273 § 2, 1994).

14.805.160 Consent to inspection. SHARE

As a condition of issuance of any permit or authorization which requires approval of the utility, each applicant shall be required to consent to reasonable periodic inspection by the utility or other appropriate city agency. If

the applicant refuses to consent to inspection, or prevents any such inspection from taking place, or causes or allows the prevention of any inspection, the director may forthwith order a stop work on the system, facility or project covered by the permit or authorization. (Ord. 1708 § 15, 2010; Ord. 1273 § 2, 1994).

14.805.170 Inspections – Right of entry. SHARE

The utility is authorized to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating any conditions relating to the provisions of this chapter or any regulation adopted under this chapter, provided that the utility shall first obtain from the owner or person responsible for such premises permission to enter. If entry is refused, the utility shall have recourse to every remedy provided by law to secure entry. (Ord. 1273 § 2, 1994).

14.805.180 Correction and discontinuance of unsafe, nonconforming or unauthorized conditions. SHARE

The director may order the correction of any condition on any premises which:

A. Is in violation of, or is being used contrary to, any provision of this code or regulation adopted under this chapter;

B. Is unsafe as defined in BMC 14.805.050.

The director may also order any activity causing such condition to be discontinued. (Ord. 1273 § 2, 1994).

14.805.185 Procedure to obtain correction or discontinuance of unsafe or nonconforming conditions. SHARE

Whenever the director determines to order the correction or discontinuance of any condition on any premises in accordance with BMC 14.805.180, the director shall notify the owner or other person responsible for such condition of the existence of such condition and shall direct the owner or other such responsible person to correct or discontinue the condition, as the case may be, within 10 days, or such other reasonable period as the director determines, following the giving of such notice. (Ord. 1273 § 2, 1994).

14.805.186 Emergency conditions requiring immediate action. SHARE

Notwithstanding any other provisions of this chapter, whenever it appears to the director that conditions covered by this chapter exist requiring immediate action to protect the public health or safety, the director or his/her designee is authorized to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating such emergency conditions. The director may without prior notice order

the immediate discontinuance of any activity leading to the emergency condition, including illicit discharges or connections. Failure to comply with such order shall constitute a civil violation as specified in this title. (Ord. 1681 § 19, 2009; Ord. 1273 § 2, 1994).

14.805.187 Discharge of pollutants into natural waters – Liability for expenses incurred by the utility. SHARE

Any person responsible for pollutant discharge into natural waters who fails to immediately collect, remove, contain, treat, or disperse such pollutant materials at the director's request is responsible for the necessary expenses incurred by the city in carrying out the pollutant abatement procedures, including the collection, removal, containment, treatment or disposal of such materials. (Ord. 1273 § 2, 1994).

14.805.190 Stop work orders. SHARE

Whenever any work is being done contrary to the provisions of this code or any regulation adopted under this chapter, the director may order the work stopped by notice in writing served on any person engaged in the doing or causing of such work to be done, and any such person shall forthwith stop such work until authorized by the director to proceed with the work. (Ord. 1273 § 2, 1994).

14.805.195 System of rates. SHARE

A. The following monthly service charges are hereby established for all developed parcels of real property within the city limits of the city of Burlington, as they now exist or as they may be hereafter amended, for the purpose of carrying on the responsibilities of the surface water management utility:

1. Undeveloped Parcels. Undeveloped parcels shall not be charged.

2. Single-Family Residential Parcels. The monthly service charge for each single-family residential parcel shall be $4.22 in calendar year 2008; $5.06 in calendar year 2009; and $6.07 in calendar year 2010. Beginning in 2011, the fee will be adjusted based upon 80 percent of the U.S. City Average Consumer Price Index. This monthly service fee shall hereafter be referred to as the "base rate."

3. Other Developed Parcels. The monthly service charge for all other developed parcels, including publicly owned properties but excluding public streets, shall be computed by multiplying the base rate times the number of equivalent service units applicable to the parcel minus any approved rate adjustment for the parcel as determined under BMC 14.805.197. This

formula is expressed mathematically as follows: Charge = Base Rate x ESUs – Rate Adjustment.

4. Minimum Charge. There shall be a minimum monthly service charge for all developed properties equal to the base rate.

B. Rate Revenue – Proceeds. All proceeds of the monthly service charge shall be placed in the surface water utility fund for the following uses: (1) the financing of capital projects included in an adopted surface water capital improvement program and identified as priority projects by the city council, (2) the funding of miscellaneous small capital projects, and (3) wages and administrative expenses for program management. (Ord. 1640 § 1, 2007; Ord. 1636 § 1, 2007; Ord. 1330 § 6, 1997; Ord. 1273 § 2, 1994).

14.805.196 Rate adjustments. SHARE

A. General. A credit against the service charge shall be available, upon application by the property owner, to all non-single-family residential properties having constructed city-approved on-site storm water mitigation facilities which exceed city standards. Under no circumstances shall the adjusted total charge be less than the base rate. Credit eligibility shall be contingent upon meeting all of the following conditions:

1. The constructed facility is a detention, retention, and/or biofiltration system;

2. The facility is constructed and maintained to the city's design specifications;

3. The facility is available for inspection by the city;

4. Excess capacity, if not used by the property owner, is accessible and available for other related public purposes; and

5. The credit is revocable under conditions where the facility no longer operates at the design level established during the drainage plan review/approval process.

B. Credit Calculation. The maximum amount to be credited shall be a function of (1) pre- and postdevelopment flows from the site or (2) a fixed percentage reduction. For water quantity mitigation, the formula is expressed mathematically as follows:

$$A = F \times \left[1 - \left(\frac{Q_R}{}\right)\right]$$

Q_D

Where:

A = the credit amount to be subtracted from the monthly fee;

F = the total monthly charge without credit;

Q_R = design storm peak runoff rate released from the developed site with improvements in place;

Q_D = design storm peak runoff rate from the site in its predevelopment condition.

For qualifying water quality, the formula is expressed mathematically as follows:

A = F x 30%

Where:

A = the credit amount to be subtracted from the monthly fee;

F = the total monthly charge without credit.

C. Application Submittal. The following information must be submitted to the city engineer in order to be eligible for a service charge credit:

1. The facility is constructed pursuant to an approved drainage plan;

2. The application includes a calculation of the credit amount based on site-specific data and credit calculation formula;

3. The application is filed under the signature of the person responsible for the accuracy of the credit application material. (Ord. 1330 § 7, 1997).

14.605.197 Rate adjustments for drainage district charges. SHARE

A. General. A credit against the service charge shall be available, upon application by the property owner, to certain properties served by a Skagit County drainage district. Under no circumstances shall the credit be greater than the total monthly charge without credit. Credit eligibility shall be contingent upon meeting all of the following conditions:

1. The property drains to a Skagit County drainage district system;

2. There are no city facilities in place which manage or divert the property's surface water runoff; and

3. The Skagit County drainage district charges the property owner a maintenance fee for district service, as stipulated in Administrative Rule #94-3.

B. Credit Calculation. The credit calculation is expressed mathematically as follows:

A = D

Where:

A = the credit amount to be subtracted from the monthly fee;

D = the Skagit County drainage district maintenance fee, expressed as a monthly amount, or the total monthly charge without credit, whichever is less.

C. Application Submittal. The following information must be submitted to the city engineer in order to be eligible for the service charge credit:

1. The current Skagit County drainage district billing/assessment statement for the affected property;

2. Calculation of the credit amount based on credit calculation formula;

3. Signature of the person responsible for the accuracy of the credit application material. (Ord. 1330 § 8, 1997).

14.805.200 System extension charges. SHARE

A. The surface water system extension charge for property owners seeking to develop or redevelop real property within the city limits of the city of Burlington shall be:

1. Single-Family Residential Parcels. The system extension charge for each single-family residential parcel shall be adopted by city council resolution. The fee will be adjusted annually. This monthly service fee shall hereafter be referred to as the "base charge."

2. Other Parcels. The system extension charge for all other parcels, including publicly owned properties but excluding public streets, shall be computed by multiplying the base charge times the number of equivalent service units applicable to the parcel upon development. This formula is expressed mathematically as follows: System Extension Charge = Base Charge x ESUs.

3. Redevelopment Parcels. The system extension charge for redevelopment parcels shall be computed by multiplying the base charge times the number of equivalent service units that have been redeveloped. This formula is expressed mathematically as follows: System Extension Charge = Base Charge x ESUs.

4. Minimum Charge. There shall be a minimum extension charge for all developing properties equal to the base charge.

5. Burlington North Central Drainage Basin. The system extension charge for all parcels within the Burlington North Central Drainage Basin, including publicly owned properties but excluding single-family residential parcels and excluding public streets, shall be computed by multiplying the base charge for the area times the number of equivalent service units applicable to the parcel development. This formula is expressed mathematically as follows: System Extension Charge = Base Charge x ESUs. A geographic description of the Burlington North Central Drainage Basin is included in the definitions section of this chapter.

B. System Extension Charge – Proceeds. All proceeds of the surface water system extension charge shall be placed in the surface water capital improvement fund for the following uses: construction of surface water expansion made necessary by system growth, debt service for indebtedness resulting from construction of surface water expansion made necessary by system growth, and the repair, replacement, and maintenance of existing surface water facilities. (Ord. 1799 § 22, 2014; Ord. 1709 § 1, 2010; Ord. 1708 § 16, 2010; Ord. 1640 § 2, 2007; Ord. 1330 § 6, 1997; Ord. 1273 § 2, 1994).

14.805.205 System extension charges adjustments.

A. General. A credit against the service charge shall be available, upon application by the property owner, to certain properties served by a Skagit County drainage district. Under no circumstances shall the credit be greater than the total system extension charge without credit. Credit eligibility shall be contingent upon meeting all of the following conditions:

1. The property drains to a Skagit County drainage district system;

2. There are no city facilities either in place or in an adopted capital improvement plan which manage or divert the property's surface water runoff; and

3. The Skagit County drainage district charges the property owner a capital improvement fee upon development.

B. Credit Calculation. The credit calculation is expressed mathematically as follows:

A = D

Where:

A = the credit amount to be subtracted from the system extension fee;

D = the Skagit County drainage district improvement fee or the total system extension charge without credit, whichever is less.

C. Application Submittal. The following information must be submitted to the city engineer in order to be eligible for the system extension charge credit:

1. The Skagit County drainage district improvement fee receipt for the affected property;

2. Calculation of the credit amount based on credit calculation formula;

3. Signature of the person responsible for the accuracy of the credit application material. (Ord. 1330 § 10, 1997).

14.805.210 Permits, fees and service charges. SHARE

The city council may establish by city council resolution fees and charges to be charged as a condition of issuance of any permit or authorization requiring approval of the utility or in responding to a request for services to be provided by the utility. Periodic adjustments to specific fees and charges established pursuant to this section may be adopted by city council resolution. (Ord. 1799 § 23, 2014; Ord. 1273 § 2, 1994).

14.805.220 Billing and collection. SHARE

The utility, jointly with the finance department, may establish procedures pertaining to the billing and collection of service charges and other fees imposed by the utility. (Ord. 1273 § 2, 1994).

14.805.230 Maintenance and operation of private utility system. SHARE

The responsibility of the utility shall be limited to maintenance and operation of the utility system, and the utility assumes no responsibility for maintenance and operation of private systems. All private systems shall be maintained by the owner or operator thereof in a safe and proper operating condition, and in compliance with all applicable requirements of this code and regulations and procedures adopted under this chapter. (Ord. 1273 § 2, 1994).

14.805.260 Interlocal agreements. SHARE

The utility, with the approval of the city council, is authorized to enter into agreements with other local, state or federal jurisdictions in order to carry out the purposes of this code or regulations adopted under this chapter. (Ord. 1273 § 2, 1994).

14.805.270 Adoption of regulations and procedures. SHARE

The utility shall prepare and forward to the council, with its recommendation, such proposed regulations as it determines to be necessary to implement and enforce the provisions of this code. The council shall adopt, by ordinance, such regulations, and with such modifications, if any, as it determines appropriate.

The utility may adopt procedures for the purpose of implementing regulations under this code. Such procedures shall not require approval by the council.

All regulations and procedures adopted pursuant to this section shall conform with the requirements or rules and regulations of local, state and federal agencies having jurisdiction within the utility service area over the operation and development of the utility system. (Ord. 1273 § 2, 1994).

14.805.280 Liability. SHARE

The director and any other employee charged with enforcement of this code, acting for the utility in good faith and without malice in the discharge of his/her duties shall not thereby render himself/herself liable personally for any damages which may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of such duties. (Ord. 1273 § 2, 1994).

14.805.290 Violations. SHARE

Any violation of any provision of this chapter is a civil violation as provided in this title for which monetary penalties may be imposed. (Ord. 1273 § 2, 1994).

14.806.010 Exceptions to requirements. SHARE

A. General. The purpose of this chapter is to administer and enforce all requirements set forth in this title. Requests for exceptions to the requirements of this title shall be made according to this section and Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit, Section 6. Exceptions shall include alternative requirements, waivers, reductions, or modifications of the requirements. An exception shall only be granted to the extent necessary to meet the criteria set forth in this section. An applicant is not entitled to an exception, whether or not the criteria allowing approval of an exception are met. The director may require an applicant to submit an engineer's report or analysis with a request for an exception. When an exception is granted, the director may impose new or additional requirements to offset or mitigate harm that may be caused by granting the exception, or that would have been prevented if the exception had not been granted.

B. Public Notice. Public notice of an application for an exception under the criteria set forth in this section shall comply with Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit, Section 6. (Ord. 1708 § 17, 2010; Ord. 1681 § 20, 2009; Ord. 1273 § 2, 1994).

14.806.020 Liability and defenses of responsible parties. SHARE

A. Who Must Comply. It is the specific intent of this title to place the obligation of complying with its requirements upon the responsible parties as defined in BMC 14.801.190. The city of Burlington and its agencies are intended to have the same obligation for compliance when the city is a responsible party. No provision of this title is intended to impose any other duty upon the city or any of its officers or employees.

B. Joint and Several Liability. Each responsible party is jointly and severally liable for a violation of this title. The director may take enforcement action, in whole or in part, against any responsible party. All applicable civil penalties may be imposed against each responsible party. In the event enforcement action is taken against more than one responsible party, recoverable damages, cost, and expenses may be allocated among the responsible parties by the court based upon the extent to which each responsible party's acts or omissions caused the violation, unless this factor cannot be determined, or the party receiving the allocation under this factor is unable to correct the violation, or is unable to pay the damages, costs, expenses, and any penalty imposed, in which case the trier of fact shall consider:

1. Awareness of the violation;

2. Ability to correct the violation;

3. Ability to pay the damages, costs, and expenses;

4. Cooperation with government agencies;

5. Degree to which any impact or threatened impact on water or sediment quality, human health, or the environment is related to acts or omissions by each responsible party;

6. Degree to which the responsible parties made good faith efforts to avoid a violation or to mitigate its consequences; and

7. Other equitable factors.

C. Defenses. A responsible party shall not be liable under this title when the responsible party carries the burden of proving, by a preponderance of the evidence, one of the following defenses:

1. The violation was caused solely by an act of God;

2. The violation was caused solely by another responsible party over whom the defending responsible party had no authority or control and the defending responsible party could not have reasonably prevented the violation;

3. The violation was caused solely by a prior owner or occupant when the defending responsible party took possession of the property without knowledge of the violation, after using reasonable efforts to identify violations. However, the defending responsible party shall be liable for all continuing, recurrent, or new violations after becoming the owner or occupant;

4. The responsible party implemented and maintained all appropriate best management practices identified in rules promulgated by the director, or in manuals published by the State Department of Ecology until superseded by rules of the director. (Ord. 1681 § 21, 2009; Ord. 1273 § 2, 1994).

14.806.030 Enforcement actions.

A. Investigation. The director may investigate any site where there is reason to believe that there may be a failure to comply with the requirements of this title.

B. Notice of Violation.

1. Issuance. Whenever the director determines that a violation of this title has occurred or is occurring, the director is authorized to issue a notice of violation to the property owner or other responsible party. The notice of violation shall be considered an order of the director.

2. Contents. The notice of violation shall include the following information:

a. A description of the violation and the action necessary to correct it;

b. The date of the notice; and

c. A deadline by which the action necessary to correct the violation must be completed.

A notice of violation may be amended at any time to correct clerical errors and to add citations of authority.

3. Service. The director shall serve the notice upon the responsible party either by personal service or by certified mail, return receipt requested, sent to the party's last known address and, where possible, by posting a copy on the site. Service by certified mail shall be effective on the date of mailing. If the whereabouts of the responsible party are unknown and cannot be ascertained in the exercise of reasonable diligence, and the director makes an affidavit to that effect, then service may be accomplished by publishing the notice once each week for two consecutive weeks in the city official newspaper.

C. Alternatives to Notice of Violation.

1. Stop Work Order. In lieu of issuing a notice of violation, the director may order work on a site stopped when the director determines it is necessary to do so in order to obtain compliance with or to correct a violation of any provision of this title or rules promulgated hereunder or to correct a violation of a permit or approval granted under this title. The stop work notice shall contain the following information:

a. A description of the violation; and

b. An order that the work be stopped until corrective action has been completed and approved by the director.

The stop work order shall be posted conspicuously on the premises or personally served on the property owner or other person known to be responsible for the work. It is unlawful for any work to be done after posting or service of a stop work order, except work necessary to conduct the required corrective action, until authorization to proceed is given by the director. It is unlawful for any person to remove, obscure or mutilate a posted stop work order.

2. Emergencies. The director is authorized to enter any property when it reasonably appears that a condition associated with grading, drainage, erosion control or a drainage control facility creates a substantial and present or imminent danger to the public health, safety or welfare, the environment, or public or private property. The director may enter property without permission or an administrative warrant in the case of an extreme emergency placing human life, property or the environment in immediate and substantial jeopardy which requires corrective action before either permission or an administrative warrant can be obtained.

The director may order the responsible party to take corrective action and set a schedule for compliance. The director may require immediate compliance with an order to correct. Any emergency which is not corrected as ordered by the director is a public nuisance which the director is authorized to abate summarily. The costs of abatement shall be collected as set forth in BMC 14.806.080.

D. Filing Notice or Order. A notice of violation, voluntary compliance agreement or an order issued by a director, or municipal judge, may be filed with the Skagit County auditor.

E. Change of Ownership. When a notice of violation, voluntary compliance agreement or an order issued by a director or municipal judge has been filed with the Skagit County auditor, a notice of violation or an order regarding the same violations need not be served upon a new owner of the property where the violation occurred. If no notice of violation or order is served upon the new owner, the director may grant the new owner the same number of days to comply as was given the previous owner. The compliance period for the new owner shall begin on the date that the conveyance of title to the new owner is completed.

F. Appeal of Notice of Violation. Any person receiving a notice of violation may appeal the determination of the public works director to the city council. The notice of appeal must be received within 14 days from the date of the notice of violation. Hearing on the appeal before the city council shall take place within 60 days from the date of receipt of the notice of appeal. The decision of the city council may be appealed to superior court. (Ord. 1681 § 22, 2009; Ord. 1273 § 2, 1994).

14.806.040 Enforcement of notice of violation. SHARE

A. Municipal Court. The director may choose to enforce a notice of violation through:

1. Referral to the city attorney's office for action in the appropriate court according to that court's normal rules and procedures. (Ord. 1273 § 2, 1994).

14.806.050 Voluntary compliance agreement. SHARE

A. Initiation. Either a responsible party or the director may initiate negotiations for a voluntary compliance agreement at any time. The director has no obligation to enter into any voluntary compliance agreement.

B. Contents. A voluntary compliance agreement shall set forth actions to be taken by the responsible party that will correct past or existing violations of this title. It may also set forth actions to mitigate the impacts of violations. The voluntary compliance agreement shall set forth a schedule for completion of the corrective and mitigating actions. It shall contain a provision allowing the director to inspect the premises to determine compliance with the agreement.

C. Effect of Agreement. A voluntary compliance agreement is a binding contract between the party executing it and the city. It is not enforceable by any other party. All voluntary compliance agreements shall provide that the responsible party agrees the city may perform the actions set forth in the agreement if the responsible party fails to do so according to the terms and schedule of the agreement, and the responsible party will pay the costs, expenses and damages the city incurs in performing the actions, as set forth in BMC 14.806.080 regarding abatements. By entering into a voluntary compliance agreement, a responsible party waives the right to an administrative appeal of the violation.

Penalties may be reduced or waived if violations are corrected or mitigated according to the terms and schedule of a voluntary compliance agreement. If the responsible party fails to perform according to the terms and schedule of the voluntary compliance agreement, penalties for each violation addressed in the agreement may be assessed starting from the date the violation occurred.

D. Modification. The terms and schedule of the voluntary compliance agreement may be modified by mutual agreement of the responsible party and the director if circumstances or conditions outside the responsible party's control, or unknown at the time the agreement was made, or other just cause necessitate such modifications. (Ord. 1273 § 2, 1994).

14.806.060 Penalties and damages. SHARE

A. Commencement of Penalties. The judge hearing matters under this title shall have the following options in assessing monetary penalties:

1. Assess monetary penalties beginning on the date the notice of violation was issued and thereafter; or

2. Assess monetary penalties beginning on the correct deadline set by the director or an alternative deadline for corrective action set by the judge or hearing examiner, and thereafter; or

3. Assess no monetary penalties; or

4. When it appears likely the responsible party will perform the required corrective action, suspend assessment of the penalty conditioned upon completion of the corrective action by the ordered deadline.

B. Schedule of Penalties.

1. Basic Penalty. Each day or portion thereof during which a violation of this title exists is a separate violation of this title. The cumulative monetary penalty for each violation of this title shall be as follows:

a. The penalty for the first day a violation exists is $100.00;

b. The penalty for the second day a violation exists is $200.00;

c. The penalty for the third day a violation exists is $300.00;

d. The penalty for the fourth day a violation exists is $400.00;

e. The penalty for each day a violation exists beyond four days is $500.00.

Schedule of Penalties per Violation

Day	Fine for that day	Cumulative Total
1	$100	$100

2	$200	$300
3	$300	$600
4	$400	$1,000
5	$500	$1,500
6 & up	$500	

2. Triple Penalties. Penalties may be trebled for:

a. A repeat violation, which means an additional violation of a requirement of this title for which the responsible party has previously received a notice of violation and failed to correct the violation by the compliance date;

b. A violation resulting in physical harm to persons or to private or public property;

c. A knowing or deliberate violation;

d. A violation resulting from gross negligence or reckless conduct.

3. Reduction of Penalties. Penalties may be reduced based upon one or more of the following mitigating factors:

a. The person showed due diligence and/or substantial progress in correcting the violation;

b. Another responsible party was the primary cause of the violation;

c. The person was unaware of the violation and had not acted negligently or recklessly.

4. Penalty for Significant Violation. Responsible parties for violations causing significant harm to public health, safety or welfare, the environment, or public or private property shall be assessed the penalties set forth in the schedule above, or an amount equivalent to the economic benefit the responsible party derived from the violation, whichever is greater.

Significant harm is harm which cannot be fully corrected or mitigated by the responsible party, and which cannot be adequately compensated for by assessment of penalties, costs, expenses or damages under this title. Economic benefit may be determined by an increase in market value of property, value received by the

responsible party, savings in costs realized by the responsible party, increased income to the responsible party, or any other method reasonable under the circumstances.

C. Damages. Whoever violates any of the provisions of this title shall, in addition to any penalties provided for such violation, be liable for any cost, expense, loss or damage occasioned thereby to the city, plus a charge of 15 percent for administrative costs. This title does not establish a case of action that may be asserted by any party other than the city. Penalties, damages, costs and expenses may be recovered only by the city.

D. Effect of Payment of Penalties. The person to whom an order is directed is not relieved of the duty to take corrective action to correct the violation by payment of a monetary penalty pursuant to this title. (Ord. 1273 § 2, 1994).

14.806.070 Collection of costs and penalties. SHARE

A. Invoice and Demand for Payment. When the director has abated a public nuisance or corrected a violation of this title and a hearing has not been conducted, the director shall issue an invoice and demand for payment of the city's abatement costs. The invoice shall include:

1. The amount of the city's abatement or correction costs;

2. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the Skagit County assessor or, where available, the property's street address;

3. A notice that the director's determination regarding the abatement and correction, including the amount owed, may be appealed to the city council;

4. Notice that if the amount due is not paid within 30 days, the outstanding balance may be collected in any of the manners set forth in subsection B below; and

5. Notice that interest shall accrue on the unpaid balance.

B. Collection Following a Hearing. The director is not required to issue an invoice for payment when a hearing has not been conducted as set forth in BMC 14.806.040, and an order has issued imposing any penalties, costs, damages, expenses or abatement costs. If the order is not appealed within 15 days of mailing or other delivery of the order to the responsible party, the director may immediately seek to collect the amount owed by:

1. Referral to the city attorney's office for action in the appropriate court; or

2. Referral, after consultation with the city attorney's office to a collection agency; or

3. Addition of a surcharge in the amount owed under the order to the drainage and wastewater utility bill for the site. If unpaid, the surcharge may become a lien on the property, may be foreclosed, and may accrue interest as provided by state law. (Ord. 1273 § 2, 1994).

14.806.080 Public nuisance. SHARE

A. Abatement Required. A public nuisance affecting storm water, drainage, erosion control, grading and other public nuisances set forth in this section is a violation of this title. A responsible party shall immediately abate a public nuisance upon becoming aware of its existence.

B. Dysfunctional Facility or Practice. Any private drainage control facility or best management practice relating to grading, storm water, drainage control or erosion not installed or maintained as required by this title, or otherwise found to be in a state of dysfunction creating, presently or in the event of a design storm, a threat to the public health, safety or welfare, the environment, or public or private property is hereby declared to be a public nuisance.

C. Obstruction of Watercourse. Obstruction of a watercourse without authorization by the director, and obstruction in such a manner as to increase the risk of flooding or erosion should a design storm occur, is hereby declared to be a public nuisance.

D. Dangerous Conditions. Any condition relating to grading, storm water, drainage or erosion which creates a present or imminent danger, or which is likely to create a danger in the event of a design storm, to the public health, safety or welfare, the environment, or public or private property is hereby declared to be a public nuisance.

E. Abatement by the City. The director is authorized, but not required, to investigate a condition that the director suspects of being a public nuisance under this title, and to abate any public nuisance. If a public nuisance is an immediate threat to the public health, safety or welfare or to the environment, the director may summarily and without prior notice abate the condition. The director shall give notice of abatement to the responsible party as soon as reasonably possible after the abatement.

The costs of abatement may be collected from the responsible party, including a reasonable charge for attorney time and a 15 percent charge for administrative expenses as set forth in BMC 14.806.060(C). Abatement costs and other damages, expenses and penalties collected by the city shall go into an abatement account for the department collecting moneys. The money in the abatement account shall be used for

abatements and corrections of violations conducted by the city. When the account is insufficient the director may use other available funds. (Ord. 1273 § 2, 1984).

14.806.090 Violation. SHARE

A. Civil Violation.

1. General. It is a violation of this title to not comply with any requirement of, or to act in a manner prohibited by, this title, or a permit, approval, rule, manual or order issued pursuant to this title.

2. Aiding and Abetting. It is a violation of this title to aid, abet, counsel, encourage, command, incite, induce, hire or otherwise procure another person to violate this title.

3. Alteration of Existing Drainage. It is a violation of this title to alter existing drainage patterns which serve a tributary area of more than five acres without authorization or approval by the director.

4. Obstruction of Watercourse. It is a violation of this title to obstruct a watercourse without authorization or approval by the director.

5. Dangerous Condition. It is a violation of this title to allow to exist, or cause or contribute to, a condition of a drainage control facility, or condition related to grading, storm water, drainage or erosion that is likely to endanger the public health, safety or welfare, the environment, or public or private property.

6. Interference. It is a violation of this title for any person to interfere with or impede the correction of any violation, or compliance with any notice of violation, emergency order, stop work order, or the abatement of any nuisance.

B. Criminal Violation.

1. Failing to Comply with Orders. Failing to comply with an order properly issued pursuant to this title by the director, or a judge is a criminal violation, punishable upon conviction by a fine of not more than $5,000 per day of each violation or imprisonment for each violation for not more than 360 days or both such fine and imprisonment.

2. Tampering and Vandalism. Tampering with or vandalizing a drainage control facility or other best management practice, a public or private drainage control system, monitoring or sampling equipment or records, or notices posted pursuant to this title is a criminal violation, punishable upon conviction by a fine of not more than $5,000 or imprisonment for not more than 360 days or both such fine and imprisonment.

3. Repeat Violations. Anyone violating this title who has had a judgment or hearing examiner's order against them pursuant to this title in the preceding five years, shall be subject to criminal penalties for the present violation, and, upon conviction thereof, be fined in a sum not to exceed $5,000, or imprisonment for not more than 360 days, or both such fine and imprisonment. (Ord. 1273 § 2, 1994).

14.806.100 Additional relief. SHARE

In lieu of or in addition to any enforcement procedure provided in this title, the director may seek any other available legal or equitable relief, including to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this title or a public nuisance. When the public works director finds that any person has violated, or continues to violate, any provision of this title, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the public works director may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

A. Immediately comply with all applicable requirements; and

B. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge. (Ord. 1681 § 23, 2009; Ord. 1273 § 2, 1994).

14.806.110 Suspension or revocation. SHARE

Approvals or permits granted in error, or on the basis of incomplete, inaccurate or misleading information, or in violation of any law, ordinance or regulation may be suspended or revoked. Other permits or approvals interrelated with an approval suspended or revoked under this subsection, including certificates of occupancy or approvals for occupancy, may also be suspended or revoked. When an approval or permit is suspended or

revoked, the director may require the applicant to take corrective action to bring the project into compliance with this title by a deadline set by the director, or may take other enforcement action. (Ord. 1273 § 2, 1994).

14.806.120 Fees. SHARE

Fees for drainage control plan review, recordkeeping or other activities pursuant to this title shall, unless otherwise provided for in this title, be prescribed by resolution. (Ord. 1273 § 2, 1994).

14.806.130 Financial assurance and covenants. SHARE

As a condition precedent to issuance of any permit or approval provided for in this title, the director may require an applicant for a permit or approval to submit financial assurances as provided in this section.

A. Insurance.

1. The director may require the owner(s), or contractor to carry liability and property damage insurance against damage, naming the city as an additional insured. The amount shall be commensurate with the risks as determined by the director.

2. The director may also require the owner(s) to maintain a policy of general public liability insurance against personal injury, death, property damage and/or loss from activities conducted pursuant to the permit or approval, or conditions caused by such activities, and naming the city as an additional insured. The policy shall be in an amount which the director determines to be commensurate with the risks. It shall cover a period of not more than 10 years from the date of issuance of a certificate of occupancy or finalization of the permit or approval. A certificate evidencing such insurance shall be filed with the director before issuance of a certificate of occupancy or finalization of a permit for any single-family dwelling or duplex.

3. The insurance policy shall provide that the city will be notified of cancellation of the policy at least 30 days prior to cancellation. The notice shall be sent to the director who required the insurance and shall state the insured's name and the property address. If a property owner's insurance is canceled and not replaced, the permit or approval and any interrelated permit or approval may be revoked, including a certificate of occupancy or approval for occupancy.

B. Bonds, Cash Deposits or Instruments of Credit.

1. Surety Bond. The director may require that the owner or contractor deliver to the director for filing in the office of the city clerk a surety bond, cash deposit or an instrument of credit in such

form and amounts deemed by the director to be necessary to ensure that requirements of the permit or approval are met. A surety bond may be furnished only by a surety company licensed to do business in the state of Washington. The bond shall be conditioned that the work will be completed in accordance with the conditions of the permit or approval, or, if the work is not completed, that the site will be restored if damaged or made unsafe by activities conducted pursuant to the permit or approval.

The bond will be exonerated one year after a determination by the director that the requirements of the permit or approval have been met.

For work under a building permit, issuance of a certificate of occupancy or approval for occupancy following a final inspection shall be considered to be such a determination. For grading, completion of the final grading inspection and submittal of required final reports in accordance with BMC 14.804.200 shall be such a determination.

2. Assurance in Lieu of Surety Bond. In lieu of a surety bond, the owner may elect to file a cash deposit or instrument of credit with the director in an amount equal to that which would be required in the surety bond and in a form approved by the director. The cash deposit or instrument of credit shall comply with the same conditions as required for surety bonds.

C. Covenants.

1. The director may require a covenant between the owner(s) of the property and the city. The covenant shall be signed by the owner(s) of the site and notarized prior to issuance of any permit or approval in a potential landslide area, potentially hazardous location, flood prone zone, or other area of potentially hazardous soils or drainage or erosion conditions. The covenant shall not be required where the permit or approval is for work done by the city. The covenant shall include:

a. A legal description of the property; and

b. A description of the property condition making this subsection applicable; and

c. A statement that the owner(s) of the property understands and accepts the responsibility for the risks associated with development on the property given the

described condition, and agrees to inform future purchasers and other successors and assignees of the risks; and

d. The application date, type, and number of the permit or approval for which the covenant is required; and

e. A statement waiving the right of the owner(s), the owner's heirs, successors and assigns to assert any claim against the city by reason or of arising out of issuance of this permit or approval by the city for the development on the property, except only for such losses that may directly result from the negligence of the city.

2. The covenant shall be filed by the director with the Skagit County auditor's office, at the expense of the owner, so as to become part of the Skagit County real property records. (Ord. 1273 § 2, 1994).

14.806.140 Severability. SHARE

The provisions of this title are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, section or portion of this title, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this title or the validity of its application to other persons or circumstances. (Ord. 1273 § 2, 1994).

14.806.150 Date of initial enforcement. SHARE

The public works director shall not enforce provisions of this code which require existing discharges and land uses to adopt operational and nonstructural best management practices until six months after adoption of rules identifying the best management practices to be required. The director shall not enforce the provisions of this code which require existing discharges and land uses to install structural best management practices until one year after adoption of rules identifying the best management practices to be required. (Ord. 1273 § 2, 1994).

STAFF REPORT
EXHIBIT "7"
SEPA CHECKLIST

STAFF REPORT EXHIBIT "7"

SEPA ENVIRONMENTAL CHECKLIST

Purpose of checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Instructions for Lead Agencies:

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

Use of checklist for nonproject proposals:

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.

A. Background

1. Name of proposed project, if applicable:

City of Burlington Storm-water Regulations Update

2. Name of applicant:

City of Burlington

3. Address and phone number of applicant and contact person:

Brad Johnson, Senior Planner - 833 S. Spruce Street – Burlington, WA 98233

4. Date checklist prepared:

November 1, 2016

5. Agency requesting checklist:
City of Burlington (non-project action)
6. Proposed timing or schedule (including phasing, if applicable):
SEPA threshold determination: November 1, 2016 – Comment period: November 1, 2016 through January 1, 2016 – Planning Commission hearing: November 16, 2016 – First City Council hearing: December 8, 2016 – Final City Council hearing and adoption: January 12, 2017
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.
N/A – non-project action – This action involves an updating the City's storm-water regulations to implement the State Department of Ecology's updated NPDES permit and corresponding amendments to the City's zoning and platting regulations to require and permit low impact development techniques. These changes are anticipated to reduce storm-water runoff and contamination.
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.
The City is adopting by the Department of Ecology's "Stormwater Manual for Western Washington"
9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.
N/A – non-project action. Updated regulations will affect permit applications received on, or after, the effective date of the ordinance.
10. List any government approvals or permits that will be needed for your proposal, if known.
N/A – non-project action
11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)
This proposal involves amendments to the Burlington Municipal Code to implement the City's updated NPDES permit. Specifically change are proposed to title 14 BMC to adopt, by reference, the Department of Ecology's "Stormwater Manual for Western Washington", and changes to titles 16 and 17 to permit and require the use of low impact development techniques.
12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.
N/A – non-project action – this proposal will apply to all property within the City of Burlington

B. ENVIRONMENTAL ELEMENTS

1. Earth

a. General description of the site:

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.
(circle one): Flat, rolling, hilly, steep slopes, mountainous, other _____

b. What is the steepest slope on the site (approximate percent slope)?
N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.
N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.
N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.
N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.
N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?
h. N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City. Proposal establishes specific limitation on impervious surfaces

i. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

2. Air

a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.
N/A – non-project action

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

N/A – non-project action

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

N/A – non-project action

3. Water

a. Surface Water:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

N/ N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City. The Skagit River is located within the City and has a large wetland complex associated with it (Gages Slough). There are no other large surface surface water bodies in the City. The proposed regulatory amendments are anticipated to reduce storm-water run-off and improve water quality.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City; however, most of the City lies within a 100 year floodplain and most of the projects involving construction will take place within the floodplain.

6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City; however this proposal will result in the adoption of more rigorous storm-water regulations, impose limits on impervious surface coverage, and require the use of low impact development techniques. These actions are anticipated to reduce storm-water runoff and improve water quality.

b. Ground Water:

1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities

withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City. Regulations being adopted may increase the amount of storm-water that is infiltrated as opposed to discharged to surface water. This could potentially increase the discharge of contaminated storm-water to the ground. Contaminants would come primarily from parking lot and road runoff.

c. Water runoff (including stormwater):

1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City. Updated regulations promote infiltration and retention.

2) Could waste materials enter ground or surface waters? If so, generally describe.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City. Regulations being adopted may increase the amount of storm-water that is infiltrated as opposed to discharged to surface water. This could potentially increase the discharge of contaminated storm-water to the ground. Contaminants would come primarily from parking lot and road runoff.

3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

N/A – non-project action – The proposed actions will amend the City's storm-water regulations and may alter the way storm-water is managed and the direction of drainage patterns throughout the City. Impacts will be mitigated through the application of the proposed regulations.

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

Implementation of NPDES permit requirements, adoption, and application of, DOE Stormwater Manual for Western Washington, require the use of low impact development techniques, increase permit documentation and analysis with respect to storm-water impacts.

4. Plants

a. Check the types of vegetation found on the site:

____deciduous tree: alder, maple, aspen, other
____evergreen tree: fir, cedar, pine, other
____shrubs
____grass
____pasture
____crop or grain
____ Orchards, vineyards or other permanent crops.
____ wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
____water plants: water lily, eelgrass, milfoil, other
____other types of vegetation

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

b. What kind and amount of vegetation will be removed or altered?
N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City. Proposed regulations may limit removal of vegetation and require that a greater quantity of native vegetation be retained or planted.

c. List threatened and endangered species known to be on or near the site.
N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:
N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City. Proposed regulations may limit removal of vegetation and require that a greater quantity of native vegetation be retained or planted.

e. List all noxious weeds and invasive species known to be on or near the site.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

5. Animals

a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site.

Examples include:

birds: hawk, heron, eagle, songbirds, other:
mammals: deer, bear, elk, beaver, other:
fish: bass, salmon, trout, herring, shellfish, other _____

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

b. List any threatened and endangered species known to be on or near the site.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City; however, development within the City will take place within the 100 year floodplain of the Skagit River. The National Marine Fisheries Services has stated that development in this area may impacts listed fish species.

c. Is the site part of a migration route? If so, explain.

Not known

d. Proposed measures to preserve or enhance wildlife, if any:

N/A – non-project action – proposal will implement updated storm-water regulations which are anticipated to reduce storm-water run-off and improve water quality. Regulations also limit impervious surface coverage and require that more native vegetation be retained or planted. These actions are consistent with guidance from National Marine Fisheries Service on maintaining floodplain habitat.

e. List any invasive animal species known to be on or near the site.

N/A – non-project action

6. **Energy and Natural Resources**

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

N/A – non-project action

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

N/A – non-project action

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

N/A – non-project action

7. **Environmental Health**

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

1) Describe any known or possible contamination at the site from present or past uses.

N/A – non-project action

2) Describe existing hazardous chemicals/conditions that might affect project development

and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

N/A – non-project action

3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.
N/A – non-project action

4) Describe special emergency services that might be required.

N/A – non-project action

5) Proposed measures to reduce or control environmental health hazards, if any:

N/A – non-project action

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

N/A – non-project action

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

N/A – non-project action

3) Proposed measures to reduce or control noise impacts, if any:

N/A – non-project action

8. Land and Shoreline Use

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

N/A – non-project action

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

The City's urban growth area contains small areas of agricultural land. The proposed regulatory amendments are not expected to impact agricultural land uses. Such impacts have been addressed through the adoption of the updated Skagit County comprehensive plan which revised the City's urban growth area boundaries.

1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

The City's urban growth area contains small areas of agricultural land. The proposed regulatory amendments are not expected to impact agricultural land uses. Such impacts have been addressed through the adoption of the updated Skagit County comprehensive plan which revised the City's urban growth area boundaries.

c. Describe any structures on the site.
N/A – non-project action

d. Will any structures be demolished? If so, what?

N/A – non-project action

e. What is the current zoning classification of the site?
N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

f. What is the current comprehensive plan designation of the site?
N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

g. If applicable, what is the current shoreline master program designation of the site?
N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City in a variety of shoreline environment designations

h. Has any part of the site been classified as a critical area by the city or county? If so, specify
Yes – the City contains numerous critical areas including flood hazards, geologically hazardous areas, and wetlands. The proposed regulatory updates are anticipated to protect such critical areas by managing storm-water through the application of natural processes.

i. Approximately how many people would reside or work in the completed project?

N/A – non-project action

j. Approximately how many people would the completed project displace?

N/A – non-project action

k. Proposed measures to avoid or reduce displacement impacts, if any:

N/A – non-project action

L. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

N/A – The City of Burlington conducted an audit of its existing plans and regulations to ensure consistency between NPDES permit requirements and current regulations. The proposed regulatory amendments are intended to address these inconsistencies.

m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:

N/A – all projects will take place within the City's established urban growth boundary. The City does not contain any lands classified as lands of long term resources significance.

9. **Housing**

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

N/A – non-project action

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

N/A – non-project action

c. Proposed measures to reduce or control housing impacts, if any:

N/A – non-project action

10. **Aesthetics**

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

N/A – non-project action

b. What views in the immediate vicinity would be altered or obstructed?

N/A – non-project action

b. Proposed measures to reduce or control aesthetic impacts, if any:

Application of City development regulations and site specific environmental review

11. **Light and Glare**

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

N/A – non-project action

b. Could light or glare from the finished project be a safety hazard or interfere with views?

N/A – non-project action

c. What existing off-site sources of light or glare may affect your proposal?
N/A – non-project action

d. Proposed measures to reduce or control light and glare impacts, if any:
N/A – non-project action

12. Recreation

a. What designated and informal recreational opportunities are in the immediate vicinity?
The City of Burlington contains a number of parks and open space areas

b. Would the proposed project displace any existing recreational uses? If so, describe.
No

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:
N/A -

13. Historic and cultural preservation

a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers ? If so, specifically describe.
N/A – non-project action

b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.
N/A – non-project action

c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.
Site specific environmental reviews will be required and compliance with the cultural resource protection laws will be required. The City will coordinate with the Department of Archaeology and Historic Preservation (DAHP) on individual projects involving significant ground disturbing activities.

d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

Coordination with DAHP and site specific environmental review

14. Transportation

a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

N/A – non-project action

b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

N/A -- non-project action – The City of Burlington is served by Skagit Area Transit Service (SKAT). At least two major bus routes and one large transit station are located in the City.

c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?

N/A – non-project action

d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

N/A – non-project action

e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

N/A – non-project action

g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

N/A – non-project action

h. Proposed measures to reduce or control transportation impacts, if any:

N/A – non-project action

15. Public Services

a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

No – the proposed regulatory updates will not increase the need for public services and may decrease the need for future expansion of the City's municipal storm-water system by increasing the amount of water infiltrated

b. Proposed measures to reduce or control direct impacts on public services, if any.

N/A – non-project action- Permit applications and development proposals affected by this proposal will occur throughout the City.

16. **Utilities**

a. Circle utilities currently available at the site:
electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other _____

N/A – non-project action

c. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.
N/A – non-project action

C. Signature

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: _____

Name of signee _____

Position and Agency/Organization _____

Date Submitted: _____

D. supplemental sheet for nonproject actions

(**IT IS NOT NECESSARY** to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

The proposed regulatory updates will limit impervious surfaces, increase the use of low impact development techniques to manage storm-water and will have little or no impact on air, noise, or other toxic emissions. By increasing the use of infiltration and bio-retention, the regulatory updates may increase the potential for contaminated run-off from roads and parking lots to enter the ground.

Proposed measures to avoid or reduce such increases are:

Implementation of NPDES permit requirements and adoption of DOE "Stormwater Manual for Western Washington.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Most of the City lies within the 100 year floodplain of the Skagit River. The National Marine Fisheries Service has concluded that development in this area may impact ESA listed fish species. The proposed regulatory amendments will, to some extent, retain natural vegetation, require planting native species, limit impervious surface coverage, and require the use of natural storm-water management techniques. These actions are consistent with NMFS guidelines for protecting floodplain habitat.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:
Most of the City lies within the 100 year floodplain of the Skagit River. The National Marine Fisheries Service has concluded that development in this area may impact ESA listed fish species. The proposed regulatory amendments will, to some extent, retain natural vegetation, require planting native species, limit impervious surface coverage, and require the use of natural storm-water management techniques. These actions are consistent with NMFS guidelines for protecting floodplain habitat.

3. How would the proposal be likely to deplete energy or natural resources?
The proposed action is not anticipated to significantly impact energy use or natural resources. By limiting impervious surface coverage and requiring greater on-site storm-water management, the regulations could, to a limited extent, reduce the overall intensity of development in the City and separate uses by greater distances thereby increasing transportation related energy consumption.

Proposed measures to protect or conserve energy and natural resources are:
Regulations contain corresponding changes which allow greater building heights in some locations and small reductions to required parking. These changes will allow greater flexibility in site design and construction which may offset the potential impacts noted above.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?
Unknown – site specific critical area impacts will be addressed through subsequent environmental reviews and application of City's critical areas regulations. Proposed regulatory amendments may afford greater protection to critical areas, particularly fish and wildlife habitat and wetlands.

Proposed measures to protect such resources or to avoid or reduce impacts are:
Site specific environmental revises and application of the City's critical areas regulations

Site specific critical area impacts will be addressed through subsequent environmental reviews and application of City's critical areas regulations. Proposed regulatory amendments may afford greater protection to critical areas, particularly fish and wildlife habitat and wetlands.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

The proposed regulatory amendments do not change the uses which are allowed or prohibited by the City's zoning regulations or shoreline master program.

Proposed measures to avoid or reduce shoreline and land use impacts are:

The proposed regulatory amendments do not change the uses which are allowed or prohibited by the City's zoning regulations or shoreline master program.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

The proposed regulatory amendments may reduce the need for future expansions or upgrades to the City's storm-water system by requiring that storm-water be infiltrated on-site to a greater extent and limiting impervious surface coverage.

Proposed measures to reduce or respond to such demand(s) are:

The proposed regulatory amendments may reduce the need for future expansions or upgrades to the City's storm-water system by requiring that storm-water be infiltrated on-site to a greater extent and limiting impervious surface coverage.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

Proposal is intended to address the requirements of the City's NPDES permit which ensures consistency with federal and State water quality regulations. No inconsistencies or conflicts are anticipated.

STAFF REPORT
EXHIBIT "8"
SEPA DNS

STAFF REPORT EXHIBIT "8"

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1908

SEPA DETERMINATION OF NON-SIGNIFICANCE (DNS) AND INCORPORATION BY REFERENECE OF EXISTING ENVIRONMENTAL DOCUMENTS

DATE:
November 1, 2016

DESCRIPTION:
Adoption of amendments to Burlington Municipal Code (BMC) to implement the City's updated NPDES storm-water permit; the NPDES permit is a permit issued to the City by the Department of Ecology which dictates how the City must manage and regulate storm-water. The proposed amendments include changes to the City's storm-water regulations (title 14 BMC) to adopt the updated Department of Ecology Stormwater Manual for Western Washington. The proposed amendments will also result in changes to the City's zoning and platting regulations (titles 16 and 17 BMC) to minimize storm-water runoff by requiring and permitting the use of low impact development techniques.

PROPONENT:
City of Burlington

LOCATION:
N/A – non-project action

LEAD AGENCY:
City of Burlington, 833 South Spruce Street, Burlington, Washington 98223

TITLE AND DATE OF DOCUMENT BEING ADOPTED OR REFERENCED:

1. Document Title: Final Supplemental Environmental Impact Statement and Preferred Alternative for the 1994 Comprehensive Plan and Zoning Ordinance Amendments.
2. Document Date: April, 1994

DESCRIPTION OF DOCUMENT BEING ADOPTED OR REFERENCED:
The document identified above was used to evaluate the environmental impacts associated with the initial adoption of the City of Burlington's comprehensive plan. It has also been used to inform subsequent updates to the comprehensive plan and it's implementing regulations.

OUTSTANDING APPEALS OR CHALLENGES:
There are no outstanding appeals or challenges involving the document being adopted or referenced.

DOCUMENT AVAILABILITY:
The document being adopted or referenced is available for review at the City of Burlington's Permit Center at 833 South Spruce Street, Burlington, Washington 98223.

ADEQUACY OF DOCUMENT BEING ADOPTED OR REFERENCED:
The Responsible Official has identified the document being adopted or referenced as being appropriate for this proposal after independent review. The document meets the City's environmental review needs for the current proposal and will accompany the proposal to the decision maker.

THRESHOLD DETERMINATION:
Determination of Non-Significance (DNS); the Responsible Official has determined that this amendment does not have a probably significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after reviewing a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

COMMENTS:
This DNS is being issued using the integrated SEPA/GMA process identified in WAC 197-11-230. Public comments will be received for a sixty day period following the issuance of this determination. This determination was issued November 1, 2016; therefore comments must be submitted, in writing, by January 1, 2017.

APPEALS:
You may appeal this determination to the Planning Department at 833 South Spruce, Burlington, WA 98233. Appeals must be in writing and filed no later than 15 calendar days from the date of this decision. You should prepare to make specific factual objections. Contact the Planning Department to read or ask about the procedures for SEPA appeals.

SIGNED:

SEPA Responsible Official:

Brad Johnson, Senior Planner _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BURLINGTON, WASHINGTON IN THE MATTER OF AMENDING THE BURLINGTON MUNICIPAL CODE TO COMPLY WITH THE WESTERN WASHINGTON PHASE II MUNICIPAL STORMWATER PERMIT

WHEREAS, the Washington State Department of Ecology (DOE) is charged with administering and implementing the Federal Water Pollution Control Act in Washington State; and

WHEREAS, DOE is also responsible for administering and implementing the Washington State Water Pollution Control Law (Chapter 90.48 RCW); and

WHEREAS, in accordance with the applicable provisions of the water quality laws identified above, DOE issues National Pollution Discharge Elimination System (NPDES) permits which regulate the manner in which municipal governments in Washington must manage and regulate stormwater discharges; and

WHEREAS, the City of Burlington is subject to, and must comply with, the provisions and conditions of the Western Washington Phase II Municipal Stormwater permit which became effective on August 1, 2013; and

WHEREAS, the stormwater permit identified above requires that the City adopt updated stormwater and development regulations by December 31, 2016; and

WHEREAS, attached exhibit "A" identifies changes to title 14 BMC that will adopt, by reference, the DOE Stormwater Manual for Western Washington; and

WHEREAS, attached exhibits "B" and "C" identify changes to titles 16 and 17 BMC that will reduce stormwater runoff and eliminate barriers to low impact development (LID) techniques; and

WHEREAS, the City's Planning Commission reviewed the proposed changes to the Burlington Municipal Code at a public meeting on November 16, 2016; and

WHEREAS, the Planning Commission found the proposed code changes were based on credible scientific and technical information; and

WHEREAS, the Planning Commission found the proposed code changes were necessary to comply with the updated NPDES permit issued by DOE; and

WHEREAS, the Planning Commission produced written findings of fact, attached hereto as exhibit "D", recommending the City Council adopt the proposed revisions to the Burlington Municipal Code; and

WHEREAS, at least 60 days prior to adopting amended development regulations the City is required to notify the Washington State Department of Commerce; and

WHEREAS, the City's Planning Department transmitted the required notice to the Department of Commerce on November 1, 2016; and

WHEREAS, the City's SEPA responsible official issued a threshold determination of non-significance on November 1, 2016; and

WHEREAS, a public comment period was provided following the issuance of the threshold determination;

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

1. The City Council hereby adopts the Planning Commission's findings and recommendation dated November 16, 2016 and attached hereto as exhibit "D"; and

2. Title 14 of the Burlington Municipal Code shall be amended as shown on attached exhibit "A"; and

3. Title 16 of the Burlington Municipal Code shall be amended as shown on attached exhibit "B"; and

4. Title 17 of the Burlington Municipal Code shall be amended as shown on attached exhibit "C"; and

5. The amendments to the Burlington Municipal Code adopted by the this ordinance shall become effective on January 1, 2017; and

INTRODUCED AND PASSED at a regular meeting of the City Council of the City of Burlington on this 8th day of December, 2016.

THE CITY OF BURLINGTON

_____

Steve Sexton, Mayor

ATTEST:

_____

Renee Sinclair, Director of Budget & Accounting

APPROVED AS TO FORM:

_____

Leif Johnson, City Attorney

Filed with the City Clerk: 12/xx/2016
Passed by the City Council: 12/08/2016
Signed by the Mayor: 12/xx/2016
Published: 12/xx/2016
Effective date: 1/1/2017

14.800.010 Title. SHARE

This title shall be known as the "surface water management code," and may be cited as such. (Ord. 1273 § 2, 1994).

14.800.020 Purpose. SHARE

A. The provisions of this title shall be liberally construed to accomplish its remedial purposes, which are:

1. To protect, to the greatest extent practical, life, property and the environment from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity;

2. To protect the public interest in drainage and related functions of drainage basins, watercourses and shoreline areas;

3. To protect surface waters, ground waters and other receiving waters from pollution, mechanical damage, excessive flows and other conditions in their drainage basins which will increase the rate of downcutting, streambank erosion, and/or the degree of turbidity, siltation and other forms of pollution, or which will reduce their low flows or low levels to levels which degrade the environment, reduce recharging and ground water, or endanger aquatic and benthic life within these surface waters and receiving waters of the state;

4. To meet the requirements of state and federal law and comply with regulatory standards for the city's municipal storm water; and

5. To fulfill the responsibilities of the city as trustee of the environment for future generations.

B. It is the specific intent of this title to place the obligation of compliance upon the owner/operator of private storm water systems. Nothing contained in this title is intended to be or shall be construed to create or form the basis for liability on the part of the city of Burlington, its utility, officers, employees or agents for any injury or damage resulting from the failure of the owner or operator of any private system to comply with the provisions of this title, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this code by the city of Burlington, its utility, officers, employees or agents. This title is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms. (Ord. 1881 § 1, 2009; Ord. 1273 § 2, 1994).

EXHIBIT A

14.800.030 Scope. SHARE

This title applies to:

A. All grading and drainage and erosion control, whether or not a permit is required; and

B. All new development, redevelopment, land disturbing activities, and construction sites, whether or not a permit is required; and

C. All new and existing discharges directly or indirectly to a public drainage control system; and

D. All new and existing land uses. (Ord. 1708 § 2, 2010; Ord. 1273 § 2, 1994).

14.800.060 Compliance with other laws. SHARE

The requirements of this title are minimum requirements. They do not replace, repeal, abrogate, supersede or affect any other more stringent requirements, rules, regulations, covenants, standards, or restrictions. Where this title imposes requirements which are more protective of human health or the environment than those set forth elsewhere, the provisions of this title shall prevail.

Approvals and permits granted under this title are not waivers of the requirements of any other laws. Compliance is still required with all applicable federal, state and local laws and regulations, including rules promulgated under authority of this title. (Ord. 1273 § 2, 1994).

14.800.080 Authority. SHARE

The public works director shall have authority regarding all provisions of this title pertaining to storm water, drainage, and erosion control, including inspection and enforcement authority for temporary drainage and erosion control measures for all projects that meet or exceed the threshold conditions set forth in BMC 14.802.015.

The public works director is authorized to take actions necessary to implement the provisions and purposes of this title in their respective spheres of authority, including, but not limited to: promulgating and amending rules and regulations, which may include prescribing best management practices ("BMPs"); establishing and conducting inspection programs; establishing and conducting or, as set forth in BMC 14.802.012, requiring responsible parties to conduct monitoring programs, which may include sampling of discharges to or from drainage control facilities, the public drainage control system, or surface water; taking enforcement action; abating nuisances; promulgating guidance and policy documents; and reviewing and approving or disapproving required submittals and applications for approvals and permits. Any powers granted or duties imposed upon

the public works director may be delegated to persons or entities acting in the beneficial interest of or in the employ of the agency.

The public works director is authorized to develop drainage basin plans for managing surface water, drainage water, and erosion within individual subbasins. Compliance with an adopted drainage basin plan may, when approved by the public works director, modify requirements of this title, provided the level of protection for human health, safety, and welfare, the environment, and public or private property will equal or exceed that which would otherwise be achieved. (Ord. 1708 § 3, 2010; Ord. 1681 § 2, 2009; Ord. 1273 § 2, 1994).

14.600.090 City not liable. SHARE

Nothing contained in this title is intended to be nor shall be construed to create or form the basis for any liability on the part of the city, or its officers, employees or agents for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this title, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement of this title, or by reason of any action or inaction on the part of the city related in any manner to the enforcement of this title by its officers, employees or agents.

The director or any employee charged with the enforcement of this title, acting in good faith and without malice on behalf of the city, shall not be personally liable for any damage that may accrue to persons or property as a result of any act required by the city, or by reason of any act or omission in the discharge of these duties. Any suit brought against the public works director or other employee because of an act or omission performed in the enforcement of any provisions of this title, shall be defended by the city.

Nothing in this title shall impose any liability on the city or any of its officers or employees for cleanup or any harm relating to sites containing hazardous materials, wastes or contaminated soil. (Ord. 1273 § 2, 1994).

14.801.010 General. SHARE

For the purpose of this title, the words listed in this chapter shall have the following meanings unless the context clearly indicates otherwise. Terms relating to pollutants and to hazardous wastes, materials, and substances, where not defined in this title, shall be as defined in chapters 173-303, 173-340 WAC, the Uniform Building Code or the Uniform Fire Code including future amendments to those codes. Words used in the singular include the plural, and words used in the plural include the singular. (Ord. 1273 § 2, 1994).

14.801.020 "A". SHARE

"Agency" means any governmental entity or its subdivision.

"AKART" means all known, available, and reasonable methods of prevention, control, and treatment. See also the state Water Pollution Control Act, RCW 90.48.010 and 90.48.520. (Ord. 1681 § 3, 2009; Ord. 1273 § 2, 1994).

14.801.030 "B". SHARE

"Basin plan" means a plan to manage the quality and quantity of storm water in a drainage basin as described in the city of Burlington comprehensive surface water management plan, as now or hereafter amended.

"Best management practice (BMP)" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, structural or managerial practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Nonstructural best management practices are those which require modified or additional operational or behavioral practices, such as sweeping a parking lot or having spill response equipment on site.

Structural best management practices are those which require the construction of a structure or other physical modification on the site. (Ord. 1681 § 4, 2009; Ord. 1273 § 2, 1994).

14.801.040 "C". SHARE

"Cause or contribute" to a violation includes acts or omissions that create a violation, that increase the duration, extent, or severity of a violation, and that aid or abet a violation.

"Civil engineer, licensed" means a person who is licensed by the state of Washington to practice civil engineering.

"Clean Water Act" means the federal Water Pollution Control Act (33 USC 1251 et seq.), and any subsequent amendments thereto.

"Combined sewer" means a system that collects sanitary sewage and storm water in a single sewer system. (Ord. 1681 § 5, 2009; Ord. 1273 § 2, 1994).

14.801.050 "D". SHARE

"Damages" means monetary compensation for harm, loss, costs, or expenses incurred by the city including, but not limited to, costs of abating violations of this title or public nuisances; fines or penalties by the city incurred as a result of a violation of this title; and costs to repair or clean the public drainage control system as a result of a violation. For the purposes of this title, it does not include compensation to any person other than the city.

"Design storm" means a rainfall event used in the analysis and design of drainage facilities.

"Designated receiving waters" means the Skagit River, Padilla Bay and other receiving waters designated by the public works director as having the capacity to receive drainage discharges.

"Detention" refers to temporary storage of drainage water.

"Developed parcel" means a parcel of real property which has been altered by developmental coverage.

Development. See "new development" and "redevelopment."

"Developmental coverage" means all areas within a site planned to be developed or redeveloped including, but not limited to, rooftops; driveways; carports; accessory buildings; parking areas; areas in which soils, slopes and vegetation have been altered; and roadways and other pervious and impervious surfaces.

"Director" means the public works director or engineering director and the director's designees, who may be employees of that department or another city department.

"Discharge point" means the location to which drainage water from a specific site is released.

"Discharge rate" means the rate at which drainage water is released from a specific site. The discharge rate is expressed as volume per unit of time, such as cubic feet per second.

"Drainage basin" means the tributary area through which drainage water is collected, regulated, transported, and discharged to receiving waters.

"Drainage control" means the management of drainage water. Drainage control is accomplished through the collection, conveyance, and discharge of drainage water, controlling the rate of discharge from a site, or separating, treating or preventing the introduction of pollutants.

"Drainage control facility" means any facility, including best management practices, installed or constructed for the purpose of controlling the flow, quantity, and/or quality of drainage water. Drainage control facilities include, but are not limited to, all types of catch basins, pipes, detention/retention ponds, bioswales, and other structural and nonstructural components that handle surface water.

"Drainage control plan" means a plan for collecting, controlling, transporting and disposing of drainage water falling upon, entering, flowing within, and exiting the site, including designs for drainage control facilities. The plan shall contain information as set forth in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

"Drainage control system" means a system to collect, convey and control release of only drainage water. The system may serve public or private property. It includes constructed and/or natural components such as ditches, culverts, streams and drainage control facilities.

"Drainage water" means storm water, snow melt, surface water, surface and irrigation runoff, water from footing drains and other drains approved by the public works director or installed in compliance with this title and rules which may be adopted hereunder. Other water which is not an illicit discharge as defined in BMC 14.802.012 shall be considered drainage water if it drains from the exterior of a building or structure, a pervious or impervious surface, or undeveloped land, or by surface or shallow subsurface flow.

"Dredging" means the excavating of earth materials from land covered by water. The term shall include dredging which maintains an established water depth. (Ord. 1708 § 4, 2010; Ord. 1471 § 1, 2001; Ord. 1330 § 1, 1997; Ord. 1273 § 2, 1994).

14.801.060 "E". SHARE

"Erosion" means the wearing away of the ground surface as a result of mass wasting or the movement of wind, water and/or ice.

"Equivalent service unit" means a configuration of impervious surface estimated to contribute an amount of runoff to the city's surface water management system which is approximately equal to that created by the average single-family residential developed parcel in Burlington. One equivalent service unit (ESU) is equivalent to 2,400 square feet of impervious surface area. For purposes of computation of rates, the number of equivalent service units shall be rounded to the nearest tenth. (Ord. 1330 § 2, 1997; Ord. 1273 § 2, 1994).

14.801.070 "F". SHARE

"Fish and wildlife habitat conservation areas" is as defined in the critical areas code, chapter 15.15 BMC.

"Flood prone area" is as defined in the critical areas code, chapter 15.15 BMC. (Ord. 1273 § 2, 1994).

14.801.080 "G". SHARE

"Ground water" means water in a saturated zone or stratum beneath the surface of the land or below a surface water body. (Ord. 1681 § 6, 2009).

14.801.090 "H". SHARE

"Hazardous materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Hyperchlorinated" means water that contains more than 10 milligrams per liter of chlorine. (Ord. 1681 § 7, 2009).

14.801.100 "I". SHARE

"Illicit connection" means any manmade conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains, footing drains, and other similar type connections, that conveys any material not composed entirely of storm water. Examples of illicit connections include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

"Illicit discharge" means any direct or indirect non-storm water discharge to the city's storm drain system, except as expressly defined by BMC 14.802.012(D).

"Impervious surface" means any surface from which most water runs off including, but not limited to, paved streets, graveled or paved areas such as driveways, parking areas, packed earth material, oiled macadam or other treated surfaces, walkways, roof surfaces, patios and formal planters.

"Inspector" means the city inspector, inspection agency, or licensed civil engineer performing the inspection work required by this title. (Ord. 1681 § 8, 2009; Ord. 1273 § 2, 1994).

14.801.130 "L". SHARE

"Land disturbing activity" means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) or the existing topography. Land disturbing activities include but are not limited to demolition, clearing, grading, filling and excavation.

"Land use permit" means a document issued by the department of planning and community development giving permission for development or use of land or street right-of-way in accordance with the zoning code (BMC Title 17).

"Low impact development (LID)" means a storm water management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic functions. (Ord. 1708 § 5, 2010; Ord. 1273 § 2, 1994).

14.801.140 "M". SHARE

"Municipal separate storm sewer system (MS4)" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (A) owned or operated by the city of Burlington; (B) designed or used for collecting or conveying storm water; (C) which is not part of a publicly owned treatment works (POTW). (Ord. 1681 § 9, 2009).

14.801.150 "N". SHARE

"National Pollutant Discharge Elimination System (NPDES) storm water discharge permit" means a permit issued by the Environmental Protection Agency (EPA) (or by the Washington Department of Ecology under authority delegated pursuant to 33 USC 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

"New development" means any of the following activities:

1. Structural development, including construction of a new building or other structure;

2. Expansion or alteration of an existing structure that results in an increase in the footprint of the building or structure;

3. Land disturbing activities;

4. Creation or expansion of impervious surface;

5. Demolition;

6. Subdivision and short subdivision of land as defined in BMC Title 16, Subdivisions;

7. Class IV general forest practices, as defined in WAC 22-16-050, that are conversions from timber land to other uses.

No other forest practices or commercial agriculture are considered new development.

"Non-storm water discharge" means any discharge to the storm drain system that is not composed entirely of storm water.

"NPDES" means National Pollutant Discharge Elimination System, the national program for controlling discharges under the federal Clean Water Act. (Ord. 1681 § 10, 2009; Ord. 1273 § 2, 1994).

14.801.160 "O". SHARE

"Owner" means any person having title to and/or responsibility for, a building or property, including a lessee, guardian, receiver or trustee and the owner's duly authorized agency. (Ord. 1273 § 2, 1994).

14.801.170 "P". SHARE

"Parcel" means the smallest separately segregated unit or plot of land having an identified owner, boundaries, and surface area which constitutes a separate lot or tract capable of being conveyed without further subdivision.

"Person" means an individual, firm, partnership, corporation, municipal corporation, and government, and the individual's or entity's heirs, successors and assigns.

"Plan" means, for the purposes of this title, and unless a different meaning is set forth or clearly required, a graphic or schematic representation, with accompanying notes, schedules, specifications and other related documents.

"Plot plan" is a scaled map of a site and adjacent public rights-of-way showing locations and dimensions of various existing and proposed features, such as buildings, curbs, driveways, sidewalks, trees, grades and drainage patterns.

"Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

"POTW" or "publicly owned treatment works" means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned.

"Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

"Public drainage control system" means a drainage control system owned or used by the city of Burlington serving city streets and adjacent property.

"Public storm drain" means the part of a public drainage control system which is wholly or partially piped, is owned or operated by a public entity, and is designed to carry only drainage water. (Ord. 1681 § 11, 2009; Ord. 1330 § 3, 1997; Ord. 1273 § 2, 1994).

14.801.190 "R". SHARE

"Redevelopment" means, on a site that is already substantially developed (i.e., has 35 percent or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

"Responsible party" means all of the following persons: (A) owners and occupants of property within the city of Burlington; and (B) any person causing or contributing to a violation of the provisions of this title.

"Riparian corridor" is as defined in the critical areas code, chapter 15.15 BMC.

"Rules" means administrative rules promulgated by the public works director in accordance with the State Administrative Procedures Act. (Ord. 1708 § 6, 2010; Ord. 1441 § 1, 2000; Ord. 1273 § 2, 1994).

14.801.200 "S". SHARE

"Serve" or "service," when used regarding a document, means the procedures set forth in BMC 14.806.030.

"Service drain" means a privately owned and maintained drainage control facility or system which carries only drainage water. Service drains include, but are not limited to, conveyance pipes, catch basin connections, downspout connections, pipes, and subsurface drain connections.

"Shoreline district" means all land regulated by the Shorelines Management Act of 1971 (chapter 90.58 RCW).

"Single-family residential parcel" means a parcel which has been actually developed with a single-family residence.

"Site" means any lot, parcel of land, street or highway right-of-way, or contiguous combination thereof, where a permit for new development, redevelopment, land disturbing activity, or grading has been issued or where any such work is proposed or performed.

"Standard design" is a design approved by the Burlington public works department for drainage and erosion control for a typical site.

Storm Drain. See "public storm drain" and "service drain."

"Storm drainage system" means publicly owned facilities, including the city's municipal separate storm sewer system, by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

"Storm water" means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

"Storm water pollution prevention plan" means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a premises and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable. The plan shall contain elements as set forth in Appendix 1

of the Western Washington Phase II Municipal Stormwater Permit. (Ord. 1708 § 7, 2010; Ord. 1681 § 12, 2009; Ord. 1330 § 4, 1997; Ord. 1273 § 2, 1994).

14.801.220 "U". SHARE

"Uncontaminated" means, for the purposes of this title, not containing sediment or other pollutants or contaminates above natural background levels when referring to surface or ground water; and not containing pollutants or contaminants in levels greater than city-supplied drinking water when referring to potable water.

"Undeveloped parcel" means any parcel of real property which has not been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area which affects the hydraulic properties of the parcel. (Ord. 1330 § 5, 1997; Ord. 1273 § 2, 1994).

14.801.240 "W". SHARE

"Watercourse" means the route, constructed or formed by humans or by natural processes, generally consisting of a channel with bed, banks, or sides, in which surface waters flow, including lakes, bogs, streams, sloughs, and intermittent artificial components (including ditches and culverts) but not including receiving waters.

"Wetland" is as defined in critical areas code, chapter 15.15 BMC. (Ord. 1273 § 2, 1994).

14.802.010 Scope. SHARE

A. General. All new and existing discharges subject to this title as set forth in BMC 14.800.030, all land uses and all new development, redevelopment, and grading shall comply with all requirements of this title unless explicitly exempted by this title or by the director exercising authority granted under this title. The words and phrases used in this chapter shall have the same meaning as defined in chapter 14.801 BMC.

B. Exemptions. The following land uses are exempt from the provisions of this title.

1. Commercial agriculture, including only those activities conducted on lands defined in RCW 84.34.020(2), and production of crops of livestock for wholesale trade;

2. Forest practices regulated under WAC Title 222, except for Class IV general forest practices, as defined in WAC 222-16-050, that are conversions from timber land to other uses;

3. Development undertaken by the Washington State Department of Transportation in state highway right-of-way that complies with the standards found in chapter 173-270 WAC, the Puget Sound Highway Runoff Program; and

4. Any additional exemptions as set forth in Appendix 1, Minimum Technical Requirements for New Development and Redevelopment, of the Western Washington Phase II Municipal Stormwater Permit. (Ord. 1708 § 8, 2010; Ord. 1681 § 13, 2009; Ord. 1273 § 2, 1994).

14.802.012 Prohibited discharges. SHARE

A. Storm Water Discharges to Sanitary and Combined Sewers. In consultation with the local sewage treatment agency, the director may approve discharges of storm water to a public combined sewer or sanitary sewer if other methods of controlling pollutants in the discharge are not adequate or reasonable, and the discharging party certifies that the discharge will not harm the environment and will not overburden or otherwise harm the public combined sewer or sanitary sewer systems. The director shall condition approval of such a discharge on compliance with local pretreatment regulations.

B. Discharges Prohibited to Public Drainage Control Systems. No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants other than storm water. It is unlawful to make illicit discharges, as defined in subsection (C) of this section, either directly or indirectly to a public drainage control system.

C. Illicit Discharges Defined. Except as provided in subsection (D) of this section, all discharges which are not composed entirely of storm water are illicit discharges, as defined in BMC 14.801.100. See BMC 14.806.020 for defenses available to responsible parties.

The following is a partial list, provided for informational purposes only, of common substances which are illicit discharges when allowed to enter a public drainage control system:

1. Trash or debris.

2. Construction materials.

3. Petroleum products including but not limited to oil, gasoline, grease, fuel oil, and heating oil.

4. Antifreeze and other automotive products.

5. Metals in either particulate or dissolved form.

6. Flammable or explosive materials.

7. Radioactive material.

8. Batteries.

9. Acids, alkalis or bases.

10. Paints, stains, resins, lacquers or varnishes.

11. Degreasers and solvents.

12. Drain cleaners.

13. Pesticides, herbicides or fertilizers.

14. Steam cleaning wastes.

15. Soaps, detergents or ammonia.

16. Swimming pool backwash.

17. Chlorine, bromine and other disinfectants.

18. Heated water.

19. Domestic animal wastes.

20. Sewage.

21. Recreational vehicle waste.

22. Animal carcasses.

23. Food wastes.

24. Bark and other fibrous materials.

25. Collected lawn clippings, leaves, or branches.

26. Silt, sediment or gravel.

27. Dyes.

28. Chemicals not normally found in uncontaminated water.

29. Washing of fresh concrete for cleaning and/or finishing purposes or to expose aggregates.

30. Any other process-associated discharge except as otherwise allowed in this section.

31. Any hazardous material or waste not listed above.

D. Allowable Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Diverted stream flows.

2. Rising ground water.

3. Uncontaminated ground water infiltration.

4. Uncontaminated pumped ground water.

5. Foundation drains.

6. Air conditioning condensation.

7. Irrigation water from agricultural sources that is commingled with urban storm water.

8. Springs.

9. Water from crawl space pumps.

10. Footing drains.

11. Flows from riparian habitats and wetlands.

12. Non-stormwater discharges authorized by another NPDES or state waste discharge permit

13~~12~~. Discharges from emergency fire fighting activities.

E. Conditional Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the public works director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and in volumes and velocities controlled to prevent re-suspension of sediments in the storm water system;

2. Lawn watering and other irrigation runoff is permitted but shall be minimized;

3. Dechlorinated swimming pool discharges. These discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and in volumes and velocities controlled to prevent re-suspension of sediments in the storm water system; Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water.

4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of street wash and dust

control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street;

~~5. Non-storm water discharges covered by another NPDES permit; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system;~~

5~~6~~. Other non-storm water discharges. The discharges shall be in compliance with the requirements of a storm water pollution prevention plan (SWPPP) reviewed and approved by the city, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

F. Testing for Illicit Discharges. When the director has reason to believe that any discharge is an illicit discharge, the director may sample and analyze the discharge and recover the costs from a responsible party in an enforcement proceeding. When the discharge is likely to contain illicit discharges on a recurring basis, the director may conduct, or may require the responsible party to conduct, ongoing monitoring at the responsible party's expense.

G. Illicit Connections Prohibited. Any connection identified by the public works director that could convey anything not composed entirely of surface and storm water directly to surface and storm water or ground water is considered an illicit connection. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this section if the person connects a line conveying sewage to the MS4 or allows such a connection to continue. (Ord. 1681 § 14, 2009; Ord. 1273 § 2, 1994).

14.802.013 Requirements for existing discharges and land uses. SHRPE

A. General. For all existing discharges directly or indirectly to a public drainage control system, responsible parties shall implement and maintain nonstructural best management practices as specified in rules promulgated by the director. Nonstructural best management practices shall include, but not be limited to, maintenance and source control housekeeping practices such as cleaning of catch basins and detention facilities, sweeping of parking lots, storing oil barrels and other contaminant sources out of the rain, covering material stockpiles, and proper use and storage of hazardous materials.

If the director determines that discharges from a drainage facility are causing or contributing to a water quality problem, such as discharges that cannot be adequately addressed by nonstructural best management practices, including, but not limited to, areas with recurrent spills such as discharges from vehicle maintenance shops or gas stations, then the director may require the responsible party to undertake more stringent or additional best management practices. These best management practices may include structural best management practices or other action necessary to cease causing or contributing to the water quality problem. Structural best management practices include but shall not be limited to constructed facilities such as detention tanks, wet ponds, oil/water separators, grassed swales, roofing and berming of container storage areas, and revised piping systems.

B. Spill Prevention Required. All commercial and industrial responsible parties shall take measures to prevent spills or other accidental introduction of illicit discharges into a public drainage control system. Such measures shall include:

1. Establishment and implementation of plans and procedures to prevent spills and other accidental releases of materials that may contaminate storm water;

2. Implementation of procedures for immediate containment and other appropriate action regarding spills and other accidental releases to prevent contamination of storm water; and

3. Provision of necessary containment and response equipment on site, and training of personnel regarding the procedures and equipment to be used.

The provisions of this subsection may be satisfied by a storm water pollution prevention plan prepared in compliance with the NPDES industrial storm water permit for the site.

The responsible parties shall make the plans and procedures required by this subsection available to the director when requested.

C. Release Notification Requirements. A responsible party must, at the earliest possible time, but in any case within 24 hours of discovery, report to the public works director a spill, release, dumping, or other situation that has contributed or is likely to contribute pollutants to a public drainage control system. This reporting requirement is in addition to, and not instead of, any other reporting requirements under federal, state or local laws.

D. Natural Drainage Patterns. Natural drainage patterns shall be maintained.

E. Obstruction of Watercourses. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. Watercourses shall not be obstructed. (Ord. 1681 § 15, 2009; Ord. 1273 § 2, 1994).

14.802.015 Storm water, drainage, and erosion control requirements. SHAPE

A. Stormwater Management Manual Adopted. The ~~2005~~2012 State Department of Ecology Stormwater Management Manual for Western Washington, as amended in 2014. This manual is further defined by Sections one through six of Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit, as now or hereafter amended, is hereby adopted as a technical reference manual hereinafter referred to as the "storm water manual." The city hereby adopts the thresholds, definitions, minimum requirements, and exceptions, adjustments and variance criteria found in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit as the city of Burlington's minimum storm water regulations.

B. Thresholds for Minimum Technical Requirements for Storm Water Control.

1. All new development, redevelopment, and construction sites, regardless of type and regardless of whether or not a permit is required, that meet or exceed the threshold conditions set forth in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit must comply with the minimum technical requirements of said Appendix 1, including the mandatory incorporated provisions of the ~~2005~~ 2012 Ecology Stormwater Management Manual for Western Washington as amended in 2014.

2. The city of Burlington requires that all projects, even those that result in land disturbance of less than one acre, adhere to the minimum requirements for erosion and storm water control set forth in Appendix 1 and Appendix 7 of the Western Washington Phase II Municipal Stormwater Permit.

3. For those projects meeting the review thresholds set forth in this section, the applicant shall submit a drainage control plan or storm water site plan pursuant to requirements in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

4. The city of Burlington allows applications for an erosivity waiver as specified in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

C. Standards and Definitions. Unless otherwise specified in this chapter, all standards, definitions, and requirements shall be in accordance with the storm water manual.

D. Flood Prone Areas. Sites within flood prone areas must employ measures to minimize the potential for flooding on the site and for the project to increase the risk of floods on adjacent or nearby properties. Flood control measures shall include those set forth in other titles of the Burlington Municipal Code and rules promulgated thereunder, including but not limited to the critical areas code, chapter 15.15 BMC, and in rules promulgated by the public works director to meet the purposes of this subsection.

E. Natural Drainage Patterns. Natural drainage patterns shall be maintained.

F. Obstruction of Watercourses. Watercourses shall not be obstructed.

G. Low Impact Development – Alternative Standards. The city allows and encourages low impact development (LID) best management practices (BMPs), as an alternative to conventional storm water management systems that rely on detention ponds and closed conveyance. Low impact development is intended to manage runoff close to the source of generation and to mimic predeveloped hydrologic condition of a site. Low impact development is accomplished ~~first~~ through minimizing the impervious surface coverage and loss of vegetation and ~~second~~ by managing runoff through dispersion, infiltration, evapotranspiration, or a combination of these approaches. Use of LID BMPs may reduce or eliminate the need for conventional detention facilities but does not remove the obligation to comply with the minimum requirements of the storm water manual. A variety of BMPs to minimize impervious surfaces and to manage storm water have been developed and tested for use in Western Washington. ~~These BMPs and the overall LID approach are described in the LID Technical Guidance Manual for Puget Sound (LID manual).~~ (Ord. 1708 § 9, 2010; Ord. 1441 § 2, 2000; Ord. 1273 § 2, 1994).

14.802.020 Scope of drainage control review and application requirements.

A. Scope of Review. Where drainage and approval are required by BMC 14.802.015, the scope of this review shall at least include the following.

1. Applications for Building and Other Permits. The public works director shall review any application for a building permit or other permit, other than land use permit applications, for compliance with BMC 14.802.015 and to determine whether improvements to the public drainage control system shall be required.

2. The public works director shall review all storm water plans for proposed development activities in accordance with the site planning process and best management practice selection and design criteria as set forth in the storm water manual.

B. Application and Approval Requirements. Drainage control plans for projects subject to review under BMC 14.802.015 shall be reviewed by the public works director. The director may approve those plans which comply with the provisions of this title and rules promulgated hereunder, and may place conditions upon the approval in order to assure compliance with the provisions of this title. Submission of the required drainage control application information shall be a condition precedent to the processing of any of the above-listed permits. Approval of drainage control shall be a condition precedent to issuance of any of the above-listed permits. A storm sewer permit shall be issued to construct on-site and off-site drainage control facilities based on the approved plans. See BMC 14.804.200, Storm sewer permits required.

The public works director may disapprove plans which do not comply with the provisions of this title and rules promulgated hereunder. Disapproved plans shall be returned to the applicant, who may correct and resubmit the plans.

C. Submittal Requirements.

1. Applications shall be prepared and submitted in accordance with provisions of this section, with chapter 14.804 BMC (Storm Sewers) and with associated rules and regulations adopted by the director.

2. The director may require additional information necessary to adequately evaluate applications for compliance with the requirements and purposes of this title and other laws and regulations, including the critical areas code, chapter 15.15 BMC. The director may also require appropriate information about adjoining properties which may be related to, or affected by, the drainage control proposal in order to evaluate effects on the adjacent property. This additional information may be required as a precondition for permit application review and approval.

3. Where an applicant simultaneously applies for more than one of the permits listed in subsection (A) of this section for the same property, the application shall comply with the requirements for the permit which are the most detailed and complete. (Ord. 1708 § 10, 2010; Ord. 1273 § 2, 1994).

14.802.040 Drainage control plan registry. SHARE

The public works director shall maintain a permanent file of all approved drainage control plans. Each plan shall be cataloged according to the property address, legal description of the property and the storm sewer permit number for which the plan is required. See BMC 14.804.200, Storm sewer permits required. Where a drainage control plan covers more than one property, the approved plan shall be cataloged for each property covered by the plan. (Ord. 1708 § 11, 2010; Ord. 1273 § 2, 1994).

14.802.060 Installation of drainage control facilities. SHARE

All privately owned and operated drainage control facilities or systems, whether or not they discharge to a public drainage control system, shall be considered storm sewers and shall be subject to BMC Title 14, the public works department director's rules promulgated under that title, and the public works department's design and installation specifications and permit requirements for storm sewer and drainage control systems.

Storm sewer permits and inspections shall be required for construction, capping, alterations, or repairs of privately owned and operated drainage control systems as provided in BMC Title 14. When the work is ready for inspection, the permittee shall notify the public works director. If the work is not in accordance with plans approved under this title and in accordance with the public works department design and installation specifications, the public works department may order the work stopped by written notice to the persons engaged in performing the work or causing the work to be done, and may require modifications as provided in this title. (Ord. 1273 § 2, 1994).

14.802.070 Modifications of drainage control facilities during construction. SHARE

During construction the public works director may require, or the applicant may request, that the construction of drainage control facilities and associated project designs be modified if physical conditions are discovered on the site which are inconsistent with the assumptions upon which the approval was based, including but not limited to unexpected soil and/or water conditions, weather generated problems, or changes in the design of the improved areas. Modifications shall be submitted to the director for approval prior to implementation.

Any such modifications made during the construction of drainage control facilities shall be recorded on the final approved drainage control plan, a revised copy of which shall be filed by the public works director. (Ord. 1273 § 2, 1994).

14.803.010 Purpose. SHARE

It is the purpose of this chapter to:

A. Provide for the inspection and regulation of public or private storm and surface water system control or detention facilities in order to provide for a properly functioning city storm and surface water drainage system and to protect the public health, safety and welfare;

B. Authorize the storm and surface water utility to inspect storm and surface water system control and drainage control facilities and to require owners of such systems to maintain, operate and repair such systems in conformity with the code and the utility standards and regulations;

C. Authorize the storm and surface water utility to investigate the source of suspected illicit discharges, dumping, and/or illicit connections. (Ord. 1681 § 16, 2009; Ord. 1273 § 2, 1994).

14.803.020 Compliance. SHARE

Each owner or person responsible for the maintenance, operation or repair of detention facilities within the city shall maintain, operate and repair said detention facilities in compliance with the requirements of this code and in compliance with the utility standards and regulations. (Ord. 1273 § 2, 1994).

14.803.030 Responsibility for inspection and maintenance. SHARE

Drainage control facilities required by this title and by the rules adopted hereunder, shall be maintained by the owner or other responsible party. The owner or responsible party shall inspect permanent drainage control facilities at least annually, and shall inspect temporary drainage control facilities and other temporary best management practices or facilities on a schedule sufficient for the facilities to function at design capacity. When an inspection identifies a need for maintenance as defined by standards found in Chapter 4 of Volume V of the storm water manual, maintenance shall be performed in accordance with the following schedule:

A. Within one year for typical maintenance of facilities, except catch basins.

B. Within six months for catch basins.

C. Within two years for maintenance that requires capital construction of less than $25,000.

The public works director may require the responsible party to conduct more frequent inspection and/or maintenance when necessary to ensure functioning at design capacity. (Ord. 1708 § 12, 2010; Ord. 1273 § 2, 1994).

14.803.040 Inspection program. SHARE

The public works director may establish inspection programs to insure compliance with the requirements of this title and accomplishment of its purposes. Inspection programs may be established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; visual inspection of catch basins and detention/retention ponds; video inspection of pipe system; sampling discharges, surface water, ground water, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other best management practices. (Ord. 1471 § 2, 2001; Ord. 1273 § 2, 1994).

14.803.050 Entry for inspection and abatement purposes. SHARE

A. New Installations and Connections. When any new drainage control facility is installed on private property, and when any new connection is made between private property and a public drainage control system~~,~~or sanitary sewer~~ or combined sewer~~, the property owner shall obtain approval from the Public Works D~~d~~irector ~~of engineering~~. The property owner shall grant the city the right to enter the property at reasonable times and in a reasonable manner pursuant to an inspection program established pursuant to BMC 14.803.040, and to enter the property when the city has a reasonable basis to believe that a violation of this title is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this title.

B. The director, whenever implementing the provisions of the utility's inspection program or whenever he/she has cause to believe that a violation of this code or the utility standards and regulations has been or is being committed, is authorized to inspect during regular working hours and at other reasonable times all drainage control facilities within the city to determine compliance with the provisions of this code and the utility standards and regulations. If a property owner has not granted right of entry under subsection (A) of this section, prior to

making any inspection the director shall present identification credentials, state the reason for the inspection, and request entry.

1. If said property or any building or structure on said property is unoccupied, he/she shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portion thereof and request entry.

2. If, after reasonable effort, the director is unable to locate the owner or such other person(s) having charge or control of the property, and he/she has reason to believe the condition of the detention facility creates an imminent hazard to persons or property, he/she may make entry.

3. Unless entry is consented to by the owner or person(s) in control of said property or portion thereof or unless conditions are reasonably believed to exist which create an imminent hazard, the director, prior to entry, shall obtain a search warrant as authorized by the laws of the state.

4. The director may inspect the drainage control facility without obtaining a search warrant pursuant to subsection (B)(3) of this section if said inspection can be conducted while he/she remains on public property or on other property on which he/she has permission to be. (Ord. 1708 § 13, 2010; Ord. 1681 § 17, 2009; Ord. 1273 § 2, 1994).

14.803.060 Disposal of waste from maintenance activities. SHARE

Disposal of waste from maintenance of drainage and storm water control facilities shall be conducted in accordance with federal, state and local regulations, including the Minimum Functional Standards for Solid Waste Handling, chapter 173-304 WAC, guidelines for disposal of waste materials, and, where appropriate, Dangerous Waste Regulations, chapter 173-303 WAC, including any subsequent amendments to these provisions. (Ord. 1273 § 2, 1994).

14.803.070 Records of installation and maintenance activities. SHARE

When a new drainage control facility is installed, the party having the facility installed shall obtain a copy of the as-built plans from the director of engineering. Responsible parties shall make records of the installation and of all maintenance and repair and shall retain the records for at least 10 years. These records shall be made available to the director during inspection of the facility and at other reasonable times upon request of the director. (Ord. 1273 § 2, 1994).

14.804.170 Definitions. SHARE

A. "Primary drainage system" means a drainage system serving a watershed of 20 acres or greater.

B. "Secondary drainage system" means a drainage system serving a watershed less then 20 acres in size or a watershed with a runoff of three cubic feet per second or less for a storm with a five-year frequency. (Ord. 1273 § 2, 1994).

14.804.180 Plans required. SHARE

Storm sewers and drainage improvements shall require a storm sewer permit with approved engineering plans with the following information:

A. Plan map properly dimensioned and drawn to scale showing the location of the proposed storm sewer, drainage ditches and sewer appurtenances within the street right-of-way. Sewers and drainage ditches shall be stationed and all manholes, catch basins, and appurtenances shall be numbered;

B. Location of existing above and below ground utilities in road right-of-way or adjacent easements;

C. Location and dimensions of utility and drainage easements and location of all existing watercourses, ditches, trunk storm sewers, ponds and retention facilities connected with or adjacent to the proposed drainage facilities;

D. Profiles of storm drains and drainage ditches with the following information:

1. Location and number of all manholes, catch basins and appurtenances,

2. Profile of existing and proposed ground surface and storm drain,

3. Size, slope and length of storm sewers between consecutive manholes,

4. Sewer, manhole, and catch basin invert elevations;

E. Suitable title plate on each drawing with street or sewer name, name and address of the developer, scale, date and the name, address and telephone number and stamp of the registered engineer responsible for the plan preparation;

F. Structural details of any special manholes, catch basins, and appurtenances including drop manholes, retention control manholes, outlet structures, pumping stations, diversion structures, etc. (Ord. 1273 § 2, 1994).

14.804.190 Design criteria. SHARE

A. Storm sewers and drainage facilities shall be designed for a projected life span of 30 years without excessive maintenance. All trunk sewers and collector sewers shall be designed and stamped by a civil engineer registered in the state of Washington unless otherwise approved by the director. Accepted engineering practices shall be employed in the design of all drainage facilities.

B. Storm drainage facilities shall be designed per specifications in the storm water manual. All drainage facilities in public rights-of-way or easements shall have an outfall into an approved drainage system.

C. The minimum requirements for storm drainage facilities shall be as follows:

1. Catch basins or inlets shall be spaced a maximum of 200 feet apart along any street, alley or avenue;

2. The minimum catch basin lateral pipe size shall be 12 inches in diameter and the minimum storm main size shall be 12 inches in diameter;

3. Manholes on trunk sewers shall have a maximum spacing of 400 feet;

4. Construction materials and methods shall be in accordance with Standards and Specifications for Municipal Public Works Construction prepared by the American Public Works Association, latest edition. (Ord. 1708 § 14, 2010; Ord. 1273 § 2, 1994).

14.804.200 Storm sewer permits required. SHARE

A. A storm sewer permit shall be obtained for the construction or alteration of all storm sewer systems, including on-site and off-site installations.

B. To obtain a permit, the applicant shall first file an application in writing on a form furnished by the permit center for that purpose. Every such application shall:

1. Identify and describe the work to be covered by the permit for which application is made;

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed project or work;

3. Be accompanied by plans, diagrams, computations and specifications and other data as required in this title;

4. Be signed by the applicant, or the applicant's authorized agent;

5. Give such other data and information as may be required by the director.

C. The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the director. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the director finds that the work described in an application for a permit and the plans, specifications, and other data filed therewith conform to the requirements of this title and other pertinent laws and ordinances, and that the fees specified in the current fee resolution have been paid, the director shall issue a permit therefor to the applicant.

When the director issues the permit where plans are required, the director shall endorse in writing or stamp the plans and specifications APPROVED. Such approved plans and specifications shall not be changed, modified or altered without authorization from the director, and all work regulated by this title shall be in accordance with the approved plans. (Ord. 1273 § 2, 1994).

14.805.010 Title. SHARE

This chapter shall be known as the storm and surface water utility code. It shall be referred to in this chapter as the "code". (Ord. 1273 § 2, 1994).

14.805.020 Purpose. SHARE

It is the purpose of this code to:

A. Provide for the regulation and management of the storm and surface water system in the utility service area, both public and private, including the construction of new storm and surface water facilities, in order to decrease flood damage to public and private property, conserve historical drainage patterns, protect and preserve open water features, and encourage the development of land in a manner that preserves the water quality of the system, protects wildlife and aquatic habitats, fosters other beneficial uses of the system, and promotes the health, safety and welfare of the citizens of the service area;

B. Establish the authority of the utility regarding the acquisition, design, construction, maintenance, management and operation of the utility system. (Ord. 1273 § 2, 1994).

14.805.030 Territorial application. SHARE

This code and regulations adopted under this chapter shall be in effect throughout the utility service area. (Ord. 1273 § 2, 1994).

14.805.040 Construction – Intent. SHARE

This code is enacted as an exercise of the police power of the city to protect and preserve the public health, safety and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.

It is the purpose of this code and any regulations and procedures adopted hereunder to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code or any regulations or procedures adopted under this chapter.

It is the specific intent of this code and any regulations and procedures adopted under this chapter to place the obligation of complying with its requirements upon the property owner and no provision of this chapter is intended to impose any duty upon the city, the utility or any of their officers, employees or agents. Nothing contained in this code or any regulations and procedures adopted under this chapter is intended to be or shall

be construed to create or form a basis for liability on the part of the city, the utility, its officers, employees or agents, for any injury or damage resulting from the failure of the property owner to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this code or any regulation or procedure adopted under this chapter by the city, the utility, its officers, employees or agents. (Ord. 1273 § 2, 1994).

14.805.050 Definitions. SHARE

The following words and phrases, when used in this chapter, shall have the following meanings:

A. "Comprehensive drainage plan" means the city of Burlington comprehensive surface water management plan, as now or hereafter amended.

B. "Director" means the director of the storm and surface water utility, or the director's designated representative.

C. "Private system" means any element of the storm and surface water system which is not a part of the utility system as defined in this chapter.

D. "Procedure" means a procedure adopted by the utility, by and through the director, to implement a regulation or regulations adopted under this code, or to carry out other responsibilities as may be required by this code or other codes, ordinances or resolutions of the city or other agencies.

E. "Regulation" means any regulation, rule or requirement prepared by the utility and adopted by the city council pursuant to the requirements of this code.

F. "Storm and surface water system" means the entire system within the city, both public and private, naturally existing and artificial, for the drainage, conveyance, detention and storage of storm and surface waters.

G. "Storm and surface water utility system" or "utility system" means those elements of the storm and surface water system of the city:

1. Located on property owned by the utility, or

2. Located on property on which the utility has an easement or other right of use for utility purposes.

H. "Unsafe condition" means any condition on any premises which is a hazard to health, safety and welfare or does or may impair or impede the operation or functioning of any portion of the utility system, or which may cause damage thereto.

I. "Utility" means the storm and surface water utility of the city, as now or hereafter amended.

J. "Utility service area" means that area delineated on that certain "service area map" on file with the public works department, as the same may be hereafter amended.

K. "Natural waters" means all lakes, streams, sloughs, ponds, underground waters, and all other water courses including the storm water and surface water system within the utility service area.

L. "Pollution" means the contamination or other alteration of the physical, chemical or biological properties of any natural waters of the city, including change in temperature, taste, color, turbidity, or odor of the waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life. (Ord. 1273 § 2, 1994).

14.805.060 Powers of the utility.

SHARE

The utility, under the direction of its director, shall have the power to:

A. Prepare regulations as needed to implement this code, and forward the same to the city council for consideration and adoption, and adopt such procedures as are required to implement the regulations or to carry out other responsibilities of the utility;

B. Administer the acquisition, design, construction, maintenance and operation of the utility system, including capital improvements designated in the comprehensive drainage plan;

C. Administer and enforce this code and all regulations and procedures adopted hereunder relating to the design, construction, maintenance, operation and alteration of the storm water and surface water system including, but not limited to, the quantity, quality and/or velocity of the storm water and surface water conveyed thereby;

D. Inspect private systems as necessary to determine the compliance of such systems with this code and any regulations adopted under this code;

E. Advise the city council, city administrator and other city departments on matters relating to the utility;

F. Review the comprehensive surface water management plan on a regular basis and revise as needed;

G. Review plans, approve or deny, inspect and accept extensions to the system;

H. Establish and enforce regulations to protect and maintain water quality within the storm and surface water system in compliance with water quality standards established by state and/or federal agencies as now adopted or hereafter amended. The city may adopt more stringent water quality standards than those established by federal or state law by ordinance when not precluded by law from so doing;

I. Analyze the cost of services and benefits provided, and the system and structure of fees, charges, fines and other revenues of the utility on a regular basis to ensure an equitable, adequate and stable utility rate and fee structure and to achieve a stable financial position for the utility;

J. Carry out such other responsibilities as required by this code or other related city codes, ordinances and regulations. (Ord. 1273 § 2, 1994).

14.805.070 Comprehensive surface water management plan. SHARE

A comprehensive surface water management plan for the utility shall be adopted by the city council and shall be updated by the council at least every six years. (Ord. 1273 § 2, 1994).

14.805.081 Policy for natural water enunciated. SHARE

The city, in recognition of the state of Washington's interest in the quality of natural waters of the state, some of which lie within the jurisdictional boundaries of the city, proclaims a public policy of working cooperatively with the state government in a joint effort to extinguish the sources of water quality degradation, while at the same time preserving and vigorously exercising city powers to provide that high standard of water quality within the city shall be maintained.

No part of this section is intended to or shall be construed as abrogating the authority or powers of the state of Washington. (Ord. 1273 § 2, 1994).

14.805.085 Discharge of polluting matter in natural water prohibited. SHARE

It is unlawful for any person to throw, drain, run, or otherwise discharge into any of the natural waters of the city, or to cause, permit or suffer to be thrown, drained, run, allowed to seep or otherwise discharged into such

waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters, as provided for in this chapter.

Pollution includes but is not limited to items described in BMC 14.802.012. (Ord. 1681 § 18, 2009; Ord. 1273 § 2, 1994).

14.805.110 Connections, extensions, modifications and alterations to the storm and surface water system – Utility review and approval. SHARE

Applications for use, connection, extension, modification or alteration to the storm and surface water system shall be reviewed by the utility to determine compliance with this code and the regulations and procedures adopted under this chapter. No permit shall be issued or approval given until the utility has determined that such application complies with this code and the regulations and procedures adopted under this chapter. (Ord. 1273 § 2, 1994).

14.805.120 System extension agreements. SHARE

The utility, through its director, is authorized to enter into agreements with private property owners for the construction of facilities which, upon completion and acceptance in writing by the utility, shall become part of the utility system. (Ord. 1273 § 2, 1994).

14.805.130 Latecomer agreements. SHARE

The utility shall have full authority, through its director, to enter into any contract authorized under chapter 35.91 RCW, the Municipal Water and Sewer Facilities Act, including contracts which provide for the reimbursement of owners constructing facilities, commonly known as latecomer agreements. (Ord. 1273 § 2, 1994).

14.805.140 Alternative methods and materials. SHARE

The provisions of this code and regulations and procedures adopted under this chapter are not intended to prevent the use of any material or method of construction not specifically prescribed therein, provided such alternate must be approved by the director as substantially equal to the material or methods provided by the code, regulations or procedures. (Ord. 1273 § 2, 1994).

14.805.160 Consent to inspection. SHARE

As a condition of issuance of any permit or authorization which requires approval of the utility, each applicant shall be required to consent to reasonable periodic inspection by the utility or other appropriate city agency. If

the applicant refuses to consent to inspection, or prevents any such inspection from taking place, or causes or allows the prevention of any inspection, the director may forthwith order a stop work on the system, facility or project covered by the permit or authorization. (Ord. 1708 § 15, 2010; Ord. 1273 § 2, 1994).

14.805.170 Inspections – Right of entry. SHARE

The utility is authorized to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating any conditions relating to the provisions of this chapter or any regulation adopted under this chapter, provided that the utility shall first obtain from the owner or person responsible for such premises permission to enter. If entry is refused, the utility shall have recourse to every remedy provided by law to secure entry. (Ord. 1273 § 2, 1994).

14.805.180 Correction and discontinuance of unsafe, nonconforming or unauthorized conditions. SHARE

The director may order the correction of any condition on any premises which:

A. Is in violation of, or is being used contrary to, any provision of this code or regulation adopted under this chapter;

B. Is unsafe as defined in BMC 14.805.050.

The director may also order any activity causing such condition to be discontinued. (Ord. 1273 § 2, 1994).

14.805.185 Procedure to obtain correction or discontinuance of unsafe or nonconforming conditions. SHARE

Whenever the director determines to order the correction or discontinuance of any condition on any premises in accordance with BMC 14.805.180, the director shall notify the owner or other person responsible for such condition of the existence of such condition and shall direct the owner or other such responsible person to correct or discontinue the condition, as the case may be, within 10 days, or such other reasonable period as the director determines, following the giving of such notice. (Ord. 1273 § 2, 1994).

14.805.186 Emergency conditions requiring immediate action. SHARE

Notwithstanding any other provisions of this chapter, whenever it appears to the director that conditions covered by this chapter exist requiring immediate action to protect the public health or safety, the director or his/her designee is authorized to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating such emergency conditions. The director may without prior notice order

the immediate discontinuance of any activity leading to the emergency condition, including illicit discharges or connections. Failure to comply with such order shall constitute a civil violation as specified in this title. (Ord. 1681 § 19, 2009; Ord. 1273 § 2, 1994).

14.805.187 Discharge of pollutants into natural waters – Liability for expenses incurred by the utility. SHARE

Any person responsible for pollutant discharge into natural waters who fails to immediately collect, remove, contain, treat, or disperse such pollutant materials at the director's request is responsible for the necessary expenses incurred by the city in carrying out the pollutant abatement procedures, including the collection, removal, containment, treatment or disposal of such materials. (Ord. 1273 § 2, 1994).

14.805.190 Stop work orders. SHARE

Whenever any work is being done contrary to the provisions of this code or any regulation adopted under this chapter, the director may order the work stopped by notice in writing served on any person engaged in the doing or causing of such work to be done, and any such person shall forthwith stop such work until authorized by the director to proceed with the work. (Ord. 1273 § 2, 1994).

14.805.195 System of rates. SHARE

A. The following monthly service charges are hereby established for all developed parcels of real property within the city limits of the city of Burlington, as they now exist or as they may be hereafter amended, for the purpose of carrying on the responsibilities of the surface water management utility:

1. Undeveloped Parcels. Undeveloped parcels shall not be charged.

2. Single-Family Residential Parcels. The monthly service charge for each single-family residential parcel shall be $4.22 in calendar year 2008; $5.06 in calendar year 2009; and $6.07 in calendar year 2010. Beginning in 2011, the fee will be adjusted based upon 80 percent of the U.S. City Average Consumer Price Index. This monthly service fee shall hereafter be referred to as the "base rate."

3. Other Developed Parcels. The monthly service charge for all other developed parcels, including publicly owned properties but excluding public streets, shall be computed by multiplying the base rate times the number of equivalent service units applicable to the parcel minus any approved rate adjustment for the parcel as determined under BMC 14.805.197. This

formula is expressed mathematically as follows: Charge = Base Rate x ESUs – Rate Adjustment.

4. Minimum Charge. There shall be a minimum monthly service charge for all developed properties equal to the base rate.

B. Rate Revenue – Proceeds. All proceeds of the monthly service charge shall be placed in the surface water utility fund for the following uses: (1) the financing of capital projects included in an adopted surface water capital improvement program and identified as priority projects by the city council, (2) the funding of miscellaneous small capital projects, and (3) wages and administrative expenses for program management. (Ord. 1640 § 1, 2007; Ord. 1636 § 1, 2007; Ord. 1330 § 6, 1997; Ord. 1273 § 2, 1994).

14.805.196 Rate adjustments. SHARE

A. General. A credit against the service charge shall be available, upon application by the property owner, to all non-single-family residential properties having constructed city-approved on-site storm water mitigation facilities which exceed city standards. Under no circumstances shall the adjusted total charge be less than the base rate. Credit eligibility shall be contingent upon meeting all of the following conditions:

1. The constructed facility is a detention, retention, and/or biofiltration system;

2. The facility is constructed and maintained to the city's design specifications;

3. The facility is available for inspection by the city;

4. Excess capacity, if not used by the property owner, is accessible and available for other related public purposes; and

5. The credit is revocable under conditions where the facility no longer operates at the design level established during the drainage plan review/approval process.

B. Credit Calculation. The maximum amount to be credited shall be a function of (1) pre- and postdevelopment flows from the site or (2) a fixed percentage reduction. For water quantity mitigation, the formula is expressed mathematically as follows:

Q_R

$A = F \times [1 - (\text{——})]$

Q_D

Where:

A = the credit amount to be subtracted from the monthly fee;

F = the total monthly charge without credit;

Q_R = design storm peak runoff rate released from the developed site with improvements in place;

Q_D = design storm peak runoff rate from the site in its predevelopment condition.

For qualifying water quality, the formula is expressed mathematically as follows:

A = F x 30%

Where:

A = the credit amount to be subtracted from the monthly fee;

F = the total monthly charge without credit.

C. Application Submittal. The following information must be submitted to the city engineer in order to be eligible for a service charge credit:

1. The facility is constructed pursuant to an approved drainage plan;

2. The application includes a calculation of the credit amount based on site-specific data and credit calculation formula;

3. The application is filed under the signature of the person responsible for the accuracy of the credit application material. (Ord. 1330 § 7, 1997).

14.805.197 Rate adjustments for drainage district charges. SHARE

A. General. A credit against the service charge shall be available, upon application by the property owner, to certain properties served by a Skagit County drainage district. Under no circumstances shall the credit be greater than the total monthly charge without credit. Credit eligibility shall be contingent upon meeting all of the following conditions:

1. The property drains to a Skagit County drainage district system;

2. There are no city facilities in place which manage or divert the property's surface water runoff; and

3. The Skagit County drainage district charges the property owner a maintenance fee for district service, as stipulated in Administrative Rule #94-3.

B. Credit Calculation. The credit calculation is expressed mathematically as follows:

A = D

Where:

A = the credit amount to be subtracted from the monthly fee;

D = the Skagit County drainage district maintenance fee, expressed as a monthly amount, or the total monthly charge without credit, whichever is less.

C. Application Submittal. The following information must be submitted to the city engineer in order to be eligible for the service charge credit:

1. The current Skagit County drainage district billing/assessment statement for the affected property;

2. Calculation of the credit amount based on credit calculation formula;

3. Signature of the person responsible for the accuracy of the credit application material. (Ord. 1330 § 8, 1997).

14.805.200 System extension charges. SHARE

A. The surface water system extension charge for property owners seeking to develop or redevelop real property within the city limits of the city of Burlington shall be:

1. Single-Family Residential Parcels. The system extension charge for each single-family residential parcel shall be adopted by city council resolution. The fee will be adjusted annually. This monthly service fee shall hereafter be referred to as the "base charge."

2. Other Parcels. The system extension charge for all other parcels, including publicly owned properties but excluding public streets, shall be computed by multiplying the base charge times the number of equivalent service units applicable to the parcel upon development. This formula is expressed mathematically as follows: System Extension Charge = Base Charge x ESUs.

3. Redevelopment Parcels. The system extension charge for redevelopment parcels shall be computed by multiplying the base charge times the number of equivalent service units that have been redeveloped. This formula is expressed mathematically as follows: System Extension Charge = Base Charge x ESUs.

4. Minimum Charge. There shall be a minimum extension charge for all developing properties equal to the base charge.

5. Burlington North Central Drainage Basin. The system extension charge for all parcels within the Burlington North Central Drainage Basin, including publicly owned properties but excluding single-family residential parcels and excluding public streets, shall be computed by multiplying the base charge for the area times the number of equivalent service units applicable to the parcel development. This formula is expressed mathematically as follows: System Extension Charge = Base Charge x ESUs. A geographic description of the Burlington North Central Drainage Basin is included in the definitions section of this chapter.

B. System Extension Charge – Proceeds. All proceeds of the surface water system extension charge shall be placed in the surface water capital improvement fund for the following uses: construction of surface water expansion made necessary by system growth, debt service for indebtedness resulting from construction of surface water expansion made necessary by system growth, and the repair, replacement, and maintenance of existing surface water facilities. (Ord. 1799 § 22, 2014; Ord. 1709 § 1, 2010; Ord. 1708 § 16, 2010; Ord. 1640 § 2, 2007; Ord. 1330 § 9, 1997; Ord. 1273 § 2, 1994).

14.805.205 System extension charges adjustments.

SHARE

A. General. A credit against the service charge shall be available, upon application by the property owner, to certain properties served by a Skagit County drainage district. Under no circumstances shall the credit be greater than the total system extension charge without credit. Credit eligibility shall be contingent upon meeting all of the following conditions:

1. The property drains to a Skagit County drainage district system;

2. There are no city facilities either in place or in an adopted capital improvement plan which manage or divert the property's surface water runoff; and

3. The Skagit County drainage district charges the property owner a capital improvement fee upon development.

B. Credit Calculation. The credit calculation is expressed mathematically as follows:

A = D

Where:

A = the credit amount to be subtracted from the system extension fee;

D = the Skagit County drainage district improvement fee or the total system extension charge without credit, whichever is less.

C. Application Submittal. The following information must be submitted to the city engineer in order to be eligible for the system extension charge credit:

1. The Skagit County drainage district improvement fee receipt for the affected property;

2. Calculation of the credit amount based on credit calculation formula;

3. Signature of the person responsible for the accuracy of the credit application material. (Ord. 1330 § 10, 1997).

14.805.210 Permits, fees and service charges. SHARE

The city council may establish by city council resolution fees and charges to be charged as a condition of issuance of any permit or authorization requiring approval of the utility or in responding to a request for services to be provided by the utility. Periodic adjustments to specific fees and charges established pursuant to this section may be adopted by city council resolution. (Ord. 1799 § 23, 2014; Ord. 1273 § 2, 1994).

14.805.220 Billing and collection. SHARE

The utility, jointly with the finance department, may establish procedures pertaining to the billing and collection of service charges and other fees imposed by the utility. (Ord. 1273 § 2, 1994).

14.805.230 Maintenance and operation of private utility system. SHARE

The responsibility of the utility shall be limited to maintenance and operation of the utility system, and the utility assumes no responsibility for maintenance and operation of private systems. All private systems shall be maintained by the owner or operator thereof in a safe and proper operating condition, and in compliance with all applicable requirements of this code and regulations and procedures adopted under this chapter. (Ord. 1273 § 2, 1994).

14.805.260 Interlocal agreements. SHARE

The utility, with the approval of the city council, is authorized to enter into agreements with other local, state or federal jurisdictions in order to carry out the purposes of this code or regulations adopted under this chapter. (Ord. 1273 § 2, 1994).

14.805.270 Adoption of regulations and procedures. SHARE

The utility shall prepare and forward to the council, with its recommendation, such proposed regulations as it determines to be necessary to implement and enforce the provisions of this code. The council shall adopt, by ordinance, such regulations, and with such modifications, if any, as it determines appropriate.

The utility may adopt procedures for the purpose of implementing regulations under this code. Such procedures shall not require approval by the council.

All regulations and procedures adopted pursuant to this section shall conform with the requirements or rules and regulations of local, state and federal agencies having jurisdiction within the utility service area over the operation and development of the utility system. (Ord. 1273 § 2, 1994).

14.805.280 Liability. SHARE

The director and any other employee charged with enforcement of this code, acting for the utility in good faith and without malice in the discharge of his/her duties shall not thereby render himself/herself liable personally for any damages which may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of such duties. (Ord. 1273 § 2, 1994).

14.805.290 Violations. SHARE

Any violation of any provision of this chapter is a civil violation as provided in this title for which monetary penalties may be imposed. (Ord. 1273 § 2, 1994).

14.806.010 Exceptions to requirements. SHARE

A. General. The purpose of this chapter is to administer and enforce all requirements set forth in this title. Requests for exceptions to the requirements of this title shall be made according to this section and Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit, Section 6. Exceptions shall include alternative requirements, waivers, reductions, or modifications of the requirements. An exception shall only be granted to the extent necessary to meet the criteria set forth in this section. An applicant is not entitled to an exception, whether or not the criteria allowing approval of an exception are met. The director may require an applicant to submit an engineer's report or analysis with a request for an exception. When an exception is granted, the director may impose new or additional requirements to offset or mitigate harm that may be caused by granting the exception, or that would have been prevented if the exception had not been granted.

B. Public Notice. Public notice of an application for an exception under the criteria set forth in this section shall comply with Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit, Section 6. (Ord. 1708 § 17, 2010; Ord. 1681 § 20, 2009; Ord. 1273 § 2, 1994).

14.806.020 Liability and defenses of responsible parties. SHARE

A. Who Must Comply. It is the specific intent of this title to place the obligation of complying with its requirements upon the responsible parties as defined in BMC 14.801.190. The city of Burlington and its agencies are intended to have the same obligation for compliance when the city is a responsible party. No provision of this title is intended to impose any other duty upon the city or any of its officers or employees.

B. Joint and Several Liability. Each responsible party is jointly and severally liable for a violation of this title. The director may take enforcement action, in whole or in part, against any responsible party. All applicable civil penalties may be imposed against each responsible party. In the event enforcement action is taken against more than one responsible party, recoverable damages, cost, and expenses may be allocated among the responsible parties by the court based upon the extent to which each responsible party's acts or omissions caused the violation, unless this factor cannot be determined, or the party receiving the allocation under this factor is unable to correct the violation, or is unable to pay the damages, costs, expenses, and any penalty imposed, in which case the trier of fact shall consider:

1. Awareness of the violation;

2. Ability to correct the violation;

3. Ability to pay the damages, costs, and expenses;

4. Cooperation with government agencies;

5. Degree to which any impact or threatened impact on water or sediment quality, human health, or the environment is related to acts or omissions by each responsible party;

6. Degree to which the responsible parties made good faith efforts to avoid a violation or to mitigate its consequences; and

7. Other equitable factors.

C. Defenses. A responsible party shall not be liable under this title when the responsible party carries the burden of proving, by a preponderance of the evidence, one of the following defenses:

1. The violation was caused solely by an act of God;

2. The violation was caused solely by another responsible party over whom the defending responsible party had no authority or control and the defending responsible party could not have reasonably prevented the violation;

3. The violation was caused solely by a prior owner or occupant when the defending responsible party took possession of the property without knowledge of the violation, after using reasonable efforts to identify violations. However, the defending responsible party shall be liable for all continuing, recurrent, or new violations after becoming the owner or occupant;

4. The responsible party implemented and maintained all appropriate best management practices identified in rules promulgated by the director, or in manuals published by the State Department of Ecology until superseded by rules of the director. (Ord. 1681 § 21, 2009; Ord. 1273 § 2, 1994).

14.806.030 Enforcement actions. SHARE

A. Investigation. The director may investigate any site where there is reason to believe that there may be a failure to comply with the requirements of this title.

B. Notice of Violation.

1. Issuance. Whenever the director determines that a violation of this title has occurred or is occurring, the director is authorized to issue a notice of violation to the property owner or other responsible party. The notice of violation shall be considered an order of the director.

2. Contents. The notice of violation shall include the following information:

a. A description of the violation and the action necessary to correct it;

b. The date of the notice; and

c. A deadline by which the action necessary to correct the violation must be completed.

A notice of violation may be amended at any time to correct clerical errors and to add citations of authority.

3. Service. The director shall serve the notice upon the responsible party either by personal service or by certified mail, return receipt requested, sent to the party's last known address and, where possible, by posting a copy on the site. Service by certified mail shall be effective on the date of mailing. If the whereabouts of the responsible party are unknown and cannot be ascertained in the exercise of reasonable diligence, and the director makes an affidavit to that effect, then service may be accomplished by publishing the notice once each week for two consecutive weeks in the city official newspaper.

C. Alternatives to Notice of Violation.

1. Stop Work Order. In lieu of issuing a notice of violation, the director may order work on a site stopped when the director determines it is necessary to do so in order to obtain compliance with or to correct a violation of any provision of this title or rules promulgated hereunder or to correct a violation of a permit or approval granted under this title. The stop work notice shall contain the following information:

a. A description of the violation; and

b. An order that the work be stopped until corrective action has been completed and approved by the director.

The stop work order shall be posted conspicuously on the premises or personally served on the property owner or other person known to be responsible for the work. It is unlawful for any work to be done after posting or service of a stop work order, except work necessary to conduct the required corrective action, until authorization to proceed is given by the director. It is unlawful for any person to remove, obscure or mutilate a posted stop work order.

2. Emergencies. The director is authorized to enter any property when it reasonably appears that a condition associated with grading, drainage, erosion control or a drainage control facility creates a substantial and present or imminent danger to the public health, safety or welfare, the environment, or public or private property. The director may enter property without permission or an administrative warrant in the case of an extreme emergency placing human life, property or the environment in immediate and substantial jeopardy which requires corrective action before either permission or an administrative warrant can be obtained.

The director may order the responsible party to take corrective action and set a schedule for compliance. The director may require immediate compliance with an order to correct. Any emergency which is not corrected as ordered by the director is a public nuisance which the director is authorized to abate summarily. The costs of abatement shall be collected as set forth in BMC 14.806.080.

D. Filing Notice or Order. A notice of violation, voluntary compliance agreement or an order issued by a director, or municipal judge, may be filed with the Skagit County auditor.

E. Change of Ownership. When a notice of violation, voluntary compliance agreement or an order issued by a director or municipal judge has been filed with the Skagit County auditor, a notice of violation or an order regarding the same violations need not be served upon a new owner of the property where the violation occurred. If no notice of violation or order is served upon the new owner, the director may grant the new owner the same number of days to comply as was given the previous owner. The compliance period for the new owner shall begin on the date that the conveyance of title to the new owner is completed.

F. Appeal of Notice of Violation. Any person receiving a notice of violation may appeal the determination of the public works director to the city council. The notice of appeal must be received within 14 days from the date of the notice of violation. Hearing on the appeal before the city council shall take place within 60 days from the date of receipt of the notice of appeal. The decision of the city council may be appealed to superior court. (Ord. 1681 § 22, 2009; Ord. 1273 § 2, 1994).

14.806.040 Enforcement of notice of violation. SHARE

A. Municipal Court. The director may choose to enforce a notice of violation through:

1. Referral to the city attorney's office for action in the appropriate court according to that court's normal rules and procedures. (Ord. 1273 § 2, 1994).

14.806.050 Voluntary compliance agreement. SHARE

A. Initiation. Either a responsible party or the director may initiate negotiations for a voluntary compliance agreement at any time. The director has no obligation to enter into any voluntary compliance agreement.

B. Contents. A voluntary compliance agreement shall set forth actions to be taken by the responsible party that will correct past or existing violations of this title. It may also set forth actions to mitigate the impacts of violations. The voluntary compliance agreement shall set forth a schedule for completion of the corrective and mitigating actions. It shall contain a provision allowing the director to inspect the premises to determine compliance with the agreement.

C. Effect of Agreement. A voluntary compliance agreement is a binding contract between the party executing it and the city. It is not enforceable by any other party. All voluntary compliance agreements shall provide that the responsible party agrees the city may perform the actions set forth in the agreement if the responsible party fails to do so according to the terms and schedule of the agreement, and the responsible party will pay the costs, expenses and damages the city incurs in performing the actions, as set forth in BMC 14.806.080 regarding abatements. By entering into a voluntary compliance agreement, a responsible party waives the right to an administrative appeal of the violation.

Penalties may be reduced or waived if violations are corrected or mitigated according to the terms and schedule of a voluntary compliance agreement. If the responsible party fails to perform according to the terms and schedule of the voluntary compliance agreement, penalties for each violation addressed in the agreement may be assessed starting from the date the violation occurred.

D. Modification. The terms and schedule of the voluntary compliance agreement may be modified by mutual agreement of the responsible party and the director if circumstances or conditions outside the responsible party's control, or unknown at the time the agreement was made, or other just cause necessitate such modifications. (Ord. 1273 § 2, 1994).

14.806.060 Penalties and damages. SHARE

A. Commencement of Penalties. The judge hearing matters under this title shall have the following options in assessing monetary penalties:

1. Assess monetary penalties beginning on the date the notice of violation was issued and thereafter; or

2. Assess monetary penalties beginning on the correct deadline set by the director or an alternative deadline for corrective action set by the judge or hearing examiner, and thereafter; or

3. Assess no monetary penalties; or

4. When it appears likely the responsible party will perform the required corrective action, suspend assessment of the penalty conditioned upon completion of the corrective action by the ordered deadline.

B. Schedule of Penalties.

1. Basic Penalty. Each day or portion thereof during which a violation of this title exists is a separate violation of this title. The cumulative monetary penalty for each violation of this title shall be as follows:

a. The penalty for the first day a violation exists is $100.00;

b. The penalty for the second day a violation exists is $200.00;

c. The penalty for the third day a violation exists is $300.00;

d. The penalty for the fourth day a violation exists is $400.00;

e. The penalty for each day a violation exists beyond four days is $500.00.

Schedule of Penalties per Violation

Day	Fine for that day	Cumulative Total
1	$100	$100

2	$200	$300
3	$300	$600
4	$400	$1,000
5	$500	$1,500
6 & up	$500	

2. Triple Penalties. Penalties may be trebled for:

a. A repeat violation, which means an additional violation of a requirement of this title for which the responsible party has previously received a notice of violation and failed to correct the violation by the compliance date;

b. A violation resulting in physical harm to persons or to private or public property;

c. A knowing or deliberate violation;

d. A violation resulting from gross negligence or reckless conduct.

3. Reduction of Penalties. Penalties may be reduced based upon one or more of the following mitigating factors:

a. The person showed due diligence and/or substantial progress in correcting the violation;

b. Another responsible party was the primary cause of the violation;

c. The person was unaware of the violation and had not acted negligently or recklessly.

4. Penalty for Significant Violation. Responsible parties for violations causing significant harm to public health, safety or welfare, the environment, or public or private property shall be assessed the penalties set forth in the schedule above, or an amount equivalent to the economic benefit the responsible party derived from the violation, whichever is greater.

Significant harm is harm which cannot be fully corrected or mitigated by the responsible party, and which cannot be adequately compensated for by assessment of penalties, costs, expenses or damages under this title. Economic benefit may be determined by an increase in market value of property, value received by the

responsible party, savings in costs realized by the responsible party, increased income to the responsible party, or any other method reasonable under the circumstances.

C. Damages. Whoever violates any of the provisions of this title shall, in addition to any penalties provided for such violation, be liable for any cost, expense, loss or damage occasioned thereby to the city, plus a charge of 15 percent for administrative costs. This title does not establish a case of action that may be asserted by any party other than the city. Penalties, damages, costs and expenses may be recovered only by the city.

D. Effect of Payment of Penalties. The person to whom an order is directed is not relieved of the duty to take corrective action to correct the violation by payment of a monetary penalty pursuant to this title. (Ord. 1273 § 2, 1994).

14.806.070 Collection of costs and penalties. SHARE

A. Invoice and Demand for Payment. When the director has abated a public nuisance or corrected a violation of this title and a hearing has not been conducted, the director shall issue an invoice and demand for payment of the city's abatement costs. The invoice shall include:

1. The amount of the city's abatement or correction costs;

2. Either a legal description of the property corresponding as nearly as possible to that used for the property on the rolls of the Skagit County assessor or, where available, the property's street address;

3. A notice that the director's determination regarding the abatement and correction, including the amount owed, may be appealed to the city council;

4. Notice that if the amount due is not paid within 30 days, the outstanding balance may be collected in any of the manners set forth in subsection B below; and

5. Notice that interest shall accrue on the unpaid balance.

B. Collection Following a Hearing. The director is not required to issue an invoice for payment when a hearing has not been conducted as set forth in BMC 14.806.040, and an order has issued imposing any penalties, costs, damages, expenses or abatement costs. If the order is not appealed within 15 days of mailing or other delivery of the order to the responsible party, the director may immediately seek to collect the amount owed by:

1. Referral to the city attorney's office for action in the appropriate court; or

2. Referral, after consultation with the city attorney's office to a collection agency; or

3. Addition of a surcharge in the amount owed under the order to the drainage and wastewater utility bill for the site. If unpaid, the surcharge may become a lien on the property, may be foreclosed, and may accrue interest as provided by state law. (Ord. 1273 § 2, 1994).

14.806.080 Public nuisance. SHARE

A. Abatement Required. A public nuisance affecting storm water, drainage, erosion control, grading and other public nuisances set forth in this section is a violation of this title. A responsible party shall immediately abate a public nuisance upon becoming aware of its existence.

B. Dysfunctional Facility or Practice. Any private drainage control facility or best management practice relating to grading, storm water, drainage control or erosion not installed or maintained as required by this title, or otherwise found to be in a state of dysfunction creating, presently or in the event of a design storm, a threat to the public health, safety or welfare, the environment, or public or private property is hereby declared to be a public nuisance.

C. Obstruction of Watercourse. Obstruction of a watercourse without authorization by the director, and obstruction in such a manner as to increase the risk of flooding or erosion should a design storm occur, is hereby declared to be a public nuisance.

D. Dangerous Conditions. Any condition relating to grading, storm water, drainage or erosion which creates a present or imminent danger, or which is likely to create a danger in the event of a design storm, to the public health, safety or welfare, the environment, or public or private property is hereby declared to be a public nuisance.

E. Abatement by the City. The director is authorized, but not required, to investigate a condition that the director suspects of being a public nuisance under this title, and to abate any public nuisance. If a public nuisance is an immediate threat to the public health, safety or welfare or to the environment, the director may summarily and without prior notice abate the condition. The director shall give notice of abatement to the responsible party as soon as reasonably possible after the abatement.

The costs of abatement may be collected from the responsible party, including a reasonable charge for attorney time and a 15 percent charge for administrative expenses as set forth in BMC 14.806.060(C). Abatement costs and other damages, expenses and penalties collected by the city shall go into an abatement account for the department collecting moneys. The money in the abatement account shall be used for

abatements and corrections of violations conducted by the city. When the account is insufficient the director may use other available funds. (Ord. 1273 § 2, 1994).

14.806.090 Violation. SHARE

A. Civil Violation.

1. General. It is a violation of this title to not comply with any requirement of, or to act in a manner prohibited by, this title, or a permit, approval, rule, manual or order issued pursuant to this title.

2. Aiding and Abetting. It is a violation of this title to aid, abet, counsel, encourage, commend, incite, induce, hire or otherwise procure another person to violate this title.

3. Alteration of Existing Drainage. It is a violation of this title to alter existing drainage patterns which serve a tributary area of more than five acres without authorization or approval by the director.

4. Obstruction of Watercourse. It is a violation of this title to obstruct a watercourse without authorization or approval by the director.

5. Dangerous Condition. It is a violation of this title to allow to exist, or cause or contribute to, a condition of a drainage control facility, or condition related to grading, storm water, drainage or erosion that is likely to endanger the public health, safety or welfare, the environment, or public or private property.

6. Interference. It is a violation of this title for any person to interfere with or impede the correction of any violation, or compliance with any notice of violation, emergency order, stop work order, or the abatement of any nuisance.

B. Criminal Violation.

1. Failing to Comply with Orders. Failing to comply with an order properly issued pursuant to this title by the director, or a judge is a criminal violation, punishable upon conviction by a fine of not more than $5,000 per day of each violation or imprisonment for each violation for not more than 360 days or both such fine and imprisonment.

2. Tampering and Vandalism. Tampering with or vandalizing a drainage control facility or other best management practice, a public or private drainage control system, monitoring or sampling equipment or records, or notices posted pursuant to this title is a criminal violation, punishable upon conviction by a fine of not more than $5,000 or imprisonment for not more than 360 days or both such fine and imprisonment.

3. Repeat Violations. Anyone violating this title who has had a judgment or hearing examiner's order against them pursuant to this title in the preceding five years, shall be subject to criminal penalties for the present violation, and, upon conviction thereof, be fined in a sum not to exceed $5,000, or imprisonment for not more than 360 days, or both such fine and imprisonment. (Ord. 1273 § 2, 1994).

14.806.100 Additional relief. SHARE

In lieu of or in addition to any enforcement procedure provided in this title, the director may seek any other available legal or equitable relief, including to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this title or a public nuisance. When the public works director finds that any person has violated, or continues to violate, any provision of this title, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the public works director may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

A. Immediately comply with all applicable requirements; and

B. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge. (Ord. 1681 § 23, 2009; Ord. 1273 § 2, 1994).

14.806.110 Suspension or revocation. SHARE

Approvals or permits granted in error, or on the basis of incomplete, inaccurate or misleading information, or in violation of any law, ordinance or regulation may be suspended or revoked. Other permits or approvals interrelated with an approval suspended or revoked under this subsection, including certificates of occupancy or approvals for occupancy, may also be suspended or revoked. When an approval or permit is suspended or

revoked, the director may require the applicant to take corrective action to bring the project into compliance with this title by a deadline set by the director, or may take other enforcement action. (Ord. 1273 § 2, 1994).

14.806.120 Fees. SHARE

Fees for drainage control plan review, recordkeeping or other activities pursuant to this title shall, unless otherwise provided for in this title, be prescribed by resolution. (Ord. 1273 § 2, 1994).

14.806.130 Financial assurance and covenants. SHARE

As a condition precedent to issuance of any permit or approval provided for in this title, the director may require an applicant for a permit or approval to submit financial assurances as provided in this section.

A. Insurance.

1. The director may require the owner(s), or contractor to carry liability and property damage insurance against damage, naming the city as an additional insured. The amount shall be commensurate with the risks as determined by the director.

2. The director may also require the owner(s) to maintain a policy of general public liability insurance against personal injury, death, property damage and/or loss from activities conducted pursuant to the permit or approval, or conditions caused by such activities, and naming the city as an additional insured. The policy shall be in an amount which the director determines to be commensurate with the risks. It shall cover a period of not more than 10 years from the date of issuance of a certificate of occupancy or finalization of the permit or approval. A certificate evidencing such insurance shall be filed with the director before issuance of a certificate of occupancy or finalization of a permit for any single-family dwelling or duplex.

3. The insurance policy shall provide that the city will be notified of cancellation of the policy at least 30 days prior to cancellation. The notice shall be sent to the director who required the insurance and shall state the insured's name and the property address. If a property owner's insurance is canceled and not replaced, the permit or approval and any interrelated permit or approval may be revoked, including a certificate of occupancy or approval for occupancy.

B. Bonds, Cash Deposits or Instruments of Credit.

1. Surety Bond. The director may require that the owner or contractor deliver to the director for filing in the office of the city clerk a surety bond, cash deposit or an instrument of credit in such

form and amounts deemed by the director to be necessary to ensure that requirements of the permit or approval are met. A surety bond may be furnished only by a surety company licensed to do business in the state of Washington. The bond shall be conditioned that the work will be completed in accordance with the conditions of the permit or approval, or, if the work is not completed, that the site will be restored if damaged or made unsafe by activities conducted pursuant to the permit or approval.

The bond will be exonerated one year after a determination by the director that the requirements of the permit or approval have been met.

For work under a building permit, issuance of a certificate of occupancy or approval for occupancy following a final inspection shall be considered to be such a determination. For grading, completion of the final grading inspection and submittal of required final reports in accordance with BMC 14.804.200 shall be such a determination.

2. Assurance in Lieu of Surety Bond. In lieu of a surety bond, the owner may elect to file a cash deposit or instrument of credit with the director in an amount equal to that which would be required in the surety bond and in a form approved by the director. The cash deposit or instrument of credit shall comply with the same conditions as required for surety bonds.

C. Covenants.

1. The director may require a covenant between the owner(s) of the property and the city. The covenant shall be signed by the owner(s) of the site and notarized prior to issuance of any permit or approval in a potential landslide area, potentially hazardous location, flood prone zone, or other area of potentially hazardous soils or drainage or erosion conditions. The covenant shall not be required where the permit or approval is for work done by the city. The covenant shall include:

a. A legal description of the property; and

b. A description of the property condition making this subsection applicable; and

c. A statement that the owner(s) of the property understands and accepts the responsibility for the risks associated with development on the property given the

described condition, and agrees to inform future purchasers and other successors and assignees of the risks; and

d. The application date, type, and number of the permit or approval for which the covenant is required; and

e. A statement waiving the right of the owner(s), the owner's heirs, successors and assigns to assert any claim against the city by reason or of arising out of issuance of this permit or approval by the city for the development on the property, except only for such losses that may directly result from the negligence of the city.

2. The covenant shall be filed by the director with the Skagit County auditor's office, at the expense of the owner, so as to become part of the Skagit County real property records. (Ord. 1273 § 2, 1994).

14.806.140 Severability. SHARE

The provisions of this title are declared to be separate and severable and the invalidity of any clause, sentence, paragraph, subdivision, section or portion of this title, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this title or the validity of its application to other persons or circumstances. (Ord. 1273 § 2, 1994).

14.806.150 Date of initial enforcement. SHARE

The public works director shall not enforce provisions of this code which require existing discharges and land uses to adopt operational and nonstructural best management practices until six months after adoption of rules identifying the best management practices to be required. The director shall not enforce the provisions of this code which require existing discharges and land uses to install structural best management practices until one year after adoption of rules identifying the best management practices to be required. (Ord. 1273 § 2, 1994).

Title 16

SUBDIVISIONS

Chapters:

16.04 General Provisions
16.08 Subdivisions
16.12 Short Plats
16.16 Lot Boundary Adjustments
16.20 Binding Site Plan Approval

The Burlington Municipal Code is current through Ordinance 1817, passed June 25, 2015.

EXHIBIT B

Chapter 16.04

GENERAL PROVISIONS

Sections:

16.04.010 Purpose.
16.04.020 Exemptions from platting regulations.
16.04.030 Definitions.
16.04.040 Compliance with state law and land use code.
16.04.050 Effect of noncompliance.

16.04.010 Purpose.
The purpose of this title is to implement the authority granted to the city by chapter 58.17 RCW and to conform to its provisions which govern the platting and subdivision of land, consistent with the city of Burlington comprehensive plan adopted pursuant to chapter 36.70A RCW, the Growth Management Act. (Ord. 1378 § 1, 1998; Ord. 1220 § 2, 1992).

16.04.020 Exemptions from platting regulations.
A. The provisions of this title shall not apply to:

1. Cemeteries and other burial plots while used for that purpose;

2. Divisions of land outside the boundaries of an approved preliminary plat, into lots or tracts each of which is 1/128 of a section of land or larger or five acres or larger if the land is not capable of description as a fraction of a section of land, provided:

a. The division meets the density or lot size zoning requirements for the area involved; provided, that for the purpose of computing the size of any lot which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

b. A survey of the division conducted by a licensed land surveyor is filed with the city. The survey shall be recorded and shall include the following note:

Future development, including but not limited to, clearing and grading, new structures and installation of infrastructure are subject to City of Burlington Development Regulations.

c. Each lot or tract adjoins or has legal access to a public road right-of-way or private road easement;

d. The property owner shall submit a critical area affidavit disclosing the presence or absence of critical areas to ensure that each lot or tract other than a nonbuilding tract contains at least two contiguous acres (referred to as a buildable area) located outside of any regulated critical area and associated setback or buffer and that access to the buildable area is located outside of said setbacks or buffers;

3. A proposed division of land made by testamentary provisions or the laws of descent shall be submitted to the city for review and approval. No building permit shall be issued on a lot created through this process unless the lot meets the requirements of subsection (lot size). Testamentary divisions shall also be subject to the following:

a. Applications for testamentary divisions shall contain a legal description of all proposed lots;

b. Each lot must adjoin or have legal access to a public road right-of-way or private road easement;

c. A note shall be recorded on the title of each lot that puts future purchasers on notice of whether or not the lot was created pursuant to applicable lot size requirements for construction of a single-family dwelling;

4. Divisions of land into lots or tracts classified for industrial or commercial use when the city has approved a binding site plan for the use of the land in accordance with city regulations;

5. A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are to be placed upon the land when a binding site plan has been approved for the use of the land;

6. A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;

7. Divisions of land into lots or tracts if (a) the improvements constructed or to be constructed thereon will be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (b) the city has approved a binding site plan for such land; and (c) the binding site plan contains thereon the following statement:

All development of the land described herein shall be in accordance with the binding site plan, as it may be amended. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest.

8. Divisions of land for use solely for the installation of electric power, natural gas, telephone, water supply, sewer service or city utility facilities of a similar or related nature; provided, however, that any remaining lot must conform with (minimum lot size sections);

9. Division of land by roads or rights-of-way accepted by the city. The city will recognize that a parcel has been divided into separate, legal lots by a state or federal road or highway that divides a parcel of real property after the effective date of the ordinance codified in this section;

10. Divisions of land for the sole purpose of enabling the city or a municipal corporation to acquire land, either by outright purchase or exchange, for port purposes, boat moorage or launching sites, or for park, open space, critical area, conservation, viewpoint, recreational, educational or other public purposes; provided, however, that any remaining lot that is nonconforming with regard to density or size shall be at least of adequate size to accommodate required zoning setbacks.

B. Exemptions provided by this section shall not be construed as exemptions from compliance with other applicable development standards required by the Burlington Municipal Code.

C. Exclusions. The following actions shall not be considered a land division action and are excluded from the provisions of this title:

1. Assessor's office segregations and combinations for tax purposes only;

2. Utility easements;

3. Boundary line adjustments made pursuant to Chapter 16.16 BMC. (Ord. 1628 § 1, 2007; Ord. 1220 § 2, 1992).

16.04.030 Definitions.
As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

A. "Subdivision" is the division or redivision of land into ten or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (F) of this section.

B. "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

C. "Dedication" is the deliberate appropriation of land by an owner for any general and public uses reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon; and the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit.

D. "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

E. "Final plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

F. "Short subdivision" is the division or redivision of land into nine or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership.

G. "Binding site plan" means a drawing to a scale specified by local ordinance which: (a) identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the city in approving the site plan; and (c) contains provisions making any development be in conformity with the site plan.

H. "Short plat" is the map or representation of a short subdivision.

I. "Lot" is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels.

J. "Block" is a group of lots, tracts, or parcels within well defined and fixed boundaries.

K. "Code" is the Burlington Municipal Code.

L. "City engineer" is the Burlington director of public works.

M. "Director" is the Burlington planning director. (Ord. 1503 § 1, 2002; Ord. 1220 § 2, 1992).

16.04.040 Compliance with state law and land use code.
Every division of land shall comply with the provisions of state law and the provisions of this title. They shall conform to the comprehensive plan and all zoning regulations, in effect at the time any preliminary plat is approved. Lots shall be of a size and dimension and have access adequate to satisfy the requirements of this title. Fees for subdivisions shall be adopted by city council resolution. (Ord. 1799 § 24, 2014; Ord. 1220 § 2, 1992).

16.04.050 Effect of noncompliance.
No building permit or other development permit shall be issued for any lot, tract or parcel of land divided in violation of state law or this subtitle, unless the director finds that the public interest will not be adversely affected by the decision. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. (Ord. 1220 § 2, 1992).

Chapter 16.08

SUBDIVISIONS

Sections:

Subchapter I Preliminary Plat Process

16.08.016 Application.
16.08.020 Content of plat.
16.08.022 Distribution of preliminary plats.
16.08.024 Planning commission review.
16.08.026 Council review.
16.08.028 Effect of preliminary plat approval.

Subchapter II Preliminary Plat Consideration

16.08.050 Topographical and surface hazards – Protective improvements.
16.08.052 Dedications required.
16.08.054 Public use and interest.

Subchapter III Review of Final Plat

16.08.064 Filing with city engineer.
16.08.066 Technical standards for final plat.
16.08.068 Certificates required.
16.08.070 Director's action on final plat.
16.08.072 Submission to council.
16.08.074 Council determination.
16.08.078 Resubmission.

Subchapter IV Reserved Land

16.08.082 Land reserved for public use.
16.08.084 Reserved land to show on plat.
16.08.086 No development on reserved land.
16.08.088 Development if not acquired.

Subchapter V Survey Requirements

16.08.092 Registered land surveyor.
16.08.094 Computations – Notes.
16.08.096 Permanent control monuments.
16.08.098 Property contiguous to water.

Subchapter VI Design and Construction Standards

16.08.100 Design standards.
16.08.102 Improvements.
16.08.106 Exceptions.

Subchapter I Preliminary Plat Process

16.08.016 Application.

A. Official filing of an application for subdivision with the director shall be preceded by a preliminary review of the proposed subdivision by the director and the city engineer.

B. Following the review, the subdivider shall submit an application to the planning director. A subdivider shall submit with the application 15 copies of a preliminary plat showing preliminary plans for streets and other improvements including but not limited to water lines, sewer lines, and drainage. Unless the subdivider requests otherwise, at the time of application the application will be processed simultaneously with applications for rezones of or planned unit development upon the property to be subdivided.

C. Applications shall be processed according to the procedures set forth in chapter 17.68 BMC, Land Use Permit Process, and the additional procedures established in this subchapter.

D. A preliminary plat shall be approved, disapproved or returned to the applicant for modification or correction within 90 days from date of filing unless the applicant consents to an extension of the time period. If an environmental impact statement is required as provided in RCW 43.21C.030, the 90-day period shall not include the time required for environmental review. (Ord. 1220 § 2, 1992).

16.08.020 Content of plat.
A. Every preliminary plat shall consist of one or more maps together with written data including the following:

1. The name of the proposed subdivision;

2. North point and scale; the location of existing property lines: streets, building, if any; watercourses and all general features;

3. The legal description of the land contained within the subdivision;

4. The names and addresses of all persons, firms and corporations holding interest in the lands, including easement rights and interest;

5. The proposed names, locations, widths and other dimensions of proposed streets, alleys, easements, parks, lots, building lines, if any, and all other information necessary to interpret the plat, including the location of existing utility and access easements which are to remain;

6. The location of streets in adjoining plats and the approximate location of adjoining utilities and proposed extensions into the plat;

7. The names of adjoining plats;

8. The name, address and telephone number and seal of the registered land surveyor who made the survey or under whose supervision it was made;

9. The date of the survey;

10. All existing monuments and markers located by the survey;

11. The zoning classification applicable to the land within the subdivision;

12. The conditions of or the limitations on dedications, if any, including slope rights;

13. Contour intervals as required, based upon city datum.

B. Any plat submitted that covers only a part of the subdivider's tract shall be accompanied by a sketch showing the proposed future street system in the remainder of the tract so that the street layout of the tract may be considered as a whole.

C. The plat shall comply with the technical requirements of Subchapters V and VI. (Ord. 1220 § 2, 1992).

16.08.022 Distribution of preliminary plats.
If the director determines that the subdivider has met all the application requirements for the preliminary plat and that the preliminary plat contains sufficient elements and data to furnish a basis for its approval or disapproval, the

director shall affix a file number and date of receipt to the application and promptly forward three copies of the plat to the city engineer. The director shall also forward a copy of the preliminary plat to each of the following:

A. Skagit County Health;

B. Puget Power;

C. Building Official;

D. Water District #1;

E. Chief, Fire Department;

F. Chief of Police;

who shall review the preliminary plat and, within 30 days, furnish the director with a report as to the effect of the proposed subdivision upon the public health, safety and general welfare, and containing their recommendations for approval or disapproval of the preliminary plat. The reports of the city engineer and PUD District #1 shall also include a recommendation as to the extent and type of improvements to be provided in dedicated areas and a preliminary estimate of the cost of these improvements. (Ord. 1220 § 2, 1992).

16.08.024 Planning commission review.
The planning commission shall: Conduct the public hearing; review the preliminary plat for conformance with the minimum standards of this chapter; recommend approval on condition, disapproval or cause the public hearing to be continued. Planning commission recommendation shall be based on written findings of fact.

The final recommendation of the planning commission shall be forwarded to the city council at its following meeting. The city council shall approve on condition, disapprove, or continue consideration of the preliminary plat; provided, that if the substantial revisions are required the revised preliminary plat must first be subject to another public hearing. City council final action shall be based on written findings of fact. (Ord. 1220 § 2, 1992).

16.08.026 Council review.
Pursuant to chapter 58.17 RCW, upon receipt of the planning commission's recommendations, the city council shall at its next public meeting set the date for the public meeting at which it may adopt or reject the recommendations. If, after considering the matter at a public meeting, the city council determines that a change is necessary in the planning commission's recommendation, it shall conduct a public hearing and adopt its own recommendations and approve or disapprove the preliminary plat. The public hearing may be held before a committee constituting a majority of the city council, which shall report its recommendations on the matter to the city council for final action by resolution. The city council's decision shall clearly state any conditions of approval imposed, including dedications and the construction of protective improvements. If the preliminary plat is approved, the decision shall include a written finding of fact that the proposed subdivision is in conformity with the applicable provisions of this title. (Ord. 1220 § 2, 1992).

16.08.028 Effect of preliminary plat approval.
A. Approval of the preliminary plat shall constitute authorization for the subdivider to develop the subdivision facilities and improvements as required in the approved preliminary plat upon issuance of the final plat. Development shall be in strict accordance with the plans and specifications as prepared or approved by the city engineer and subject to any conditions imposed by the city council.

B. No subdivision requirements which become effective after the approval of a preliminary plat for a subdivision shall apply to such subdivision unless the city council determines that a change in conditions created a serious threat to the public health or safety.

C. Preliminary plat approval is valid for seven years until December 31, 2014, after which the period will be five years.

D. A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within 10 years of the date of preliminary plat approval if the project is not subject to requirements adopted under Chapter 90.58 RCW and the date of preliminary plat approval is on or before December 31, 2007. (Ord. 1809 § 1, 2015; Ord. 1770 § 1, 2012; Ord. 1220 § 2, 1992).

Subchapter II Preliminary Plat Consideration

16.08.050 Topographical and surface hazards – Protective improvements.
Land having topographical or subsurface conditions hazardous to the health, safety or general welfare of persons or property in or near a proposed subdivision shall not be subdivided unless the construction of protective improvements will eliminate the hazards or unless land subject to the hazard is restricted to uses which will not expose persons or property to the hazard. Protective improvements consistent with the standards established in Subchapter VI shall be constructed, prior to final plat approval unless a performance bond acceptable to the city engineer is filed in lieu of the improvements. (Ord. 1220 § 2, 1992).

16.08.052 Dedications required.
A. Every subdivision shall include adequate provision for dedication of drainage ways, streets, alleys, easements, slope rights, parks and other public open spaces for general purposes as may be required to protect the public health, safety and welfare.

B. Protective improvements and easements to maintain the improvements shall be dedicated at the discretion of the city.

C. Convenient pedestrian and vehicular access to every lot by way of a dedicated street or permanent appurtenant easement shall be provided. Access from a dedicated street shall be required, unless the city engineer determines that the following conditions exist, and permits access by a permanent private easement:

1. Access by easement would not compromise the goals of the Zoning Code to provide for adequate light, air and usable open space between structures; and

2. The dedication and improvement of a street is not necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage; and

3. The dedication and improvement of a street is not necessary or desirable in order to provide on-street parking for overflow conditions; and

4. No potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines; and

5. There is no potential for extending the street system.

6. Private streets and roads shall be consistent with the requirements identified chapter 17.54 BMC.

D. If the city council concludes that the public interest will be served the city council may, in lieu of requiring the dedication to the public of land in a subdivision for protective improvements, drainage ways, streets, alleys, sidewalks, parks and other open space, allow the land to be conveyed to a homeowner's nonprofit maintenance corporation. In that case the subdivider shall, at or prior to the time of filing a final plat for approval, supply the director with copies of articles of incorporation and bylaws of the grantee organization and with evidence of the conveyance or of a binding commitment to convey. The articles of incorporation shall provide that membership in the corporation shall be conditioned upon ownership of land in the subdivision, that the corporation is empowered to assess the land for costs of construction and maintenance of the improvements and property owned by the corporation, and that the assessment shall be a lien upon the land. The city attorney shall review and approve the articles of incorporation and bylaws as to compliance with this provision. The city council may impose other conditions as it deems appropriate to assure that property and improvements owned by the corporation will be adequately constructed and maintained.

E. Any dedication, donation or grant as shown on the face of the plat shall be considered, to all intents and purposes, as a quitclaim deed to the grantee or grantees, for his, her or their use for the purpose intended by the donors or grantors.

F. Dedicated streets and alleys shall meet the requirements of chapter 12.28 BMC. Easements shall meet the design standards of BMC 12.28.150 for access streets, except that the minimum width of an easement shall be 30 feet. (Ord. 1220 § 2, 1992).

G. When new storm-water facilities or LID features are provided to serve the plat an access easement shall be conveyed to the City for purposes of inspection and maintenance.

16.08.054 Public use and interest.
The city council shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall consider all relevant facts to determine whether the public interest will be served by the subdivision and dedication, and if it finds that the proposed plat makes appropriate provision for the public health, safety and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, fire protection facilities, parks, playgrounds, sites for school and schoolgrounds and that the public use and interest will be served by the platting of subdivision, then it shall be approved. If it finds that the proposed plat does not provide the appropriate elements or that the public use and interest will not be served, then the city council may disapprove the proposed plat. Dedication of land to any public body may be required as a condition of subdivision approval and shall be clearly shown on the final plat. The city council shall not as a condition to the approval of any plat require a release from damages to be procured from other property owners. (Ord. 1220 § 2, 1992).

Subchapter III Review of Final Plat

16.08.064 Filing with city engineer.
A. Time of Filing.

1. A final plat meeting all the requirements of chapter 58.17 RCW and of this chapter, shall be filed with the city engineer within three years of the date of preliminary plat approval. As required by RCW 58.17.140, an applicant who files a written request with the city council at least 30 days before the expiration of the three-year period shall be granted one one-year extension upon a showing that the applicant has attempted in good faith to submit the final plat within the three-year period.

2. Within 30 days of the date of filing of the plat, unless the applicant consents to an extension of the time period, final plats shall be approved or disapproved by action of the city council, or returned to the applicant.

B. Submittal Requirements. The following shall be submitted for final plat review:

1. A final plat consistent with the technical requirements of BMC 16.08.066 and Subchapters V and VI;

2. A complete survey of the section or sections in which the plat or replat is located, or as many sections as may be necessary to properly orient the plat within the section or sections;

3. Complete field and computation notes as provided in BMC 16.08.094;

4. A title report from a title company licensed to do business in the state showing the ownership and title of all parties of interest in the subdivision and confirming that title of the lands as described and shown on the final plat is in the name of the owners signing the certificate required in BMC 16.08.066;

5. A guarantee deposit in an amount established by the city engineer sufficient to cover the expense of the city in checking the plat, advertising the ordinance, posting notices. (Ord. 1220 § 2, 1992).

16.08.066 Technical standards for final plat.
A. The final plat shall be prepared upon the best grade of tracing medium and shall be 18 inches by 24 inches in size. The accuracy and completeness of the map shall be the sole responsibility of a registered land surveyor whose seal shall appear on the plat and who shall make field surveys and investigations as necessary to insure that the map

is complete and accurate in every detail. The preparation of the tracing shall be by an experienced draftsman and work shall conform to established standards of workmanship. The final plat shall be presented at a scale not smaller than 100 feet to one inch and shall contain and show the following:

1. The name of the subdivision;

2. The lines, widths and names of all streets, avenues, places, parks or other public property, and the location of monuments marking the same;

3. The length and direction of all lot lines, also the angles made by the lot lines with the street lines;

4. The location of control points and monuments together with all ties;

5. The names of all subdivisions immediately adjacent;

6. The scale and north point;

7. The boundary of the tract as covered by the plat showing courses and distance on the plat;

8. The initial point;

9. All protective improvements and restrictions on uses;

10. All dedications and all conveyances to a homeowner's nonprofit maintenance corporation in lieu of dedication;

11. Any additional information necessary to meet the standards for mapping as set forth in WAC 332-130.

B. In the case of a replat, the lots, blocks, streets, alleys, easements and parks appearing on the original plat shall be shown by dotted lines in their proper position in relation to the new arrangement of the plat, and the new plat shall be shown clearly in solid lines to avoid ambiguity.

C. The description, dedication, acknowledgment, certificates of city and county treasurers, certificates of approval by the city engineer, the city comptroller and the director, and recording certificate, shall be lettered with India ink and shall be substantially in the form set forth in the city engineer subdivision standards. (Ord. 1220 § 2, 1992).

16.08.068 Certificates required.
Each and every final plat, or replat, of any property to be filed for record shall:

A. Contain a statement of approval from the city engineer as to the survey date, the layout of streets, alleys and other rights-of-way, design of bridges, sewage and water systems, and other structures;

B. Be acknowledged by the person filing the plat before the Skagit County auditor or any other officer who is authorized by law to take acknowledgment of deeds, and a certificate of the acknowledgment shall be enclosed or annexed to the plat and recorded with it;

C. Contain a certification from the proper officer or officers in charge of tax collections that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied or discharged;

D. Contain a certificate giving a full and correct description of the lands divided as they appear on the plat, including a statement that the subdivision has been made with the free consent and in accordance with the desires of the owners. If the plat is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, an individual or individuals, religious society or societies or to any corporation, public or private as shown on the plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a

notary public by all parties having any ownership interest in the land subdivided and recorded as part of the final plat. (Ord. 1220 § 2, 1992).

16.08.070 Director's action on final plat.
The city engineer shall refer the final plat to the director who shall review the final plat for substantial conformance to the approved preliminary plat, including any requirements or conditions imposed by the city council, and to the standards established by chapter 58.17 RCW and this chapter. The director shall within 10 days furnish the city engineer with a report regarding the conformance of the plat. The city engineer shall review the final plat for the following:

A. That the proposed final plat bears the certificates and statements of approval required by state law and this chapter;

B. That a title insurance report furnished by the subdivider confirms that title of the land and the proposed subdivision is vested in the name of the owners whose signatures appear on the plat certificate;

C. That the facilities and improvements required to be provided by the subdivider have been completed or alternatively, that the subdivider will provide a bond in a form approved by the city attorney and in an amount commensurate with the cost of improvements remaining to be completed, conditioned upon the construction and installation of improvements within a fixed time set by the city engineer, not to exceed one year after final approval of the plat;

D. That the map is technically correct and accurate as certified by the registered land surveyor responsible for the plat. (Ord. 1220 § 2, 1992).

16.08.072 Submission to council.
A. Pursuant to the requirements of RCW 58.17.150, the city engineer shall not modify the recommendations made in the city council approval of the preliminary plat when making recommendations on the final plat without the consent of the subdivider.

B. If the planning director and the city engineer determine that the requirements of this subtitle are met, the city engineer shall certify that the proposed final plat meets the requirements of chapter 58.17 RCW and this chapter, and shall forward a complete copy of the proposed plat to the city council.

C. If either director determines that the requirements of this chapter have not been met, the final plat shall be returned to the applicant for modification, correction or other action as may be required for approval; provided, that the final plat shall be forwarded to the city council together with the determination of the directors, upon written request of the subdivider. (Ord. 1220 § 2, 1992).

16.08.074 Council determination.
A. The city council shall determine:

1. Whether the final plat is in substantial conformance with the approved preliminary plat;

2. Whether the requirements imposed when the preliminary plat was approved have been met;

3. Whether the bond, if required by the city, is sufficient in its terms to assure completion of improvements; and

4. Whether the requirements of state law and the Burlington Municipal Code which were in effect at the time of preliminary plat approval have been satisfied by the subdivider.

B. The city council shall approve by ordinance, or disapprove, the proposed final plat. If the city council approves the plat, it shall inscribe and execute written approval on the face of the plat, and the city engineer shall transmit the original plat to the Skagit County auditor for filing, and forward one copy to the planning director and one copy to the county assessor. At least one copy of the approved final plat shall be retained in the files of the city engineer.

C. As required by RCW 58.17.170, a subdivision shall be governed by the terms of approval of the final plat and any lots created thereunder shall be deemed to meet lot requirements imposed by the Zoning Code for a period of no less than five years. (Ord. 1220 § 2, 1992).

16.08.078 Resubmission.
A. Any final plat disapproved by the city council or returned to the applicant may, at the subdivider's option, be resubmitted for approval upon satisfaction of the following condition:

1. The subdivider has corrected those deficiencies of the final plat, attachments to it, or improvements, any or all of which caused the final plat to be returned or disapproved;

2. The final plat is resubmitted within the three-year period after the date of approval of the preliminary plat as provided in BMC 16.08.064 or within six months from the date of city council disapproval whichever is later;

3. The final plat was not disapproved by city council with prejudice against resubmission;

4. The subdivider has not accepted any proffered refund of filing fees paid for individual lots.

B. Any subdivision, the final plat of which is disapproved for reasons of nonconformance with the approved preliminary plat and any requirements or conditions attached to it, may be submitted as a preliminary plat, and shall be considered a new and separate application for all intents and purposes. (Ord. 1220 § 2, 1992).

Subchapter IV Reserved Land

16.08.082 Land reserved for public use.
Any public agency with the power to acquire land by condemnation or otherwise for public use may, at any time prior to final approval of a preliminary plat, notify the city council and the subdivider of its intention to acquire some or all of the land in the proposed subdivision for public use, and may request that the city council require its dedication for the use, the public agency may request that the city council require the reservation of the land for a stated period not to exceed the two years following the city council's approval of the final plat, during which time the agency may acquire the land. If the city council finds that the public health, safety, or general welfare will be served, it may require as a conditional precedent to approval of the final plat that the land or that part of it as the city council deems appropriate be designated on the plat as reserved land and that for the period requested or a shorter period as the city council deems sufficient, the reserved land not be developed for uses other than the contemplated public use. A public agency may accelerate the expiration date of a reservation period by filing written notice with the Skagit County auditor of its intention to abandon its right to acquire the reserved land. (Ord. 1220 § 2, 1992).

16.08.084 Reserved land to show on plat.
The subdivider may indicate on the plat that if the reserved land is not acquired for public use, it shall be subdivided and if the subdivider does so the plat shall show the configuration and dimensions of the proposed lots, blocks, streets, easements and like features in the reserved area. (Ord. 1220 § 2, 1992).

16.08.086 No development on reserved land.
No building permit or other development permit shall be issued for improvements on reserved land during the period of reservation unless the public agency has abandoned its rights and except as expressly authorized by the city council at the time the final plat is approved. (Ord. 1220 § 2, 1992).

16.08.088 Development if not acquired.
If the public agency has not acquired or commenced proceedings to acquire the reserved lands within the period set by the city council, the subdivider may proceed to develop land lying within the reserved area in conformity with the final plat. No improvements shall be made upon reserved land which is made available for development until adequate security for development of all required public and protective improvements has been provided. (Ord. 1220 § 2, 1992).

Subchapter V Survey Requirements

16.08.092 Registered land surveyor.
A survey of every proposed subdivision and the preparation of preliminary and final plats of the subdivision shall be prepared by a registered land surveyor who shall certify on the plat that it is a true and correct representation of the lands actually surveyed. All surveys shall conform to standard practices and principles for land surveying. (Ord. 1220 § 2, 1992).

16.08.094 Computations – Notes.
A. The surveyor shall furnish the city engineer with a full set of survey notes which notes shall clearly show:

1. The ties to each permanent monument;

2. At least three durable, distinctive reference points or monuments;

3. Sufficient data to determine readily the bearing and length of each line;

4. The base meridian referred to.

B. A traverse of the boundaries of the subdivision and all lots and blocks shall close within one foot in 5,000 feet, as required by chapter 332-130 WAC.

C. Primary survey control points shall be referenced to section corners and monuments, and corners of adjoining subdivisions, or portions of subdivisions shall be identified and ties shown. (Ord. 1220 § 2, 1992).

16.08.096 Permanent control monuments.
A. Permanent control monuments shall be established at:

1. All controlling corners on the boundaries of the subdivision;

2. The intersections of centerlines of roads within the subdivisions;

3. The beginning and ends of curves on centerlines;

4. All block corners.

B. Permanent control monuments may be placed on the offset lines. The position and type of every permanent monument shall be noted on all plats of the subdivision. Permanent control monuments shall be of a type approved by the city engineer.

C. Permanent control monuments within the streets shall be set after the streets are graded. In the event a final plat is approved before streets are graded, the security deposit to provide for grading shall be sufficient to pay the costs of setting the monuments estimated by the city engineer.

D. Each lot corner shall be marked by a three-quarter-inch galvanized iron pipe, 24 inches in length, or approved equivalent, driven into the ground, set with C cap per the requirements of RCW 58.19.120. (Ord. 1220 § 2, 1992).

16.08.098 Property contiguous to water.
If any land in a subdivision is contiguous to a body of water, a meander line shall be established along the shore at a safe distance back from the ordinary high water mark. Property lying below and beyond the meander line shall be defined by distance along the side property lines extended from the meander line. If the thread of a stream lies within a subdivision or forms the boundary of a subdivision, such thread shall be defined by bearings and distances as it exists at the time of the survey. (Ord. 1220 § 2, 1992).

Subchapter VI Design and Construction Standards

16.08.100 Design standards.
The design of all subdivisions shall conform to the standards set forth in this section and chapter 12.28 BMC:

A. Streets and Alleys.

1. All subdivisions shall be served by one or more streets providing adequate ingress and egress to and from the subdivision.

2. Major streets within each subdivision shall conform with the city's arterial street plan and shall provide for the continuation of major streets which serve property contiguous to the subdivision. Unless warranted by special physical circumstances, streets serving lots on two sides shall be at least 60 feet wide.

3. Street intersections shall be as nearly at right angles as practicable and in no event shall the angle formed be less than 30 degrees.

4. Street networks shall provide ready access for fire and other emergency vehicles and equipment, and routes of escape for inhabitants.

5. Alleys shall be at least 16 feet wide plus such additional width as shall be necessary for an adequate turning radius.

B. Blocks. Blocks shall be designed to assure traffic safety and ease of traffic control and circulation. Blocks shall be identified by letters or numbers.

C. Lots.

1. Every lot shall be provided with convenient vehicular access to a street or to a permanent appurtenant easement which satisfies the requirements of chapter 12.28 BMC except that the minimum width of an easement shall be 30 feet.

2. Lots shall be numbered with reference to blocks.

D. Sidewalks. Design of sidewalk or sidewalk easement in residential subdivisions shall be as required by the city engineer.

E. Drainage – Storm Sewer and Utility Easements.

1. Easements for drainage channels and ways shall be of sufficient width to assure that they may be maintained and improved. Easements for storm sewers shall be provided and shall be of sufficient width and in proper location to permit future installation. Utility easements shall be in accordance with plans and specifications prepared by the appropriate city department.

2. Easements for electric, telephone, water, gas and similar utilities shall be of sufficient width to assure installation and maintenance.

3. Design of storm water systems shall comply with the latest section of the Department of Ecology Stormwater Management Manual.

F. Underground Utility Installation. Subdivisions located adjacent to subdivisions having underground utility lines shall provide underground utility lines including but not limited to those for electricity, telephone, CATV and street lighting. (Ord. 1220 § 2, 1992).

16.08.102 Improvements.
All improvements shall follow the latest edition of the Washington State Department of Transportation Standard Specifications and chapter 12.28 BMC.

A. Streets, Bridges, and Other Construction. All streets, bridges, drains, culverts and other structures and facilities in dedicated areas shall be constructed in accordance with plans and specifications prepared or approved by the city engineer.

B. Street Grading and Surfacing. All dedicated streets shall be graded to their full width with adequate drainage provided prior to acceptance for public use. Grades shall be established by the city engineer and all roadways shall be surfaced according to plans and specifications prepared or approved by the city engineer.

C. Water and Sewers. Water supply facilities adequate to provide potable water from a public supply to each lot within a subdivision shall be installed in conformity with standards adopted by the Skagit County PUD. Each lot shall be provided with a single sanitary sewer system connection approved by the department of public works, unless a shared system is approved by the department of public works. All connections shall conform to applicable city regulations.

D. Service Mains and Fire Hydrants. Prior to the construction of any structure in the subdivision, service mains and fire hydrants shall be installed in accordance with plans and specifications prepared or adopted by the city engineer and in accordance with requirements and standards of the PUD and fire departments. (Ord. 1220 § 2, 1992).

16.08.106 Exceptions.
Exceptions from the design standards and improvement requirements set forth in this subchapter may be authorized by the city council in those instances where it is deemed that hardship, topography or other factual deterrent conditions prevail, and in such manner as it considers necessary to maintain the intent and purpose of the regulations and requirements. Approval by the city council of a preliminary plat on which variations and exceptions are clearly indicated shall constitute authorization of the variations and exceptions. (Ord. 1220 § 2, 1992).

Chapter 16.12

SHORT PLATS

Sections:

16.12.010 Filing of application.
16.12.020 Content of application.
16.12.030 Content of short plat.
16.12.035 Access.
16.12.040 Criteria for approval.
16.12.050 Planning director's decision.
16.12.060 Redivision procedures.

16.12.010 Filing of application.
A. Any person seeking to divide or redivide land situated within the city into nine or fewer lots for the purpose of sale or lease, transfer or ownership, development or financing shall submit an application for approval of a short subdivision to the planning director together with an application fee as established in the Permit Fee Ordinance. The application is subject to procedure requirements, established in the land use permit process. Within 30 days of the date of filing, a short plat shall be approved or disapproved or returned to the applicant, unless the applicant consents to an extension of this time period.

B. A survey of each proposed short subdivision and preparation of the short plat for it shall be made by or under the supervision of a registered land surveyor who shall certify on a short plat that it is a true and correct representation of the lands actually surveyed. (Ord. 1503 § 2, 2002; Ord. 1220 § 2, 1992).

16.12.020 Content of application.
Applications for approval of a short subdivision shall include the following:

A. A plat of the proposed short subdivision containing standard survey data;

B. A vicinity map on which shall be indicated the property to be subdivided;

C. A plot plan, as appropriate, showing the location and dimensions of existing buildings in relation to the proposed short subdivision. The square footage and closure computations of each parcel or lot shall show that each parcel or lot contains at least sufficient footage to meet minimum zoning and health requirements;

D. Legal descriptions of the property to be subdivided and of all proposed lots or divisions;

E. Name and address of owner(s) of the tract;

F. Location of existing roadways, sanitary sewer, storm drain and watermains, if any, together with proposed street improvements. (Ord. 1220 § 2, 1992).

16.12.030 Content of short plat.
A. Every short plat of a short subdivision filed for record must contain:

1. A certificate giving a full correct description of the lands divided as they appear on the short plat, including a statement that the short subdivision has been made with the free consent and in accordance with the desires of the owner or owners.

2. If the short plat includes a dedication, the certificate or a separate written instrument of dedication shall contain the dedication of all streets and other areas to the public, an individual or individuals, religious society or societies or to any corporation, public or private, as shown on the short plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road.

3. Roads not dedicated to the public must be clearly marked on the face of the short plat.

4. All short plats containing a proposed dedication must be accompanied by a title report confirming that the title of the lands as described and shown on the short plat is in the name of the owner signing the certificate or instrument of dedication.

5. A title certificate shall be required for all land divisions.

B. The certificate and instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land subdivided and shall be recorded as part of the final plat. Any dedication, donation, or grant as shown on the face of the short plat shall be considered to all intents and purposes as a quitclaim deed to the grantee or grantees for his, her or their use for the purpose intended by the donors or grantors. (Ord. 1220 § 2, 1992).

16.12.035 Access.
A. Every short plat shall include adequate provisions for dedication of drainage ways, street, alleys, easements, slope rights, parks and other public open spaces for general purposes as may be required to protect the public health, safety and welfare.

B. Protective improvements and easements to maintain the improvements shall be dedicated at the discretion of the city.

C. Convenient pedestrian and vehicular access to every lot by way of a dedicated street or permanent appurtenant easement shall be required.

D. Access to new lots shall be from a dedicated street, unless the director determines that the following conditions exist, and permits access by a permanent private easement:

1. Access by easement would not compromise the goals of the zoning code to provide for adequate light, air and usable open space between structures; and

2. The dedication and improvement of a street is not necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage; and

3. The dedication and improvement of a street is not necessary or desirable in order to provide on-street parking for overflow conditions; and

4. No potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines; and

5. There is no potential for extending the street system.

6. Private streets and roads shall be consistent with the requirements identified chapter 17.54 BMC.

E. Dedicated streets and alleys shall meet the improvement requirements of chapter 12.28 BMC. Easements shall meet the design standard of BMC 12.28.150 for access streets, except that the minimum width of an easement shall be 30 feet. (Ord. 1220 § 2, 1992).

16.12.040 Criteria for approval.
A. The planning director shall, after conferring with appropriate officials, use the following criteria to determine whether to grant, condition or deny a short plat:

1. Conformance to the applicable comprehensive plan policies and zoning code provisions;

2. Adequacy of access for vehicles, utilities and fire protection as provided in BMC 16.12.035;

3. Adequacy of drainage, water supply and sanitary sewage disposal;

4. Whether the public use and interests are served by permitting the proposed division of land.

B. If the short subdivision contains a proposed dedication, the planning director shall refer the matter to the city engineer for report and recommendation. The short plat or dedication instrument shall be transmitted to the city council for acceptance of the dedication by ordinance. (Ord. 1220 § 2, 1992).

C. When new storm-water facilities or LID features are provided to serve the plat an access easement shall be conveyed to the City for purposes of inspection and maintenance.

16.12.050 Planning director's decision.

A. If the planning director determines that the requirements of this section are met, or may be met upon compliance with specified conditions, the planning director shall inform the applicant in written findings of the decision to approve the application and the conditions of the approval, if any, and may return the proposed short plat to the applicant for modification or correction. When the planning director has determined that: (1) the short plat contains the certificates, dedication instruments and statements of approval required by state law and this chapter, (2) the short plat and all legal descriptions are technically correct, and (3) review procedures pursuant to chapter 17.68 BMC have been concluded, the short plat shall be filed for record with the Skagit County auditor. Except for purposes of appeal, no short plat or short subdivision granted approval by the planning director shall be deemed to have final approval until filed.

B. The decision of the planning director on a short subdivision is subject to the further review procedures established under land use permit process, chapter 17.68 BMC. (Ord. 1220 § 2, 1992).

16.12.060 Redivision procedures.

Land within a short subdivision may not be further divided within a five-year period immediately following approval and filing of a short plat unless a final plat for such subdivision is approved and filed for record in accordance with the provisions of BMC 16.12.050 and this title. However, any revision of an approved short plat in which the total number of lots is not increased shall not be considered a further division, and shall be approved or disapproved in the manner prescribed in this code. (Ord. 1220 § 2, 1992).

Chapter 16.16

LOT BOUNDARY ADJUSTMENTS

Sections:

16.16.010 Purpose.
16.16.020 Application for approval of lot boundary adjustment.
16.16.030 Criteria for approval.

16.16.010 Purpose.
The purpose of this chapter is to provide a method for summary approval of lot boundary adjustments which do not create any additional lot, tract, parcel, site or division, while insuring that such lot boundary adjustment satisfies public concerns of health, safety, and welfare. (Ord. 1220 § 2, 1992).

16.16.020 Application for approval of lot boundary adjustment.
Anyone seeking an approval by the planning director of a lot boundary adjustment shall file an application as provided in chapter 17.68 BMC, the land use permit process. All applications for lot boundary adjustment shall contain the following:

A. A plan showing the proposed change and containing standard survey data;

B. A plot plan as appropriate showing the location and dimensions of existing structures in relation to the proposed lot boundary adjustment;

C. A legal description of the property involved;

D. Name and address of owner(s) of the property involved;

E. Legal description of the proposed lot boundary adjustment. (Ord. 1220 § 2, 1992).

16.16.030 Criteria for approval.
Lot boundary adjustment shall comply with chapter 58.17 RCW and with the following criteria:

A. No additional lots shall be created. This also refers to redividing already created lots where structures are located on property lines.

B. Lots shall comply with minimum standards of the zoning code.

C. Lots shall comply with the Burlington Municipal Code standards for access.

D. The following statement shall appear on all lot boundary adjustment deeds:

> The above described property will be combined or aggregated with contiguous property owned by the grantee. This lot boundary adjustment is not for the purpose of creating an additional lot.
>
> (Ord. 1220 § 2, 1992).

Chapter 16.20

BINDING SITE PLAN APPROVAL

Sections:

16.20.010 General.
16.20.020 Eligible developments.
16.20.030 Criteria.

16.20.010 General.
The divisions of lands described in BMC 16.20.020 are exempt from compliance with this division if they meet the requirements of BMC 16.20.030. (Ord. 1220 § 2, 1992).

16.20.020 Eligible developments.
The following types of developments are subject to the provisions of this section:

A. A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land;

B. A division of land into lots or parcels located within industrial, commercial or office zones as defined in the zoning code;

C. A division which is made by subjecting a portion of a parcel or tract of land to chapter 64.32 RCW. (Ord. 1220 § 2, 1992).

16.20.030 Criteria.
A division of land is a binding site plan under this section if it meets all of the following criteria:

A. The city council approves a site plan as part of a discretionary zoning or other similar land use permit that involved a public hearing before the planning commission or the city approves a building permit site plan.

B. The site plan is shown to a scale of one inch equals 20 feet.

C. The site plan identifies and shows the areas and locations of all streets, roads, improvements, utilities and open spaces.

D. The site plan contains inscriptions or attachments setting forth all limitations and conditions for the use of land as established by city council.

E. The site plan contains a provision requiring that any development of the subject property be in conformance with the binding site plan.

F. All required public improvements including infrastructure and utilities shall be installed prior to recording the binding site plan, except for phased projects, delays due to weather constraints, or other exceptions approved by the public works director, where the work is bonded or otherwise secured by means provided in BMC 17.68.110 with a 15 percent contingency fund.

G. The site plan shall be filed for record with the county auditor to run with the subject property in compliance with state and county laws and regulations. (Ord. 1339 § 1, 1997; Ord. 1220 § 2, 1992).

H. Access to new lots shall be from a dedicated street, unless the director determines that the following conditions exist, and permits access by a permanent private easement:

1. Access by easement would not compromise the goals of the zoning code to provide for adequate light, air and usable open space between structures; and

2. The dedication and improvement of a street is not necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage; and

3. The dedication and improvement of a street is not necessary or desirable in order to provide on-street parking for overflow conditions; and

4. No potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines; and

5. There is no potential for extending the street system.

6. Private streets and roads shall be consistent with the requirements identified chapter 17.54 BMC.

I. Public streets and roads shall be designed and constructed in accordance with the standards identified in chapter 12.28 BMC.

Formatted: Indent: Left: 0"

J. When new storm-water facilities or LID features are provided to serve the binding site plan an access easement shall be conveyed to the City for purposes of inspection and maintenance.

Formatted: Indent: Left: 0"

Title 17

ZONING

Chapters:

17.03 General Provisions
17.06 Definitions
17.09 District Establishment, Maps and Boundaries
17.12 Land Uses
17.15 R-1 Land Use District
17.18 Repealed
17.21 R-2 Two-family Residence District
17.24 R-3 Multifamily Residence District
17.27 R-S Semi-Public District
17.28 OSP Open Space, Parks and Agriculture District
17.30 MR-NB Medium Density Residential and Neighborhood Business District
17.33 B-1 Business District
17.36 C-1 General Commercial District
17.39 C-2 Heavy Commercial District
17.42 M-1 Industrial District
17.43 Business Park District
17.45 Supplemental Development Standards
17.48 Performance Standards
17.50 Landscaping
17.51 Superseded
17.54 ~~Off-street~~Access, Parking and Loading
17.57 Repealed
17.58 Repealed
17.60 Public Utilities
17.63 Signs
17.66 Nonconforming Structures, Land and Uses
17.67 Essential Public Facilities
17.68 The Land Use Permit Process – Framework for Decisionmaking
17.69 Design Review Board
17.70 Agricultural Heritage Credit Program
17.72 Repealed
17.75 Repealed
17.76 Planning Commission
17.78 Board of Adjustment
17.81 Repealed
17.84 Enforcement of the Zoning Code
17.87 Violation – Penalty

EXHIBIT C

Chapter 17.03

GENERAL PROVISIONS[1]

Sections:

17.03.010 Short title.
17.03.015 Administration.
17.03.020 Purpose.
17.03.030 Scope.
17.03.040 Administrative interpretations.
17.03.050 Zoning for annexed land.
17.03.060 Relationship to other titles, chapters and codes.

17.03.010 Short title.
The ordinance codified in this title shall be known as "The Comprehensive Zoning Ordinance" of the city of Burlington which shall constitute Title 17 of the Burlington Municipal Code and shall hereafter be referred to as "this title". (Ord. 1221 § 1, 1992).

17.03.015 Administration.
The planning director of the city of Burlington shall be responsible for administration of this title. (Ord. 1763 § 1, 2012).

17.03.020 Purpose.
A. The purpose of this title is to implement the city of Burlington's comprehensive plan. This title will be used to further the growth and development of the city of Burlington consistent with the adopted comprehensive plan and its implementing elements. This title will also further the purpose of promoting the health, safety, morals, convenience, comfort, prosperity, and general welfare of the city's population.

B. The specific zones and regulations herein are designed to facilitate adequate provisions of utilities, schools, parks and housing with essential light, air, privacy, and open space; to lessen congestion on streets and facilitate the safe movement of traffic thereon; to stabilize and enhance property values; to prevent the overcrowding of land; to facilitate adequate provisions for doing public and private business and thereby safeguard the community's economic structure upon which the prosperity and welfare of all depends and through such achievements help ensure the safety and security of home life, foster good citizenship, create and preserve a more healthful, serviceable and attractive municipality and environment in which to live.

C. To most effectively accomplish these purposes, this title divides the city into zones wherein the location, height and use of buildings, the use of land, the size of yards and other open space, and the provision of off-street parking and loading are regulated and restricted in accordance with the comprehensive plan for the city of Burlington. These zones and regulations are hereby deemed necessary and are made with reasonable consideration, among other things, as to the character of each zone and its particular suitability for specific uses, the need for such uses, the common rights and interests of all within the zone as well as those of the general public, and with the view of conserving and encouraging the most appropriate use of land throughout the city. (Ord. 1221 § 1, 1992).

17.03.030 Scope.
A. The provisions of this title shall apply to both public and private use of land within the corporate limits of the city of Burlington.

B. Hereafter, no use shall be conducted, and no building, structure and appurtenance shall be erected, relocated, remodeled, reconstructed, altered or enlarged unless in compliance with the provisions of this title and with the comprehensive plan of the city of Burlington, and then only after securing all permits and approvals required hereby. It shall be unlawful to build or use any building or structure or to use premises in the city for any purpose or use other than the uses listed as being permitted in the district in which such building, land, or premises are located.

C. Any building, structure or use lawfully existing at the time of passage of this title, although not in compliance therewith, may continue as provided in chapter 17.66 BMC.

D. In interpreting and applying the provisions of this title, they shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. It is not intended by this title to interfere with, abrogate or annul any easements, covenants or other agreements between private parties. However, where this title imposes a greater restriction upon the use of land and/or building or in general requires higher standards than other ordinances, rules, or private agreements, the provisions of this title shall govern.

E. No division of land shall occur unless in compliance with the provisions of this title.

F. This title is not intended to regulate the erection, construction, or reconstruction of public streets, power poles, street lights, utility lift stations, transmission lines, or other public uses necessary to support the general public welfare, carried on by the city of Burlington, or agents of the city working under the appropriate contract or franchise.

G. A land use permit issued pursuant to chapter 17.68 BMC shall be required to establish or change use as provided by this title. Issuance of a building permit shall constitute the land use permit for a Type I decision as described in BMC 17.68.040(A).

H. The planning director may at any time amend an administrative decision to correct ministerial errors clearly identifiable from the public record. Such a correction does not affect any time limit provided for in this chapter. (Ord. 1763 § 2, 2012; Ord. 1221 § 1, 1992).

17.03.040 Administrative interpretations.
A. The planning director shall be authorized to interpret the meaning of words, phrases and sentences which relate to the determining of uses permitted in the various districts, approval or disapproval of development plans, or other related zoning actions.

B. The planning director may permit other uses in a zone other than those which are listed, if the director determines the use is consistent with the intent of the zone and is of the same general character of the uses permitted within the zone.

C. The planning director may adopt rules for the implementation of this title; provided, the planning director shall first hold a public hearing. The planning director shall publish notice of intent to adopt any rule, and the date, time and place of the public hearing thereon in a newspaper of general circulation in the city at least 14 days prior to the hearing date. Any person may submit written comment to the planning director in response to such notice, and any person may speak at the public hearing. Following the public hearing, the planning director shall adopt, adopt with modifications, or reject the proposed rule.

D. Administrative rules may be appealed to the board of adjustment as prescribed in chapters 17.68 and 17.78 BMC.

E. Should a conflict occur between the provisions of this title or between this title and the laws, regulations, codes or rules promulgated by another authority having jurisdiction within the city, the most restrictive requirement shall be applied, except when constrained by federal or state law, or where specifically provided otherwise in this code. (Ord. 1763 § 3, 2012; Ord. 1221 § 1, 1992).

17.03.050 Zoning for annexed land.
Prior to any parcel of land being annexed to the city, the property may be zoned consistent with the Burlington zoning districts and the comprehensive plan amended if necessary.

Application for the rezone and necessary amendment may be done simultaneously with the request for annexation.

For property that is not zoned prior to annexation the property shall assume the R-A designation upon annexation.

With respect to property not zoned prior to annexation, the planning director is empowered to initiate a rezone application from the R-A designation to a zone compatible with the comprehensive plan. This rezone process shall occur within six months of the date of annexation. This section shall expire on July 1, 1994. (Ord. 1230 § 1, 1993; Ord. 1221 § 1, 1992).

17.03.060 Relationship to other titles, chapters and codes.
The administrative provisions of this title including chapter 17.68 BMC, Land Use Permit Process and chapter 17.84 BMC, Enforcement of the Zoning Code, shall apply to BMC Title 16, Subdivisions, chapter 15.12 BMC, State Environmental Policy Act Guidelines, chapter 15.13 BMC, Methods to Mitigate Development Impacts, and chapter 15.15 BMC, Critical Areas. (Ord. 1221 § 1, 1992).

---

[1] Prior legislation: Ord. 890 §§ 1, 6.1, 6.2.

Chapter 17.06

DEFINITIONS[1]

Sections:

17.06.010 Generally.
17.06.015 Accessory antenna device.
17.06.020 Accessory building.
17.06.030 Accessory use.
17.06.040 Alley.
17.06.060 Alterations.
17.06.065 Antenna.
17.06.070 *Deleted.*
17.06.080 Area, building.
17.06.090 Area, site.
17.06.091 Attached wireless communication facility.
17.06.095 Automotive retail sales and service.
17.06.100 *Deleted.*
17.06.110 *Deleted.*
17.06.120 *Deleted.*
17.06.120 Board.
17.06.130 Boarding house.
17.06.140 Building.
17.06.150 Building height.
17.06.160 Building line.
17.06.170 Building site.
17.06.175 Club, topless.
17.06.180 *Deleted.*
17.06.185 Co-location exists.
17.06.190 Commission.
17.06.200 Conditional use.
17.06.220 *Deleted.*
17.06.230 Council.
17.06.240 Court.
17.06.250 Coverage.
17.06.260 Density.
17.06.270 Detached building.
17.06.280 Developed land area.
17.06.285 Discontinue.
17.06.290 Dwelling, single-family.
17.06.300 Dwelling, two-family.
17.06.310 Dwelling, multifamily.
17.06.320 Dwelling unit.
17.06.325 Eating and drinking establishment.
17.06.327 *Repealed.*
17.06.330 *Deleted.*
17.06.335 Essential public facility (EPF).
17.06.340 *Deleted.*
17.06.350 Family.
17.06.360 Floor area.
17.06.370 *Deleted.*
17.06.380 *Repealed.*
17.06.390 *Repealed.*
17.06.410 *Deleted.*
17.06.415 Guyed tower.

17.06.420 *Repealed.*
17.06.430 Home occupation.
17.06.440 Hospital.
17.06.450 Hotel.
17.06.455 Impervious surface
17.06.460 Inoperable vehicle.
17.06.470 Junk storage.
17.06.480 Junk yard.
17.06.490 Kennel.
17.06.500 Land use.
17.06.510 Land use permit.
17.06.515 Lattice tower.
17.06.520 Lot.
17.06.530 Lot, corner.
17.06.540 Lot depth.
17.06.550 Lot, interior.
17.06.~~560~~ 555 Lot width.
17.06.560 Low impact development
17.06.565 Macro facility.
17.06.570 Mailed notice.
17.06.580 *Repealed.*
17.06.590 Manufactured home.
17.06.592 Marijuana processor.
17.06.594 Marijuana producer.
17.06.596 Marijuana retailer.
17.06.600 Mean depth.
17.06.602 Medical cannabis collective garden.
17.06.605 Medical service.
17.06.606 Micro facility.
17.06.608 Mini facility.
17.06.610 Mobile home.
17.06.620 Mobile home park.
17.06.622 Monopole I.
17.06.624 Monopole II.
17.06.625 Motion picture theater, adult.
17.06.630 Nonconforming structure.
17.06.640 Nonconforming use.
17.06.645 Office.
17.06.647 Outdoor vending machine.
17.06.650 Parking space.
17.06.660 Permitted use.
17.06.665 Personal and household retail sales and service.
17.06.670 Primary use (or principal use).
17.06.680 *Deleted.*
17.06.690 Public hearing.
17.06.692 Related equipment.
17.06.695 Retail sales and service.
17.06.700 Rezone.
17.06.705 Secure community transition facility (SCTF).
17.06.710 Service or storage yard.
17.06.720 *Deleted.*
17.06.730 Setback.
17.06.737 *Repealed.*
17.06.740 *Repealed.*
17.06.750 *Repealed.*
17.06.760 *Repealed.*

17.06.770 *Repealed.*
17.06.780 *Repealed.*
17.06.790 *Repealed.*
17.06.800 *Repealed.*
17.06.810 *Repealed.*
17.06.820 *Repealed.*
17.06.830 *Repealed.*
17.06.840 Solid planting.
17.06.845 Specified anatomical areas.
17.06.850 Specified sexual activities.
17.06.860 Story.
17.06.870 Street.
17.06.880 Structure.
17.06.890 Tract.
17.06.895 Trailer park.
17.06.897 Transmission tower.
17.06.900 Variance.
17.06.905 Wireless communication facility.
17.06.906 Wireless communication support structure.
17.06.910 Yard.
17.06.920 Yard, front.
17.06.930 Yard, rear.
17.06.940 Yard, side.

17.06.010 Generally.
Except where specifically defined in this chapter, all words used in this title shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular; the word "shall" is always mandatory, the word "may" denotes a use of discretion in making a decision: the words "used" or "occupied" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied." (Ord. 1206 § 2, 1992).

17.06.015 Accessory antenna device.
"Accessory antenna device" means an antenna including, but not limited to, test mobile antennas and global positioning (GPS) antennas which are less than 12 inches in height or width, excluding the support structure. (Ord. 1396 § 1, 1999).

17.06.020 Accessory building.
"Accessory building" means a subordinate building, the use of which is incidental to the use of the main building on the same lot. (Ord. 1206 § 2, 1992).

17.06.030 Accessory use.
"Accessory use" means a use incidental and subordinate to the principal use and located on the same lot or in the same building as the principal use. (Ord. 1206 § 2, 1992).

17.06.040 Alley.
"Alley" means a public thoroughfare which affords only a secondary means of access to abutting property and not intended for general traffic circulation. (Ord. 1206 § 2, 1992).

17.06.050 Alterations.
"Alterations" means a change or rearrangement of the structural parts or exit facilities, or an enlargement by extending the sides or increasing the height or depth, or the moving from one location to another. In buildings for business, commercial, industrial or similar uses the installation or rearrangement of partitions affecting more than one-third of a single floor area shall be considered an alteration. (Ord. 1206 § 2, 1992).

17.06.055 Antenna.
"Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio frequency signals.

A. "Omnidirectional antenna" (also known as a "whip antenna") transmits and receives radio frequency signals in a 360-degree radial pattern. For the purpose of this title, an omnidirectional antenna is up to 15 feet in height and up to four inches in diameter.

B. "Directional antenna" (also known as a "panel antenna") transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees.

C. "Parabolic antenna" (also known as a "dish antenna") is a bowl-shaped device for the reception and/or transmission of radio frequency communications signals in a specific directional pattern. (Ord. 1396 § 2, 1999).

17.06.060 Apartment house.
Deleted by Ord. 1206.

17.06.070 Area, building.
"Building area" means the total ground coverage of a building or structure which provides shelter measured from the outside of its external walls or supporting members or from a point four feet in from the outside edge of a cantilevered roof. (Ord. 1206 § 2, 1992).

17.06.080 Area, site.
"Site area" means the total horizontal area within the property lines excluding external streets. (Ord. 1206 § 2, 1992).

17.06.081 Attached wireless communication facility.
"Attached wireless communication facility" means a wireless communication facility that is affixed to an existing structure and is not considered a component of the attached wireless communication facility. (Ord. 1396 § 3, 1999).

17.06.085 Automotive retail sales and service.
"Automotive retail sales and service" means a retail sales and service use which includes one or more of the following uses:

A. "Automotive parts and accessories sales" means an automotive retail sales and service use in which goods are rented or sold primarily for use in motorized vehicles, but excluding gas stations.

B. "Car wash" means an automotive retail sales and service use in which goods are rented or sold primarily for use in motorized vehicles, but excluding gas stations.

C. "Gas station" means an automotive retail sales and service use in which fuel for motorized vehicles is sold, and in which accessory uses including, but not limited to, towing by no more than two tow trucks, minor automobile repair, or rental of vehicles under 10,000 pound gross vehicle weight may also be provided. Facilities for washing no more than one car at a time or for the collection of used motor oil shall also be considered accessory to a gas station.

D. "Sales and rental of motorized vehicles" means an automotive retail sales and service use in which motorized vehicles, such as cars, trucks, buses, recreational vehicles or motorcycles, or related nonmotorized vehicles, such as trailers, are rented or sold.

E. "Towing service" means an automotive retail sales and service use in which more than two tow trucks are employed in the hauling of motorized vehicles, and where vehicles may be impounded, stored or sold, but not disassembled or junked.

F. "Vehicle repair, major" means an automotive retail sales and service use in which one or more of the following activities are carried out:

1. Reconditioning of any type of motorized vehicle including any repairs made to vehicles over 10,000 pounds gross vehicle weight;

2. Collision services, including body, frame, or fender straightening or repair;

3. Overall painting of vehicles in a paint shop;

4. Dismantling of motorized vehicles in an enclosed structure.

G. "Vehicle repair, minor" means an automotive retail sales and service use in which general motor repair work is done as well as the replacement of new or reconditioned parts in motorized vehicles of 10,000 pounds or less gross vehicle weight, but not including any operation included in the definition of "major vehicle repair."

H. "Automobile wrecking yard" means a salvage and recycling business establishment in which vehicles are dismantled or junked, or where one or more vehicles not in operable condition or used parts of motor vehicles are stored in an area outside an enclosed structure. (Ord. 1396 § 4, 1999).

17.06.090 Auto court.
Deleted by Ord. 1206.

17.06.100 Basement.
Deleted by Ord. 1206.

17.06.110 Billboard.
Deleted by Ord. 1206.

17.06.120 Board.
The term "board" shall mean the board of adjustment of the city. (Ord. 1206 § 2, 1992).

17.06.130 Boarding house.
"Boarding house" means a dwelling in which not more than four roomers and/or boarders are housed or fed. (Ord. 1206 § 2, 1992).

17.06.140 Building.
A "building" is a structure as defined in this chapter. When separated by division walls without openings each portion so separated shall be considered a separate building. (Ord. 1206 § 2, 1992).

17.06.150 Building height.
"Height of building" means the vertical distance measured from the finished grade to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs. If a structure has none of the above features then the height shall be measured from the finished grade to the highest portion of the structure. (Ord. 1221 § 2, 1992).

17.06.160 Building line.
"Building line" means a corner of part of a building nearest the property line. (Ord. 1206 § 2, 1992).

17.06.170 Building site.
See Area, Site, BMC 17.06.080. (Ord. 1206 § 2, 1992).

17.06.175 Club, topless.
"Topless club" means a public or private club employing persons exposing "specified anatomical areas" as defined in BMC 17.06.845. (Ord. 1206 § 2, 1992).

17.06.180 Cellar.
Deleted by Ord. 1206.

17.06.185 Co-location exists.
"Co-location exists" means that more than one wireless communications provider mounts equipment on a single support structure (i.e., building, monopole, lattice tower). (Ord. 1396 § 5, 1999).

17.06.190 Commission.
The term "commission" shall mean the planning commission of the city. (Ord. 1206 § 2, 1992).

17.06.200 Conditional use.
"Conditional use" means uses which may be permitted as principal or accessory uses when authorized by the council pursuant to specified standards. (Ord. 1206 § 2, 1992).

17.06.220 Cooperative or group house.
Deleted by Ord. 1206.

17.06.230 Council.
The term "council" or "city council" shall mean the city council of the city of Burlington. (Ord. 1206 § 2, 1992).

17.06.240 Court.
"Court" means an unoccupied open space bounded on three or more sides by buildings or lot lines on which walls are permitted. (Ord. 1206 § 2, 1992).

17.06.250 Coverage.
"Coverage" means the area of a lot which is covered by a roofed structure. (Ord. 1206 § 2, 1992).

17.06.260 Density.
"Density" means the permitted ratio of residential units to land area and/or the permitted ratio of building size to land area. (Ord. 1206 § 2, 1992).

17.06.270 Detached building.
"Detached building" means a building surrounded on all sides by open space. (Ord. 1206 § 2, 1992).

17.06.280 Developed land area.
"Developed land area" means those parts of a land parcel that have been extensively improved for an existing land use including building coverage, parking and loading areas, service yards and landscaped areas. (Ord. 1206 § 2, 1992).

17.06.285 Discontinue.
"Discontinue" means to cease to operate, use, or take; to end. (Ord. 1206 § 2, 1992).

17.06.290 Dwelling, single-family.
"Single-family dwelling" means a detached building containing but one kitchen, designed for and occupied exclusively by one family and the household employees of that family. (Ord. 1206 § 2, 1992).

17.06.300 Dwelling, two-family.
"Two-family dwelling" means a building containing two kitchens and designed to be occupied by two families living independently of each other. (Ord. 1206 § 2, 1992).

17.06.310 Dwelling, multifamily.
"Multifamily dwelling" means a building designed to house three or more families living independently of each other. (Ord. 1206 § 2, 1992).

17.06.320 Dwelling unit.
"Dwelling unit" means a building or portion thereof providing complete housekeeping facilities for one family. (Ord. 1206 § 2, 1992).

17.06.325 Eating and drinking establishment.
"Eating and drinking establishment" means a retail sales and service use in which food and/or beverages are prepared and sold at retail for immediate consumption.

A. "Brewpub" means an eating and drinking establishment which produces on the premises a maximum of 2,000 barrels per year of beer, ale or other malt beverage, as determined by the brewpub's filings of barrelage tax reports to the Washington State Liquor Control Board, for sale only on the premises.

B. "Fast-food restaurant" means an eating and drinking establishment in which the manner or preparation, packaging, and service of the product enables and/or encourages its consumption outside the restaurant, and which

has most of the following characteristics: quick food service is offered and sales transactions are completed within a very short time period; food is already prepared and held for service, or able to be prepared quickly; the menu is limited, but usually includes a main course and beverages; food is generally service in disposable wrappings or containers, with disposable utensils and/or orders are not generally taken at a customer's table.

C. "Restaurant" mans an eating and drinking establishment which has most of the following characteristics: products sold are generally consumed within an enclosed structure at tables and/or at a counter; taking food and drink from the restaurant is purely incidental, except for limited take-out service which uses the same kitchen as the main restaurant and has a similar menu; food is served using nondisposable containers and utensils; and consumption of food in vehicles on the premises is discouraged by the nature of the service. A restaurant may or may not have a separate area, or cocktail lounge, where alcoholic beverages are served without full food service.

D. "Tavern" means an eating and drinking establishment in which the serving of food is incidental to the serving of beer and/or wine. (Ord. 1396 § 6, 1999).

17.06.327 Essential public facilities or EPF.
Repealed by Ord. 1670. (Ord. 1652 § 2, 2008).

17.06.330 Electrical distribution substation.
Deleted by Ord. 1206.

17.06.335 Essential public facility (EPF).
"Essential public facility (EPF)" means any public facility or facilities owned or operated by a unit of local or state government, public or private utility, transportation company, or any other entity that provides a public service as its primary mission, and is difficult to site. EPFs include those facilities listed in RCW 36.70A.200. (Ord. 1670 § 4, 2009).

17.06.340 Essential use.
Deleted by Ord. 1206.

17.06.350 Family.
"Family" means one person or two or more related persons living together. Not more than four unrelated persons living together as a single, nonprofit housekeeping unit. (Ord. 1206 § 2, 1992).

17.06.360 Floor area.
"Floor area" means the sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls and from the center line of division walls. Floor area shall include: Basement space, elevator shafts and stairwells at each floor, mechanical equipment rooms or attic spaces with headroom of seven feet, six inches or more, penthouse floors, interior balconies and mezzanines, enclosed porches. Floor area shall not include: Accessory water tanks and cooling towers, mechanical equipment or attic spaces with headroom of less than seven feet, six inches, exterior steps or stairs, terraces, breezeways and open spaces. See also BMC 17.54.010(F). (Ord. 1206 § 2, 1992).

17.06.370 Fraternity, sorority, or student cooperative.
Deleted by Ord. 1206.

17.06.380 Garage, private.
Repealed by Ord. 1396. (Ord. 1206 § 2, 1992).

17.06.390 Garage, public.
Repealed by Ord. 1396. (Ord. 1206 § 2, 1992).

17.06.410 Hazardous waste.
Deleted by Ord. 1206.

17.06.415 Guyed tower.
"Guyed tower" means a wireless communication support structure which is usually over 100 feet tall, which consists of metal crossed strips or bars and is steadied by wire guys in a radial pattern around the tower. Guyed towers are often constructed in rural areas and are used to support antennas and related equipment. (Ord. 1396 § 10, 1999).

17.06.420 Gas station.
Repealed by Ord. 1396. (Ord. 1206 § 2, 1992).

17.06.430 Home occupation.
"Home occupation" means an occupation or profession which is customarily incident to or carried on in a dwelling place and not one in which the use of the premises as a dwelling place is largely incidental to the occupation carried on, and which occupation is carried on by a member of the family residing within the dwelling place. (Ord. 1206 § 2, 1992).

17.06.440 Hospital.
"Hospital" means a building designed and used for the medical and surgical diagnosis, treatment and housing of persons under the care of doctors and nurses. Rest homes, nursing homes, convalescent homes and clinics are not included. (Ord. 1206 § 2, 1992).

17.06.450 Hotel.
"Hotel" means a building or portion thereof designed or used for the transient rental of five or more units for sleeping purposes. A central kitchen and dining room and accessory shops and services catering to the general public can be provided. Not included are institutions housing persons under legal restraint or requiring medical attention or care. (Ord. 1206 § 2, 1992).

17.06.455 Impervious Surface
"Impervious surface" means a hard surface which either prevents or retards the entry of water into the soil mantel as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increase rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops and eaves, walkways, patios, decks (both covered and open slat construction shall both be considered impervious), driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, rockeries and oiled macadam or other surfaces which similarly impede the natural infiltration of surface and storm-water runoff. Open uncovered storm-water retention and detention facilities shall not be considered impervious surfaces for purposes of this definition. For purposes of calculating impervious surface coverage and demonstrating compliance with this title, the following impervious surfaces shall be included at a ratio of 50 percent:

A. "Permeable paving" means pervious concrete, porous asphalt, permeable pavers, grass grid, or other forms of pervious or porous paving material intended to allow the passage of water through the pavement section. Permeable paving often includes an aggregate base that provides structural support and acts as a storm-water reservoir.

B. "Open slatted decking" means a deck surface constructed of boards with intermittent gaps that allow water to pass through to the surface below. Only open uncovered decks installed over a permeable surface shall be included in impervious surface calculations at a 50 percent ratio. Covered decks, or decks installed over an impermeable surface shall be considered an impervious surface an included in all coverage calculations accordingly.

C. "Green roof" or "vegetated roof" means a roof, or a portion of a roof, consisting of waterproofing material, growing medium or soil, and vegetation used in place of or over the top of a conventional roof. Green roofs provide storm-water management by capturing, filtering, and evaporating rainfall.

Formatted: Font: Not Bold

17.06.460 Inoperable vehicle.
"Inoperable vehicle" means a car, truck or van that cannot be started and moved under its own power. A vehicle that is not currently licensed, including a recreational vehicle or trailer, that is designed for travel on the public roads, is also considered an inoperable vehicle. (Ord. 1206 § 2, 1992).

17.06.470 Junk storage.
"Junk storage" means the temporary or permanent storage outdoors of junk, waste, discarded, salvaged or used materials or inoperable vehicles or vehicle parts. This definition shall include, but not be limited to, the storage of used lumber, scrap, metal, tires, household garbage, furniture, and inoperable machinery, and as further defined in the current edition of the Uniform Fire Code. See also chapter 8.12 BMC, Nuisance. (Ord. 1396 § 11, 1999; Ord. 1206 § 2, 1992).

17.06.480 Junk yard.
"Junk yard" means a lot, land or structure, or part thereof, used for the collection, storage and sale of waste paper, rags, scrap metal or discarded material; or for the collecting, dismantling, storage, salvaging or sale of parts of machinery or vehicles not in running condition. (Ord. 1206 § 2, 1992).

17.06.490 Kennel.
More than four dogs and/or one litter of unweaned pups constitutes a kennel. (Ord. 1668 § 1, 2009; Ord. 1206 § 2, 1992).

17.06.500 Land use.
"Land use" means the type of use activity occurring on a land parcel or within a building situated upon a land parcel. (Ord. 1206 § 2, 1992).

17.06.510 Land use permit.
"Land use permit" means the document issued to an applicant which records all land use decisions which are made by the city on a land use application. Construction permits are excluded. (Ord. 1206 § 2, 1992).

17.06.515 Lattice tower.
"Lattice tower" means a wireless communication support structure which consists of metal crossed strips or bars to support antennas and related equipment. (Ord. 1396 § 12, 1999).

17.06.520 Lot.
A "lot" in the meaning of this title is a single tract of land, no matter how legally described, whether by metes and bounds and/or by lot or lots and block designation as in a recorded plat, that at the time of applying for a building permit is designated by its owner or developer as the tract to be used, developed or built upon as a unit of land under single ownership or control and assigned to the particular use for which the building permit is being secured. (Ord. 1206 § 2, 1992).

17.06.530 Lot, corner.
"Corner lot" means a lot at the junction of and fronting on two or more intersecting streets. A corner lot has two front and two side yards. (Ord. 1206 § 2, 1992).

17.06.540 Lot depth.
"Lot depth" means the mean dimension of the lot from the front street line to the rear line. (Ord. 1206 § 2, 1992).

17.06.550 Lot, interior.
"Interior lot" means a lot fronting on one street. (Ord. 1206 § 2, 1992).

17.06.~~560~~555 Lot width.
"Lot width" means the dimension of the lot line at the street, or in an irregular shaped lot the dimension across the lot at the building line, or in a corner lot the narrow dimension of the lot at a street or building line. (Ord. 1206 § 2, 1992).

17.06.560 Low impact development
"Low impact development" or "LID" means a storm-water and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed storm-water management practices that are integrated into a project design. Low impact development features, practices, and techniques include bio-retention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated or green roofs, minimum excavation foundations, and water re-use.

17.06.565 Macro facility.
"Macro facility" is an attached wireless communication facility which consists of antennas equal to or less than 15 feet in height or a parabolic antenna up to one meter (39.37 inches) in diameter and with an area not more than 100 square feet n the aggregate as viewed from any one point. (Ord. 1396 § 13, 1999).

17.06.570 Mailed notice.
"Mailed notice" means notice mailed to all property owners, commercial lessees and all residents of the area within a specified distance of the boundaries of the site of a proposed action. (Ord. 1206 § 2, 1992).

17.06.580 Major auto repair.
Repealed by Ord. 1396. (Ord. 1206 § 2, 1992).

17.06.590 Manufactured home.
"Manufactured home" means a structure, transportable in one or more sections from its manufacturer, retailer or wholesaler to its destination. A manufactured home is designated primarily for residential occupancy by human beings and the term includes mobile home or modular home. (Ord. 1206 § 2, 1992).

17.06.592 Marijuana processor.
"Marijuana processor" means a person licensed by the State Liquor Control Board to process marijuana into usable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products at wholesale to marijuana retailers. (Ord. 1788 § 2, 2013).

17.06.594 Marijuana producer.
"Marijuana producer" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers. (Ord. 1788 § 3, 2013).

17.06.596 Marijuana retailer.
"Marijuana retailer" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet. (Ord. 1788 § 4, 2013).

17.06.600 Mean depth.
The "mean depth" of a lot is the depth of such lot measured on a line approximately perpendicular to the fronting street and midway between the side lines of such lot. (Ord. 1206 § 2, 1992).

17.06.602 Medical cannabis collective garden.
"Medical cannabis collective garden" or "collective garden" means any place, area or garden where qualifying patients share responsibility and engage in the production, processing, and/or delivery of marijuana/cannabis for medical use as set forth in chapter 69.51A RCW and subject to the limitations therein. (Ord. 1788 § 5, 2013).

17.06.605 Medical service.
"Medical service" means a retail sales and service use in which health care for humans if provided on an outpatient basis including, but not limited to, offices for doctors, dentists, chiropractors, and other health care practitioners. (Ord. 1396 § 15, 1999).

17.06.606 Micro facility.
"Micro facility" means an attached wireless communication facility which consists of antennas equal to or less than four feet in height (except omnidirectional antennas which may be up to six feet in height) and with an area of not

more than 580 square inches in the aggregate (e.g., one-foot diameter parabola or two-foot by one-and-one-half-foot panel) as viewed from any one point. The permitted antenna height include the wireless communication facility support structure. (Ord. 1396 § 16, 1999).

17.06.608 Mini facility.
"Mini facility" means an attached wireless communication facility which consists of antennas equal to or less than 10 feet in height or a parabolic antenna up to one meter (39.37 inches) in diameter and with an area of not more than 50 square feet in the aggregate as viewed form any one point. (Ord. 1396 § 17, 1999).

17.06.610 Mobile home.
"Mobile home" means a factory constructed residential unit with its own independent sanitary facilities, that is intended for year-round occupancy and is composed of one or more major components which are mobile in that they can be supported by wheels attached to their own integral frame or structure over the public highway under license or by special permit. (Ord. 1206 § 2, 1992).

17.06.620 Mobile home park.
"Mobile home park" means an area of land occupied or designed for the occupancy of two or more mobile homes. (Ord. 1206 § 2, 1992).

17.06.622 Monopole I.
"Monopole I" is a wireless communication facility which consists of a support structure, the height of which shall not exceed 60 feet. (Ord. 1396 § 18, 1999).

17.06.624 Monopole II.
"Monopole II" is a wireless communication facility which consists of a wireless communications support structure, greater than 60 feet in height erected to support wireless communication antennas and connecting appurtenances. (Ord. 1396 § 19, 1999).

17.06.625 Motion picture theater, adult.
"Adult motion picture theater" means a place of public assembly in which, in an enclosed building, motion picture films, video cassettes, cable television, or any other such visual media, are presented which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified anatomical areas" or "specified sexual activities," as defined in BMC 17.06.845 and 17.06.850. (Ord. 1206 § 2, 1992).

17.06.630 Nonconforming structure.
"Nonconforming structure" means a structure which was lawful when established which does not now conform to the development standards of the zone in which it is located. A structure shall be considered established if it conformed to applicable zoning regulations at any time, or when it is built under permit, a permit for the structure has been granted and has not expired, or the structure is substantially underway as evidenced by timely called inspections complying with the Uniform Building Code. (Ord. 1206 § 2, 1992).

17.06.640 Nonconforming use.
"Nonconforming use" means a use of land or a structure which was lawful when established and which does not now conform to the use regulations of the zone in which it is located. A use shall be considered established if it conformed to applicable zoning regulations at any time, or when it has commenced under permit, a permit for the use has been granted and has not expired, or a structure to be occupied by the use is substantially underway as evidenced by timely called inspections complying with the Uniform Building Code. (Ord. 1206 § 2, 1992).

17.06.645 Office.
"Office" means a commercial use which provides administrative, contractors, professional or customer services to individuals, businesses, institutions and/or government agencies in an office setting.

A. "Administrative office" means an office use in which services are provided to customers primarily by phone or mail, by going to the customer's home or place of business, or on the premises by appointment; or in which customers are limited to holders of business licenses. Examples of services provided include, but are not limited to, general contracting, janitorial and housecleaning, legal, architectural, data processing, broadcasting companies, administrative office or businesses, unions or charitable organization, and wholesalers and manufacturer's

representatives' office. Administrative offices may include accessory storage, but not the storage of building materials, contractor's equipment or items, other than samples, for wholesale sale.

B. "Customer service office" means an office use in which on-site customer services are provided in a manner which encourages walk-in clientele and in which generally an appointment is not needed to conduct business. Examples include branch banks, travel agencies, airline ticket offices, brokerage firms, real estate offices, and government agencies which provide direct services to clients. (Ord. 1396 § 20, 1999).

17.06.647 Outdoor vending machine.
"Outdoor vending machine" shall mean a mechanical device located on the outside of a building that provides a product or service to the public for compensation, including but not limited to drink dispensers, food dispensers, movie rental or other product vending machines. The definition shall also include freestanding automated teller machines that are not on the same property as the financial institution. For purposes of this chapter, news boxes, pay phones, youth amusement rides, and bottled soda, juice or water machines shall not be deemed to be outdoor vending machines. (Ord. 1720 § 1, 2010).

17.06.650 Parking space.
"Parking space" means an off-street space used to temporarily park a motor vehicle and having access to a public street or alley. (Ord. 1206 § 2, 1992).

17.06.660 Permitted use.
"Permitted use" means any use authorized or permitted alone or in conjunction with another use in specific district and subject to the limitations of the regulations of such use district. (Ord. 1206 § 2, 1992).

17.06.665 Personal and household retail sales and service.
"Personal and household retail sales and service" means a retail sales and service use in which goods are rented or sold or services are provided primarily for household and personal use, rather than for business establishments, institutions, or government agencies, but excluding uses in which primarily building materials and/or heating fuel are sold. Examples of personal and household retail sales are bookstores, furniture stores, and grocery stores. Examples of personal and household services are shoe repair, hair-cutting salons, and dry cleaning.

A. "General personal and household retail sales and service" means a personal and household retail sales and service use which is not a multipurpose convenience store, major durables sales and service or a specialty food store.

B. "Major durables sales, service and rental" means a personal and household retail sales and service use in which large household items such as, but not limited to, furniture or appliances, are rented or sold.

C. "Multipurpose convenience store" means a personal and household retail sales and service use in which a wide range of items frequently purchased for household use are rented or sold. Examples of multipurpose convenience stores include, but are not limited to, grocery, hardware, drug, and variety stores.

D. "Specialty food store" means a personal and household retail sales and service use in which food such as salads, deli meats, desserts, baked goods, whole pizzas, and other ready-to-eat foods are prepared and sold, generally for consumption on other premises. Specialty packaged foods, and/or bulk items such as cheese, aged foods, and/or bulk items such as cheese may also be sold, and the square footage of any area used for seating for the immediate consumption of food shall be no more than 300 square feet. If more than 300 square feet are devoted to seating space, the entire use shall be considered an eating and drinking establishment rather than a specialty food store. (Ord. 1396 § 21, 1999).

17.06.670 Primary use (or principal use).
"Primary use (or principal use)" means the use for which a lot, structure or building, or the major portion thereof, is designed or actually employed. (Ord. 1206 § 2, 1992).

17.06.680 Protrusions.
Deleted by Ord. 1206.

17.06.690 Public hearing.
"Public hearing" means a duly advertised public meeting called by the council, board or commission of the city for the purpose of taking formal public comment, both in favor and opposition to a proposed action. (Ord. 1206 § 2, 1992).

17.06.692 Related equipment.
"Related equipment" is all equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit and connectors. (Ord. 1396 § 22, 1999).

17.06.695 Retail sales and service.
"Retail sales and service" means a commercial use in which goods are rented or sold at retail to the general public for direct consumption and not for resale, or in which services are provided to individuals and/or households. Merchandise may be bought as well as sold and may be processed as long as the items processed are sold only on the premises, and production is incidental or subordinate to the selling, rental or repair of goods. See the following definitions: personal and household retail sales and service; medical services; automotive retail sales and service; eating and drinking establishments. (Ord. 1396 § 23, 1999).

17.06.700 Rezone.
"Rezone" means an amendment to the official land use map to change the zone classification of an area. (Ord. 1206 § 2, 1992).

17.06.705 Secure community transition facility (SCTF).
"Secure community transition facility (SCTF)" means, under RCW 71.09.020, a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under chapter 71.09 RCW. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250 and any community-based facilities established under this chapter and operated by the Washington State Secretary of Social and Health Services or under contract with the Secretary. (Ord. 1670 § 5, 2009).

17.06.710 Service or storage yard.
"Service or storage yard" means an accessory yard used for the storage of equipment, vehicles or materials and/or outdoor fabrication or processing of materials or devices. (Ord. 1206 § 2, 1992).

17.06.720 Semi-private facility.
Deleted by Ord. 1206.

17.06.730 Setback.
"Setback" means yard requirements. The distances that buildings or uses must be removed from their lot lines. (Ord. 1206 § 2, 1992).

17.06.737 Secure community transition facility or SCTF.
Repealed by Ord. 1670. (Ord. 1652 § 3, 2008).

17.06.740 Sign.
Repealed by Ord. 1694. (Ord. 1206 § 2, 1992).

17.06.750 Sign area, or surface area.
Repealed by Ord. 1694. (Ord. 1206 § 2, 1992).

17.06.760 Sign, electronic message center.
Repealed by Ord. 1694. (Ord. 1206 § 2, 1992).

17.06.770 Sign, free-standing.
Repealed by Ord. 1694. (Ord. 1206 § 2, 1992).

17.06.780 Sign, ground-mounted.
Repealed by Ord. 1694. (Ord. 1206 § 2, 1992).

17.06.790 Sign, logo.
Repealed by Ord. 1694. (Ord. 1206 § 2, 1992).

17.06.800 Sign, message.
Repealed by Ord. 1694. (Ord. 1206 § 2, 1992).

17.06.810 Sign, off-premises.
Repealed by Ord. 1694. (Ord. 1206 § 2, 1992).

17.06.820 Sign, public service information.
Repealed by Ord. 1694. (Ord. 1206 § 2, 1992).

17.06.830 Sign, segmented message.
Repealed by Ord. 1694. (Ord. 1206 § 2, 1992).

17.06.840 Solid planting.
"Solid planting" means a planting of evergreen trees and shrubs which will prevent a through and unobscured penetration of sight or light. (Ord. 1206 § 2, 1992).

17.06.845 Specified anatomical areas.
"Specified anatomical areas" means:

A. Less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and

B. Human male genitals in a discernible turgid state, even if completely and opaquely covered. (Ord. 1206 § 2, 1992).

17.06.850 Specified sexual activities.
"Specified sexual activities" means:

A. Human genitals in a state of sexual stimulation or arousal;

B. Acts of human masturbation, sexual intercourse or sodomy;

C. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast. (Ord. 1206 § 2, 1992).

17.06.860 Story.
"Story" means the part of a building lying between two floors or between the floor and ceiling of the highest usable level in the building. (Ord. 1206 § 2, 1992).

17.06.870 Street.
"Street" means a public thoroughfare which affords the principal means of access to abutting properties. (Ord. 1206 § 2, 1992).

17.06.880 Structure.
"Structure" means a combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground. Not included are residential fences, retaining walls less than three feet in height, rockeries and similar improvements of a minor character. (Ord. 1206 § 2, 1992).

17.06.890 Tract.
"Tract" means a lot, usually several acres in area. (Ord. 1206 § 2, 1992).

17.06.895 Trailer park.
"Trailer park" means a facility designed to accommodate recreational vehicles or trailers no longer than 40 feet and capable of being pulled with a one ton truck, designed to provide the amenities necessary for permanent residents and accommodating the overnight guest. Units shall at all times be prepared for evacuation in event of a flood warning. (Ord. 1227 § 1, 1993).

17.06.897 Transmission tower.
"Transmission tower" is a freestanding structure, other than a building, on which communication devices are mounted. Transmission towers may serve either as a major or minor communication facility. Examples include, but are not limited to:

A. Monopoles;

B. Lattice towers;

C. Guyed towers. (Ord. 1396 § 24, 1999).

17.06.900 Variance.
"Variance" means relief from certain provisions of this title as authorized by the board of adjustment after determining that the criteria established for the granting of variances have been satisfied. (Ord. 1206 § 2, 1992).

17.06.905 Wireless communication facility.
"Wireless communication facility" is an unstaffed facility for the transmission and reception of low-power radio signals consisting of an equipment shelter or cabinet, a support structure, antennas (e.g., omnidirectional, panel/directional or parabolic) and related equipment. (Ord. 1396 § 25, 1999).

17.06.906 Wireless communication support structure.
"Wireless communication support structure" is the structure erected to support wireless communication antennas and connecting appurtenances. Support structure types include, but are not limited to, stanchions, monopoles, lattice towers, wood poles or guyed towers. (Ord. 1396 § 26, 1999).

17.06.910 Yard.
"Yard" means an unoccupied space open to the sky, on the same lot with a building or structure. Eaves and masonry chimneys may protrude a maximum of 30 inches into a required yard. (Ord. 1206 § 2, 1992).

17.06.920 Yard, front.
"Front yard" means an open unoccupied space extending from the principal street line to the nearest wall of a building on the lot and including the full width of the lot to its side lot lines. See Yard, BMC 17.06.910. (Ord. 1206 § 2, 1992).

17.06.930 Yard, rear.
"Rear yard" means an open unoccupied space extending from the rear lot line to the nearest wall of the main building on the lot and including the full width of the lot to its side lines. See Yard, BMC 17.06.910. (Ord. 1206 § 2, 1992).

17.06.940 Yard, side.
"Side yard" means an open unoccupied space extending from the front yard to the rear yard and from the nearest wall of the main building to the side lot line. See Yard, BMC 17.06.910. (Ord. 1206 § 2, 1992).

---

[1] Prior legislation: Ords. 890 (Chapter 3), 1136 § 1, 1158 § 12, 1187 § 1, and 1200 § 3.

Chapter 17.09

DISTRICT ESTABLISHMENT, MAPS AND BOUNDARIES

Sections:

17.09.010 Districts established.
17.09.020 Unclassified areas.
17.09.030 District boundaries – Established.
17.09.040 District boundaries – Shown on zoning map.
17.09.050 District boundaries – Rules for interpretation.
17.09.060 Conformity with district regulations required.
17.09.070 Adoption of special planning areas map.

17.09.010 Districts established.
In order to classify, segregate, and regulate the uses of land, buildings, and structures, the city is divided into the following use districts:

R-1-6.0	Single-family residence district (6,000 square foot minimum lot),
R-1-7.6	Single-family residence district (7,600 square foot minimum lot),
R-1-9.6	Single-family residence district (9,600 square foot minimum lot),
R-A	Residence and agriculture district,
R-2	Two-family residence district,
R-3	Multifamily residence district,
R-S	Semipublic district,
T-1	Tourist district,
B-1	Business district,
C-1	General commercial district,
C-2	Heavy commercial district,
M-1	Industrial district.

(Ord. 1221 § 3, 1992; Ord. 979 § 3, 1981; Ord. 890 § 2.1, 1977).

17.09.020 Unclassified areas.
All lands not classified according to the aforementioned classifications on the official zoning maps, and all lands, if any, of the city not shown on officially adopted zoning maps, shall be considered unclassified and, pending future classification, shall be subject to other restrictions and regulations of the R-A district. (Ord. 890 § 2.2, 1977).

17.09.030 District boundaries – Established.
The boundaries of such use districts as are shown upon any zoning map adopted by this title, or amendments thereto, are adopted and approved and the regulations of this title governing the uses of land, buildings and structures, the height of buildings and structures, the sizes of yards about buildings and structures, and other matters as set forth in this title are hereby established and declared to be in effect upon all land included within the boundaries of each and every use district shown upon each zoning map. (Ord. 890 § 2.5, 1977).

17.09.040 District boundaries – Shown on zoning map.
The boundaries of use districts shall be determined and defined or redefined from time to time, by the adoption of zoning maps covering the city and showing the geographical area and location of said use districts. Each zoning map

shall be, upon its final adoption, a part of the zoning ordinance codified in this title, and said map, and all notations, references and other information shown thereon, thereafter shall be as much a part of this title as though all matters and information set forth on said map were fully described in this title. (Ord. 890 § 2.3, 1977).

17.09.050 District boundaries – Rules for interpretation.
When uncertainty exists as to the boundaries of any use district shown on zoning maps, the following rules of construction shall apply:

A. Where district boundaries are indicated as approximately following the centerline of streets, alleys or highways, the actual centerline shall be construed to be the boundary.

B. Where district boundaries are indicated as running approximately parallel to the centerline of a street, the boundary line shall be construed to be parallel to the centerline of the street.

C. Where district boundaries are indicated on such map as approximately following the lot or tract lines, the actual lot or tract lines shall be construed to be the boundary of such use district.

D. Where a district boundary on such zoning map divides a tract in unsubdivided property, the location of such use district boundary, unless the same is indicated by dimensions thereon, shall be determined by use of the scale appearing on such zoning map.

E. Where a public street or alley is officially vacated or abandoned, the regulations applicable to the abutting property to which the vacated portion shall revert shall apply to such vacated or abandoned street or alley.

F. In case uncertainty exists which cannot be determined by application of the foregoing rules, the planning commission shall recommend, and the city council shall determine, the location of such use district boundaries. (Ord. 890 § 2.4, 1977).

17.09.060 Conformity with district regulations required.
Except as otherwise provided in this title:

A. No building or structure shall be erected and no existing building or structure shall be moved, altered, added to or enlarged, nor shall any land, building, structure or premises be used, designed or intended to be used for any purpose or in any manner other than a use listed in this title or amendments thereto or permitted in the use district in which such land, building, structure or premises is located.

B. No building or structure shall be erected, nor shall any building or structure be moved, altered, enlarged or rebuilt, nor shall any open spaces surrounding any building or structure be encroached upon or reduced in any manner, except in conformity with the building site requirements and the area, yard and height regulations established by this title or amendments thereto for the use district in which such building or structure is located.

C. No yard or other open spaces provided about any building or structure for the purpose of complying with the regulations of this title or amendments thereto shall be considered as providing a yard or open space for any other building or structure. (Ord. 890 § 2.6, 1977).

17.09.070 Adoption of special planning areas map.
The special planning areas map, adopted as part of the Burlington comprehensive plan, is hereby adopted as part of the zoning code for the purpose of identifying the location of areas where there may be specific additional regulations under the applicable chapter of this code. See Exhibit A, attached to the ordinance codified in this section. The following descriptions apply to the special planning areas:

A. Downtown. This area encompasses the original downtown of Burlington and adjacent areas that are directly linked to the main street, Fairhaven Avenue. The intent is to implement the downtown plan, encourage new activity, and gradually retrofit the area to enhance the focus on customer service retail, office and restaurant, keeping medical uses east of Anacortes Street and north of Fairhaven Avenue.

B. North and South Entrance Areas. These areas are uniquely constrained by freeway interchanges and major interchanges including the Skagit River Bridge and, as a result, have traffic problems that may require study and mitigation. High traffic generating uses are discouraged.

C. Retail Core. This area is the shopping and entertainment district that attracts regional traffic. Drive-ins are limited to tenant pads and signalized intersection, banks are limited to multiple-tenant buildings, gas stations, car washes and automobile sales are prohibited and vehicle repair is limited to side streets.

D. West Side Commercial Area. This area provides a wide array of uses, but the emphasis in terms of overall land use is on vehicle sales and related activities. (Ord. 1396 § 27, 1999).

Chapter 17.12

LAND USES

Sections:

17.12.010 *Repealed.*
17.12.010 Designated.

Repealed by Ord. 1206. (Ord. 1200 § 2, 1992; Ord. 1103 § 2, 1987; Ord. 890 Table 1, 1977).

Chapter 17.15

R-1 LAND USE DISTRICT[1]

Sections:

17.15.010 Intent.
17.15.020 District subdivisions designated.
17.15.030 Permitted primary uses.
17.15.035 Permitted accessory uses.
17.15.040 Uses requiring permit.
17.15.050 Additional regulations.
17.15.055 Residential small lot.
17.15.060 Area and dimensional regulations.

17.15.010 Intent.

The R-1 single-family residential zones are intended to create a living environment of optimum standards for single-family dwellings. It is further intended to limit development to relatively low degrees of density. This district will provide for the development of single-family detached dwellings, not more than one such dwelling on each lot, and for such accessory uses as are related, incidental and not detrimental to the residential environment. (Ord. 1206 § 3, 1992).

17.15.020 District subdivisions designated.

District R-1 is further subdivided into districts differing only in the requirements of lot width and of lot area per family as follows:

Subdistrict	Minimum Lot Width at the Building Line	Minimum Lot Area Per Dwelling Unit
R-1- 6.0	60 feet	6,000 sq. ft.
R-1- 7.6	60 feet	7,600 sq. ft.
R-1- 8.4	60 feet	8,400 sq. ft.
R-1- 9.6	60 feet	9,600 sq. ft.

(Ord. 1502 § 1, 2002; Ord. 1260 § 1, 1994; Ord. 1221 § 4, 1992; Ord. 1206 § 3, 1992).

17.15.030 Permitted primary uses.

Hereafter all buildings, structures, or parcels of land shall only be used for the following, unless otherwise provided for in this title:

A. One detached single-family dwelling, not to exceed one dwelling on any lot;

B. Keeping of not more than six household pets, four of which may be dogs, that can be kept in the home. This limit shall not include birds, fish or suckling young of pets;

C. Municipal parks, playgrounds;

D. Family day care home, as defined by the State Department of Social and Health Services (DSHS);

E. Schools;

F. Congregate residences each accommodating 10 persons or less;

G. Foster family care homes licensed by the Washington State Department of Social and Health Services, as an accessory use to a dwelling unit, for six or fewer children including those of the resident family. (Ord. 1668 § 2, 2009; Ord. 1431 § 1, 2000; Ord. 1396 § 28, 1999; Ord. 1237 § 1, 1993; Ord. 1206 § 3, 1992).

17.15.035 Permitted accessory uses.
A. Accessory uses to include residential garage, guest cottage, recreation room, tool shed, noncommercial greenhouse, and swimming pool.

B. Telecommunication micro facility, subject to the following requirements:

1. Micro facility shall be located on existing buildings, poles or other existing support structures. A micro facility may locate on buildings and structures provided that the interior wall or ceiling immediately adjacent to the facility is not designated residential space.

2. Antennas equal to or less than four feet in height (except omnidirectional antennas which can be up to six feet in height) and with an area of nor more than 580 square inches in the aggregate (e.g., one-foot diameter parabola or two-foot by one-and-one-half-foot panel as viewed from any one point) are exempt from the height limitation of the zone in which they are located. Structures which are nonconforming with respect to height may be used for the placement of omnidirectional antennas providing they do not extend more than six feet above the existing structure. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

3. The micro facility shall be exempt from review by the design review board if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

4. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

5. Micro facilities for a specific wireless provided shall be separated by a distance equal to or greater than 1,320 linear feet from other micro facilities of the same wireless provider. (Ord. 1396 § 29, 1999).

17.15.040 Uses requiring permit.
The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of this code:

A. Day care limited to a mini day care center. Day care center, preschool or nursery schools may also be permitted but must be located on an arterial;

B. Duplex on a corner lot in any residential zone; provided, that a duplex shall be located no closer than 300 feet from another duplex, measured along the right-of-way; except that when the blocks are more than 300 feet long, duplexes shall not be limited to the corner as long as they are located no closer than 300 feet to another duplex;

C. Government facilities;

D. Kennels;

E. Mobile home park;

F. Neighborhood recreational buildings and facilities;

G. Private country clubs and golf courses, excluding driving ranges;

H. Religious institutions;

I. Utility substations. (Ord. 1717 § 1, 2010; Ord. 1396 § 30, 1999; Ord. 1333 § 1, 1997; Ord. 1284 § 1, 1995; Ord. 1260 § 2, 1994; Ord. 1237 § 2, 1993; Ord. 1221 § 5, 1992; Ord. 1206 § 3, 1992).

17.15.050 Additional regulations.

A. A manufactured home may be allowed to be placed within any residential zone that allows single-family homes, provided the following conditions are met:

1. The home is comprised of at least two fully enclosed parallel sections each of not less than 12 feet wide by 36 feet long;

2. The home must be placed on a permanent foundation similar to that required of other residential construction;

3. The home was originally constructed with and now has a pitched roof with a slope no less than three-inch rise to 12-inch run, and the roof must be an integral part of the home and shall be made of either composition, shakes or shingles (wood or metal);

4. The home has exterior siding similar in appearance to siding materials commonly used on conventional site-built International Building Code single-family residences;

5. All requirements of this title and other applicable regulations must be met. These requirements do not apply to mobile homes located within a mobile home park.

B. Rooms may be rented to no more than two persons, other than the family occupying a single-family dwelling, provided there is compliance with health and building code requirements.

C. Accessory buildings and structures which are connected to the primary building and defined in chapter 17.06 BMC are permitted provided that they comply with the setbacks required of the main building.

D. Accessory buildings and structures which are detached as defined in chapter 17.06 BMC and are a minimum of 10 feet from the primary structure may be located in the rear yard a minimum of five feet from the rear and side property lines, except where on an alley in which case they may be on the rear property line, and provided it is not a corner lot.

E. Horses, beef cattle or other domestic farm animals are permitted on the condition that the number of animals not exceed a ratio of one per one-half acre of fenced pasture area. The keeping of mink, goats, foxes or hogs is prohibited.

F. No trailer, recreational vehicle, camping trailer, fifth wheeler, camper, van or other similar type of mobile unit that is not a permanent structure attached to the ground, shall be used as a place of habitation.

G. See chapter 17.54 BMC for parking requirements.

H. Junk storage and inoperable vehicles are prohibited outdoors unless in a solid fenced yard and not visible from the street, except as follows:

1. Litter, trash, used appliances, used interior furnishings and discarded exterior furnishings and similar items are prohibited outdoors regardless of location.

2. Junk storage is further limited to piled used lumber, yard cleanup equipment and similar types of items; it is not intended to include the storage of any items that would be classified as a nuisance under chapter 8.12 BMC. Whenever it is stated in writing by two or more persons having separate residences in a neighborhood that any person is violating the provisions of this subsection, the Burlington police chief or designee shall investigate, and, if appropriate, advise the person of the complaint and that such violations must cease. Failure to comply shall constitute a violation of this code.

I. Where alley access is available, parking shall be located off the alley and no curb cuts shall be permitted. This requirement shall apply to new construction of homes and accessory buildings.

J. Accessory dwelling units shall be permitted as an additional means of providing opportunities for affordable housing in an existing owner occupied residence. The following criteria for approval shall be met in order to establish an accessory dwelling unit:

1. Maintain single-family appearance and character.

2. New entrances only on side or rear.

3. Provide three off-street parking spaces. Parking shall not be located in front of the structure.

4. Location shall be within or attached to the residence; not in detached accessory structures such as guest house or garage unless the lot is in excess of 12,000 square feet in area.

5. The primary dwelling or the accessory dwelling shall be occupied by the owner. The residence must have been owner occupied for at least three years since the construction date. Covenants regarding ownership requirements shall be filed with the county.

6. The immediate neighbors shall be notified and a public hearing shall be held before the board of adjustment.

7. The board shall have the final authority to grant, grant with conditions, or deny the request.

K. Home occupations are allowed subject to compliance with BMC 17.45.080.

L. Heat pumps or other noise-producing mechanical equipment shall not be located within 10 feet of a property line abutting another lot and all equipment shall be equipped with a noise-baffling screen so that there shall be no audible sound at the property line. (Ord. 1396 § 31, 1999; Ord. 1260 § 3, 1994; Ord. 1237 § 3, 1993; Ord. 1221 § 5, 1992; Ord. 1206 § 3, 1992).

17.15.055 Residential small lot.
A. Lot Area. Minimum lot area for one detached dwelling unit shall be 3,000 square feet.

B. Height Limit and Roof Pitch. The basic height limit shall be 20 feet with a maximum of a story and one-half. A pitched roof is required, with a minimum 4:12 for a one story building and 12:12 for a story and one-half building. See BMC 17.06.150 for definition of building height.

C. Structure Depth. The depth of any structure shall not exceed 60 feet, except garages. Decks, balconies, and bay windows shall be excluded from measurement for the purposes of this provision.

D. Yards and Setbacks.

1. Front yard setback: ~~shall be twenty~~17 feet. ~~unless the adjoining lot has a smaller setback, in which case it shall be no less than 10 feet.~~The front setback for residential small lots may be reduced to 10 feet through the subdivision or short subdivision process if alley access is provided and setback requirements are noted on the face of the plat.

2. Rear yard setback shall be no less than 10 feet and the sum of the front yard plus the rear yard shall be a minimum of 30 feet.

3. Side setback shall be a minimum of five feet.

E. ~~Lot~~ Maximum building c~~C~~overage:~~.~~ ~~Lot coverage shall be limited to~~ 45 percent~~.~~

F. Maximum impervious surface coverage: 60 percent

~~G~~F. Manufactured homes are prohibited. (Ord. 1502 § 2, 2002).

17.15.060 Area and dimensional regulations.
A. Minimum Lot Requirements.

1. Minimum lot area per dwelling unit and minimum lot width at the building line as specified at the beginning of BMC 17.15.020; except that residential small lots may be developed as provided in BMC 17.15.055.

2. Minimum lot width at street line: 30 feet.

3. Minimum mean depth of lot: 80 feet.

4. Access to lots shall be from a dedicated street, unless the director determines that the following conditions exist, and permits access by a permanent private easement:

a. Access by easement would not compromise the goals of the zoning code to provide for adequate light, air and usable open space between structures; and

b. The dedication and improvement of a street is not necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage; and

c. The dedication and improvement of a street is not necessary or desirable in order to provide on-street parking for overflow conditions; and

d. No potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines; and

e. There is no potential for extending the street system; and

f. Minimum width of an easement shall be 30 feet.

B. Minimum Setback Requirements.

1. Front yard ~~minimum mean depth~~setback: ~~20~~ 17 feet.

2. Side yard minimum mean width: five feet. The total of the two side yards shall be 15 feet. Side of building means the outer face of any part of the building roof eaves.

3. Rear yard minimum mean depth: 20 feet.

C. Maximum ~~Land Coverage by~~ Buildings and Impervious Surface Coverage:~~.~~

1. ~~Total~~Building coverage: 35 percent except that residential small lots may be developed as provided in BMC 17.15.055.

2. ~~Accessory buildings~~Impervious surface coverage: ~~50~~ 40 percent. ~~of rear yard.~~

D. Maximum Building Height. Two and one-half stories, but not more than 35 feet except that churches may exceed this height when approved by plan review (see BMC 17.68.150), except that residential small lots may be developed as provided in BMC 17.15.055.

1. Main buildings: two and one-half stories not to exceed 30 feet.

2. Accessory buildings: one story not to exceed 20 feet.

E. Accessory buildings shall not cover more than 50 percent of the required rear yard setback and shall comply with the following requirements:

Lot Size	Maximum Building Size	Setback	Maximum Eave Height at Minimum Setback Line
Up to 9,600 square feet	640 square feet	5 feet	12 feet

Lot Size	Maximum Building Size	Setback	Maximum Eave Height at Minimum Setback Line
9,601 – 10,890 square feet (1/4 acre)	10 square feet /100 square feet lot area > 9,600 square feet (760 square feet @ 1/4 acre)	7 feet	12 feet
10,891 – 21,780 square feet (1/2 acre)	1,200 square feet	10 feet	12 feet
21,781 – 43,560 (1 acre)	1,600 square feet	12 feet	12 feet
> 43,560 (1 acre)	2,000 square feet	15 feet	15 feet

F. Subdivisions shall comply with the following criteria:

1. A detailed landscaping plan shall be submitted.

2. Artist's renderings with both isometric and perspective views and a color plan for the proposed development. Models may be required for large and complex projects.

3. A design review report and recommendation pursuant to chapter 17.69 BMC shall be presented.

4. Common open space, playground and/or park shall be provided for subdivisions larger than 40 units.

G. Cluster developments may be permitted ~~as part of the~~through a subdivision or short subdivision process. ~~The planning commission, when considering a subdivision, may allow~~For such developments, ~~a reduction of~~the normally applicable requirements –for lot width and lot width and the building line, lot depth~~lot width at building line~~, building and impervious surface coverage, and lot area may be reduced or altered; provided, that:

1. Housing types may include single-family detached, townhouses, zero lot line and multifamily. A maximum of eight dwelling units is permitted in a single building.

2. The density of dwellings ~~is~~ shall not be greater than that which would be permitted ~~occur~~ under strict interpretation of the requirements for the underlying zoning classification in which the development is located.~~subject to adopted administrative rules reviewed and approved by the planning commission within six months of the effective date of this section.~~

3. When ~~lot widths and lot areas are decreased, 35 percent lot coverage shall be the maximum permitted for a detached single-family dwelling and proportional limits on building size may be imposed on other housing types~~the building or impervious surface coverage of individual lots exceeds the permissible limits for the zone in which the development is located, additional open space areas shall be set aside so that the total coverage of all building lots and open space tracts is consistent with coverage limit prescribed by the underlying zone.~~.~~

4. The resulting subdivision design shall clearly retain~~s~~ a substantial area of continuous, publicly accessible open space, wetlands, areas adjacent to wetlands ~~such as Gages Slough, a~~ lakes, ~~wetland,~~ bluffs, ravines, steep slopes, wildlife habitat areas, or other critical areas ~~trail on Burlington Hill, or other unique topographic feature, or a conservation area identified by the planning commission. Such open spaces shall be maintained in accordance with their intended use and purpose.~~. Cluster developments may also be authorized if the resulting open space area(s) is used for non-structural low impact development features, such as bio-retention areas, which mimic natural environmental and hydrologic processes. All such low impact development features shall be extensively landscaped using native vegetation.

5. A reduction in lot size of up to 20 percent below the minimum lot size of the underlying zoning shall be permitted. For example, if the underlying zoning has a minimum lot size of 9,600 square feet, the maximum reduction in lot size is 1,920 square feet, or a minimum lot size of 7,680 square feet in a cluster subdivision.

6. A detailed landscaping plan shall be submitted.

7. Artist's renderings with both isometric and perspective views and a color plan for the proposed development. Models may be required for large and complex projects.

8. ~~A design review report and recommendation pursuant to chapter 17.69 BMC shall be presented.~~Open space areas created through a cluster development shall be placed within separate tracts.

9. Restrictive notes shall be included on the face of the plat, or short plat, limiting the future use and development of open space tracts to uses and developments that are consistent with intended purpose of the open space.

H. Subdivisions shall be required to provide one 10-foot and one five-foot side yard where feasible to maximize the opportunity for vehicle access to the rear yard. (Ord. 1502 § 3, 2002; Ord. 1473 § 1, 2001; Ord. 1431 § 2, 2000; Ord. 1396 § 32, 1999; Ord. 1260 § 4, 1994; Ord. 1237 § 4, 1993; Ord. 1206 § 3, 1992).

[1] Prior legislation: Ord. 1090 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.18

R-A RESIDENCE AND AGRICULTURAL DISTRICT

(Repealed by 1630)

Chapter 17.21

R-2 TWO-FAMILY

RESIDENCE DISTRICT[1]

Sections:

17.21.010 Intent.
17.21.020 Permitted primary uses.
17.21.030 Permitted accessory uses.
17.21.040 Uses requiring permit.
17.21.050 Area and dimensional regulations.

17.21.010 Intent.
The R-2 duplex residential zones are intended to permit a limited increase in population density in those areas to which this classification applies by permitting two dwelling units on a minimum size lot while at the same time, by means of the standards and requirements set forth in this chapter, maintaining a desirable family living environment by establishing minimum lot areas, yards and open spaces. A related consideration is to provide a transition between single-family areas and other intensive designations or activities which reduce the suitability for single-family uses. (Ord. 1206 § 3, 1992).

17.21.020 Permitted primary uses.
Hereafter all buildings, structures, or parcels of land shall only be used for the following subject to the same additional regulations (BMC 17.15.050) required as though located in the R-1 district, unless otherwise provided for in this title:

A. One duplex (two-family dwelling) not to exceed one duplex per lot;

B. One detached single-family dwelling, not to exceed one single-family dwelling per lot. If only a single-family dwelling exists on a lot on the effective date of this title codified herein, an additional dwelling unit may be added or attached to and made a part of the existing building, provided all requirements of this title are met;

C. Accessory uses to include residential garage, guest cottage, recreation room, tool shed, noncommercial greenhouse, and swimming pool;

D. Keeping of no more than four household pets. This limit shall not include birds, fish, or suckling young of pets;

E. Municipal parks and playgrounds;

F. Renting of rooms for lodging purposes only, to accommodate not more than two persons in addition to the immediate family;

G. Family day care home, as defined by DSHS. (Ord. 1206 § 3, 1992).

17.21.030 Permitted accessory uses.
Permitted accessory uses are those uses permitted in district R-1. See chapter 17.54 BMC for parking requirements. (Ord. 1206 § 3, 1992).

17.21.040 Uses requiring permit.
The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of BMC 17.68.130:

A. Boarding houses;

B. Child day care center, as defined by DSHS, and preschool/nursery schools;

C. Duplexes, more than one per lot;

D. Government facilities;

E. Mobile home parks;

F. Museums;

G. Nursing homes;

H. Religious institutions;

I. Utility substations. (Ord. 1396 § 34, 1999; Ord. 1206 § 3, 1992).

17.21.050 Area and dimensional regulations.

A. Minimum lot area for single-family residence: 6,000 square feet.

Minimum lot area for two-family residence: 7,600 square feet.

Minimum lot width at building line for single-family residence: 60 feet.

Minimum lot width at building line for two-family residence: 70 feet.

B. Maximum building and impervious surface coverage:

1. Building coverage: 40 percent

2. Impervious surface coverage: 60 percent

~~B~~C. All other area and dimensional regulations shall be the same as for the ~~district~~ R-1 district.~~except maximum land coverage by buildings, which shall be 40 percent.~~ (Ord. 1206 § 3, 1992).

[1] Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.24

R-3 MULTIFAMILY RESIDENCE DISTRICT[1]

Sections:

17.24.010 Intent.
17.24.020 Permitted primary uses.
17.24.030 Permitted accessory uses.
17.24.040 Uses requiring permit.
17.24.050 Area and dimensional regulations.

17.24.010 Intent.
This district is intended to provide for multiple-family residential development and is further intended as a residential district of single, duplex and multiple-family residences, except as specifically provided elsewhere in this chapter. A related consideration is to make it possible to more efficiently and economically design and install all physical public service facilities in terms of size or capacity to adequately and permanently meet needs resulting from a defined intensity of land use. (Ord. 1206 § 3, 1992).

17.24.020 Permitted primary uses.
A. Those uses permitted in districts R-1 and R-2, subject to the same restrictions as though located in those districts.

B. Multifamily dwellings. The following plan review criteria shall be met:

1. Parking areas shall be screened from the street.

2. Pedestrian access to open space shall be on walkways and shall minimize the need to walk through parking areas.

3. Projects shall comply with the city of Burlington design guidelines for multifamily development, even when design review board approval is not required.

4. Dumpsters shall be fully enclosed with a solid fence or wall with a solid gate and shall not be visible from the public right-of-way.

5. A children's play area shall be provided, with a minimum size of 225 square feet plus 20 square feet per unit.

6. Common open space for passive or active recreation shall be provided at the rate of 50 square feet per unit.

7. Laundry and storage facilities shall be provided, either in each unit or in a central facility.

8. Multifamily developments shall comply with chapter 17.48 BMC, Performance Standards, where applicable.

9. Exterior lighting shall be provided for parking areas, access streets and pedestrian walkways, to be reviewed by the planning commission. Lighting shall be designed to direct light away from residential units to prevent glare.

10. Sidewalks shall be level and comply with the standards of the Americans with Disabilities Act. A five-foot planting strip shall be provided where adequate right-of-way is available. Exceptions shall be reviewed by the planning commission in the plan review process, to a minimum of three feet. Driveways shall be designed so that a minimum three feet in width provides a continuous level sidewalk route of travel.

11. Nothing in this section shall preclude the requirement for additional mitigation in critical areas as defined in chapter 15.15 BMC, based on identified adverse environmental impacts pursuant to chapter 15.12 BMC. See also chapter 17.68 BMC, Plan Review Criteria.

12. In the event of identified unique or unusual site conditions that are not anticipated by the development standards in this code, the planning commission and/or city council is authorized to further condition a proposed project, including reducing density. See BMC 17.24.050(H).

C. Municipal buildings, police stations, fire stations. (Ord. 1322 § 1, 1996; Ord. 1260 § 6, 1994; Ord. 1206 § 3, 1992).

17.24.030 Permitted accessory uses.
A. Those uses permitted in districts R-1 and R-2, subject to the same restrictions as though located in those districts, and recreation and storage building. See chapter 17.54 BMC for parking requirements.

B. Telecommunication mini facility, subject to the following requirements:

1. The mini facility may be located on buildings and structures provided that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The mini facility shall be exempt from review by the design review board if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Mini facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 10 feet, or in the case of nonconforming structures the antennas may extend 10 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing nonconforming building and blends in architecturally with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1396 § 35, 1999; Ord. 1206 § 3, 1992).

17.24.040 Uses requiring permit.
The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of BMC 17.68.130:

A. Boarding and group housing;

B. Child day care center as defined by DSHS, preschools or nursery schools;

C. Government facilities;

D. Health care facilities;

E. Mobile home park;

F. Nursing homes;

G. Professional offices;

H. Religious institutions;

I. Utility substations. (Ord. 1717 § 2, 2010; Ord. 1396 § 36, 1999; Ord. 1333 § 2, 1997; Ord. 1322 § 2, 1996; Ord. 1260 § 7, 1994; Ord. 1206 § 3, 1992).

17.24.050 Area and dimensional regulations.
A. Minimum Lot Requirements.

1. Minimum lot area: 6,000 square feet. For a multifamily dwelling the required land area shall be computed as follows: Initial minimum lot size for two units of any size: 6,000 square feet. For each additional unit over two, add 3,000 square feet per unit.

2. Minimum lot dimensions: 60-foot width at front building line, 30-foot minimum width at street line, 80-foot minimum mean depth.

B. Minimum setback requirements: The same as for district R-1.

C. Maximum ~~land coverage~~building and impervious surface coverage: ~~Not more than~~ 70 percent ~~of any lot area may be covered by buildings and/or impervious paving materials, and not more than 30 percent of any lot area may be occupied by buildings. A minimum 30 percent of each lot shall be landscaped.~~

D. Maximum building height: ~~Two stories, but not more than 30~~ 35 feet.

E. Interior courts or areas between multifamily dwelling buildings shall have a minimum dimension of 30 feet in one-story buildings, 40 feet in two-story buildings.

F. Maximum Building Dimension. In no instance shall the greatest dimension of a multifamily building exceed 150 feet, measured parallel to exterior building walls.

G. Maximum Building Gross Floor Area. In no instance shall the gross floor area exceed 8,000 square feet for any multifamily building.

H. Maximum Density. Maximum density for any multifamily development shall not exceed 14 units per usable acre, except as provided in chapter 17.70 BMC, Agricultural Heritage Credit Program. Usable acreage is defined as the total site area minus any delineated wetlands or steep slope areas.

I. Cluster developments may be permitted as part of the subdivision process. The planning commission, when considering a subdivision, may allow a reduction of lot width, lot width at building line and lot area; provided, that:

1. Housing types may include single-family detached, townhouses, zero lot line and multifamily. A maximum of eight dwelling units is permitted in a single building.

2. The density of dwellings is not greater than that which would occur under strict interpretation of the requirements for the underlying zoning classification subject to adopted administrative rules reviewed and approved by the planning commission within six months of the effective date of the ordinance codified in this section.

3. When lot widths and lot areas are decreased, 35 percent lot coverage shall be the maximum permitted for a detached single-family dwelling and proportional limits on building size may be imposed on other housing types.

4. The resulting subdivision design clearly retains a substantial area of continuous, public accessible open space such as Gages Slough, a lake, wetland, a bluff, ravine, wildlife habitat area, trail on Burlington Hill, or other unique topographic feature, or a conservation area identified by the planning commission. Such open spaces shall be maintained in accordance with their intended use and purpose.

5. A reduction in lot size of up to 20 percent below the minimum lot size of the underlying zoning shall be permitted. For example, if the underlying zoning has a minimum lot size of 9,600 square feet, the maximum reduction in lot size is 1,920 square feet, or a minimum lot size of 7,680 in a cluster subdivision.

6. A detailed landscaping plan shall be submitted.

7. Artist's renderings with both isometric and perspective views and a color plan for the proposed development. Models may be required for large and complex projects.

8. A design review report and recommendation pursuant to chapter 17.69 BMC shall be presented. (Ord. 1717 § 3, 2010; Ord. 1322 § 3, 1996; Ord. 1260 § 8, 1994; Ord. 1206 § 3, 1992).

[1] Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.27

R-S SEMI-PUBLIC DISTRICT[1]

Sections:

17.27.010 Intent.
17.27.020 Permitted primary uses.
17.27.030 Permitted accessory uses.
17.27.040 Area and dimensional regulations.

17.27.010 Intent.
The R-S semi-public zone is intended to permit a mixture of residential and office uses that are compatible in design and character with adjacent residential uses. (Ord. 1206 § 3, 1992).

17.27.020 Permitted primary uses.
A. Those uses permitted in districts R-1, R-2 and R-3, subject to the same restrictions and additional regulations (BMC 17.15.050) as though located in those districts. Higher density apartment developments may be permitted by conditional use.

B. Professional office buildings for the use of such professions as doctors, architects, lawyers and engineers or administrative office buildings for uses commensurate with the nonadvertising, conservative occupancy characteristics inherent in the professional uses listed above, provided that the exterior design of the buildings is residential in character, compatible with developments on adjacent residential properties.

C. Uses similar in character to the above uses within the process of plan review. (Ord. 1206 § 3, 1992).

17.27.030 Permitted accessory uses.
A. Those accessory uses permitted in district R-1.

B. Accessory buildings or uses incident to primary uses such as garages solely for the storage and servicing of vehicles of occupants of the building; restaurants or cafeterias primarily for the convenience of the occupants of the building; printing of materials necessary in the operation of the primary business and not used for the conduct of a general printing business; sample display sales rooms; or similar accessory uses.

C. Playfields, parks or recreation areas.

D. Accessory buildings or multibuilding developments with uses complementary and related to the primary use; provided control of building design, location, and site development is retained by the dominant use. In such coordinated developments the site area requirement shall apply to the group of buildings and the yard requirements to the site perimeter.

E. No operation shall be permitted in the R-S district which creates smoke, dust, dirt, fly ash, noise, glare, heat, odor, gases, vibrations, electrical radiation or interference or any other evidence of nuisance which is detectable at objectionable levels at the property lines. The performance standards of chapter 17.48 BMC shall provide the criteria for measurement of such nuisances.

F. Parking spaces must be provided for all residential uses as though located in district R-3. Other parking requirements are prescribed in BMC 17.54.050.

G. Sign regulations: See chapter 17.63 BMC.

H. Parking area and service yards in district R-S must be screened from adjoining residences. (Ord. 1206 § 3, 1992).

17.27.040 Area and dimensional regulations.
A. Minimum lot requirements for residential use as required by BMC 17.15.060, 17.21.050, and 17.24.050.

B. Minimum setback requirements as required by BMC 17.15.060, 17.21.050, and 17.24.050.

C. Floor area ratio for nonresidential buildings: one square foot of gross building area for every three square feet of land. This requirement can be exceeded by conditional use approval.

D. Maximum building height: four stories, but not more than 45 feet. Nonhabitable structures such as a church spire, fleche, campanile or high nave, a dome and lantern, or a clock tower may be permitted to exceed the height limit provided such structures are not intended as advertising devices.

E. Interior courts in multifamily dwelling buildings shall have a minimum dimension of 30 feet in one-story buildings, 40 feet in two-story buildings, 50 feet and not more than three sides in three or more story buildings. (Ord. 1396 § 37, 1999; Ord. 1271 § 1, 1994; Ord. 1206 § 3, 1992).

---

[1] Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.28

OSP OPEN SPACE, PARKS AND AGRICULTURE DISTRICT

Sections:

17.28.010 Intent.
17.28.020 Permitted primary uses.
17.28.030 Uses requiring permit.
17.28.040 Additional regulations.
17.28.050 Area and dimensional regulations.

17.28.010 Intent.
It is the intent of this chapter to:

To encourage desirable and appropriate land uses in areas of the city which by reason of location, soil, topographic or flooding characteristics, public ownership, wetlands, wildlife habitat, or values to the community for scenic, recreation, agriculture, forest, or open space, are not suited to intensive land development patterns as determined by the comprehensive plan and may require specific management or development techniques. Use of this district may also allow for special assessment as open space under the provisions of Skagit County's open space taxation program. This district shall not, however, be construed as guaranteeing open space land valuation. To secure such assessment, application must be made to the county assessor as set forth in Skagit County law. (Ord. 1260 § 9, 1994).

17.28.020 Permitted primary uses.
Hereafter all buildings, structures, or parcels of land shall only be used for the following, unless otherwise provided for in this title:

A. Agriculture, including crop land but specifically excluding livestock and poultry, machinery and equipment sheds or barns.

B. Conservation areas including forest, wetlands and wildlife preserves.

C. Parks, natural scenic areas, trails, walking and bicycle paths, excluding commercial amusement devices or operations.

D. Playgrounds or playfields, including restrooms, storage buildings and refreshment stands.

E. Reclamation areas limited to soil, forest, wildlife special flood risk or wetland.

F. Community centers, recreational buildings, band shells and similar facilities.

G. Parking facilities to support the permitted uses identified in this chapter.

H. Any special flood risk areas along the Dike or Gages Slough, even when only a portion of a lot.

I. Cultural resources including significant historical, archaeological and traditional cultural properties.

J. Existing agriculture related uses.

K. Existing single-family dwellings and the replacement of existing single-family dwellings. (Ord. 1320 § 1, 1996; Ord. 1260 § 9, 1994).

17.28.030 Uses requiring permit.
The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of this code:

A. Uses similar to and compatible with the permitted uses. Conditional uses may not decrease the openness or interfere with the scenic or habitat value of the land.

B. Installation of various public utilities into or across open space zones, and clearing of a vegetated natural area for one of the permitted uses listed above, subject to the following:

1. In addition to the conditional use criteria of Chapter 17.68 BMC, it shall be shown that the intrusion is necessary to provide services to the open space for public benefit or safety; or for physical or technical reasons, and that no reasonable alternative is practicable.

2. The design and plan shall create the minimum of surface and vegetation disturbance necessary to accomplish its purpose.

3. Undergrounding of utilities shall be encouraged and required where site characteristics are suitable.

C. Publicly owned golf courses and associated clubhouses. (Ord. 1260 § 9, 1994).

17.28.040 Additional regulations.
A. Where open space zoning is established along Gages Slough, property owners may continue mowing, gardening or other normal maintenance activities.

B. Protection and enhancement of water quality shall be required, including no dumping of yard waste, no use of chemical pesticides or herbicides in wetlands or on water, and no dumping of hazardous waste, litter, rubbish or any materials further regulated by the Burlington Nuisance Code. (Ord. 1717 § 4, 2010; Ord. 1333 § 3, 1997; Ord. 1260 § 9, 1994).

17.28.050 Area and dimensional regulations.
A. Minimum Setback Requirements.

1. Buildings and other structures shall be located a minimum of 50 feet from any lot in a residential zone.

2. Sports play areas and parking lots shall be located to minimize disruption of nearby residential uses.

B. Maximum building height: One story not to exceed 20 feet.

C. Minimum lot area: 40 acres. (Ord. 1320 § 2, 1996; Ord. 1260 § 9, 1994).

Chapter 17.30

MR-NB MEDIUM DENSITY RESIDENTIAL AND NEIGHBORHOOD BUSINESS DISTRICT

Sections:

17.30.010 Intent.
17.30.020 Permitted primary uses.
17.30.030 Uses requiring permit.
17.30.040 Accessory uses.
17.30.050 Supplemental development standards.
17.30.060 Area and dimensional regulations.

17.30.010 Intent.
To provide a mixed use zone for residences, small apartments, business and commercial uses that are not high traffic generators and that provide limited customer services on the premises, in areas that may already be mixed use in character because of a fragmented zoning pattern, or residential areas that are in transition as a result of changes in the arterial street network. Reuse of existing buildings is encouraged. This is a mixed use, medium density residential and neighborhood business district that allows more than one use on a lot, but requires that the business uses are compatible with residential uses. (Ord. 1260 § 10, 1994).

17.30.020 Permitted primary uses.
A. Apartments with a maximum of eight dwelling units;

B. Art, music and dance studios;

C. Artisanal uses, such as photographer, artist studio dwelling;

D. Contractors office and storage;

E. Home occupations;

F. Laboratories, such as dental or soil testing.

G. Light industry;

H. Parks and recreation facilities;

I. Personal service uses such as barber and beauty shops;

J. Professional services, corporate and other offices with minimal customer service on the premises;

K. Religious institutions, existing;

L. Residential uses, single-family and duplex;

M. Trades and subcontractors such as plumbing, electrical, HVAC;

N. Utility installations;

O. Woodworking uses complying with the Uniform Building Code exception from hazardous occupancies. (Ord. 1260 § 10, 1994).

17.30.030 Uses requiring permit.
Other uses are permitted by administrative use permit, in accordance with the plan review process in BMC 17.68.150, and subject to a review of traffic impacts, when consistent with the spirit and purpose of the zone, including but not limited to the following:

A. Cafe, delicatessen or coffee shop, not to exceed 1,000 square feet in gross floor area;

B. Day care facilities as defined by DSHS;

C. Other uses consistent with the intent of the zone. (Ord. 1260 § 10, 1994).

17.30.040 Accessory uses.

A. Outdoor storage that is screened with a solid fence and perimeter landscaping, accessory to the primary use.

B. Telecommunication mini facility, subject to the following requirements:

1. The mini facility may be located on buildings and structures provided that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The mini facility shall be exempt from review by the design review board if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Mini facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 10 feet, or in the case of nonconforming structures the antennas may extend 10 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing nonconforming building and blends in architecturally with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1396 § 38, 1999; Ord. 1260 § 10, 1994).

17.30.050 Supplemental development standards.

A. Uses generating noise levels incompatible with residential occupancy shall not be permitted.

1. Truck loading activities and similar noisy activities shall be limited to 7:00 a.m. to 7:00 p.m.

2. Uses such as music and dance studios shall be conducted in a fully enclosed building and an approved acoustical wall installed to prevent excessive noise at the property line, or if in a mixed use building, to provide a noise barrier between the commercial and residential occupancy. Sound transmission control ratings compatible with mixed uses shall be required in construction.

B. No on-site hazardous substance processing and handling, including medical waste, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use, subject to the requirements of the Uniform Fire Code.

C. Parking located in the setback in front of the building shall be screened and landscaped.

D. Drive-in uses are prohibited.

E. Parking area illumination shall be directed away from residential uses.

F. Assembly uses shall require approval from the planning, police and fire departments for all special events. (Ord. 1396 § 39, 1999; Ord. 1260 § 10, 1994).

17.30.060 Area and dimensional regulations.

A. Minimum Setback Requirements. Existing buildings may be converted to other uses without complying with the setback requirements, and existing nonconforming setbacks may be extended with additions, subject to building code standards.

1. Front yard, minimum mean depth: ~~20~~ 17 feet.

2. Side yard, minimum mean width: five feet each side.

3. Rear yard, minimum mean depth: 10 feet.

B. Minimum Lot Requirements.

1. Minimum lot area per dwelling unit: 3,000 square feet, except as provided in chapter 17.70 BMC, Agricultural Heritage Credit Program.

2. Minimum lot area for nonresidential use: none required. Nonresidential uses may be added to the residential uses without requiring additional lot area beyond that required for the residential uses.

C. Maximum ~~land coverage by buildings~~building and impervious surface coverage: none ~~required.~~

D. Maximum building height: two stories, but not more than 35 feet.

E. Maximum building size: 6,500 square feet. (Ord. 1717 § 5, 2010; Ord. 1260 § 10, 1994).

Chapter 17.33

B-1 BUSINESS DISTRICT[1]

Sections:

17.33.010 Intent.
17.33.020 Permitted primary uses.
17.33.030 Accessory uses.
17.33.035 Uses requiring administrative permit.
17.33.040 Uses requiring permit.
17.33.050 Development standards.
17.33.060 Supplemental development standards.

17.33.010 Intent.
This zoning district exists in three locations in the city of Burlington. The primary focus of the district is to preserve the existing central business district of the city and provide for its revitalization and expansion. Because of the intensive retail orientation, auto service stations, outdoor sales yards and drive-in businesses are discouraged from locating in this district.

The intent and objective of this classification and its application is to set apart that portion of the city which forms the center for financial, commercial, governmental, professional, and cultural activities all of which have common or similar performance standards in that they represent types of enterprises involving the rendering of services, both professional or to the person, or on-premises retail activities. This zone encourages leisure shopping and provides amenities conducive to attracting pedestrian shoppers.

The goal of the business district is to attract new businesses and uses, and to upgrade existing businesses and uses that enhance the district as a whole, without having an adverse impact on parking or changing the character of the area. The process for improving the district is an on-going process that will continue over many years. See also BMC 17.09.070. (Ord. 1396 § 40, 1999; Ord. 1206 § 3, 1992).

17.33.020 Permitted primary uses.
Hereafter all buildings, structures, or parcels of land shall only be used for the following, unless otherwise provided for in this title:

A. Administrative offices located on the second floor;

B. Apartments, provided they are located in a multistory building the ground floor of which must contain a permitted use as listed in this section;

C. Art, music and photography studios;

D. Automotive parts and accessories;

E. Caretaker apartment;

F. Customer service office, excluding drive-in facilities;

G. General personal and household retail sales and service;

H. Hotels;

I. Major durables, sales, service and rentals;

J. Medical services, located outside of Fairhaven Avenue;

K. Multipurpose convenience store;

L. Restaurants, including outdoor seating;

M. Schools, including art, business, barber, beauty, dancing, martial arts and music;

N. Specialty food store;

O. Theaters, except drive-in;

P. Other uses may be permitted by the planning director if the use is determined to be consistent with the intent of the zone and is of the same general character of the uses permitted in this section. (Ord. 1717 § 6, 2010; Ord. 1396 § 41, 1999; Ord. 1356 § 1, 1997; Ord. 1206 § 3, 1992).

17.33.030 Accessory uses.
A. Accessory buildings or multibuilding developments with uses complementary and related to a dominant or primary use; provided control of building design, location and site development is retained by the dominant use. In such coordinated developments the site area requirement shall apply to the group of buildings and the yard requirements to the site perimeter; provided, that construction of warehouse space accessory to another use shall be required to provide landscaping, comply with design review standards and shall not be permitted to be an all-metal building.

B. Off-Street Parking and Loading Area Requirements.

1. See chapter 17.54 BMC for standards including on-site and off-site parking facilities and special contracts.

2. New accessory parking lots on private property are prohibited adjacent to the street front along Fairhaven Avenue between Burlington Boulevard and Skagit Street, unless a conditional use permit is issued by the city council; provided, that an additional criteria for review of the conditional use permit is that the proposed project is consistent with the downtown comprehensive plan streetscape that consists of a traditional main street with continuous building facades along the street frontage.

C. Signs: See chapter 17.63 BMC.

D. Macro facilities are permitted in all zones except single-family (R-1) residential zones.

1. Macro facilities may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The macro facility shall be exempt from review by the design review board if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Macro facilities shall comply with the height limitation specified for all zones except as follows: omnidirectional antennas may exceed the height limitation by 15 feet, or in the case of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blend in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1454 § 1, 2001; Ord. 1451 § 1, 2001; Ord. 1396 § 42, 1999; Ord. 1206 § 3, 1992).

17.33.035 Uses requiring administrative permit.
The following uses and activities may be permitted by means of an administrative permit, issued in accordance with BMC 17.68.150, if the development plan of such use is found by the planning commission to be consistent with the purpose of the zone and the related policies of the comprehensive plan:

A. Administrative offices located on the first floor;

B. Medical service;

C. Other uses not listed may be permitted if the use is determined to be consistent with the intent of the zone and is of the same general character as the uses permitted in BMC 17.33.030. (Ord. 1396 § 43, 1999).

17.33.040 Uses requiring permit.
The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of BMC 17.68.130:

A. Apartments;

B. Arcades;

C. Brewpubs;

D. Taverns;

E. Utility substations. (Ord. 1717 § 7, 2010; Ord. 1396 § 44, 1999; Ord. 1356 § 2, 1997; Ord. 1206 § 3, 1992).

17.33.050 Development standards.
A. Minimum Lot Area.

1. Minimum lot area per dwelling unit: 3,000 square feet, except as provided in chapter 17.70 BMC, Agricultural Heritage Credit Program.

2. Minimum lot area for nonresidential use: none required. Nonresidential uses may be added to the residential uses without requiring additional lot area beyond that required for the residential uses.

B. Minimum lot width: none required.

C. Minimum lot depth: none required.

D. Maximum ~~lot coverage~~building and impervious surface coverage: none ~~required.~~

E. Maximum building height: four stories not to exceed 45 feet.

F. Minimum yard setbacks:

1. Front: zero feet;

2. Side, interior: none required;

3. Side, street: zero feet;

4. Rear: none required.

G. Maximum front yard setback on Fairhaven Avenue is zero feet. Exceptions:

1. When a wider sidewalk or additional landscaping is approved at the building entrance.

2. When a setback is necessary to maintain the continuity of the street front because of the setback line of the buildings on either side.

H. Maximum Setback Requirement in All Other Locations.

1. Ten feet from the property line on the street side for new construction. If the new construction occurs on a corner lot, the maximum setback shall apply to each boundary line adjacent to a street.

2. Parking shall not be located in the setback in front of the building.

I. Fences: see BMC 17.45.050.

J. Parking: see chapter 17.54 BMC.

K. Landscaping: see chapter 17.50 BMC.

L. Signs: see chapter 17.63 BMC. Signage shall also be reviewed for consistency with the comprehensive plan for downtown. (Ord. 1717 § 8, 2010; Ord. 1502 § 4, 2002; Ord. 1396 § 45, 1999; Ord. 1233 § 2, 1993; Ord. 1206 § 3, 1992).

17.33.060 Supplemental development standards.

A. All uses shall be conducted entirely within a building or structure except:

1. Automobile parking lots;

2. Display or sales of goods that do not extend eight feet past the front of the building, do not block entrances or interfere with pedestrian travel, do not interfere with the parking areas and do not encroach upon public property;

3. Outdoor seating for restaurants, theaters, or other entertainment;

4. Temporary uses as permitted by the fire marshal, building official, planning director or city engineer pursuant to the applicable ordinances;

5. Unloading and loading areas;

6. Utility substations;

7. Refuse containers;

8. Play areas for day cares.

B. Any repairing done on the premises shall be incidental only, and limited to custom repairing of the types of merchandise sold on the premises at retail. The floor area devoted to such repairing shall not exceed 30 percent of the total floor area occupied by the particular enterprise, except that the limitations of this subsection shall not apply to shoe, radio, television, or other small appliance repair services.

C. Storage shall be limited to accessory storage of commodities sold at retail on the premises or materials used in the limited fabrication of commodities sold at retail on the premises. No outside storage is permitted.

D. Operations conducted on the premises shall not be objectionable beyond the property boundary lines by reason of noise, odor, fumes, gases, smoke, vibration, hazard, or other causes.

E. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use as regulated by International Fire Code. (Ord. 1206 § 3, 1992).

---

[1] Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.36

C-1 GENERAL

COMMERCIAL DISTRICT[1]

Sections:

17.36.010 Intent.
17.36.020 Permitted primary uses.
17.36.025 Accessory uses.
17.36.030 Uses requiring permit.
17.36.040 Development standards.
17.36.050 Supplemental development standards.

17.36.010 Intent.
The intent and objective of this classification and its application is to provide for the location of a grouping of uses which are considered compatible uses having common or similar performance standards in that they represent types of enterprises involving the rendering of services, both professional or to the person, or on-premises retail activities. This zone represents the prime commercial designation for small to moderate scale commercial activities and should be developed in a manner which is consistent with and attracts pedestrian oriented activities. This zone encourages leisure shopping and provides amenities conducive to attracting shoppers.

There are several blocks zoned C-1 general commercial in old downtown Burlington located along Fairhaven, Victoria and Washington between Burlington Boulevard and Anacortes Avenue. The goal of the commercial zoning in this area is to attract new businesses and uses, and to upgrade existing businesses and uses that enhance the district as a whole, without having an adverse impact on parking or changing the character of the area. the process for improving the central business district, old downtown, is an on-going process that will continue over many years. See also BMC 17.09.070. (Ord. 1396 § 46, 1999; Ord. 1206 § 3, 1992).

17.36.020 Permitted primary uses.
Property located in downtown Burlington as mapped in the comprehensive plan that is zoned C-1 general commercial shall comply with the B-1 business district zoning regulations, unless a conditional use permit is authorized by the city council. See also BMC 17.09.070.

Hereafter all buildings, structures, or parcels of land zoned general commercial, but located outside downtown Burlington, shall only be used for the following, unless otherwise provided for in this title:

A. Apartments or other multifamily housing types, provided they are located in a mixed use building with commercial on the lower floor(s) and apartments on the upper floor(s);

B. Art, music and photography studios;

C. Automobile parking facilities;

D. Automotive parts and accessories sales;

E. Banking and related financial institutions, excluding drive-in facilities and located in a mixed use building;

F. Bowling alleys, bingo halls, skating rinks and other commercial recreation;

G. Bus passenger terminals;

H. Caretaker apartment;

I. Civic, social, and fraternal clubs;

J. Day care, including home based, mini day care, day care center, preschools or nursery schools;

K. Existing automobile service stations;

L. Funeral homes;

M. Hospitals and health care, to include small animal, but does not allow outside runs or kennels;

N. Hotels;

O. Medical service;

P. Meeting rooms and/or reception facilities;

Q. Motels;

R. Nursing homes;

S. Offices;

T. Personal and household retail sales and service;

U. Printing and publishing;

V. Religious institutions;

W. Residences, existing single-family and duplex;

X. Restaurants and fast-food restaurants, including outdoor seating, but excluding drive-in facilities;

Y. Schools, including art, business, barber, beauty, dancing, martial arts and music;

Z. Theaters, except drive-in;

AA. Trailer parks within 1,000 feet of the Skagit River Dike, subject to the following requirements:

1. A flood evacuation plan shall be prepared by the applicant, approved by the city and posted on the site. The plan shall include the following elements at a minimum:

a. A requirement that wheels shall not be removed from units,

b. A requirement that the hitch shall not be removed from units,

c. A requirement that only quickly removable, knockdown skirting shall be used,

d. A requirement that a plan is in place to move the units out;

2. The site shall have a row of screening trees or hedge around the perimeter;

3. The site shall be designed and maintained as a permanent long-term viable use, rather than an interim use and shall meet city standards for utilities and infrastructure;

4. The site shall be located in an area where it is unlikely to create land use conflicts with either industrial or residential properties;

5. The site shall be developed to minimize drainage impacts, with gravel and lawn and minimal asphalt;

6. The site shall take advantage of FEMA recommendations for location and shall be planned for ease of evacuation in the event of flood danger;

7. Park rules shall be approved by the city and posted on the site;

8. Health department and other required permits shall be obtained for the use;

9. A children's play area approved by the city shall be provided on the site;

BB. Other uses may be permitted by the planning director if the use is determined to be consistent with the intent of the zone and is of the same general character of the uses permitted in this section;

CC. Uses permitted in the C-2 heavy commercial and M-1 industrial districts may be permitted on a portion of the site by the planning commission, in accordance with BMC 17.68.150. This review may be conducted only if there is a recommendation for approval by the planning director, in consultation with the public works director, fire marshal, building official and police chief, based on the following criteria:

1. The lot is deep or irregular and C-1 uses may not be appropriate on a portion of the site;

2. The site abuts a more intense use and a transitional use is a better fit with the character of the area. (Ord. 1396 § 47, 1999; Ord. 1365 § 1, 1998; Ord. 1356 § 3, 1997; Ord. 1322 § 4, 1996; Ord. 1260 § 11, 1994; Ord. 1227 § 3, 1993; Ord. 1206 § 3, 1992).

17.36.025 Accessory uses.

A. Telecommunication macro facilities, subject to the following requirements:

1. Macro facilities may be located on buildings and structures provided that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The macro facility shall be exempt from review by the design review board if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Macro facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 15 feet, or in the case of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1396 § 48, 1999).

17.36.030 Uses requiring permit.

The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of BMC 17.68.130:

A. Apartments or other multifamily housing types, either single purpose or as part of a mixed use development; provided, that an additional criterion for approval is that the site is better suited for housing than commercial development and the project complies with the plan review criteria in BMC 17.24.020 and 17.24.050;

B. Arcades;

C. Brewpubs;

D. Dance halls;

E. Drive-in facilities, including banks and restaurants, when located on a tenant pad on an existing development site or at a signalized intersection;

F. Government facilities, excluding offices and related uses that are permitted outright;

G. Household goods storage, provided the following requirements are met:

1. No more than two main entrances and/or exits to the building and access to the individual storage area shall be from the inside of the building;

2. Landscaping and architectural improvements required to ensure compatibility with present and potential C-1 uses in the vicinity;

3. The site does not front on Burlington Boulevard;

H. Taverns;

I. Utility substations. (Ord. 1717 § 9, 2010; Ord. 1630 § 2, 2007; Ord. 1396 § 49, 1999; Ord. 1365 § 2, 1998; Ord. 1361 § 1, 1998; Ord. 1356 § 4, 1997; Ord. 1322 § 5, 1996; Ord. 1206 § 3, 1992).

17.36.040 Development standards.

A. Minimum Lot Area.

1. Minimum lot area per dwelling unit: 3,000 square feet, except as provided in chapter 17.70 BMC.

2. Minimum lot area for nonresidential use: none required. Nonresidential uses may be added to the residential uses without requiring additional lot area beyond that required for the residential uses.

B. Minimum lot width: none required.

C. Minimum lot depth: none required.

D. Maximum ~~lot~~ building and impervious surface coverage: ~~none required.~~

1. Building coverage: none

2. Impervious surface coverage: 80 percent

E. Maximum building height: ~~four stories not to exceed~~ 45 feet.

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line~~,~~ for each foot the building exceeds 45 feet; and

Formatted: Indent: Left: 0.31"

2. An additional 15 feet of building height may be permitted when parking is located under the building.~~.~~

F. Minimum yard setbacks:

1. Front: zero feet;

2. Side, interior: none required;

3. Side, street: zero feet;

4. Rear: none required.

G. Maximum front yard setback on Fairhaven Avenue is zero feet.

1. When a wider sidewalk or additional landscaping is approved at the building entrance.

2. When a setback is necessary to maintain the continuity of the street front because of the setback line of the buildings on either side.

H. Maximum Setback Requirement in all Other Locations.

1. Ten feet from the property line on the street side for new construction. If the new construction occurs on a corner lot, the maximum setback shall apply to each boundary line adjacent to a street.

2. Parking shall not be located in the setback in front of the building.

3. Exceptions which may be authorized through the planning commission plan review process include the following list:

a. Drive-in businesses shall have the building setback established as part of the conditional use permit for the drive-in use.

b. Utility easements.

c. When a wider sidewalk or additional landscaping is approved at the building entrance.

d. Architectural design features such as a unique building entrance, outside seating area, pocket park or similar element.

e. Irregular shaped lots or lots that do not directly abut the right-of-way.

f. Site development that incorporates existing buildings, when needed to preserve existing visual and physical access.

g. Other exceptions consistent with the intent of providing a well defined street edge and pedestrian-oriented streetscape.

I. Fences: see BMC 17.45.050.

J. Parking: see chapter 17.54 BMC.

K. Landscaping: see chapter 17.50 BMC.

L. Signs: see chapter 17.63 BMC. (Ord. 1717 § 10, 2010; Ord. 1237 § 6, 1993; Ord. 1233 § 3, 1993; Ord. 1206 § 3, 1992).

17.36.050 Supplemental development standards.

A. All uses shall be conducted entirely within a building or structure except:

1. Automobile parking lots;

2. Automobile sales and leasing;

3. Display or sales of goods that do not extend eight feet past the front of the building, do not block entrances or interfere with pedestrian travel, do not interfere with the parking areas and do not encroach upon public property;

4. Outdoor seating for restaurants, theaters, or other entertainment;

5. Play areas for day cares;

6. Refuse containers;

7. Temporary uses as permitted by the fire marshal, building official, planning director or city engineer pursuant to the applicable ordinances;

8. Unloading and loading areas;

9. Utility substations.

B. Any repairing done on the premises shall be incidental only, and limited to custom repairing of the types of merchandise sold on the premises at retail. The floor area devoted to such repairing shall not exceed 30 percent of the total floor area occupied by the particular enterprise, except that the limitations of this subsection shall not apply to shoe, radio, television, or other small appliance repair services.

C. Storage shall be limited to accessory storage of commodities sold at retail on the premises or materials used in the limited fabrication of commodities sold at retail on the premises.

D. Operations conducted on the premises shall not be objectionable beyond the property boundary lines by reason of noise, odor, fumes, gases, smoke, vibration, hazard, or other causes.

E. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use, subject to the requirements of the International Fire Code.

F. Commercial land abutting directly a residential zone shall provide for a transition to the residential use as required in chapter 17.48 BMC, Performance Standards, and the following:

1. A six-foot screening fence and a 20-foot landscaped buffer designed for sight and noise baffling or a six-foot solid block wall and a 10-foot landscaped buffer designed for sight and noise baffling; and

2. Uses generating noise after 9:00 p.m. shall not be permitted, including taverns, assembly occupancies, restaurants with cocktail lounges or dance floors, all night business and other similar types of uses;

3. Measures shall be taken to prevent light and glare from being directed to residential uses.

G. New construction shall comply with the citywide design guidelines and chapter 17.69 BMC, Design Review Board, on sites one acre or larger in size. (Ord. 1322 § 6, 1996; Ord. 1260 § 12, 1994; Ord. 1206 § 3, 1992).

---

[1] Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.39

C-2 HEAVY COMMERCIAL DISTRICT[1]

Sections:

17.39.010 Intent.
17.39.020 Permitted uses.
17.39.025 Accessory uses.
17.39.030 Uses requiring conditional use permit.
17.39.040 Development standards.
17.39.050 Supplemental development standards.

17.39.010 Intent.
The intent and objective of this classification and its application is to provide for the location of and grouping of enterprises which may involve some on-premises retail service but with outside activities and display or fabrication, assembling, and service features. This zone is intended to accommodate uses which are oriented to automobiles either as the mode or target of producing the commercial service. The uses enumerated in this classification are considered as having common or similar performance standards in that they are heavier in type than those uses permitted in the more restrictive commercial classifications. (Ord. 1206 § 3, 1992).

17.39.020 Permitted uses.
Land that is zoned C-2, but located in the retail core as mapped in the comprehensive plan, shall comply with the C-1 zoning regulations for the retail core, provided that expansion of an existing use on C-2 zoned property shall be permitted consistent with this chapter. See also BMC 17.09.070.

Hereafter all buildings, structures, or parcels of land shall only be used for the following, unless otherwise provided for in this title:

A. Arcades;

B. Art, music and photography studios;

C. Auction houses, excluding animals;

D. Automobile parking facilities;

E. Automotive parts and accessories sales;

F. Banking and related financial institutions;

G. Bowling alleys, bingo halls, skating rinks and other commercial recreation;

H. Building contractor services, including storage yards;

I. Bus passenger terminals;

J. Car wash;

K. Caretaker apartments;

L. Civic, social and fraternal associations;

M. Dance halls;

N. Day care, including home based, mini day care, day care centers, preschool or nursery schools;

O. Eating and drinking establishments;

P. Equipment rental and leasing, does not include heavy construction equipment;

Q. Food locker services;

R. Funeral homes;

S. Gas stations;

T. Health and physical fitness clubs;

U. Hospitals, to include small animal, but does not allow outside runs or kennels;

V. Hotels;

W. Lumber yards;

X. Manufactured/mobile home sales lots;

Y. Massage parlor;

Z. Medical service;

AA. Meeting rooms and/or reception facilities;

BB. Mini-storage warehouses;

CC. Motels;

DD. Offices;

EE. Personal and household retail sales and service;

FF. Printing and publishing;

GG. Sales and rental of motorized vehicles;

HH. Schools, including art, business, barber, beauty, dancing, driving, martial arts and music;

II. Storage warehousing, limited to being incidental to principal permitted use on property;

JJ. Taverns;

KK. Theaters, including drive-ins;

LL. Other uses may be permitted by the planning director if the use is determined to be consistent with the intent of the zone and is of the same general character of the uses permitted in this section;

MM. Uses permitted in the C-1 general commercial and M-1 industrial districts may be permitted on a portion of the site by the planning commission, in accordance with BMC 17.68.150. This review may be conducted only if there is a recommendation for approval by the planning director, in consultation with the public works director, fire marshal, building official and police chief, based on the following criteria:

1. The lot is deep or irregular and C-1 uses may not be appropriate on a portion of the site;

2. The site abuts a more intense use and a transitional use is a better fit with the character of the area;

NN. Vehicle repair, major;

OO. Vehicle repair, minor. (Ord. 1396 § 49, 1999; Ord. 1260 § 13, 1994; Ord. 1227 § 4, 1993; Ord. 1206 § 3, 1992).

17.39.025 Accessory uses.
A. Telecommunication macro facilities, subject to the following requirements:

1. Macro facilities may be located on buildings and structures provided that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The macro facility shall be exempt from review by the design review board if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Macro facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 15 feet, or in the case of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blend in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1396 § 50, 1999).

17.39.030 Uses requiring conditional use permit.
The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of BMC 17.68.130:

A. Apartments or other multifamily housing types either single purpose or as part of a mixed use development; provided, that an additional criterion for approval is that the site is better suited for housing than commercial development, and the project complies with the plan review criteria in BMC 17.24.020 and 17.24.050, area and dimensional requirements, subsections A, E, F, G, and H;

B. Government facilities, this excludes offices and related uses that are permitted outright;

C. Heliports;

D. Miscellaneous light manufacturing including toys, jewelry, ceramic, musical instruments and similar products, apparel and other finished products made from fabrics, leather, and similar materials, manufacturing of professional, scientific, and controlling instruments such as photo and optical goods, watch and clock manufacturing, and similar products, with retail sales of products manufactured on the premises;

E. Nursing homes;

F. Semi-tractor and trailer sales;

G. Utility substations;

H. Towing service. (Ord. 1396 § 51, 1999; Ord. 1322 § 7, 1996; Ord. 1206 § 3, 1992).

17.39.040 Development standards.
A. Minimum lot area: none required.

B. Minimum lot width: none required.

C. Minimum lot depth: none required.

D. Maximum ~~lot~~ building and impervious surface coverage: ~~none required.~~

1. Building coverage: none

2. Impervious surface coverage: 80 percent

E. Maximum building height: ~~four stories not to exceed~~ 45 feet~~;~~. except

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line~~,~~ for each foot the building exceeds 45 feet; and~~.~~

Formatted: Indent: Left: 0.31"

2. An additional 15 feet of height may be permitted when parking is located under the building

F. Minimum yard setbacks:

1. Front: 0 feet;

2. Side, interior: none required;

3. Side, street: 0 feet;

4. Rear: none required.

G. Maximum Setback Requirement in all Other Locations.

1. Ten feet from the property line on the street side for new construction. If the new construction occurs on a corner lot, the maximum setback shall apply to each boundary line adjacent to a street.

2. Parking shall not be located in the setback in front of the building.

3. Exceptions which may be authorized through the planning commission plan review process include the following list:

a. Drive-in businesses shall have the building setback established as part of the conditional use permit for the drive-in use.

b. Utility easements.

c. When a wider sidewalk or additional landscaping is approved at the building entrance.

d. Architectural design features such as a unique building entrance, outside seating area, pocket park or similar element.

e. Irregularly shaped lots or lots that do not directly abut the right-of-way.

f. Site development that incorporates existing buildings, when needed to preserve existing visual and physical access.

g. Other exceptions consistent with the intent of providing a well defined street edge and pedestrian oriented streetscape.

H. Fences: see BMC 17.45.050.

I. Parking: see chapter 17.54 BMC.

J. Landscaping: see chapter 17.50 BMC.

K. Signs: see chapter 17.63 BMC. (Ord. 1237 § 7, 1993; Ord. 1233 § 4, 1993; Ord. 1206 § 3, 1992).

17.39.050 Supplemental development standards.

A. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use, subject to the requirements of the Uniform Fire Code.

B. Service Yards. All service yards shall be enclosed by a six-foot fence and screened with solid planting where visible from right-of-way or adjacent to R-3 zone with the exception of access gates.

C. Commercial land abutting directly a residential zone shall provide for a transition to the residential use as required in chapter 17.48 BMC, Performance Standards, and the following:

1. A six-foot screening fence and a 20-foot landscaped buffer designed for sight and noise baffling or a six-foot solid block wall and a 10-foot landscaped buffer designed for sight and noise baffling; and

2. Uses generating noise after 9:00 p.m. shall not be permitted, including taverns, assembly occupancies, restaurants with cocktail lounges or dance floors, all night business and other similar types of uses;

3. Measures shall be taken to prevent light and glare from being directed to residential uses.

D. New construction shall comply with the Citywide Design Guidelines, and on sites one acre or larger in size, Chapter 17.69 BMC, Design Review Board. (Ord. 1322 § 8, 1996; Ord. 1260 § 14, 1994; Ord. 1206 § 3, 1992).

[1] Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.42

M-1 INDUSTRIAL DISTRICT[1]

Sections:

17.42.010 Intent.
17.42.020 Permitted primary uses.
17.42.025 Accessory uses.
17.42.030 Uses requiring administrative permits.
17.42.040 Uses requiring a conditional use permit.
17.42.050 Development standards.
17.42.060 Supplemental development standards.

17.42.010 Intent.
An M-1 district shall provide a use district for manufacturing, warehousing and distribution operation which require little or no retail contact with the general public.

The industrial zone is intended to provide for general manufacturing and processing and grouping of industrial enterprises which possess common or similar characteristics and performance standards involving manufacturing, assembling, fabrication and processing, bulk handling of products, large amounts of storage and warehousing, outdoor storage, processing and other related uses.

While other uses may be sited within this zone, permits for such uses should not be issued if such uses will discourage use of adjacent sites for industry, interrupt the continuity of industrial sites, or produce traffic in conflict with the industrial uses. (Ord. 1206 § 3, 1992).

17.42.020 Permitted primary uses.
Hereafter all buildings, structures, or parcels of land shall only be used for the following, unless otherwise provided for in this title:

A. Basic wood processing including sawmills, planing mills, veneering and laminating of wood;

B. Building movers;

C. Caretaker's quarters, not more than one per establishment;

D. Club, topless; provided, that it shall be located a minimum of 1,000 feet from any residential zone, 1,000 feet from any school, public or private, 1,000 feet from any church, and 1,000 feet from any park, measured along the right-of-way;

E. Cold storage plants;

F. Commercial laundries;

G. Contractor trade services including storage yards;

H. Enameling, galvanizing and electroplating;

I. Equipment repair and storage;

J. Heavy equipment and truck repair;

K. Household movers and storage;

L. Janitorial services;

M. Job training and vocational education;

N. Lumber yards;

O. Manufacturing, assembling and packaging of articles, products, or merchandise from previously prepared natural or synthetic materials, including but not limited to bristles, canvas, cellophane, and similar synthetics, chalk, clays (pulverized only, with gas or electric kilns), cloth, cork, feathers, felt, fiber, fur, glass (including glass finishing), graphite, hair, horn, leather, paper, paraffin, plastic and resins, precious or semi-precious metals or stones, putty, pumice, rubber, shell, textiles, tobacco, wire, wood, wool, and yarn;

P. Manufacturing establishments engaged in electronic, automotive, aerospace, airframe, or related manufacturing and assembly activities, including precision machine shops producing parts, accessories, assemblies, systems, engine, major components, and whole electronic or electrical devices, automobiles, aircraft, aerospace, or underwater vehicles, but specifically excluding explosive fuels and propellants;

Q. Manufacturing, processing, assembling and packaging of precision components and products, including precision machine shops for products such as radio and television equipment, business machine equipment, home appliances, scientific, optical, medical, dental, and drafting instruments, photographic and optical goods, phonograph records and pre-recorded audio-visual tape, measurement and control devices, sound equipment and supplies, personal accessories, and products of similar character;

R. Manufacturing, processing, treating, assembling and packaging of articles, products or merchandise from previously prepared ferrous, nonferrous or alloyed metals;

S. Manufacturing, processing, blending and packaging of products such as the following:

1. Soaps, detergents and other basic cleaning and cleansing materials;

2. Mineral products such as abrasives, asbestos, chalk, pumice, etc.;

3. Clay and cement products such as brick, tile, pipe, etc.;

T. Manufacturing, processing, blending and packaging of the following:

1. Drugs, pharmaceuticals, toiletries, and cosmetics;

2. Food and kindred products, such as confectionery products, chocolate, cereal breakfast food, bakery products, paste products, fruits and vegetables, beverages, prepared food specialties (such as coffee, dehydrated and instant food, extracts, spices and dressings) and similar products;

3. Dairy products and by-products such as milk, cream, cheese and butter, including the processing and bottling of fluid milk, and cream and wholesale distribution;

U. Manufacturing, assembling, packaging and development of computer equipment and software, and related products;

V. Medical marijuana/cannabis collective gardens and recreational marijuana processors, producers and retail stores. All such uses shall meet the following development standards:

1. The definitions set forth in chapter 17.06 BMC shall apply.

2. Medical marijuana/cannabis collective gardens and recreational marijuana processors, producers and retail stores shall only be permitted when licensed by the state of Washington.

3. Location.

a. No more than one medical or recreational marijuana use or garden shall be located on a single parcel or in a single structure.

b. Shall be located fully within a permanent structure designed to comply with the city building code and constructed under a building permit from the city regardless of the size or configuration of the structure.

c. Shall not be located in a mobile structure.

d. Shall not be located within 1,000 feet of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or arcade, single-family residential zone or another medical or recreational marijuana use. The measurement shall be taken in a straight line from property boundary to property boundary.

e. No production, processing or delivery of marijuana may be visible to the public nor may it be visible through windows.

f. All requirements of state laws must be met.

g. All fertilizers, chemicals, gases and hazardous materials shall be handled in compliance with all applicable local, state and federal regulations. No fertilizers, chemicals, gases or hazardous materials shall be allowed to enter a sanitary sewer or storm sewer system nor be released into the atmosphere outside of the structure where the garden is located.

h. No odors shall be allowed to migrate beyond the interior portion of the structure where the garden or processing facility is located;

W. Motion picture theater, adult; provided, that it shall be located a minimum of 1,000 feet from any residential zone, 1,000 feet from any school, public or private, 1,000 feet from any church, and 1,000 feet from any park, measured along the right-of-way;

X. Motor freight terminals and transportation;

Y. Offices related to an on-site permitted use or larger than 50,000 square feet of floor area;

Z. On-site day care serving a specified permitted use;

AA. On-site recreational facilities serving a specified permitted use;

BB. Outside storage yards;

CC. Printing, publishing, and allied industries including such processes as lithography, etching, and engraving, binding, blueprinting, photocopying, and film processing;

DD. Research, development and testing of permitted use;

EE. Residences, existing single-family and duplex;

FF. Restaurants, limited to serving a permitted use on the same site;

GG. Retail and wholesale trade of products manufactured, processed or assembled on site;

HH. Warehousing and distribution facilities, to include wholesale trade not open to general public;

II. Other similar uses and accessory uses and buildings appurtenant to a principal use which the planning director finds compatible with the principal permitted uses described in this chapter and consistent with the purpose and intent of the M-1 zone;

JJ. Uses permitted in the C-1 general commercial and C-2 heavy commercial districts may be permitted on a portion of the site by the planning commission, in accordance with BMC 17.68.150. This review may be conducted only if there is a recommendation for approval by the planning director, in consultation with the public works director, fire marshal, building official and police chief, based on the following criteria:

1. The lot is deep or irregular and C-1 uses may not be appropriate on a portion of the site.

2. The site abuts a more intense use and a transitional use is a better fit with the character of the area. (Ord. 1788 § 6, 2013; Ord. 1784 § 1, 2013; Ord. 1396 § 52, 1999; Ord. 1284 § 2, 1995; Ord. 1260 § 15, 1994; Ord. 1206 § 3, 1992).

17.42.025 Accessory uses.

A. Telecommunication macro facilities, subject to the following requirements:

1. Macro facilities may be located on buildings and structures provided that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The macro facility shall be exempt from review by the design review board if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Macro facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 15 feet, or in the case of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

B. Existing monopole I and lattice towers may be extended in height to maximum of 160 feet in height without complying with setback requirements. (Ord. 1396 § 53, 1999).

17.42.030 Uses requiring administrative permits.

The following uses and activities may be permitted by means of an administrative permit, issued in accord with BMC 17.68.150, if the development plan of such use is found by the planning commission to be consistent with the purpose of the zone and the related policies of the comprehensive plan:

A. Auction houses, excluding animals;

B. Automobile wrecking yard;

C. Banks and financial institutions;

D. Car wash;

E. Day care, including family day care homes and child day care centers as defined by DSHS, preschools or nursery schools;

F. Eating and drinking establishments other than restaurants serving a permitted use on the same site;

G. Equipment rental and leasing and sales;

H. Health and physical fitness clubs;

I. Mini storage warehouses;

J. Offices, including corporate headquarters;

K. Personal and household retail sales and service;

L. Reupholstery and furniture repair;

M. Secretarial services;

N. Small appliance repair;

O. Towing service;

P. Vehicle repair, major and minor. (Ord. 1396 § 54, 1999; Ord. 1260 § 16, 1994; Ord. 1206 § 3, 1992).

17.42.040 Uses requiring a conditional use permit.
The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of BMC 17.68.130:

A. Animal auction houses;

B. Animal and food processing including the following:

1. Tanning and dressing of hides,

2. Curing, canning, freezing, canning and processing of meat and seafood,

3. Pickling and brine curing;

C. Bulk storage or processing of oil, gas, petroleum, butane, liquid petroleum, gas and similar products, unless clearly incidental and secondary to support a principally permitted use;

D. Concrete mixing and batching plants, including ready-mix concrete facilities;

E. Drive-in theaters;

F. Government facilities;

G. Motels;

H. Radio and television transmitting towers;

I. Rock crushing plants;

J. Sales and rental of motorized vehicles;

K. Transmission towers on Burlington Hill where co-location exists subject to the following additional criteria:

1. Antennas may not extend more than 15 feet above their supporting structure, monopole, lattice tower, building or other structure;

2. Site location and development shall preserve the pre-existing character of the surrounding buildings and land uses and the zone district to the extent consistent with the function of the communications equipment. Wireless communication towers shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practicable. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area;

3. Accessory equipment facilities used to house wireless communications equipment should be located within buildings or placed underground when possible.When they cannot be located in buildings, equipment shelters or cabinets shall be screened and landscaped in conformance with chapter 20.12 BMC;

4. No equipment shall be operated so as to produce noise in levels above 45 dB as measured from the nearest property line on which the attached wireless communication facility is located;

5. New transmission towers and additional height on existing towers shall comply with performance standards for industrial uses adjacent to residential zones, BMC 17.48.110, 17.48.120 and 17.48.130);

L. Utility substations, unless clearly incidental and part of a permitted use;

M. Warehouse sales, open to the public, must have a minimum of 50,000 square feet of floor space. (Ord. 1396 § 55, 1999; Ord. 1206 § 3, 1992).

17.42.050 Development standards.
A. Minimum lot area: none required.

B. Minimum lot width: none required.

C. Minimum lot depth: none required.

D. Maximum ~~lot~~ building and impervious surface coverage: ~~none required.~~

1. Building coverage: none

2. Impervious surface coverage 80 percent

E. Maximum building height: 45 feet~~.~~ except

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line for each foot the building exceeds 45 feet; and~~For those structures that exceed 45 feet, one additional foot of setback shall be provided for each foot the structure exceeds 45 feet.~~

Formatted: Indent: Left: 0.25"

2. An additional 15 feet of height may be permitted when parking is located under the building

F. Minimum yard setbacks:

1. Front: 0 feet;

2. Side, interior: none required;

3. Side, street: 0 feet;

4. Rear: none required.

A 20-foot setback shall be required for any and each yard that abuts, adjoins, or is separated by a street, less than 50 feet in width, any residentially zoned property. This additional setback requirement also applies to residentially zoned property that is unincorporated county land.

G. Fences: see BMC 17.45.050.

H. Parking: see chapter 17.54 BMC.

I. Landscaping: see chapter 17.50 BMC.

J. Signs: see chapter 17.63 BMC.

K. Performance standards: see chapter 17.48 BMC. (Ord. 1233 § 5, 1993; Ord. 1206 § 3, 1992).

17.42.060 Supplemental development standards.
A. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use, subject to the requirements of the Uniform Fire Code.

B. Industrial land abutting directly a residential zone shall provide for a transition to the residential use required in chapter 17.48 BMC, Performance Standards, and the following:

1. A six-foot screening fence and a 20-foot landscaped buffer designed for sight and noise baffling or a six-foot solid block wall and a 10-foot landscaped buffer designed for sight and noise baffling; and

2. Uses generating noise after 9:00 p.m. shall not be permitted, including taverns, assembly occupancies, restaurants with cocktail lounges or dance floors, all night business and other similar types of uses. This shall not include shift work for the industrial use;

3. Measures shall be taken to prevent light and glare from being directed to residential uses.

C. New construction shall comply with the Citywide Design Guidelines, and on sites one acre or larger in size, Chapter 17.69 BMC, Design Review Board. (Ord. 1322 § 9, 1996; Ord. 1260 § 17, 1994; Ord. 1206 § 3, 1992).

---

[1] Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.43

BP BUSINESS PARK DISTRICT

Sections:

17.43.010 Intent.
17.43.020 Who may initiate – Requirement for project manager.
17.43.030 Public services availability.
17.43.040 Preapplication conference.
17.43.050 Application.
17.43.060 Process.
17.43.070 Permitted uses.
17.43.080 Development standards.
17.43.090 Supplemental development standards.
17.43.100 Time limit.

17.43.010 Intent.
The purpose of this chapter is to respond to modern trends in business park (BP) development by providing a suitable area for industrial, professional office, service and commercial uses within a planned, well managed site with high quality development standards, through a contract rezone and site plan approval process.

It is also the intent of this district to allow flexibility with regard to development standards and uses if the flexibility results in an atmosphere of quality architectural, site and landscape design.

This district may be applied to any site within the city which is zoned business, commercial or industrial or designated as appropriate for business park development in the comprehensive plan. (Ord. 1260 § 18, 1994).

17.43.020 Who may initiate – Requirement for project manager.
A. BP projects may be initiated by:

1. The owner of all the property involved, if under one ownership, or

2. Jointly by all owners having title to all the property in the area proposed for the BP project, if there is more than one owner, or

3. A governmental agency, or

4. A person having interest in the property to be included in the BP.

B. The BP applications shall be in the name or names of the recorded owner or owners of property included in the development. The property owner(s) shall sign an approved form authorizing an agent of the owner to apply. The applications may be initially filed by the holder(s) of an equitable interest in or option on such property, but the applicant must evidence a full ownership interest in the land (either legal title or the execution of a binding sales agreement) before final approval of the applicant's plan or the recorded owner or owners must have given written consent satisfactory to the city to imposition of the term and conditions of the applicant's plan on the property.

C. One person shall be designated in writing as project manager who shall be accountable to the city and initiator(s) of the project. (Ord. 1260 § 18, 1994).

17.43.030 Public services availability.
A. The purpose of this section is to establish the criteria for installation, funding and ownership of utilities and other facilities, and the responsibilities of the developer for mitigation of the impacts of development. Methods for determining the fair share contribution shall be established by administrative rule.

B. Utility extensions to serve the development shall be funded by the developer, including but not limited to water, storm and sanitary sewer, on site surface water management. When such extensions are made, they may be required

to be sized to implement the capital facilities plan. Funding arrangements to compensate for oversizing or extending utility services past other properties may include proportionate costs shared by the developer and the provider of the utility, latecomers agreements or other means.

C. Business park projects shall be consistent with the comprehensive transportation plan and shall mitigate traffic impacts concurrent with the development. Concurrent mitigation includes construction of transportation improvements prior to occupancy of the development, agreement to participate in public improvements at a later date if improvements are best constructed as part of a larger planned project, or contribution of funds to construct improvements within six years.

D. Business park projects shall include recreational facilities and a neighborhood park on the site for the use of the employees, tenants and visitors. Other mitigation of the impacts of development on parks and playgrounds will be required as for any commercial or industrial development, pursuant to applicable laws and rules.

E. A residential component of a business park project shall mitigate the impacts of development on schools, consistent with applicable laws and rules.

F. Private utilities, facilities or services may be provided in lieu of public improvements when authorized by the entity delivering the service.

G. All required public improvements and amenities shall be completed according to a schedule negotiated with the city. Some may be required before building permit issuance and all improvements shall be in place prior to issuance of a certificate of occupancy unless a bond is appropriate because of adverse weather conditions or other circumstances beyond the control of the applicant. (Ord. 1260 § 18, 1994).

17.43.040 Preapplication conference.
Before filing any application for a BP, the prospective applicant shall submit to the planning director preliminary plans and sketches and basic site information for consideration and advice regarding the relation of the proposal to general developmental objectives and city policies in the area. After review by the planning director, the preliminary plans that have been accepted will be reviewed by the technical committee, consisting of designated representatives of the planning department, building department, police department, fire department and public works department. The technical committee shall meet with the applicant regarding the basic requirements, issues to be addressed, and concerns of the city, and shall document those issues by filling out the preapplication conference form at the meeting. A written record of the technical committee's recommendations and comments shall be given to the applicant at the meeting. Any follow-up correspondence shall be completed within 30 days after the meeting with the applicant, and a copy shall be retained on file for future reference. (Ord. 1260 § 18, 1994).

17.43.050 Application.
A. General. An application for a BP shall include the following information, along with a completed land use permit application form, payment of fees specified in current fee resolution, and an environmental checklist. Application shall include a written description of the development program for the site, including site planning, architectural and landscaping design standards for the site, timing of development, and how any unique features will be handled, such as protection of special flood risk zones or provision of open space.

B. Conceptual Approval. An application shall be required for conceptual approval of a business park and shall include the following:

1. Standard rezone application;

2. Subdivision, short subdivision or binding site plan if required;

3. List of uses to include hazardous materials or waste and impact on emergency response;

4. Covenants and restrictions;

5. A site plan to illustrate the following:

   a. Vicinity map,

b. Boundaries and dimensions of proposed park,

c. Acreage of park,

d. Layout of interior streets,

e. Adjacent public streets,

f. Easements, existing, and if known proposed,

g. Location and size of all existing utilities,

h. General location of uses,

i. Existing ownership pattern,

j. The site plan shall be properly dimensioned and drawn at scale not less than one inch equals 40 feet and on a sheet size 24 x 36 inches, more sheets may be used if necessary. A reproducible and seven copies of the site plan shall be submitted at the time of application. An alternative scale may be approved by the planning director.

C. Site Plan Approval. An application shall be required for site plan approval of a business park and shall include the following:

1. The ordinance and contract of the conceptual approval;

2. A site plan which shall illustrate the following:

a. Vicinity map,

b. Boundaries and dimensions of park,

c. If partial approval, illustrate the proposal within the boundaries of the park,

d. Illustrate previous site plan approvals that may have occurred within the park,

e. Acreage of proposal,

f. Layout of interior streets,

g. Adjacent public streets,

h. Easements, existing and proposed,

i. Location and size of all existing and proposed utilities,

j. Typical street cross section,

k. Location of uses,

l. Location of buildings and structures, both existing and proposed, including setbacks,

m. Location and layout of off-street parking, loading and unloading areas,

n. Location of walls and fences, indication of their height and materials,

o. Location of any storage areas or refuse containers,

p. Location and size of signs,

q. Landscaping plan,

r. Indication of height of buildings,

s. Proposed architectural treatment of large expanse of walls,

t. Any covenants not previously approved,

u. The site plan shall be properly dimensioned and drawn at a scale not less than one inch equals 40 feet and on a sheet size 24 x 36 inches, more sheets may be used if necessary. A reproducible and seven copies of the site plan shall be submitted at the time of application. An alternative scale may be approved by the planning director. (Ord. 1260 § 18, 1994).

17.43.060 Process.
The approval process for business parks is two steps. The first step is the conceptual approval of the business park, by the planning commission and city council, this step also approves the contract rezone to the business park district. The second step is the approval of the site plan by the planning director with review by the planning commission as applicable. These two steps may be combined if the applicant wishes to proceed more quickly.

A. Conceptual Approval.

1. Conceptual approval of a business park shall be processed as a contract rezone. The contract rezone shall include an agreement that establishes the type, square footage and general location of the uses; the location and size of the park; restrictive covenants; public improvements; and the responsibilities of the owner/developer.

2. A BP district shall only be approved when the owner/developer has demonstrated that a public benefit will result and the project contains architectural, site, and landscape design standards that are significantly superior to those typically required in the other industrial and commercial zones.

3. No significant impacts on the public infrastructure shall occur that cannot be effectively mitigated by the development of the business park.

4. If the approval of the business park requires a subdivision of property, the preliminary plat may be processed concurrently.

B. Site Plan Approval.

1. The site plan of a business park shall be approved by the planning director with review by the planning commission as applicable.

If a contract is voided, the planning commission must find reason for the BP zone to remain on that portion of the business park that has not been constructed. If no reason is found to continue the BP zone, then the planning commission shall conduct a public hearing to rezone the parcel back to the zone on the property prior to the BP zone.

2. From the date of filing a complete application the planning director shall within 30 calendar days either approve, deny, or approve with conditions the site plan.

3. The approved site plan shall be recorded at Skagit County. (Ord. 1260 § 18, 1994).

17.43.070 Permitted uses.
Only those uses specifically authorized in the contract rezone, as approved by the city council, may be permitted in this zone. Any of the uses listed as permitted, administrative, and conditional in the B-1, R-3, C-1, C-2, and M-1 chapters may be those uses permitted in this zone. This however shall not allow outdoor activities such as storage, fabrication, or sales, unless specifically authorized as part of the contract rezone.

The city council may establish any procedural or substantive conditions on any such use as may be appropriate for the site. (Ord. 1260 § 18, 1994).

17.43.080 Development standards.
A. Minimum area to be developed as a business park: 10 acres.

B. Minimum lot area: none required.

C. Minimum lot width: none required.

D. Minimum lot depth: none required.

E. Maximum ~~lot~~ building and impervious surface coverage: ~~none required.~~

1. Building coverage: none

2. Impervious surface coverage: 80 percent

F. Maximum building height: ~~35~~ 45 feet~~.~~; except

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line for each foot the building exceeds 45 feet; and ~~Additional height may be allowed if approved by the city council.~~

Formatted: Indent: Left: 0"

2. An additional 15 feet of height may be permitted when parking is located under the building

G. Minimum Yard Setbacks.

1. Exterior property lines: Setbacks from the exterior boundary line of the business park shall be comparable to or compatible with those of existing development of adjacent properties; or if adjacent properties are undeveloped, the type of development which may reasonably be expected on such properties given the existing zoning of such properties or the projections of the comprehensive plan. In no event shall such setback be less than 20 feet.

2. Interior property lines: The setbacks within the business park may either be determined at the time of conceptual or site plan approval.

H. Parking: see Chapter 17.54 BMC.

I. Supplemental development standards and performance standards: see Chapters 17.45 and 17.48 BMC.

J. Landscaping: see Chapter 17.50 BMC, a minimum of 15 percent of the business park shall be landscaped.

K. Signs: see Chapter 17.63 BMC.

L. Land use permit process: see Chapter 17.68 BMC.

M. Sidewalks and/or walkways: there may be flexibility in the design of sidewalks or walkways if approved by the city engineer. (Ord. 1260 § 18, 1994).

17.43.090 Supplemental development standards.
A. All activities shall be conducted entirely within a building except as follows:

1. Gas pumps;

2. Refuse containers, provided they are screened from adjoining property and public or private right-of-way;

3. Horticulture activities;

4. Play areas for day care;

5. Outdoor activities as permitted by the contract rezone.

B. All odors, noise, vibrations, heat, glare, or other emissions are controlled within the confines of a building unless specifically permitted elsewhere by this title.

C. No outdoor testing of products.

D. No highly combustible, explosive or hazardous materials are permitted, unless clearly incidental and secondary to the permitted use.

E. Roof top equipment shall be set back a minimum of 20 feet from the edge of the roof and be painted the same color as the building on which the equipment is located; or, screen the equipment from adjoining uses or from street right-of-way if setback is less than 20 feet.

F. Loading and unloading docks that have frontage on a street shall be required to provide an additional 10-foot width of landscaping or in lieu of additional 10-foot width, landscaping may be provided as approved by the landscaping committee.

G. Outdoor storage may be restricted to the rear of the property and shall as a minimum be guided by the screening and landscaping requirements of the M-1 zone.

H. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use. On-site hazardous waste treatment and storage facilities shall be subject to the approval of the fire department. (Ord. 1260 § 18, 1994).

17.43.100 Time limit.
In order to effectively respond to the changing circumstances with regard to industrial land within Burlington and on neighboring parcels of the business park, and to be consistent with evolving development standards, the following time limit shall apply:

A. Every two years, from the approval date of the contract of each business park, the planning commission shall review the contract of each business park in which construction has not been completed. The planning commission shall determine whether the business park is still a viable proposal by reviewing whether the applicant is still pursuing the project, or there are conflicts in the execution of the contract, and shall recommend to the city council to either extend, amend or void the contract.

If a contract is voided, the BP zone itself may remain but further construction shall only be authorized by the execution of a new contract. (Ord. 1260 § 18, 1994).

Chapter 17.45

SUPPLEMENTAL DEVELOPMENT STANDARDS[1]

Sections:

17.45.010 Preexisting lots.
17.45.015 Mini-lots permitted without setbacks.
17.45.020 Special height restrictions.
17.45.030 Obstructions, generally prohibited.
17.45.040 Marquees.
17.45.050 Fences.
17.45.060 Yards.
17.45.070 Design review guidelines.
17.45.080 Home occupations.
17.45.090 Responsibility for animals.
17.45.100 Outdoor vending machines.
17.45.110 Low Impact Development

Formatted: Space After: 0 pt

17.45.010 Preexisting lots.
Any lot of any size can be used for a building site, subject to the regulations governing the use district in which it is located, if it was officially recorded in city or county offices as a single lot prior to the adoption of the ordinance codified in this title, provided it has 30-foot frontage on a public street or access to a public street by a 20-foot wide private lane. Once vacant adjacent substandard lots are considered in ownership, they cannot revert to original lots of substandard size subject to the requirements of BMC 17.15.055. (Ord. 1502 § 5, 2002; Ord. 1221 § 6, 1992).

17.45.015 Mini-lots permitted without setbacks.
Subdivision to create zero lot line residences or small lots without yards that meet the underlying zoning district requirements, by either short plat or full subdivision, shall be permitted in the following zoning districts and locations:

A. R-3 multifamily;

B. R-2 duplex;

C. MR-NB medium residential neighborhood business;

D. Permitted duplex dwelling units located in the R-1 single-family zoning district.

This section only applies if the total development site complies with all underlying zoning district development standards and permit conditions. The total development site is defined as the site for which the land use permit is issued authorizing the construction of the dwelling units. This section shall not apply in locations where site access and circulation is provided by a network of private streets. All projects subject to this provision shall be reviewed by the planning commission for compliance with the intent of the code. (Ord. 1584 § 1, 2005).

17.45.020 Special height restrictions.
A. There shall not be anything constructed or reconstructed, and no obstruction permitted to grow, other than a post, column or tree not exceeding one foot square or one foot in diameter, between a height three feet and 10 feet above the established grade within the triangular areas described below, without the express approval of the city engineer:

1. The triangular area formed by a line 20 feet along the right-of-way lines of two intersecting streets, measured from the point of intersection of the right-of-way lines, and the line connecting the two ends of the two 20-foot lines,

2. The triangular area formed by a line 15 feet along the street right-of-way line measured from the point of intersection of the alley right-of-way line and a line 15 feet along the alley right-of-way line measured from the

point of intersection of the street and alley right-of-way lines and the line connecting the unconnected ends of the two lines.

B. In general, no fence, hedge, structure or other obstruction shall act as a sight hazard to traffic, and the city engineer may order the removal of such hazard whether or not such object otherwise complies with the provisions of this title. (Ord. 1221 § 6, 1992).

17.45.030 Obstructions, generally prohibited.
A. In no case shall any fence and/or hedge be constructed or grown, within a distance of three feet, around any fire hydrant; as well as no fence or hedge shall deter or hinder the fire department from gaining access to any fire department connection, fire protection control valve, fire hydrant, or fire department appliance or device;

B. In no case shall any fence and/or hedge obstruct the visibility of any fire hydrant from a distance of 150 feet, in any direction, of vehicular approach to the hydrant;

C. In no case shall any fence and/or hedge be constructed or grown in a manner which interferes with access to storm or sanitary sewer manholes and other appurtenances which require access for maintenance purposes. (Ord. 1221 § 6, 1992).

17.45.040 Marquees.
In the business, commercial and industrial districts, the projection of marquees to the property line shall not be considered a violation of the building setback requirements. Marquees must conform to the construction requirements as set forth in the building code. (Ord. 1221 § 6, 1992).

17.45.050 Fences.
A. Fences in residential areas providing a maximum six-foot sight obstruction from adjacent properties can be built on the side and rear property lines and across the front of the property in line with the front of a building but not closer than 20 feet to the street right-of-way. Corner lots must observe the 20-foot setback on both streets. From the 20-foot line to the street right-of-way, solid fences a maximum of three feet high, measured from the ground on which the fence stands, are permitted and open rail fences a maximum of four feet, six inches high, measured from the ground on which the fence stands, are permitted in which the rails and posts constitute not more than one-third of the fence area. Taller fences may be permitted in the 20-foot setback area by the planning commission through the plan review process provided in BMC 17.68.150 based on a field inspection and staff report with site plan and photographs provided by the applicant demonstrating consideration of adjacent structures, driveways, location of transit stops, need for privacy, visual impacts of fence structure on block front, or other circumstances not anticipated by this code. Fences up to six feet tall are permitted in commercial and industrial areas subject to corner vision requirements and permit conditions established through the plan review process.

B. Electric fences are permitted in the R-A district by conditional use on approval only when located in an open area where the likelihood of children playing in the area is minimal. (Ord. 1396 § 56, 1999; Ord. 1340 § 5, 1997; Ord. 1221 § 6, 1992).

17.45.060 Yards.
A. The following may project into required yards:

1. Fireplace structures, bay windows, garden windows, enclosed stair landings, closets, framed fireplace shafts or similar projections not wider than eight feet measured in the general direction of the wall of which it is a part: 18 inches into any yard;

2. Uncovered porches and platforms which do not extend above the floor level of the first floor: 18 inches into side yards and six feet into the front yard and rear yard, provided they may extend three feet into the side yard when they do not exceed 18 inches in height above the finished grade;

3. Planting boxes or masonry planters not exceeding 42 inches in height may intrude into any required front yard;

4. Eaves shall not protrude more than 24 inches into any minimum required yard.

B. Special Front Yard Depth. If buildings occupy 50 percent or more of the frontage in any block, and are on one side of the street, then the depth of the front yard required by this title shall be disregarded on that side of the street in such block, and in lieu thereof the depth of front yard required on each lot therein shall be not less than average depth of the front yards. This shall apply to residentially zoned property only. (Ord. 1221 § 6, 1992).

17.45.070 Design review guidelines.
The planning director, in consultation with the planning commission, shall adopt design review guidelines consistent with the comprehensive plan and other adopted city policies by administrative rule, which shall provide supplementary review criteria for land use decisions, no later than six months following the effective date of the ordinance codified in this chapter. (Ord. 1221 § 6, 1992).

17.45.080 Home occupations.
A. Home occupations are required to have a business license as issued by the city clerk, comply with all city codes and ordinances, and shall be consistent with the following provisions:

1. Only members of the immediate family residing on the premises may be employed;

2. No inventory is kept (other than incidental supplies necessary for and consumed in the conduct of such home occupation) or commodities sold other than those produced on the premises. Samples may be kept but not sold on the premises. Items commonly collected or traded, and occasionally sold by hobbyists such as coins, stamps, antiques, etc. may be considered to be exempt from this provision, as long as all other requirements of home occupations are met;

3. No mechanical equipment is used except such as is customarily used for domestic, household or personal purposes (or as deemed similar in terms of power and type);

4. Not more than one-fourth of the floor area of any building is devoted to such occupation, except accessory buildings which are used for no other purpose;

5. Such occupation shall not require internal or external alteration or involve construction features not customarily found in a dwelling;

6. Shall not involve the use of commercial vehicles for the distribution of materials from the premises;

7. The conduct of any home occupation, including but not limited to the storage of goods and equipment, shall not reduce or render unusable areas provided for the required off-street parking. Additional parking is not allowed in order to conduct a home occupation;

8. Only one sign is permitted, two square feet in area, indirect illumination only, and attached to a building or inside the home;

9. No display pertaining to the occupation, other than the one permitted sign, is visible from the street or adjacent residences;

10. No more animals are maintained on the premises than what may otherwise be permitted in the zone;

11. The home occupation is to be conducted in such a manner that the residence shall not differ from its residential character either by the use of colors, materials, construction, lighting, signs, or the emissions of sound, noises, vibrations or odors.

B. Exemptions. Garage sales, yard sales, bake sales, temporary home boutiques or bazaars for handcrafted items, parties for the display of domestic products, and other like uses do not need to comply with the requirements of BMC 17.45.080 as long as the use does not operate for more than four days semi-annually or in violation of any other provisions of the Burlington Municipal Code. To qualify for this exemption, garage and yard sales must involve only the sale of household goods, none of which were purchased for the purpose of resale.

C. A conditional use permit is required and must be granted by the city council for the following home occupation uses, even if the use meets all 11 of the requirements of subsection A but in no case shall any home occupation meet less than nine of the 11 requirements:

1. Automobile repair and rebuild;

2. Craft classes;

3. Home occupations that can only meet 9 or 10 of the 11 requirements as outlined in subsection A;

4. Music and dancing studios.

D. In considering applications for home occupation conditional use permits, the city council shall consider the nature and conditions of all adjacent uses and structures, and no such special home occupation permit shall be authorized unless the city council finds that the authorizing of such special home occupation permit will not be materially detrimental to the public welfare or injurious to the property in the zone or vicinity in which the property is located, and that the authorization of such permit will be consistent with the spirit and purpose of this title. In authorizing a permit, the city council may impose such requirements and conditions with respect to location, installation, construction, maintenance and operation and extent of open spaces in addition to those expressly set forth in this title, as may be deemed necessary for the protection of other properties in the zone or vicinity and the public interest. (Ord. 1340 § 6, 1997; Ord. 1221 § 6, 1992).

17.45.090 Responsibility for animals.
Owners, including both property owners and residents, of animals, including household pets and farm animals, shall be responsible for damage to other properties, including damage to trees and other landscaping, fences and structures. (Ord. 1284 § 3, 1995).

17.45.100 Outdoor vending machines.
A. Notwithstanding any other provisions of this chapter, outdoor vending machines may be operated only in the C-1 and C-2 zoning districts, provided they are carried on in accordance with the limitations hereinafter set forth and provided a land use permit is first obtained in accordance with BMC 17.68.030(B). Outdoor vending machines located in public parks or any other public property shall not be subject to this section.

B. No outdoor vending machine may be installed, maintained, repaired or operated in the city without first being issued a valid land use permit. A land use permit shall be issued by the planning director only if the following standards and conditions are met:

1. The outdoor vending machine may not be located such that the outdoor vending machine, or a user of the outdoor vending machine, is within:

a. A public right-of-way;

b. A required landscape area;

c. A driveway;

d. An area used by vehicles for circulation; or

e. Five feet of any business entrance or exit.

2. All outdoor vending machines must be ancillary to an approved primary use and may not be located on an unimproved lot. Automated teller machines not on the same property as the financial institution may be located in a parking lot of a multiple tenant development if a conditional use permit is issued pursuant to BMC 17.68.130.

3. When an outdoor vending machine is situated within the primary ingress to and egress from the lot, a minimum walkway width of six feet shall be required in front of the outdoor vending machine. The building

official shall determine whether the ingress to and egress from the lot is primary to the lot. In all other situations, a minimum walkway width of four feet is required in front of the outdoor vending machine.

4. All outdoor vending machines shall only be located on a building elevation that contains a primary entrance.

5. All outdoor vending machines must be positioned against a building wall and not located in front of windows.

6. An outdoor vending machine shall not block the exit door.

7. Outdoor vending machine sign panels shall be limited to the products sold within the outdoor vending machine. No additional signs or advertising can be attached to or placed on the top or side of any outdoor vending machine.

8. Exterior conduit, piping or wiring must not be visible when standing directly in front of the outdoor vending machine.

9. No visible security cages are permitted on the outside of an outdoor vending machine.

10. Outdoor vending machines shall not exceed 80 inches in height and 36 inches in depth and 42 inches in width.

11. All outdoor vending machines shall be maintained in a clean and attractive condition.

12. Any graffiti on an outdoor vending machine shall be removed within 24 hours.

13. The vending machine shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the machine as visible from any residence or vehicle traveling the right-of-way.

14. Number of Outdoor Vending Machines.

a. No more than five outdoor vending machines shall be permitted per development site or integrated development site.

b. The number of outdoor vending machines permittable on a development site shall be as follows:

Square Footage of Development Site	Number of Outdoor Vending Machines
15,000 or less	1
15,001 – 30,000	2
30,001 – 45,000	3
45,001 – 60,000	4
60,001 or greater	5

c. For integrated development sites, regardless of the number of lots or individual tenants, that are developed with common parking, on-site circulation, architecture or design features, with multiple underlying lots, at least one outdoor vending machine, but not to exceed three outdoor vending machines, may be allowed per lot. Multiple outdoor vending machines shall be subject to the following ratio:

Square Footage of a Lot within an Integrated Development	Number of Outdoor Vending Machines

Square Footage of a Lot within an Integrated Development	Number of Outdoor Vending Machines
15,000 or less	1
15,001 – 30,000	2
30,001 or greater	3

15. Upon removal of an outdoor vending machine, the building and site area where the outdoor vending machine was located shall be repaired to its original condition. (Ord. 1720 § 2, 2010).

17.45.110 Low Impact Development

The following standards and requirements shall apply to any building, development, or construction activities that result in an increase in impervious surface coverage, building coverage, or modifications to existing storm-water management features or facilities. These standards and requirements shall also apply to all activities involving the modification of existing impervious surfaces or the removal of significant quantities of vegetation.

A. All development, building, construction, and grading permit applications shall be provided to the City Engineer for review. No permit shall be issued or approved unless the City Engineer finds the proposal complies with the surface water management regulations in title 14 BMC.

B. All development activities shall be designed and constructed in accordance with the Washington State Department of Ecology's Stormwater Manual for Western Washington.

C. Low impact development shall be the preferred and commonly used approach for all development and construction activities. Low impact development (LID) techniques shall be incorporated into all development proposals unless demonstrated to be infeasible through an engineering analysis.

D. The Department of Ecology's Stormwater Manual for Western Washington and the Puget Sound Partnership's Low Impact Development Technical Guidance Manual for Puget Sound shall be consulted to assess the feasibility of LID techniques, to select appropriate LID measures, and to aid in the design and construction of LID features. All storm-water systems and improvements shall be consistent with title 14 BMC.

Formatted: Font: 10 pt
Formatted: Font: 10 pt
Formatted: Font: 10 pt

[1] Prior legislation: Ords. 890 §§ 5.1, 5.5, 5.6, 5.7, 5.11 and 979 § 3.

Chapter 17.48

PERFORMANCE STANDARDS

Sections:

17.48.010 Intent.
17.48.020 Light and glare.
17.48.030 Electrical interference.
17.48.040 Odorous gases and matter.
17.48.050 Smoke and particulate matter emissions.
17.48.060 Dust, dirt, fly ash, or air-borne solids.
17.48.070 Waste storage.
17.48.080 Toxic gases and matter.
17.48.090 Vibration.
17.48.100 Hazardous substance and waste.
17.48.110 Solar access.
17.48.120 Height requirements for transitional zones.
17.48.130 Minimum setback requirements.
17.48.140 Performance standard for urban residential density.
17.48.145 Telecommunication facilities.
17.48.150 Mechanical equipment.

17.48.010 Intent.
The intent of this chapter is to establish the following performance standards to specifically govern industrial, manufacturing, processing, assembly and similar type uses typically found within the industrial zones. These standards also apply to multifamily, commercial or industrial development when abutting a residential zone. These performance standards are intended to reduce the visual, physical, and environmental impacts of new development on existing single-family, duplex and multifamily residences and the character of the neighborhood. These standards may also apply to other uses and activities in other zones, which are not otherwise governed by other regulations. (Ord. 1322 § 10, 1996; Ord. 1221 § 6, 1992).

17.48.020 Light and glare.
Building materials with high light-reflective qualities shall not be used in the construction of buildings in such manner that reflected sunlight will throw intense glare to surrounding areas. Artificial lighting shall be hooded or shaded so that direct light of high-intensity lamps will not result in glare when viewed from residential areas surrounding a commercial or industrial district. (Ord. 1221 § 6, 1992).

17.48.030 Electrical interference.
Provisions must be made for necessary shielding or other preventive measures against interference occasioned by mechanical, electrical and nuclear equipment uses or processes with electrical apparatus in nearby buildings or land uses. (Ord. 1221 § 6, 1992).

17.48.040 Odorous gases and matter.
The emission of odorous gases or matter in such quantities as to be readily detectable, without special instruments, at any point beyond the property line of the use creating the odors, is prohibited. (Ord. 1221 § 6, 1992).

17.48.050 Smoke and particulate matter emissions.
No emissions shall exceed the allowances set forth by the Environmental Protection Agency, the Washington State Department of Ecology and/or the Northwest Sound Air Pollution Control Agency, unless local regulations are more restrictive, in which case the local regulation shall apply. (Ord. 1322 § 11, 1996; Ord. 1221 § 6, 1992).

17.48.060 Dust, dirt, fly ash, or air-borne solids.
No observable dust, dirt, fly ash or other air-borne solids shall be emitted except as related to construction activity. (Ord. 1221 § 6, 1992).

17.48.070 Waste storage.
Storage of animal or vegetable wastes which attract insects or rodents or otherwise create a health hazard shall be prohibited. No waste products shall be exposed to view, from eye level, beyond the property line of the use storing the waste. (Ord. 1221 § 6, 1992).

17.48.080 Toxic gases and matter.
No emissions of toxic gases or matter shall be permitted. (Ord. 1221 § 6, 1992).

17.48.090 Vibration.
Vibration which is easily discernible, without special instruments at any point beyond the property line, is prohibited. This shall not apply to vibration caused by highway vehicles, trains, aircraft or construction activities. (Ord. 1221 § 6, 1992).

17.48.100 Hazardous substance and waste.
No hazardous substances or wastes shall be released into the environment so as to cause dangerous or offensive emission or contamination of any public or private water supply, sewage treatment processes, watercourse or water body, the air, or, the ground, except in accordance with standards approved by provisions of federal, state and local laws and regulations, and the Uniform Fire Code. (Ord. 1221 § 6, 1992).

17.48.110 Solar access.
Shading affects property lying to the north of land where new construction is proposed. These criteria are required to be met for any new construction that is south of existing residential land:

A. New construction of multifamily, commercial or industrial structures more than one story in height shall in no way, partially or fully, shade the maximum building envelope of any existing dwelling(s) or vacant residential lots as determined by the angle of the sun on December 21st (winter solstice) at 12:00 p.m. (an approximate angle of 22 degrees).

B. Site plans shall be required to show the shading impacts of new multifamily, commercial or industrial structures on existing dwellings or vacant residential lots.

C. When existing vegetation is shading a dwelling or a vacant residential lot prior to the construction of an adjacent multifamily, commercial or industrial building more than one story in height, the new construction shall meet the requirements of this section as if the vegetation were not there.

D. The provisions of this section shall apply only to the primary dwelling and its maximum building envelope and not to accessory structures on the threatened property.

E. Shading impact on dwellings or on vacant residential lots shall be measured at the adjacent property's southernmost building envelope baseline, where the foundation wall would be located. (Ord. 1322 § 12, 1996).

17.48.120 Height requirements for transitional zones.
The average elevation of the nearest single-family structures on either side of a lot shall be used to establish the height limit of the multifamily and commercial structures located within 45 feet of the lot line of the single-family zone. The multifamily dwellings with this average building height will act as a transition between single-family residences and taller multifamily structures. Average building heights shall be established according to the following provisions:

A. Each structure used for averaging shall be located on a lot adjacent to the side or rear lot line for which a height limit is being established. The structure used shall be the nearest single-family structure on each side of the lot, and shall be within 100 feet of the lot lines of the lot.

B. The height limit for the multifamily and commercial structures located within 45 feet of the single-family zone shall be established by averaging the elevations of the structures on either side in the following manner:

1. The elevation to be used for averaging shall be the highest point of the roof of the nearest structure on either side.

2. Rooftop features which are exempt from height limitations shall not be included in elevation calculations.

3. The elevations obtained from subsection (B)(1) of this section shall be averaged to derive the height limit for the portion of the structure within 45 feet of the lot line.

C. When there is no single-family structure within 100 feet on a side of the lot, or when the nearest single-family structure within 100 feet on a side of the lot is across a street, the elevation used for averaging on that side shall be 30 feet.

D. When the lot is a corner lot, the height limit may be the highest elevation of the nearest structure on the same block front; provided, that that structure is within 100 feet of the side lot line of the lot and that both front yards face the same street.

E. In no case shall the height limit established according to these height averaging provisions be greater than 45 feet.

F. Height averaging will not be required for multifamily or commercial structures greater than 45 feet from the lot line of adjacent single-family lots. (Ord. 1322 § 13, 1996).

17.48.130 Minimum setback requirements.
A. Multifamily: The same as for R-1, except the minimum side and rear yard setback for multifamily structures more than one story in height, adjacent to single-family residential lots shall be derived using a ratio of two feet building setback for every one foot of building height.

B. Commercial: The same as C-1, C-2, except the minimum side and rear yard setback for structures adjacent to single-family lots shall be derived using a ratio of two feet building setback for every one foot of building height.

C. Industrial: The same as C-1, C-2, except the minimum side and rear yard setback for structures adjacent to single-family lots shall be derived using a ratio of two feet building setback for every one foot of building height. (Ord. 1322 § 14, 1996).

17.48.140 Performance standard for urban residential density.
Residential development shall be required to meet a minimum net density standard of four dwelling units or more per acre, on average, throughout the residential zoning districts in the unincorporated urban growth area as established in the 1997 Skagit County comprehensive plan. Four dwelling units per acre shall be the minimum allowable density for new subdivisions and development other than a single-family home on an existing lot of record, except where it cannot be achieved due to special flood risk designation or other physical site constraints. (Ord. 1388 § 1, 1999).

17.48.145 Telecommunication facilities.
A. Application and Conditional Use Criteria – FCC Preemption. In any proceeding regarding the issuance of a conditional use permit under the terms of this chapter, federal law prohibits consideration of environmental effects of radio frequency emissions to the extent that the proposed facilities comply with the Federal Communications Commission regulations concerning such emission.

B. The following are exempt from the requirements of a conditional use permit, and shall be considered a permitted use in all zones where wireless and attached wireless communications facilities are permitted: minor modifications of existing wireless communications facilities and attached wireless communications facilities, whether emergency or routine, so long as there is little or no change in the visual appearance. Minor modifications are those modifications, including the addition of antennas, to conforming wireless and attached wireless communications facilities that meet the performance standards set forth in this title.

C. A wireless communications facility or attached wireless communications facility shall be removed by the facility owner within six months of the date it ceases to be operational or if the facility falls into disrepair. (Ord. 1396 § 57, 1999).[1]

17.48.150 Mechanical equipment.
A. Mechanical equipment shall be equipped with a noise-baffling screen as necessary, so that there shall be no audible sound at the property line.

B. Roof-mounted or ground-mounted equipment shall be located and designed to blend in with the architecture of the building. (Ord. 1396 § 58, 1999).

[1] Code reviser's note: Ord. 1396 added this section as BMC 17.48.140. It has been editorially renumbered to avoid duplication of section numbering.

Chapter 17.50

LANDSCAPING

Sections:

17.50.010 Purpose and intent.
17.50.020 Areas of application.
17.50.030 Application/review procedures.
17.50.040 General standards.
17.50.050 Minimum area standards.
17.50.060 Street frontage requirements.
17.50.070 Perimeter landscaping.
17.50.080 Parking lot landscaping.
17.50.090 Screening requirements.
17.50.100 Minor modifications.

17.50.010 Purpose and intent.
Landscaping is necessary to provide a well-balanced, aesthetically pleasing environment for the residents and visitors of Burlington. Specifically, these requirements are intended to accomplish the following:

A. Maintain and enhance property values;

B. Enhance the appearance of the development;

C. Provide adequate buffers between different uses;

D. Improve the character and appearance of the city;

E. Reduce erosion and stormwater runoff, and provide areas for biofiltration of sediments and oils;

F. Retain and incorporate existing significant trees and natural drainage areas into site plans to the maximum extent practical. (Ord. 1162 § 2, 1990).

17.50.020 Areas of application.
The standards of this section shall apply to all development within the city, except:

A. A single-family residence in any district in which a single-family residence is allowed;

B. Where 100 percent lot coverage is permitted by buildings and the proposed project covers 100 percent of the lot. Landscaping shall be provided as feasible on such sites, focused on improving the appearance of the site from the public right-of-way. (Ord. 1304 § 1, 1995; Ord. 1162 § 3, 1990).

17.50.030 Application/review procedures.
A. Submittal Requirements. Landscape plans shall be submitted to the planning department, and shall include locations, spacing, quantities and sizes of proposed plants, dimensions of planting areas, calculation of percentage of site to be landscaped, staking and planting plans, irrigation plans (may be on separate sheet), and other nonplant features to be included in the landscaping, such as river rock, pedestrian paths, benches, large stones, garden ornaments, or special lighting features. Three sets of drawings shall be submitted.

B. Planning Department Review. The planning department shall review all landscape plans under the provisions of this chapter and may approve, deny, or approve with conditions, landscape plans for any development which does not require planning commission review under this chapter. In addition, the planning department shall review and recommend action to the planning commission on the landscape plans for any development subject to planning commission review. The planning commission, or site plan review committee may authorize the planning director to review any landscape plan, or final landscape plan, for any development which has come under their review.

C. Planning Commission Review. Landscape plans for any development subject to a public hearing review, or plan review by the planning commission, under chapter 17.48 BMC, shall be reviewed by the planning commission, who may approve, deny, or approve with conditions, the proposed landscaping. The planning commission may authorize the planning director, or the site plan review committee, to review any landscape plan.

D. Minor Modifications. Any applicant, or the planning director, may request modification of any standard specified under this chapter, subject to the provisions of BMC 17.50.100. (Ord. 1162 § 4, 1990).

17.50.040 General standards.
The following general standards shall apply to all landscaping required under this section:

A. Landscape Materials.

1. Acceptable ~~L~~andscape materials ~~shall be defined as~~include evergreen or deciduous trees, shrubs, and groundcover plants, perennial or annual flowers, and lawn. River rock, driftwood, bark, rockeries, ornamental or decorative walkways (provided both sides abut landscaping), may be included~~. Suggested plant materials suited to the unique soils, geology, and weather patterns of Burlington shall be available at City Hall.~~ No artificial lawn or plants will be permitted in landscaped areas.

Formatted: Indent: Left: 0.25"

2. At least 50 percent of all vegetation shall be native to the northwest and at least 25 percent of required trees shall be coniferous evergreens.

B. Existing Site Vegetation. Significant existing trees and shrubs shall be incorporated into the landscaping as much as possible. "Significant trees" shall be those evergreen and deciduous trees at least six inches in diameter at a point five feet above ground level. The site plan for the project shall include the location of significant trees, and shall identify which trees will be retained on the site. Care shall be taken in the grading and construction process so as not to disturb the roots within the drip line of existing trees to be retained, and to ensure proper irrigation.

C. Erosion Control Plan. The city may require temporary erosion sedimentation control measures as part of the landscape plan for the development. Sloped areas of the site shall be protected during construction, and planted with vines or other ground cover materials that will provide 90 percent coverage within 18 months of planting.

D. Pollution Control. It shall be the responsibility of the property owner to insure that storm runoff from landscaped areas does not contain excessive amounts of fertilizer, insecticides and herbicides that may be harmful to aquatic life, and to take measures to prevent runoff water impacts as required by the Departments of Ecology and Wildlife.

E. Corner Vision. Along street frontages, within 30 feet of a driveway, alley, or street intersection, no shrubs shall be higher than 30 inches and no trees shall have branches or foliage below eight feet above street level.

F. Safety Features/Utilities. Installation of landscape materials shall not obstruct access to fire hydrants, standpipes, sprinkler connections, utility vaults, pedestals, and other public and private utility facilities.

G. Right-of-Way Landscaping. In addition to all other landscaping requirements, the developer shall landscape the unused right-of-way between the front property line(s) and the improved roadway. Where a street is at its ultimate width, unused right-of-way is defined as the area between the property line and the curb or edge of pavement. Landscaping within the right-of-way shall satisfy the corner vision and safety feature provisions of this section. In most cases, low shrubs and ground cover plantings similar to those used on the site will be preferred. Trees should be placed on private property whenever possible. Maintenance of landscaping in the right-of-way shall be the responsibility of the owner of the property adjacent to the right-of-way.

Nothing in this section shall create or imply any interest of the property owner in the right-of-way. At such time as the city, county or state shall need to use the right-of-way, removal of the landscaping shall be the responsibility of the property owner. If such landscaping is not removed, it may be destroyed by the city, county or state.

H. Irrigation/Watering System. An irrigation system, or alternative watering system, shall be required. For smaller projects, an acceptable alternative would be the location of hose bibs in locations where hoses do not have to extend over parking lots or driveways to rear planting areas. The applicant shall contact the Public Utility District or

applicable water purveyor to determine if any backflow prevention device is necessary; if so, such a device will be installed as required. Irrigation may be provided from shallow wells tapping ground water sources.

I. Maintenance. All landscaping and screening areas shall be maintained in a healthy, growing condition. Broken, dead, or dying trees, shrubs, or other plants shall be replaced. All landscaping and screening shall be kept reasonably free of weeds and trash. Any property owner who fails to reasonably maintain landscaping and screening areas will be considered to have committed an offense under this code.

J. Performance Assurance/Bonding. Unless otherwise required by the planning commission, all landscaping and screening required under this chapter shall be installed prior to occupancy of the development. In the event that landscaping improvements cannot be installed prior to application for occupancy, a cash deposit or other assurance acceptable to the city equal to 120 percent of the estimated installation costs shall be required. Such deposit shall be accompanied by a letter which shall stipulate completion of all landscape development no later than six months after the issuance of the certificate of occupancy or date of final approval, whichever is later. If these conditions are not met, the city may use the deposit to perform the landscape development. (Ord. 1162 § 5, 1990).

K. Storm-Water Management.

1. Storm-water facilities and low impact development features landscaped in accordance with the requirements of this chapter may be used to meet any applicable minimum landscaping requirements.

Formatted: Indent: Left: 0.25"

2. To the greatest extent possible the planting areas required by this chapter should be used as storm-water infiltration areas or low impact development features.

3. Low impact development features and planting areas used to treat, manage, or infiltrate storm-water should be designed and constructed consistent with the Washington State Department of Ecology's "Stormwater Manual for Western Washington" and the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for Puget Sound".

4. When trees or plants are located within, or adjacent to, an infiltration area the landscape architect shall submit evidence that they have coordinated with the engineer responsible for onsite storm-water management. Based on information provided by the storm-water engineer the landscape architect shall:

a. Specify tree and plant species suitable for the hydrologic and soil conditions anticipated or present in the planting area; and

Formatted: Indent: Left: 0.5"

b. Specify tree and plant species that will not detrimentally affect the ability of the planting area to manage storm-water

5. Landscaping plans shall identify areas of the site with suitable soils for storm-water infiltration and LID features.

Formatted: Indent: Left: 0.25"

6. Any landscaping areas used for storm-water infiltration, treatment, or storage shall be consistent with title 14 BMC.

17.50.050 Minimum area standards.

A. Basic Requirements. The percentage of gross site area to be landscaped is to be regarded as the minimum. In the event that, because of lot configuration, adjacent land uses, or special circumstances, more landscaping is required to meet all requirements of this code, the higher amount of landscaping shall be required. The minimum landscaping area requirements indicated below may include landscaping around buildings, along road frontages, in parking and loading areas, and outdoor recreational use areas, as required in this section. Area within the right-of-way may be used to satisfy up to 20 percent of the minimum requirements.

Zoning Classification	Percent of Gross Site Area
Multifamily (R-3 and R-2)	15

General/Heavy Commercial District (C-1 and C-2)	10
Multifamily in Commercial District	15
Semi-Public (R-S)	15
Business District (B-1)	10
Business Park District (BP)	10
Industrial District (M-1)	5
Commercial Uses in Industrial Districts	10
Short Plats, Subdivisions, and Cluster Developments - see BMC 17.50.050 C and BMC 17.50.060 for requirements	

B. Preexisting Developments/Alterations. Any development existing prior to the adoption of this section which does not satisfy the provisions of this section shall be considered a nonconforming use. Additions or alterations to these nonconforming uses shall require that landscaping be provided, as possible, commensurate with the extent of the alteration of addition, in compliance with the provisions of this section, provided that compliance with BMC 17.50.060 shall be required as a minimum.

C. Phased Projects. Phased projects include but are not limited to shopping centers, large site developments proceeding in phases, subdivisions, cluster developments, and business parks. Before construction permits are issued for the first phase of any phased project, conceptual approval of the landscaping plan for the site as a whole is required.

1. Final approval of the landscaping plan for each phase is required before construction permits are issued for a phase.

2. Landscaping along a frontage road or perimeter screening may be required to be installed in the first phase. Criteria to be considered in the decision include but are not limited to the following:

a. Timing of phases of a project, and

b. Proximity to residential areas.

D. A licensed landscape architect shall be required to prepare the landscaping plans and supervise the installation of landscaping for all new development. ~~subject to environmental review~~This requirement may be waived by the Community Development Director for simple small scale projects with minimal landscaping requirements. (Ord. 1260 § 19, 1994; Ord. 1199 § 1, 1992; Ord. 1162 § 6, 1990).

17.50.060 Street frontage requirements.
Planting areas along street frontage shall be as follows:

A. Minimum Width. Ten feet. When lot depth is less than 200 feet, the minimum width may be reduced to five percent of the lot depth, but not less than six feet in width.

B. Maximum Spacing. One tree for every 30 feet of road frontage shall be planted, either in groupings or evenly spaced, with ground cover or shrubs used liberally.

C. Plant Varieties. Trees utilized in this area shall be of varieties that do not conflict with underground and overhead utilities. These trees may be selected from the city's suggested list of plant materials, or any approved equivalent, based upon the specific constraints of the site.

D. Street Tree Requirements. Plantings shall also comply with the adopted Burlington tree plan as now or hereafter amended. Where the Burlington tree plan differs from these requirements, the Burlington tree plan shall control. (Ord. 1260 § 20, 1994; Ord. 1162 § 7, 1990).

17.50.070 Perimeter landscaping.
Planting areas within side and rear yards which are not occupied by structures shall be as follows:

A. Minimum Width. Five feet, unless otherwise specified under the screening requirements of this chapter.

B. Exempt.

1. Areas adjacent to railroad rights-of-way on an industrial site shall be exempt.

2. Perimeter of industrial site or heavy commercial yard that is not substantially visible from the right-of-way or located where screening is required, shall be exempt, but in no case shall exceed the maximum 25 percent modification per BMC 17.50.100.

C. Planting Requirements. A minimum of one tree shall be planted for every 150 square feet, or fraction thereof, of perimeter planting area. See Burlington tree plan for perimeter planting in the right-of-way. Shrubs and ground cover plantings shall be in quantities and spacing that will provide for 80 percent ground coverage within three years. When applicable, the screening requirements under BMC 17.50.090 shall supersede the requirements of this subsection.

D. Connecting Driveways. When connecting, or joint driveways are provided between sites, the minimum area requirements under BMC 17.50.050A may be reduced by the area occupied by the driveway that would otherwise be landscaped under the requirements of this subsection. (Ord. 1260 § 21, 1994; Ord. 1199 § 2, 1992; Ord. 1162 § 8, 1990).

17.50.080 Parking lot landscaping.
The provisions of this section are intended to soften the visual effect created by large expanses of barren asphalt; increase the amount of permeable surface; and reduce the quantity and speed of runoff from the site.

A. Area of Application. The provisions of this section shall apply to the interior of parking areas providing 20 or more spaces.

B. Required Area. Fifteen square feet of landscaping per parking space, excluding perimeter spaces.

C. Minimum Width. Planting islands shall have a minimum average width of eight feet.

D. Location of Plantings Areas. Parking area landscaping shall be located at the ends of parking columns, between the parking stalls oriented in the same direction as the stalls, or between rows of parking to break up and define parking areas.

E. Tree and Shrub Requirements. A minimum of one tree shall be required for every 150 square feet, or fraction thereof, of required landscaped area. Deciduous trees shall have a clear trunk at least five feet above ground and a minimum size of two inches diameter breast high (dbh). Low shrubs shall be provided on the perimeter of the landscaping islands, in addition to other ground cover or flowers. Other landscape materials shall comply with the general provisions of this section.

F. Landscape Protection. Any trees, shrubs, or plants which are susceptible to damage by pedestrian or motor vehicles shall be protected by appropriate curbs, tree guards or other protective devices.

G. Pedestrian walkways may be included in landscaped areas and the standards of this section modified to accommodate them. (Ord. 1260 § 22, 1994; Ord. 1162 § 9, 1990).

17.50.090 Screening requirements.
When applicable, the requirements of this section shall supersede the requirements of other sections of this chapter.

A. Purpose. The requirements of this section are intended to reduce the visual impacts and incompatible characteristics of:

1. Abutting properties with different land use classifications;

2. Service areas and facilities, including loading and storage areas;

3. Parking areas located in front of buildings;

4. Any other use or area as required under this section or by the planning commission.

B. Landscaping. Screen planting shall consist of evergreen trees planted a maximum of 15 feet on center; deciduous trees for seasonal color and texture; and medium-sized shrubs (three to five feet at maturity) and ground cover plants at a density to form an effective barrier to cover 85 percent of the ground surface within two years.

C. Minimum Width. The screening area shall be 10 feet wide unless the use of an earth berm, fence, or wall is incorporated into the screening, as provided below:

1. Earth Berm Alternative. If an earth berm is incorporated into the screening plan, medium-sized shrubs and/or evergreen trees shall be spaced a maximum of 4.5 feet on center and the width of the screening area may be reduced to 10 feet.

2. Fence Alternative. If a fence option is selected, maximum spacing of medium-sized shrubs shall be six feet on center, and the width of the screening area may be reduced to seven feet. The fence shall be constructed of exterior weather-resistant wood, or acceptable alternative. If a cyclone fence is proposed, such fence shall include natural colored slats and shall be located so as to place the landscaping on the outside of the fence next to the buffered property or right-of-way.

3. Wall Alternative. If a wall at least five feet high is to be used for screening, the planting requirements shall be as specified under BMC 17.50.060C, and the screening area may be reduced to five feet. Screen walls shall be constructed with masonry, block, or textured concrete, subject to design approval by the planning director.

D. Uses Requiring Screening. The planning commission may require screening to protect adjacent properties from probable negative impacts of any permitted or conditional use in a district. Except as otherwise required by the planning commission, screening shall be required in the following instances:

1. Developments located in districts on the left side of the chart, below, shall provide screening when adjoining districts specified on the right side of the chart.

District to be Developed	District to be Screened
Multifamily Residential	Single-family Residential
Semi-Public	All Residential
Commercial/Business	All Residential
Industrial	All Residential Commercial

2. Mobile home parks shall have screening installed around the perimeter of the development in the required open space buffer, which shall not be less than 10 feet in width.

3. Churches, community clubhouses, and other similar conditional uses shall provide perimeter screening when adjoining a residential district.

4. Heavy industrial uses such as wrecking yards, gravel operations, concrete plants, lumber mills and similar uses shall provide screening at least 20 feet in width along property lines adjoining and residential, rural or agricultural district. (Ord. 1260 § 23, 1994; Ord. 1162 § 10, 1990).

17.50.100 Minor modifications.

A. Establishment of Committee. The planning director and chairperson of the planning commission, or designee, shall serve on the site plan review committee. In addition, the chairperson of the planning commission may appoint two additional members who have knowledge and interest in serving on this committee.

B. Purpose. The purpose of the site plan review committee (SPRC) is to review development proposals where full application of these landscaping regulations cannot be satisfied to consider minor modifications, substitutions and other methods deemed appropriate to meet the stated intent.

C. Procedures. Whenever a development proposal cannot meet the minimum requirements concerning the area to be landscaped due to lot size, configuration, topography, etc., or when minor modifications or substitutions are requested, a proposal shall be made on forms supplied by the planning director. Any reduction in the area landscaped shall not exceed 25 percent of the requirement specified under BMC 17.50.050(A). Upon receipt of a proposal, the planning director shall schedule an open meeting of the SPRC for the earliest time convenient to all parties. The proponent shall be notified of the meeting.

D. Powers of Committee. The SPRC, at its meeting, shall consider the merits of each request. The committee may approve modifications or substitutions so long as the committee shall observe the purpose and intent of these regulations under BMC 17.50.010, and the general standards under BMC 17.50.040. For any proposal not requiring a public hearing review by the planning commission, the committee may make the following decisions:

1. Approve the request as presented;

2. Approve the request with specific stipulated conditions;

3. Approve the request with minor or major modifications;

4. Request a revised plan;

5. Deny the request.

For any proposal involving a public hearing before the planning commission the action of the committee shall be a recommendation to the planning commission, who may or may not adopt the recommendation. The powers of the planning commission shall be the same as those of the committee in reviewing the request.

E. Appeal of Committee Action. Any applicant may appeal the decision of the site plan review committee to the planning commission under the plan review procedures of the zoning ordinance. (Ord. 1260 § 24, 1994; Ord. 1162 § 11, 1990).

Chapter 17.51

FLOODPLAINS[1]

[1] Code reviser's note: Chapter 17.51 BMC was superseded by the provisions of Ord. 1191 which are codified in chapter 15.15 BMC.

Chapter 17.54

~~OFF-STREET~~ ACCESS, PARKING AND LOADING

Sections:

17.54.010 General and exceptions.
17.54.020 Required off-street parking – Minimum standards.
17.54.030 Shared parking.
17.54.035 Cooperative parking.
17.54.040 Drive-in businesses.
17.54.050 Off-street parking area development and maintenance.
17.54.060 Development of required off-street parking spaces for one-family dwellings.
17.54.070 Off-street parking lots – Location and screening.
17.54.080 Off-street parking plan design standards.
17.54.090 Pedestrian circulation and access.
17.54.100 Existing off-street parking reduction.
17.54.110 Fractional spaces.
17.54.120 Reserved.
17.54.130 Off-street loading space.

17.54.010 General and exceptions.

A. Off-street parking and loading lots shall be provided in accordance with the following provisions of this chapter for every building hereafter erected, altered, enlarged, or relocated.

1. Any new building, use or structure shall provide the required parking to the standards specified herein.

2. Any parking lot hereafter physically altered shall comply with all of the provisions of this chapter, except that such lot which provides five percent of its area in landscaping shall be deemed to comply with chapter 17.50 BMC.

3. Because there are currently no parking garage structures in Burlington, standards are not included at this time. If an application is filed for a parking garage structure, the standards will need to be adjusted to meet the intent of the code.

B. Parking Quantity Exceptions in General.

1. Parking Exceptions for Landmark Structures. The director may reduce or waive the minimum accessory off-street parking requirements for a use permitted in a landmark structure, considering the following elements:

a. A survey may be required of on-and off-street parking availability.

b. A determination that there is no feasible way to meet parking requirements on the lot.

c. Consideration of the types and scale of uses proposed or practical in the landmark structure and the controls imposed by the landmark designation.

2. Expansion of Existing Nonresidential Uses in Commercial and Business Zones. Additional parking spaces for nonresidential uses shall not be required for the expansion of existing structures if the minimum parking requirement would not be increased by more than 10 percent. If the minimum parking requirement would be increased by more than 10 percent, the parking spaces required for the entire expansion shall be provided. This provision may be used only once for any individual structure.

3. Whenever any existing, nonresidential use in a building is changed to another use in the same building, the requirements of this section shall apply in full to the new use if and only if the change in parking requirements

between the old and new uses is greater than five spaces. Credit for on-street parking spaces that are located along the building's street frontage shall be given.

4. Whenever there is a change from a residential use to a nonresidential use in an existing building, the requirements of this section shall apply in full to the new use; except that the planning commission may determine that a portion of the residential structure cannot be effectively utilized by the proposed commercial use and such area then may be excluded from the gross floor area used to compute the parking requirement.

5. Existing on-street parking spaces abutting a development site may be used to meet the requirements of this chapter, at a rate of one space for every 20 linear feet of abutting street frontage, except:

a. Spaces that are not available, or will not be available, due to roadway design, right-of-way constraints, or future plans shall not be included; and

Formatted: Indent: Left: 0.56"

b. Applicants may be required to provide a parking survey prepared by a qualified professional demonstrating that adequate on-street parking is reasonably available.

C. Parking Quantity Exceptions in the Downtown Special Planning Area, BMC 17.09.070(B).

1. No parking shall be required for new uses to be located in existing structures, or when existing structures are remodeled.

2. No parking shall be required for the first 2,500 square feet of retail sales and service use or other nonresidential use or live-work unit.

3. No parking shall be required for any gross floor area in human service or child care use.

4. No parking shall be required for the addition of one residential unit to an existing building meeting development standards. If two units are added, one space will be required; three units will require two spaces, etc.

5. When an existing nonresidential structure is partially or completely converted to residential use, then no parking space shall be required for the first new dwelling unit; provided, that the lot area is not increased and existing parking is screened and landscaped to the greatest extent practical.

6. If an existing structure does not conform to the development standards for parking, or is occupied by a nonconforming use, when:

a. Dwelling units are added to the structure; or

b. The structure is altered to create additional dwelling units; or

c. The structure is completely converted to residential use, then no parking space need be provided for the first new or added dwelling unit; provided, that the lot area is not increased and existing parking is screened and landscaped to the greatest extent practical.

7. Tandem Parking and Multifamily.

a. Off-street parking for multifamily structures may be provided as tandem parking. ~~A tandem parking space shall equal one and one-half parking spaces and shall meet the minimum size requirements.~~

b. A minimum of one parking space per multifamily dwelling unit is required, whether provided as a regular space or as a tandem space.

D. The required parking and/or loading shall have reasonable access to a public street or alley and a capacity according to the use of the building listed in the following sections.

E. Where a use is not listed, the planning director shall determine the number of required parking and/or loading spaces based upon similar uses for which the requirements are specified.

F. Removal of required parking and/or loading spaces from practical use by obstruction, erection of buildings, or other actions as to reduce the parking and/or loading capacity or usefulness thereof below the minimum requirements established in this chapter is prohibited.

G. "Parking area" includes the parking spaces together with driveways and the access to public street. (Ord. 1630 § 3, 2007).

17.54.020 Required off-street parking – Minimum standards.

A. The number of off-street parking spaces shall be determined for each principal use of the land, building, or structure. For ancillary uses to the principal use, required parking shall be calculated the same as for the principal use, or as otherwise provided for in this chapter. For uses not specifically identified in this chapter, parking shall be provided as specified for the use which, in the opinion of the planning director, is most similar to the use under consideration.

B. The total number of parking spaces provided for any use or development shall not exceed 120 percent of the minimum requirements identified in this section, except:

1. This limitation shall only apply to uses and developments that require 20 or more parking spaces; and

Formatted: Indent: Left: 0.25"

2. This limitation shall not apply to uses and developments where an alternative maximum number is prescribed by Burlington Municipal Code; and

Formatted: Indent: Left: 0.5"

3. Additional spaces may be provided in excess of 120 percent of the minimum requirement provided that any such spaces are located under a building with usable floor space; and

4. This limitation may be waived for publicly owned parking lots; and

5. This limitation may be waived if a traffic and parking study is submitted showing the need for additional parking. Such studies shall be prepared by a licensed engineer, shall be consistent with, and integrated into, any other traffic study prepared for the project, and shall be reviewed by the City Engineer,

USE	PARKING REQUIREMENT GENERAL
ANIMALS	
Dog day care with no outside runs or kennels	
Kennels, boarding, outside runs	1 space for each 2,000 square feet
Veterinary clinic, animal services, animal hospital with no outside runs or kennels	1 space for each 350 square feet
ASSEMBLY	
Commercial recreation indoors (bowling, swimming, skating, bingo, dancing)	1 space for each 100 square feet of activity area
Commercial recreation outdoors (miniature golf, batting, ball courts)	1 space for each 350 square feet, or 1 per cage, hole, court
Community center, city	1 space for each 550 square feet
Facilities for lectures, meetings, dances, receptions	1 space for each 8 fixed seats or 1 space for each 100 square feet of spectator assembly area not containing fixed seats
Library	1 space for each 80 square feet of floor area of all auditoriums and public meeting rooms; plus 1 space for each 500 square feet of other gross floor area open to the public
Motion picture theatre, motion picture theatre – adult	1 space for each 8 fixed seats or 1 space for each 100 square feet of

	spectator assembly area not containing fixed seats
Museum	1 space for each 100 square feet of floor area of all auditoriums and public assembly rooms; plus 1 space for each 500 square feet of other gross floor area open to the public
Performing arts theater	1 space for each 8 fixed seats or 1 space for each 100 square feet of spectator assembly area not containing fixed seats
Private club, health, fitness, civic, social and other organization	1 space for each 100 square feet of floor area of all auditoriums and public assembly rooms; plus 1 space for each 500 square feet of other gross floor area open to the public
Religious facility	1 space for each 80 square feet of all auditoriums
Sports facility or stadium	1 space for each 8 fixed seats or 1 space for each 100 square feet of spectator assembly area not containing fixed seats
Topless club	1 space per 200 square feet
HEALTH AND FAMILY SERVICES	
Counseling service	1 space for each 350 square feet
Day care, adult	1 space for each 10 clients or 1 space for each staff member, whichever is greater; plus 1 loading and unloading space for each 20 clients
Day care center, child, including preschool and nursery school	1 space for each 10 children or 1 space for each staff member, whichever is greater; plus 1 loading and unloading space for each 20 children
Day care home, family home, mini	1 loading and unloading space
Health care facility	1 space for each 350 square feet
Hospital	2 per bed
Medical facilities, clinic, laboratory, urgent care, triage	1 space for each 350 square feet
Medical services, doctor, chiropractor, optometrist office, health care	1 space for each 350 square feet
Nursing home, convalescent center, assisted living	1 space for each 2 staff members on site at peak staffing time: plus 1 space for each 6 beds or units
Physical therapy, massage services	1 space for each 350 square feet
INDUSTRY, MANUFACTURING, PROCESSING, WHOLESALING	
Auction house except animals	1 space for each 2,000 square feet
Bulk storage of petroleum products unless incidental to primary use	1 space for each 2,000 square feet
Cold storage plant	1 space for each 2,000 square feet
Commercial laundry	1 space for each 2,000 square feet
Concrete mixing or batch plant	1 space for each 2,000 square feet
Construction services, contractor's office and storage	1 space for each 2,000 square feet
Equipment rental and leasing	1 space for each 2,000 square feet
Enameling, galvanizing and electroplating	1 space for each 2,000 square feet
Government facilities other than office	1 space for each 2,000 square feet
Heavy equipment and trucks, repair, sales and leasing	1 space for each 2,000 square feet
Laboratories such as water quality, soil testing, research and development	1 space for each 1,500 square feet

Manufactured/mobile home sales lot	
Manufacturing and related activities such as processing, assembling, research and development	1 space for each 1,500 square feet
Materials yards – lumber, stone, concrete products	1 space for each 2,000 square feet
Mini-storage and/or household goods warehouse	1 space for each 30 storage units
Motor freight terminals	1 space for each 2,000 square feet
Printing and publishing	1 space for each 2,000 square feet
Retail and wholesale of products manufactured, processed, or assembled on site	1 space for each 1,500 square feet
Salvage yard	1 space for each 2,000 square feet
Storage warehousing	1 space for each 2,000 square feet
Warehouse and distribution facilities	1 space for each 2,000 square feet
Wholesale showroom	1 space for each 1,500 square feet
Wood processing	1 space for each 2,000 square feet
LODGING	
Bed and breakfast inn	1 space for each dwelling plus 1 space for each 2 guest rooms or suites
Hotels or motels	1 space for each sleeping room or suite
RESIDENTIAL	
Accessory dwelling unit	1 space
Adult family home	1 space for each dwelling unit
Apartment (multifamily dwelling, townhouse, multiplex dwelling)	General: 1 1/2 per 1 and 2 bedroom; 2 per 3 or more bedroom Downtown: 2 – 10 units: 1.10/unit 11 – 30 units: 1.15/unit 31 – 60 units: 1.20/unit More than 60: 1.25/unit ** All: Guest parking at 1 space for 3 units
Apartment for adults age 55 and up	1 space for each dwelling unit and guest parking at 1 space for 3 units
Artist's studio dwelling	1 space for each dwelling unit
Boarding and group housing	1 space for each dwelling unit
Caretaker's quarters, 1 per establishment	None
Congregate residence accommodating 10 or less	1 space for each dwelling unit
Cottage housing development	1.1 space for each dwelling unit
Duplex (2-family dwelling)	1 1/2 per 1 and 2 bedroom; 2 per 3 or more bedroom 1.1 per unit downtown
Live-work unit up to 2,500 square feet	1 space for each unit
Live-work unit greater than 2,500 square feet	1 space for each unit; plus the number of spaces required for the

	commercial or manufacturing activity conducted in the unit, based on the most similar nonresidential use
Mobile home park or trailer park	2 per unit plus guest parking at 1 space for 3 units
Multiplex dwelling up to 4 units, 1 owner occupied	1 1/2 per 1 and 2 bedroom; 2 per 3 or more bedroom 1 downtown
Single-family dwelling including manufactured home	1 per 2 bedroom, 2 per 3 or more bedroom 1 downtown
Townhouse	1 1/2 per 1 and 2 bedroom; 2 per 3 or more bedroom 1 downtown
RETAIL AND SERVICE	
Banking and related financial institutions	1 space for each 350 square feet
Bar, tavern, brewpub	1 space for each 200 square feet
Business support services	1 space for each 2,000 square feet
Car wash	1 space for each 2,000 square feet
Communication utilities	1 space for each 2,000 square feet
Congregated residences	1 space for each 4 residents
Custom and craft work	1 space for each 1,000 square feet
Dog day care	1 space for each 500 square feet
Drive-in business – high volume such as food, coffee, bank	1 space for each 200 square feet
Eating and drinking establishments – all types	1 space for each 200 square feet
Fast-food restaurant	1 space for each 200 square feet
Funeral home and mortuary services	1 space for each 350 square feet
Gas station	1 space for each 2,000 square feet
Ground floor businesses in downtown zones	None, maximum of 10 spaces
Major durables sales, service, and rental such as furniture, appliance	1 space for each 2,000 square feet
Multi-purpose convenience store such as grocery, hardware, drugs, variety	1 space for each 350 square feet
Municipal buildings, city hall, police and fire stations	1 space for each 350 square feet
Office, administrative	1 space for each 1,000 square feet
Office, customer service	1 space for each 350 square feet
Personal and household retail sales and service, general	1 space for each 350 square feet
Personal services such as barber, beauty shop, tan, tattoo	1 space for each 500 square feet
Restaurant	1 space for each 200 square feet
Sales, service and rental of office equipment	1 space for each 350 square feet
Shopping center or mall	1 space for each 350 square feet
Small appliance repair	1 space for each 500 square feet

Specialty food store – bakery, deli, cheese, wine, some seating	1 space for each 500 square feet
Studios – art, music, photography	1 space for each 1,000 square feet
Trades and subcontractors – plumbing, electrical, HVAC	1 space for each 1,000 square feet
Woodworking	1 space for each 1,000 square feet
SCHOOLS/EDUCATION/TRAINING	
School, private elementary and secondary	1 space for each 80 square feet of floor area of all auditoriums and public assembly rooms, or if no auditorium or assembly rooms, 1 space for each staff member
School, public elementary and secondary	1 space for each 80 square feet of floor area of all auditoriums or public assembly rooms, or 1 space for every 8 fixed seats in auditoriums or public assembly rooms containing fixed seats, for new public schools on a new or existing public school site
Vocational or fine arts school	1 space for each 2 faculty and full-time employees; plus 1 space for each 5 students (based on the maximum number of students in attendance at any one time)
TRANSPORTATION AND UTILITIES	
Dispatch facility – taxi, ambulance, limousine	1 space for each 1,000 square feet
Telecommunication tower	1 space
Terminal – bus, rail, transit	1 space for each 200 square feet
Transit vehicle base	1 space for each 2,000 square feet
Utility substation or service facility	1 space for each 2,000 square feet
VEHICLE RELATED	
Automotive or boat parts or accessories sales	1 space for each 350 square feet
Automobile wrecking yard	1 space for each 2,000 square feet
Sales, service and rental of motorized vehicles including automobiles, motorcycles, trucks other than semis, boats	1 space for each 2,000 square feet
Semi-tractor and trailer sales	1 space for each 2,000 square feet
Towing service	1 space for each 1,000 square feet
Vehicle repair, major and minor	1 space for each 2,000 square feet; minimum of 3 spaces
** In addition, for all multifamily uses whose average gross floor area per dwelling unit, excluding decks and all portions of a structure shared by multiple dwelling units, exceeds 500 square feet shall be required up to a maximum additional 0.15 spaces per dwelling unit; and When at least 50 percent of the dwelling units in a multifamily use have three bedrooms, an additional 0.25 spaces per bedroom for each unit with three bedrooms shall be required; and Any multifamily use that contains a dwelling unit with four or more bedrooms shall be required to provide an additional 0.25 spaces per bedroom for each unit with four or more bedrooms.	

(Ord. 1630 § 3, 2007).

17.54.030 Shared parking.

A. Shared Parking – General Provisions.

1. Shared parking shall be allowed between two or more uses to satisfy all or a portion of the minimum off-street parking requirement of those uses as provided in subsections B and C of this section.

2. Shared parking shall be allowed between different categories of uses or between uses with different hours of operation, but not both.

3. A use for which an application is being made for shared parking shall be located within 800 feet of the parking.

4. No reduction to the parking requirement shall be made if the proposed uses have already received a reduction through the provisions for cooperative parking.

5. The reduction to parking permitted through shared use of parking shall be determined as a percentage of the minimum parking requirement as modified by the reductions permitted in BMC 17.54.010.

6. An agreement providing for the shared use of parking, executed by the parties involved, shall be filed with the director. Shared parking privileges shall continue in effect only as long as the agreement, binding on all parties, remains in force. If the agreement is no longer in force, then parking shall be provided as otherwise required by this chapter.

B. Shared Parking for Different Categories of Use.

1. A business establishment may share parking according to only one of the following subsections: (B)(2), (3), or (4) of this section.

2. If an office use and a retail sales and service use share parking, the parking requirement for the retail sales and service use may be reduced by 20 percent; provided, that the reduction shall not exceed the minimum parking requirement for the office use.

3. If a residential use shares parking with a retail sales and service use other than lodging uses, eating and drinking establishments or entertainment uses, the parking requirement for the residential use may be reduced by 30 percent; provided, that the reduction does not exceed the minimum parking requirement for the retail sales and service use.

4. If an office and a residential use share off-street parking, the parking requirement for the residential use may be reduced by 50 percent; provided, that the reduction shall not exceed the minimum parking requirement for the office use.

C. Shared Parking for Uses with Different Hours of Operation.

1. For the purposes of this section, the following uses shall be considered daytime uses:

a. Customer service and administrative offices;

b. Retail sales and services, except eating and drinking establishments, lodging uses, and entertainment uses;

c. Wholesale, storage and distribution uses;

d. Manufacturing uses; and

e. Other similar primarily daytime uses, when authorized by the director.

2. For the purposes of this section, the following uses shall be considered nighttime or Sunday uses:

a. Auditoriums accessory to public or private schools;

b. Religious facilities;

c. Entertainment uses, such as theaters, bowling alleys, and dance halls;

d. Eating and drinking establishments;

e. Lodging uses; and

f. Other similar primarily nighttime or Sunday uses, when authorized by the director.

3. Up to 90 percent of the parking required for a daytime use may be supplied by the off-street parking provided by a nighttime or Sunday use and vice-versa, when authorized by the director, except that this may be increased to 100 percent when the nighttime or Sunday use is a religious facility.

4. The applicant shall show that there is no substantial conflict in the principal operating hours of the uses for which the sharing of parking is proposed. (Ord. 1630 § 3, 2007).

17.54.035 Cooperative parking.
A. Cooperative parking shall be permitted between two or more business establishments which are commercial uses according to the provisions of this section.

B. Up to a 20 percent reduction in the total number of required parking spaces for four or more separate business establishments, 15 percent reduction for three business establishments, and a 10 percent reduction for two commercial uses may be authorized by the director under the following conditions:

1. No reductions to the parking requirement shall be made if the proposed business establishments have already received a reduction through the provisions for shared parking.

2. The business establishments for which the application is being made for cooperative parking shall be located within 800 feet of the parking.

3. The reductions to parking permitted through cooperative parking shall be determined as a percentage of the minimum parking requirement as modified by the reductions permitted through BMC 17.54.010(B) and (C) and 17.54.030.

4. An agreement providing for the cooperative use of parking shall be filed with the director when the facility or area is established as cooperative parking. Cooperative parking privileges shall continue in effect only as long as the agreement to use the cooperative parking remains in force. If the agreement is no longer in force, then parking shall be provided as otherwise required by this chapter. New business establishments seeking to meet parking requirements by becoming part of an existing cooperative arrangement shall provide the director with an amendment to the agreement stating their inclusion in the cooperative parking facility or area. (Ord. 1630 § 3, 2007).

17.54.040 Drive-in businesses.
All banks, savings and loan associations, food dispensing establishments, and other businesses which maintain drive-in facilities which are intended to serve customers who remain in their motor vehicles during business transactions, or are designed in such a manner that customers must leave their automobiles temporarily in a driving lane located adjacent to the facility, shall provide stacking space for the stacking of motor vehicles as follows:

A. Stacking Space. The drive-in facility shall be so located that sufficient stacking space is provided for the handling of motor vehicles using such facility during peak business hours of such facility.

B. Driveway Location. The location of entrances and exits shall be determined by the public works director.

C. Shopping Centers. When located in a shopping center, drive-in facilities shall provide sufficient stacking space to handle peak business demands and shall not in any way obstruct the normal circulation pattern of the shopping center. (Ord. 1630 § 3, 2007).

17.54.050 Off-street parking area development and maintenance.
~~Every parcel of land hereafter used as a public or private off-street parking area shall be developed and maintained as follows:~~

A. ~~The~~ All parking areas ~~on private property~~, including interior driveways and access to a public street, shall be paved with permeable pavement, asphalt concrete, or cement concrete pavement ~~and shall~~. ~~have appropriate bumper~~

~~guards where needed.~~ All asphalt pavement sections shall have a minimum pavement section consisting of two inches of Class "B" asphalt concrete, two inches of five-eighths-inch minus crushed rock, and six inches of Class "A" bank run gravel or approved equal. All permeable paving, concrete pavement sections, or any alternative asphalt pavement sections shall be designed to support the post development traffic loads anticipated due to the intended use.

B. Parking and circulation areas, access roads, and drive aisles shall be designed and constructed with LID features such as permeable pavement, rain gardens, or bio-retention areas unless demonstrated to be infeasible through an engineering analysis.

Formatted: Indent: First line: 0"

C. In determining the feasibility of LID features, an engineering analysis shall be submitted and reviewed by the City Engineer. This analysis should consider site characteristics such as soil and groundwater conditions, and anticipated traffic volumes. The analysis should be consistent with the Department of Ecology's "Stormwater Manual for Western Washington" and the design and site evaluation guidance in the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for Puget Sound". The engineering analysis requirement identified above may be waived by the City Engineer for simple small scale projects when the feasibility of permeable pavement can be easily determined without the need for additional information or analysis, provided that an engineering analysis shall be submitted for all projects involving 20 or more parking spaces.

D. All parking and circulation areas, access roads, and drive aisles shall be designed and constructed in accordance with any applicable requirements in title 14 BMC.

E~~B~~. Parking areas shall be used for automobile parking only, with no sales, unless permitted elsewhere by this title, dead storage, repair work, or dismantling of any kind.

F~~C~~. Outdoor sales areas shall be paved and landscaped in accordance with this title.

G~~D~~. If lighting is provided, it shall be arranged to reflect away from the residential area, also from any public street or highway.

H~~E~~. Drainage facilities for storm-water shall be provided for and be approved by the public works department.

I~~F~~. Ingress and egress shall be approved as to location and design by the public works department.

J~~G~~. Driveways and parking stalls shall be clearly marked.

K~~H~~. Landscaping: see chapter 17.50 BMC.

L~~I~~. For parking lots in excess of 100 spaces the design shall be approved by the planning director. (Ord. 1630 § 3, 2007).

17.54.060 Development of required off-street parking spaces for one-family dwellings.
For parking areas serving single-family dwellings, this section shall apply in lieu of BMC 17.54.050.

A. Required off-street parking spaces for one-family dwellings on separate lots smaller than 15,000 square feet in area shall be paved with permeable pavement, asphalt concrete, or cement concrete. Each required off-street parking space shall be connected to an improved public or private street by a driveway which shall be paved with permeable pavement, asphalt concrete, or cement concrete.

B. Required off-street parking spaces for one-family dwellings on separate lots of 15,000 or more square feet in area shall have an all-weather surface. Each required off-street parking space shall be connected to an improved public or private street by a driveway which shall have an all-weather surface. The construction of the all-weather surface shall be determined by the public works director. (Ord. 1630 § 3, 2007).

C. A note shall be included on the face of subdivisions and short subdivisions identifying any applicable impervious surface limits.

D. Driveways for single family dwellings may utilize a two track design to minimize impervious surface coverage.

17.54.070 Off-street parking lots – Location and screening.

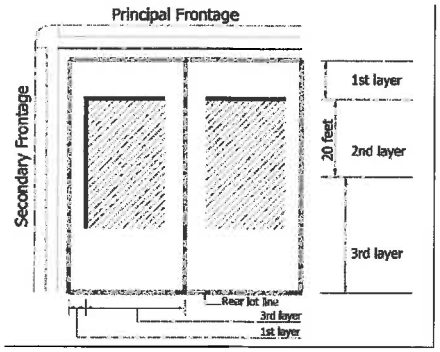
A. Required off-street parking shall be located on the same parcel as the uses served unless off-site parking is authorized in compliance with this chapter. Parking shall be located on each site in compliance with the parking layer requirements in BMC 17.12.010 Table 12-1, Urban Standards. The parking layers are defined and illustrated as follows:

1. First Layer. The area between the frontage line and the facade line.

2. Second Layer. The area between the facade line and 20 feet from the facade. Note that the second layer is not required on the secondary frontage.

3. Third Layer. That portion of the lot that is neither the first layer nor the second layer. Generally this portion of the lot extends to an alley or an interior lot line.

B. Surface Parking Location and Screening.



1. Parking area and service yards must be screened from adjoining residences.

2. Where alley access is available, parking shall be located off the alley and no curb cuts shall be permitted for residential uses.

3. Parking located in the setback in front of the building shall be screened and landscaped with a streetscreen as defined in BMC 17.45.050 and 17.87.875.

4. Parking area illumination shall be directed away from residential uses.

5. Downtown Including DTO, DTN, DTRR and DTB Zoning Districts. Surface parking shall be located in the third layer and masked by a streetscreen or building, except that driveways and aprons may be located in the first or second layer.

6. Burlington Boulevard Corridor. Surface parking may be located in the first, second or third layer and masked by a streetscreen if the street frontage is not fully occupied by buildings.

C. Single-Family Dwellings. Required parking shall be located on the same lot as the building it is to serve.

D. Multifamily Dwellings. Required parking may be on a contiguous lot in the same zone if located within 800 feet of dwelling units. The lot shall be legally encumbered by an easement or other appropriate means to ensure continuous use of the parking facilities. Documentation shall require review and approval of the city attorney.

E. Other Uses. Required parking may be in areas other than on the premises if the required amount of parking area is set aside for a particular use in such a lot and such area is not located more than 800 feet from the premises and is in the same zone as the use. The lot or area to be utilized shall be legally encumbered by an easement or other

appropriate means to ensure continuous use of the parking facilities. Off-street parking for assembly occupancies and fraternal organizations shall be contiguous if more than five spaces are required. Documentation shall require review and approval of the city attorney.

F. Whenever required parking facilities are located off-site, pedestrian facilities shall be provided connecting the satellite parking facility to the development being served, which are safe, durable and adequate to accommodate pedestrian use. (Ord. 1630 § 3, 2007).

17.54.080 Off-street parking plan design standards.

A. Parking stalls ~~shall be a minimum of eight feet six inches in width and 16 feet in length, except when an area (up to a maximum of 30 percent of the lot area) is clearly designated for compact cars only, by painting the word "COMPACT" in upper case block letters using white paint on the pavement, in which case the width may be reduced to eight feet.~~and drive aisles shall be consistent with the dimensions specified in Figure "A" below.

B. ~~When determining the minimum dimensional requirements for standard and compact parking spaces oriented at an angle to the driveway or aisle serving them, Figure A shall be consulted.~~Up to 30 percent of the parking spaces required by this chapter may be compact spaces, except in the Downtown Special Planning Area where all of the required parking spaces may be compact.

C. Off-street parking lots shall comply with the barrier-free parking space requirements of the Uniform Building Code.

D. The minimum parking space and aisle dimensions for the most common parking angles are shown on chart below. For parking angles other than those shown on the chart, the minimum parking space and aisle dimensions shall be determined by the ~~manager~~Community Development Director and shall be proportional to the dimensions shown below. ~~Regardless of the parking angle, one-way aisles shall be at least 10 feet wide, and two-way aisles shall be at least 20 feet wide. Parking plans for angle parking shall use space widths no less than eight feet six inches for a standard parking space design and eight feet for a compact car parking space design.~~

Figure A
Minimum Parking Stall and Aisle Dimensions

Park-ing Angle	Stall Width	Curb Length	Stall Depth	Aisle Width		Unit Depth	
				1-Way	2-Way	1-Way	2-Way
0°	8.0~~*~~ ~~Min. 8.5~~	20.0~~*~~ ~~22.5~~	8.0~~*~~ ~~8.5~~	12.0 12.0	20.0 20.0	** 29.0	** 37.0
30°	8.0* Min. 8.5	16.0* 17.0	15.0* 16.5	10.0 10.0	20.0 20.0	** 43.0	** 53.0
45°	8.0* Min. 8.5	11.5* 12.0	17.0* 19.0	12.0 12.0	20.0 20.0	** 50.0	** 58.0
60°	8.0* Min. 8.5	9.5* 10.0	18.0* 20.0	18.0 18.0	20.0 20.0	** 58.0	** 60.0
90°	8.0* Min. 8.5	8.0* 8.5	~~16~~15.0* ~~20~~17.0	23.0 23.0	23.0 23.0	** 63.0	** 63.0

*For use with compact stalls only.

**Variable with compact and standard combinations.

E. Any parking spaces abutting a landscaped area on the driver or passenger side of the vehicle shall provide an additional 18 inches above the minimum space width requirement to provide a place to step other than in the

landscaped area. The additional width shall be separated from the adjacent parking space by a parking space division stripe. The parking space depth may be reduced when vehicles overhang a walkway under the following conditions:

1. Wheelstops or curbs are installed.

2. The remaining walkway provides a minimum of 60 inches of unimpeded passageway for pedestrians.

3. The amount of space depth reduction is limited to a maximum of one and one-half feet for standard parking spaces and one and one-half feet for compact spaces including the wheelstop or curb.

F. Driveways may cross required setbacks or landscaped areas in order to provide access between the off-street parking facilities and the street, provided no more than 10 percent of the required landscaping or setback area is displaced by the driveway. Driveways may be used for parking when serving single detached dwellings but shall not be considered for purposes of calculating required parking.

G. Lighting shall be provided for safety of traffic and pedestrian circulation on the site, as required by the Uniform Building Code. It shall be designed to minimize direct illumination of abutting properties and adjacent streets. The director shall have the authority to waive the requirement to provide lighting. (Ord. 1630 § 3, 2007).

17.54.090 Pedestrian circulation and access.

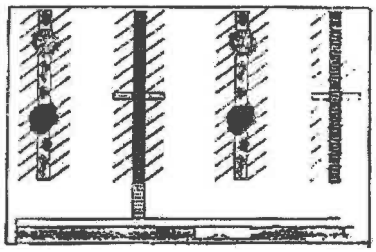
A. All uses shall provide pedestrian access to the site. Pedestrian access shall be provided at all pedestrian arrival points for the development including the property edges, adjacent lots, abutting street intersections and mid-block crosswalks, existing transit stops and at least every 100 feet of consecutive street frontage. Pedestrian access shall be located as follows:

1. Access at property edges and to adjacent lots shall be coordinated with existing development to provide logical circulation patterns between developments.

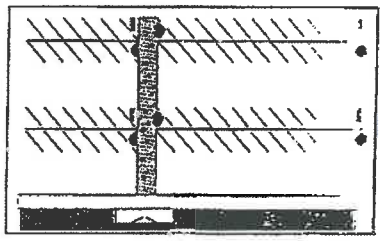
2. Residential developments shall provide links between cul-de-sacs or buildings to allow pedestrian access from within the development and from adjacent developments to activity centers, parks, common tracts, open spaces, schools or other public facilities, transit stops and public streets.

3. Pedestrian walkways shall be located as follows:

a. If walkways run parallel to the parking row at least one walkway shall be provided for every two rows. Rows without walkways shall be landscaped or contain barriers or other means to encourage pedestrians to use the walkways.



b. If walkways run perpendicular to the parking rows access to the walkway shall be no further than five parking spaces. Landscaping, barriers or other means shall be provided between the parking rows to encourage pedestrians to use the walkways.



B. Pedestrian walkways shall form an on-site circulation system that minimizes the conflict between pedestrians and traffic at all points of pedestrian access to on-site parking and building entrances. Pedestrian walkways shall be provided when the pedestrian access or any parking space is more than 75 feet from the building entrance or principal on-site destination and as follows:

1. All developments which contain more than one building shall provide walkways between the principal entrances of the buildings.

2. All nonresidential buildings set back more than 100 feet from the public right-of-way shall provide for direct access from the building to the buildings on adjacent lots.

C. Pedestrian access and walkways shall meet the following minimum design standards:

1. Access and walkways shall be well lit and physically separated from driveways and parking spaces by landscaping, berms, barriers, grade separation or other means to protect pedestrians from vehicular traffic.

2. Access and walkways shall be a minimum of 60 inches of unobstructed width and ~~meet the surfacing standards of the city of Burlington standards for walkways or sidewalks~~ shall be constructed using permeable pavement unless demonstrated to be infeasible through an engineering analysis, in which case an alternative hard surface approved by the City Engineer shall be used~~.~~

3. Access shall be usable by the mobility impaired and shall be designed and constructed to be easily located by the sight-impaired pedestrian by either grade change, texture or other equivalent means.

4. A crosswalk shall be required when a walkway crosses a driveway or a paved area accessible to vehicles.

5. If any parking space is more than 150 feet from the building entrance or principal on-site destination, a stop sign, stop line or other pavement marking and a speed bump shall be required at the end of every row of parking.

6. If any parking space is more than 200 feet from the building entrance or principal on-site destination:

a. At least one sheltered rest area shall be provided; and

b. Raised crosswalks or speed bumps shall be located at all points where a walkway crosses the lane of vehicle travel.

7. Where the building entrance is more than 250 feet from the public right-of-way, a sheltered rest area may be required at the public street. (Ord. 1630 § 3, 2007).

8. Sidewalks and walkways should be slopped to drain towards adjoining landscaping, planting areas, or infiltration features

17.54.100 Existing off-street parking reduction.
Existing off-street parking facilities shall not be eliminated nor reduced to an amount less than that required for new buildings. (Ord. 1630 § 3, 2007).

17.54.110 Fractional spaces.
When units or measurements determining the number of required parking spaces result in requirements of a fractional space, any fraction up to one-half shall be disregarded, and fractions of one-half or over shall require one parking space. (Ord. 1630 § 3, 2007).

17.54.120 Reserved.
(Ord. 1630 § 3, 2007).

17.54.130 Off-street loading space.
Buildings devoted to retail trade, retail and wholesale food markets, warehouses, supply houses, wholesale and manufacturing trade, hotels, hospitals, laundry, dry cleaning establishments or other buildings where large amounts of goods are received or shipped, shall provide loading and unloading space on the same premises as the building as follows:

A. Building of 6,000 square feet or more of floor area, one off-street loading and unloading space plus one additional off-street loading space for each 20,000 square feet of floor area;

B. Each loading space shall be not less than 10 feet in width, 25 feet in length and 14 feet in height;

C. Loading space, exclusive of driveways and/or corridors leading thereto, shall not be considered as providing off-street parking space. (Ord. 1630 § 3, 2007).

17.54.140 Design standards for private streets and roads.
Private streets and roads created to serve new development, including subdivisions, short subdivisions, binding site plans, and commercial and industrial development, shall be subject to the following standards and requirements:

Formatted: Font: 10 pt
Formatted: Font: 10 pt
Formatted: Font: 10 pt

A. A road maintenance agreement and access easement approved by the City Engineer shall be recorded with Skagit County Auditor's Office;

B. Streets and roads serving up to four dwelling units shall be at least twenty feet in width;

C. Streets and roads serving more than four dwelling units or carrying a traffic volume of up to 250 average trips per day, whichever is less, shall be at least 28 feet in width and a sidewalk shall be provided on at least one side in addition to the 28 feet of roadway width;

D. Streets and roads carrying a traffic volume of more 250 average trips per day or more shall comply with the design standards and specifications applicable to public streets and roads in chapter 12.28 BMC;

E. Low impact development features such as bio-retention areas, rain gardens, and permeable paving shall be incorporated into the design and construction of all private streets and roads unless demonstrated to be infeasible through an engineering analysis. In determining the feasibility of such low impact development features, an engineering analysis shall be submitted and reviewed by the City Engineer. This analysis should consider site characteristics such as soil and groundwater conditions, and anticipated traffic volumes. The analysis should be consistent the Washington State Department of Ecology's "Stormwater Manual for Western Washington" and the design and site evaluation guidance in the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for Puget Sound".

F. All private streets and roads shall be designed and constructed consistent with any applicable requirements in title 14 BMC.

Chapter 17.57

PERFORMANCE STANDARDS[1]

(Repealed by Ord. 1221)

[1] Code reviser's note: See chapter 17.48 BMC for provisions on performance standards.

Chapter 17.58

NOISE ABATEMENT AND CONTROL

(Repealed by Ord. 1660)

Chapter 17.60

PUBLIC UTILITIES

Sections:

17.60.010 Permitted when.
17.60.020 Visual compatibility.
17.60.030 Protective fencing.
17.60.040 Setbacks.
17.60.050 Commercial and industrial location.
17.60.060 Residential locations.

17.60.010 Permitted when.
Public utility buildings, telephone exchanges, sewage pumping stations, electrical distribution substations, and similar developments necessary for the operation of a public utility shall be permitted as indicated in Table One, BMC 17.12.010[1], provided the requirements set forth in this chapter are complied with. (Ord. 890 § 5.3, 1977).

17.60.020 Visual compatibility.
A. If the installation is housed in a building, the building must conform architecturally with the surrounding buildings or with the type of building that will develop due to the zoning district.

B. An unhoused installation on the ground or a housed installation that does not conform to the architectural requirements of subsection A of this section, must be sight-screened with evergreen trees, shrubs and landscaping planted in sufficient depth to form an effective sight barrier within five years. (Ord. 890 § 5.3.1, 1977).

17.60.030 Protective fencing.
An unhoused installation of a dangerous nature such as an electrical distribution substation shall be enclosed with an eight-foot-high wire fence. (Ord. 890 § 5.3.2, 1977).

17.60.040 Setbacks.
All buildings, installations and fences shall observe the setback requirements for buildings in the district in which they are located, and in the R districts the side yard requirements shall be increased to 20 feet. Exceptions to these setback requirements may be permitted by variance. (Ord. 890 § 5.3.3, 1977).

17.60.050 Commercial and industrial location.
In commercial and industrial districts a complete plot plan and elevations showing the entire development, and photographs showing the location and character of all adjoining land improvements must be submitted to the city engineer with the application for a permit. (Ord. 890 § 5.3.4, 1977).

17.60.060 Residential locations.
In residential districts, public utility developments shall be permitted by conditional use as provided in BMC 17.68.130. (Ord. 890 § 5.3.5, 1977).

---

[1] Code reviser's note: BMC 17.12.010 was repealed by Ord. 1206.

Chapter 17.63

SIGNS

Sections:

17.63.010 Purpose.
17.63.014 Definitions.
17.63.020 General provisions.
17.63.025 Permit required.
17.63.027 Exceptions.
17.63.030 Review of signs/design standards.
17.63.040 Residential district sign regulations.
17.63.050 Permanent identification signs for commercial, business, and industrial developments.
17.63.052 Permanent identification signs for developments in areas zoned MR-NB.
17.63.055 Permanent identification signs for developments in areas zoned B-1 and C-1 and located in Downtown on Fairhaven Avenue and Victoria Avenue.
17.63.060 On-site traffic control and directories.
17.63.065 Electronic changing message sign requirements.
17.63.070 Temporary display and portable signs.
17.63.080 Off-premises signs.
17.63.085 Prohibited signs.
17.63.090 Variances.

17.63.010 Purpose.

The purpose of this chapter is to establish standards for the regulation of signs, to assist businesses in contributing to the economic well-being of the community by increasing the overall effectiveness of visual communications, to provide a harmonious relationship of urban graphics and their settings, and to avoid the visual clutter that is potentially harmful to traffic and pedestrian safety, property values, business opportunities and the community's appearance. (Ord. 1694 § 11, 2009; Ord. 1382 § 1, 1998; Ord. 1158 § 4, 1990).

17.63.014 Definitions.

For the purpose of this chapter, certain abbreviations, terms, phrases, words and their derivatives shall be construed as specified in this chapter:

"Abandoned sign" means a sign structure that has ceased to be used, and the owner or lessor of the sign structure intends no longer to use the sign structure for the display of sign copy, or as otherwise defined by state law. It shall be a rebuttable presumption that a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product or activity, and/or for which no legal owner can be found, is an abandoned sign.

"Animated sign" means a sign employing actual motion or the illusion of motion. Note that animation is prohibited per BMC 17.63.085(B)(2), except for temporary signs in BMC 17.63.070. Animated signs, which are differentiated from changeable signs as defined and regulated by this code, include the following types:

1. "Electrically activated" means animated signs producing the illusion of movement by means of electronic, electrical, or electro-mechanical input and/or illumination capable of simulating movement through employment of the characteristics of one or both of the classifications noted below:

a. Flashing. Animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of nonillumination. For the purposes of this chapter, flashing will not be defined as occurring if the cyclical period between on-off phases of illumination exceeds four seconds.

b. Patterned illusionary movement. Animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion.

2. "Environmentally activated" means animated signs or devices motivated by wind, thermal changes or other natural environmental input, including spinners, pinwheels, pennant strings, and/or other devices or displays that respond directly to naturally occurring external motivation. Time or temperature displays shall not be construed as a direct response to the natural environment.

3. "Mechanically activated" means animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

"Area" or "surface area" of a sign means the area of a sign excluding sign support structures, which do not form part of the sign proper or the display. Surface area shall be measured as follows:

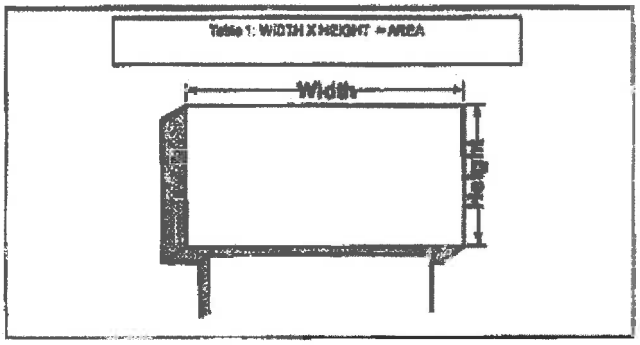
1. The surface area of the sign is determined by the height times the width of a typical rectangular sign or other appropriate mathematical computation of surface area for nonrectangular signs.

2. Surface area includes only one face of a double-faced sign where the faces of the sign are parallel. If any face is offset from parallel by more than five degrees, such face shall be counted as a separate surface area.

3. Surface area of a sign with more than two faces, such as a cube or pyramid, shall be calculated as the sum of the surface area of all faces, divided by two.

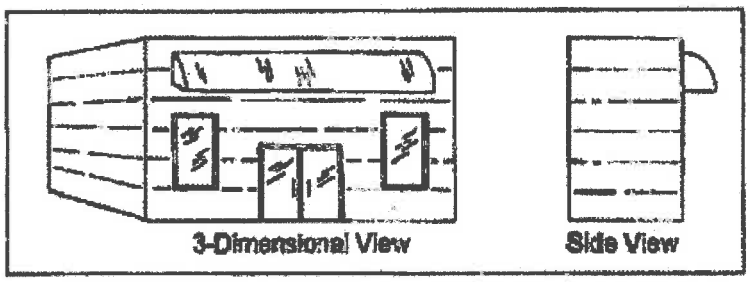
4. In the event of an irregular, three-dimensional object that serves as signage, where the surface area is not readily measurable, the surface area shall be calculated by the largest area of the three-dimensional object visible from any one viewing angle.

Figure 1. Sign Surface Area Calculation



"Awning" means a roof-like cover that projects from the wall of a building for the purpose of shielding a door or window from the elements.

Figure 2. Awning



"Awning sign" means any sign erected upon, or against, an awning.

"Banner" means a flexible substrate on which copy or graphics may be displayed, including blade banners.

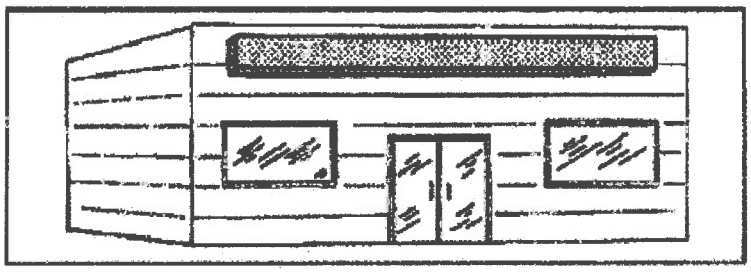
"Banner sign" means a sign utilizing a banner as its display surface.

"Billboard" means an outdoor advertising sign containing a message, commercial or otherwise, unrelated to the use or activity on the property on which the sign is located, and which is customarily leased for commercial purposes, but not including attached directional signs (not within the billboard face) as defined herein. Billboards are regulated in BMC 17.63.080(A).

"Building" means any structure used or intended for supporting or sheltering any use or occupancy.

"Building-mounted sign" means a single- or multiple-faced sign of a permanent nature, made of rigid material, attached to the facade of a building or the face of a marquee.

Figure 3. Building-Mounted (Wall) Sign



"Canopy" means a multisided overhead structure or architectural projection that provides protection from the elements to persons or property. The surface(s) or soffit may be illuminated by means of internal or external sources of light. This includes marquees.

"Canopy-mounted sign" means any sign or awning erected upon or against a canopy, including marquee-mounted signs.

"Changeable sign" means a sign with the capability of content change by means of manual or remote input without reworking, repainting, or otherwise altering the physical composition of the sign, including signs which are:

1. Electrically Activated. A changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other

light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display. See also "electronic message sign or center."

2. Manually Activated. A changeable sign whose message copy or content can be changed manually.

"Development complex sign" means a free-standing sign identifying a multiple-occupancy development, such as a shopping center or planned industrial park, which is controlled by a single owner or landlord, approved in accordance with BMC 17.63.050.

"Directional sign" means any sign that is limited to the purpose of providing direction and/or orientation for pedestrian or vehicular traffic. Directional signs typically indicate entrances, exits, one-way circulation, drive-up windows, or provide similar types of information.

"Double-faced sign" means a sign with two faces, back to back.

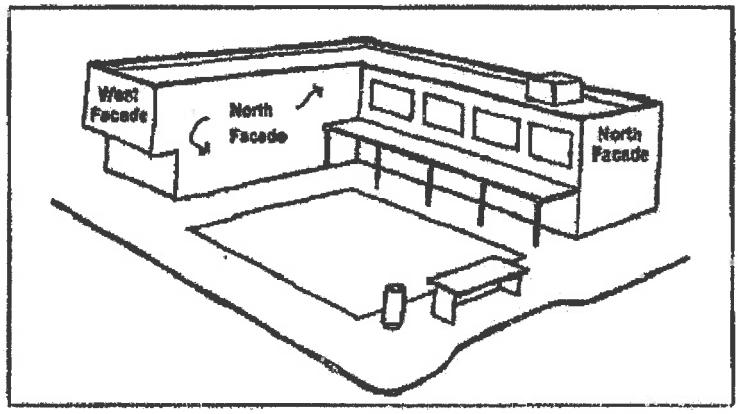
"Electric sign" means any sign activated or illuminated by means of electrical energy.

"Electronic message sign or center" means an electrically activated changeable sign whose variable message capability can be electronically programmed. The electronic sign includes text and/or graphic messages that may change every few seconds. Advertising messages may contain words, phrases, sentences, symbols, trademarks and logos. See BMC 17.63.065 for requirements regarding electronic signs.

"Exterior sign" means any sign placed outside a building.

"Facade" means the exterior wall face of a building, extending from the ground to the top of the parapet or eaves, but not including any portion of the roof. Each side of a building (i.e., each architectural elevation) is considered one facade (see Figure 4). For buildings with more than one occupant, the facade for each occupant shall be that portion of the exterior wall face between the points where the interior walls between tenants intersect with the exterior wall.

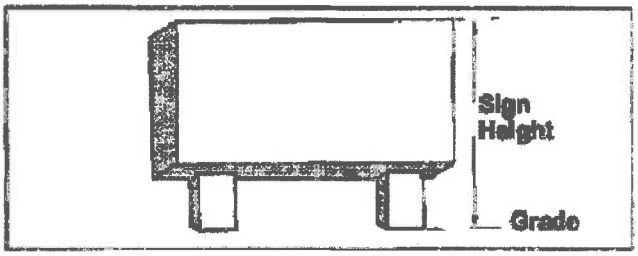
Figure 4. Facade



Flashing Sign. See "animated sign, electrically activated."

"Freestanding sign" means a sign principally supported by a structure affixed to the ground, and not supported by a building, including signs supported by one or more columns, poles or braces placed in or upon the ground. Freestanding signs include those signs otherwise known as pedestal signs, pole signs, pylon signs, and monument signs.

Figure 5. Freestanding Sign



"Frontage (building)" means the length of an exterior building wall or structure of a single premises oriented to the public way or other properties that it faces as determined by the planning director.

"Height of sign" means the vertical distance from the adjacent ground level to the highest point of a sign or, in the case of freestanding signs, to any vertical projection thereof including its supporting columns.

"Holographic display" means any display that creates a three-dimensional image through projection.

"Illegal sign" means a sign that does not meet the requirements of this chapter and has not received legal nonconforming status.

"Illuminated sign" means a sign characterized by the use of artificial light, either projecting through its surface(s) (internally illuminated); or reflecting off its surface(s) (externally illuminated).

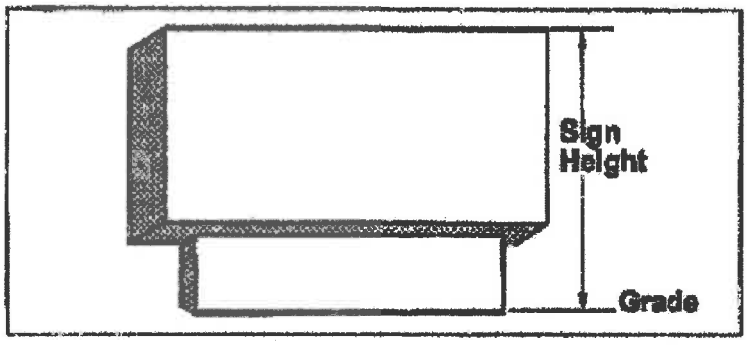
"Inflatable object" means an inflatable object larger than 18 inches in diameter, such as a blimp, large air balloon, or inflatable sport equipment, used to attract attention to a special event or grand opening.

"Informational sign" means a single- or double-faced sign intended primarily for the safety and convenience of the public or to ensure the orderly operation of the site, including but not limited to signs designating restrooms, address numbers, hours of operation, business directories, help wanted, public telephones, and instructions regarding parking.

"Interior sign" means any sign placed within a building, but not including window signs as defined by this chapter. Interior signs, with the exception of window signs as defined, are not regulated by this chapter.

"Monument sign" means a ground-mounted, fixed sign. The base (not included in the sign surface area calculation) is attached to the ground as a wide base of solid construction.

Figure 6. Monument Sign



"Multiple-tenant development" means a group of structures housing at least one retail business, office, commercial venture, or independent or separate part of a business or a single structure containing more than one business with separating walls and at least one outside access for each business which shares a common lot, access, and/or parking facility.

"Noncommercial public service sign" means a noncommercial sign devoted to religious, charitable, cultural, governmental, or educational messages including, but not limited to, the advertising of events sponsored by a governmental agency, a school, church, civic or fraternal organization or other organizations.

"Portable sign" means a movable sign that is not permanently attached to a structure or the ground. Portable signs include A-frame signs and signs mounted on a portable base, but not portable readerboards.

"Readerboard" means a sign or part of a sign on which the letters are replaceable by manual means, such as changing magnetic letters on a sign board.

"Roof sign" means a sign or sign structure erected above a roof, parapet, canopy, or porte cochere of a building or structure.

"Sign" means all surfaces/structures (permitted, exempt, or prohibited) regulated by this chapter that have letters, figures, designs, symbols, trademarks or devices intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever.

"Sign, off-premises" means a sign which displays a message relating to a use of property or sale of goods or services at a location other than that on which the sign is located.

"Sign, on-premises" means a sign which displays a message which is directly related to the use of the property on which it is located.

"Traffic control devices" means signs, signals, directional symbols, and similar devices specifically intended to direct traffic to, from, and within a site.

"Walking advertisers" means persons carrying or wearing portable advertising signs or costumes designed to advertise a business, event, sale or season/holiday with a permit describing location, supervision and public safety. (Ord. 1706 § 1, 2010; Ord. 1694 § 12, 2009).

17.63.020 General provisions.
A. Conflicting Standards. Signs shall be allowed subject to the provisions of this chapter, except when these provisions conflict with the specific standards for signs in a subject district or in a separately adopted design plan relating to the property.

B. Signs Subject to State Approval. All signs visible to the traveling public from state highways are subject to the regulations and permit requirements of the State Department of Transportation. Where the regulations of the state and city differ, the more restrictive regulations shall govern.

C. International Building Code. All signs for which a building permit is required shall comply with the provisions of the International Building Code as adopted in chapter 15.04 BMC, and be subject to approval of a building permit.

D. Address Display. The signing program for a multifamily, commercial or industrial development shall include the display of street numbers for the development on the sign, support structure, or building where it can be seen from adjacent roads, as specified in BMC 15.10.060.

E. Sign Clearances. A minimum of eight feet above sidewalks and 15 feet above driveways shall be provided under freestanding or projecting signs.

F. Setbacks. Signs shall be situated in a manner so as not to adversely affect safety, corner vision, public rights-of-way, improvements or future improvements, easements, or other similar conditions.

G. Illuminated Signs.

1. Internally illuminated signs, or lights used to indirectly illuminate signs, shall be placed, shielded or deflected so as not to shine into residential dwelling units or structures or impair the vision of the driver of any vehicle.

2. No colored lights shall be used at any location or in any manner which may be confused with or construed to be traffic signals or control devices, or lights on an emergency vehicle.

3. No person shall construct, establish, create or maintain any stationary exterior lighting or illumination system or any interior system which is intended to be viewed from a public right-of-way used for vehicular traffic which system contains or utilizes:

a. Any exposed incandescent lamp with a wattage in excess of 25 watts unless a dimmer or sun screen is attached;

b. Any exposed incandescent lamp with an internal or external metallic reflector;

c. Any continuous or sequential flashing operation.

4. All lighted signs shall have low or soft illumination or be shielded.

H. Moving Signs. No sign, sign structure, or portion thereof, shall be designed to rotate, flutter, or appear to move, except as specifically provided in this code.

I. Maintenance. All signs, together with all of their supports, braces, guys, and anchors, shall be kept in good repair and be maintained in a safe condition. All signs and the sites upon which they are located shall be maintained in a neat, clean, and attractive condition. Signs shall be kept free from rust, corrosion, peeling paint, or other surface deterioration. The display surfaces of all signs shall be kept neatly painted or posted.

J. Preexisting Signs. Signs and sign structures existing prior to the effective date of the ordinance codified in this chapter, which complied with applicable regulations existing when the sign was established, but which do not comply with one or more of the requirements of this chapter, shall be subject to the provisions of chapter 17.66 BMC for nonconforming uses, except:

1. Alteration to a nonconforming sign which reduces or does not increase its noncompliance with the provisions of this chapter, including changes in display surface, sign area, height and setback, may be allowed subject to review under the provisions of BMC 17.63.030; and

2. Sign copy which identifies or advertises a business, product or service no longer located on the same site or premises on which the sign is posted shall be replaced, or removed, within one month of the change in

occupancy or vacancy of the premises. Failure to use the copy area of a nonconforming sign for purposes permitted under this section for a period of more than 12 consecutive months shall constitute a discontinuance of a nonconforming use, as provided in chapter 17.66 BMC, and such sign shall be removed or modified to satisfy all applicable requirements of this chapter and the underlying district. (Ord. 1694 § 13, 2009; Ord. 1382 § 2, 1998; Ord. 1158 § 5, 1990).

17.63.025 Permit required.

A. No sign shall hereafter be erected, re-erected, constructed, refaced, altered or repaired except as provided by this chapter and a permit for same has been issued by the planning director, unless such sign is excepted in accordance with BMC 17.63.027. A separate permit shall be required for a sign or signs for each individual business establishment. Thereafter, each additional sign erected on the structure must have a separate permit.

B. Applications for sign permits shall be made to the planning director upon building permit forms provided by the city. Applications for sign permits shall be accompanied by:

1. Two site (plot) plans showing the location of the affected lot, building or buildings, and sign or signs, showing both existing signs and awnings and the proposed sign;

2. Two copies of a scale drawing of the proposed sign or sign revision, including size, height, copy, structural and footing details, material specifications, methods of attachment, illumination, landscaping, front and end views of awning, sample of canvas, soil, seismic and wind calculations, photograph of site and building marked to show where sign or awning is proposed, and any other information required to ensure compliance with appropriate laws;

3. Written consent of the owner of the building, structure, or property where the sign is to be erected, if not the applicant;

4. A permit fee per current fee resolution. (Ord. 1694 § 14, 2009).

17.63.027 Exceptions.

The following shall not require a permit. These exceptions shall not be construed as relieving the owner of any sign for the responsibility of its erection, maintenance, removal, and its compliance with the provisions of this chapter or any other law or ordinance regulating the same.

A. Address sign, allowed without permit when all conditions are met:

1. One sign allowed per street frontage displaying the street number and/or name of the occupant of the premises;

2. Such signs may be attached to the building or may be on a post no more than four feet high, and set back at least three feet from the public right-of-way;

3. Such signs may include identification of an on-premises professional office;

4. Such signs may not exceed two square feet in area;

5. Such signs shall be limited to a maximum letter height of eight inches.

B. Construction/contractor sign, allowed without permit when all conditions are met:

1. One construction/contractor sign allowed for each street frontage of site under construction;

2. Excepted signs shall not exceed eight square feet in area and 10 feet in height;

3. Signs may denote the architect, engineer, and/or contractor(s);

4. Signs shall not be illuminated;

5. Signs must be set back a minimum distance of five feet from the frontage road and 10 feet from adjoining properties unless exceptions are made by the planning director;

6. Signs may be posted during such times as a duly issued building permit for the project remains valid.

C. Incidental Signs. Emblems, decals, and other similar signs indicating membership in organizations, acceptance of credit cards, brand names of items sold, and other such information which pertains to the business or proprietor of the business located on the premises may be displayed on any window or door.

D. Directional/informational signs, allowed without permit when all conditions are met:

1. Directional/informational signs must be located on premises;

2. Excepted signs may not exceed four square feet in area per face; two face maximum;

3. Signs may not contain advertising except as necessary to convey directions;

4. Signs shall be nonelectrical and nonilluminated.

E. Flags, allowed without permit when all conditions are met:

1. Flags must be of a country, state, city or other governmental body;

2. Flags must not exceed 35 square feet in area.

F. Garage/yard sale signs, allowed without permit when all conditions are met:

1. Two movable garage/yard sale signs allowed per sale;

2. Signs shall not exceed six square feet per sign face or two signs on sticks not exceeding four square feet per sign face;

3. Sale shall not be advertised for a period exceeding three days;

4. Signs may be placed on public street right-of-way or private property with owner's permission;

5. Signs shall not be placed on public utility poles.

G. Land Use and Construction Sign – Public Notification Signs. Signs on private property for public notification of major land use or construction activity.

H. Nameplates (residential signs), allowed without permit when all conditions set forth in BMC 17.63.040 are met.

I. Public Service Information Sign. Signs of public service companies and governmental agencies indicating danger and/or service and safety information.

J. Temporary signs advertising the sale, lease or rental of property, or identifying the developer, lease agent or builder, or advertising a legally recorded subdivision in its entirety, or real estate signs for individual lots, may be allowed subject to the following conditions (the regular use of temporary signs is further addressed in BMC 17.63.070):

1. Shall pertain only to the property upon which they are located, except for small directional signs;

2. Shall observe the setback and corner vision provisions of this chapter;

3. Shall not be illuminated;

4. Only one such sign shall be permitted on the premises;

5. Such signs shall be removed from the premises within two weeks after the premises are sold, leased, or rented. Signs pertaining to recorded subdivisions shall not remain on the premises in excess of 18 months from the date of filing of the subdivision;

6. Shall be of a size commensurate with the size of the property or premises being advertised.

K. Real estate, on-premises for sale, lease or rent, allowed without permit when all conditions are met:

1. One temporary, on-premises for sale, lease or rent sign is allowed for each street frontage of the premises, not to exceed two;

2. Signs shall not exceed six square feet in area, maximum height four feet;

3. Signs shall offer the immediate premises for sale, lease or rent;

4. Signs may remain in place on premises until 10 days after the property is sold, rented, or leased;

5. Small directional signs may be placed at the end of the block where listed with the property owner's permission.

L. Temporary Window Signs. Posters and other signs of a temporary nature which advertise or inform the public of current prices or events may be displayed on the inside of any window or door of a business located in a commercial, business, or industrial district, covering a maximum of 20 percent of the window or door area.

M. Within a Building. Any sign which is located within a building and which is clearly intended to be visible primarily to people located within the building.

N. See BMC 17.63.070 for community and special event exemptions. (Ord. 1694 § 15, 2009).

17.63.030 Review of signs/design standards.
Except as otherwise provided for temporary, portable, and political signs, and billboards, under BMC 17.63.070 and 17.63.080, the size, design, color, lighting and location of signs and supporting structures for all signs shall comply with the following provisions, in addition to other applicable provisions of this chapter:

A. Legibility. All forms of sign copy shall be of a size, color, style, spacing, and shape to produce a legible, concise, and uncluttered message as viewed from adjacent public roads or from an internal circulation road or walkway towards which it is oriented.

B. Design. Signs shall be designed using shapes, graphics, colors, materials, and lighting which are coordinated, integrated into, and a natural extension of the design of the building, development or business identified. On-building signs shall be incorporated into the design of the building, and shall not be placed in locations which interrupt, detract from or change the architectural lines of the building.

C. Coordination. In multibusiness developments, every effort shall be made to coordinate the size, placement, and colors of signs to promote a pleasing image and avoid a confusing, cluttered appearance, while retaining individual business identity through the use of letter style, logos or symbols. An overall sign program addressing the requirements of this section shall be required for multitenant developments, and it shall be the responsibility of the owner/manager of the development to inform all tenants of the requirements of the approved sign program.

D. Sign Structure. When visible, the supporting structure of the sign shall be incorporated into the overall sign design, and shall be in scale with the sign. The sign structure, and any street numbers included on the sign structure, shall not be counted for purposes of determining sign area. (Ord. 1694 § 16, 2009; Ord. 1382 § 3, 1998; Ord. 1340 § 1, 1997; Ord. 1158 § 6, 1990).

17.63.040 Residential district sign regulations.
A. Residential nameplates:

1. Shall not exceed two square feet.

2. Only one such sign shall be permitted on the premises.

3. May be mounted on the residence or accessory structure to the residence.

4. May be illuminated by indirect lighting only.

B. Signs for home occupations:

1. Shall not exceed six square feet (24 inches by 36 inches).

2. Shall be located inside the dwelling or located flat against the dwelling within which the home occupation is conducted or may be located within 10 feet of the house in a yard if approved by the planning commission for location and design, with a maximum height of four feet, six inches to the top.

3. Only one such sign shall be permitted on the premises and no variances shall be allowed.

4. May be illuminated by indirect lighting only.

C. Signs identifying multifamily developments or subdivisions:

1. Only ground-mounted signs shall be allowed, and shall not exceed a size of 30 square feet, as viewed from a single direction, and shall not exceed a height of five feet above the finished ground elevation of the development in that location.

2. No more than one ground-mounted identification sign shall be allowed for a development or complex, even when more than one tax lot or ownership is included in the development, except as follows:

a. When an additional sign is needed to provide identification of the development at major public access points located on two different roads; or

b. When two single-faced signs oriented in two different directions are proposed in lieu of a two-sided identification sign.

c. In business park developments, additional signage may be permitted to identify the residential portions of the development, as well as the commercial or industrial portions.

3. On-building signs shall be reviewed as part of the architecture of the building, including size, color, type of lighting and location.

4. Directional signs within the development shall not exceed three square feet, except as provided in the district.

5. Internally illuminated signs may be allowed subject to BMC 17.63.020(G).

6. Setback. Signs shall be situated in a manner so as not to adversely affect safety, corner vision, public rights-of-way improvements or future improvements, easements, or other similar conditions.

D. Signs for noncommercial public service uses such as schools, churches, hospitals and similar uses:

1. Only one freestanding or ground-mounted sign shall be allowed on the premises, and shall not exceed 24 square feet per side.

2. On-building signs shall be allowed subject to the criteria under BMC 17.63.050 (C).

3. Readerboard signs that are not electronic are allowed; provided, that the area of the readerboard shall be included within the total allowable square footage for signage; and provided, that illuminated readerboards in residential zones shall be turned off between 10:00 p.m. and 6:00 a.m. (Ord. 1694 § 17, 2009; Ord. 1382 § 4, 1998; Ord. 1340 § 2, 1997; Ord. 1158 § 7, 1990).

17.63.050 Permanent identification signs for commercial, business, and industrial developments.
A. Freestanding pylon signs oriented to off-site circulation identifying the uses on the premises in areas zoned B-1, B-P, C-1, C-2 and M-1 and not located on East Fairhaven Avenue or East Victoria Street or connecting side streets (downtown) shall be allowed subject to the following conditions:

1. Only one development complex sign shall be allowed for a multiple-occupancy development, even when more than one tax lot or ownership is included in the development, unless:

a. Up to two additional signs are needed to provide identification of the development at major public access points located at different major arterials; and/or

b. When two single-faced signs oriented in two different directions are proposed in lieu of a two-sided identification sign.

2. Maximum sign height:

a. General: 25 feet.

b. Businesses located within 500 feet of an I-5 freeway interchange which cater to the traveling public, such as gas stations, freeway oasis uses, restaurants, and motels, may be allowed one freeway-oriented sign not to exceed 50 feet in height.

c. Business, commercial, or industrial sites with freeway frontage may have a freeway-oriented sign not to exceed 45 feet in height.

3. Maximum sign area:

a. General. Fifty square feet as viewed from one direction.

b. Sign area may be increased by an additional 30 square feet if the site is larger than one-half acre.

c. Sign area may be increased by an additional 30 square feet if identification of more than one use within a development is included on the sign.

d. Sign area may be increased by an additional 30 square feet if the sign uses natural materials (carved or sand-blasted wood, or marble or stone) and indirect illumination.

e. Sign area may be increased by an additional 30 square feet if there is a need for identification at a great distance, or by traffic moving at high speeds, as in the case of traveler services and "freeway oasis" uses, or uses with freeway frontage. The size of any such sign, or portion thereof, exceeding the 25-foot level, as provided under subsection (A)(2) of this section, shall not exceed a maximum of 80 square feet unless other factors under subsections (A)(3)(b), (c), (d) and (e) of this section apply.

f. Sign area may be increased by a maximum of 20 square feet for time and temperature only if a time and/or temperature display is incorporated in the design of the sign, as further regulated in BMC 17.63.065.

g. For developments over 30 acres in size, an additional 30 square feet of sign area is allowed for each tenant larger than 10,000 square feet in size up to a maximum of 350 square feet.

4. Setbacks/Location. All freestanding signs shall be located within a landscaped planter, to be shown on the plans for the sign permit with protective curbs located at least three feet from all support elements.
Free-standing signs larger than 50 square feet, or exceeding a height of 25 feet, shall be set back at least 10 feet from the property line (as measured to the outer edge of the sign) and shall not adversely affect corner vision or otherwise create a safety hazard.

5. Illumination. Freestanding signs may be internally or indirectly illuminated, as provided under BMC 17.63.020(G).

B. Monument Signs.

1. Monument signs may be used in lieu of a freestanding identification sign, as allowed for a development under subsection (A) of this section. In such case, the requirements for size, number, and setback/location for freestanding signs shall apply. Monument signs may include electronic time and temperature up to 20 square feet in area as part of the total sign area. No other sign or illuminating devices shall have blinking, flashing, or fluttering lights.

2. Supplementary Identification. In addition, monument signs may be used to identify individual uses within a multitenant development which are not otherwise identified on the freestanding sign(s) for the development. Monument signs may also be used to provide identification of additional entrances to a development that has entrances in more than one location. Monument signs shall be subject to the following requirements:

a. Height. A monument sign (also called ground-mounted signs) shall not exceed a height of six feet.

b. Maximum size: 36 square feet.

c. Number. Only one monument sign shall be allowed for a business, and shall be situated in front of that business.

d. Setbacks/Location. All monument signs shall be located within a landscaped area, with curbing located at least three feet from the base of the sign on all sides, except next to a sidewalk. Monument signs shall be situated at least 50 feet from any freestanding sign, and at least 100 feet from any other monument sign within the same development. Monument signs shall not be located within a 20-foot radius of the corner of any two streets, or the street and any driveway.

e. Materials. Monument signs shall incorporate colors and materials which are the same, or substantially the same, as those used on the building identified by the sign.

f. Illumination. Such signs may be internally or indirectly illuminated.

C. On-building signs identifying the use of the premises shall be allowed subject to the following conditions:

1. Sign Area. The sign area, location of the building, number of signs, and the size of the copy used shall be determined in consideration of the following factors:

a. The relationship of the building to the road or on-site circulation areas;

b. The use and location of a freestanding or ground-mounted sign identifying the premises, including on-site identification signs approved under subsection (B)(2) of this section;

c. The use of the premises and associated need for identification of the building;

d. The size and design of the building elevation on which the sign would be placed;

e. The amount of signing for the use which can be seen from a given direction;

f. Wall signs and marquee signs shall not exceed a total sign area of two square feet per lineal foot of building frontage; except, that if a business has only a wall sign, the sign area allowed shall be at least 60 square feet regardless of frontage;

g. Projecting signs shall be limited to one per street frontage and shall not exceed an area of 25 feet per sign face.

2. Wall Graphics. The use of exterior walls of buildings for graphics, artwork, or other displays shall be subject to review and approval by the planning commission.

3. Illumination. On-building signs may be internally or indirectly illuminated, or back-lit, subject to BMC 17.63.020(G).

D. Signs Advertising Movie Theaters.

1. Building-mounted signs are permitted as provided in subsection (C) of this section.

2. One freestanding sign is permitted fronting on an arterial and one freeway-oriented sign, if the site has freeway frontage, up to a maximum size of 100 square feet per sign face.

3. Readerboards are permitted as needed on the freestanding sign or on the building; provided, that no moving messages are permitted, and the sign does not exceed the maximum permitted. (Ord. 1694 § 18, 2009; Ord. 1547 § 1, 2004; Ord. 1532 § 1, 2004; Ord. 1382 § 5, 1998; Ord. 1344 § 1, 1997; Ord. 1340 § 3, 1997; Ord. 1221 § 8, 1992; Ord. 1158 § 8, 1990).

17.63.052 Permanent identification signs for developments in areas zoned MR-NB.
A. Internally illuminated signs are prohibited.

B. Signs shall be limited to 20 square feet per sign face attached to the building.

C. In lieu of an on-building sign, a 20-square-foot ground-mounted sign no taller than five feet in height may be installed in the front of the building within 15 feet of the front of the building. (Ord. 1694 § 19, 2009; Ord. 1382 § 6, 1998).

17.63.055 Permanent identification signs for developments in areas zoned B-1 and C-1 and located in Downtown on Fairhaven Avenue and Victoria Avenue.
A. Signs shall be reviewed for conformance with the Downtown Design Guidelines as adopted in the comprehensive plan.

B. Freestanding and projecting signs shall be limited to 25 square feet in area, 25 feet high.

C. On-building signs shall comply with BMC 17.63.050(C) and (D), and the Downtown Design Guidelines.

D. Signs located on buildings may project over the sidewalk or an alley (within the right-of-way), provided such signs have at least eight feet of vertical clearance from the sidewalk to the bottom of the sign, or 15 feet of clearance from an alley to the bottom of the sign. (Ord. 1694 § 20, 2009; Ord. 1382 § 7, 1998).

17.63.060 On-site traffic control and directories.
A. Traffic Control. Signs which direct the flow of traffic to, from and within the site area shall observe the corner vision requirements of the district and shall be a maximum of three square feet per side. See BMC 17.45.020 and 17.45.030.

B. Directories. An on-site sign oriented primarily towards vehicle circulation which identifies and directs traffic to a number of tenants, uses or buildings within the development, including informational signs, shall be limited in area to a maximum of two square feet per tenant, use or building specifically identified, up to a maximum of 40 square feet, and shall not exceed 12 feet in height. Directories oriented toward pedestrian circulation areas, including those attached to buildings, shall be a maximum of 24 square feet in area and eight feet in height.

C. Menu Boards. On-site menus oriented toward internal circulation drives shall not exceed a combined area of 40 square feet. (Ord. 1694 § 21, 2009; Ord. 1158 § 9, 1990).

17.63.065 Electronic changing message sign requirements.
A. A time and temperature sign is permitted up to a maximum of 20 square feet in area for time and temperature only, in locations specified in BMC 17.63.050.

B. An LED gas price sign is permitted with digit heights of six, eight, 12, 15, 22 and 30 inches for gas prices only, in locations specified in BMC 17.63.050, to be included in maximum sign area.

C. Electronic message center signs and other changeable copy signs may be incorporated into a permanent identification sign. Approval for moving electronic message center signs shall not be granted unless the following conditions are satisfied:

1. Only one sign shall be used in a development;

2. The changeable copy sign or electronic message center shall be integrated into a nonelectronic sign and that portion of the sign shall not exceed:

a. Eighty square feet in sign area for signs 40 feet or less in height;

b. One hundred fifty square feet in sign area for signs over 40 and less than 50 feet in height;

c. Two hundred fifty square feet in sign area for signs 50 feet in height;

d. Sign pole width shall be a maximum of one-fourth of the sign width;

3. Electronic message centers and changeable copy signs may be used only to advertise activities conducted or goods and services available on the property on which the sign is located, or to present public service information;

4. Electronic message center signs are only permitted for a multiple-tenant development complex, a group of businesses, or an individual business;

5. Location shall be within 100 feet of the Interstate 5 right-of-way and the sign shall be oriented to Interstate 5, separated along each side of I-5 by 1,500 feet;

6. The display shall comply with WAC 468-66-050 as summarized and amended here:

Electronic signs may be used only as on-premises signs and/or to present public service information, as follows:

a. Advertising messages on electronic signboards may contain words, phrases, sentences, symbols, trademarks, and logos. A single message or a message segment must have a static display time of at least two seconds after moving onto the signboard, with all segments of the total message to be displayed within 10 seconds. A one-segment message may remain static on the signboard with no duration limit.

b. Displays must appear as a picture that holds in a static position for a minimum of four seconds.

c. Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the signboard.

d. No electronic sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility. In no case may the brightness exceed 8,000 nits or equivalent candelas during daylight hours, or 1,000 nits or equivalent candelas between dusk and dawn. Signs shall be programmed to automatically adjust illumination for all times of day and night.

D. No other signs or illuminating devices shall have blinking, flashing, or fluttering lights. (Ord. 1798 § 1, 2014; Ord. 1782 § 1, 2013; Ord. 1706 § 2, 2010; Ord. 1694 § 22, 2009).

17.63.070 Temporary display and portable signs.

A. Exempt Activities. See also BMC 17.63.027.

1. Community Events. Temporary signs, banners, lights, streamers, and other similar apparatus used in conjunction with a community event shall be exempt from the provisions of this chapter. A "community event" is an event of a public nature sponsored by the city or a community club, chamber of commerce, or other

community organization for the purpose of celebrating a particular holiday, festival, or other traditional commemoration which typically occurs no more than once a year.

2. Special Events under Special Event Permit. Temporary signs, banners, lights, streamers, inflatables, balloons, and other similar apparatus used in conjunction with an approved advertising plan for a special event permit shall be exempt from the provisions of this chapter, such as car sales and carnivals as further defined in the special event administrative rules.

B. Temporary Displays. Banners, streamers, festoons of lights, flags, blade banners, and other similar apparatus may be displayed for the purpose of advertising outdoor sales of vehicles, a grand opening, promotional sale, or similar event subject to the following conditions and limitations:

1. Time Period and Duration. The display of apparatus specified shall not exceed a total time period of four weeks in any calendar year; provided, that temporary displays for outdoor sales of vehicles that are maintained in good repair may be used as desired except in the retail core.

2. Hazards. No sign, light, electrical cord, streamer, banner, or other apparatus shall be situated or used in a manner which creates a hazard.

C. Temporary Portable Identification Signs. One portable identification sign may be used to temporarily identify a new business until permanent identification signs are installed, or to identify an existing business while permanent signs are being repaired or replaced, under the following conditions and limitations:

1. Maximum Size. No portable identification sign shall exceed 24 square feet in area.

2. Setbacks. Portable signs shall observe corner vision requirements, and shall in no case be placed in the public right-of-way.

3. Anchoring. All signs shall be physically anchored to the premises in a manner which both prevents the sign from being moved or blown from its approved location, and allows the prompt removal of the sign.

4. Illuminated Signs. No portable identification sign shall have flashing lights or arrows or any other apparatus which may be construed to be a traffic control device. All illuminated signs requiring an outside power source shall use a state-approved power outlet.

5. Hazards. No portable sign or associated apparatus shall be situated or used in a manner which creates a hazard. The city retains the right to remove a portable sign that, in the judgment of the city officials, may create a hazardous situation.

D. Use of Temporary/Portable Signs, MR-NB, B-1, C-1, C-2 and M-1 Zoning Districts.

1. No more than a combination of one portable sign and two banners shall be permitted for any business.

2. In addition to permanent signage, a business may also display one moveable sign during business hours up to a maximum size of six square feet per sign face.

3. Signs shall be secured, anchored, weighted or staked to handle wind loads of 50 mph.

4. In the retail core, signs shall be located behind the sidewalk on private property.

5. In downtown, signs shall be located within the area for outdoor display of goods, as provided in BMC 17.33.060(A)(2), or other approved location.

6. Well maintained banners may be used for promotions if securely anchored.

7. Up to two well maintained blade banners per street front may be used on private property and not extend over public right-of-way, if securely anchored.

E. Walking Advertisers. Persons carrying or wearing portable advertising signs or costumes designed to advertise a business, event, sale or season/holiday with a permit describing location, supervision and public safety. (Ord. 1694 § 23, 2009; Ord. 1535 § 1, 2004; Ord. 1340 § 4, 1997; Ord. 1158 § 10, 1990).

17.63.080 Off-premises signs.
Off-premises signs shall not be allowed except as herein provided:

A. Billboards (Outdoor Advertising Structures). New billboards shall not be allowed in any zoning district. Billboards may be allowed to relocate from one location within the city to another. Such relocated billboards shall not be allowed in any zoning district except the general commercial, heavy commercial and industrial districts.

B. Political Signs. Signs which support or oppose ballot measures, persons running for political office, and other issues subject to a vote by the public may be allowed subject to the following conditions:

1. Approval of the owner of the property on which the sign is to be placed;

2. Location. Such signs shall not be posted in state, county or city rights-of-way, on telephone poles, traffic signs, or other public apparatus. Such signs shall observe the corner vision requirements of this title, and shall not be situated in a manner which creates a hazard;

3. Size. Signs shall not exceed 16 square feet in size as viewed from one direction;

4. Time Limit. Such signs shall not be posted more than four months before the affected election, and shall be removed within one week after the election for which the sign is posted.

C. Temporary Directional Signs. The intent of this provision is to allow the infrequent, and not the regular, use of signs of a temporary nature. Off-premises directional signs of a temporary nature such as those used to direct persons to open houses, garage sales, or special events of short (two days') duration may be allowed subject to the following conditions:

1. Any such sign which is visible from a state highway shall be subject to approval by the State Department of Transportation.

2. All such signs shall comply with subsections (B)(1) through (3) of this section.

3. Time Limit. All such signs shall be removed at the end of the day on which the event, open house or garage sale is conducted and shall not be used repeatedly, contrary to the stated intent.

4. The city shall have the authority to immediately remove and dispose of any such sign found to be in violation of this subsection.

D. Permanent Off-Premises Directional Signs. The intent of this provision is to provide directional and locational information to the general public about places of general interest, such as tourist information services, school or public recreational facilities, shopping malls, restaurants, lodging, business directories designed to be compatible with the city's urban wayfinding program, central business or other special districts, historic sites, and regional developments; or, to provide information of a general community nature, such as those found at city entrance locations identifying the city and historic dates, or listing local service clubs and organizations or to provide business identification for sites located on a dead-end street. Such signs may be allowed, subject to the following:

1. Any such sign which is visible from a state highway shall be subject to approval by the Department of Transportation.

2. Approval of the owner of the property on which the sign is to be placed.

3. Location. Any such sign shall not be placed where it may cause a hazard, or obstruct the vision of any driver.

4. Size. Shall be no larger than necessary to clearly inform or direct the public. City identification/community service club type signs shall be reviewed and approved by the planning commission. Business identification directional signs on dead-end streets and business directories shall be designed to be generally compatible with the city's urban wayfinding signage program and the design shall be reviewed and approved by the planning commission.

5. Illumination. May be indirectly illuminated.

6. Design. All such signs shall be designed using materials, colors, lettering and other graphics which will be, in the opinion of the planning commission, an asset to the community and in the best interest of the city and the general public. (Ord. 1694 § 24, 2009; Ord. 1382 § 8, 1998; Ord. 1158 § 11, 1990).

17.63.085 Prohibited signs.

A. Prohibited signs are subject to removal by the city at the owner's or user's expense. Prohibited signs on public property may be summarily removed by the city. Prohibited signs on private property shall be subject to code enforcement action for removal pursuant to this section.

B. The following signs or displays are prohibited in all zones within the city, whether located on public or private property, except those expressly permitted as temporary signs in BMC 17.63.070:

1. Abandoned or obsolete signs;

2. Animated or moving signs;

3. Dilapidated, nonmaintained signs;

4. Flashing signs and strobe lights, holographic displays;

5. Inflatable advertising devices;

6. Mylar balloons;

7. Obstructing signs which obstruct or interfere with free access to or egress from a required exit from a building or structure, or do not meet corner vision requirements;

8. Off-premises signs except those expressly allowed in this chapter;

9. Pennants, streamers, ribbons, spinners, whirlers, propellers, festoons, blinking lights, or similar items that attract attention through movement, reflection or illumination;

10. Portable signs include any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building. Examples of portable signs include but are not limited to wire stake signs, A-frame, sandwich board signs and portable readerboard signs. See BMC 17.63.070(D) for exceptions;

11. Persons carrying or wearing portable advertising signs or costumes designed to advertise a business. See BMC 17.63.070(E) for exceptions;

12. Signs mounted on the tops of roofs, projecting above parapet walls, are prohibited.

C. Penalties. Violation of or failure to comply with any of the provisions of this chapter shall be subject to a civil penalty as set forth in chapter 1.34 BMC. Each day shall constitute a separate violation.

D. Continued Duty to Correct. Payment of a monetary penalty pursuant to this section does not relieve a person of the duty to correct the violation as ordered by the code enforcement officer. (Ord. 1763 § 4, 2012; Ord. 1694 § 25, 2009; Ord. 1535 § 2, 2004).

17.63.090 Variances.
Relief from or modifications of the size limits of signs regulated by this chapter require a zoning variance as provided in BMC 17.68.140. (Ord. 1382 § 9, 1998).

Chapter 17.66

NONCONFORMING STRUCTURES, LAND AND USES[1]

Sections:

17.66.010 Intent.
17.66.020 Continuance of nonconforming structures and uses.
17.66.030 Use of nonconforming land.
17.66.040 Changes of use, tenancy, ownership or management.
17.66.050 Maintenance, damage repairs and restorations, additions, enlargements, moving or relocation of nonconforming structures, and residential structures.
17.66.060 Abatement of nonconforming structures and uses.
17.66.070 Amortization and abatement of outdoor storage.
17.66.080 Amortization and abatement of nonconforming signs.

17.66.010 Intent.
Amendments over time to regulatory authority provided within this title may result in structures, land and uses which no longer conform with the provisions set forth for the district in which they are situated. Therefore it is the intent of this chapter to allow for the continuance and maintenance of legally established nonconforming uses subject to standards and provisions prescribed within this chapter. This chapter must be read along with chapter 15.15 BMC and the more restrictive requirements shall apply. (Ord. 1206 § 5, 1992).

17.66.020 Continuance of nonconforming structures and uses.
Any nonconforming structure or use lawfully existing on the effective date of this title, or any subsequent amendments to this title, may be continued and maintained in conformance with provisions of this chapter, provided no enlargement of area, space or volume occupied by the nonconforming use occurs. Any nonconforming structure authorized by a valid building permit prior to the effective date of this title, or any subsequent amendments to this title, may be completed and used in accordance with the plans, specifications and regulations under which such permit was issued. Expiration of authorization permits will result in a loss of vested right for construction and use of such structure. (Ord. 1206 § 5, 1992).

17.66.030 Use of nonconforming land.
If any parcel of land with a minimum lot size or lot dimension which is less than that prescribed for by the district in which such parcel is located, was subdivided into lots according to a plat of record on or before the effective date of this title, or any subsequent amendments to this title, then the fact that the parcel of land does not meet the minimum lot size or lot dimension requirements as set forth in this title shall not prohibit the property from being utilized provided that all other regulations prescribed for that district by this title are complied with, except as provided for in chapter 17.45 BMC. (Ord. 1206 § 5, 1992).

17.66.040 Changes of use, tenancy, ownership or management.
Changes of use, tenancy, ownership or management may occur to any existing legally established and continued nonconforming use under one or more of the following circumstances:

A. Any part of a structure occupied by an existing legally established and continued nonconforming use may be changed to a use which, in the opinion of the planning director, is of the same or of a more restrictive nature. When the use of a nonconforming structure is hereafter changed to a more restrictive use, the structure shall not thereafter be used for a less restrictive use.

B. There may be a change of tenancy, ownership or management of any existing legally established and continued nonconforming use provided there is no change in the nature, character or occupancy classification of such nonconforming use except as authorized within this chapter. (Ord. 1206 § 5, 1992).

17.66.050 Maintenance, damage repairs and restorations, additions, enlargements, moving or relocation of nonconforming structures, and residential structures.
A. Ordinary maintenance of a nonconforming structure which includes minor interior and exterior repairs and incidental alterations is permitted. Minor maintenance and repair may include but is not limited to painting, roof

repair and replacement, plumbing, wiring, mechanical equipment replacement, and weatherization. Incidental alterations may include construction of nonbearing walls or partitions.

B. No structural alterations, as defined by the Uniform Building Code, shall be made except as required by law or ordinance, provided that the cost of such work shall not exceed 50 percent of the assessed valuation of such structure as established by the most current Skagit County assessor's tax roll.

C. A nonconforming structure having been damaged or partially destroyed to an extent not exceeding 50 percent of the assessed valuation of such structure as established by the most current Skagit County assessor's tax roll, may be restored to its original condition, as authorized by the city's building official, and its immediately preceding or existing use at the time of partial destruction may be continued or resumed. Restoration shall begin within one year and be completed within two years of the date of partial destruction. If restoration is not started within one year, then the reuse and occupancy of the structure shall conform to all the regulations of the district in which the use is located.

D. Structures or lands which are nonconforming as to use regulations shall not be enlarged or intensified in any manner unless the enlargement within such structures or lands conforms to all regulations of the district in which it is located. A nonconforming use, within a nonconforming structure, shall not expand into any portion of the nonconforming structure.

E. Structures which are nonconforming as to percentage of site coverage, setbacks, building height or density shall not be enlarged unless such enlargement conforms to the regulations of the district in which it is located.

F. Nonconforming residential structures are allowed to provide maintenance, alterations and additions which may exceed the requirements of this chapter; provided the total number of dwelling units does not increase and all other development standards of the district are complied with.

G. This chapter shall not prevent the following provided the total value of the improvements, over the lifetime of the nonconforming use, does not exceed 50 percent of the assessed value of the nonconforming use as established by the most current Skagit County assessor's tax roll; and the nonconforming use or structure is not expanded except as allowed by BMC 17.66.050(H); provided further, that any replacement of a nonconforming structure, or parts thereof, must comply with the appropriate development standards unless a variance is granted pursuant to this title:

1. Strengthening or restoring to a safe condition any nonconforming structure or part thereof which is declared to be unsafe or a hazard to the public by the order of a city official charged with protecting the public safety;

2. Lessening a hazardous situation, nuisance or other adverse environmental impact;

3. Bringing the structure or use into more conformance with this title;

4. Adapting the structure to new technologies or equipment;

5. Improvements which do not increase the intensity of the nonconforming use.

H. A nonresidential structure or use which becomes a legal nonconforming structure or use after the effective date of this title may be permitted, by means of a variance issued by the board of adjustment pursuant to this title, to expand the existing use or structure up to 25 percent of the use or structure existing at the time of the adoption of this title; provided further, that the addition otherwise meets the standards of this title and other requirements of the city.

This subsection does not allow the expansion of a use or structure which would be inconsistent with a previously authorized conditional use permit, special property use permit, contract rezone, or binding agreement between the city and the property owner.

This subsection also does not allow the expansion of any nonconforming hazardous material storage.

I. When a building or structure is moved to another location it must then be made to conform to the requirements of the district to which it is moved, unless specifically allowed elsewhere by this title. (Ord. 1206 § **5,** 1992).

17.66.060 Abatement of nonconforming structures and uses.
Nonconforming structures and uses shall be abated if one or more of the following circumstances exist:

A. If a nonconforming use is discontinued and changed to a conforming use, any future use of the structure or land shall be in conformity to the regulations of the district in which structure or land is located.

B. Any structure or portion of a nonresidential structure, or parcel of land occupied by a nonconforming use which becomes vacant and remains unoccupied for a continuous period of 180 days shall not thereafter be occupied except by a use which conforms to the use regulations of the district in which it is located. Residential uses in commercial or industrial zones which are unoccupied for more than 180 days may be allowed to reoccupy if a variance is issued pursuant to this title.

C. If a nonconforming structure sustains damage or destruction which exceeds 50 percent of the current assessed valuation of the structure as established by the Skagit County assessor's office. Reconstruction of such damaged structure or reuse of occupancy shall conform to all regulations of the district in which it is located and it shall be treated as a new building. This subsection shall not apply to single-family dwellings. (Ord. 1206 § 5, 1992).

17.66.070 Amortization and abatement of outdoor storage.
A. All outdoor storage yards that do not comply with the landscape and screening requirements of chapter 17.50 BMC, which are located within a C-2 or M-1 zone that are adjacent to a residential zone or are visible from any public street shall, within three years of the adoption of this title, screen and landscape the outdoor storage pursuant to the requirements of chapter 17.50 BMC, or the use be abated.

B. All existing outdoor storage yards accessory to a business use in the B-1 and C-1 zones shall be screened and landscaped as provided in chapter 17.50 BMC within three years, or the use be abated. All other outdoor storage areas shall be abated within six months of the adoption of this code. (Ord. 1206 § 5, 1992).

17.66.080 Amortization and abatement of nonconforming signs.
A. All off-premises advertising and directional signs that do not comply with the requirements of chapter 17.63 BMC shall be given an amortization period of six months that commences upon notification of the sign owner and/or property owner. Following such notification, the nonconforming sign shall be abated within six months. (Ord. 1327 § 1, 1996).

---

[1] Prior legislation: Ord. 890 § 5.10.

Chapter 17.67

ESSENTIAL PUBLIC FACILITIES

Sections:

17.67.020 Purpose.
17.67.030 Scope.
17.67.040 Procedure.
17.67.050 Applications for EPF projects.
17.67.060 CUP-EPF review criteria.
17.67.070 Building permit application.
17.67.080 Special provisions for secure community transition facilities (SCTFs).
17.67.090 Processing timelines.
17.67.100 CUP city council authority – Final decision.

17.67.020 Purpose.
A. The purpose of this chapter is to establish a siting process for essential public facilities (EPFs). This process involves the community and is intended to assist in the identification and minimization of adverse impacts.

B. Essential public facilities are defined in chapter 17.06 BMC. EPFs include, but are not limited to, those facilities which are difficult to site, such as airports, state educational facilities, state and regional transportation facilities, state and local correctional facilities, solid waste handling facilities and in-patient facilities (including substance abuse and mental health facilities). The Growth Management Act mandates that no local development regulation may preclude the siting of essential public facilities. Secure community transition facilities as defined in chapter 17.06 BMC are also included.

C. Nothing in this chapter shall be deemed to waive the city's rights to assert lead agency status to conduct environmental review under Washington State's Environmental Policy Act pursuant to chapter 43.21C RCW and chapter 197-11 WAC as now and hereafter amended. (Ord. 1670 § 3, 2009).

17.67.030 Scope.
A. This chapter establishes the criteria that the city shall use in making a decision upon an application for an EPF. The city's director of planning and community development (director) shall develop a list of essential public facilities at the time of a request for conditional use permit by an applicant. These facilities shall meet the definition of essential public facilities under chapter 17.06 BMC and the list shall be part of the record for the application.

B. This chapter shall serve to establish the process for permitting those uses determined to be EPFs and which satisfy the criteria set forth under BMC 17.67.060. The director shall determine whether a proposed facility shall be reviewed as an EPF and subject to this review process. (Ord. 1670 § 3, 2009).

17.67.040 Procedure.
Applications that seek approval for an EPF as defined by chapter 17.06 BMC and listed under BMC 17.67.030 shall follow the procedures established in chapter 17.68 BMC for a Type IV EPF conditional use permit process. In addition to the decision criteria described in BMC 17.67.060, secure community transition facilities as defined in chapter 17.06 BMC shall also be consistent with the decision criteria described in BMC 17.67.080. (Ord. 1670 § 3, 2009).

17.67.050 Applications for EPF projects.
All proposed projects determined to be EPFs shall be reviewed and conditioned in accordance with all requirements of the Burlington Municipal Code including the conditional use permit procedure, set forth in this chapter and referred to as the CUP-EPF review procedure. All EPF applications shall contain the following information:

A. A detailed written description of the proposed and potential public services to be provided, including a proposed site plan, the proposed service area of the facility, the source or sources of funding, and identification of any applicable public regulatory agencies or regional state or federal project agency sponsors and the federal or state authority which the agency has been granted for siting decision-making; and

B. A written statement of the need, in statistical or narrative form, for the proposed project currently and over the following 10-year period; and

C. An inventory of known, existing or proposed facilities, by name and address, within Skagit County, or within the region, serving the same or similar needs as the proposed project; and

D. An explanation of the need and suitability for the proposed facility in the proposed city location(s); and

E. An assessment of the suitability of the proposed location in the city or another jurisdiction in terms of local, county, regional and/or state needs in order to minimize public costs (where appropriate) and environmental impacts, to discern the suitability of the facility's location in the city or within another jurisdiction, to determine the number of jurisdictions affected or served by the proposed EPF, and to decide what, if any, inter-jurisdictional approach is most appropriate or available; and

F. An analysis of the environmental, social, economic, financial and infrastructure impacts of the proposed EPF, including an assessment of the proportionate financial impacts on affected jurisdictions, consideration copies of agreements which allocate the financial burdens of the proposed project on the city and other jurisdictions, and the approximate area within which the proposed project could potentially have adverse impacts, such as increased traffic, public safety risks, noise, glare, emissions, or other environmental impacts; and

G. An analysis of the proposal's consistency with the city's comprehensive plan and development regulations, and plans and policies of other affected jurisdictions, including but not limited to Skagit County countywide planning policies; and

H. Documentation of public involvement efforts to date, including public and agency comments received, and plans for future public participation; and

I. All application materials required by other chapters of the Burlington Municipal Code for components of the project not covered by this chapter; such as platting requirements, critical area code compliance, traffic concurrency, comprehensive plan and zoning, et cetera, so that code compliance for all components of the project can be reviewed together; and

J. Such information as requested by the director as determined necessary to complete the preliminary analysis or to otherwise assist the director, staff, and the planning commission in making recommendation(s) and the city council in making the final determination on the CUP-EPF. (Ord. 1670 § 3, 2009).

17.67.060 CUP-EPF review criteria.

A. Essential public facilities shall be subject to classification and identification as follows:

1. Type One – Regional EPFs. These are major essential public facilities that provide public services to more than one county and where the provider has statutory authority to site and construct the facility and where a regional, intergovernmental siting process has been followed. These facilities may include, but are not limited to, regional transportation facilities, such as regional airports, state correction facilities, and state educational facilities.

2. Type Two – Local EPFs. These are local or interlocal facilities serving residents or property serving Skagit County. A "local EPF" means an essential public facility that is not a regional EPF.

3. To enable the city to determine the project's classification, any public or private entity proposing to site an EPF in the city shall provide the application materials set forth in BMC 17.67.050 to the director once it is known that the EPF is likely or required to be built.

4. The director shall review the application for an EPF upon receipt and determine whether the proposed project shall be identified as an EPF and if so whether the EPF shall be classified as a regional EPF or local EPF. A determination shall be made within 45 days following the director's written notice to the applicant of receipt of sufficient material and information set forth in BMC 17.67.050. The director shall provide notice of determination to the applicant and publish notice of the determination in a newspaper of general circulation within Skagit County.

5. The director's determination shall be an administrative determination subject to appeal and procedures established in BMC 17.03.040.

B. Notification and involvement of community and jurisdictions for EPFs shall be as follows:

1. Type One Facilities. In addition to such other notice as may be required by law before the siting decision, and at least 90 days before submitting an application for a type one essential public facility, the prospective applicant shall notify the affected public and jurisdictions of the general type and nature of the proposal, identify sites under consideration for accommodating the proposed facility, and identify opportunities to comment on the proposal. Applications for specific projects shall not be considered complete in the absence of proof of a published notice and notice to the city regarding the proposed project. Published notice shall be in a newspaper of general circulation in the affected area. This notice shall include the information described above and shall be published at least 90 days prior to the submission of the application. It is expected that an environmental impact statement may be required for most type one facilities in accordance with the SEPA environmental review process. Nothing from this chapter will preclude the city from consulting with the Skagit County council of governments which may provide the project sponsor and affected jurisdictions with their comments or recommendations regarding alternative project locations during this process. The purpose of this provision is to enable potentially affected jurisdictions and the public to collectively review and comment on alternative sites for major facilities before the project sponsor has made their siting decision.

2. Type Two Facilities. Type two essential public facilities shall be required to provide a notice of application as required by chapter 17.68 BMC in addition to any standard notification requirements for conditional uses.

C. Conditional Use Permit Required.

1. An EPF shall be a conditional use in all zones. In the event of a conflict with any other provision within the Burlington Municipal Code, the provisions of this chapter shall govern.

2. In addition to the conditional use permit, other development review permits might be necessary depending upon the site that is selected. For example, a plat or critical area mitigation could be necessary.

3. An EPF application and approval process shall satisfy the requirements of this chapter and the procedures established in chapter 17.68 BMC for a conditional use permit.

4. In addition to the conditional use permit application fee, an additional cost reimbursement agreement with the applicant may be required for additional costs, including but not limited to costs for independent consultant review set forth in subsection (D) of this section, associated with review of an EPF application under the criteria established in this chapter.

D. Independent Consultant Review.

1. The department may require independent consultant review of the proposal to assess its compliance with the decision criteria contained in this chapter.

2. If independent consultant review is required, the applicant shall deposit funds or other security in an amount and in a form acceptable to the director to defray the cost of such review. Unexpended funds will be returned to the applicant following the final decision on the application without interest.

E. Decision Criteria for Type One Facilities – Regional Essential Public Facilities. The planning commission must recommend approval or recommend approval with conditions, and the city council must approve or approve with conditions, a conditional use permit for a type one EPF in accordance with the following criteria:

1. The sponsor has provided a meaningful opportunity for public participation in the siting decision and development of mitigation measures that is appropriate in light of the project's scope, applicable requirements of the county code, and state or federal law;

2. The proposal complies with applicable requirements of chapter 17.68 BMC and all other applicable provisions of the city code except BMC 17.68.130(B);

3. The proposal shall be consistent with the comprehensive plan and types of uses of the underlying zoning of the proposed site including being consistent with the environmental impacts of the underlying zoning permitted uses;

4. The project site meets the facility's minimum physical site requirements, including projected expansion needs. Site requirements shall be determined by the minimum size of the facility, setbacks, access, support facilities, topography, geology, and on-site mitigation needs;

5. The proposal, as conditioned, adequately mitigates significant adverse impacts to life, limb, property, the environment, public health and safety, transportation systems, economic development and other identified impacts;

6. The proposal, as conditioned, adequately mitigates for any probable significant adverse impact on critical areas or resource lands, except for lineal facilities, such as highways, where no feasible alternative exists;

7. The proposal incorporates specific features to ensure it responds appropriately to the existing or planned character, appearance, quality of development, and physical characteristics of the site and surrounding property; and

8. The project sponsor has proposed mitigation measures that are consistent with the Uniform Relocation Assistance Act, chapter 8.26 RCW, chapter 486-100 WAC, as now exists or is hereafter amended when otherwise required by law.

F. Decision Criteria for Type Two Facilities – Local Essential Public Facilities. The planning commission may recommend approval, or condition its recommendation for approval; and the city council may approve, or condition its approval, of a conditional use permit for a local EPF only when the proposal meets all of the following criteria:

1. The proposal shall be consistent with the comprehensive plan and types of uses of the underlying zoning of the proposed site including being consistent with the environmental impacts of the underlying zoning permitted uses;

2. The project applicant has demonstrated a need for the project, as supported by an analysis of the projected service population, an inventory of existing and planned comparable facilities, and the projected demand for the type of facility proposed;

3. If applicable, the project would serve a significant share of the city's population, and the proposed site will reasonably serve the project's overall service population;

4. The applicant has reasonably investigated alternative sites, as evidenced by a detailed explanation of site selection methodology;

5. The project is consistent with the applicant's own long-range plans for facilities and operations;

6. The project has fewer impacts in the particular geographic area in contrast with other available locations;

7. The applicant has provided a meaningful opportunity for public participation in the siting decision and development of mitigation measures that is appropriate in light of the project's scope, applicable requirements of the city code, and state or federal law;

8. The proposal complies with applicable requirements of all other applicable provisions of the city code;

9. The project site meets the facility's minimum physical site requirements, including projected expansion needs. Site requirements shall be determined by the minimum size of the facility, setbacks, access, support facilities, topography, geology, and on-site mitigation needs;

10. The proposal, as conditioned, adequately mitigates significant adverse impacts to life, limb, property, the environment, public health and safety, transportation systems, economic development and other identified impacts;

11. The proposal shall not have any probable significant adverse impact on critical areas or resource lands, except for lineal facilities, such as highways, where no feasible alternative exists;

12. The proposal incorporates specific features to ensure it responds appropriately to the existing or planned character, appearance, quality of development, and physical characteristics of the site and surrounding property;

13. Major public facilities which generate substantial traffic should be sited near major transportation corridors;

14. The project sponsor has proposed mitigation measures that are consistent with the Uniform Relocation Assistance Act, chapter 8.26 RCW, chapter 486-100 WAC, as now exists or is hereafter amended when otherwise required by law;

15. The proposal will not be materially detrimental to uses or property in the immediate vicinity;

16. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property; and

17. Parity exists with the uses permitted in the same general area in their freedom from nuisance-generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. (Ord. 1670 § 3, 2009).

17.67.070 Building permit application.
A. Any building permit for an EPF approved under this chapter shall comply with all conditions of approval in the conditional use permit. In the event a building permit for an EPF is denied, the director shall submit in writing the reasons for denial to the project sponsor.

B. No construction permits may be applied for prior to approval of a conditional use permit for an EPF unless the applicant signs a written release acknowledging that such approval is neither guaranteed nor implied by the department's acceptance of the construction permit applications. The applicant shall expressly hold the city harmless and accept all financial risk associated with preparing and submitting construction plans before a final decision is made under this chapter. (Ord. 1670 § 3, 2009).

17.67.080 Special provisions for secure community transition facilities (SCTFs).
A. The purpose and intent of this section is to establish standards for secure community transition facilities (SCTFs) in compliance with chapter 71.09 RCW, and to maintain compatibility with other land uses and services permitted within the city. The standards in this section apply to all SCTFs in addition to the conditional use permit process set forth under BMC 17.68.060; the standards of this section are not subject to variance.

B. SCTFs conforming with the standards set forth below (in addition to approval under standards set forth pursuant to BMC 17.67.060, criteria for EPFs) may be approved by conditional use permit. The following additional siting criteria apply to SCTFs:

1. SCTFs should be located near transit facilities, as appropriate.

2. No SCTF shall be permitted within one mile from any existing SCTF, work release, prerelease, or similar facilities, and shall not result in disproportionate grouping of similar facilities pursuant to RCW 71.09.250(8) and (9).

3. On-Site Facilities Required. Each SCTF shall have the capability to provide on-site dining, on-site laundry or laundry service, and on-site recreation facilities to serve the residents.

4. SCTFs shall not be permitted adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a conditional use is applied for consideration. "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: public and private schools, school bus stops, licensed day care

and licensed preschool facilities, public and private parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

5. Siting of SCTFs shall be in accordance with the siting criteria of chapter 71.09 RCW, and regulations adopted pursuant thereto. In addition, no SCTFs shall be sited closer than 1,000 feet from any residentially zoned or utilized property.

6. SCTFs shall provide the following staffing and security measures:

a. The owner and operator of the SCTF shall submit and maintain a plan for staffing, security measures, procedures for immediate public notification of escapes, and escapee search procedures ("the plan"), all in a form and content satisfactory to the director. The security measures shall indicate the types of security measures/facilities proposed for the SCTF including, but not limited to, constant electronic monitoring of residents, site security measures/equipment, and site access and control consistent with chapter 71.09 RCW, unless otherwise ordered by a court. The plan, along with documentation of the director's concurrence in or rejection of the plan, shall be included in materials submitted to and reviewed by the planning commission; provided, that the security plan made part of the public record shall not be in such detail that security of the facility would be compromised.

b. The owner and operator of the SCTF shall enter into a contract with the city, in a form and content satisfactory to the city attorney, committing the owner and operator to comply with and maintain the plan for the life of the facility.

c. The applicant shall install an eight-foot-high fence, in character with the surrounding area, between the facility and all property boundaries. This fence shall be set back at least 10 feet from the property boundaries and screening landscaping as defined within BMC 17.50.090 shall be installed between the property boundary and the fence. The planning commission may waive or lessen this requirement upon finding that due to existing site features or the type or character of adjoining uses, the privacy and security of the occupants of adjoining properties can be maintained in the absence of a fence or with a lower fence, or with reduced landscaping requirements.

d. The facility shall have a backup power source.

7. The total number of SCTF beds in an SCTF shall be no greater than the total number of beds required be sited in a county under RCW 71.09.250(7)(a). The number of SCTF beds in a proposed SCTF shall be reduced below the maximum number required in a county when public safety and security considerations including site characteristics, program components, average response time of emergency services to the general area, and proximity of proposed site to risk activity exists and alternative siting is available elsewhere within the county.

C. Application Materials. In addition to the regular application materials required for a land use review pursuant to chapter 17.68 BMC and BMC 17.67.050, an application for an SCTF shall also include:

1. The siting process used for the SCTF, including alternative locations considered.

2. An analysis showing that consideration was given to potential sites such that siting of the facility will not result in a concentration of similar facilities in a particular neighborhood, community, jurisdiction, or region.

3. Proposed mitigation measures, including the use of buffering from adjoining uses.

4. A general overview of planned security for the facility.

5. A schedule and analysis of all public input solicited or to be solicited during the siting process.

6. Notice of the application to all property owners and occupants of record within one mile of the proposed site. (Ord. 1670 § 3, 2009).

17.67.090 Processing timelines.
A. Notice of the city council final decision following the public hearings on a project permit application shall be issued within 120 days from when the permit application is determined by the director to be technically complete for processing.

B. In determining the number of days that have elapsed after an application is technically complete, the following periods shall be excluded:

1. Any period during which the city asks the applicant to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the city mails notification to the applicant of the need for additional information until the date the city determines whether the additional information satisfies the request for information, or 28 days after the applicant supplies the information to the city, whichever is earlier. If the information submitted by the applicant under this subsection is insufficient, the city shall mail notice to the applicant of the deficiencies and the provisions of this subsection shall apply as if a new request for information had been made;

2. Any period during which an environmental impact statement is being prepared;

3. The period specified for administrative appeals of project permits;

4. Any period during which processing of an application is suspended pursuant to verification of compliance with required notice requirements; and

5. Any period of time mutually agreed upon by the applicant and the city.

C. The time periods established by this section shall not apply to a project permit application:

1. That requires an amendment to the comprehensive plan or a development regulation in order to obtain approval;

2. That is substantially revised by the applicant, in which case a new 120-day time period shall start from the date at which the revised project application is determined to be complete;

3. That requires approval of a development agreement by the city council;

4. When the applicant consents to an extension; or

5. During any period necessary for reconsideration of a planning commission's decision.

D. The city shall notify the applicant in writing if a notice of final decision on the project has not been made within the time limits specified in this section. The notice shall include a statement of reasons why the time limits have not been met and an estimated date of issuance of a notice of final decision.

E. Failure of the city to make a final decision within the timelines specified by this chapter shall not create liability for damages. (Ord. 1670 § 3, 2009).

17.67.100 CUP city council authority – Final decision.
A. The designated hearing body, giving substantial weight to the recommendations of the staff report, shall review the application under the following criteria:

1. Whether the proposed action as recommended by city staff and the planning commission is consistent with the criteria established under BMC 17.67.060 and 17.67.080 if applicable;

2. Whether modifications to recommended conditions or restrictions, if any, are adequate to mitigate impacts in a manner which meets the standards of this code and any related development agreement; and

3. Whether project conditions cumulatively are reasonable and would not preclude development of the EPF.

B. Recognizing that RCW 36.70A.200(2) prohibits the city from precluding the siting of an essential public facility, if the permit application proposes siting of a project in a location other than the city's preferred location as recommended by city staff or otherwise designated under the city's comprehensive plan or zoning code, the applicant shall present information as to why the city's preferred location, rather than the location applied for, will preclude development of the project. The applicant shall provide any engineering, financial and other studies and information necessary to explain its position, unless it has already done so through the comprehensive planning process. However, financial studies will not be required for linear transportation projects, such as roads and highways, proposed by the Washington State Department of Transportation. The city council, with additional analysis and input from city staff and the planning commission, if requested, shall make findings and a decision as to whether siting the project at the city's preferred location would be impossible, impracticable, or otherwise preclusive. The said findings and decision shall not be deemed, however, to preclude the authority of a regional decision-making body, under law now existing or subsequently amended, to determine where a regional EPF shall be sited, assuming applicable laws and legal requirements are complied with. This section shall not apply to the siting of SCTFs.

C. As a condition of approval pursuant to BMC 17.67.060, the planning commission may recommend and the city council may:

1. Increase requirements in the standards, criteria, or policies established by this title;

2. Stipulate the exact location as a means of minimizing hazards to life or limb, property damage, impacts to the environment, erosion, underground collapse, landslides, or transportation systems;

3. Impose conditions necessary to avoid, minimize or mitigate any adverse impacts identified as a result of the project;

4. Require the posting of construction and maintenance bonds sufficient to secure to the city the estimated cost of construction, installation and maintenance of required improvements;

5. Impose any requirement that will protect the public health, safety, and welfare; and

6. Impose conditions as may be deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. (Ord. 1670 § 3, 2009).

Chapter 17.68

THE LAND USE PERMIT PROCESS – FRAMEWORK FOR DECISIONMAKING

Sections:

17.68.010 Intent and scope.
17.68.020 Definition of terms used in this chapter.
17.68.030 Land use decision framework.
17.68.040 Land use permits required.
17.68.050 Applications – General.
17.68.060 Review criteria for decisions.
17.68.070 Notice requirements, type and content of notice – General.
17.68.080 Notice of application requirements and comment period.
17.68.090 Public hearing requirements.
17.68.100 Notice of decision requirements and content of notice.
17.68.110 Standards to ensure performance and compliance with conditions.
17.68.120 Expiration of land use approvals.
17.68.130 Conditional use applications, when required, submittal requirements, review criteria and conditions of approval.
17.68.140 Variance applications, when required, submittal requirements, review criteria and conditions of approval.
17.68.150 Plan review, when required, application submittal requirements, review criteria and conditions of approval.
17.68.155 *Repealed.*
17.68.160 Reclassification of property including rezone and contract rezone and zoning ordinance text amendments, initiation of amendments, review criteria and conditions of approval.

17.68.010 Intent and scope.

A. The purpose of the land use permit process is to promote informed public participation in discretionary land use decisions, eliminate redundancy in the application submittal process, and minimize delays and expense in appeals of land use decisions.

B. Increasing opportunities for public comment and getting the concerned public involved early in the process are the primary goals. This makes it feasible for the project developer to be responsive to the issues raised and will result in better projects, among other benefits.

C. Each proposed development project shall obtain a land use permit as required by BMC 17.68.040, which shall contain all the components required for the project. The broadest applicable public notice shall apply.

D. This chapter consolidates all land use decisions and constitutes the permit process for BMC Title 17, Zoning, BMC Title 16, Subdivisions, chapter 15.12 BMC, State Environmental Policy Act Guidelines, chapter 15.13 BMC, Methods to Mitigate Development Impacts, chapter 15.15 BMC, Critical Areas, and chapter 15.16 BMC, Requirements for Building and Land Use Permit Applications. All permit components required by this chapter are applied for and reviewed concurrently, except for variances, lot boundary adjustments and short subdivisions that may be decided prior to other land use elements.

E. The Zoning Code, BMC Title 17, other relevant chapters of the Burlington Municipal Code relating to utilities, transportation, sewers, and any other infrastructure elements, the adopted comprehensive plan and related technical plans as they may be further amended, identify the types of land use, specify residential density, and provide for funding of public facilities to form the foundation for project review. The land use permit process and the consideration of consistency start from this point and these land use planning decisions will not be re-analyzed in making a permit decision.

F. Through the consolidated land use permit process specified in this chapter, the city will determine whether existing requirements, including the applicable regulations or plans, adequately analyze and address a project's

environmental impacts, avoiding the need for additional studies and mitigation where existing regulations have adequately addressed a proposed project's probable specific adverse environmental impacts.

G. Consistency of a proposed project with the applicable development regulations or plans is determined by considering four factors as follows:

1. Type of land use allowed;

2. Level of development allowed, such as units per acre or other measures of density;

3. Infrastructure, such as the adequacy of public facilities and services to serve the proposed project;

4. The character of the proposed development, such as compliance with specific development standards.

For the purpose of this section, the term "consistency" shall include all terms used in this chapter and the Growth Management Act including but not limited to compliance, conformity and consistency. Nothing in this section requires documentation, dictates the process for considering consistency or limits the city from asking more specific or related questions with respect to any of the four categories listed in subsection (G)(1) through (G)(4) above.

H. Applicable regulations or plans shall be determinative of the:

1. Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as business parks, cluster subdivisions, and conditional uses, if the criteria for their approval have been satisfied;

2. Density of residential development; and

3. Availability and adequacy of public facilities identified in the comprehensive plan, and the plan provides for construction and/or funding of these facilities as part of a development proposal.

During project review the city shall not re-examine any alternatives to or hear appeals on the items identified in subsection (H), except for issues of code interpretation. Any interested person may file a written request for a code interpretation. The process for code interpretation is provided in BMC 17.03.020.

I. Nothing in this section limits the authority of the city to approve, condition or deny a project as provided in the applicable development regulations and policies. Project review shall be used to identify specific project design and conditions relating to the character of the development, such as the details of site plans, curb cuts, drainage swales, payment of voluntary mitigation or impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts, if applicable.

J. Any public meeting or required open record hearing may be combined with any public meeting or open record hearing that may be held on the project by another local, state, regional, federal, or other agency, subject to the public notification requirements of this chapter. (Ord. 1318 § 1, 1996; Ord. 1221 § 10, 1992).

17.68.020 Definition of terms used in this chapter.

A. Use – Establish or Change. This is the decision that a use is permitted in the zone and that it meets the development standards, such as setbacks, parking. It is not a discretionary decision, but is often combined with one.

B. Plan Review. Plan review at a public meeting by the planning commission is required for most new construction projects to assure that all land use permits and approvals comply with the use, development and all other standards of this title and related land use standards, rules, policies and procedures. Plan review decisions may be appealed to the city council pursuant to BMC 17.76.070.

C. Environmental Review. See Chapters 15.12 and 15.13 BMC for detailed requirements. This includes the determination of significance (DS), which requires preparation of a detailed environmental impact statement (Draft and Final EIS) for large projects and other projects with significant adverse environmental impacts. Environmental review also includes the determination of nonsignificance (DNS). This determination often includes conditions to

mitigate the adverse impacts of a project, in which case it is a mitigated determination of nonsignificance (MDNS). The threshold for requiring environmental review is the construction of more than four dwelling units, grading more than 500 cubic yards, the construction of more than 4,000 square feet of commercial space, construction of a parking lot for more than 20 cars, or as further defined by WAC 197-11-800 (Washington Administrative Code regulations) and Chapter 15.12 BMC.

D. Subdivision Decisions. There are four types of subdivision decisions which are further defined in BMC Title 16:

1. Lot Boundary Adjustment. Moves existing property lines; no new lots created.

2. Binding Site Plan. Used for commercial and industrial properties that are leased or sold, often frequently moving property lines as tenants demand.

3. Short Subdivision. Process to create or redivide land into four or fewer lots. Review elements include location, access, configuration, and availability of utilities. Review by the planning commission is required.

4. Long Subdivision. Process to create any number of lots. Substantial public improvements are typically required, such as construction of streets, sewers, and sidewalks to provide safe walking areas for children attending school. One open public hearing is required before the planning commission who makes a recommendation to the city council, and a public meeting is required before the city council.

E. Zoning Exceptions and Changes.

1. Conditional Use. Allows a use to be located in a zone where it is not normally permitted, if certain conditions can be met. One open public hearing is required before the planning commission who makes a recommendation to the city council, and one public meeting is required before the city council; provided, that a closed record appeal may be held in the event that a request for further consideration is filed.

2. Variance. Allows relief from the dimensional standards of the zoning code, such as front, side or rear setbacks. It requires an open public hearing before the board of adjustment. Variances may also be sought from the noise ordinance and the floodplain requirements of the critical areas ordinance.

3. Rezone Including Contract Rezone. This is a zoning map amendment. It changes the list of permitted uses on the site as well as the height, setback and other limitations, such as changing from residential to commercial or industrial. One open public hearing is required before the planning commission who makes a recommendation to the city council, and one public meeting is required before the city council; provided, that a closed record appeal may be held in the event that a request for further consideration is filed. If there are conditions required by the city council, a contract shall be executed as further provided in this chapter.

4. Zoning Text Amendment. This is a change to the text of the code, such as adding a use to the list of uses permitted in a zone. One open public hearing is required before the planning commission who makes a recommendation to the city council, and one public meeting is required before the city council.

F. Comprehensive Plan. A generalized coordinated land use policy statement of the city that guides the future physical development of the community and assists in land use decisions, capital improvement planning and enactment of development regulations. One open public hearing is required before the planning commission who makes a recommendation to the city council, who may adopt by resolution the plan or any part of the plan.

G. Permit Process Terminology.

1. "Closed record appeal" means an administrative appeal on the record to the city council, following an open record hearing on a project permit application. When the appeal is on the record, the city council's review shall be based on the record, with no or limited new evidence or information allowed to be submitted and only oral or written appeal argument based on the record. If the city council examines the record and determines that a factual error exists or that essential information is missing from the record, the city council may, except in the case of a preliminary plat:

a. Remand the request and record to the director for further consideration and report; or

b. Remand the request to the planning commission and direct the planning commission to conduct another hearing, limited to the consideration of perceived factual error or new information and to reconsider the recommendation; or

c. Open the record to correct the factual error or receive the new information. The city council shall conduct a hearing on the new or corrected information. The city council may hear testimony from those who testified before the planning commission, and may accept written or oral argument based on the record. Notice of the hearing shall be mailed at least seven days prior to the hearing to the parties of record.

In the case of a preliminary plat, the recommendation shall be submitted to the city council not later than 14 days following action by the planning commission. Upon receipt of the recommendation on any preliminary plat, the city council shall at its next public meeting set the date for the public meeting where it shall consider the recommendations of the planning commission and may adopt or reject the recommendations of the planning commission based on the record established at the planning commission public hearing. If, after considering the matter at a public meeting, the city council deems a change in the planning commission's recommendation is necessary, the city council shall adopt its own recommendations and approve or disapprove the preliminary plat. Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.

2. "Open record hearing" means a hearing, conducted by the planning commission, board of adjustment or city council, that creates the city's record through testimony and submission of evidence and information. An open record hearing may be held prior to a decision on a project permit, known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit application.

3. "Land use permit" or "land use permit application" includes but is not limited to building permits, subdivision decisions, conditional uses, plan reviews, site-specific rezones, but excludes the adoption or amendment of a comprehensive plan or development regulations.

4. "Public meeting" means an informal meeting, hearing, workshop or other public gathering of people to obtain comments on a proposed land use permit before the city's decision. A public meeting may include, but is not limited to, a design review board or planning commission meeting or a neighborhood meeting. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the land use permit application file. (Ord. 1318 § 2, 1996; Ord. 1221 § 10, 1992).

17.68.030 Land use decision framework.

A. Land use decisions are classified into four categories based on the amount of discretion and level of impact associated with each decision. Procedures for the four different categories are distinguished according to who makes the decision, the type and amount of public notice required, and whether appeal opportunities are provided. Land use decisions are consolidated as components of the land use permit.

B. Type I decisions are nonappealable decisions made by the director which require the exercise of little or no discretion. Type I decisions include the following components:

Lot Boundary Adjustment

Binding Site Plan

Single-Family Zoning Plan Review

Determination of Significance (Environmental Impact Statement required)

Uses Permitted Outright

Sign Permits Meeting Standards

Temporary Uses for up to Two Weeks

C. Type II decisions are discretionary decisions that involve two review steps. The first step is a report and recommendation or decision by the director, with a final decision made by one of three decisionmaking bodies, city council, board of adjustment, or planning commission. The final decision-making body for each decision is listed as follows:

1. Planning Commission:

Temporary Uses for more than two weeks

Shoreline Substantial Development Permits

2. Board of Adjustment:

Zoning Variances

Floodplain Variance and Appeals

Noise Standards Variance

Sign Variance

Administrative Rules

Accessory Dwelling Unit

3. City Council:

Environmental (SEPA) appeal of the decision to grant a permit based on environmental review, with or without conditions

Plan review appeal of the decision to grant a permit based on the planning commission's plan review criteria with or without conditions

Short subdivision appeal of the decision to grant a permit based on the short subdivision review criteria, with or without conditions

D. Type III decisions are quasi-judicial decisions made by the city council pursuant to existing legislative standards and based on the planning commission's record, open record public hearing and recommendation, and a public meeting or closed record appeal by the city council.

Type III decisions include the following components:

Full Subdivisions (preliminary plat)

Zoning Map Amendments (Rezone and Contract Rezone)

Conditional Use Permits

Essential Public Facility Conditional Use Permit

E. Type IV decisions are quasi-judicial decisions made by the council in its capacity to establish policy and manage public lands, pursuant to existing legislative standards and based on the planning commission's record, public meeting and recommendation, and an open record public hearing by the city council.

Zoning Text Amendments

Comprehensive Plan Adoption and Amendment

Citywide Rezoning to Implement Comprehensive Plan

F. For projects requiring more than one type of decision, all decisions must be made prior to issuance of a land use permit, except that a variance, lot boundary adjustment or short subdivision may be decided prior to other land use elements. All conditions established by the decision-making bodies in their decisions shall be incorporated in any subsequently issued land use permit or construction permit for the project.

G. Land use permits requiring only Type I decisions are categorically exempt from the State Environmental Policy Act (SEPA) and do not require environmental review. All land use permits requiring environmental review include a Type II decision and may include a Type I decision. For these projects, SEPA review procedures established in chapter 15.12 BMC are supplemental to the procedures set forth in this chapter. (Ord. 1670 § 6, 2009; Ord. 1318 § 3, 1996; Ord. 1221 § 10, 1992).

17.68.040 Land use permits required.
A. A land use permit shall be required to establish or change use of land or a structure and to expand the existing use of land or a structure. The issuance of a building permit shall constitute the land use permit for Type I decisions.

B. Type I, II and III decisions are components of land use permits. Land use permits shall be required for all projects requiring one or more of these decisions.

C. An application shall be deemed abandoned and void if the applicant has failed without reasonable justification to supply all required information or data within 60 days of a written request for it; provided that the director may extend the period for such submission if it is determined that the delay was not the fault of the applicant. (Ord. 1221 § 10, 1992).

17.68.050 Applications – General.
A. Applications for land use permits shall be made by the property owner, lessee, contract purchaser, or a city agency, or by an authorized agent thereof.

B. All applications for land use permits shall be made to the director on a form provided by the department.

C. Applications shall be accompanied by payment of the applicable filing fees, if any, as adopted by city council resolution in the current fee schedule of the city.

D. All land use permit decisions necessary for a project shall be included in the same application; provided, that at the applicant's discretion, a separate land use permit application may be filed for a variance, lot boundary adjustment and/or short subdivision approval if no environmental review pursuant to chapter 15.12 BMC, Environmental Policy, is required for the proposed project, or if SEPA review is required only because the project is located in an environmentally sensitive area or over water.

E. All applications shall contain the submittal information required by the applicable sections of this chapter and related sections of BMC Title 17, Zoning; BMC Title 16, Subdivisions; chapter 15.12 BMC, Environmental Policy; chapter 15.13 BMC, Impact Fees; and chapter 15.15 BMC, Regulations for Critical Areas. The director may require additional material from the applicant such as maps, text, or models when the director determines that such material is needed to accurately assess the proposed project. See also BMC 15.16.020 for the requirement for a determination of completeness to the applicant.

F. Time Limits.

1. See BMC 15.16.020 for time limits on the determination of completeness to the applicant.

2. Except as otherwise provided in subsection (F)(3) of this section, the city shall issue its notice of final decision on a land use permit application within 120 days after the city notifies the applicant that the application is complete (determination of completeness). The following time periods shall be excluded:

a. Any period during which the applicant has been requested by the city to correct plans, perform studies, or provide additional required information. The period shall be calculated from the date the city notifies the applicant of the need for additional information until the earlier of the date the city determines whether

the additional information satisfies the request for information or 14 days after the date the information has been provided to the local government;

b. If the city determines that the information submitted by the applicant under subsection (F)(2)(a) of this section is insufficient, it shall notify the applicant of the deficiencies and the procedures under subsection (F)(2)(a) of this section shall apply as if a new request for studies had been made;

c. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to chapter 43.21C RCW and chapter 15.12 BMC, subject to an agreement between the city and the applicant in writing to a time period for completion of an environmental impact statement;

d. Any period for administrative appeals of project permits, if an open record appeal hearing or a closed record appeal is allowed. The time period for and open record appeal hearing shall not exceed 90 days and 60 days for a closed record appeal. The parties to an appeal may agree to extend these time periods;

e. Any extension of time mutually agreed upon by the applicant and the local government.

3. The time limits established by subsections (F)(1) and (F)(2) of this section do not apply if a project permit application:

a. Requires an amendment to the comprehensive plan or development regulation;

b. Requires approval of the siting of an essential public facility;

c. Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete under BMC 15.16.020.

4. If the local government is unable to issue its final decision within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of the reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.

G. The applicant or authorized agent shall attend all public meetings and/or public hearings or the matter shall be continued until the applicant or authorized agent is available to attend. A single person or entity shall be designated by the applicant to receive determinations and notices required by this chapter. (Ord. 1799 § 25, 2014; Ord. 1318 § 4, 1996; Ord. 1221 § 10, 1992).

17.68.060 Review criteria for decisions.
A. General. Compliance with all applicable codes, ordinances, standards and procedures is required prior to authorization of compliance with the zoning code. This includes but is not limited to Subdivision, Critical Areas, Interim Controls, Voluntary Mitigation Agreements pursuant to SEPA, in addition to this code.

B. Plan Review. See BMC 17.68.150.

C. Conditional Use Permit. See BMC 17.68.130.

D. Variances. See BMC 17.68.140 for Zoning Variance, chapter 17.58 BMC for Noise Variances, chapter 15.15 BMC for Flood Plain.

E. Subdivisions. See Title 16.

F. Environmental (SEPA – State Environmental Policy Act). See chapters 15.12 and 15.13 BMC. (Ord. 1221 § 10, 1992).

17.68.070 Notice requirements, type and content of notice – General.
A. Process for Notification. If public notice is required, notice shall be in accordance with subsection (D) of this section. The general intent is to give the broadest notice on application (notice of application). When notice of application is required, it shall be given to the public and city departments and agencies with jurisdiction as provided

in this section. If the city has made a determination of significance under chapter 15.12 BMC concurrently with the notice of application, the notice of application shall be combined with the determination of significance and scoping. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application. Next step is notice of public meeting and/or notice of public hearing, whichever applies to the project. This is followed by notice of decision/opportunity for appeal or opportunity to request further consideration.

B. Types of Public Notice. The following is a description of the types of notice utilized as further provided in this chapter.

1. Post a large sign on the site. Specific standards shall be set by administrative rule. The sign shall be a four-foot by four-foot half sheet of plywood. There shall be precise specifications about what goes on the sign, and they shall all be of a standard design except for the specifics about the project. These shall be furnished by the applicant. The processing of the application will not begin until the large sign is in place. The large sign shall be located so as to be clearly visible from the adjacent street or sidewalk, and shall remain posted until final city action on the application has been completed. For sites that are not highly visible, location of the large sign shall be approved by the director or alternative means of notification provided to include mailed notice. Projects limited to interior remodeling are exempt from the large sign requirement. Large sign standards shall be adopted by administrative rule.

2. Publication of a notice in the official newspaper or newspaper of general circulation. The legal publication of notice shall be easily identifiable, language should be simple and descriptive, not bureaucratic.

3. Individual mailed notice to owners and occupants in a 600-foot radius of the site. The notice shall provide a brief description of the proposed project and its location and identify any opportunities for comment, appeal, public hearings, and the means for obtaining additional information.

4. Monthly bulletin providing update on all projects. Posted in City Hall, the library, mailed out to neighborhood planning committees and others. This shall include specific projects, proposed code changes, significant dates, describing opportunities for comment or appeal.

5. Public access channel if available on cable TV; public service broadcasts on local radio station. This is used for major projects and citywide issues.

6. Notice to applicant and to persons who have expressed an interest in the project. These are the parties of record who are apprised of each action taken on a proposed project.

7. Open meeting notice. This shall include posting in City Hall and the library and mailing to the news media and interested persons.

8. Mailed notice to adjacent property owners.

D. Types of Notice Required for Each Land Use Action.

1. Use, establish or change – None required.

2. Plan review by planning commission.

Notice of application –

Monthly bulletin

Open meeting notice

3. Establish accessory dwelling unit.

Mailed notice to adjacent property owners

4. Environmental (SEPA) review.

a. *Determination of nonsignificance and mitigated determination of nonsignificance –*

Notice of application –

Post a large sign on site

Monthly bulletin

Mailed notice to adjacent property owners

Notice of decision – Appeal opportunity –

Publish in the city official newspaper

Monthly bulletin

Notice to parties of record

b. *Determination of significance, scoping notice, draft and final environmental impact statement –*

Notice of application –

Post a large sign on site

Monthly bulletin

Mailed notice to adjacent property owners

Determination of significance – none required

Scoping notice –

Publication in official newspaper and newspaper of general circulation

Monthly bulletin

Mailed notice

Notice of draft environmental impact statement availability and public hearing –

Publication in official newspaper

Monthly bulletin

Mailed notice

Open meeting notice

Public access channel

Final environmental impact statement –

Publication in official newspaper

Monthly bulletin

Notice to parties of record

5. Lot boundary adjustment – None required.

6. Binding site plan – None required.

7. Short subdivision – Mailed notice to adjacent property owners.

8. Full subdivision.

Notice of application –

Post large sign

Publication in official newspaper

Mailed notice

Monthly bulletin

Notice of public hearings –

Publication in official newspaper

Mailed notice

Monthly bulletin

Open meeting notice

Notice of decision –

Notice to parties of record

9. Conditional use – Notice of application and public hearing may be combined for a minor conditional use permit such as a drive-in use.

Notice of application –

Publication in official newspaper

Mailed notice

Monthly bulletin

Notice of public hearings –

Publication in official newspaper

Mailed notice

Monthly bulletin

Open meeting notice

Notice of decision –

Notice to parties of record

10. Variance, including zoning, flood and noise – Notice of application and public hearing may be combined for a variance.

Notice of application –

Publication in official newspaper

Mailed notice

Monthly bulletin

Notice of public hearing –

Publication newspaper

Mailed notice

Notice of decision –

Notice to parties of record

11. Rezone and contract rezone.

Notice of application –

Publication in official newspaper

Mailed notice

Monthly bulletin

Notice of public hearing(s) –

Publication in official newspaper

Mailed notice

Monthly bulletin

Open meeting notice

Notice to parties of record

Notice of decision –

Notice to parties of record

12. Zoning text amendment.

Notice of public hearing(s) –

Publication in official newspaper

Monthly bulletin

Open meeting notice

Notice to parties of record

13. Comprehensive plan adoption and amendment.

Notice of public hearing(s) –

Publication in official newspaper

Monthly bulletin

Open meeting notice

Notice to parties of record

Public access channel

E. Contents of Notice.

1. Notice of application shall include:

a. The notice shall provide a description of the proposed project action, identify the nature and location of the project;

b. The date of application, the date of the notice of completeness (BMC 15.16.020) for the application, the date of the notice of application;

c. If applicable, a list of any studies requested, identify any permits not included in the application to the extent known by the city, identify existing environmental documents that evaluate the proposed project, and the location where the application and any studies can be reviewed;

d. A statement that persons who desire to submit comments on the application or who request notification of the decision may so inform the director in writing within the comment period specified in this notice, except that all projects that require mailed notice include a mailing to property owners within 600 feet of the site who receive notice of an opportunity to participate in any hearings. The city may accept public comments any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;

e. The notice shall also state any appeal rights;

f. Except for the large sign requirement, each notice shall also include a list of the land use decisions sought. The director shall specify detailed requirements for large signs;

g. The notice shall state the date, time, place and type of hearing, if applicable, and scheduled at the date of notice of the application; and

h. A statement of the preliminary determination, if one has been made at the time of notice of those development regulations that will be used for project mitigation and of consistency as provided in BMC 17.68.010; and

i. Any other information deemed appropriate by the director.

2. Notice of open public hearing shall include elements (E)(1)(a), (e), (g), (h) and (i) above.

F. When a land use permit includes more than one decision component, notice requirements shall be consolidated and the broadest applicable notice requirements imposed. (Ord. 1318 § 5, 1996; Ord. 1252 § 1, 1994; Ord. 1221 § 10, 1992).

17.68.080 Notice of application requirements and comment period.

A. Notice of Application. When a land use permit application requiring a Type II or III decision is submitted, the director shall provide notice of application and an opportunity for public comment as described in this chapter, within 14 days after the determination of completeness as provided in BMC 15.16.020. No notice or public comment period shall be required for Type I decisions.

B. Comment Period. The director shall provide a 14-day public comment period prior to making a threshold determination of nonsignificance (DNS) or issuing a decision or recommendation on a proposed Type II or III land use action; provided that the comment period shall be extended to 30 days if a written request for extension is

submitted within the initial 14-day comment period. The comment period shall begin on the date notice is published in the official newspaper. Comments shall be filed with the director by 5:00 p.m, of the last day of the comment period. When the last day of the comment period is a Saturday, Sunday or federal or city holiday, the comment period shall run until 5:00 p.m. of the next business day. (Ord. 1396 § 59, 1999; Ord. 1318 § 6, 1996; Ord. 1221 § 10, 1992).

17.68.090 Public hearing requirements.

Public hearings are required as listed below for the following land use permit components, prior to a recommendation, final environmental impact statement or land use decision being made. Notice of hearing shall be provided no later than 14 days prior to the hearing. Procedures for the city council shall be adopted by administrative rule.

A. Draft Environmental Impact Statement. An open public hearing is required before the director to take comments for inclusion in the final environmental impact statement.

B. Conditional Use Permit. One open public hearing is required, before the planning commission and one public meeting before the city council; provided, that a closed record appeal may be held in the event that a request for further consideration is filed:

1. Any person substantially affected by or interested in the planning commission's recommendation regarding a conditional use permit decision may submit in writing to the city council a request for further consideration, which shall be filed with the city council by 5:00 p.m. of the fourteenth calendar day following the date of mailing of the planning commission's recommendation. When the last day of the request period so computed is a Saturday, Sunday or federal or city holiday, the request period shall run until 5:00 p.m. on the next business day. The request shall clearly identify specific objections to the planning commission's recommendation, facts missing from the record, and the relief sought.

2. After city council receipt of the request for further consideration, the city council shall mail a copy of the request for further consideration and instructions for those responding to the request to those individuals who were provided written notice of the planning commission's action, the parties of record. Such notice shall be mailed at least seven days prior to the date of the city council's closed public hearing to consider the request for further consideration.

3. If there is no request for further consideration, city council action shall be based on the record established by the planning commission. The city council may allow oral or written arguments based on the record.

4. If the city council examines the record and determines that a factual error exists or that essential information is missing from the record, the city council may:

a. Remand the request and record to the director for further consideration and report; or

b. Remand the request to the planning commission and direct the planning commission to conduct another hearing, limited to the consideration of perceived factual error or new information and to reconsider the recommendation; or

c. Open the record to correct the factual error or receive the new information. The city council shall conduct a hearing on the new or corrected information. The city council may hear testimony from those who testified before the planning commission, and may accept written or oral argument based on the record. Notice of the hearing shall be mailed at least seven days prior to the hearing to the parties of record.

C. Zoning, Flood and Noise Variance. An open public hearing is required before the board of adjustment.

D. Full Subdivision. See BMC Title 16 for detailed requirements. One open public hearing is required, before the planning commission. In the case of a preliminary plat, the recommendation shall be submitted to the city council not later than 14 days following action by the planning commission. Upon receipt of the recommendation on any preliminary plat, the city council shall at its next public meeting set the date for the public meeting where it shall

consider the recommendations of the planning commission and may adopt or reject the recommendations of the planning commission based on the record established at the planning commission public hearing. If, after considering the matter at a public meeting, the city council deems a change in the planning commission's recommendation approving or disapproving the preliminary plat is necessary, the city council shall adopt its own recommendations and approve or disapprove the preliminary plat. Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.

E. Rezone and Contract Rezone. An open public hearing is required before the planning commission and one public meeting before the city council, provided that a closed record appeal may be held in the event that a request for further consideration is filed:

1. Any person substantially affected by or interested in the planning commission's recommendation regarding a rezone or contract rezone decision may submit in writing to the city council a request for further consideration, which shall be filed with the city council by 5:00 p.m. of the fourteenth calendar day following the date of mailing of the planning commission's recommendation. When the last day of the request period so computed is a Saturday, Sunday or federal or city holiday, the request period shall run until 5:00 p.m. on the next business day. The request shall clearly identify specific objections to the planning commission's recommendation, facts missing from the record, and the relief sought.

2. After city council receipt of the request for further consideration, the city council shall mail a copy of the request for further consideration and instructions for those responding to the request to those individuals who were provided written notice of the planning commission's action, the parties of record. Such notice shall be mailed at least seven days prior to the date of the city council's closed public hearing to consider the request for further consideration.

3. If there is no request for further consideration, city council action shall be based on the record established by the planning commission. The city council may allow oral or written arguments based on the record.

4. If the city council examines the record and determines that a factual error exists or that essential information is missing from the record, the city council may:

a. Remand the request and record to the director for further consideration and report; or

b. Remand the request to the planning commission and direct the planning commission to conduct another hearing, limited to the consideration of perceived factual error or new information and to reconsider the recommendation; or

c. Open the record to correct the factual error or receive the new information. The city council shall conduct a hearing on the new or corrected information. The city council may hear testimony from those who testified before the planning commission, and may accept written or oral argument based on the record. Notice of the hearing shall be mailed at least seven days prior to the hearing to the parties of record.

F. Zoning Text Amendment. An open public hearing is required before the planning commission and a public meeting is required before the city council.

G. Comprehensive Plan Adoption and Amendment. A public hearing is required before the planning commission. The council may adopt by resolution the plan or any part of the plan. (Ord. 1396 § 60, 1999; Ord. 1318 § 7, 1996; Ord. 1221 § 10, 1992).

17.68.100 Notice of decision requirements and content of notice.

A. The council shall adopt written findings and conclusions in support of its decision on subdivisions, rezones, and conditional use permits. A copy of the council's findings, conclusions and decision shall be sent to all parties of record. The process for judicial review shall be subject to the requirements of the Land Use Petition Act, as codified in RCW Title 90. The transmittal shall include official notice of the time and place for seeking judicial review. The

director shall be bound by and incorporate the terms and conditions of the council's decision in permits issued to the applicant or on approved plans.

B. The planning commission minutes shall constitute the written findings and conclusions in support of its recommendations and decisions on Type II, III and IV land use permits and recommendations.

C. The board of adjustment minutes shall constitute the written findings and conclusions in support of its decisions on Type II land use permits. (Ord. 1725 § 1, 2010; Ord. 1318 § 8, 1996; Ord. 1221 § 10, 1992).

17.68.110 Standards to ensure performance and compliance with conditions.
Whenever a new development project is approved and substantial public and private improvements are required, the city shall use the following methods to ensure performance and compliance with the requirements of the land use permit:

A. Binding agreement to perform at a later date.

B. Performance bond or other security for defined time period with a 15 percent contingency fund.

C. Cash deposit or interest-bearing savings account, or other acceptable instrument of credit with a 15 percent contingency fund.

D. Covenants and/or easements that are filed with the Skagit County auditor's real property records.

E. Conditional building permits with specified compliance requirements linked to called inspections.

F. Preannexation agreements.

G. Agreement to participate in a local improvement district or other public improvement project at a later date.

H. Development agreements as provided in RCW 36.70B.170. (Ord. 1666 § 2, 2009; Ord. 1340 § 7, 1997; Ord. 1221 § 10, 1992).

17.68.120 Expiration of land use approvals.
A. Type I and II land use permits, contract rezones, and conditional use permits shall expire two years from the date of issuance. An extension of one year may be granted by the director upon a showing of substantial progress towards completion. Sites of phased projects shall be maintained in good condition, including seeding any bare ground for erosion and dust control, mowing, removal of any junk, litter or abandoned vehicles, and compliance with the nuisance and zoning codes.

B. Subdivisions shall be regulated by BMC Title 16. (Ord. 1345 § 1, 1997; Ord. 1221 § 10, 1992).

17.68.130 Conditional use applications, when required, submittal requirements, review criteria and conditions of approval.
A. A conditional use permit is required when the use proposed is listed as requiring a conditional use in the regulations for the zone in which it is located. Any project requiring a plan review for determination of the proper classification of a land use not listed requires a conditional use when the planning commission determines the need for a public hearing and conditional use review of the application.

B. An application shall be required for approval of a conditional use permit which shall include a site plan that illustrates the following:

1. Vicinity map;

2. Name, address, phone number of property owner;

3. Name, address, phone number of engineer or agent;

4. Boundaries and dimensions of property;

5. Adjacent public streets;

6. Easements, existing and proposed;

7. Location and size of all existing and proposed utilities;

8. Location of buildings, including setbacks;

9. Location and layout of off-street parking;

10. Location and height of fences;

11. Location and size of signs;

12. Landscape detail;

13. Indication of height of buildings.

C. The site plan shall be properly dimensioned and drawn to scale.

D. The site plan shall be adopted and made part of the permit. Subsequent building permits and construction activity shall be in accord with the approved site plan. Adjustments to the site plan may be approved as follows:

1. Minor Adjustments. Minor adjustments may be made and approved by the director. Minor adjustments are those which may affect the precise dimensions or siting of buildings, but which do not affect the basic character or arrangement of buildings approved, nor the development coverage of the development or the open space requirements. Such dimensional adjustments shall not vary more than 10 percent from the original.

2. Major Adjustments. Major adjustments are those when determined by the director, substantially change the basic design, coverage, open space or other requirements of the permit. When the director determines that a change constitutes a major adjustment, no building or other permit shall be issued without prior review and approval by the planning commission and city council of such adjustment.

E. Review Criteria. Conditional use permits may only be approved if findings of fact are drawn to support the following:

1. The use will have no more adverse effect on the health, safety or comfort of persons living or working in the area, and will be no more injurious, economically or otherwise to property or improvements in the surrounding area, than would any use generally permitted in the district. Among matters to be considered are traffic flow and control, access to and circulation within the property, off-street parking and loading, refuse and service areas, utilities, screening and buffering, signs, yards and other open spaces, height, bulk and location of structures, location of proposed open space uses, hours and manner of operation, and noise, lights, dust, odor, fumes and vibration.

2. The proposal is in accordance with the goals, policies and objectives of the comprehensive plan.

3. The proposal complies with all the requirements of this title.

4. The proposal can be constructed and maintained so as to be harmonious and appropriate in design, character, and appearance with the existing or intended character of the general vicinity and provides a high quality of development.

5. The proposal will not adversely affect the public infrastructure.

F. Conditions of Approval. In order to mitigate any adverse impact or support a finding of fact associated with the proposal, conditions may be imposed which could increase requirements in the standards, criteria, or regulations of this title or other city legislation or adopted policies.

G. A variance application may be processed as a component of a land use application that includes a conditional use application, as part of a consolidated land use permit application. A consolidated open public hearing shall be held before the planning commission with the conditional use application. (Ord. 1363 § 1, 1998; Ord. 1221 § 10, 1992).

17.68.140 Variance applications, when required, submittal requirements, review criteria and conditions of approval.

A. A variance is required when, because of special circumstances applicable to subject property because of size, shape, topography, location or surroundings, the strict application of this title is found to deprive subject property of rights and privileges enjoyed by other properties in the same zone and vicinity, the board of adjustment shall have the authority to grant a variance from the requirements of the title, after considering the matter at a public hearing; provided, that the planning commission will hear variance applications that are consolidated with a conditional use application.

B. Application. A site plan shall be required with each application for a variance. The site plan shall be accurately drawn using an appropriate scale and shall illustrate the following:

1. Adjacent streets and alleys;

2. Boundaries and dimensions of site and setbacks;

3. Location and dimensions of buildings;

4. Location and dimensions of parking areas;

5. Location and dimensions of feature needing variance.

C. Review Criteria. Subject to conditions, safeguards and procedures provided by this title, the board of adjustment may be empowered to hear and decide applications for variances from the terms of this title provided the board of adjustment may approve a variance only if the request conforms to all of the following criteria. The board must enter findings of fact and conclusions which support the following criteria and any conditions:

1. That there are unique physical conditions including narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardships arise in complying with the provisions of this title.

2. That, because of such physical conditions, the development of the lot in strict conformity with the provisions of this title will not allow a reasonable and harmonious use of such lot.

3. That the variance, if granted, will not alter the character of the neighborhood, or be detrimental to surrounding properties in which the property is located.

4. That the special circumstances and conditions associated with the variance are not a result of the actions of the applicant or previous owners.

5. Literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.

6. The approval of the variance will be consistent with the purpose of this title and the zoning district in which the property is located.

7. The variance will not allow an increase in the number of dwelling units permitted by the zoning district.

8. The authorization of such variance will not adversely affect the comprehensive plan.

9. The variance shall not allow a land use which is not permitted under the zoning district in which the property is located.

10. The variance shall not change any regulations or conditions established by conditional use permits or contract rezones.

D. Conditions of Approval. In authorization of a variance, the board of adjustment may attach thereto such conditions regarding the location, character and other features of the proposed structure or use as may be deemed necessary to carry out the spirit and purpose of this title and in the public interest.

E. Floodplain variance and appeals pursuant to chapter 15.15 BMC shall be heard by the board of adjustment, based on the criteria established in chapter 15.15 BMC.

F. Noise ordinance variance requests pursuant to BMC 17.58.120 shall be heard by the board of adjustment, based on the criteria established in BMC 17.58.120. (Ord. 1363 § 2, 1998; Ord. 1221 § 10, 1992).

17.68.150 Plan review, when required, application submittal requirements, review criteria and conditions of approval.

A. Plan review is required for the following:

1. Parking and loading area plans for all developments, except single-family and duplex residential units on existing lots, and the addition of up to five parking spaces in an existing development.

2. Landscaping plans.

3. Determination of proper classifications of land uses not included in the lists of permitted or conditional uses for the zone.

4. Temporary conforming and nonconforming land uses and buildings for more than two weeks and not exceeding one year.

5. ~~Review of new development proposals for consistency with the city of Burlington Design Guidelines as may be amended and updated over time to reflect the city's comprehensive plan and vision for the future. The review shall not include single-family and duplex dwellings on existing lots of record or short subdivisions.~~Subdivisions and short subdivisions.

B. Application submittal requirements include the following:

1. Site plan drawn to an appropriate scale.

2. Boundary lines and dimensions for the property and all proposed lot lines. Future building locations in phased developments shall be indicated.

3. Natural features of the site, including existing significant trees, wetlands areas and special flood risk areas.

4. Location, dimensions and names of all existing or platted streets or alleys, easements, railroad rights-of-way, on or adjacent to the property.

5. Location and dimensions of all existing structures, improvements or utilities to remain, and structures to be removed.

6. Approximate location and size of storm-water ~~retention or detention~~ facilities, ~~and~~ storm drains, low impact development features, and infiltration areas.

7. Location and dimensions of all proposed structures and parking lots, to include parking and loading areas, pedestrian circulation and related access ways. Individual parking spaces shall be shown.

8. Service areas for waste disposal, recycling, loading and delivery and location of mail boxes.

9. Architectural drawings including building elevations and sections, building materials, color and type and floor plans.

10. Landscaping plans.

11. Signs, including freestanding and signs located on the building.

12. A soils report prepared by a licensed engineer or geologist identifying areas of the site suitable for storm-water infiltration and low impact development features. This report should be consistent with the Washington State Department of Ecology's Stormwater Manual for Western Washington and the guidance provided in the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for Puget Sound". The City Engineer may waive this requirement for small scale projects where the soil conditions and feasibility of low impact development techniques can be easily ascertained without the need for additional studies or analysis.

13. Any other applicable information required by title 17 BMC.

D. Review Criteria. Plan review by the planning commission includes compliance with the use and development standards, assuring that appropriate conditions are on the plans and in the recommendations of the director, determining project consistency with current design review guidelines, comprehensive plans, capital facilities and improvement plans, environmental mitigation and concurrency requirements and reasonableness of standards. Review of the site plan includes landscaping, parking and relationship of the proposed project to the public right-of-way from the pedestrian and transportation perspectives.

E. Conditions of Approval. In authorization of a plan review, the planning commission may attach such conditions as may be deemed necessary to carry out the spirit and purpose of this title and in the public interest. (Ord. 1221 § 10, 1992).

17.68.155 Transfer or purchase of development rights.
Repealed by Ord. 1717. (Ord. 1333 § 4, 1997).

17.68.160 Reclassification of property including rezone and contract rezone and zoning ordinance text amendments, initiation of amendments, review criteria and conditions of approval.
A. Initiation of Amendments.

1. Zoning Map.

a. One or more property owners of the property may submit an application requesting a reclassification of the property;

b. The city council, upon its own motion, may request the planning commission to conduct a public hearing on the reclassification of property;

c. The planning commission, as part of a citywide project to implement the comprehensive plan, may upon its own motion call for a public hearing on the reclassification of property.

2. Text.

a. The city council, upon its own motion, may request the planning commission to conduct a public hearing to amend any portion or all of this title;

b. The planning commission may upon its own motion call for a public hearing to amend any portion or all of this title;

c. Any resident or property owner of the city may petition the city to request an amendment to the text of this title.

B. Review Criteria. When the planning commission is considering recommendations for reclassifications, or when the city council is considering approval of reclassifications, the planning commission or the city council shall investigate the request for reclassification and shall consider, among other questions, the following:

1. Is the request compatible with the city's comprehensive plan and development goals?

2. Are public utilities, public facilities and other services currently adequate to serve the proposed district?

3. Would the proposal adversely affect the health, safety, or welfare of the adjacent area of the area being considered?

4. Is the reclassification or land development needed at this time?

5. What are the economic impacts of the proposed action?

6. Are the arguments of support or opposition by local citizens valid?

7. Have conditions of the area substantially changed since the original zoning to justify a rezone?

C. Amendments to Rezone Requests. A requested rezone may be changed, conditioned or modified by the city council without requiring additional hearings subject to the following:

1. The modification or change shall not result in a more intense zone than the one requested.

2. The area of the request shall not be enlarged, however, the area may be lessened.

D. Contract Rezones.

1. In order to mitigate any impacts that may result from a rezone the city may enter into a property use and development agreement with the property owner. The agreement shall outline the conditions of approval and the obligations of the property owner. The contract shall be binding upon the owner and his/her heirs, assigns and successors. The agreement shall run with the land, be signed by the property owner(s) and be recorded with the Skagit County auditor real property records within 120 days of adoption of the ordinance accepting the agreement.

2. The ordinance rezoning the property shall provide for acceptance of the agreement and shall not be effective until the agreement has been executed by the owner.

3. Amendment of Contract Rezones. Agreements required as a condition to map amendments may be amended by agreement between the owner and the city, provided that the amended agreement shall be approved by the council. Amendments which are within the spirit and general purpose of the prior decision of the council may be approved by the council by ordinance after receiving any advice which it deems necessary. Written notice and an opportunity to comment shall be provided by the council at least 14 days prior to council consideration of the amendment request to persons who submit written or oral comments on the original rezone decision. Amendments which in the judgment of the council represent a major departure from the terms of the agreement shall not be approved until the council has received the recommendations from the planning commission after a public hearing held in the same manner and pursuant to the same notice provided for map amendments. (Ord. 1396 § 61, 1999; Ord. 1318 § 9, 1996; Ord. 1221 § 10, 1992).

Chapter 17.69

DESIGN REVIEW BOARD

Sections:

17.69.010 Intent.
17.69.020 Design review board created.
17.69.030 Membership, qualifications and terms.
17.69.040 Approval required and procedures.
17.69.060 Review criteria.
17.69.070 Implementation.

17.69.010 Intent.
In addition to the general purposes of the comprehensive plan and the zoning ordinance, this chapter is included for the following purposes:

A. To encourage the realization and conservation of a desirable and aesthetic environment that is designed for the human, pedestrian scale and strengthens a sense of community.

B. To encourage and promote development which features amenities and excellence in the form of variations of siting, types of structures, and a compact pattern of development that comprises many smaller buildings reflecting a fabric of varying elements.

C. To encourage creative approaches to the use of land and related physical developments.

D. To minimize incompatible and unsightly surroundings and visual blight which prevent orderly community development and reduce community property values.

E. To supplement land use regulation to encourage a high quality of development, to promote and enhance construction and maintenance practices that will tend to promote visual quality throughout the city.

F. To recognize environmental and aesthetic design as an integral part of the planning process. (Ord. 1260 § 25, 1994).

17.69.020 Design review board created.
There is created a design review board, hereafter referred to as "the board" for the city which shall have the powers, duties and functions as provided in this chapter. (Ord. 1260 § 25, 1994).

17.69.030 Membership, qualifications and terms.
A. Created. The board shall consist of seven members who shall be appointed by the mayor and confirmed by a majority of the city council.

B. Qualifications. Insofar as practicable, at least three members of the board shall consist of architects, landscape architects, or otherwise qualified by design background, training or experience. A representative of each neighborhood planning area shall be appointed if possible.

C. Terms of Office. The initial appointment of members of the board shall be for the following respective terms: two for two years; three for three years; and two for four years; thereafter, all appointments shall be for a term of four years. A person appointed to fill a vacancy shall serve for the remainder of the unexpired term. No member of the board shall participate in discussions or vote on any matter involving any client he/she is serving or from any business of which he/she is owner, or corporation officer or employee.

D. Rules. The board shall adopt rules for the transaction of its business. The rules shall provide for a record of proceedings, reports, studies, findings, conclusions and recommendations. The rules shall provide for the election of a chairperson of the board and vice-chairperson for a one-year term each. The rules shall provide that when a member misses three consecutive meetings and is not excused, the position may be declared vacant by a majority

vote of the board. The rules shall provide that the meeting of the board shall be open to the public but that no special notice of the meetings need be given nor shall such meetings be public hearings although nothing shall prohibit the board from soliciting explanations and additional input from the applicant or applicant's representatives and such other sources as the board deems necessary to enable them to complete their review of the application. Meetings shall be set as individual projects come in for which review is required, in consideration of the fact that there will be a relatively low volume of applications.

E. Minutes. The board shall keep minutes of its proceedings and such minutes and a copy of the rules shall be kept on file in the city clerk's office.

F. Voting. The decisions of the board shall be made by a majority vote of the quorum present at the time of the decision. A majority of the members shall constitute a quorum for the transaction of business provided at least three shall be required to constitute a quorum. Action may be taken by a majority of those present when these constitute a quorum at any regular or special meeting of the board. Any number less than a quorum shall be authorized to convene at the set time and to adjourn, recess or continue a regular or special meeting to a certain time and date.

G. Staff Services. The planning director shall be responsible for the general administration of the board and may request staff services from other city departments. The planning director shall be responsible for all records, including preparation of the board's minutes. (Ord. 1260 § 25, 1994).

17.69.040 Approval required and procedures.
A. Regulated Improvements. The following actions require review and recommendation by the design review board:

1. Multifamily developments of more than 16 units;

2. Subdivisions;

3. Cluster developments;

4. Commercial development on sites one acre or larger.

B. Development Permits. No land use, building or other required permit shall be issued by the city for any regulated improvement unless it is in compliance with the plans approved by the design review board, as may be further modified by the planning commission or city council, and no significant changes shall be made in or to an architectural feature of any regulated improvement without the prior approval of the board.

C. Minor Exterior Additions and Temporary Structures. The planning director may waive the review of the board for minor exterior alterations or additions provided the addition or alteration is in the same architectural style and will not have detrimental impact on the site and/or surrounding area and provided the alterations or additions are 500 square feet or less.

D. Sequence of Approvals. Regulated improvements shall be reviewed by the design review board before review by the planning commission.

E. Time Limit. The board shall complete its review and make its recommendation within 60 days after a matter is submitted to it.

F. Effect of Recommendation. The recommendation of the design review board shall be given substantial weight by the planning commission and/or city council in their review of the proposed project. (Ord. 1260 § 25, 1994).

17.69.060 Review criteria.
A. Design guidelines shall be promulgated by administrative rule, and shall be consistent with the Comprehensive Land Use Plan.

B. Guidelines shall be reviewed and approved by the design review board and the planning commission prior to adoption. (Ord. 1260 § 25, 1994).

17.69.070 Implementation.
This chapter shall take effect no later than six months from the effective date of the ordinance codified in this chapter, or as soon as appointments are made and the process established. (Ord. 1260 § 25, 1994).

Chapter 17.70

AGRICULTURAL HERITAGE CREDIT PROGRAM

Sections:

17.70.010 Purpose.
17.70.020 Application.
17.70.030 Definition of terms used in this chapter.
17.70.040 General requirements.
17.70.050 Procedure to sell or transfer development rights from sending site.

17.70.010 Purpose.
The purpose of the agricultural heritage credit program is to provide additional residential density in specific zoning districts in exchange for a fee dedicated to transfer and/or purchase of development rights through the Skagit County farmland legacy program. The program provides a voluntary, incentive-based process for permanently preserving agricultural lands that provide a public benefit. The provisions of this program are intended to supplement land use regulations, resource protection efforts and open space acquisition programs and to encourage increased residential development density inside the city where it can best be accommodated with the least impacts on the natural environment and public services by:

A. Providing an effective and predictable incentive process for agricultural land property owners to preserve lands with a public benefit;

B. Providing an efficient and streamlined administrative review system to ensure that transfers of development rights to receiving sites are evaluated in a timely way and balanced with other county goals and policies, and are adjusted to the specific conditions of each receiving site. (Ord. 1717 § 12, 2010).

17.70.020 Application.
A. The MR-NB, B-1, C-1 and R-3 zoning district areas as shown on the official zoning map of the city of Burlington are a receiving zone for Burlington.

B. Agricultural heritage credits are assigned towards the purchase of development rights from land zoned agriculture natural resource in the Skagit County zoning ordinance and designated as significant open space connections on the development right acquisition area map, attached as Exhibit A to the ordinance codified in this chapter.

C. The residential use in the receiving zone shall be permitted at the rate of one additional residential dwelling unit per Burlington agricultural heritage credit.

D. The applicant may opt to acquire development rights from farmland that is included in the Skagit farmland legacy program and transfer those rights into the receiving zone at a rate comparable to the Burlington agricultural heritage credit formula. (Ord. 1717 § 12, 2010).

17.70.030 Definition of terms used in this chapter.
A. "Burlington agricultural heritage credit program" means a voluntary program where density of new development may be increased as specified in this title through the purchase of heritage credits at a set price established by resolution[1] directly from the city of Burlington and the funds are used by the Skagit farmland legacy program towards the purchase of farmland development rights through an interlocal agreement/contract.

B. "Development right" means one residential unit of credit. This is calculated for unincorporated Skagit County in the agriculture natural resource land zoning district (AgNRL) at the rate of one residential unit per 40 acres of farmland, or at the rate of one residential unit per county certified lot of record for development. The farmland legacy program will accumulate Burlington heritage credits until a willing seller is identified and there is enough funding to acquire one or more development rights from agricultural resource land in the area specified on Map Exhibit A, attached to the ordinance codified in this chapter.

C. "Receiving site" means the site in the recipient zoning district that will receive the increased density by purchasing Burlington heritage credits at a set fee or transferring development rights from the sending site. Receiving sites in the city of Burlington are further described in the MR-NB, B-1, C-1 and R-3 zoning districts.

D. "Sending site" means the site that is to be preserved as agricultural resource land by selling or transferring its residential development rights to the Skagit farmland legacy program or other entity approved by the Skagit farmland legacy program. Sending sites shall be maintained permanently as agricultural lands and no structures may be built on the land. Sending sites may not be in public ownership. If the sending site consists of more than one tax lot, the lots must be contiguous. For purposes of this section, lots divided by a street are considered contiguous if the lots would share a common lot line if the street was removed. See Map Exhibit A, attached to the ordinance codified in this chapter, for land generally eligible as sending sites for the purpose of this chapter. (Ord. 1717 § 12, 2010).

17.70.040 General requirements.
A. Property eligible for increased residential density is described in the MR-NB, B-1, C-1 and R-3 zoning districts.

B. Burlington agricultural heritage credits shall be used by the Skagit farmland legacy program for the acquisition of residential development rights on agricultural resource land in target locations to protect the agriculture natural resource land around the Burlington urban growth area as identified on Map Exhibit A, attached to the ordinance codified in this chapter.

C. The residential development rights of agricultural resource land shall be considered as interests in real property and may be transferred by sale or gift in part or in total as provided in this section. Once used, credits for residential development rights shall not be used again and the residential development rights of the subject property providing them shall be considered severed forever.

D. Residential development rights on agricultural natural resource land may be transferred to a specific parcel in Burlington or sold to an individual(s) or other entity such as the Skagit farmland legacy program.

E. On the receiving site, the purchase of Burlington agricultural heritage credits shall increase the underlying zoning density by one dwelling unit per heritage credit, as further designated in the MR-NB, B-1, C-1 and R-3 zoning districts. Owners of the parcels within the recipient zone districts gain additional density for their property when they purchase Burlington agricultural heritage credits for the receiving site. Detailed use and development standards for the receiving site are specified in each zoning district.

F. Burlington agricultural heritage credits shall be allocated to a specific receiving site.

G. Conservation easements shall be required for land contained in the sending site to indicate development limitations on the sending site. (Ord. 1717 § 12, 2010).

17.70.050 Procedure to sell or transfer development rights from sending site.
Note: this process may be amended by the farmland legacy program.

A. The farmland legacy program will receive Burlington heritage credit fees collected by the city and use those fees to acquire residential development rights on agriculture natural resource land in the areas identified around the Burlington urban growth area on Map Exhibit A, attached to the ordinance codified in this chapter.

B. Property owners participating in the farmland preservation program will use the following process to sell or transfer their residential development rights.

1. An owner of real property desiring to sell or transfer development rights shall submit an application for severance of development rights (sending site certification) to the Skagit farmland legacy program or other such entity as the city council may nominate. The farmland legacy program shall determine the form of the application and the information required for a complete application. The farmland legacy program shall determine if the application may be accepted. Responsibility for preparing a completed application rests exclusively with the applicant. Application for sending site certification shall include:

a. A legal description of the site;

b. A title report;

c. A brief description of the site resources and public benefit to be preserved;

d. A site plan showing the proposed conservation easement area, existing and proposed dwelling units, submerged lands, any area already in a conservation easement or other similar encumbrance and any other area, except setbacks, required by Skagit County to remain open.

2. The applicant shall submit a Skagit County lot certification if the lot is less than 40 acres in size and the farmland legacy program shall determine the number of residential development rights available for severance.

3. A preliminary estimate of value is defined by reviewing the site selection criteria and pricing formula and the estimate is transmitted to the conservation futures committee for approval and any additional steps required by the farmland legacy program.

4. To sever residential development rights approved by the farmland legacy program, the property owner shall execute a restrictive easement, (the "conservation easement"), granting to the farmland legacy program or a tax exempt organization or other governmental agency, as approved by the farmland legacy program. The conservation easement shall preclude subdivision of the subject property. If the sending site includes federal funds, an appraisal is ordered.

5. Once development rights have been severed from a sending area property in accordance with this code, the property owner may sell or transfer the development rights by executing and recording with the Skagit County auditor a deed of residential development rights, using a deed form prescribed by the farmland legacy program. The deed shall describe the number of development rights being sold or transferred.

6. The certificate of residential development rights and the restrictive easement shall be recorded by the escrow agent of the farmland legacy program with the Skagit County auditor. The owner shall provide a copy of the recorded documents to the farmland legacy program. When the documents have been recorded and the recorded documents have been received by the department, the severance is complete.

C. Procedure to Acquire and Use Burlington Agricultural Heritage Credits.

1. A request to increase residential density within a receiving area by purchasing Burlington agricultural heritage credits must be part of a land use permit application under chapter 17.68 BMC. The site plan must indicate the number of Burlington agricultural heritage credits necessary to implement the project.

2. Prior to final approval of the site plan, the applicant must buy Burlington agricultural heritage credits at the rate of one credit per additional dwelling unit.

3. The site plan, referencing the Burlington agricultural heritage credits, shall be recorded by the owner with the Skagit County auditor. (Ord. 1717 § 12, 2010).

[1] Fee is based on initial study "Demand for and Value of Density (Heritage) Credits," June 2009, and study shall be updated once every five years to ensure accurate economic basis for fee.

Chapter 17.72

VARIANCES

(Repealed by Ord. 1221)

Chapter 17.75

AMENDMENTS AND RECLASSIFICATIONS

(Repealed by Ord. 1221)

Chapter 17.76

PLANNING COMMISSION

Sections:

17.76.010 Created – Membership – Appointment – Tenure – Compensation.
17.76.020 Organization – Meetings – Rules and records.
17.76.030 Quorum.
17.76.040 Powers and duties – Statutory authority.
17.76.050 Powers and duties – Designated.
17.76.060 Recommendations to city council.
17.76.070 Appeal to city council.

17.76.010 Created – Membership – Appointment – Tenure – Compensation.
Pursuant to authority conferred by chapter 35.63 RCW, there is created a planning commission. The commission shall consist of seven in number, who shall be selected as follows:

A. The seven members shall be selected and appointed by the mayor and confirmed by the city council.

B. The term of office of the seven commissioners first appointed shall be designated from one to six years in such manner as to provide that the fewest possible terms will expire in any one year. Thereafter the term of office for each appointed member shall be six years. The terms of the first seven members appointed shall be fixed and designated by the mayor at the time of the appointment.

C. Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired term.

D. The members shall be selected without respect to political affiliations and they shall serve without compensation. (Ord. 1221 § 11, 1992).

17.76.020 Organization – Meetings – Rules and records.
The commission shall elect its own chair and create and fill such other offices as it may determine it requires. The commission shall meet on the third Wednesday of each month at 7:00 p.m., at City Hall, 833 South Spruce Street, Burlington, and all such meetings shall be open to the public in accordance with the provisions of the Open Public Meetings Act. It shall adopt rules for transaction of business and shall keep a written record of its meetings, regulations, transactions, findings and determinations, which records shall be a public record. (Ord. 1737 § 10, 2011; Ord. 1221 § 11, 1992).

17.76.030 Quorum.
A majority of the commission shall constitute a quorum for the transaction of business. Any action taken by a majority of those present at any regular or special meeting of the commission shall be taken as the action of the commission. (Ord. 1221 § 11, 1992).

17.76.040 Powers and duties – Statutory authority.
The planning commission shall have the powers and perform the duties specified in chapter 35.63 RCW, including amendments enacted after the effective date of the ordinance. (Ord. 1221 § 11, 1992).

17.76.050 Powers and duties – Designated.
A. The commission may act as the research and fact finding agency of the municipality. To that end it may make such surveys, analyses, researches and reports as are generally authorized or requested by the council.

B. The commission shall review proposed development projects for compliance with ordinances and plans for the physical development of the city, in such measure as is reasonably necessary or requisite in the interest of the general public and as further specified in the zoning and subdivision codes.

C. The commission shall make recommendations to the council on adopting zoning and subdivision ordinances.

D. The commission shall make recommendations to the council on the adoption of a comprehensive plan and amendments to the plan.

E. The commission shall make recommendations to the council as specified in BMC 17.76.060. (Ord. 1221 § 11, 1992).

17.76.060 Recommendations to city council.
A. The city council shall refer to the planning commission for its recommendation and report on:

1. Any proposed full subdivisions within the city's boundaries or proposed additions;

2. Any proposed rezone or contract rezone within the city's boundaries or proposed additions;

3. All recommendations as required by the city zoning ordinance;

4. Adoption of the comprehensive plan and any amendments to the plan.

B. The commission shall make its written recommendation within 30 days subsequent to the date it has completed its public hearing or public meeting as required by ordinance. (Ord. 1221 § 11, 1992).

17.76.070 Appeal to city council.
In the event any interested party is aggrieved by any decision of the planning commission, said interested party may apply to the Burlington city council to review the planning commission decision. Said request for review shall be made to the city planning director within 15 days of the issuance of the planning commission's written decision and transmittal of said written decision to all interested parties entitled thereto. Said application shall specify the name, address and telephone number of the interested party, the nature of the interested party's interest in the planning commission decision, and shall specifically describe the decision from which the appeal is taken. Upon receipt of such application or upon the city council's own motion, a public hearing regarding the subject matter of the planning commission decision shall be held pursuant to the procedures for city council hearings adopted by administrative rule. If, after conducting said public hearing, the city council determines that a change is necessary in the planning commission's decision, the council may affirm, modify or disaffirm the planning commission's decision. (Ord. 1291 § 1, 1995).

Chapter 17.78

BOARD OF ADJUSTMENT[1]

Sections:

17.78.010 Purpose.
17.78.020 Establishment – Membership.
17.78.030 Organization.
17.78.040 Terms of office.
17.78.050 Removal.
17.78.060 Vacancy filling.
17.78.070 Meetings.
17.78.080 Rules and records.
17.78.090 Powers and duties.
17.78.100 Appeals from board of adjustment.

17.78.010 Purpose.
The purpose of this chapter is to establish a board of adjustment for the city, to provide for their powers and duties, and to set forth their procedures. (Ord. 1221 § 12, 1992).

17.78.020 Establishment – Membership.
Pursuant to RCW 35.63.080, a board of adjustment is established, which shall consist of no less than three and a maximum of five members who are residents of the city, to be appointed by the mayor and approved by the city council. A quorum of this committee shall be three members. The board of adjustment shall also act as the board of appeals of the city building codes as stated in BMC 2.34.070. (Ord. 1470 § 1, 2001; Ord. 1221 § 12, 1992).

17.78.030 Organization.
The board of adjustment shall elect a chairman and vice chairman from among its members and shall provide a secretary who need not be a member of the board. The planning and/or building department shall provide assistance necessary to carry out the functions of the board of adjustment. (Ord. 1470 § 1, 2001; Ord. 1221 § 12, 1992).

17.78.040 Terms of office.
The initial appointments to the board of adjustment shall be staggered. One member shall be appointed for one year, two members shall be appointed for two years, and two members shall be appointed for three-year terms. Thereafter, the terms shall be for three years. (Ord. 1470 § 1, 2001; Ord. 1221 § 12, 1992).

17.78.050 Removal.
Any member of the board of adjustment may be removed by the mayor for neglect of duty or malfeasance in office. Neglect of duty shall include, but not be limited to, three consecutive unexcused absences for regular meetings, or a recurring pattern of unexcused absences, not necessarily consecutive. (Ord. 1221 § 12, 1992).

17.78.060 Vacancy filling.
Vacancies on the board of adjustment shall be filled by appointment of the mayor and approved by the city council. Appointment shall be for the unexpired portion of the term. (Ord. 1221 § 12, 1992).

17.78.070 Meetings.
The board of adjustment shall meet on the third Wednesday of each month at 6:00 p.m., at City Hall, 833 South Spruce Street, Burlington, and all such meetings shall be open to the public in accordance with the provisions of the Open Public Meetings Act. (Ord. 1737 § 11, 2011; Ord. 1221 § 12, 1992).

17.78.080 Rules and records.
The board of adjustment shall adopt rules for the transaction of its business and shall keep official minutes of its proceedings and shall keep a public record of its transactions, findings and determinations. (Ord. 1221 § 12, 1992).

17.78.090 Powers and duties.
The board of adjustment shall hear and decide the following:

A. Zoning Ordinance. To hear and decide appeals or orders, decisions or determinations made by the director regarding the application and interpretation of this title.

B. Variances. To hear, make decisions, and grant variances in accordance with chapter 17.68 BMC.

C. Uniform Codes, chapter 15.04 BMC. To hear and decide appeals of orders, decisions or determinations made by the building official regarding the application and interpretation of the Uniform Codes.

D. Majority Vote Required. The concurring vote of two members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of applicant on any matter upon which it is required to pass under this chapter. (Ord. 1221 § 12, 1992).

17.78.100 Appeals from board of adjustment.
A. Action Final. The action by the board of adjustment shall be final and conclusive unless within 10 days from the date of said action the original applicant or an adverse party makes application to a writ of prohibition or a writ of mandamus.

B. Inclusion of Findings of Fact. The board of adjustment shall, in making an order, requirement, decision or determination, include in a brief, nonverbatim written record of the case the findings of fact upon which the action is based. (Ord. 1221 § 12, 1992).

---

[1] Prior legislation: Ord. 891.

Chapter 17.81

APPEALS[1]

(Repealed by Ord. 1221)

[1] See chapter 17.78 BMC for provisions on appeal procedures.

Chapter 17.84

ENFORCEMENT OF THE ZONING CODE[1]

Sections:

17.84.010 Violations.
17.84.020 Duty to enforce.
17.84.030 —
17.84.080 *Repealed.*
17.84.090 Civil penalty.
17.84.100 *Repealed.*
17.84.110 *Repealed.*

17.84.010 Violations.
A. It is a violation of BMC Title 17 for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land or property within the city without first obtaining the permits or authorization required for the use by BMC Title 17.

B. It is a violation of BMC Title 17 for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the city in any manner that is not permitted by the terms of any permit or authorization issued pursuant to BMC Title 17, provided that the terms or conditions are explicitly stated on the permit or the approved plans.

C. It is a violation of BMC Title 17 to remove or deface any sign, notice, complaint or order required by or posted in accordance with BMC Title 15 or 17.

D. It is a violation of BMC Title 17 to misrepresent any material fact in any application, plans or other information submitted to obtain any land use authorization.

E. It is a violation of BMC Title 17 for anyone to fail to comply with the requirements of BMC Title 17. (Ord. 1206 § 6, 1992).

17.84.020 Duty to enforce.
A. It shall be the duty of the planning director to enforce BMC Title 17. The director may call upon the police, fire, health or other appropriate city departments to assist in enforcement.

B. Upon presentation of proper credentials, the director or duly authorized representative of the director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued warrant, enter any building or premises subject to the consent or warrant to perform the duties imposed by the zoning code.

C. This title shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

D. It is the intent of this title to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of this code.

E. No provision of or term used in this code is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action. (Ord. 1763 § 5, 2012; Ord. 1206 § 6, 1992).

17.84.030 Investigation and notice of violation.
Repealed by Ord. 1763. (Ord. 1206 § 6, 1992).

17.84.040 Time to comply.
Repealed by Ord. 1763. (Ord. 1206 § 6, 1992).

17.84.050 Stop work order.
Repealed by Ord. 1763. (Ord. 1206 § 6, 1992).

17.84.060 Emergency order.
Repealed by Ord. 1763. (Ord. 1206 § 6, 1992).

17.84.070 Review by the director.
Repealed by Ord. 1763. (Ord. 1206 § 6, 1992).

17.84.080 Extension of compliance date.
Repealed by Ord. 1763. (Ord. 1206 § 6, 1992).

17.84.090 Civil penalty.
Violation of or failure to comply with any of the provisions of this chapter shall be subject to a civil penalty as set forth in chapter 1.34 BMC. Each day shall constitute a separate violation. (Ord. 1763 § 12, 2012; Ord. 1206 § 6, 1992).

17.84.100 Criminal penalties.
Repealed by Ord. 1763. (Ord. 1206 § 6, 1992).

17.84.110 Additional relief.
Repealed by Ord. 1763. (Ord. 1206 § 6, 1992).

---

[1] Prior legislation: Ord. 890 Ch. 12.

Chapter 17.87

VIOLATION – PENALTY

Sections:

17.87.010 Violation deemed misdemeanor – Penalty – Additional action authorized when.

17.87.010 Violation deemed misdemeanor – Penalty – Additional action authorized when.

A. The violation of the provisions of this title or failure to comply with any of its requirements constitutes a misdemeanor and such violation shall be punishable according to the provisions of chapter 1.24 BMC. Each day such violation continues shall be considered a separate offense.

B. The owner or tenant of any building, structure, premises or part thereof, or any architect, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties provided in this chapter.

C. Nothing contained in this title shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 890 § 14.1, 1977).

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

PLANNING COMMISSION DECISION

DATE: November 16, 2016

PROJECT: Storm-water and LID Code Revisions

LOCATION: City-wide – development regulation amendment

NUMBER: DRA 1-2016

APPLICANT: City of Burlington

SUMMARY:

Amendments to titles 14, 16, and 17 BMC to ensure compliance with updated NPDES permit requirements and implement Low Impact Development regulations.

FINDINGS OF FACT:

1. The City's current NPDES permit will expire and be replaced by an updated NPDES permit on January 1, 2017.

2. The updated NPDES permit issued by the Washington State Department of Ecology requires the City to adopt, and regulate development with, the Department of Ecology's "Stormwater Manual for Western Washington".

3. Revisions to Title 14 BMC have been drafted in order to adopt, by reference, the current DOE storm-water manual. The Planning Commission finds that these changes are necessary in order to comply with the updated NPDES permit.

4. The updated NPDES permit requires the City to revise its development regulations to make "Low Impact Development" (LID) the preferred and commonly used approach to managing storm-water generated by new development.

5. Revisions to Titles 16 and 17 have been drafted in order to ensure LID is the preferred and commonly used approach to managing storm-water generated by new development. The

EXHIBIT D

Planning Commission finds these changes are necessary to comply with the updated NPDES permit.

6. The Planning Commission has reviewed the "Critical Areas Audit" prepared by the City's Planning Department and finds that the proposed code revisions are necessary to ensure compliance with applicable Washington State water quality laws. The Planning Commission further finds that the proposed code revisions are adequately supported by technical guidance and scientific information.

7. The Planning Commission finds that the State Environmental Policy Act (SEPA) Responsible Official has determined that all applicable SEPA and Burlington Environmental Policy requirements have been addressed.

RECOMENDATION:

Based on a thorough review of the record associated with this proposal, the applicable regulatory requirements, and the findings and conclusions presented above, the Planning Commission respectfully recommends that the City Council adopt the proposed revisions to the Burlington Municipal Code attached hereto as exhibits "A", "B", and "C". It is the Planning Commission's intent that underlined code language be added and that "strike-through" language be deleted.

DATED this 14th day of November 2016

Chair, City of Burlington Planning Commission

Exhibits:

"A"	Draft amendments to Title 14 BMC
"B"	Draft amendments to Title 16 BMC
"C"	Draft amendments to Title 17 BMC

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 8

CHECK ONE:

NEW BUS. ____

OLD BUS. X

AGENDA ITEM

Council Date: December 8, 2016 Subject: 2017-2022 Capital Improvement Plan

Brad Johnson, Senior Planner

Attachments: Resolution, 2017-2022 Capital Improvement Plan

SEPA Checklist, Determination of Non-significance

Planning Commission minutes

Public Hearing Required: YES ( ) NO (X)

SUMMARY

The proposed 2017-2022 Capital Improvement Plan (CIP) update is part of the city's annual budget development process. The City of Burlington is proposing to amend its comprehensive plan by adopting an updated CIP.

The Planning Commission held the public hearing on September 21, 2016 and recommends adoption; there were no public comments. The 60 day comment period by the Department of Commerce is now complete; there were no comments.

RECOMMENDATION

Motion to approve the 2017-2022 Capital Improvement Plan.

RESOLUTION NO. XX-2016

A RESOLUTION OF THE CITY OF BURLINGTON, WASHINGTON IN THE MATTER OF THE AMENDING THE COMPREHENSIVE PLAN TO ADOPT THE 2016 CAPITAL IMPROVEMENT PLAN

WHEREAS, Chapter 36.70A RCW, the Washington State Growth Management Act (GMA), requires local governments to adopt comprehensive plans and implementing regulations; and

WHEREAS, the City of Burlington adopted a GMA compliant comprehensive plan and implementing regulations in 1994; and

WHEREAS, the GMA requires that the City's comprehensive plan contain a Capital Facilities Element addressing the capital facilities that will be needed to support projected population and employment growth for a twenty year period; and

WHEREAS, the GMA requires that the Capital Facilities Element in the City's comprehensive plan include a detailed list of projects and expenditures for a six year period; and

WHEREAS, the detailed project list required by the GMA is known as the Capital Improvement Plan (CIP); and

WHEREAS, GMA normally requires that amendments to the comprehensive plan be consolidated and considered no more frequently than once a year; and

WHEREAS, updates to the CIP that are part of the City's annual budgeting process are exempt from the annual review process pursuant to RCW 36.70A.130(2)(a)(iv); and

WHEREAS, the City has prepared an updated version of the CIP as part of its annual budgeting process (see attached exhibit "A"); and

WHEREAS, the Planning Commission reviewed the updated CIP at a public meeting on September 21, 2016; and

WHEREAS, the Planning Commission recommended the City Council adopt the updated CIP (see attached exhibit "B"); and

WHEREAS, at least 60 days prior to adopting amendments to the comprehensive plan the City is required to notify the Washington State Department of Commerce; and

WHEREAS, the City's Planning Department transmitted the required notice to the Department of Commerce on September 30, 2016; and

WHEREAS, the City's SEPA responsible official issued a threshold determination of non-significance on September 30, 2016; and

WHEREAS, a 60 day public comment period was provided following the issuance of the threshold determination;

NOW, THEREFORE, BE IT RESOLVED, that the updated CIP, attached hereto as exhibit "A", shall replace and supersede all previous versions of the CIP; and

BE IT FURTHER RESOVED, that the updated CIP, attached hereto as exhibit "A", shall be incorporated into, and made a part of, the City's comprehensive plan.

INTRODUCED AND PASSED at a regular meeting of the City Council of the City of Burlington on this 8th day of December, 2016.

THE CITY OF BURLINGTON

_____

Steve Sexton, Mayor

ATTEST:

_____

Renee Sinclair
Director of Budget & Accounting

APPROVED AS TO FORM:

_____

Leif Johnson, City Attorney

Published: 12/xx/2016

CITY OF
Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

EXHIBIT A

Capital Improvement Plan 2017 - 2022
Program Category: ***Municipal Library***

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / QUESTIONS
Administration										
L-001	Pole Sign	301	12,500						12,500	
	L-001 continued	Donation	7,000						7,000	$7,000 Donation from Library Foundation
	LIBRARY TOTAL:		**19,500**	**0**	**0**	**0**	**0**	**0**	**19,500**	

Capital Improvement Plan 2017 - 2022
Program Category: ***Planning/Permit Center***

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / QUESTIONS
Administration										
PC-100	Permiting Software	301	60,000						60,000	Permitting Software will be used by Planning, Building, Public Works, Fire Marshal
	PLANNING/PERMIT CENTER TOTAL:		**60,000**	**0**	**0**	**0**	**0**	**0**	**60,000**	

Capital Improvement Plan 2017 - 2022
Program Category: ***Information Technology***

Information Technology (IT)

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / QUESTIONS
IT-001	PC Replacement	CurrExp	17,500	55,600	78,800	73,900	33,200	33,200	292,200	Ref PC repl schedule
IT-002	Server & Networking Replacement	Cap Imp	26,500	45,000	40,000	30,000	30,000	30,000	201,500	Ref server repl schedule
IT-003	Server Software Replacement & licensing	CurrExp	10,000	4,000	2,500	4,000	6,400	6,400	33,300	SW schedule based on MS rel
IT-004	Core Network Equipment Replacement	CurrExp	18,000	2,500	2,500	2,500	2,500	2,500	30,500	Ref Networking repl schedule
IT-005	Network Cyber Security	Cap Imp	25,000	25,000	5,000	5,000	5,000	5,000	70,000	Incl FG firewalls, FireEye
IT-006	City User Security 2 factor authentication	Cap Imp	5,000	5,000	5,000				15,000	new token based secure logins
IT-007	Microsoft enterprise agreement EA	CurrExp			12,000	12,000	12,000	15,000	51,000	MS WIN10 enterprise & office
IT-008	MS Office upgrades	CurrExp	4,000	4,000					8,000	Change from purchase to rental
IT-009	Misc application software upgrades	CurrExp	5,000	3,000	3,000	3,000	3,000	3,000	20,000	Ongoing application upgrades
IT-010	City web site hosting (replacement)	CurrExp	4,000	10,000	10,000	10,000	10,000	4,000	48,000	
IT-011	City phone system	Cap Imp	7,000	5,000					12,000	Mitel server hardware
IT-012	City phone system user software	Cap Imp	4,500	2,000	1,000	1,000	1,000	5,000	14,500	Mitel MiCollab user SW
IT-013	PD Server room expansion, UPS rpl	Cap Imp	12,000	2,000	2,000				16,000	Expansion for fiber racks
IT-014	Building network rewire (PD, FD, ST)	Cap Imp	70,000	30,000	5,000				105,000	CAT6 wiring
IT-015	Security cameras PD, Library, City Hall	Cap Imp	20,000	5,000	5,000				30,000	
IT-016	Cell phone Text capture	CurrExp	6,000	5,000	5,000	5,000	5,000	5,000	31,000	Req'd for PRR
IT-017	Replace City Hall projectors	Cap Imp	13,000	10,000					23,000	rpl 2007 4x3 projectors with 16x9
IT-018	Misc unplanned repairs & maintenance	CurrExp	10,000	10,000	10,000	10,000	10,000	10,000	60,000	
IT-019	Video Message board Library, City Hall	Cap Imp	2,500						2,500	
IT-020	Wireless bridges, security cameras Parks boat ramp, skate park, Grafton, SRP	Cap Imp	15,000	5,000					20,000	surveilance camera exp
IT-021	Fiber deployment Projects	Cap Imp	40,000	40,000	40,000	40,000	40,000	40,000	240,000	Connecting business (15% return)
IT-022	City WireLess projects	Cap Imp	20,000	20,000	20,000	20,000	20,000	20,000	120,000	
IT-023	Fiber Network Repairs	Cap Imp	30,000	30,000	30,000	30,000	30,000	30,000	180,000	reserve funding only
IT-024	Fiber materials, parts	Cap Imp	7,500	7,500	5,000	5,000	5,000	5,000	35,000	infastructure exp
IT-025	City Fiber expansion (County)	Grant	500,000	200,000	200,000	200,000	200,000		1,300,000	County 0.09 economic development
	INFORMATION TECHNOLOGY TOTAL:		**872,500**	**525,600**	**481,800**	**451,400**	**413,100**	**214,100**	**2,958,500**	

Capital Improvement Plan 2017 - 2022

Program Category: *Public Safety*

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / QUESTIONS
Police Department										
PS-002	Annual Vehicle Replacement	Curr Exp	168,000	115,000	140,000	150,000	140,000	180,000	893,000	
PS-004	Vehicle Replacement - Code Enf.	Curr Exp			30,000				30,000	
PS-005	Radar Trailer	Curr Exp	15,000						15,000	
PS-018	New Patrol Vehicle	Curr Exp	45,000						45,000	
PS-019	Motorcycle Traffic Unit	Curr Exp		30,000					30,000	
PS-020	Spillman Mobile Data Upgrade	Curr Exp				35,000			35,000	
PS-025	Base Station Repeater Upgrade	Curr Exp			15,000				15,000	
PS-026	Portable Radio Replacement	Curr Exp				68,000			68,000	
PS-027	Lightbar Replacement	Curr Exp						25,000	25,000	
PS-028	Total Station Investigative Tool	Curr Exp			15,000				15,000	
	POLICE TOTAL:		**228,000**	**145,000**	**200,000**	**253,000**	**140,000**	**205,000**	**1,171,000**	

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / QUESTIONS
Fire Department										
PS-101	Portable Mobile Radios	501	5,000						5,000	Modified based on AFG Grant
PS-109	Hydraulic Rescue Extraxtion	501	57,000						57,000	No Change
PS-110	Breathing Compressor/filling station	501			64,450				64,450	No Change
PS-111	Fire Hose Replacement	501	5,000	5,000	5,000	5,000	5,000	5,000	30,000	Modified for annual replacement cycle
PS-112	Ladder Truck Replaement (1) $302,404 total 10 year impact fees toward new ladder truck	501 / Imp Fee		1,500,000					1,500,000	No Change - 20 year replacement cycle, ERR Fund Developed
PS-113	Engine Replacement (2)	501			500,000				500,000	No Change - 10 year replacement cycle X 2, ERR Fund Developed
PS-114	Station Remodel for Capacity	300							0	Moved to Public Works CIP
PS-115	Self Contained Breathing Appartus	Grant				200,000			200,000	Moved to 2020 to correspond with new NFPA Standards, ERR Fund Developed
PS-116	Personal Protective Equipment	Grant	20,000	20,000	20,000	20,000	20,000	20,000	120,000	Modified for annual replacement cycle
PS-117	Satellite Station East of BNSF mainline	Loan							0	Moved to Public Works CIP
PS-118	Staff Vehicle (2)	501	50,000					50,000	100,000	Modified for 12 year replacement cycle, ERR Fund Developed
PS-119	BLS Ambulance (1)	501 / EMS Grant		200,000					200,000	50% from EMS Grant and 50% Impact Fees - 10 year replacement cycle, ERR Fund Developed
PS-120	Burlington Hill Radio Repeater	501			25,000				25,000	Added for potential radio system enhancement with Skagit 911
	FIRE TOTAL:		**137,000**	**1,725,000**	**614,450**	**225,000**	**25,000**	**75,000**	**2,801,450**	

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / QUESTIONS
Fire Marshal										
FM-100	Vehicle Replacement	301	12,500	12,500	12,500	12,500	12,500		62,500	Purchase new vehicle in 2021
	FIRE MARSHAL TOTAL:		**12,500**	**12,500**	**12,500**	**12,500**	**12,500**	**0**	**62,500**	

Capital Improvement Plan 2017 - 2022

Program Category: ***Buildings & Grounds***

Buildings & Grounds

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / QUESTIONS
BG-002	HVAC Contols for City Hall	301	40,000						40,000	
BG-004	Lift for Custodian van	301	7,000						7,000	
BG-005	Refinish exterior wood - City Hall	301	30,000						30,000	
BG-006	Replace door lock sytem - Pub Safe	301		20,000					20,000	
BG-007	Parks & Rec Bldg upgrades-construct	301	30,000	50,000	100,000	150,000	200,000	300,000	830,000	
BG-008	Bldgs & Grnds office building upgrades	301	25,000						25,000	
BG-010	Backup Generator for City Hall	301	20,000	150,000					170,000	
BG-011	Replace commercial mower	301				20,000			20,000	
BG-012	Sissor manlift for interior use	301		25,000					25,000	
BG-014	Paint/ext maint. - police & fire bldgs	301				30,000			30,000	
BG-015	Genie 4x4 boom lift	301			65,000				65,000	
BG-016	Replace bucket truck	301						100,000	100,000	
BG-017	Parks & Rec Bldg upgrades-design	301	10,000			10,000			20,000	
	BUILDINGS & GROUNDS TOTAL:		**162,000**	**245,000**	**165,000**	**210,000**	**200,000**	**400,000**	**1,382,000**	

Capital Improvement Plan 2017 - 2022
Program Category: ***Cemetery***

Cemetery Department

	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2021	TOTAL	NOTES / QUESTIONS
C-101	Urn Garden II	116	25,000						25,000	
C-102	New Property	116						200,000	200,000	
C-105	Building Remodel	116		30,000					30,000	
	CEMETERY TOTAL:		**25,000**	**30,000**	**0**	**0**	**0**	**200,000**	**255,000**	

Capital Improvement Plan 2017 - 2022
Program Category: *Parks & Recreation*

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / QUESTIONS
Equipment										
P-003	1-2 Ton Pick Up	Park Imp Fee		17,000					17,000	
P-004	Irrigation Pipe	Park Imp Fee	4,500						4,500	
P-012	Blade Attachment	Park Imp Fee	2,211						2,211	
P-013	John Deere Mower	Park Imp Fee	43,000						43,000	
	EQUIPMENT TOTAL:		**49,711**	**17,000**	**0**	**0**	**0**	**0**	**66,711**	

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / QUESTIONS
Parks Projects										
P-100	**Maiben Park Master Plan**									
	Restrooms	Park Imp Fee	250,000						250,000	
	Community Center Improvements	REET	5,000	5,000	5,000	5,000	5,000	5,000	30,000	
P-200	**Rotary Park Master Plan**								0	
	Restrooms	Park Imp Fee	227,700						227,700	
	Outfield Fencing	REET				15,000			15,000	
P-300	**Jack Doyle Park Master Plan**								0	
	Interpretive Boardwalk	REET					50,000		50,000	
	Footbridge	REET		21,000	21,000	21,000	21,000	21,000	105,000	
P-400	Park Land Acquisition	Park Res		50,000	50,000	50,000	50,000	50,000	250,000	
P-401	Urban Forestry Program	Curr Exp	20,000	10,000					30,000	
P-404	Gages Slough Restoration	REET/CurrExp		8,000	8,000	8,000	8,000	8,000	40,000	
P-405	New Parks Building Addition	Park Imp Fee			200,000				200,000	
P-409	Park Signage	Park Imp Fee	10,000						10,000	
P-501	**Skagit River Park Master Plan**								0	
	RV Parking	Park Imp Fee	75,000						75,000	
	Irrigation SRP West	REET	250,000						250,000	
	Perimeter Road and Parking Phase 2	REET		1,300,000					1,300,000	
	Pave Roads and Parking	REET		150,000	2,000,000				2,150,000	
	Restrooms and Concessions bball	REET	600,000		600,000				1,200,000	
	Ecology Blocks for Parking Area	REET	3,000						3,000	
	Baseball Backstop Extensions-N. Field	REET	24,000						24,000	
P-600	Boerner Park Improvements	REET					200,000		200,000	
	P-600 continued	Pvt Donation					40,000		40,000	
P-700	Comprehensive Community Survey	Park Res	15,000						15,000	
	PARK PROJECTS TOTAL:		**1,479,700**	**1,544,000**	**2,884,000**	**99,000**	**374,000**	**84,000**	**6,464,700**	

Capital Improvement Plan 2017 - 2022
Program Category: ***Transportation***

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / COMMENTS
Equipment										
T-009	48-inch Street Drum Roller	101				30000			30,000	
T-012	Trailer-mounted Air Compressor	101				20000			20,000	
T-013	1-Ton Flatbed Truck	101	40,000						**40,000**	
T-019	Open Bay Vehicle Storage	101	180,000						180,000	
T-028	Skid Steer Loader	101		55,000					**55,000**	
T-029	Three axle PUP dump trailer	101		20,000					**20,000**	
T-030	Small asphalt paving machine	101			80,000				**80,000**	
T-031	Mower W/10' mow width	101			40,000				**40,000**	
T-032	Vactor truck replacement	101					260,000		260,000	
T-033	Street sweeper replacement	101						230,000	**230,000**	
	EQUIPMENT TOTAL:		**220,000**	**75,000**	**120,000**	**50,000**	**260,000**	**230,000**	**955,000**	
Street Improvement Projects										
T-101	Misc Street Projects / Overlay	102	60,000	60,000	60,000	60,000	60,000	60,000	**360,000**	
	T-101 continued: Grants	Grants	340,000	340,000	340,000	340,000	340,000	340,000	**2,040,000**	
T-102	East-West Connector at Costco Signal	102	103,000	320,000					**423,000**	
	T-102 continued:TIB Grant	Grants	583,000	1,816,000					**2,399,000**	
T-103	Street Standards Update	102	80,000						80,000	
T-104	Rio Vista Improve. - Skagit-Anacortes	102				300,000			**300,000**	
	T-104 continued: TIB Grant	Grants				1,200,000			**1,200,000**	
T-105	Walnut Street O'lay - Sharon-SR 20	102		80,000					**80,000**	
	T-105 continued: TIB Grant	Grants		400,000					**400,000**	
T-106	Orange Avenue Reconstruction	102						300,000	**300,000**	
	T-106 continued:	Grants						1,200,000	1,200,000	
T-107	Pease Rd Recon. - RR track-Burl Blvd	102					500,000		**500,000**	
	T-107 continued.: TIB Grant	Grants					1,000,000		**1,000,000**	
T-108	SR20/Avon Bike-Ped Path-Blvd-Skagit	102			50,000	200,000			250,000	
	T-108 continued:	Grants			200,000	1,800,000			**2,000,000**	
T-109	Regent Str Impr. - Fairhaven to SR 20	102				50,000	400,000		**450,000**	
	T-109 continued: TIB Grant	Grants				50,000	400,000		**450,000**	
T-110	Gardner Road Impr.-Rio Vista to SR20	102					100,000	400,000	**500,000**	
	T-110 continued: TIB Grant	Grants					100,000	1,200,000	**1,300,000**	
T-111	Gages Slough Trail Phase 2	102			135,000				135,000	
	T-111 continued: TAP Grant	Grants			865,000				**865,000**	
	STREET IMPROV. PROJECT TOTAL:		**1,166,000**	**3,016,000**	**1,650,000**	**4,000,000**	**2,900,000**	**3,500,000**	**16,232,000**	

Capital Improvement Plan 2017 - 2022
Program Category: *Transportation*

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / COMMENTS
	Arterial Street Improvement / Traffic Impact Fee Projects									
T-201	George Hopper Impr - Phase 1	Imp Fee	346,075						346,075	
	T-201 continued: STP Grant/Other	Grants	1,753,925						1,753,925	
T-202	George Hopper Impr - Phase 2	Imp Fee			1,153,583				1,153,583	
	T-202 continued: Grant/Other	Grants			5,846,417				5,846,417	
T-203	Fairhaven Improvements - 5 way	Imp Fee	175,000						175,000	
	T-203 continued: Grant/Other	Grants	400,000						400,000	
T-205	Frontage Rd	Imp Fee						953,472	953,472	
	T-205 continued: Grant/Other	Grants						3,546,528	3,546,528	
T-206	Whitmarsh Road Rebuild	Imp Fee						329,595	329,595	
	T-206 continued: Grant/Other	Grants						6,670,405	6,670,405	
T-207	Traffic Signal @ SR 20 & Skagit Str	Imp Fee		176,569					176,569	
	T-207 continued: Grant/Other	Grants		1,323,431					1,323,431	
T-208	Active Traffic Management I-5 ramps	Imp Fee						235,425	235,425	
	T-208 continued: Grant/Other	Grants						1,764,575	1,764,575	
T-209	Railroad Overcrossing - Design	Imp Fee		317,824					317,824	
	T-209 continued: Railroad/Grant/Other	Grants		1,182,176					1,182,176	
T-209	Railroad Overcrossing - Construction	Imp Fee						2,860,415	2,860,415	
	T-209 continued: Grant/Other	Grants						10,639,585	10,639,585	
T-210	Section Str Impr - Fairhaven to SR 20	Imp Fee				47,085			47,085	
	T-210 continued: Grant/Other	Grants				1,952,915			1,952,915	
T-211	*Spruce St Bridge - Design*	Imp Fee						423,765	423,765	
	T-211 continued: Grant/Other	Grants						1,576,235	1,576,235	
T-212	Fairhaven SR20 Entrance	Imp Fee					423,765		423,765	
	T-212 continued: Grant/Other	Grants					2,576,235		2,576,235	
	ARTERIAL STR PROJECT TOTAL:		**2,675,000**	**3,000,000**	**7,000,000**	**2,000,000**	**3,000,000**	**29,000,000**	**46,675,000**	

Capital Improvement Plan 2017 - 2022

Program Category: Storm Drainage

CIP #	EXPENDITURES	FUND	2017	2018	2019	2020	2021	2022	TOTAL	NOTES / QUESTIONS
SD-101	Flood Protection Citywide	425	50,000	50,000	50,000				**150,000**	
SD-102	Gages Slough Restoration/Acquisition	425	60,000	50,000	50,000	50,000	50,000	50,000	**310,000**	
SD-103	Walnut Street Drainage Improvemt	425	150,000	900,000	900,000				**1,950,000**	
SD-104	Misc. Drainage Improvements	425	50,000	50,000	50,000	50,000	50,000	50,000	**300,000**	
SD-106	Storm Pump St #6 Encl & Cover	101	35,000						**35,000**	
SD-111	Surface Water Mngmt Plan Update	425	75,000						**75,000**	
SD-112	Pervious Concrete Phase 2-Pine Street	425	30,000	30,000	0	500,000			**560,000**	
	SD-112 continued	Grant	87,500	87,500	0	1,500,000			**1,675,000**	
	STORM DRAINAGE TOTAL:		**537,500**	**1,167,500**	**1,050,000**	**2,100,000**	**100,000**	**100,000**	**5,055,000**	

Capital Improvement Plan 2017 - 2022										
Program Category: ***Sewer Department***										
Sewer Department										
CIP #	**EXPENDITURES**	**FUND**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**TOTAL**	**NOTES / QUESTIONS**
Sewer Projects and Equipment										
S-012	Technology Upgrade Camera Truck	Sewer Res	50,000						**50,000**	
S-139	Bio Solids Dryer	Sewer Res			630,000				**630,000**	
S-147	Primary Clarifier Upgrade	Sewer Res				425,000			**425,000**	
S-150	Boiler Replacement	Sewer Res						75,000	**75,000**	
S-151	Pump Station #14 Pumps Repl	Sewer Res						65,000	65,000	
S-146	Generator at PS 1,2,7&9	Sewer Res					300,000		300,000	
S-013	200KW Generator @ PS #8	Sewer Res				135,000			135,000	
S-103	Sewer Line Infiltration & Inflow	Sewer Res	100,000	100,000	100,000	100,000	125,000	150,000	675,000	
S-148	Update Sewer Comp. Plan	Sewer Res					85,000		85,000	
S-152	Primary Digester Design Report	Sewer Res						40,000	40,000	
S-149	Sewer Line Repl Rio Vista (Skagit-Pine)	Sewer Res				470,000			470,000	
S-109	Pump Station #4 Ugrade	Sewer Res		500,000					**500,000**	
S-112	Pump Station #9 Upgrade	Sewer Res	175,000						**175,000**	
S-114	Pump Station #10 Upgrade	Sewer Res	500,000						**500,000**	
S-118	Pump Station #13 Upgrade	Sewer Res		250,000					**250,000**	
S-120	Sewer Line Repl - Koch Str alley	Sewer Res				300,000			**300,000**	
S-123	Sewer Line Repl - Regent Str	Sewer Res	230,000						**230,000**	
S-128	Plant Equipment Replacement	Sewer Res	150,000	225,000	225,000	225,000	225,000	250,000	1,300,000	
S-131	Sewer Line Replacement Program	Sewer Res	275,000	275,000		275,000	275,000	300,000	1,400,000	
S-142	S. Anacortes & Cul de Sac Sewer	Sewer Res			50,000		900,000		950,000	
S-145	N. Skagit & Hill Court Sewer	Sewer Res		50,000	1,100,000				1,150,000	
	SEWER PROJECT TOTAL:		**1,480,000**	**1,400,000**	**2,105,000**	**1,930,000**	**1,910,000**	**880,000**	**9,705,000**	

MINUTES OF THE PLANNING COMMISSION

September 21, 2016

Council Chambers, City Hall
833 S. Spruce Street, Burlington, WA

MEMBERS: Brian Hanson, Jana Vater, Jeff Anderson, Ken Frye and Sally Straathof.
Marianne Manville-Ailles and Rock White are excused.

STAFF: Brad Johnson, Senior Planner; Kim O'Hara, Permit Center Manager

Motion by **Frye/*Straathof*** to approve the minutes of the August 17, 2016 Planning Commission as written. All in favor.

PUBLIC HEARING
2017-2022 CAPITAL IMPROVEMENT PLAN
CITY OF BURLINGTON, APPLICANT

Public hearing and review of the proposed 2017-2022 Capital Improvement Plan (CIP) for the City of Burlington. ***Johnson*** explained the city is required to have a capital facilities element in our comprehensive plan to identify how much growth may occur in the next twenty years. The CIP lays out the financing over a six year period of the capital projects, facilities and equipment in order to meet the needs for growth. ***Johnson*** noted that with the update of the comprehensive plan we hope to develop a new layout for the CIP. The 2017-2022 CIP is an update of the capital project, facilities and equipment.

Straathof asked for clarification on the pole sign shown under Administration. ***Johnson*** explained it is a proposed pole sign for the library.

Motion by ***Frye/Anderson*** to recommend adoption of the 2017-2022 Capital Improvement Plan. All in favor.

EXHIBIT B

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1960

SEPA DETERMINATION OF NON-SIGNIFICANCE (DNS) AND INCORPORATION BY REFERENECE OF EXISTING ENVIRONMENTAL DOCUMENTS

DATE:
September 30, 2016

DESCRIPTION:
Adoption of an updated Capital Improvement Plan (CIP); the CIP is a component of the City's comprehensive plan and includes a detailed project list and financing plan. The purpose of the CIP is to identify capital projects that will be needed to support planned growth and development for a six year period, along with probably sources of funding. The City updates the CIP every year as part of its annual budget development process. The proposed CIP amendments are minor and are intended to address current financial conditions and remove projects that have already been completed.

PROPONENT:
City of Burlington

LOCATION:
N/A – non-project action

LEAD AGENCY:
City of Burlington, 833 South Spruce Street, Burlington, Washington 98233

TITLE AND DATE OF DOCUMENT BEING ADOPTED OR REFERENCED:

1. Document Title: Final Supplemental Environmental Impact Statement and Preferred Alternative for the 1994 Comprehensive Plan and Zoning Ordinance Amendments.
2. Document Date: April, 1994

DESCRIPTION OF DOCUMENT BEING ADOPTED OR REFERENCED:
The document identified above was used to evaluate the environmental impacts associated with the initial adoption of the City of Burlington's comprehensive plan. It has also been used to inform subsequent updates to the comprehensive plan and it's implementing regulations.

OUTSTANDING APPEALS OR CHALLENGES:
There are no outstanding appeals or challenges involving the document being adopted or referenced.

DOCUMENT AVAILABILITY:
The document being adopted or referenced is available for review at the City of Burlington's Permit Center at 833 South Spruce Street, Burlington, Washington 98233.

ADEQUACY OF DOCUMENT BEING ADOPTED OR REFERENCED:
The Responsible Official has identified the document being adopted or referenced as being appropriate for this proposal after independent review. The document meets the City's environmental review needs for the current proposal and will accompany the proposal to the decision maker.

THRESHOLD DETERMINATION:
Determination of Non-Significance (DNS); the Responsible Official has determined that this amendment does not have a probably significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after reviewing a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

COMMENTS:
This DNS is being issued using the integrated SEPA/GMA process identified in WAC 197-11-230. Public comments will be received for a sixty day period following the issuance of this determination. This determination was issued September 30, 2016; therefore comments must be submitted, in writing, by November 30, 2016.

APPEALS:
You may appeal this determination to the Planning Department at 833 South Spruce Street, Burlington, WA 98233. Appeals must be in writing and filed no later than 15 calendar days from the date of this decision. You should prepare to make specific factual objections. Contact the Planning Department to read or ask about the procedures for SEPA appeals.

SIGNED:

SEPA Responsible Official:

Brad Johnson, Senior Planner _____

SEPA ENVIRONMENTAL CHECKLIST

Purpose of checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Instructions for Lead Agencies:

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

Use of checklist for nonproject proposals:

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.

A. Background

1. Name of proposed project, if applicable:

City of Burlington Capital Improvement Plan Update

2. Name of applicant:

City of Burlington

3. Address and phone number of applicant and contact person:

Brad Johnson, Senior Planner - 833 S. Spruce Street, Burlington, WA 98233

4. Date checklist prepared:

September 26, 2016

5. Agency requesting checklist:
City of Burlington (non-project action)
6. Proposed timing or schedule (including phasing, if applicable):
SEPA threshold determination: September 30, 2016 – Comment period: September 30, 2016 through November 30, 2016 – Final action by City Council to adopt CIP update: December 8, 2016
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.
N/A – non-project action – any site specific construction impacts associated with projects identified in the updated CIP will be addressed through subsequent environmental and permitting reviews, general area-wide impacts were addressed through the SEPA EIS associated with the adoption of the City's comprehensive plan in 1994.
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.
The City is adopting by reference the SEPA EIS prepared for the original comprehensive plan. The EIS is dated April, 1994.
9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.
Some of the listed construction projects, particularly the transportation projects, may require additional permits and reviews from the City of Burlingotn and State and federal agencies
10. List any government approvals or permits that will be needed for your proposal, if known.
None, this is a non-project action. The final action will be City Council adoption of an updated CIP.
11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)
The City of Burlington is adopting an updated Capital Improvement Plan (CIP). The CIP is a component of the comprehensive plan and provides a detailed list of project and sources of funding for a six year period. It is a mechanism for implementing the capital facilities element of the comprehensive plan.
12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

B. ENVIRONMENTAL ELEMENTS

1. Earth

a. General description of the site:
N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City and vary in topography and soil characteristics.

(circle one): Flat, rolling, hilly, steep slopes, mountainous, other _____

b. What is the steepest slope on the site (approximate percent slope)?
N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City and vary in topography and soil characteristics.

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.
N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City and vary in topography and soil characteristics.

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.
N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City and vary in topography and soil characteristics.

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.
N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City and vary in topography and soil characteristics.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.
N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City and vary in topography and soil characteristics.

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?
h. N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City and vary in topography and soil characteristics.

i. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City and vary in topography and soil characteristics.

2. Air

a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.
N/A – non-project action

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.
N/A – non-project action
c. Proposed measures to reduce or control emissions or other impacts to air, if any:
N/A – non-project action

3. **Water**

a. Surface Water:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.
N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City. The Skagit river is located within the City and has a large wetland complex associated with it(Gages Slough). There are no other large surface surface water bodies in the City.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.
N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.
N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.
N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City; however, the projects identified in the CIP do not involve surface water withdawals.

5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.
The projects described in the CIP may take place on a variety of sites throughout the City; however, most of the City lies within a 100 year floodplain and most of the projects involving construction will take place within the floodplain.

6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.
The projects described in the CIP may take place on a variety of sites throughout the City; however the projects related to stormwater and sewer infrastructure will involve discharges subject to applicable water quality regulations and subsequent project level environmental reviews.

b. Ground Water:

1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities

withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City; however, the projects identified in the CIP do not involve groundwater withdawals.

2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

N/A – non-project action – no such discharges are anticipated

c. Water runoff (including stormwater):

1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

Stormwater impacts associated with individual projects will be subject to site specific review and compliance with applicable stormwater regulations. Other projects involve upgrades to the City's stormwater and sewer systems to improve water quality.

2) Could waste materials enter ground or surface waters? If so, generally describe.

It is possible; however, stormwater impacts associated with individual projects will be subject to site specific review and compliance with applicable stormwater regulations. Other projects involve upgrades to the City's stormwater and sewer systems to improve water quality.

3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

Stormwater impacts associated with individual projects will be subject to site specific review and compliance with applicable stormwater regulations. Other projects involve upgrades to the City's stormwater and sewer systems to improve water quality.

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

Many of the projects included in the updated CIP are intended to improve water quality through upgrades to the City's strormwater and sewer treatement facilities.

4. Plants

a. Check the types of vegetation found on the site:

____deciduous tree: alder, maple, aspen, other
____evergreen tree: fir, cedar, pine, other
____shrubs
____grass
____pasture
____crop or grain
____ Orchards, vineyards or other permanent crops.
____ wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
____water plants: water lily, eelgrass, milfoil, other
____other types of vegetation

The projects described in the CIP may take place on a variety of sites throughout the City. The City's urban growth area contains very few undeveloped sites; accordingly most sites are covered in ornamental landscaping or non-native species

b. What kind and amount of vegetation will be removed or altered?
N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City.

c. List threatened and endangered species known to be on or near the site.
The projects described in the CIP may take place on a variety of sites throughout the City. The City's urban growth area contains very few undeveloped sites; accordingly most sites are covered in ornamental landscaping or non-native species

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:
The projects described in the CIP may take place on a variety of sites throughout the City. Compliance with applicable City landscaping codes will be required for individual projects.

e. List all noxious weeds and invasive species known to be on or near the site.

N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City.

5. **Animals**

a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site.

Examples include:

birds: hawk, heron, eagle, songbirds, other:
mammals: deer, bear, elk, beaver, other:
fish: bass, salmon, trout, herring, shellfish, other _____

N/A – non-project action- The projects described in the CIP may take place on a variety of sites throughout the City

b. List any threatened and endangered species known to be on or near the site.
The projects described in the CIP may take place on a variety of sites throughout the City; however, development within the City will take place within the 100 year floodplain of the Skagit River. The National Marine Fisheries Services has stated that development in this area may impacts listed fish species.

c. Is the site part of a migration route? If so, explain.
Not known

d. Proposed measures to preserve or enhance wildlife, if any:
N/A – non-project action

e. List any invasive animal species known to be on or near the site.
N/A – non-project action

6. **Energy and Natural Resources**

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.
N/A – non-project action

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.
N/A – non-project action

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:
N/A – non-project action

7. **Environmental Health**

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

1) Describe any known or possible contamination at the site from present or past uses.
N/A – non-project action
2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

N/A – non-project action

3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.
N/A – non-project action

4) Describe special emergency services that might be required.

N/A – non-project action

5) Proposed measures to reduce or control environmental health hazards, if any:

N/A – non-project action

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

N/A – non-project action

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

N/A – non-project action

3) Proposed measures to reduce or control noise impacts, if any:

N/A – non-project action

8. **Land and Shoreline Use**

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

N/A – non-project action

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

The City's urban growth area contains small areas of agricultural land. The proposed CIP is not expected to impact agricultural land uses. Such impacts have been addressed through the adoption of the updated Skagit County comprehensive plan which revised the City's urban growth area boundaries.

1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

The City's urban growth area contains small areas of agricultural land. The proposed CIP is not expected to impact agricultural land uses. Such impacts have been addressed through the adoption of the updated Skagit County comprehensive plan which revised the City's urban growth area boundaries.

c. Describe any structures on the site.

N/A – non-project action

d. Will any structures be demolished? If so, what?

N/A – non-project action

e. What is the current zoning classification of the site?
N/A – non-project action – construction projects identified in the CIP update will take place throughout the City in a variety of zones

f. What is the current comprehensive plan designation of the site?
N/A – non-project action – construction projects identified in the CIP update will take place throughout the City in a variety of comprehensive plan designations

g. If applicable, what is the current shoreline master program designation of the site?
N/A – non-project action – construction projects identified in the CIP update will take place throughout the City in a variety of shoreline environment designations

h. Has any part of the site been classified as a critical area by the city or county? If so, specify
Yes – the City contains numerous critical areas including flood hazards, geologically hazardous areas, and wetlands. The projects identified in the updated CIP may impacts one or more of these critical areas but impacts will be addressed through site specific environmental review and the application of development regulations.

i. Approximately how many people would reside or work in the completed project?

N/A – non-project action

j. Approximately how many people would the completed project displace?

N/A – non-project action

k. Proposed measures to avoid or reduce displacement impacts, if any:

N/A – non-project action

L. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:
Application of City development regulations and comprehensive plan policies. Site specific environmental review will be required for most projects involving construction activities.

m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:

N/A – all projects will take place within the City's established urban growth boundary. The City does not contain any lands classified as lands of long term resources significance.

9. **Housing**

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

N/A – non-project action

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

N/A – non-project action

c. Proposed measures to reduce or control housing impacts, if any:

N/A – non-project action

10. **Aesthetics**

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

N/A – non-project action

b. What views in the immediate vicinity would be altered or obstructed?

N/A – non-project action

b. Proposed measures to reduce or control aesthetic impacts, if any:

Application of City development regulations and site specific environmental review

11. **Light and Glare**

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

N/A – non-project action

b. Could light or glare from the finished project be a safety hazard or interfere with views?

N/A – non-project action

c. What existing off-site sources of light or glare may affect your proposal?

N/A – non-project action

d. Proposed measures to reduce or control light and glare impacts, if any:
N/A – non-project action

12. Recreation

a. What designated and informal recreational opportunities are in the immediate vicinity?
The City of Burlington contains a number of parks and open space areas

b. Would the proposed project displace any existing recreational uses? If so, describe.
No – the proposal may result in the creation of new recreational uses or the improvement of existing recreational uses.

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:
The proposal may result in the creation of new recreational uses or the improvement of existing recreational uses.

13. Historic and cultural preservation

a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers ? If so, specifically describe.
N/A – non-project action

b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.
N/A – non-project action

c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.
Site specific environmental reviews will be required and compliance with the cultural resource protection laws will be required. The City will coordinate with the Department of Archaeology and Historic Preservation (DAHP) on individual projects involving significant ground disturbing activities.

d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

Coordination with DAHP and site specific environmental review

14. Transportation

a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

N/A – non-project action

b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

The City of Burlington is served by Skagit Area Transit Service (SKAT). At least two major bus routes and one large transit station are located in the City.

c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?

N/A – non-project action

d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

N/A – non-project action

e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

Yes – many of the projects identified in the CIP are transportation projects and will involve improvements to the City's existing transporation infrastructure.

f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

N/A – non-project action

g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

N/A – non-project action

h. Proposed measures to reduce or control transportation impacts, if any:

N/A – non-project action

15. **Public Services**

a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

No – the proposed CIP update will identify projects to improve public services

b. Proposed measures to reduce or control direct impacts on public services, if any.

The proposed CIP update will identify projects to improve public services

16. **Utilities**

a. Circle utilities currently available at the site:
electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other _____

N/A – non-project action

c. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.
N/A – non-project action

C. Signature

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: _____

Name of signee BRAD JOHNSON

Position and Agency/Organization SENIOR PLANNER, CITY OF BURLINGTON

Date Submitted: 9/20/2016

D. supplemental sheet for nonproject actions

(**IT IS NOT NECESSARY** to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

The proposed updates to the CIP may result in a number of projects intended to improve the City's stormwater and sewer facilities. These projects may result in increased discharges but will comply with applicable water quality regulations. Some projects may result in improvements to water quality. Transporation projects may result in additional vehicle traffic and associated vehicle emissions. No projects are expected to result in toxic or hazardous substance storage or discharges.

Proposed measures to avoid or reduce such increases are:

All projects involving construction activities will be subject to site specific environmental review. Stormwater and sewer system projects will be subject to clean water regulations and laws. Storwater improvements are generally intended to improve water quality and will be required to comply with updated NPDES permit requirements. Other projects will be subject to applicable City codes and regulations.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Most of the City lies within the 100 year floodplain of the Skagit River. The National Marine Fisheries Service has concluded that development in this area may impact ESA listed fish species. The City is currently working to develop updated regulations to address these impacts. Projects completed after the adoption of these regulations will avoid or mitigate any associated impacts.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:
Most of the City lies within the 100 year floodplain of the Skagit River. The National Marine Fisheries Service has concluded that development in this area may impact ESA listed fish species. The City is currently working to develop updated regulations to address these impacts. Projects completed after the adoption of these regulations will avoid or mitigate any associated impacts.

3. How would the proposal be likely to deplete energy or natural resources?
The City has not significantly expanded its Urban Growth Area. Most development within the City of Burligton involves redevelopment and the intensification of uses on existing developed sites. The projects in the updated CIP are intended to facilitiate the continuing redevelopment and intensification of uses within the City's established boundaries. It is thought that such an approach to growth and development will, over the long term, reduce the reliance on single occupant vehicles and associated energy use. It is also thought that new, or redeveloped buildings are more energy efficient that older buildings.

Proposed measures to protect or conserve energy and natural resources are:
Compliance with applicable building and energy codes. The CIP is intended to identify projects necessary to carry out the comprehensive plan which invisions continuing redevelopment within the City's established boundaries which may reduce long term energy and natural resource demands.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?
Unknown – site specific critical area impacts will be addressed through subsequent environmental reviews and application of City's critical areas regulations

Proposed measures to protect such resources or to avoid or reduce impacts are:
Site specific environmental revies and application of the City's critical areas regulations

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

The proposed updates to the CIP will facilitate a pattern of growth and development that is consistent with the adopted comprehensive plan. The CIP is intended to implement, and carry out, the capital facilities element of the comprenensive plan.

Proposed measures to avoid or reduce shoreline and land use impacts are:

Compliance with applicable city development regulations

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

The project will improve transportation facilities and public services

Proposed measures to reduce or respond to such demand(s) are:

The project will improve transportation facilities and public services

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

All projects identified in the updated CIP will be required to comply with applicable laws and regulations

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 9

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Marv Pulst, Public Works Director

Subject: Franchise Agreement with Skagit County for Sewer System Facilities

Attachments: Proposed Agreement

Public Hearing Required: YES ( ) NO (X)

SUMMARY

The City and Skagit County entered in an interlocal agreement on August 11, 2016 that, among other requirements for each party, requires the parties to execute a sewer franchise agreement in 2016. The execution of this agreement by City Council will fulfill that requirement. This agreement provides authority for the City to install, construct, operate, repair, relocate, maintain, and remove sewer system facilities within certain roads in Skagit County.

RECOMMENDATION

Motion to approve the proposed franchise agreement with Skagit County for sewer system facilities and authorize the Mayor's signature.

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF SKAGIT COUNTY, WASHINGTON.

IN THE MATTER OF THE APPLICATION OF	)	**ORDER GRANTING**
	)	**APPLICATION FOR**
THE CITY OF BURLINGTON	)	**FRANCHISE**
	)	**NO.:_____**
FOR A FRANCHISE OVER CERTAIN ROADS IN	)	
	)	
SKAGIT COUNTY, WASHINGTON	)	
_____	)	

WHEREAS, the City of Burlington, a Washington municipal corporation ("City"), has applied for a franchise to install, construct, operate, repair, relocate, maintain, and remove Facilities for purposes of a sanitary sewer system including gravity sewer pipes, manholes, pumping stations, force mains, pipes, valves, controls, telemetry systems, other sanitary sewer system related underground and above grade infrastructure, and other necessary sanitary sewer system related appurtenances thereto, in, upon, under, along, and across certain roads in Skagit County, Washington; and

WHEREAS, the City's Franchise application having come on regularly to be heard on _____, 2016, or soon thereafter, and the public having been given notice of this hearing in accordance with RCW 36.55.040, and it appearing to the Skagit County Board of Commissioners that notice of said application and hearing thereon has been given as required by law, and that it is in the public interest to grant the franchise, and the Board having considered said application and being advised in the premises.

NOW, THEREFORE, IT IS HEREBY ORDERED, that pursuant to Chapter 36.55 RCW and other applicable law, the right, privilege, authority, and non-exclusive franchise are hereby given and granted to the City, and its successors to install, construct, operate, repair, relocate, maintain, and remove sewer system Facilities in, upon, under, along, and across certain roads in Skagit County defined below as the Franchise Area.

This Franchise is granted upon the following express terms and conditions:

Section 1. Definitions. Where used in this Franchise Agreement (the "Franchise") the following terms shall mean:

1.1 "Agreement" means this Franchise Agreement herein, which sets forth the terms and conditions of this Franchise.

1.2 "County" means Skagit County, a political subdivision of the State of Washington, and its respective successors and assigns.

1.3 "City" means the City of Burlington, a Washington municipal corporation, and its respective successors and assigns.

1.4 "Facilities" means, collectively, sanitary sewer system including gravity sewer pipes, manholes, pumping stations, force mains, pipes, valves, controls, telemetry systems, other sanitary sewer system related underground and above grade infrastructure, and other necessary or reasonably convenient sanitary sewer system related appurtenances thereto.

1.5 "Franchise" or "Franchise Agreement" means the grant of rights, privileges, and authority embodied in this Agreement.

1.6 "Franchise Area" means the below listed rights-of-way for public roads, streets, avenues, alleys, and highways of the County as now laid out, platted, `dedicated, acquired or improved:

Please see, Exhibit "A" and Exhibit "B", attached hereto and hereby incorporated by reference.

1.7 "Hazardous Substance" shall mean any material or substance which does cause or may cause environmental pollution or contamination (and associated liability and clean-up costs related thereto) as defined under applicable state and federal laws, rules, and regulations.

1.8 "Operate" or "Operations" shall mean the operation, use, and maintenance of the City's Facilities, pursuant to the terms of this Franchise.

1.9 "Party" or "Parties" means collectively the County and the City, and individually either the County or the City.

1.10 "Public Works Project" means any capital improvement, maintenance, and/or repair within the Franchise Area that is undertaken by the County (and/or by the County's contractors), regardless of the source of the County's funds for said capital improvement, maintenance, and/or repair within the Franchise Area (including, but not limited to, parks, roads and/or streets, sidewalks, curbs, pedestrian and/or vehicle traffic, and storm water facilities). For the avoidance of doubt, the term "Public Works Project" shall include any such capital improvement, maintenance, and/or repair undertaken by the County which requires the relocation of the City's Facilities within the Franchise Area, even if such capital improvement, maintenance, and/or repair entails, in part, work performed by a Third Party municipality or government (including special purpose districts) under a valid Interlocal Agreement (or other valid contractual agreement or obligation) between the County and such municipality or government (including special purpose districts). The term "Public Works Project" shall not include any improvements or repairs independently made or undertaken by a private Third Party.

1.11 "Third Party" means any person, party, or entity other than the County and the City.

Section 2. Grant of Franchise

2.1 Pursuant to the laws of the State of Washington including, but not limited to, Chapter 36.55 RCW, the County hereby grants to the City, subject to the terms and conditions as set forth herein, a Franchise for a period of ten (10) years commencing upon the effective date of this Agreement and subsequent acceptance of such Agreement and Franchise by the City. This Franchise is granted upon the express condition that prior to or within thirty (30) days after the adoption of this Agreement by the Skagit County Board of Commissioners, the City shall provide the County a written acceptance of the same. Execution of this Agreement by the City pursuant to City Council approval shall be considered written acceptance. If the City fails to do so within the time frame above, this Agreement and Franchise shall be null and void.

2.2 This Agreement is intended to convey only a limited, non-exclusive, right and interest and is not a warranty of title or interest in the County roads or rights-of-way.

2.3 The City shall, in carrying out activities under the rights, privileges, and authority granted by this Agreement comply with the provisions of all applicable County codes, ordinances, regulations, standards, procedures, permits, or policies, except as said such laws, County codes, ordinances, regulations, standards, procedures, permits, or policies laws may be superseded by applicable State law. The express terms of this Agreement shall constitute a valid and enforceable contract between the Parties.

2.4 The City shall, in carrying out activities under the rights, privileges, and authority granted by this Agreement, comply with all applicable State, federal, and local laws and regulations.

Section 3. Non-Franchise Area County Property

3.1 This Franchise shall not convey any right to the City to install Facilities on or to otherwise use County-owned or leased properties or easements outside the Franchise Area.

Section 4. Nonexclusive Franchise

4.1 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the County from granting other and further franchises upon, under, and across the Franchise Area that do not interfere with the City's rights under this Franchise. This Franchise shall not prohibit or prevent the County from using the Franchise Area for any lawful purpose or

affect the police powers or jurisdiction of the County over the same or any part thereof.

Section 5. Installation/Noninterference of Facilities/Restoration

5.1 All work performed by the City under this Agreement shall be performed in accordance with the permit(s) issued by the County, in compliance with the County Utility Policy and County Road Standards, together with all applicable federal laws and regulations, and the laws and regulations of the State of Washington, the provisions of any applicable County codes, ordinances, regulations, standards and procedures as now exist or as may be hereafter amended or superseded.

5.2 The City's Facilities shall be located and maintained within the Franchise Area so as not to interfere with the free passage of pedestrian and/or vehicle traffic therein, or with the reasonable ingress or egress to the properties abutting the Franchise Area as they exist at the time of installation of the Facilities.

5.3 The City shall restore the surface of the Franchise Area that is disturbed or damaged by the performance of this Agreement to at least the same condition as existed immediately prior to any such work. The County shall have final approval of the condition of the Franchise Area after restoration pursuant to the provisions of applicable County codes, ordinances, regulations, standards, policies, and procedures as now exist or as may be hereafter amended or superseded.

5.4 The County may at any time make a determination to perform or have performed any and all work that it considers necessary to restore to a safe condition any area within the Franchise Area disturbed by the City in the performance of this Agreement provided notification has been provided to the City that such restoration work is required, and the City has been given adequate time to perform the work. Notification shall be in writing to the City. Upon demand of the County, the City shall pay all actual costs of such work incurred by the County (including, but not limited to, labor, materials, supplies, use of County equipment, and County staff time).

5.5 All survey monuments which are disturbed or displaced by the City in its performance of any work under this Franchise shall be referenced and restored by the City, as per WAC 332-120, as from time to time amended, and all pertinent federal, state, and local standards and specifications.

5.6 In the event that the City permanently ceases use of any of its Facilities within the Franchise Area, the City shall within one hundred and eighty (180) days or within such additional time as is agreed to between the Parties after such permanent cessation of use, remove such Facilities at the sole cost and expense of the City; provided that with the express written consent of the County, the City may leave such Facilities in place subject to the conditions set forth in this section. Any such Facilities to be left in place shall be made inert by purging, disconnecting,

and/or sealing such Facilities, all in compliance with applicable laws, regulations and industry standards. The County's consent shall not relieve the City of the obligation and/or costs to subsequently remove or alter such Facilities in the event the County reasonably determines that such removal or alteration is necessary or advisable for the health and safety of the public or for a Public Works Project, in which case the City shall perform such work at no cost to the County. The obligations contained in this Section shall survive the expiration, revocation, or termination of this Franchise.

Section 6. Relocation of Facilities

6.1 Whenever the County causes the construction of any Public Works Project within the Franchise Area and determines that such construction necessitates the relocation of the City's Facilities from their existing location within the Franchise Area, such relocation shall be accomplished by the City at no cost, expense, or liability to the County, and within timeframes specified by the County. Pursuant to RCW 36.55.060(5) the County shall, in the predesign phase of construction , reasonably consult with the City in order to coordinate the design. Provided, however, the County shall give the City a minimum of one hundred eighty (180) days written notice of the requirement to relocate its' Facilities in the Franchise Area. An alternate location for relocation of the City's Facilities shall be determined and mutually approved by the County and the City. In the event that the County determines than an alternative location for the Facilities is not available within the Franchise Area, if necessary, an alternative location for relocation shall be obtained and provided by the City, at no cost to the County. To the maximum extent provided by law, the City is responsible and liable for the timely performance and relocation of its Facilities located within the Franchise Area (to facilitate any Public Works Project), and to this extent the City further agrees (to the maximum extent permitted by law), to be liable and responsible for all actual costs, expenses, and/or damages suffered by the County arising from and/or related to a delay caused by the City's failure to timely relocate the Facilities within the Franchise Area, pursuant to the terms of this Section 6. Instead of requiring the City to independently conduct such relocation of the City's Facilities, the County may consider a direct payment from the City to the County (per the terms of a mutually agreeable duly executed interlocal agreement) for the County's actual costs and expenses incurred by the County to perform such work (including, but not limited to, labor, materials, supplies, use of County equipment, and County staff time), when the City and the County both agree that such a direct payment is in the best interest of both Parties.

6.2 In the event an emergency posing a threat to public safety or welfare requires the relocation of the City's Facilities within the Franchise Area, the County shall give the City notice of the emergency as soon as reasonably practicable (to the extent that the County may be aware of any such threat). Upon receipt of such notice from the County, the City shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities.

6.3 Whenever any Third Party requires and requests the relocation of the City's Facilities to accommodate work of such Third Party within the Franchise Area, the City shall have the right as a condition of any such relocation to require payment by the Third Party to the City, at a time and upon terms acceptable to the City, for any and all costs and expenses incurred by the City in the relocation of the City's Facilities.

6.4 Any condition or requirement imposed by the County upon any Third Party (including, but not limited to, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of the City's Facilities within the Franchise Area shall be a condition or requirement causing relocation of the City's Facilities to occur subject to the provisions of Section 6.3 above; provided, however in the event the County reasonably determines and notifies the City that the primary purpose of imposing such condition or requirement upon such Third Party is to cause or facilitate the construction of a Public Works Project to be undertaken within a segment of the Franchise Area on the County's behalf then the City shall otherwise relocate its Facilities within such portion(s) of the Franchise Area in accordance with this Agreement, and such relocation shall be accomplished by the City at no cost or expense to the County.

6.5 As to any relocation of the City's Facilities whereby the cost and expense thereof is to be borne by the City in accordance with this Section 6, the City may, after receipt of written notice requesting such relocation, submit in writing to the County alternatives to relocation of its Facilities. Upon the County's receipt from the City of such written alternatives, the County shall evaluate such alternatives and shall provide the City with a copy of its written determination(at the County's sole option and discretion), indicating whether if one or more of such alternatives are suitable to accommodate the work which would otherwise necessitate relocation of the City's Facilities. In the event the County reasonably determines that such alternatives are not appropriate, the City shall relocate its Facilities as otherwise provided in this Agreement.

Section 7. Vacation of County Roads

7.1 If, at any time, the County shall vacate any County road and/or rights-of-way which are subject to the rights granted by this Franchise, then the Board of County Commissioners may at its option and by giving one hundred eighty (180) days' written notice to the City, terminate this Franchise with reference to such County road and/or rights-of-way so vacated, and the County shall not be liable for any damages or loss to the City by reason of such termination.

7.2 Prior to vacation of any county roads and/or rights-of-way, the County will make best efforts to (but shall not be required to) grant to the City an easement sufficient in size for the existing Facilities contained in the vacated road and/or

right-of-way which shall be intended to survive the vacation of the road and/or right-of-way.

Section 8. Roads Transferred to Cities

8.1 Whenever any of the County roads and/or rights-of-way as designated in this Franchise by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within the city or town limits, this Franchise shall continue in force and effect as to all county roads and/or rights-of-way not so included in city or town limits.

8.2 Prior to incorporation of any of the county roads and/or rights-of-way by any city or town, the County the County will make best efforts to (but shall not be required to) grant to the City an easement sufficient in size for the existing Facilities contained in the incorporated road and/or right-of-way which shall be intended to survive the transfer of the road and/or right-of-way.

Section 9. Records of Installation and Planning

9.1 Upon the County's request, the City shall provide to the County copies of any plans prepared by the City for initial installation, improvements, relocations and conversions to its Facilities within the Franchise Area; provided, however, any such plans so submitted shall be for informational purposes only and shall not obligate the City to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

9.2 Upon the County's request, the City shall provide to the County copies of available drawings in use by the City showing the location of its Facilities at specific locations within the Franchise Area. As to any such drawings so provided, the City does not warrant the accuracy thereof and, to the extent the locations of Facilities are shown, such Facilities are shown in their approximate location.

9.3 Upon the County's request, the City shall verify the location of its underground Facilities within the Franchise Area by reasonable methods determined by the City, at no expense to the County, and within reasonable timeframes specified by the County. In the event the City performs excavation (e.g. potholing) to determine the location of underground Facilities within the Franchise Area, the County shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.

9.4 The City expressly acknowledges and agrees that all and/or parts of any and all drawings, data, mapping and other information received by the County from the City may be subject to public disclosure, pursuant to Washington State law (including, RCW 42.56). While the County may take reasonable steps to attempt to prevent the disclosure of drawings, information, and/or materials that the

County believes to be confidential, the County cannot and does not represent and/or guarantee that any specific drawings and/or information will not be released, even if the release of such drawings and/or information may be (or may arguably be) exempt or otherwise preventable by law.

9.5 Nothing in this Section 9 is intended (nor shall be construed) to relieve either Party of their respective obligations arising under applicable law with respect to determining the location of the Facilities. The City shall identify, mark, and otherwise locate any and all underground Facilities located within the Franchise Area in accordance with and subject to Chapter 19.122 RCW (commonly known as the "call before you dig" law), and/or any other such subsequent and/or successor legislation. The City agrees (to the maximum extent permitted by law), to be liable and responsible for any and all costs, expenses, and/or damages suffered by the County arising from and/or directly related to any delay caused by the City's failure to locate its underground Facilities within the Franchise Area within the timeframes specified by Chapter 19.122 RCW (and/or any other subsequent and/or successor legislation), and/or otherwise pursuant to the terms of this Section 9.

Section 10. Coordination, Shared Excavations

10.1 The City and the County shall each exercise all best reasonable efforts to coordinate any construction work that either may undertake within the Franchise Areas so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. The City and the County shall further exercise best reasonable efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

10.2 If, at any time or from time to time, either the City or the County shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (1) such joint use shall not unreasonable delay the work of the Party causing the excavation to be made; and (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties.

Section 11. Default; Remedies, and Dispute Resolution

11.1 If there is any dispute or alleged default with respect to performance under this Franchise, the complaining Party shall notify the second Party in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within ten (10) days of its receipt of such notice, the second Party shall provide written response to the complaining Party that shall acknowledge receipt of such notice and state the second Party's intentions with respect to how the second Party shall

respond to such notice. The second Party shall further have thirty (30) days (the "cure period") from its receipt of such notice to:

A. Respond to the complaining Party, contesting the complaining Party's assertion(s) as to the dispute or any alleged default and requesting a meeting, or;

B. Resolve the dispute or cure the default, or;

C. Notify the complaining Party that the second Party cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default. Notwithstanding such notice, the second Party shall promptly take all reasonable steps to begin to resolve the dispute or cure the default and notify the complaining Party in writing and in detail as to the actions that will be taken by the second Party and the projected completion date. In such case, the complaining Party may set a meeting in accordance with Section 11.2.

11.2 If any dispute is not resolved or any alleged default is not cured or a meeting is not requested or set in accordance with Section 11.1, then the complaining Party shall promptly schedule a meeting between the complaining Party and the second Party to discuss the dispute or any alleged default. The complaining Party shall notify the second Party of the meeting in writing and such meeting shall take place not less than ten (10) days after the second Party's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) days following the conclusion of the meeting shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means consistent with this Franchise. To the extent allowed by applicable law, all negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

11.3 If, at the conclusion of the steps provided for in Section 11.1 and 11.2 above, the County and the City are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the County or the City (as the City may have authority to do so) may:

A. Take any enforcement or corrective action provided for in County code, as from time to time amended; provided such action is not otherwise in

conflict with the provisions of this Franchise, and State and/or Federal law, and/or;

B. Declare an immediate forfeiture of this Franchise for a breach of any material obligations under this Franchise, and/or;

C. Take such other action to which it is entitled under this Franchise or any applicable law, and/or;

D. Pursue any Alternative Remedies as provided in Section 12.

11.4 In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action or litigation shall be in the Superior court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the laws of the State of Washington.

11.5 Unless otherwise agreed by the County and the City in writing, the County and the City shall, as may be reasonably practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

11.6 This Section 11 (or any other provision of this Franchise) shall not be deemed to bar the right of the County or the City to seek or obtain judicial relief from a violation of any term or provision of this Franchise at any time (as further provided in Section 12). The dispute resolution timeframes specified within this Section 11 shall not alter or impair the City's duty to relocate Facilities within the Franchise Area pursuant to the terms of Section 6 of this Franchise, and shall not alter or impair the City's duty to locate underground Facilities within the Franchise Area pursuant to the terms of Section 9 of this Franchise.

Section 12. Alternative Remedies

12.1 No provision of this Franchise shall be deemed to bar the right of the County or the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder at any time. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the County or the City to recover monetary damages for such violations by the other party, or to seek and obtain judicial enforcement of the other Party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

Section 13. Indemnification

13.1 To the maximum extent allowed by law, the City shall indemnify, defend and hold the County, its appointed and elective officials, agents, officers, employees, and volunteers harmless from and against any and all claims, demands, liability,

loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fees, made against the County, its agents, officers or employees on account of injury, harm, death or damage to persons or property which is caused by, in whole, or in part, and then only to the extent of the negligent acts or omissions of the City or its agents, servants, employees, contractors, or subcontractors in the exercise of the rights granted to the City by this Franchise. Provided, however, such indemnity and defense shall extend only to that portion of any claims, demands liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fees caused by the negligence of the City, its appointed and elective officials, agents, officers, employees, and volunteers.

13.2 To the maximum extent allowed by law, the City shall indemnify, defend and hold the County, its appointed and elective officials, agents, officers, employees, and volunteers harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fees, made against the County on account of violation of any environmental laws applicable to the Facilities, or from any release of Hazardous Substances on or from the Facilities. This indemnity includes, but is not limited to: (a) liability for a governmental agency's costs of removal or remedial action for Hazardous Substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to Hazardous Substances; and (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws. Provided, however, such indemnity and defense shall extend only to that portion of any claims, demands liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fees caused by the negligence or fault of the City, its appointed and elective officials, agents, officers, employees, and volunteers.

13.3 The City's indemnification obligations include assuming potential liability for actions brought by the City's own employees and the employees of the City's agents, representatives, contractors, and subcontractors even though the City might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the County arising by virtue of the City's exercise of the rights set forth in this Agreement. The obligations of the City under this section have been mutually negotiated by the Parties, and the City acknowledges that the County would not enter into this Agreement without the City's waiver. To the extent required to provide this indemnification and this indemnification only, the City waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

13.4 In the event any matter (for which the County intends to assert its rights under this Section 13) is presented to or filed with the County, the County shall promptly notify the City thereof, and the City shall have the exclusive right, at its election

and at its sole costs and expense, to settle and compromise such matter as it pertains to the City's responsibility to indemnify, defend and hold harmless the County, its agents, officers or employees. In the event any suit or action is started against the County based upon any such matter, the County shall likewise promptly notify the City thereof, and the City shall have the exclusive right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to the City's responsibility to indemnify, defend and hold harmless the County, its agents, officers or employees.

13.5 Acceptance by the County of any work performed by the City under this Agreement shall not be grounds for avoidance of this Section 13.

Section 14. Vegetation Management

14.1 As between the Parties, the City shall be responsible and/or liable for the maintenance of vegetation that may impair the City's Facilities within the Franchise Area. Trees within the Franchise Area which may interfere with Facilities may be trimmed or removed. The City shall otherwise coordinate its routine vegetation management activities with the County and shall as necessary manage vegetation in close proximity to its Facilities within the Franchise Area in compliance with all federal and state laws and all County ordinances, regulations, resolutions, policies and rules, and comply with applicable law. Trimming and removal of vegetation within the Franchise Area shall be performed by the City using accepted industry standards and practices.

14.2 Nothing in this Agreement shall impair the County's ability to perform vegetation management activities within the Franchise Area, as the County may determine to be useful or necessary to serve and protect the public interest and welfare; provided, that nothing in this Agreement shall create or impose any duty or obligation on the part of the County to perform any vegetation management activities within the Franchise Area.

Section 15. Emergency Management, Leaks, Ruptures, and Emergency Response

15.1 Annually, upon the request of the County, the City shall meet with the County's Emergency Management staff (and other County staff as the County may designate) to coordinate emergency management operations and, at least once a year, at the request of the County, City personnel shall actively participate with the County's Emergency Management staff (and/or other County staff as the County may designate) in emergency preparedness drills or planning sessions.

15.2 During the term of this Franchise, the City shall have a written emergency response plan and procedure. The City's emergency plans and procedures shall designate the City's responsible local emergency response officials and a direct twenty four (24) hour emergency contact number for the City.

15.3 Upon request of the County, the City shall provide to the County a copy of its emergency response plans and procedures, including, but not limited to, emergency release, leak, and rupture response.

15.4 The City shall be solely responsible for all necessary costs incurred in responding to any leak, rupture or other release from the City's Facilities, including, but not limited to, detection and removal of any Hazardous Substances from air, earth, or water, and any and all remediation costs.

Section 16. Assignment of Franchise

16.1 The City, nor its successors in interest, may not assign or otherwise transfer its rights, privileges, authority, and Franchise conferred by this Agreement without the duly authorized prior written approval of the County. Any assignment or transfer of this Franchise without duly authorized written consent of the County shall make this Agreement immediately voidable (at the sole discretion of the County).

Section 17. Severability and Survival

17.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of the sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

17.2 All provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the termination or expiration of the Franchise. Subject to Section 16 above, the Parties' respective rights and interests under this franchise shall inure to the benefit of their respective successors and assigns.

Section 18. Amendments to Franchise

18.1 This Franchise may be amended only by duly authorized mutual agreement thereto, set forth in writing in the form of a subsequent Agreement (in the form of a new Franchise agreement, or formal amendment to this Agreement) duly executed by both Parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington.

Section 19. Relationship of the Parties

19.1 Nothing in this Franchise shall be construed to create or confer any right or remedy upon any person(s) other than the County and the City. No action may be commenced or prosecuted against any Party by any Third Party claiming as a

Third Party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any Third Party to either Party. Nothing in this Agreement is intended to expand the scope of liability of either Party to any Third Party.

19.2 Nothing contained in this Franchise shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any Party. Each Party shall be individually and severally responsible for its own duties, obligations, and liabilities under this Franchise.

19.3 The City accepts any privileges granted by the County to the Franchise Area and public Rights-of-Way in an "as is" condition. The City agrees that the County has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of the City's Facilities within the Franchise Area. The City shall remain solely and separately responsible for the function, testing, maintenance, replacement and/or repair of the City's Facilities within the Franchise Area.

19.4 Nothing in this Franchise shall (a.) abrogate the right of the County to perform any public works or public improvements of any description, (b.) be construed as a waiver of any codes or ordinances of general applicability promulgated by the County (or of the County's police powers), or (c.) be construed as a waiver or release of the rights of the County in and to the County's public rights-of-way.

Section 20. Insurance

20.1 The City shall procure and maintain for the duration of the Franchise, insurance, or provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the City, its agents, representatives or employees. The City shall provide evidence of self-insurance and/or an insurance certificate, that to the greatest extent possible also names the County, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insured's, to the County prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such self-insurance and/or insurance certificate shall evidence the following minimum coverages. All required insurance shall be obtained from companies rated "A-" or better in "A.M. Best's Insurance Guide," or an equivalent rating by similar rating agencies, and shall be from insurers authorized to transact business in the State of Washington. In no event shall the limits of any insurance policies be construed as limiting the liability of the City

A. Comprehensive general/excess liability insurance including coverage for premises - operations, explosions and collapse hazard, underground hazard and products completed hazard, with limits not less than:

(1) $5,000,000 (five million dollars) per occurrence and in the aggregate for bodily injury or death to each person;

(2) $5,000,000 (five million dollars) for property damage resulting from any one accident; and

(3) $5,000,000 (five million dollars) for general liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of $2,000,000 (two million dollars) for each person and $2,000,000 (two million dollars) for each accident;

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $2,000,000 (two million dollars);

D. Environmental/Pollution liability with a limit not less than $5,000,000 (five million dollars) for each occurrence, at a minimum covering liability from sudden and/or accidental occurrences.

If coverage is purchased on a "claims made" basis, then the City shall warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date termination of this Franchise, and/or conversion from a "claims made" form to an "occurrence" coverage form. The required liability limits may be met under a primary or an excess policy, or any combination thereof. The City shall either provide the minimum insurance requirements set forth in this Section 20., or the City shall instead provide equivalent coverage by evidencing membership in a risk pool (such as the Washington Cities Insurance Authority) which coverage meets or exceeds the coverage limits, which shall be deemed to satisfy the terms of Section 20.

20.2 Payment of deductibles and self-insured retentions shall be the sole responsibility of the City. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

20.3 The City's insurance shall be primary insurance with respect to the County, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the County, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the City's insurance and shall not contribute with it.

20.4 In addition to the coverage requirements set forth in this Section, the certificate of insurance shall provide that:

"The above described policies will not be canceled before the expiration date thereof, without the issuing company giving sixty (60) days written notice to the certificate holder."

In the event of said cancellation or intent not to renew, the City shall obtain and furnish to the County evidence of replacement insurance policies meeting the requirements of this Section 20 by the cancellation date.

Section 21. Compliance with Laws and Standards

21.1 In carrying out any authorized activities under the privileges granted herein, the City shall meet accepted industry standards and comply with all applicable Federal, State, and local laws, rules, and regulations, of any governmental entity or agency (Federal, State, and/or local) with jurisdiction over the City, the Facilities and the City's operations. .

Section 22. Operations, Maintenance, Inspection, and Testing

22.1 The City shall be solely responsible for all costs, expenses, and liability for the operation, maintenance, and testing of all Facilities within the Franchise Area, and the City shall operate, maintain, inspect, and test the Facilities in full compliance with all applicable federal, state, and local laws, rules, regulations, and industry standards.

Section 23. Force Majeure

23.1 In the event that either Party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God, sabotage or terrorism. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a force Majeure Event. The occurrence of a Force Majeure Event shall not alter or impair any of the provisions concerning liability and/or insurance as provided in this Franchise Agreement.

Section 24. Effective Date

24.1 This Agreement shall be effective upon the date of mutual execution by both Parties having first been submitted to the County's attorney(s), having been introduced to the Board of County Commissioners before its passage; having been passed at a regular meeting of the Board of County Commissioners by an approving vote of at least a majority thereof; and public notice having been

published in a newspaper of general circulation in the County and posted in accordance with RCW 36.55.

Section 25. Miscellaneous

25.1 In the event that a Court or agency of competent jurisdiction declares a material provision of this Franchise Agreement to be invalid, illegal or unenforceable, the Parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate actions so as to give effect to the intentions of the Parties as reflected herein. If severance from this Franchise Agreement of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise Agreement, either Party may apply to a Court of competent jurisdiction to reform or reconstitute the Franchise Agreement so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending.

25.2 Whenever this Franchise sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Franchise.

25.3 The Section headings in this Franchise are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.

25.4 The Parties each represent and warrant that they have full authority to enter into and to perform this Franchise, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof.

25.5 Whenever this Franchise calls for notice to or notification by any Party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Section, unless written notice of change of address is provided to the other Party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be provided to the parties as follows:

To the County:	Skagit County Public Works Department Attn: County Engineer 1800 Continental Place Mount Vernon, WA 98273
To the City:	City of Burlington Public Works Department Attn: Public Works Director 833 S. Spruce St.

Burlington, WA 98233

25.6 This Franchise Agreement and the attachments hereto represent the entire understanding and agreement between the Parties with respect to the subject matter and it supersedes all prior oral negotiations between the Parties. All previous Franchise Agreements between the parties pertaining to the City's Facilities are hereby superseded.

25.7 The City shall, prior to or within thirty (30) days after the County's passage of this Franchise Agreement, file with the County, its unconditional written acceptance of all the terms and conditions of this Franchise Agreement. If the City shall fail to so file and provide its written acceptance within such period, then the rights and privileges granted hereunder shall be deemed forfeited.

FRANCHISE AGREEMENT ACCEPTED:

CITY OF BURLINGTON

_____

Steve Sexton, Mayor

Recommended:

_____

Marv Pulst, Public Works Director

Approved as to form and Indemnification:

_____

Leif Johnson, City Attorney

Approved as to budget:

_____

Renee Sinclair, Director of Budget & Accounting

DATED this _____ day of _____, 2016.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

_____
Lisa Janicki, Chair

_____
Ron Wesen, Commissioner

_____
Kenneth A. Dahlstedt, Commissioner

Attest:

_____
Clerk of the Board

For contracts under $5,000:
Authorization per Resolution R20030146

_____
County Administrator

Recommended:

_____
Department Head

Approved as to form:

_____
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

_____
Risk Manager

Approved as to budget:

_____
Budget & Finance Director

EXHIBIT "A"

Legal Description of Franchise Area

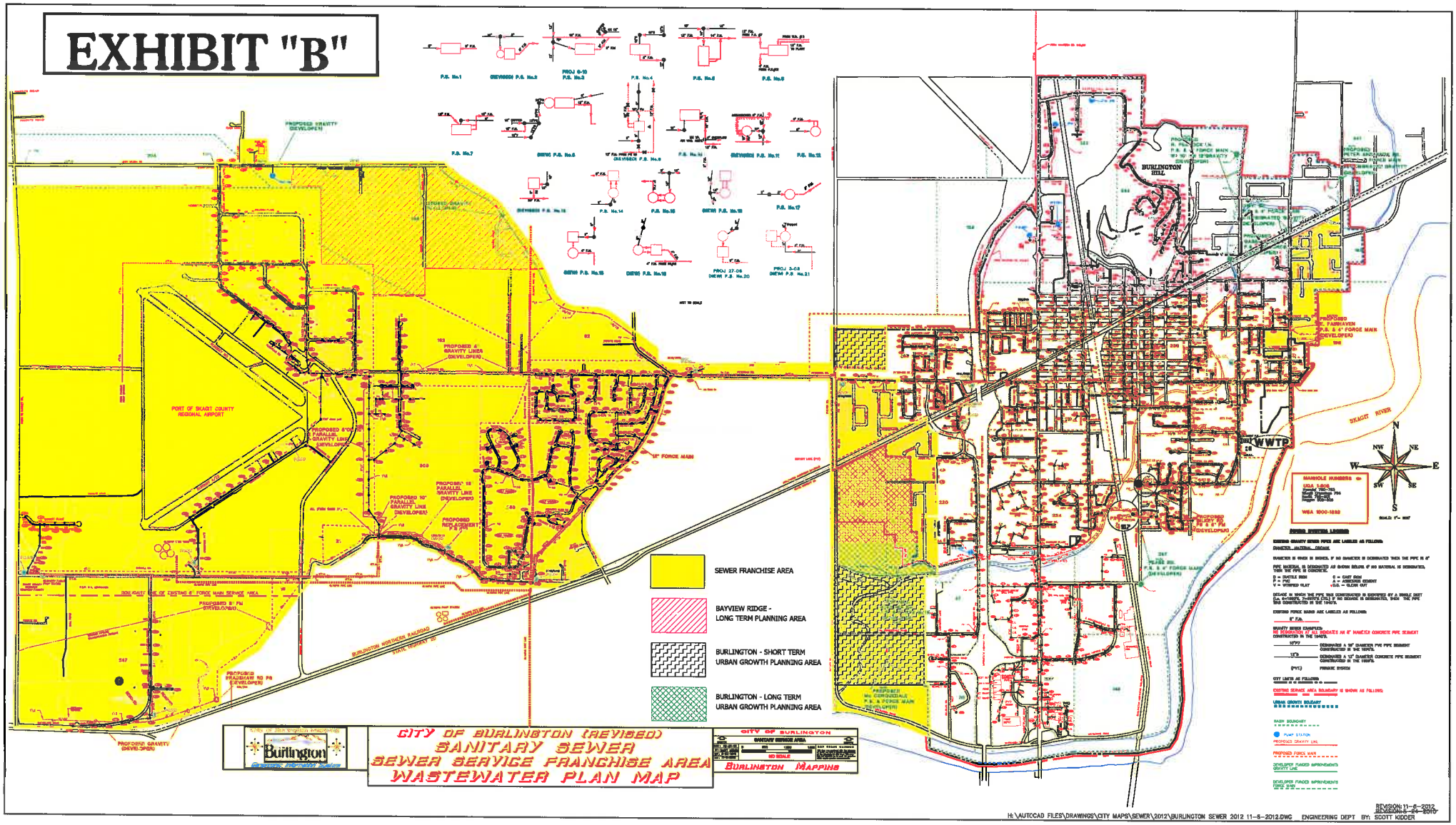
The Franchise Area is described as follows:

Any, every and all of the County highways, roads, streets, avenues, alleys, rights-of-way, and County public ways as now and hereafter laid out, platted, dedicated, established, or improved within the boundaries described as:

Township 35 North, Range 03 East, Sections 26, 27, 28, 29, 32, 33, 34, 35, and 36
Township 35 North, Range 04 East, Section 31, and 33
Township 34 North, Range 03 East, Sections 01, 02, 03, 04, 05, 08, 09, 10, 11, and 12
Township 34 North, Range 04 East, Sections 06, and 07

Situate in the County of Skagit, State of Washington

EXHIBIT "B"


SEWER FRANCHISE AREA
BAYVIEW RIDGE - LONG TERM PLANNING AREA
BURLINGTON - SHORT TERM URBAN GROWTH PLANNING AREA
BURLINGTON - LONG TERM URBAN GROWTH PLANNING AREA
PORT OF SKAGIT COUNTY REGIONAL AIRPORT
BURLINGTON HILL
WWTP
SKAGIT RIVER
CITY OF BURLINGTON (REVISED)
SANITARY SEWER
SEWER SERVICE FRANCHISE AREA
WASTEWATER PLAN MAP
Burlington
CITY OF BURLINGTON
SANITARY SEWER AREA
NO SCALE
BURLINGTON MAPPING
H:\AUTOCAD FILES\DRAWINGS\CITY MAPS\SEWER\2012\BURLINGTON SEWER 2012 11-8-2012.DWG ENGINEERING DEPT BY: SCOTT KIDDER

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 10

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Bryan Harrison, City Administrator

Subject: Lease Agreement with Mei Fong Chinn to lease the Canton Parking Lot for public parking

Attachments: Proposed Lease Agreement

Public Hearing Required: YES ( ) NO (X)

SUMMARY

Attached is a draft lease agreement between the City of Burlington and Mei Fong Chinn & Wallen Chinn to lease portions of Parcels 71564 and 71565, commonly known as the parking lot at Chinn's restaurant, 423 Fairhaven Avenue, Burlington, WA. The site currently contains approximately 50 parking spaces. The lease would be month to month and allow the City to manage the site as a public parking lot. The cost is $1,000.00 per month. The City would be permitted to post public parking signs and to stripe the parking lot as desired. Mr. Clay Learned has served as the City's liaison during lease negotiations.

RECOMMENDATION

Motion to approve the proposed lease agreement with Mei Fong Chinn & Wallen Chinn to lease property for public parking and authorize the Mayor's signature on applicable documents.

LEASE AGREEMENT

THIS AGREEMENT is made this ____8th day of _____, ~~Novembe~~December~~r~~, 2016, between the CHINN MEI FONG, (hereinafter designated the "**Landlord**"), and the CITY OF BURLINGTON, a Washington municipal corporation (hereinafter designated the "**Tenant**").

The **Landlord** does hereby rent unto the said **Tenant** parking space at that real property and improvements situated at 423 Fairhaven St. in the City of Burlington, Skagit County, State of Washington (hereinafter designated the "**Premises**"), which **Premises** are more particularly described as follows:

a. SEE LEGAL DESCRIPTION ATTACHED HERETO AND IDENTIFIED AS EXHIBIT "A," INCORPORATED HEREIN.
b. **Landlord** hereby rents the entire existing parking lot, consisting of approximately ____sixty (60) parking spaces at the **Premises** for use by the **Tenant** for the purpose of public parking.
c. **Tenant** does not rent, and this Lease creates no right of entry to any building or structure at the **Premises**.

1. Term. **Tenant** agrees to rent from **Landlord** the above-described real property on a month-to-month basis, commencing the ____8th day of _____, ~~November~~December, 2016. Termination of this leasehold shall be accomplished in accordance with the terms of this Agreement in order for the termination to be effective.

2. Rent. The **Tenant** shall pay monthly rent in the amount of One Thousand Dollars ($1,000), which amount shall be inclusive of taxes described in Section 11, below. Rental payments shall be payable in advance, and due on the first day of each month, to:

~~[Landlord's Address]~~Wallen Chinn, 216 North Spruce Street, Burlington, WA 98233

3. Utilities. **Landlord** shall pay for all services and utilities supplied in the **Premises**.

4. Sublet. The **Tenant** agrees not to sublet the **Premises** nor assign this Agreement nor any part thereof without the prior written consent of **Landlord**, which consent shall not be unreasonably withheld.

5. Use of **Premises**. **Tenant** shall use the **Premises** for public parking and ~~related commercial~~public event activities, and for no other use or purpose. **Tenant** may levy a charge upon parking customers for some or all of the

stalls in individual parking areas. **Tenant** shall retain all proceeds from any charge upon parking customers, if any.

6. Improvements. The **Premises** leased to **Tenant** has been used by the **Landlord** for vehicular parking lots for use by the general public. Varying types of improvements may exist, including asphalt surfacing, painted striping, wheel stops or curbing, sign posts, etc. Any additional improvements deemed necessary by **Tenant** shall be constructed at **Tenant's** sole expense and shall be completed in a good and workmanlike manner free of all liens and claims. **Tenant** may erect signs to facilitate public parking. **Tenant** shall sign the premises to prohibit overnight parking, oversize, over length and overweight parking, and commercial parking. **Tenant** shall have authority to conduct maintenance that is necessary to keep the condition of the **Premises** safe for parking and access by the public. **Tenant** shall request that the Burlington Police Department periodically patrol the premises while in possession of the **Tenant**. All improvements or maintenance performed by **Tenant** shall become property of **Landlord** upon termination of this Agreement.

7. Alterations. **Landlord** agrees to not make alterations to the **Premises** that unreasonably hinders the **Tenant's** ability to utilize the **Premises** for purposes contemplated pursuant to this Agreement without prior written consent from **Tenant**.

8. **Landlord's** Obligations. **Landlord** shall immediately notify **Tenant** of any changes as to the person or address of the **Landlord**. **Landlord** makes no warranties or guarantees as to the condition of the improvements, or as to the suitability of the improvements for **Tenant's** proposed use.

9. Access. **Landlord** reserves the right of access to the **Premises** for the purpose of inspection, and to conduct tests, inspections, surveys, and studies as the **Landlord** sees fit. Access shall be at reasonable times except in case of emergency or abandonment, and **Landlord** shall provide 48 hours notice to the **Tenant** prior to accessing the **Premises**, except in case of emergency. Landlord retains the right to have vehicles towed from the premises that are left onsite in excess of twenty four (24) hours.

10. Surrender of **Premises**. In the event of default in payment of installment of rent, **Tenant** will quit and surrender the said **Premises** to **Landlord**.

11. Taxes. **Landlord** shall be responsible for all real property taxes pursuant to this Agreement.

12. Insurance. **Tenant** is a member of Washington Cities Insurance Authority (WCIA), a liability-property pool. The parties agree that the City's membership in WCIA constitutes adequate insurance for purposes of this

Agreement. **Tenant** shall provide Landlord with written confirmation of liability-property insurance coverage. **Landlord** agrees to obtain commercial general liability insurance with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate, and property insurance covering the full value of **Landlord's** property and improvements with no coinsurance provisions. The parties shall provide proof of insurance to each other upon reasonable request.

13. Costs and Attorney's Fees. In any action brought to enforce any provision of this Lease, including actions to recover sums due or for the breach of any covenant or condition of this Lease, or for the restitution of the **Premises** to the **Landlord** or eviction of **Tenant** during the term or after expiration thereof, the substantially prevailing Party shall be entitled to recover from the other Party all reasonable costs and reasonable attorney's fees incurred, including, without limitation, the fees of accountants, appraisers, and other professionals, at trial, on appeal, or without resort to suit.

14. Termination. Either Party may terminate this Agreement by giving ninety (90) days advance notice to the other Party. Notice shall be given by certified mail, return receipt requested, and shall be deemed to be effective on the date deposited into the U.S. mail. In the alternative, notice may be effected by service on the following representative of the Parties:

    For the City:
    CITY OF BURLINGTON
    ATTN: CITY ATTORNEY
    833 SOUTH SPRUCE STREET
    BURLINGTON, WA 98233

    For the **Tenant**:
    ~~[Landlord Address]~~WALLEN CHINN
    216 NORTH SPRUCE STREET
    BURLINGTON, WA 98233

15. Time of Essence. Time is of the essence of this Lease and of every provision hereof.

16. Quiet Enjoyment. **Tenant**, on performing all the covenants and conditions hereof, shall, at all times during the demised term, peaceably and quietly have, hold, and enjoy the leased **Premises**, provided, however, that no eviction of **Tenant** for any reason whatever, after the **Landlord** shall have conveyed the fee of the leased **Premises**, shall be construed as a breach of this covenant, and no action therefore shall be brought against the **Landlord**.

17. Covenants Real. Every covenant in this Lease shall be deemed and treated to be a covenant real running with the **Premises** during the term hereof, and

shall extend to the heirs, legal representatives, successors and assigns of the Parties. No change in the **Landlord's** ownership of the **Premises**, or rights to the rents payable hereunder, however accomplished, shall operate to enlarge the obligations or reduce the rights of **Tenant**. No change in the **Landlord's** ownership in the **Premises** shall be binding upon **Tenant** for any purpose until **Tenant** shall have been given notice thereof.

18. Prior Agreements. This Lease contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Lease, and no prior agreement, letter of intent or understanding pertaining to any such matter will be effective for any purpose. No oral modification of, or amendment to, this Lease shall be effective; however, this Lease may be modified or amended by a written agreement signed by both Parties to this Lease.

19. Recording. Neither Party may record this Lease, nor any memorandum thereof, without the prior written consent of the other Party.

20. Severability. Any provision of this Lease which proves to be invalid, void, or illegal will in no way affect, impair, or invalidate any other provision hereof, and such other provisions will remain in full force and effect.

21. Applicable Law and Venue. This Lease is made pursuant to and shall be construed in accordance with the laws of the State of Washington. **Landlord** and **Tenant** hereby agree that venue of any action relating to this Lease will be in Skagit County, Washington.

22. Other Documents. Each Party undertakes to execute such additional or other documents as may be required to fully implement the intent of this Agreement.

23. Paragraph Headings, Gender, and Number. Paragraph headings are not to be construed as binding provisions of this Lease; they are for the convenience of the Parties only. The masculine, feminine, singular and plural of any word or words shall be deemed to include and refer to the gender and number appropriate in the context.

24. Counterparts. This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25. Nonwaiver of Breach. The failure of the Parties to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such rights, or any other covenants or agreements, but the same shall be and remain in full force and effect.

26. Construction. Nothing contained herein shall create the relationship of principal and agent or of partnership or of joint venture between the Parties hereto, and neither the method of computation of rent nor any other provision contained herein shall be deemed to create any relationship between the Parties hereto other than the relationship of **Landlord** and **Tenant**.

IN WITNESS WHEREOF, the **Tenant** and **Landlord**, or his agent, each hereunto sets his hand

LANDLORD

_____
Chinn Mei Fong

_____
Wallen Chinn

TENANT/CITY OF BURLINGTON

_____
Steve Sexton, Mayor

Attest:

_____
Dr. Renée C. Sinclair, CPFO
Director of Budget & Accounting

Approved as to form:

_____
Leif Johnson, City Attorney

EXHIBIT A – Legal Description

BURLINGTON AC, (DK12) THAT PORTION OF TRACT 85, "PLAT OF THE BURLINGTON ACREAGE PROPERTY", AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 49, RECORDS OF SKAGIT COUNTY, WASHINGTON, LYING WEST OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT ON THE SOUTH LINE OF SAID TRACT 85, WHICH IS NORTH 88 DEGREES 55' WEST, 1212.4 FEET AND 30 FEET NORTH OF THE SOUTH 1/4 CORNER OF SECTION 5, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., SAID POINT BEING THE SOUTHWEST CORNER OF THAT TRACT CONVEYED TO JOSEPH PAULI AND ETHEL PAULI, HUSBAND AND WIFE, BY DEED DATED DECEMBER 26, 1958, AND RECORDED DECEMBER 28, 1958, UNDER AUDITOR'S FILE NO. 574035; THENCE NORTH ALONG THE WEST LINE OF THE PAULI TRACT, 629.3 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID TRACT 85 AND THE TERMINAL POINT OF SAID LINE BEING HEREBY DESCRIBED. ALSO TOGETHER WITH THAT PORTION OF THE EAST 264.00 FEET OF THE SOUTH 825.00 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID EAST 264.00 FEET OF THE SOUTH 825.00 FEET; THENCE SOUTH 0 DEGREES 30' 59" EAST ALONG THE EAST LINE OF SAID SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 FOR A DISTANCE OF 152.35 FEET; THENCE NORTH 18 DEGREES 35' 55" WEST FOR A DISTANCE OF 36.19 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 380.00 FEET, THROUGH A CENTRAL ANGLE OF 18 DEGREES 04' 56" AN ARC DISTANCE OF 119.93 FEET TO A POINT OF TANGENCY; THENCE NORTH 0 DEGREES 30' 59" WEST FOR A DISTANCE OF 0.63, MORE OR LESS, TO THE NORTH LINE OF SAID SOUTH 825.00 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 AT A POINT BEARING NORTH 89 DEGREES 18' 30" WEST FROM THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 18' 30" EAST ALONG SAID NORTH LINE FOR A DISTANCE OF 30.01 FEE, MORE OR LESS, TO THE POINT OF BEGINNING. ALSO TOGETHER WITH CERTAIN UNNAMED DEDICATED ROAD ADJOINING THE WEST LINE OF TRACT 85 " PLAT OF BURLINGTON ACREAGE PROPERTY", AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 49 RECORDS OF SKAGIT COUNTY, WASHINGTON, ALL AS DESCRIBED IN SKAGIT COUNTY SUPERIOR COURT CAUSE NO. 81-2-00071-4; EXCEPT THAT PORTION LYING WITH A TRACT OF LAND CONVEYED TO THAD L BINGHAM, ET UX BY DEED RECORDED DECEMBER 10, 1943 AS AUDITOR'S FILE NO. 367953, ALSO EXCEPT THAT PORTION THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF THE ABOVE DESCRIBED TRACT; THENCE SOUTH 89 DEGREES 23' 26" EAST ALONG THE NORTH LINE OF SAID TRACT FOR A DISTANCE OF 4.87 FEET TO THE PROPOSED WESTERLY MARGIN OF SOUTH SPRUCE STREET; THENCE SOUTH 18 DEGREES 35' 55" EAST ALONG SAID PROPOSED WESTERLY MARGIN FOR A DISTANCE OF 31.13 FEET, TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 320.00 FEET, THROUGH A CENTRAL ANGLE OF 18 DEGREES 04' 56" FOR A DISTANCE OF 100.99 FEET TO A POINT OF TANGENCY; THENCE NORTH 87 DEGREES 27' 42" WEST TO THE NORTHEAST CORNER OF THE WEST 16.00 FEET OF THE SOUTH 530.00 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., THENCE NORTH 89 DEGREES 18' 30" WEST ALONG SAID NORTH LINE OF THE OSUTH 530 FEET FOR A DISTANCE OF 16.00 FEET TO THE NORTHWEST CORNER THEREOF AT A POINT BEARING SOUTH 0 DEGREES 30' 59" EAST FROM THE POINT OF BEGINNING; THENCE NORTH 0 DEGREES 30' 59" WEST ALONG THE WEST LINE OF SAID SUBDIVISION, ALSO BEING THE WEST LINE OF THE ABOVE DESCRIBED UNNAMED DEDICATED ROAD RIGHT-OF-WAY FOR A DISTANCE OF 127.91 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 11

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Sarah Ward, Library Director

Subject: Addendum to the Library Foundation Interlocal Agreement to reimburse the Library Foundation for Quidditch Festival Expenses

Attachments: Proposed Addendum

Public Hearing Required: YES ( ) NO (X)

SUMMARY

This addendum is for the reimbursement of funds that the Library Foundation spent to cover the costs of the Burlington Public Library Quidditch Festival 2016. The reimbursement funds will be dispersed from the Lodging Tax grant funds that were awarded to the Burlington Public Library for the Quidditch Festival in 2016.

RECOMMENDATION

Motion to approve the addendum to the agreement with the Burlington Library Foundation for reimbursement of funds related to the 2016 Quidditch Festival and authorize the Mayor's signature.

ADDENDUM TO AGREEMENT

THIS ADDENDUM TO AGREEMENT is made and entered into this 8th day of December, 2016 by and between the City of Burlington, a municipal corporation herein after referred to as "City", and the Burlington Library Foundation, a non-profit corporation designed to provided assistance and aid in the development, maintenance and promotion of growth and preservation of the Burlington Public Library and its staff, herein after referred to as "Foundation".

WHEREAS, the City and Foundation previously entered into an agreement to establish their relationship, a copy of which is attached hereto as EXHIBIT A; and

WHEREAS, that agreement may be amended in writing if signed by the parties; and

WHEREAS, pursuant to it's mission, the City of Burlington Public Library (herein the "Library") desired to create a new annual *Harry Potter*-themed public event in 2016 to be called "Quidditch Fest"; and

WHEREAS, the purpose of the Foundation is to support the mission of the Library; and

WHEREAS, the Foundation desires to provide certain financial services for the Library, as described in the attached Agreement and this Addendum to Agreement, in furtherance of its corporate purpose;

WHEREAS, the Foundation desired to provide funds necessary in order to obtain providers, equipment and supplies necessary to support the City's creation and administration of Quidditch Fest; and

WHEREAS, the City and Foundation are aware of potential grant funding sources to reimburse those expenses if applied for by the City; and

WHEREAS, the Foundation wished to be reimbursed for it's contributions if grant funding was obtained by the City; and

WHEREAS, the Library Staff, on behalf of the City, desired to obtain grant funding associated with Quidditch Fest in order to reimburse the Foundation for it's contributions, if possible;

NOW, THEREFORE, in consideration of the mutual exchange of services and the other covenants and agreements hereinafter mentioned, the parties hereto covenant and agree as follows:

A. THE FOUNDATION AGREES TO:

a. Pay for costs and expenses associated with the City of Burlington Library's 2016 Quidditch Fest.
b. Pay for costs and expenses in an amount not exceed $3,500.00.
c. Provide documentation of costs and expenses incurred by the Foundation to the City on or before December 1, 2016.

B. THE CITY AGREES TO:

a. Make reasonable efforts to seek out grant funding or other sources for reimbursement of the Foundation's costs and expenses for Quidditch Fest, up to the amount described in A(b) above.
b. Reimburse the Foundation, if grant funding is successfully obtained by the City, in an amount not to exceed the total amount of grant funding obtained.

C. MODIFICATION

No alteration or modification of any terms of this Agreement shall be valid unless made in writing and signed by the parties.

D. TERMINATION

Notwithstanding the provisions of Term of Agreement, either party may terminate this Agreement, with or without cause, upon 30 days written notice to the other party.

E. ASSIGNMENT

Neither party may assign or transfer this Agreement.

F. GOVERNING LAW AND DISPUTES

This agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by the laws of the State of Washington. Venue for all litigation arising out of this Agreement shall be Skagit County, Washington.

CITY OF BURLINGTON:

_____

By: Steve Sexton, Mayor

Date:_____

APPROVED AS TO FORM:

_____

By: Leif Johnson
City Attorney

ATTEST:

_____

By: Dr. Renée C. Sinclair, CPFO
Director of Budget & Accounting

BURLINGTON LIBRARY FOUNDATION:

_____

By: _____, President

Date: _____

APPROVE:

_____

By: _____, Chair President
Burlington Library Board

Date: _____

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 12

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Bryan Harrison, City Administrator

Subject: Professional Services Agreement with Lana Reichert of Skagit County Investigations, LLC

Attachments: Proposed Agreement

Public Hearing Required: YES ( ) NO (X)

SUMMARY

This agreement is for individual background investigations for candidates under consideration of employment with the City of Burlington Civil Service and other City needs. The City has previously contracted with Lana Reichert for background investigations.

RECOMMENDATION

Motion to approve the agreement with Lana Reichert of Skagit County Investigations, LLC and authorize the Mayor's signature.

City of Burlington
Professional Service Agreement

This Agreement is entered into this 8th day of December, 2016 by and between the City of Burlington, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City", and Lana Reichert of Skagit County Investigations LLC f1004 7th Street Suite 208, Anacortes, WA. 98221, (360) 661-4979, hereinafter referred to as the "Contractor".

RECITAL:

WHEREAS, the City provides numerous services for persons in the Burlington area; and

WHEREAS, the City wishes to facilitate certain services and projects but does not have available staff or expertise to provide certain services to the citizens of Burlington; and

WHEREAS, Contractor represents and warrants that it is available, experienced and qualified with specific expertise to provide the following services:

NOW, THEREFORE, THE CITY AND CONTRACTOR MUTUALLY AGREE AS FOLLOWS:

1. **Services:** The Contractor shall perform services in the following general areas:

   Individual background investigations for candidates under consideration for employment with the City of Burlington Fire Department. (see Scope of Work attached hereto as Exhibit A)

2. **Location:** The Contractor shall perform said services at the following location(s):

   Services shall generally be performed at the location of Contractor's choosing, pursuant to the Scope of Work described more fully in Exhibit A, attached hereto. Occasional meetings at Burlington City facilities may be requested by either Party, at a reasonable time to be agreed between the parties.

3. **Time:** The Contractor shall perform said services according to the following schedule:

   Within thirty (30) days, of the transmittal of candidate files, or other timeline as agreed to by both parties, the Contractor shall provide written reports on the candidates. If more than three (3) candidate files are transmitted within any thirty (30) day period, additional review time shall be allowed, if necessary. Reports shall be submitted to the City as they are completed.

4. **Compensation:** The City shall pay the Contractor for performance of said services according to the following schedule:

   A rate of $65.00 per hour shall be billed for all time worked by the Contractor for any aspect of individual background investigations including phone interviews, in-person interviews, report writing and travel time. The total amount billed shall not exceed twenty thousand dollars ($20,000.00), without written consent of the City.

5. **Termination:** The City may terminate this Agreement at any time, with or without cause, by giving written notice to the Contractor of such termination and specifying the effective date. The termination notice shall be sent to the address set forth above. The Contractor shall notify the City of any change in address. If the Agreement is terminated by the City as provided herein, the Contractor will be paid for services actually performed prior to termination, as billed by Contractor and agreed by the City, less payment for compensation previously made. Billing may not exceed twenty thousand dollars ($20,000.00) total without written consent of the City.

   Unless terminated beforehand, this Agreement shall terminate on December 31, 2018. The parties may extend this Agreement pursuant to written agreement, executed prior to the date of termination.

   Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City, its officers, employees and agents by virtue of any breach of this Agreement by the Contractor for the purpose of set off until such time as the exact amount of damages due the City for the Contractor is determined.

6. **Independent Contractors**: The Contractor shall at all times be an Independent Contractor and not an employee of the City and shall not be entitled to compensation or benefits of any kind except as specifically provided herein. The Contractor shall be subject to the City's control and direction as to results to be accomplished, but not as to the details and means by which the results are accomplished. The Contractor shall not be covered by any City benefit programs, such as health and welfare, benefit plans, social security, workers compensation or unemployment compensation, and shall not be treated as an employee for federal tax purposes or any other purpose. The Contractor shall be responsible for paying all taxes related to payments the City makes to the Contractor, including federal income taxes, self employment (social security and Medicaid) taxes and state business and occupation taxes, and the City is not responsible for withholding for or paying any of those taxes. The Contractor shall indemnify and hold harmless the City from and against any and all costs (including attorney's fees incurred in defense or liabilities including payroll taxes, penalties or interests) arising out of any breach of the above representations and warranties or any assertion that the Contractor is not an independent contractor.

7. **Indemnification/Hold Harmless:** The Contractor shall defend, indemnify and hold the City, its officers, elected officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

8. **Authority:** The Contractor does not have, and shall not hold itself out as having authority to create any contract or obligation that is binding on the City unless the City otherwise consents in writing.

9. **Assignability**: The Contractor shall not assign any interest in its Agreement and shall not transfer any interest in the same.

10. **Employees of the Contractor**: All services to be performed by the Contractor herein shall only be performed by said Contractor, or his/her employees unless by specific written consent of the City. The Contractor shall have constant supervision of all of Contractor's employees at all times.

11. **Insurance Coverage**: At all times during the term of this Agreement, Contractor shall provide a current copy of and maintain and keep in force the following insurance policies against claims arising out of or in connection with the performance of this Agreement to the City:

Commercial General Liability Insurance written on an occurrence basis with limits no less than one million dollars ($1,000,000.00) combined single limit per occurrence and two million dollars ($2,000,000.00) aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to blanket contractual; products/completed operations; broad form property damage; explosion; collapse and underground (XCU) if applicable, and employer's liability. The City of Burlington should be the additional insured on the Certificate of Insurance along with language on the Endorsement to include: "Additional Insureds include the City of Burlington, its Elected Officials, Appointed Officers, Employees and Agents".

12. **Wage in Hours Law Compliance:** The Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and any other laws affecting its employees, if any, and the rules and regulations issued there under insofar as applicable to its employees and shall at all times indemnify, defend and save the City free, clear and harmless from and against any and all actions, claims, demands, expenses arising out of said Act or laws and rules and regulations that are or may be promulgated in conjunction herewith.

13. **Equal Employment Opportunity:** The Contractor will not discriminate against any employee or applicant for employment because of race, color, or religion, sex, age, handicap, marital status or national origin.

14. **Non-Discrimination in Services:** The Contractor shall not, on the grounds of race, color, sex, religion, national origin, creed, marital status, age or the presence or any sensory, mental or physical disability:
    a. Deny any individual services or benefits provided under this Agreement
    b. Provide any services or other benefit to an individual which are different or are provided in a different manner from those provided to others under this Agreement
    c. Subject an individual to segregation or separate treatment in any manner related to his receipt of any service(s) or benefits provided under this Agreement
    d. Deny any individual an opportunity to participate in any program provided by this Agreement through the provision of service(s) or otherwise, or will afford him an opportunity to do so which is different than that afforded others under this Agreement.

15. **Changes to Agreement:** The City may, from time to time, require changes in the scope of the service to be performed hereunder. Such changes, including increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by the City and the Contractor, shall be incorporated in written amendment to this Agreement.

16. **Contents and Understanding:** This Agreement contains a complete integrated understanding and Agreement between the Parties and supersedes any understanding, agreement or negotiations whether oral or written not set forth herein or in any written amendments hereto duly executed by both Parties.

In witness whereof, the City and the Contractor have executed this Agreement as of the date first above written.

CITY OF BURLINGTON:

Mayor
Title

Steve Sexton
Print Name

_____
Signature

_____
Date

CONTRACTOR:

Lana Reichert/Skagit County Investigations LLC
Print Name

Lana Reichert, SCI
Signature

11/16/2016
Date

ATTEST:

Director of Budget and Accounting
Title

Renee Sinclair
Print Name

_____
Signature

_____
Date

APPROVED AS TO FORM:

City Attorney
Title

Leif Johnson
Print Name

_____
Signature

_____
Date

Exhibit A

Contractor certifies that he/she has the necessary training, education and/or skill to perform the scope of work in accordance with the standards and best practices of his/her profession.

1. **Contractor's Scope of Work:**

   Conduct an individual background investigation on candidates supplied by the City to include the following:

   - Employment verification
     - Including follow-up for general character reference
   - PHI questionnaire consistency review and follow-up.
     - Criminal history (Criminal History report to be obtained by the Contractor)
     - Driving history (Driver Record to be provided by the City)
     - Personal finances (Credit Report to be provided by the applicant)
   - Credential checks
     - Certification, license, and award verification
     - Professional affiliation and/or membership verification
     - Educational history, including verification of attendance and degrees earned
   - Reference verifications
     - Contact selection of relatives
     - Contact selection personal references
     - Contact other affiliates deemed necessary or appropriate as leads develop through other interviews/verifications
   - Written report including verification and contact information as well as any insight into the character, judgment, or general personality tendencies of the candidate.

2. **Contractor's Training / Qualifications:**

   Lana Reichert, Skagit County Investigation LLC owner and agency principal, holds a Bachelors of Arts in Science from the University of Idaho. Ms. Reichert is licensed and bonded with the State of Washington. Ms. Reichert has over 20 years of experience in all aspects of investigations to include criminal, civil, criminal history, background checks, surveillance, trial preparation, interviewing and report writing, witness location, scene analysis and court testimony. Ms. Reichert worked 14 years as the Chief Criminal Defense Investigator for the Skagit County Public Defender's Office.

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 13

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Geoff Hawes, IT Manager

Subject: Professional Services Fiber Agreement with Mt. Baker Cable, LLC

Attachments: Proposed Agreement

Public Hearing Required: YES ( ) NO (X)

SUMMARY

The City needs an alternative fiber installer for current work that can't be done on time because of scheduling conflicts. When the current fiber repair contractor was out on holiday, it was realized that we need a back-up fiber contractor. The City is also in need of a fiber installer for the planned fiber work in 2017 with the Skagit County 0.09 Grant funds that were awarded to the City.

RECOMMENDATION

Motion to approve the attached professional services agreement with Mt. Baker Cable, LLC and authorize the Mayor's signature.

CITY OF BURLINGTON
PROFESSIONAL SERVICES FIBER AGREEMENT

THIS AGREEMENT made and entered into on this December _____ 2016, by and between the **CITY OF BURLINGTON**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the **"City of Burlington,"** and **Mt. Baker Cable, LLC** whose address is POB 29534, Bellingham WA 98228, hereinafter referred to as the **"Contractor".**

WHEREAS, the City of Burlington desires to engage the Contractor to provide the City of Burlington with Fiber Optic Professional Services for help in design, installation, emergency repair and maintenance of its fiber optic infrastructure; and

WHEREAS, Contractor represents that it is fully qualified to perform the work to be performed hereunder in a competent and professional manner; and

WHEREAS, Contractor represents that it is fully compliant with CJIS security qualifications to perform the work hereunder and that all work and information related to the work performed in this agreement will be treated under a non-disclosure with the City of Burlington.

NOW, THEREFORE, the Parties herein do mutually agree as follows:

1. **Engagement of Contractor**. The City of Burlington hereby agrees to engage the Contractor, and the Contractor hereby agrees to perform the work in a competent and professional manner and provide the services described in the attached "Exhibit A - Scope of Work". The Scope of Work so identified is hereafter referred to as "Work". Without a written directive of an authorized representative of the City of Burlington, the Contractor shall not perform any services that are in addition to or beyond the scope of the Work. If the Contractor's proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then the Contractor expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City of Burlington and Contractor. If the Work includes the design of a public work or improvement, in whole or in part, Contractor's design shall be reasonably accurate, adequate and suitable for its intended purpose.

2. **Intellectual Property Rights**. Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City of Burlington for all purposes, whether the project for which they are made is executed or not, and may be used by the City of Burlington for any purpose. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the City of Burlington, belong to the City of Burlington. Contractor retains any intellectual property rights in documents and intangible property created by Contractor prior to engagement, or not created by Contractor for its performance of this Agreement.

3. **Time of Beginning and Completion of Performance**. This Agreement shall commence as of the date of execution of this Agreement and shall be completed by **31st day of December, 2017**, with an automatic annual renewal at the discretion of the City, unless notified pursuant to Section 7 ("Termination of Contract") of this Agreement. Contractor shall have the right to change the hourly rates charged under this agreement, upon renewal by the City, so that such rates are consistent with prevailing wages and existing union wages.

4. **Compensation**.

A. The City of Burlington shall pay the Contractor prevailing wages only for completed Work and for services actually rendered which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work.

B. The Contractor shall be paid such amounts and in such manner as described in "Exhibit B".

C. Contractor may receive payment as reimbursement for Reimbursable Expenses actually incurred. "Reimbursable Expenses" means those types and amounts of expenses either listed in "Exhibit C" or such expenses as are approved for reimbursement by the City of Burlington in writing prior to the expense being incurred. If "Exhibit C" is either blank or not attached, expenses may not be reimbursed unless prior written approval was obtained from the City of Burlington. An expense shall not be reimbursed if: (1) the expense is not identified in "Exhibit C"; (2) the expense exceeds the per item or cumulative limits for such expense if it is identified in "Exhibit C"; or (3) the expense was not approved in writing by an authorized City of Burlington representative prior to the Contractor incurring the expense. If, and to the extent, overnight lodging in western Washington is authorized, Contractor is strongly encouraged to lodge within the corporate limits of City of Burlington. When authorized, Contractor will be reimbursed 100% of lodging expense, if lodged within the corporate limits of the City of Burlington, but Contractor will be reimbursed 50% of lodging expense when lodged outside the corporate limits of the City of Burlington. If authorized, the City of Burlington may (at its sole option) obtain or arrange air travel for the Contractor.

D. Total compensation, including all services and expenses, shall not exceed a maximum of thirty thousand dollars. ($30,000).

E. If Contractor fails or refuses to correct its Work when so directed by the City of Burlington, the City of Burlington may withhold payment otherwise due an amount that the City of Burlington in good faith believes is equal to the cost to the City of Burlington of correcting, re-procuring, or remedying any damage caused by Contractor's conduct.

F. The Contractor is responsible for paying prevailing wages to anyone sub-employed by the said Contractor.

5. **Method of Payment**.

A. To obtain payment, the Contractor shall (a) file its request for payment, accompanied by evidence satisfactory to the City of Burlington justifying the request for payment; (b) submit a report of Work accomplished and hours of all tasks completed; (c) provide professional drawings and related documentation of all adds, changes, modifications and related fiber cable numbers and identifiers; (d) to the extent reimbursement of Reimbursable Expenses is sought, submit itemization of such expenses and, , copies of receipts and invoices; and (e) comply with all applicable provisions of this Agreement. Contractor shall be paid no more often than once every thirty (30) days.

B. All requests for payment should be sent to:

City of Burlington
Attn: IT department
833 South Spruce St

Burlington, WA 98233

6. **Submission of Reports and Other Documents**. The Contractor shall submit all reports and other documents as and when specified in "Exhibit A". Said information shall be subject to review by the City of Burlington, and if found to be unacceptable, Contractor shall correct and deliver to the City of Burlington any deficient Work at Contractor's expense within a reasonable period of time. Contractor shall abide by the City of Burlington's determinations concerning acceptability of Work.

7. **Termination of Contract**. The City of Burlington reserves the right to terminate this Agreement at any time by sending written notice of termination to Contractor ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Contractor (whether by fax, mail, delivery or other method reasonably calculated to be received by Contractor in a reasonably prompt manner) or three (3) calendar days after issuance of the Notice. Upon the Notice Date, Contractor shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Contractor's material breach, the Contractor shall be paid or reimbursed for: (a) all hours worked and Reimbursable Expenses incurred up to the Notice Date (with conditions met as outlined above), less all payments previously made; and (b) those hours worked and Reimbursable Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. The Notice shall be sent by United States Mail to Contractor's address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by delivery. In addition, the Notice may also be sent by any other method reasonably believed to provide Contractor actual notice in a timely manner, such as fax. The City of Burlington does not waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provision of this Agreement. At its sole option, City of Burlington may deduct from the final payment due the Contractor (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other backcharges or credits.

8. **Changes**. The City of Burlington may, from time to time, unilaterally change the scope of the Work of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the scope of Work (and resulting increase or decrease in compensation), shall: (a) be made only in writing and signed by an authorized City of Burlington representative, (b) be explicitly identified as a Change Order and (c) become a part of this Agreement.

9. **Subletting/Assignment of Contracts**. Contractor shall not sublet or assign any of the Work without prior written consent of the City of Burlington.

10. **Indemnification**. Except as otherwise provided in this paragraph, the Contractor hereby agrees to defend and indemnify the City of Burlington from any and all Claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Contractor (or its employees, agents, representatives subcontractors/subconsultants) relating to this Agreement. The Contractor is obligated to defend and indemnify the City of Burlington pursuant to this paragraph whether a Claim is asserted directly against the City of Burlington, or whether it is asserted indirectly against the City of Burlington, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City of Burlington. The Contractor's duty to defend and indemnify pursuant to this paragraph is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of the Contractor. The Contractor shall not indemnify the City of Burlington for Claims caused solely by the negligence of the City of Burlington. If (1) RCW 4.24.115 applies to a particular Claim, and (2) the bodily injury or damage to property for which the Contractor is to indemnify the City of Burlington is caused by or

results from the concurrent negligence of (a) the Contractor, its employees, subcontractors/subconsultants or agents and (b) the City of Burlington, then the Contractor's duty to indemnify shall be valid and enforceable only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the City of Burlington, the Contractor specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The Contractor recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this paragraph: (1) "City of Burlington" includes the City of Burlington's officers, employees, agents, volunteers and representatives and (2) "Claims" include, but is not limited to, any and all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, Contractor employs or engages subconsultants or subcontractors, then Contractor shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify the City of Burlington to the extent and on the same terms and conditions as the Contractor pursuant to this paragraph.

11. **Insurance**.

A. Contractor shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Contractor's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City of Burlington.

1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than $1,000,000 per occurrence. If the City of Burlington authorizes sublet work, the Contractor shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless the Contractor covers such employees.

2. Commercial General Liability Insurance on an occurrence basis in an amount not less than $1,000,000 per occurrence and at least $2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

3. Business Automobile Liability Insurance in an amount not less than $1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

4. Professional Errors and Omissions Insurance in an amount not less than $1,000,000 per occurrence and $1,000,000 in the annual aggregate. Such coverage may be written on a claim made basis. If both parties agree that the Work does not warrant Contractor providing Professional Errors and Omissions Insurance, this paragraph may be stricken and initialed by both parties.

B. The above liability policies shall contain a provision that the policy shall not be canceled or materially changed without thirty (30) days prior written notice to the City of Burlington. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Contractor to furnish the required insurance during the term of this Agreement.

C. Upon written request by the City of Burlington, the insurer or his/her agent will furnish, prior to or during any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.

D. Prior to the Contractor performing any Work, Contractor shall provide the City of Burlington with a Certificate of Insurance acceptable to the City of Burlington Attorney evidencing the required insurance. Contractor shall also provide the City of Burlington with either (1) a true copy of an endorsement naming the City of Burlington, its officers, employees and agents as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of Burlington of any certificate showing less coverage than required is not a waiver of the Contractor's obligations to fulfill the requirements.

E. If the policy listed in paragraph 11.A.4. above, Professional Errors and Omissions Insurance, is on a claims made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy provided. The extended reporting or discovery period on a claim made policy form shall not be less than thirty six (36) months following expiration of the policy. (This paragraph shall not apply if paragraph 11.A.4. above is stricken.)

F. Contractor certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Contractor shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Contractor shall provide the City of Burlington with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

G. In case of the breach of any provision of this Section, the City of Burlington may, at its option and with no obligation to do so, provide and maintain at the expense of Contractor, such types of insurance in the name of the Contractor, and with such insurers, as the City of Burlington may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement or may demand Contractor to promptly reimburse the City of Burlington for such cost.

12. **Independent Contractor**.

A. It is further agreed by and between the Parties that because this Agreement shall not constitute nor create an employer-employee relationship, and since the Contractor is an independent contractor, Contractor shall be responsible for all obligations relating to federal income tax, self-employment FICA taxes and contributions, and all other so called employer taxes and contributions, including, but not limited to, industrial insurance (Workmen's Compensation), and that the Contractor agrees to indemnify, defend and hold the City of Burlington harmless from any claims, valid or otherwise, made to the City of Burlington, because of these obligations.

B. Any and all employees of the Contractor, while engaged in the performance of any Work, shall be considered employees of only the Contractor and not employees of the City of Burlington. The Contractor shall be solely liable for any and all claims that may arise under the Worker's Compensation

Act on behalf of said employees or Contractor, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Contractor's employees, while so engaged on any of the Work

C. Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City of Burlington free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

D. Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, City of Burlington business and occupation taxes), fees, licenses, excises or payments required by any City of Burlington, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in performance of the Work and Contractor shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

E. Contractor shall insure that any subcontractor or subconsultant complies with all applicable terms of this Agreement including insurance and labor practices.

13. Employment. The Contractor warrants that he/she had not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City of Burlington shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **Audits and Inspections**. At any time during normal business hours and as often as the City of Burlington may deem necessary, the Contractor shall make available to the City of Burlington for the City of Burlington's examination all of the Contractor's records and documents with respect to all matters covered by this Agreement and, furthermore, the Contractor will permit the City of Burlington to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

15. **City of Burlington Business License**. Contractor agrees to obtain a City of Burlington business license prior to performing any work pursuant to this Agreement.

16. **State of Washington Requirements**. Contractor agrees to register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.

17. **Compliance with Federal, State and Local Laws**. Contractor shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

18. **Compliance with Grant Terms and Conditions.** Contractor shall comply with any and all conditions, terms and requirements of any federal, state or other grant that wholly or partially funds Contractor's work hereunder.

19. **Waiver**. Any waiver by the Contractor or the City of Burlington or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

20. **Complete Agreement**. This Agreement contains the complete and integrated understanding and Agreement between the Parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

21. **Modification of Agreement.** This Agreement may be modified as provided in Section 8, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City of Burlington and the Contractor.

22. **Severability**. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, the remainder of the Agreement shall remain in full force and effect.

23. **Notices**.

A. Notices to the City of Burlington shall be sent to the following address:

City of Burlington
IT Department
833 South Spruce St
Burlington, WA 98233

B. Notices to the Contractor shall be sent to the following address:

Mt. Baker Cable, LLC
POB 29534
Bellingham WA 98228

24. **Venue**. It is agreed that venue for any lawsuit arising out of this Agreement shall be Skagit County, Washington.

IN WITNESS WHEREOF, the City of Burlington and Contractor have executed this Agreement as of the date first above written.

	CONTRACTOR: Please fill in the spaces and sign in the box appropriate for your business entity.
CITY OF BURLINGTON **WASHINGTON** By: _____ Steve Sexton, Mayor _____ Date	***Corporation*** **XXXXX** By _____ Typed/Printed Name: _____ Its _____ Date: _____
ATTEST: _____ Renee Sinclair Budget and Accounting Director Date: _____	***Partnership (general)*** _____ [Contractor's Complete Legal Name] a Washington general partnership By _____ Typed/Printed Name: _____ General Partner Date: _____
APPROVED AS TO FORM: _____ Leif Johnson, Attorney Date: _____	***Partnership (limited)*** _____ [Contractor's Complete Legal Name] a Washington limited partnership By _____ Typed/Printed Name: _____ General Partner Date: _____
APPROVED AS TO FORM: _____ Marv Pulst, Public Works Director Date: _____	***Sole proprietorship*** _____ Typed/Printed Name: _____ Sole proprietor Date: _____
	Limited Liability Company _____ [Contractor's Complete Legal Name] a Washington limited liability company

"EXHIBIT A"
SCOPE OF WORK

WORK TO BE PERFORMED

This Scope of Work (SOW) describes the type of work to be performed by the Contractor to assist the City of Burlington for the support, design, installation and maintenance of Fiber optic infrastructure.

Fiber Optic Installation, Maintenance, Emergency Repair and Design:

Design – Help with job costing and design.
Installation – Including Aerial, underground trenching and micro trenching, permits, pole surveys, pole make ready, conduit installations, micro trenching, splicing, fiber labeling, fiber tags and provide professional documentation, drawings etc.
Maintenance and Repair – Fiber maintenance includes repairs of fiber in conduit, repair of fiber on poles, including pole transfers, including 24 hours-per-day availability for emergency on-call repair, relashing, repairing any outside fiber plant related issues, relocate or repair fiber as is needed.

As-needed capability to provide design, installation, integration, maintenance and job costing services for fiber optic communication infrastructure applications.
Ability to work with The City of Burlington Information Technology Manager or Public Works designated staff on all jobs and provides timely job estimates and scheduled install dates.
Ability to work with The City of Burlington IT and/or Public Works staff on 7x24 emergency callout situations.
Maintain proper license, bond and insurance as an independent contractor.
Maintain strong relationships with all other City of Burlington utilities and City of Burlington business partners.
Able to meet CJIS requirements.
Ability to work with NJUNS to comply with make ready, pole permits, pole surveys, pole transfers and maintenance.
Must be listed and current on the State MRSC small works roster.
Able to work independently and on-call 24 hours-per-day as needed.
Able to provide costs based on time and material.

FIBER SPLICING:

Have the capability to provide single and mass splicing using both mechanical and fusion splicing techniques.
Able to perform all splices within a controlled environment whenever possible.
Have the capability to perform adequate emergency response repairs and hot cuts.
Able to provide splicing documentation for all jobs, including a splice log, to identify fiber number, fiber color, buffer tube color and location.

Able to provide fiber splicing capabilities including:
- Maintenance/Emergency Restoration
- Single Fusion and Mass Splicing
- Active (Hot) Fiber Rollovers
- Mid-Sheath splicing
- Ring Cuts

"EXHIBIT A"
SCOPE OF WORK

FIBER TERMINATION / MAINTENANCE

Able to provide comprehensive testing and documentation services and provide test results in both printed and digital format.

Able to provide splicing capabilities including:

- Termination (SC, LC, UPC and APC, Unicam Connectors and Pigtails)
- Complete Testing Services
- Documentation
- End to End testing
- Reel testing
- Splice Loss
- OTDR
- Power Meter/Laser Source
- GPON
- Fiber footage or meter counts
- CWDM and DWDM
- Test for live fiber

Cost Estimate:
Professional services described in this scope of work are based on time and material along with the estimated labor hours and expense allowances allocated. Services will be provided as requested by the City of Burlington, to the extent allowed by the allocated budget. If additional professional services or levels of effort in excess of the labor hours and expenses allocated in the associated fee estimates services are required, changes to the scope of work and budget may be required, as determined by the contractor and the City of Burlington.

"EXHIBIT B"
COMPENSATION

ALTERNATE A [HOURLY RATE UP TO A MAXIMUM AMOUNT]

☐ The City of Burlington shall pay the Contractor a sum equal to the amount of hours actually worked multiplied by the rate identified herein for the staff performing the Work, subject to the maximum stated in 4(D) of this Agreement. Please provide a rate schedule that includes rates for installing fiber for both aerial and underground, splicing, termination, pole surveys, pole make ready, pole transfers, and misc. maintenance.

Name	**Responsibility**	**Rate**	**Est. Hours**	**Extension**
OSP PM/Design/Repair	Maintenance, Design, Splicing, Installation and Repair	$55.00/HR		
OSP Foreman	Installation, Maintenance and Repair	$55.00/HR		
OSP Lineman	Installation, Maintenance and Repair	$55.00/HR		
OSP Groundman	Installation, Maintenance and Repair	$40.00/HR		
OSP Flagger	Traffic Control	$45.00/HR		
OSP Splicer	Splice/Test Fiber Cable	$60.00/HR		

"EXHIBIT C"
REIMBURSABLE EXPENSES

Type of Expense	Maximum Per Item	Cumulative Maximum
Bucket Truck	$250/Day	
OSP Vehicle w/Equipment	$150/Day	
Misc. Materials	Cost + 15%	
Rental Equipment if needed	Cost + 15%	

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 14

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Bryan Harrison, City Administrator

Subject: Senior Services: 2017 Interlocal Agreement with Skagit County to provide Senior Services at the Burlington Senior Center

Attachments: Proposed 2017 Interlocal Agreement

Public Hearing Required: YES ( ) NO (X)

SUMMARY

Attached is a proposed interlocal agreement between the City of Burlington and Skagit County pertaining to provision of senior nutrition and other senior service programs at the Burlington Senior Center. The contract is for one year (January 1 – December 31, 2017) and replaces the prior funding formula (cost minus percentage of utilities) with a flat fee that was adjusted to account for assumed utility costs.

RECOMMENDATION

Motion to approve the proposed interlocal agreement with Skagit County to provide senior services at the Burlington Senior Center and authorize the Mayor's signature.

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN
SKAGIT COUNTY
AND
THE CITY OF BURLINGTON

THIS AGREEMENT is made and entered into by and between the City of Burlington ("City") and Skagit County, Washington ("County") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

1. PURPOSE: The County operates a **Senior Services Program, within the department of Public Health**, and employs a staff of qualified and professional personnel to develop, direct and coordinate a comprehensive system for the delivery of services to seniors. For the purpose of this Agreement, a senior will be defined as any person 55 years of age or older. As a result of other contractual Agreements, some services may be limited to those over 60 years of age.

   The City desires to enter into an Agreement whereby the County will furnish to the City certain administrative and professional services and the City will pay for the services so performed. This Agreement is general in nature and reflects the broad responsibilities the County has for the provision of services to seniors.

2. RESPONSIBILITIES: It is agreed between the parties during the effective term of this Agreement, the County will furnish administrative and professional services to the City; said services to consist primarily of the following **Program Services for Seniors:**

   A. Nutritional Services

      1. Congregate meals: Hot, nutritionally balanced noon-time meals are served at the Senior Center.

      2. Home-delivered meals: Individuals over the age of 60 who are homebound and unable to prepare meals for themselves or attend a Senior Center may have meals delivered to their homes. Volunteers deliver hot and frozen meals to homebound seniors on weekdays. Meal delivery can be a temporary or an on-going service especially helpful to individuals with disabilities or individuals recovering from illnesses. Staff members from the Skagit Nutrition Program make initial home visits to assess the extent of the need for home-delivered meal service, along with providing nutrition intervention when applicable. Meal delivery can be a temporary or on-going service, based on individual client needs. Annual reassessments are conducted to re-evaluate eligibility

      3. Liquid Meal Supplement: The Skagit Nutrition Program has Ensure Plus available at the Skagit County Senior Centers, which is available to older

adults. Ensure Plus is a high-calorie liquid food for use when extra calories and nutrients, but a normal concentration of protein, are needed. A prescription or written statement of need from a physician, registered nurse, or registered dietitian is required. Prescriptions can be kept on file with the nutrition program and must be renewed every 6 months.

B. Senior Center Program Services

1. The County provides comprehensive Senior Service programs at community focal points where older adults can conveniently access services and activities which support their independence, enhance their dignity and encourage their involvement in and with their community. As part of a comprehensive community strategy to meet the needs of older persons, coordinated Senior Services programs will take place within and emanate from this facility. The Coordinator shall utilize local Senior Advisory Boards to assess needs and interests of local senior citizens in the formulation of programs.

C. Senior Center Operating Hours: 8:00 a.m. - 4:00 p.m. (Monday - Friday)

3. TERM OF AGREEMENT: The term of this Agreement shall be from January 1, 2017 through December 31, 2017.

4. MANNER OF FINANCING: The City shall pay for the services provided in this Agreement the sum of **thirteen thousand and seventy-nine dollars ($13,079.00).** This amount reflects an offset of utility costs for the central kitchen. One-fourth of the amount shall be due at the end of each quarter, that being March 31, June 30, September 30, December 31, 2017 and payable after submission of a voucher and processing in the manner provided by the City for processing voucher and issuing warrants thereon. The total amount may be paid at any time, if desired by the City.

5. INSURANCE: The County shall provide proof of insurance for general comprehensive liability in the amount of two million dollars ($2,000,000.00) to cover the County's activities during the term of this Agreement. Proof of insurance shall be in a form acceptable and approved by the City. No Agreement shall form until and unless a copy of the Certificate of Insurance, in the form and amount required, is attached hereto.

6. ADMINISTRATION AND RELATIONSHIP: Senior programs will function according to policies and procedures of Skagit County and in accordance with the Federal guidelines for Older Americans Act and Senior Citizen Service Act grants. These policies, guidelines and budgets will be monitored and evaluated by County Administrative staff. The County will provide supervisory and general staff to conduct and coordinate comprehensive Senior Services. With the signing of this intergovernmental Agreement, the delivery of programs to older adults shall be a function of the County, managed by the Department of Public Health. The City and County intend that an independent contractual relationship be created by this Agreement. The County's employees, agents, contractors and/or subcontractors are

not considered to be an employee of the City for any purpose, and neither the County nor any employee, agent, contractor and/or subcontractor of the County shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation.

The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

A. The County's representatives shall be the Director of Public Health, Human Services Manager and the Senior Center Coordinator.

B. The City's representative shall be the Parks and Recreation Director or the City Administrator.

7. OPERATION:

A. The County will be responsible for all related operational expenses associated in providing direct senior services as outlined in this Agreement. The City will provide an appropriate site for the delivery of Senior Center Services. Sites will be obtained through facility donations, building rental or acquisition. The City will be responsible for all costs associated with facility maintenance, utilities, repairs and custodial services to appropriate levels as determined by the City. The County will ensure that the site is maintained at a reasonable level of upkeep during normal, daily operations of the Senior Center. The County will be responsible for all costs incurred relating to the Senior Center telephone service.

B. The signing of this intergovernmental Agreement provides for the delivery of Senior Services programs by Skagit County with the City furnishing space. It is agreed that the County shall have use of the multipurpose room, reception area, conference room, crafts room, and commercial kitchen, from 8:00 a.m. until 4:00 p.m., Monday through Friday. The conference room is also available for City use; whenever the City needs daytime use of the conference room, the City will contact the Senior Center Coordinator in order to coordinate the scheduling of its facility.

C. It shall be the responsibility of the Senior Center Coordinator to contact City staff to request additional usage of the community room and/or community kitchen or request for additional Senior Center hours, no later than the third Monday of the month preceding the proposed use. City staff shall then check the community schedule for availability. If another group has not scheduled the facility, the space will be made available to the Center and placed on the facility calendar by City staff. The City agrees that for this additional use the County will not be charged.

D. The City shall designate the Senior Center Coordinator's office to be used exclusively by program staff and volunteers on a 24-hour basis and will not rent this space to other groups during the duration of the Agreement.

E. City and County agree that the Burlington Community Center's commercial kitchen was designed to provide on-site meal preparation for senior meals. The City agrees to allow the County to operate a central kitchen in the Burlington Community Center on a long-term basis to meet this need.

F. It is agreed that the County will be responsible for costs associated with the on-site meal preparation operations. Since the City will realize significant increases in utility costs associated with the central kitchen operation, the City and County agree that the County will be responsible for this increased cost. The requested payment for services in this Agreement is calculated to offset utility costs incurred by the central kitchen. The City agrees to not rent the commercial kitchen to any groups. Only community service groups who have scheduled fundraising events at the building may use the commercial kitchen. The Senior Nutrition Program Coordinator must be made aware of all community service group requests to use the commercial kitchen. Service groups approved to use the commercial kitchen must schedule and contract with the City for a Nutrition Program kitchen monitor.

G. The City will focus and direct temporary and periodic usage of the facility by community groups towards the community room and community kitchen. The City may schedule other compatible community activities in the community room and community kitchen during the regular hours of Senior Center operations. The City will make the Senior Center Coordinator aware of all community group scheduling. The City will be responsible for setting and collecting fees and providing trained monitors for community usage. The City also agrees to retain all appropriate damage deposits and make associated repairs and cleaning. The Senior Nutrition Program shall be reimbursed for any damage or loss of kitchen equipment or utensils and food that results from community service groups use of the commercial kitchen. The City agrees to pay for all repairs and maintenance of the commercial kitchen equipment that is damaged by any community service group usage during the term of this Agreement. These procedures will allow for maximum use of the facility and promote diversity of programs, as well as be responsive to the general community needs.

H. Janitorial and maintenance services for the Burlington Community Center, except for the commercial kitchen, are the responsibility of the City; maintenance and custodial services for the warming kitchen shall be the responsibility of the City. The County agrees to maintain a reasonable level of upkeep during normal operations of the Senior Center. The City will provide customary custodial services prior to the opening of the Senior Center at 8:00 a.m.

I. Janitorial and maintenance including the repair and/or replacement of all items within the commercial kitchen situated within the Burlington Community Center shall be the responsibility of the County. The City shall have no authority to allow

any third party to use the commercial kitchen. The County shall have sole authority to allow use of the commercial kitchen by any third party.

J. All issues and concerns about the use of the Community Center shall be brought to the Burlington Parks Board for consideration and recommendation of approved usage.

8. TREATMENT OF ASSETS AND PROPERTY: The County will be allowed to leave all of its Senior Services furnishings in place on a daily basis. If other groups use or remove furnishings, it is agreed that the user will return the rooms and their furnishings to the original state. The County assumes all responsibility for its own equipment that may be left out on a daily basis. No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

9. INDEMNIFICATION: County covenants and agrees to hold the City harmless from and to pay and defend any claims, causes of action, and suits for damage occurring as a result of the use of the leased premises for the operation of this Agreement except if such claims, causes of action and suits for damages are based on negligence of the City. It is further understood and agreed that the County and its employees are acting as independent contractors in the performance of the Agreement and are in no way employees or agents of the City of Burlington. Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the County or City by reason of entering into this Agreement except as expressly provided herein.

10. TERMINATION: Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

11. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS: The Agreement may be changed, modified, amended or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

12. SEVERABILITY: In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

13. ENTIRE AGREEMENT: This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

14. AUTHORITY TO SIGN: Each individual executing this Agreement on behalf of the City and the County represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the County.

15. COUNTERPARTS: This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counter parts shall be construed as and shall constitute on and the same Agreement.

16. OTHER PROVISIONS:

A. REPORTS: County reports will be provided to the City on a quarterly basis. These reports will contain statistical information regarding the participation levels in senior service programs.

B. AUDITS: The City may audit the records to assure that it will receive full value in services for the consideration of services recited herein.

CITY OF BURLINGTON:

_____

Steve Sexton
Mayor

Date _____

City of Burlington
833 South Spruce Street
Burlington, WA 98233

DATED this _____ day of _____, 2016.

BOARD OF COUNTY COMMISSIONERS SKAGIT COUNTY, WASHINGTON

_____
Lisa Janicki, Chair

_____
Ron Wesen, Commissioner

_____
Kenneth A. Dahlstedt, Commissioner

Attest:

_____
Clerk of the Board

For contracts under $5,000:
Authorization per Resolution R20030146

_____
County Administrator

Recommended:

_____
Department Head

Approved as to form:

_____
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

_____
Risk Manager

Approved as to budget:

_____
Budget & Finance Director

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 15

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Bryan Harrison, City Administrator

Subject: Discussion regarding second City Council meeting in December

Attachments: _____

Public Hearing Required: YES ( ) NO (X)

SUMMARY

Discussion regarding rescheduling second City Council meeting in December, possible dates to consider Monday, December 19th or Tuesday, December 20th.

CITY OF Burlington
SKAGIT COUNTY, WASHINGTON INCORPORATED 1902

ITEM #: 16

CHECK ONE:

NEW BUS. X

OLD BUS. ____

AGENDA ITEM

Council Date: December 8, 2016

Mayor Steve Sexton

Bryan Harrison, City Administrator

Subject: Discussion regarding 2017 Council Committee Appointments

Attachments: ____

Public Hearing Required: YES ( ) NO (X)

SUMMARY

Discussion regarding 2017 Council Committee appointments; committee appointments will be made at the first City Council meeting in January.