

CITY COUNCIL AGENDA
City Hall, 833 South Spruce Street
7:00 p.m. December 28, 2017

CALL TO ORDER:

Mayor Sexton
Council Members: Aslett, Bieche, J. DeGloria, R. DeGloria, Edmundson, Loving and Montgomery
Staff: Berner, Blaine, Dempsey, Erickson, Hampton, Harrison, Hawes, Brad Johnson, Brittany Johnson, L. Johnson, Jongsma, Luvera, Morrison, Moser, Peterson, Pulst, Rabenstein, Schwetz, Sinclair, Toth, Ward, Yengoyan

MINUTES:

City Council Meeting December 14, 2017

AUDIT OF BILLS:

PUBLIC COMMENTS:

COUNCIL COMMENTS:

MAYOR'S UPDATE:

PROCLAMATION:

SPECIAL PRESENTATION:

OFFICERS REPORTS:

TBD

UNFINISHED BUSINESS:

CONSENT AGENDA:

NEW BUSINESS:

- 1) Portable Restroom Services Agreement
- 2) Supplement Agreement with Reichhardt & Ebe – Extend Agreement End Date
- 3) Supplement Agreement with TranTech Engineering – Extend Agreement End Date
- 4) Ordinance adopting updated Capital Improvement Plan
- 5) Phase five of the Comprehensive Municipal Code Update and Reorganization – Final adoption of code and map updates.
- 6) Police patrol division jackets purchase

FUTURE WORKSHOP:

EXECUTIVE SESSION:

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

ADJOURNMENT:

MEETINGS:

- | | |
|--|--|
| 1) <u>DOWNTOWN BURLINGTON ASSOCIATION:</u> | Wednesday <u>December 27, 2017</u> 9:00 a.m.
Chamber of Commerce, 520 E Fairhaven Ave |
| 2) <u>AUDIT & FINANCE COMMITTEE:</u> | Thursday <u>December 28, 2017</u> 4:00 p.m.
City Hall, 833 S Spruce St |
| 3) <u>AUDIT & FINANCE COMMITTEE:</u> | Thursday <u>December 14, 2017</u> 4:00 p.m.
City Hall, 833 S Spruce St |
| 4) <u>LIBRARY BOARD:</u> | Tuesday <u>January 2, 2018</u> 6:00 p.m.
Burlington Public Library, 820 E Washington Ave |
| 5) <u>PARKS ADVISORY BOARD:</u> | Monday <u>January 8, 2018</u> 5:30 p.m.
Parks & Recreation, 900 E Fairhaven Ave |
| 6) <u>PUBLIC SAFETY COMMITTEE:</u> | Tuesday <u>January 9, 2018</u> 4:00 p.m.
Public Safety Building, 311 Cedar Street |
| 7) <u>HISTORICAL PRESERVATION BOARD:</u> | Tuesday <u>January 9, 2018</u> 5:00 p.m.
Parks & Recreation, 900 E Fairhaven Ave |

December 2017

December 2017

January 2018

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

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

January 2018

January 2018						
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 2018						
Su	Mo	Tu	We	Th	Fr	Sa
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
Dec 31	Jan 1, 18	2	3	4	5	6
		6:00pm Library Board (Library)				
7	8	9	10	11	12	13
	5:30pm Parks Board (Parks & Rec)	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		
14	15	16	17	18	19	20
		4:00pm Public Works Committee (Engineering Conf Room)	1:00pm SKAT Board (Burlington City Hall) 5:30pm 7:30pm Planning Commission (Council Chambers)			
21	22	23	24	25	26	27
			9:00am 10:00am Downtown Burlington Association (Visitor Information Center/Chamber of	4:00pm Audit & Finance (City Hall) 7:00pm Council Meeting		
28	29	30	31	Feb 1	2	3

Dec 31 - Jan 6

Jan 7 - 13

Jan 14 - 20

Jan 21 - 27

Jan 28 - Feb 3

December 14, 2017

CALL TO ORDER:

Mayor Steve Sexton called the meeting to order at 7:01 p.m. with the Pledge of Allegiance. Council members present: Bill Aslett, Tonya Bieche, Joe DeGloria, Rick DeGloria, Edie Edmundson, Chris Loving, and Ted Montgomery. Staff present: Jennifer Berner, Kelly Blaine, Brian Dempsey, Lawanda Hampton, Bryan Harrison, Geoff Hawes, Brad Johnson, Leif Johnson, Michael Luvera, Kristen Morrison, Marv Pulst, Renee Sinclair, Sarah Ward, and Levon Yengoyan.

MINUTES:

A motion was made to approve the minutes of the November 21, 2017 council meeting by **Councilors R. DeGloria/Loving**. All in favor; motion carried.

AUDIT OF BILLS:

A motion was made by **Councilors J. DeGloria/Aslett** to approve Accounts Payable invoices to be paid as reviewed on December 14, 2017 in the amount of \$435,326.87; and Payroll expenses for pay period ending November 25, 2017 in the amount of \$631, 250.48. All in favor; motion carried. **Councilor J. DeGloria** remarked that the Payroll expenses were greater than normal as there were pay-outs for police officers and fire fighters.

PUBLIC COMMENTS:

Kim DeDonado, resident of Anacortes spoke of the issue of issues regarding homelessness.

COUNCIL COMMENTS:

Councilor Edmundson invited all to the next Historical Board event, featuring Dr. Wayne Martin, which will take place on Saturday, January 6, 2018 at 1:00 p.m. at the Burlington Chamber of Commerce Visitor's Information center.

Councilor Aslett discussed recent calls from the Burlington Chamber of Commerce, and EDASC, requesting a meeting with him regarding the TPA. **Councilor Aslett** stated that he would do his best to represent all council members in the meeting, and would share the meeting discussions with council. **Councilor Edmundson** stated that she had also been contacted by both entities, but declined, as she did not feel as though she would like to go a meeting where all council was not included.

Councilor Loving thanked **Councilor Bieche** for her service to Burlington.

Councilor Bieche discussed a request to reconsider allowing of prayer, open to all faiths, before council meetings.

MAYOR'S UPDATE:

Mayor Sexton thanked Councilor Bieche for her service as a council member, and presented to her a plaque of appreciation.

December 14, 2017

Mayor Sexton discussed his attendance this past week, of the US Bank 2018 Financial Preview presentation, in which economic forecasters discussed the upcoming economy, and stated that he would distribute to council the information learned.

PROCLAMATION:

No proclamation.

SPECIAL PRESENTATION:

Manny Smith, Director of Operations Boys and Girls Club of Skagit County presented to council the services offered by the organization. **Ron McHenry**, CEO/Executive Director of Boys and Girls Club of Skagit County also discussed the services of the organization, and thanked the Burlington Police and Fire department for their efforts in providing support to some of the children's activities.

OFFICER REPORTS:

Public Works Director Marv Pulst updated council on grant applications which were submitted last fall to the Transportation Improvement board, stating that \$206,000 was awarded for a repaving project on Anacortes Street, from the compact roundabout, south to the railroad tracks. **Pulst** stated that a 15% match was required for the grant funding, which means the City of Burlington will be contributing \$30,000 to the project funding.

Pulst updated council on a \$2.7 million grant application which was awarded for the East-West connector road, which will expand east from Costco's entrance on Burlington Blvd., and end at Walnut Street. **Pulst** stated that the City's ability to possess the property on which Skagit Cycle is located, has been essential for the project, and that a La Quinta hotel will be opening on the new road around the time of the project's completion. **Pulst** discussed timing and logistics of the project, which he stated is to begin the design process in 2018, with a projected summer 2019 completion date.

City Administrator Bryan Harrison reported that the CRS (Community Rating System) has been recertified 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.

City Administrator Bryan Harrison informed council that EDASC will be holding an Economic Development Forecast meeting on February 8th, 2018, which conflicts with the regularly scheduled Burlington City Council meeting. **Administrator Harrison** stated that council could elect to reschedule the council meeting, should they choose to, in order to attend the EDASC meeting.

City Administrator Bryan Harrison discussed the success of the Children's Museum's Winter Wonderland event, which was funding in part by the city's Lodging Tax fund. **Mayor Sexton**

December 14, 2017

stated that Sunday was the busiest day of the event, and praised police for their efforts and positive interaction at the event.

Director of Budget & Accounting Renee Sinclair introduced newly hired staff member, Accounting Supervisor **Lawanda Hampton**.

UNFINISHED BUSINESS:

No Unfinished Business.

CONSENT AGENDA:

1. **Agreement with Skagit Valley Tulip Festival** - Printing, marketing, and distribution of the 2018 Official Skagit Valley Tulip Festival Brochure: \$5,000
2. **Agreement with Burlington Chamber of Commerce – Berry Dairy Days Festival** marketing: \$11,000
3. **Agreement with Burlington Chamber of Commerce – Operation of the Burlington Visitor’s Information Center:** \$117,000
4. **Agreement with Celtic Arts Foundation – Marketing of Highland Games & Celtic Festival:** \$2,500
5. **Agreement with Children’s Museum of Skagit County – Marketing of the museum:** \$30,000
6. **Agreement with Children’s Museum of Skagit County – 3rd Annual Winter Wonderland:** \$50,000
7. **Agreement with Children’s Museum of Skagit County – Skagit County Museum Passports:** \$5,000
8. **Agreement with Lincoln Theatre Foundation – Marketing of events:** \$8,000
9. **McIntyre Hall Performing Arts Center – Marketing of McIntyre Hall and Events Center:** \$15,000
10. **Skagit River Bald Eagle Awareness Team – Marketing of Skagit River Bald Eagle Festival & Interpretive Center:** \$5,000
11. **Skagit River Salmon Festival – Marketing of the 2018 Skagit River Salmon Festival -** \$5,000
12. **Burlington Edison Little League – Upgrade Skagit River Park Baseball Fields -** \$27,300

December 14, 2017

A motion was made to approve the consent agenda by **Councilors Loving/Bieche**. **Councilor Aslett** recused himself from voting. **Councilors J. DeGloria/ R. DeGloria/Edmundson/Montgomery** in favor; motion carried.

NEW BUSINESS:

PUBLIC HEARING: PROPOSED 2018 BUDGET

Mayor Sexton opened the Public Hearing.

No public comments were made.

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

Discussion was held regarding the 2017 budget, 2018 budget and budget process, and revenues and expenditures for 2018 and future revenue sources.

A motion was made by **Councilors Loving/Edmundson** to approve the proposed 2018 budget ordinance and adopt the 2018 budget and authorize the Mayor's signature on the budget ordinance. **Councilors Aslett/Edmundson/R. DeGloria/Loving/Montgomery** in favor. **Councilors Bieche/J. DeGloria** opposed. Motion carried.

INTERLOCAL AGREEMENT WITH SKAGIT COUNTY TO PROVIDE SENIOR SERVICES TO BURLINGTON RESIDENTS

Parks and Recreation Director Jennifer Berner presented to council the 2 year contract with Skagit County, which allows for a cooperative operation of the Senior Center, stating that the contract term will cost \$24,958, and that the agreement also includes provision of Wi-Fi services to the building at a shared cost.

A motion was made by **Councilors J. DeGloria/Bieche** to approve the attached two year interlocal agreement with Skagit County to provide senior services to the Burlington Senior Center and authorize the Mayor to sign. All in favor; motion carried.

PHASE FOUR OF THE COMPREHENSIVE MUNICIPAL CODE UPDATE AND REORGANIZATION – REVISIONS TO TITLE 17 BMC

Senior Planner Brad Johnson discussed the comprehensive municipal code update, and the phases which have been completed, recommending to council to adopt the proposed changes to Title 17 BMC.

CONTRACT FOR PROSECUTION SERVICES BY KAILIN JAMES

City Attorney Leif Johnson stated that this is an updated to the current contract with Kailin James for prosecution services. **L. Johnson** reviewed the changes to the contract and the reasons behind those changes.

December 14, 2017

A motion was made to approve the agreement for legal services between the City of Burlington and Kailin James and authorize the Mayor's signature by **Councilors Bieche/R. DeGloria**. All in favor; motion carried.

AGREEMENT WITH TRANTECH ENGINEERING FOR ENGINEERING SERVICES FOR EAST GEORGE HOPPER RD SIGNAL REPLACEMENTS

Public Works Director Marv Pulst discussed the project engineering service agreement with Trantech Engineering, for a project which will upgrade the transportation corridor along East George Hopper Road between Burlington Boulevard and Costco Drive.

A motion was made by **Councilors Aslett/Bieche** to authorize the Mayor to sign the agreement with Trantech Engineering for engineering services. All in favor; motion carried.

INTERGOVERNMENTAL PURCHASING AGREEMENT

Fire Chief Levon Yengoyan discussed the Intergovernmental Cooperative Purchasing Agreement, which will allow for the Burlington Fire Department to utilize fire service programs under NPPGov, which is a national cooperative purchasing organization utilized by fire departments across the state of Washington.

A motion was made by **Councilors Montgomery/R. DeGloria** to approve the Intergovernmental Cooperative Purchasing Agreement with Public Procurement Authority and authorize the mayor to sign the agreement. All in favor; motion carried.

EXECUTIVE SESSION:

City Attorney Leif Johnson stated the following: that an Executive Session will be held Per RCW 42.30.110 to evaluate the qualifications of an application for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, discharging or disciplining an employee, that action shall be taken in a meeting open to the public. The Executive Session should last approximately 20 minutes; no action will be taken at the conclusion of the Executive Session.

Council and City staff adjourned for Executive Session at 8:37 p.m.

Council and City staff returned from Executive Session at 9:06 p.m.

There was no action taken after Executive Session.

ADJOURNMENT:

December 14, 2017

Mayor Steve Sexton adjourned the meeting at 9:06p.m.

Renee Sinclair
Director of Budget & Accounting

Steve Sexton
Mayor



ITEM #: \

CHECK ONE:

NEW BUS. ☒

OLD BUS. ☐

AGENDA ITEM

Council Date: December 28, 2017 Subject: Portable Restroom Services Agreement
Jennifer Berner,
Parks and Recreation Director

Attachments: RFP for Portable Restroom Services Public Hearing Required: YES () NO (X)
Agreement for Portable Restroom Services

SUMMARY

The Parks and Recreation Department's current contract with United Site Services for portable restroom services in the parks is expiring December 31, 2017. Staff prepared a Request for Proposal for Portable Restroom Services (attached). The RFP requested proposals from qualified contractors for the rental and servicing of portable restrooms at various parks and recreation facilities. The RFP was advertised on November 3, 2017 and closed November 20, 2017.

Two (2) proposals were received, one from United Site Services, current provider, and one from Baker Septic Pumping. Baker Septic Pumping provided the lowest bid for the City. Staff followed up with references, all provided good reports, and is confident in recommending Baker Septic Pumping. The agreement will be effective 2018 – 2019 with an option for 2020.

RECOMMENDATION

Council Motion to award the portable restroom services bid to Baker Septic Pumping and approve the agreement and authorize the Mayor to sign.



REQUEST FOR PROPOSALS (RFP) PORTABLE RESTROOM SERVICES

Nov. 3, 2017

The City of Burlington's Parks and Recreation Department is requesting proposals from qualified contractors for the rental and servicing of portable restrooms at various Parks and Recreation facilities for the time period between January 1, 2018 through December 31, 2019 with option for 2020. Ideally, all portable restrooms shall have the following features:

- All equipment shall be in good working order
- Shall be of primarily polyethylene construction
- Sanitary seat deck and flow design (nonporous surfaces)
- Anti-slip floor surface
- Outside emergency access
- Heavy duty spring loaded doors with interior latch and in-use indicator
- Maximum venting from floor, window, and vent pipe
- Units shall have wall mounted urinal
- Minimum 70 gallon tank
- 2 or more toilet paper roll dispensers
- Handicap units must comply with American with Disabilities Act

Interested contractors must submit sealed proposals by 3:00 p.m. Monday, Nov. 20, 2017 to:
City of Burlington Finance Department
833 S. Spruce Street
Burlington, WA 98233

Please direct questions to the Burlington Parks and Recreation Department at (360) 755-9649 or BParks@burlingtonwa.gov.

TIME TABLE

Following is the tentative timetable for this RFP:

- | | |
|--|---------------------------------|
| 1. Proposals due from contractors | 3:00 p.m. Monday, Nov. 20, 2017 |
| 2. Selection of contractor | Wednesday, Nov. 22, 2017 |
| 3. Reviewed/signed professional services contract returned from contractor | Monday, Dec. 4, 2017 |
| 4. Council award of professional services contract | Thursday, Dec. 14, 2017 |
| 5. Start of services | Tuesday, Jan. 2, 2018 |

The submittal of a proposal indicates that the contractor can comply with this timetable.

SERVICING

- A general service schedule shall be mutually agreed upon between the contractor and the City. The service schedule is subject to change based on usage.
- Units must be serviced weekly while onsite.
- Each portable restroom shall display a record of service clearly identifying personnel performing service and date of service.
- All units shall be delivered fully stocked with hand sanitizer and toilet paper which shall be restocked regularly.
- Units will be monitored by the City for overall cleanliness and repair. Requests by the City for maintenance and /or cleaning shall be responded to within 24 hours.
- Contractor is responsible for securing units in place during wind storms and other natural events that may cause units to tip over.

LOCATIONS

Contractor shall provide units in the locations and time periods as requested by the City. Service requests from the City shall be provided to the contractor with ample advance notice.

The City of Burlington's Parks and Recreation Department oversees 22+ park facilities located within 5 square miles. Contractor may be asked to provide units to any of these facilities when needed; however, the following facilities currently have regular portable restroom requirements. Time periods and quantities are subject to change:

PARK NAME	STREET ADDRESS	UNIT	UNIT TYPE	TIME PERIOD
Jack Doyle Memorial Park	343 S. Section Street	1	Standard	SEP – OCT
N.O.R.A.	1740 E. Whitmarsh Rd	1	Standard	APR – OCT
		1	ADA	JUL
Railroad Park	520 E. Fairhaven Ave	3	Standard	JUN
Rotary Park	821 S. Section Street	1	Standard	MAR –JUN
		1	ADA	MAY – SEP
Tjeerdsma Boat Launch	851 S. Gardner Rd	1	Standard	JAN – DEC
Whitmarsh Practice Fields	1800 E. Whitmarsh Rd	2	Standard	MAR – NOV
Skagit River Park Playfields*	1100 S. Skagit Street	8-45	Standard	MAR – NOV
		2-3	ADA	MAR-JUN/SEP
		2	Sinks	MAR/APR/SEP

*Skagit River Park is an 80+ acre complex that hosts a variety of tournaments, special events and leagues. Unit counts and unit types will vary based on event types. The unit counts noted above reflect the typical min/max needed during event "season" (March - November).

PAYMENT

- Payment for services will be made to the contractor within 30-days of invoice receipt.
- Payment will be made for delivery/removal and weekly servicing of units. Servicing must include cleaning, pumping and stocking of units.
- Payment will be made to the contractor based upon the City's actual use.
- No additional payment will be made to Contractor for units requiring servicing or replacement because of vandalism or other causes beyond the City's control.

PROPOSALS

1. Proposals must be received in **sealed** envelope **by 3:00 p.m. Monday, Nov. 20, 2017.** Unsealed proposals will not be accepted. Envelopes should be clearly marked on the outside "SEALED BID FOR PORTABLE RESTROOM SERVICES".
2. **Sealed** proposals must be delivered to:
City of Burlington Finance Department
833 S. Spruce Street
Burlington, WA 98233
3. **Sealed** proposals will be opened at Burlington City Hall at 3:00 p.m. on Monday, Nov. 20, 2017. City Hall is located at 833 S. Spruce Street.
4. Contractor's proposal documents must include:
 - a. **Contractor's contact Information.**
Contact information shall include, at minimum, company name and address, name of representative and representative's telephone number.
 - b. **Company Description.**
Proposal shall include a brief summary of contractor's qualifications and expertise, support and customer service standards, and description of the proposed equipment.
 - c. **Fees.**
Contractor's proposed fee schedule must be submitted using the Fee Specification Form found on page-5. Proposals shall include any and all fees that are associated with services that may be provided by contractor.
5. The following items apply to all submitted proposals:
 - a. **Addendum or Supplement to Request for Proposal**
In the event that it becomes necessary to revise any of this Request for Proposal (RFP), an Addendum to this RFP will be provided to each contractor. The City reserves the right to change submission date(s) for any reason, including an Addendum or Supplement to the RFP.
 - b. **Late Proposals**
Proposals received after 3:00 p.m. Monday, Nov. 20, 2017 will not be accepted.

c. Rejection of Proposals

The City of Burlington reserves the right to reject any or all submissions, and to waive informalities and minor irregularities in submissions received, and to accept the portion of the proposal or all items if deemed in the best interest of the City of Burlington.

d. Response Material Ownership and Protection

All material submitted regarding this RFP becomes the property of the City of Burlington and will only be returned to the contractor at the City's option.

Responses are public record and may be reviewed by any person after the final selection has been made. The City of Burlington reserves the right to use any or all ideas presented in reply to this request. Disqualification of a contractor does not eliminate this right. If proprietary or protected information is provided in the proposal, it must be clearly identified in the proposal with references to appropriate patents, or other applicable state or federal laws.

e. Incurring Costs

The City of Burlington is not liable for any costs incurred by the contractor prior to issuance of an agreement, contract, or purchase order. This includes any costs associated with a requested demonstration or presentation.

f. Acceptance of Proposal Content

The contents of the proposal of the successful contractor may become contractual obligations if the City of Burlington wishes to execute a contract based on the submitted proposal. Failure of the successful contractor to accept these obligations in a professional services contract or similar instrument may result in cancellation of the award, and such contractor may be removed from future solicitations.

CONTRACT

The successful contractor shall be required to sign a professional services contract with the City relating to the work to be performed. Such contract shall include, but is not limited to, the following articles: method of compensation, time of performance, specifications of the equipment, duties of the contractor, termination of the contract, ownership of material, changes, submission of material, and obligations of the City. A sample professional services contract is attached to the RFP.

SELECTION

Selection of the contractor will be based upon contractor's overall qualifications, ability to meet preferred equipment specifications, demonstrated knowledge and experience, willingness to meet time requirements, total cost of contractor's proposal and contractor's customer service standards. The City reserves the right to request an interview/demonstration if necessary to make a selection.

In making a proposal, the contractor hereby certifies that he/she has reviewed this RFP and is familiar with all conditions contained therein.

City staff will review all proposals. Final selection of the contractor will be made by City staff and authorized, via contract award, by City Council.

PORTABLE RESTROOM SERVICES FEE SPECIFICATIONS

Contractor's pricing must include:

- Unit delivery and removal
- Delivery of fully stocked restroom units with hand sanitizer and toilet paper
- All chemicals and supplies needed to perform once weekly cleaning/servicing/restock

UNIT DESCRIPTION	2018 & 2019 FEE	OPTION FOR 2020
Standard Unit with Weekly Service	\$_____ per month	\$_____ per month
Standard Unit Extra Service	\$_____ per service	\$_____ per service
ADA Unit with Weekly Service	\$_____ per month	\$_____ per month
ADA Unit Extra Service	\$_____ per service	\$_____ per service
Standard Sink Unit with Weekly Service	\$_____ per month	\$_____ per month
Approximate Number of Uses	_____ per sink	
Standard Sink Unit Extra Service	\$_____ per service	\$_____ per service
Double/Deluxe Sink Unit with Weekly Service	\$_____ per month	\$_____ per month
Approximate Number of Uses	_____ per sink	
Double/Deluxe Sink Unit Extra Service	\$_____ per service	\$_____ per service

Please indicate the features included with your units:

- ☐ Constructed from polyethylene materials primarily
- ☐ Sanitary seat deck and flow design (nonporous surfaces)
- ☐ Anti-slip floor surface
- ☐ Outside emergency access
- ☐ Heavy duty spring loaded doors
- ☐ Doors have interior latch and in-use indicator
- ☐ Maximum venting from floor, window, and vent pipe
- ☐ Wall mounted urinal
- ☐ Minimum 70 gallon tank on restroom units
- ☐ 2 or more toilet paper roll dispensers
- ☐ Handicap units comply with American with Disabilities Act

Please describe any other fees or services that you feel the City should be aware of:

For Administration Use Only:

CONTRACT NO. _____ DEPARTMENT Parks and Recreation
FEDERAL TAXPAYER I.D. _____ Service Provider: Baker Septic Pumping
SERVICES PROVIDED: Portable Restroom Service
AMOUNT Attached _____ FUND SOURCE: Operating Budget (Rentals)
DURATION: FROM January 1, 2018 TO December 31, 2019 (2020 optional)

AGREEMENT

THIS AGREEMENT made and entered into on this ____ day of _____, _____ (hereafter the "date of this Agreement"), by and between the ***CITY OF BURLINGTON***, (hereafter referred to as the "City") and _____, (hereafter referred to as "Provider").

WITNESSETH:

WHEREAS, the City desires to contract with the Provider for providing of services; and

WHEREAS, the Provider is licensed and/or duly qualified to provide such services; and

WHEREAS, the City has an interest in promoting the health, safety and welfare of the citizens of the City of Burlington; and

WHEREAS, the Scope of Work included in this Agreement is consistent with promoting the interests of the City; and

WHEREAS, the City and the Provider 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 Provider do mutually agree as follows:

1. **WORK AND/OR SERVICES TO BE PROVIDED BY THE PARTIES:**

The Provider shall complete in a satisfactory and proper manner, as determined by the City, the work and/or services described in **"Exhibit A", Scope of Work and/or Services of Provider**, which is attached hereto and incorporated herein by reference.

2. TIME OF PERFORMANCE:

All services described under Scope of Work and/or Services shall be conducted during the dates provided in "Exhibit B", which is attached hereto and incorporated herein by reference.

3. CONSIDERATION/PAYMENT:

a. The City shall pay to the Provider for work and/or services as described in **"Exhibit B", Payment for Services**, which is attached hereto and incorporated herein by reference.

b. As a governmental taxing entity, the City may not pay Provider for services in advance to the Provider's rendition of services.

c. The Provider understands and acknowledges that the City will not withhold Federal or State income taxes. If necessary or applicable, where required by State or Federal law, the Provider authorizes the City to make withholding for any taxes other than income taxes. All compensation received by the Provider will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable Internal Revenue Service regulations. It is the responsibility of the Provider to make the necessary estimated tax payments throughout the year, if any, and the Provider is solely liable for any tax obligation arising from the Provider's performance on this Agreement.

4. INSURANCE:

The Provider shall provide proof of insurance as set forth in "Exhibit C" for general comprehensive liability in the amount of \$1,000,000 per occurrence to cover activities during the term of this Agreement and \$2,000,000 in the aggregate. Proof of insurance shall be in a form acceptable and approved by the City. A certificate of insurance naming the City of Burlington at 833 S. Spruce Street, Burlington, WA 98233, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees as additional insureds shall accompany this Agreement for signing.

The Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Provider, its agents, representatives, or employees.

- a. Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Provider.
- b. The Provider shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

No Agreement shall form until and unless a copy of the Certificate of Insurance, in the form and amount required, is attached hereto.

5. REPORTS AND INFORMATION:

The Provider, in such form as the City may require, shall provide reports as to the status of the work or services undertaken pursuant to this Agreement, including the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

6. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as a part of the Agreement by whatever legal and reasonable means deemed by the City.

7. RELATIONSHIP:

The City and Provider intend that an independent contractual relationship be created by this Agreement. Provider is not considered to be an employee of the City for any purpose, and neither the Provider nor any employee of the Provider 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.

8. QUALIFIED AND LICENSED:

Provider specifically represents and stipulates that the Provider is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that provider is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business. Further, the Provider shall attach hereto as **"Exhibit D", License(s)** a copy of Provider's license to operate in the State of Washington, and if applicable, in the City of Burlington. No Agreement shall form until and unless copies of the required licenses are attached hereto.

9. EQUAL OPPORTUNITY EMPLOYER:

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

10. DEFENSE & INDEMNITY AGREEMENT:

a. Provider agrees to defend, indemnify and save harmless the City, its appointed and elective 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 appointed or elected officials, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, 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 Provider, 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 appointed or elected officials, 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.

11. INDUSTRIAL INSURANCE WAIVER:

With respect to the performance of this Agreement and as to claims against the City, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees, the Provider expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Provider. This waiver is mutually negotiated by the Parties to this Agreement.

12. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Provider 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.

13. DISPUTE RESOLUTION/COSTS AND ATTORNEY FEES:

a. If for any reason either Party fails to comply with any material provision of the Agreement or any material obligation assumed hereunder, the Parties shall meet and confer in good faith in an effort to agree on resolution and cure of the breach. If the Parties are unable to agree on the informal resolution or cure of the breach, the other Party shall provide to the defaulting Party written notice (default notice) detailing the nature of the default and the steps required to cure such default and may terminate such Agreement, upon written notice if the defaulting Party fails to cure such default or commence and diligently pursue to cure the default within seven (7) days after receiving the default notice.

b. In the event it becomes necessary for either Party to employ an attorney to enforce the provisions of this Agreement or bring an action for the breach of terms of this Agreement, then the non-prevailing Party agrees to pay all reasonable costs, expenses and attorney's fees expended or incurred in connection herein.

14. 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.

15. 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.

16. 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.

17. JURISDICTION/VENUE:

In the event that any dispute arises over this Agreement, the Parties shall submit and not object to jurisdiction and venue being that of Skagit County, Washington, in connection with any claim(s) arising out of this Agreement.

18. 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.

19. 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.

20. FORCE MAJEURE:

A Party is not liable under this Agreement for non-performance caused by events or conditions beyond that Party's reasonable control, if the Party makes reasonable efforts to perform.

21. NON-EXCLUSIVITY

if the Provider is unable or unwilling to provide services requested or required by the City, the City shall have authority to hire another service provider of the City's choosing in order to meet the City's needs.

22. 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.

23. NOTICES:

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

City of Burlington
ATTN: Finance Director
833 S. Spruce Street
Burlington, WA 98233

With copies to the Burlington City Attorney and City Administrator at the same address.

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

Baker Septic Pumping
PO Box 2128
Ferndale, Washington 98248

24. ATTACHMENTS:

Any conflict(s) between the language of any Attachments and the paragraphs of this Agreement set forth in pages one (1) through eight (8), the conflict(s) shall be resolved in favor of the paragraphs of this Agreement unless the conflict(s) is/are specifically addressed, in writing, by the Parties.

25. HEADINGS:

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

26. AUTHORITY:

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

27. 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 one and the same Agreement.

28. ENTIRE AGREEMENT:

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

IN WITNESS WHEREOF, the City and the Provider have executed this Agreement as of the date of this Agreement first written above.

CITY OF BURLINGTON

PROVIDER

By _____
STEVE SEXTON, Mayor

By _____
Tax ID Number: _____

ATTEST:

Address: _____

By: _____
RENEE SINCLAIR,
Budget & Acct. Director

Phone: _____
Email: _____
Fax: _____

Approved as to Form:

By: _____
LEIF JOHNSON,
City Attorney

Approved as to Content:

By: _____
JENNIFER BERNER, Director
Parks and Recreation Director

ATTACHMENTS:

- [1] Exhibit A - Scope of Work and/or Services of Provider**
- [2] Exhibit B – Payment for Services**
- [3] Exhibit C – Insurance**
- [4] Exhibit D - Business License**

FOR CITY ADMINISTRATION USE ONLY: Copy of the [] proof of insurance and/or [] proof of license(s) as required by this Agreement was received and complies with the terms herein on the _____ day of _____, 2017, and is attached hereto as Exhibit(s) C and/or D.

By _____, Title: _____

"Exhibit A"
Scope of Work
and/or Services of Provider

Provider will be responsible for the following services during the contract period described in Exhibit B.

- Provide portable restroom services on park property as well as other properties which parks and recreation events are taking place.
- Transportation of portable restrooms, hand sanitizers and sink units to and from areas requested by Parks and Recreation staff or affiliated agents of the city.
- Weekly service is included in unit cost.
- Extra service as requested by Parks and Recreation staff or affiliated agents of the city.
- Provider is responsible for securing units in place during wind storms and other natural events that may cause units to tip over at the request of Parks and Recreation staff or affiliated agents of the city.
- Provider is responsible for removing units with little notice if natural events are about to occur (floods, wind, etc.).
- All Provider owned units are insured by provider for damage and vandalism including total destruction.
- If Provider is unable to fulfill any part of this Agreement, the City has the option to hire another service.

"Exhibit B"

Payment for Services

PORTABLE RESTROOM SERVICES FEE SPECIFICATIONS

Contractor's pricing must include:

- Unit delivery and removal
- Delivery of fully stocked restroom units with hand sanitizer and toilet paper
- All chemicals and supplies needed to perform once weekly cleaning/servicing/restock

UNIT DESCRIPTION	2018 & 2019 FEE	OPTION FOR 2020
Standard Unit with Weekly Service	\$ <u>60</u> ⁰⁰ per month	\$ <u>60</u> ⁰⁰ per month
Standard Unit Extra Service	\$ <u>25</u> ⁰⁰ per service	\$ <u>25</u> ⁰⁰ per service
ADA Unit with Weekly Service	\$ <u>100</u> ⁰⁰ per month	\$ <u>100</u> ⁰⁰ per month
ADA Unit Extra Service	\$ <u>25</u> ⁰⁰ per service	\$ <u>25</u> ⁰⁰ per service
Standard Sink Unit with Weekly Service	\$ <u>110</u> ⁰⁰ per month	\$ <u>110</u> ⁰⁰ per month
Approximate Number of Uses	<u>250</u> per sink	
Standard Sink Unit Extra Service	\$ <u>30</u> ⁰⁰ per service	\$ <u>30</u> ⁰⁰ per service
Double/Deluxe Sink Unit with Weekly Service	\$ <u>75</u> ⁰⁰ per month	\$ <u>75</u> ⁰⁰ per month
Approximate Number of Uses	<u>900</u> per sink	
Double/Deluxe Sink Unit Extra Service	\$ <u>25</u> ⁰⁰ per service	\$ <u>25</u> ⁰⁰ per service

Please indicate the features included with your units:

- ☒ Constructed from polyethylene materials primarily
- ☒ Sanitary seat deck and flow design (nonporous surfaces)
- ☒ Anti-slip floor surface
- ☒ Outside emergency access
- ☒ Heavy duty spring loaded doors
- ☒ Doors have interior latch and in-use indicator
- ☒ Maximum venting from floor, window, and vent pipe
- ☒ Wall mounted urinal
- ☐ Minimum 70 gallon tank on restroom units
- ☒ 2 or more toilet paper roll dispensers
- ☒ Handicap units comply with American with Disabilities Act

Please describe any other fees or services that you feel the City should be aware of:

Standard unit tank size 60 gal

ADA unit tank size 68 gal

"Exhibit C" **Insurance**

Provider shall provide proof of insurance for general comprehensive liability in the amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate to cover the Provider's activities during the term of this Agreement. Proof of insurance shall be in a form acceptable and approved by the City, as outlined below. An Endorsement Page declaring the City of Burlington as an additional insured must accompany the certificate of insurance.

CERTIFICATE OF INSURANCE

1. Additional Insured/Certificate Holder* must be listed as:
City of Burlington
833 S. Spruce Street
Burlington, WA 98233
**Specific departments, facilities or persons cannot be listed as Additional Insureds/Certificate Holders*
2. Description of Operations/Additional Remarks must include the statement:
"Additional Insureds include the City of Burlington, it's elected officials, appointed officers, employees, volunteers and agents."
3. Minimum Thresholds of Coverage:
 - a. Commercial General Liability Insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
 - b. Automobile Liability insurance shall be written with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

ENDORSEMENT

1. An Endorsement using ISO Form CG 20 26 or coverage at least as broad must accompany the Certificate of Insurance.
2. Additional Insured must be listed as:
City of Burlington
833 S. Spruce Street
Burlington, WA 98233
3. The insured's policy number must be referenced on the Endorsement.

No Agreement shall form until and unless copy of Insurance Documentation, in the form and amount required, is attached hereto.

**“Exhibit D”
License(s)**



ITEM #: 2

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: December 27, 2017 Subject: Supplement Agreement with Reichhardt & Ebe
- Extend Agreement End Date

Attachments: 1) Supplement Agreement Public Hearing Required: YES () NO (X)

SUMMARY

This will extend the end date of an existing consultant agreement. More time is needed since grant funding for construction is not available until year 2020.

Their current consultant agreement is for the design a traffic signal at Skagit Street and State Route 20.

RECOMMENDATION

Motion to authorize Mayor to sign supplement agreement.



**Washington State
Department of Transportation**

Supplemental Agreement Number 001		Organization and Address Reichhardt & Ebe Engineering, Inc. 423 Front Street PO Box 978 Lynden, WA 98264 Phone: 360-354-3687	
Original Agreement Number LA-8772			
Project Number 91-158235	Execution Date	Completion Date 12/31/2019	
Project Title SR20 / Skagit Street Signalization	New Maximum Amount Payable \$ 148,036.37		
Description of Work Completion date shall be extended until December 31, 2019			

The Local Agency of City of Burlington
desires to supplement the agreement entered into with Reichhardt & Ebe Engineering, Inc.
and executed on 3/25/2016 and identified as Agreement No. LA-8772

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

N/A

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: Completion date shall be extended until December 31, 2019

III

Section V, PAYMENT, shall be amended as follows:

N/A

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the appropriate spaces below and return to this office for final action.

By: Nathan Zylstra

By: _____


Consultant Signature

Approving Authority Signature

Date



ITEM #: 3

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: December 27, 2017

Subject: Supplement Agreement with Trantech
Engineering - Extend Agreement End Date

Attachments: 1) Supplement Agreement

Public Hearing Required: YES () NO (X)

SUMMARY

This will extend the end date of an existing consultant agreement. More time is needed since grant funding for construction is not available until year 2020.

Their current consultant agreement is for the design of a combined use trail (Tammi Wilson Memorial Trail) between Pease Road and Cascade Mall.

RECOMMENDATION

Motion to authorize Mayor to sign supplement agreement.



**Washington State
Department of Transportation**

Supplemental Agreement Number _____		Organization and Address TRANTECH ENGINEERING, LLC 1221 FRASER ST; STE # E 3 BELLINGHAM, WA 98229 Phone: (360) 255-2563	
Original Agreement Number TAP-7323(004)			
Project Number 91-1582135		Execution Date 04/18/2016	Completion Date 12/31/2020
Project Title PEASE RD CASCADE MALL NON-MOTORIZED CONNECTION		New Maximum Amount Payable \$ 78,895.93	
Description of Work Completion date shall be extended until December 31, 2020			

The Local Agency of CITY OF BURLINGTON
desires to supplement the agreement entered in to with TRANTECH ENGINEERING, LLC
and executed on 04/18/16 and identified as Agreement No. TAP-7323(004)
All provisions in the basic agreement remain in effect except as expressly modified by this supplement.
The changes to the agreement are described as follows:

I
Section 1, SCOPE OF WORK, is hereby changed to read:

N/A

II
Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days
for completion of the work to read: COMPLETION DATE SHALL BE EXTENDED UNTIL
DECEMBER 31, 2020

III
Section V, PAYMENT, shall be amended as follows:

N/A

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.
If you concur with this supplement and agree to the changes as stated above, please sign in the Appropriate
spaces below and return to this office for final action.

By: _____

THOMAS WELER
[Signature]
Consultant Signature

By: _____

Approving Authority Signature

Date



ITEM #: 4

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: December 28, 2017

Subject: Approval of ordinance adopting updated Capital Improvement Plan

Brad Johnson, Senior Planner

Attachments: (1) Staff Report, (2) SEPA DNS, (3) SEPA Checklist, and (4) Ordinance 1857 with exhibits

Public Hearing Required: YES (x) NO ()

SUMMARY

The City is required to maintain a financing plan for the facilities, equipment, and land necessary to support six years of planned growth and development. This plan is updated annually to ensure consistency with the City's adopted budget.


RECOMMENDATION

Accept the Planning Commission's recommendation to adopt an updated CIP and authorize the Mayor to sign ordinance 1857.



Planning Department Staff Report

To: Burlington City Council

From: Brad Johnson, Senior Planner 

Date: December 15, 2017

Subject: Capital Improvement Plan (CIP) Update

Summary:

On December 13, 2017 the Planning Commission voted to recommend the City Council adopt an updated Capital Improvement Plan (CIP). The CIP is a component of the City's comprehensive plan and identifies six years of capital spending projects needed to support planned growth and development, and to maintain the City's existing levels of service. Each year the CIP must be updated to reflect the coming six year period and current financial conditions.

Background Information:

The City of Burlington is required by the Washington State Growth Management Act (GMA) to adopt, and periodically update, a comprehensive plan (RCW 36.70A.040). The GMA further requires that the City's comprehensive plan include a number of specific "elements", including a capital facilities element (RCW 36.70A.070(3)). The capital facilities element of the City's comprehensive plan covers a twenty year period and includes a forecast of future capital facilities needs based on projected population and employment growth (RCW 36.70A.070(3)(b) & WAC 365-196-415(b)).

Importantly, the capital facilities element of the City's comprehensive plan must identify, at least conceptually, potential funding sources for any capital facilities needed to support population and employment growth for a twenty year period. In addition, a detailed financing plan identifying specific costs and sources of revenue for the first six years of the plan must also be included. This six year financing plan is known as a Capital Improvement Plan (CIP). The CIP is typically updated on an annual basis to adjust to changing budgetary conditions and to address the City's most pressing infrastructure priorities.

By state law, all comprehensive plans must be “internally consistent”. For purposes of adopting, and updating, a CIP this means that the same set of assumptions must be used throughout the plan. Because the need for capital facility improvements is directly related to population and employment growth, the City’s capital improvement plan must be based on the population and employment forecasts use in the Land Use Element of the Comprehensive plan. For example, the City may not use one set of population and employment assumptions when developing a list of transportation improvements necessary to support growth, and a different set of assumptions when forecasting increases in potential revenue sources. All of the City’s activities, including the adoption of an annual capital budget must be consistent with the City’s comprehensive plan and CIP (RCW 36.70A.120).

Recommendation:

The City Council should accept the Planning Commission’s recommendation and adopt the updated Capital Improvement Plan prepared by the Planning Department.



SEPA DETERMINATION OF NON-SIGNIFICANCE (DNS) AND INCORPORATION BY REFERENCE OF EXISTING ENVIRONMENTAL DOCUMENTS

DATE:

October 24, 2017

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 probable 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 its 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 October 24, 2017; therefore comments must be submitted, in writing, by December 24, 2017.

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:

October 24, 2017

5. Agency requesting checklist:

City of Burlington (non-project action)

6. Proposed timing or schedule (including phasing, if applicable):

SEPA threshold determination: October 24, 2017 – Comment period: October 24, 2017 through

December 24, 2017 – Final action by City Council to adopt CIP update: December 28, 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 – 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 Burlington 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

N/A AREA WIDE
PROPOSAL

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 withdrawals.

- 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 withdrawals.

- 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 stormwater and sewer treatment 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 transportation 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: 10/24/2017

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; pro-
duction, 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.
Transportation 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. Stormwater 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's Urban Growth Area has not been expanded during this CIP period. Most development within the City of Burlington involves redevelopment and the intensification of uses on existing developed sites. The projects in the updated CIP are intended to facilitate 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 than 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 involves 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 reviews 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 comprehensive 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

ORDINANCE NO. 1857

AN ORDINANCE OF THE CITY OF BURLINGTON, WASHINGTON IN THE MATTER OF AMENDING TITLE 17 OF THE BURLINGTON MUNICIPAL CODE

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 "B"); and

WHEREAS, the Planning Commission reviewed the updated CIP at a public hearing on December 13, 2017; and

WHEREAS, the Planning Commission recommended the City Council adopt the updated CIP (see attached exhibit "A"); 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 October 25, 2017; and

WHEREAS, the City's SEPA responsible official issued a threshold determination of non-significance on October 24, 2017; and

WHEREAS, a 60 day 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 December 13, 2017 and attached hereto as exhibit "A"; and
2. The updated Capital Improvement Plan attached hereto as exhibit "B" shall replace and supersede all previous Capital Improvement Plan documents.

INTRODUCED AND PASSED at a regular meeting of the City Council of the City of Burlington on this 28th day of December, 2017.

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/2017



EXHIBIT "A"

PLANNING COMMISSION RECOMMENDATION

DATE: December 13, 2017

PROJECT: Capital Improvement Plan (CIP) Update

LOCATION: N/A – Comprehensive Plan Amendment

NUMBER: N/A

APPLICANT: City of Burlington

SUMMARY:

The Planning Commission has reviewed the revised Capital Improvement Plan (CIP) prepared by the Planning Department. The Planning Commission finds that the updated CIP is consistent with the City's Comprehensive Plan and Growth Management Act requirements and recommends the City Council adopt the updated CIP.

FINDINGS:

1. The City of Burlington is required to adopt, and periodically update, a comprehensive plan (RCW 36.70A.040).
2. Washington State law requires that the City's comprehensive plan include a capital facilities element identifying the facilities, property, and equipment necessary to meet the needs of the population and employment growth forecasted by the comprehensive plan (RCW 36.70A.070(3) and WAC 365-196-415).
3. The capital facilities element of the comprehensive plan must include a detailed financing plan identifying specific costs and sources of revenue for a six year period. This financing plan is known as a Capital Improvement Plan (CIP).
4. In order to ensure the CIP covers a six year period, and to ensure consistency with current financial conditions, the CIP must be updated annually.

5. The Washington State Growth Management Act requires that comprehensive plans be internally consistent documents and that all local government actions be consistent with the adopted comprehensive plan (RCW 36.70A.120).
6. The Planning Commission has reviewed the updated CIP prepared by the Planning Department and finds that it is consistent with the City's adopted Comprehensive Plan and all applicable Growth Management Act requirements.

RECOMENDATION:

Based on the findings presented above the Planning Commission respectfully makes the following recommendations to the City Council:

1. The City Council should adopt the updated Capital Improvement Plan attached to this recommendation as exhibit "A".
2. The Planning Department should make any necessary editing and grammatical changes to exhibit "A" before presenting it to the City Council for final approval.
3. The City Council should ensure that the adopted budget for 2018 is consistent with the updated Capital Improvement Plan.

DATED this 13th day of December 2017



Chair, City of Burlington Planning Commission

Attachments:

Exhibit "A" – 2018-2023 Capital Improvement Plan (CIP)

EXHIBIT 'B'

City of Burlington
Capital Improvement Program
2017 Update

1 Introduction

1.1 Summary

This document is intended identify the capital expenditures which the City believes will be necessary to maintain existing facilities and services, and to support growth and development over the next six years, and to identify the sources of revenue that will be used to pay for these facilities and services. Capital expenditures include investments in major infrastructure such as sewer lines, public buildings, fire-fighting equipment, and parks.

1.2 Planning Requirements

The City of Burlington is required by the Washington State Growth Management Act (GMA) to adopt, and periodically update, a comprehensive plan (RCW 36.70A.040). The GMA further requires that the City's comprehensive plan include a number of specific "elements", including a capital facilities element (RCW 36.70A.070(3)). The capital facilities element of the City's comprehensive plan covers a twenty year period and includes a forecast of future capital facilities needs based on projected population and employment growth (RCW 36.70A.070(3)(b) & WAC 365-196-415(b)).

Importantly, the capital facilities element of the City's comprehensive plan must identify, at least conceptually, potential funding sources for any capital facilities needed to support population and employment growth for a twenty year period. In addition, a detailed financing plan identifying specific costs and sources of revenue for the first six years of the plan must also be included. This six year financing plan is often known as a Capital Improvement Program (CIP). The CIP is typically updated on an annual basis to adjust to changing budgetary conditions and to address the City's most pressing infrastructure priorities.

1.3 Relationship to Comprehensive Plan and Annual Budget

By state law, all comprehensive plans must be "internally consistent". For purposes of adopting, and updating, a CIP, this means that the same set of assumptions must be used throughout the plan. Because the need for capital facility improvements is directly related to population and employment growth, the City's capital improvement program must be based on the population and employment forecasts use in the Land Use Element of the Comprehensive plan. For example, the City may not use one set of population and employment assumptions when developing a list of transportation improvements necessary to support growth, and a different set of assumptions when forecasting increases in potential revenue sources. All of the City's activities, including the adoption of an annual capital budget must be consistent with the City's comprehensive plan and CIP (RCW 36.70A.120).

2 Planning and Community Development

2.1 Department Description

The Planning and Community Development department is responsible for managing and coordinating the City's permit review and code enforcement programs, and providing long range planning services. The department is staffed by three full time employees and one part time employee. In addition the department also houses the City's Fire Marshal; however, the Fire Marshall's activities are funded by the Fire Department.

2.2 Funding and Expenditure Summary

Planning and Community Development's activities and services are funded by a combination of permit revenue, which covers much of the department's annual operating expenses. The Planning Department is largely administrative and does not have frequent or reoccurring capital expenses.

The only long term capital improvement project currently planned by Community Development is the implementation of permit tracking database. This is a multi-year project that involves both hardware purchases and software services and licensing. A summary of the department's capital expenses and revenue sources is provided below.

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
General Fund	\$60,000						\$60,000
Total	\$60,000						\$60,000
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement							
Expansions and New Facilities or Equipment	\$60,000						\$60,000
Total	\$60,000						\$60,000

2.3 Challenges

Planning and Community Development does not anticipate any challenges funding the planned capital improvements. The department's capital investments are not necessary to meet established level of service or concurrency standards.

2.4 Project List

Permit Tracking System							
Project Number:	CD-1-2018		Completion Year:		2019		
Location:	City Hall, Community Development Office						
Description:	Obtain permit tracking software or services for all community development employees, integrate with cashiering system, and install countertop terminal.						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$60,000						\$60,000
Total:	\$60,000						\$60,000

3 Finance Department

3.1 Department Description

The Finance Department is responsible for all activities pertaining to accounting and budgeting for all departments. Four positions are currently authorized: Director of Budget & Accounting, Payroll & Accounting Supervisor, and two Accounting Technician II positions.

3.2 Funding and Expenditure Summary

The primary funding for the Finance Department is the Current Expense fund. For this CIP period, the Finance Department has two capital projects planned. Specifically the Finance Department is planning on upgrading the City's finance and accounting software to the current version and replacing an automated postage and mailing machine.

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
501 ER & R	\$50,000						\$50,000
Total	\$50,000						\$50,000
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement	\$50,000						\$50,000
Expansions and New Facilities or Equipment							
Total	\$50,000						\$50,000

3.3 Challenges

The Finance Department is still researching the technical details involved in upgrading the City's finance and accounting software. The department hasn't received any cost estimate for the planned software upgrades. Of the planned \$50,000 in expenditures, \$15,000 will be used to purchase a new mailing and postage machine. The remaining \$35,000 is intended to serve as a "place holder" until the exact cost of the planned software upgrades can be determined.

3.4 Opportunities

The Pitney Bowes Folder/Stuffing machine is more than 10 years old and frequently requires technical service. Each utility billing cycle (every two months) we process 4-5,000 invoices, each pay period we process 150 paychecks, and each accounts payable cycle we process as many as 500 checks. The alternative to replacing this machine is to outsource the utility billing process we are researching the costs and requesting estimates for this service. In the event we determine efficiencies in both costs and labor we will present our findings to Council and make a recommendation to outsource rather than replace this piece of equipment.

3.5 Project List

Postage Machine Replacement							
Project Number:	F-1-2018			Completion Year:		2018	
Location:	City Hall Finance Dept.						
Description:	Replace Pitney Bowes Folding/Stuffing Machine						
Funding:	2018	2019	2020	2021	2022	2023	Total
501 ER & R	\$15,000						\$15,000
Total:	\$15,000						\$15,000

Finance Software Upgrade							
Project Number:	F-2-2018			Completion Year:		2018	
Location:	City Hall Finance Dept.						
Description:	Upgrade Springbrook/Accela to Version 7.18						
Funding:	2018	2019	2020	2021	2022	2023	Total
501 ER & R	\$35,000						\$35,000
Total:	\$35,000						\$35,000

4 Fire Department

4.1 Department Description

The Burlington Fire Department (BFD) provides fire, emergency medical, and life safety services to the citizens, businesses, and visitors to the City of Burlington. BFD provides emergency response to fires, motor vehicle accidents, medical, rescue, and hazardous materials incidents. In addition, the BFD performs a wide variety of non-emergency services including public education, fire safety inspections, business inspections, and pre-incident planning. The Fire Chief provides overall management Fire Department operations, administration, personnel, and budget. The Assistant Chief aids in the management of emergency response operations and is responsible for career and part time firefighter scheduling. As the Training Officer, the Assistant Chief is responsible for the departments training program that provides ongoing training to all members that enhances and maintains the skills required of a Firefighter/Emergency Medical Technician. BFD utilizes a combination of part-time and full-time staff to deliver services. Full-time members are assigned program management areas with specific responsibilities such as EMS, fire/safety inspections, apparatus maintenance, logistics, technical rescue, etc. BFD works closely with the local EMS provider in the area, Central Valley Ambulance Authority (CVAA). The station houses the CVAA Paramedics who serve the City of Burlington and the surrounding areas of Skagit County.

4.2 Funding and Expenditure Summary

Fire Department capital projects are primarily funded from two primary sources. The first is money transferred from the City's Current Expense Fund into the Equipment Rental and Replacement Fund (ER&R). In 2017, the Fire Department established a 30 year apparatus replacement plan. Budget lines were established in the City's ER&R fund and money allocated to these line items to implement this plan. The second primary source of money is Fire Impact Fees. The use of both ER&R funds and Fire Impact Fees is outlined for each project below.

In addition to these two funding sources, several grant opportunities exist for projects proposed projects outside the City's budget. The Fire Department has a successful track record of grant awards and will look to future grant opportunities for additional funding.

Capital Project priorities for the Fire Department fall into two categories. The highest priority projects include the replacement of aging apparatus and out of date equipment. In 2016, an apparatus replacement plan was developed to proactively set aside funds for known large expenditures in the future. The finances needed to implement these funds were approved by the City and allocated within the ER&R fund. These projects include the replacement of apparatus, purchase of new hydraulic extrication tools, and new self-contained breathing apparatus (SCBA). The second priority capital projects include partnerships with local agencies to improve operations, communications, and training. While no funds have been allocated, these projects are typically successful grant awards especially when done in a regional context.

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
ER&R	\$568,750	\$559,750	\$459,750	\$93,000			\$1,681,250
Fire Impact Fees		\$200,000					\$200,000
Grants		\$25,000			\$500,000		\$525,000
From Previous Years							\$568,750
Total	\$568,750	\$784,750	\$459,750	\$93,000	\$500,000		\$2,975,000
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement	\$50,000	\$1,250,000	\$925,000	\$225,000			\$2,450,000
Expansions and New Facilities or Equipment		\$25,000			\$500,000		\$525,000
Total	\$50,000	\$1,275,000	\$925,000	\$225,000	\$500,000		\$2,975,000

4.3 Project List

Project Name: Ladder Truck Replacement							
Project Number:	PS-1-2018			Completion Year:		2019	
Location:	Burlington Fire Department 350 Sharon Ave. Burlington, WA 98233						
Description:	Replace 1996 Ladder Truck						
Funding:	2018	2019	2020	2021	2022	2023	Total
ER&R 501-000-594-22-60-01	\$350,000	\$350,000					\$700,000
Impact Fees		200,000					\$200,000
From Previous Years							\$350,000
Total:		\$1,250,000					\$1,250,000

Project Name: Engine Replacement							
Project Number:	PS-2-2018		Completion Year:		2020		
Location:	Burlington Fire Department 350 Sharon Ave. Burlington, WA 98233						
Description:	Replace 2003 Pierce Fire Engine						
Funding:	2018	2019	2020	2021	2022	2023	Total
ER&R 501-000-594- 22-60-01	\$125,000	\$125,000	\$275,000				\$525,000
From Previous Years							\$125,000
Total:	\$125,000	\$125,000	\$275,000				\$650,000

Project Name: SCBA & Air Fill Station Replacement							
Project Number:	PS-3-2018		Completion Year:		2020		
Location:	Burlington Fire Department 350 Sharon Ave. Burlington, WA 98233						
Description:	Replace SCBA equipment and fill station to comply with new standards						
Funding:	2018	2019	2020	2021	2022	2023	Total
ER&R 501-000-594- 22-60-02	\$68,750	\$68,750	\$68,750				\$206,250
From Previous Years							\$68,750
Total:	\$68,750	\$68,750	\$68,750				\$275,000

Project Name: Command Vehicle Replacement							
Project Number:	PS-4-2018		Completion Year:		2018		
Location:	Burlington Fire Department 350 Sharon Ave. Burlington, WA 98233						
Description:	Replace 2003 Chevy Tahoe Command Vehicle						
Funding:	2018	2019	2020	2021	2022	2023	Total
ER&R 501-000-594- 22-60-01	\$25,000						\$25,000
From Previous Years							\$25,000
Total:	\$25,000						\$50,000

Project Name: BLS Aid Unit Replacement							
Project Number:	PS-5-2018		Completion Year:		2021		
Location:	Burlington Fire Department 350 Sharon Ave. Burlington, WA 98233						
Description:	Replace 1997 BLS Aid Unit						
Funding:	2018	2019	2020	2021	2022	2023	Total
501-000-594-22-60-01		\$16,000	\$116,000	\$93,000			\$225,000
Total:				\$93,000			\$225,000

Project Name: Burlington Hill Repeater							
Project Number:	PS-6-2018		Completion Year:		2019		
Location:	Burlington Hill Burlington, WA 98233						
Description:	Partner with Skagit 911 to increase radio communication capabilities						
Funding:	2018	2019	2020	2021	2022	2023	Total
Grant		\$25,000					\$25,000
Total:		\$25,000					\$25,000

Project Name: Regional Training Facility							
Project Number:	PS-7-2018		Completion Year:		2019		
Location:	Burlington, WA 98233						
Description:	Partner with mutual and automatic aid Fire Departments on regional training tower						
Funding:	2018	2019	2020	2021	2022	2023	Total
Grant			\$500,000				\$500,000
Total:			\$500,000				\$500,000

5 Information Technology

5.1 Department Description

The Information Technology Department provides IT and IS services to support all information systems to the City of Burlington users to accomplish their goals and perform the objectives outlined in the City's mission statement. This including procurement, structural maintenance and website support for all PC, laptop and server hardware, all PC and server software, City of Burlington copper and fiber networking and network firewall, SPAM, and security appliances, VoIP phone systems, wireless cellular phones, City security camera's, public free WiFi. IT now also manages the City Fiber project, designs, plans, implements, and works with fiber ISP's and electrical contractors, develops and manages fiber, ISP contracts with local businesses and service providers all with 2 FTE's.

5.2 Funding and Expenditure Summary

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
General fund	\$142,000	\$145,000	\$147,000	\$149,000	\$152,000	\$155,000	\$890,000
ER&R	\$105,000	\$105,000	\$112,000	\$112,000	\$115,000	\$115,000	\$664,000
General Capital	\$523,000	\$80,000	\$90,000	\$90,000	\$80,000	\$80,000	\$943,000
Total	\$770,000	\$330,000	\$349,000	\$351,000	\$347,000	\$350,000	\$2,497,000
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement	\$730,000	\$290,000	\$309,000	\$311,000	\$307,000	\$294,000	\$2,241,000
Expansions and New Facilities or Equipment	\$40,000	\$40,000	\$40,000	\$40,000	\$40,000	\$56,000	\$256,000
Total	\$770,000	\$330,000	\$349,000	\$351,000	\$347,000	\$350,000	\$2,497,000

5.3 Challenges

ER&R fund may not have enough resources. Not having fiber funding will result in less economic development opportunities, potentially resulting in lower city income.

[illegible]

Project Name: Network Security

Project Number:	IT-4-2018		Completion Year:		Ongoing		
Location:	City Hall, 311 Cedar Street						
Description:	Upgrade network security devices						
Funding:	2018	2019	2020	2021	2022	2023	Total
ER&R 501-000-594-18-60-02	\$8,500	\$34,000		\$5,000		\$5,000	\$52,500
Total:	\$8,500	\$34,000		\$5,000		\$5,000	\$52,500

Project Name: Phone Systems

Project Number:	IT-5-2018		Completion Year:			2020	
Location:	City Hall, 311 Cedar Street						
Description:	Replace Mitel phone system server and add redundancy, update phones						
Funding:	2018	2019	2020	2021	2022	2023	Total
ER&R 501-000-594-18-60-02	\$15,000	\$5,000	\$5,000				\$25,000
Total:	\$15,000	\$5,000	\$5,000				\$25,000

Project Name: AV System Upgrades – Projectors

Project Number:	IT-6-2018	Completion Year:			2022		
Location:	City owned buildings						
Description:	Upgrade AV systems and projectors in various City owned buildings						
Funding:	2018	2019	2020	2021	2022	2023	Total
ER&R 501-000-594-18-60-02	\$30,000				\$5,500		\$35,500
Total:	\$30,000				\$5,500		\$35,500

Project Name: Network Switches

Project Number:	IT-7-2018	Completion Year:				2023	
Location:	City Hall, 311 Cedar Street						
Description:	Networks switches and fiber buildout and deployment						
Funding:	2018	2019	2020	2021	2022	2023	Total
ER&R 501-000-594-18-60-02						\$16,000	\$16,000
Total:						\$16,000	\$16,000

Project Name: Cameras							
Project Number:	IT-8-2018		Completion Year:			2021	
Location:	N/A – all locations						
Description:	New and replacement City cameras						
Funding:	2018	2019	2020	2021	2022	2023	Total
ER&R 501-000-594-18-60-02	\$5,000	\$5,000	\$5,000	\$5,000			\$20,000
Total:	\$5,000	\$5,000	\$5,000	\$5,000			\$20,000

Project Name: Network Wiring Replacement							
Project Number:	IT-9-2018			Completion Year:		2019	
Location:	Fire and Street Department buildings						
Description:	Replace network wiring						
Funding:	2018	2019	2020	2021	2022	2023	Total
GenCap 300-000-594-32-62		\$30,000					\$30,000
Total:		\$30,000					\$30,000

Project Name: Door Control							
Project Number:	IT-10-2018			Completion Year:		2020	
Location:	Public Safety Building, Fire Department, Parks office, and Library						
Description:	Door control						
Funding:	2018	2019	2020	2021	2022	2023	Total
GenCap 300-000-594-32-62	\$35,000	\$25,000	\$20,000				\$80,000
Total:	\$35,000	\$25,000	\$20,000				\$80,000

Project Name: Door Control							
Project Number:	IT-11-2018		Completion Year:			2020	
Location:	N/A						
Description:	Upgrade various IT infrastructure and security software						
Funding:	2018	2019	2020	2021	2022	2023	Total
GenCap 300-000-594-32-62	\$10,000	\$25,000	\$10,000	\$10,000	\$10,000	\$10,000	\$75,000
Total:	\$10,000	\$25,000	\$10,000	\$10,000	\$10,000	\$10,000	\$75,000

6 Legal

6.1 Department Description

Provide accurate and timely legal counsel to the Mayor, City Administrator, City Council, City departments, and advisory boards and commissions to improve and minimize risk of city operations. This department represents the City in all civil court proceedings, prosecutes criminal cases in municipal court and provides risk management services. This department also facilitates all risk management activities, manages property and liability insurances, and coordinates risk management trainings for all City departments. There are 2 full time positions (1 City Attorney/1 Risk Manager-Paralegal a ½ time Legal Assistant and a Contracted Prosecutor).

6.2 Funding and Expenditure Summary

No legal department capital projects are planned or funded at this time.

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
No planned expenditures							
Total							
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement							
Expansions and New Facilities or Equipment							
Total							

7 Library

7.1 Department Description

The Burlington Public Library promotes early literacy, encourages lifelong learning, and supports evolving technology. We have a five person advisory board. We are staffed with four full time librarians and a total of 11.5 FTEs. We have a 22,000 square foot building. In 2016, our library had 171,679 patron visits and circulated 136,100 total items. We also offer an active community meeting room, which held 1,309 meetings with a total attendance of 34,385.

7.2 Funding and Expenditure Summary

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
General Fund	\$50,000						\$50,000
Library Foundation	\$4,000	\$25,000					\$29,000
Total	\$54,000	\$25,000					\$79,000
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement	\$4,000						\$4,000
Expansions and New Facilities or Equipment	\$50,000	\$25,000					\$75,000
Total	\$54,000	\$25,000					\$79,000

7.3 Project List

Library Security							
Project Number:	L-1-2018		Completion Year: 2018		2018		
Location:	Burlington Public Library 820 E. Washington Ave						
Description:	BPL safety updates including cameras on exterior of building and lighting upgrades on exterior of building, staff door camera system.						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$50,000						\$50,000
Total:	\$50,000						\$50,000

Notification Sign							
Project Number:	L-2-2018		Completion Year: 2019		2019		
Location:	Burlington Public Library 820 E. Washington Ave						
Description:	Sign to notify community about library happenings.						
Funding:	2018	2019	2020	2021	2022	2023	Total
Library Foundation		\$25,000					\$25,000
Total:		\$25,000					\$25,000

Teen Area Improvements							
Project Number:	L-3-2018		Completion Year: 2019		2018		
Location:	Burlington Public Library 820 E. Washington Ave						
Description:	Teen Area Refresh						
Funding:	2018	2019	2020	2021	2022	2023	Total
Library Foundation	\$4,000						\$4,000
Total:	\$4,000						\$4,000

8 Police

8.1 Department Description

Burlington Police Department is engaged in cooperative policing, protection and service to the citizens, guests and visitors of Burlington.

8.2 Funding and Expenditure Summary

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
ER&R	\$68,000	\$85,000					\$153,000
General Fund	\$110,000	\$10,000					\$120,000
Total	\$178,000	\$95,000					\$273,000
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement	\$168,000	\$20,000					\$188,000
Expansions and New Facilities or Equipment	\$10,000	\$75,000					\$85,000
Total	\$178,000	\$95,000					\$273,000

8.3 Capital Projects

The operating budget for BPD has consistently been underspent. Listed items such as the command vehicle update and some of the uniforms/equipment request could be absorbed using existing budget dollars. I will need more time to completely analyze and asses this. For now I will include it in our CIP as it gives an overall picture of our needs.

Portable Radios: Portable radios are essential equipment that are heavily used and receive ample wear and tear. Over time these radios need to be replaced. In order to spread the costs and future replacement costs, we propose this be completed over a two year cycle.

The replacement of patrol vehicles is a challenge because patrol vehicles are not something that can be quickly replaced if they become inoperable mid-year. I am reviewing our past practices and identifying options that might reduce these expenses over the course of future years. In 2018 we are requesting \$100k in order to replace and equip two patrol vehicles. The Chief's vehicle is listed for rotation in 2018 but this will be set aside until a thorough assessment of our needs is completed. Part of this assessment will include not only the use of these

vehicles for patrol purposes but how these vehicles might be better used to serve other departments within the City.

Command Vehicle: The BPD has an incident command vehicle which is utilized during major incidents. It is in need of additional technological equipment and other equipment such as items used to process crime scenes. Part of this request will include graphics so our vehicle can be enhanced and displayed at community events such as “touch a truck”. This vehicle can and should also be used as a central point of contact for the numerous community events that are hosted by the City of Burlington.

Uniforms and equipment: The BPD is in need of updating our uniforms and equipment. In example, most officers have purchased work flashlights on their own, as the flashlights issued are heavy, ineffective and cumbersome. Our current issued uniform is more expensive than patrol uniforms that are on the market today. We will continue to keep a formal uniform for Court and other formal events, but the wearing and replacement of formal uniforms for everyday patrol work is not a cost effective measure. We will be doing a uniform and equipment assessment and drafting a future replacement schedule so that we maintain a professional image.

8.4 Challenges

The challenge with any Police Department is that we are not typically a money generating division of the City. In the future I will present information about the importance of a police department engaged in procedural justice. An engaged, trained and equipped police department dramatically impacts the quality of life that our citizens, businesses and shoppers experience in our community. This quality of life and experience is invaluable.

8.5 Project List

The BPD parks all of our vehicles (essential resources) in one area without any protection from vandalism or acts that could prevent response in an emergency. A fenced area around our parking lot would greatly reduce and help prevent acts like this from occurring. As we know, significant money is invested in these vehicles and the equipment they contain. We should consider installing fencing to better protect these assets.

Secure Parking Area

Project Number:	PD-1-2018		Completion Year: 2019			2019	
Location:	North side of Police Building						
Description:	Create secured patrol vehicle parking area						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund		\$75,000					\$75,000
Total:		\$75,000					\$75,000

Vehicle Replacement

Project Number:	PD-2-2018		Completion Year: 2019			Ongoing	
Location:	N/A - Vehicles						
Description:	Ongoing replacement of police vehicles						
Funding:	2018	2019	2020	2021	2022	2023	Total
ER&R	\$100,000						\$100,000
Total:	\$100,000						\$100,000

Firearm Replacement

Project Number:	PD-3-2018			Completion Year: 2019		2018	
Location:	N/A - Equipment						
Description:	Ongoing replacement of firearms						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$18,000						\$18,000
Total:	\$18,000						\$18,000

Portable Radio Replacement

Project Number:	PD-4-2018		Completion Year: 2019			2019	
Location:	N/A – Equipment						
Description:	Ongoing replacement of portable radios						
Funding:	2018	2019	2020	2021	2022	2023	Total
ER&R	\$10,000	\$10,000					\$20,000
General Fund	\$10,000	\$10,000					\$20,000
Total:	\$20,000	\$20,000					\$40,000

Command Vehicle Upgrades

Project Number:	PD-5-2018			Completion Year: 2019		2018	
Location:	N/A - Vehicle						
Description:	Upgrade and maintain command vehicle						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$10,000						\$10,000
Total:	\$10,000						\$10,000

Uniform and Equipment Replacement

Project Number:	PD-6-2018			Completion Year: 2019		2018	
Location:	N/A - Equipment						
Description:	Replace police uniforms and personal equipment						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$30,000						\$30,000
Total:	\$30,000						\$30,000

9 Public Works

9.1 Department Description

9.1.1 Buildings and Grounds

The Buildings and Grounds Department provides functional and clean facilities for Burlington's residents, the general public, and City employees. They maintain the appearance of facilities and grounds at a level of professionalism expected by the residents of the City. Facility preventive maintenance is planned into the future years by the department. In most instances, these major maintenance and replacement projects are executed under contract to specialty contractors with oversight by the department. Most of the routine breakdowns of equipment and facility repairs reported by City staff are responded to on a daily basis by Buildings and Grounds staff. The cleanliness of building interiors is attended to by the custodian staff. The department also provides support for City events.

9.1.2 Sewer

The Sewer Department operates a plant that services the city proper of Burlington plus limited areas of Skagit County to the west and north of the City. Under its current discharge permit limitation, the plant has the capabilities of treating 3.79 million gallons of wastewater per day. The wastewater collection system includes approximately 58 miles of gravity sewer pipes varying in size from 4 inch diameter local connections to 27 inch diameter interceptors. Because of the flat terrain in the Burlington area, sewage must be pumped via force mains to the treatment plant. There are a total of 21 pump stations within the system. The physical assets of the system are extensive and the environment for the equipment is harsh. This translates to a high investment in maintenance and capital projects to keep a critical service for the community fully operational at all times. The plant is fully staffed for a 24/7 operation.

9.1.3 Stormwater

The Storm Drain Utility Fund was founded in 1997. The utility enables City staff to plan for and improve stormwater system functions. It also finances water quality studies. The results of these studies are used to determine the best type of water quality improvements to clean the stormwater entering Gages Slough and other tributaries. The Drainage Utility currently provides capital project funding and partial maintenance of the existing storm drain systems, including city-owned detention and conveyance facilities. The level of service for the installed system is to convey the 25-year storm event to receiving drainage basins without causing ponding or overflows into the system.

9.1.4 Street Maintenance and Operations

The Streets Department maintains approximately 45 miles of City paved roads which includes pothole repair, crack sealing, asphalt patching, road stripping, and raised pavement markings. The department also constructs and repairs concrete curbs and gutters in addition to repairing sidewalks and building new sidewalks where none exists. They repair damaged roadway

signage and replace signage which has reached its useful life to keep the City's roadways safe. Streets are kept clear and passable by the Department during times of extreme weather which may litter the streets with tree debris or blanket them with snow. Vegetation control and landscaping in City right of way is performed by the Department to keep the City well groomed and attractive. The Department cleans the stormwater system during the summer months and ensures stormwater is freely conveyed during the rainy season. With their fleet of heavy equipment, they assist other department in construction related activities as needed.

9.1.5 Transportation Improvements

Public Works Engineering Department oversees planning and development of roadways and transportation features that will address future traffic growth within the City of Burlington. Projects are selected to align with both the six year Transportation Improvement Program (TIP) as well as those transportation projects which form the basis for traffic impact fees.

9.2 Funding and Expenditure Summary

9.2.1 Buildings and Grounds

The Building and Grounds Department is funded directly from the City's General Fund. Capital projects are identified in the Capital Reserve Fund which is reviewed and approved annually by the City Council.

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
General Fund	\$333,000	\$407,000	\$240,000	\$290,000	\$317,000	\$40,000	\$1,627,000
Grant	\$120,000						\$120,000
From Previous Years							
Total	\$453,000	\$357,000	\$290,000	\$312,000	\$342,000	\$40,000	\$1,747,000
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement	\$453,000	\$257,000	\$240,000	\$140,000	\$167,000	\$40,000	\$1,304,000
Expansions and New Facilities or Equipment		\$150,000		\$150,000	\$150,000		\$450,000
Total	\$453,000	\$357,000	\$290,000	\$312,000	\$342,000	\$40,000	\$1,754,000

9.2.2 Sewer

The City of Burlington operates two individual fund sources, The City Sewer Fund and the Sewer Capital Improvement Fund. The Sewer Fund accumulates monthly service fees, septage disposal charges, and sewer plan review fees. The Capital Improvement Fund derives revenues for all new connections to the sewer system to finance improvements to the wastewater system which are required to service future growth. As such, the general facility charge (GFC)

establishes a one-time charge assessed against new sewer customers as a way to recover a part of the cost of additional system capacity constructed for their use.

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10	\$1,415,000	\$1,730,000	\$2,005,000	\$1,035,000	\$855,000	\$100,000	\$7,140,000
From Previous Years							
Total	\$1,415,000	\$1,730,000	\$2,005,000	\$1,035,000	\$855,000	\$100,000	\$7,140,000
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement	\$1,415,000	\$1,730,000	\$2,005,000	\$950,000	\$855,000	\$100,000	\$7,055,000
Expansions and New Facilities or Equipment				\$85,000			\$85,000
Total	\$1,415,000	\$1,730,000	\$2,005,000	\$1,035,000	\$855,000	\$100,000	\$7,140,000

9.2.3 Stormwater

The primary source of funding for the department is derived from monthly stormwater fees paid by the residences and businesses within the City. Stormwater inspection fees and connection fees also contribute to the fund. Most large capital projects receive a majority of their funding from grant sources such as the Department of Ecology.

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
Storm Drain Fund	\$527,500	\$1,167,500	\$3,000,000	\$100,000	\$100,000		\$4,895,000
From Previous Years							
Total	\$527,500	\$1,167,500	\$3,000,000	\$100,000	\$100,000		\$4,895,000
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement							
Expansions and New Facilities or Equipment	\$527,500	\$1,167,500	\$3,000,000	\$100,000	\$100,000		\$4,895,000
Total	\$527,500	\$1,167,500	\$3,000,000	\$100,000	\$100,000		\$4,895,000

9.2.4 Street Maintenance and Operations

The Streets Department is funded directly from the City's General Fund. Capital projects are identified in the Capital Reserve Fund which is reviewed and approved annually by the City Council.

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
General Fund	\$80,000	\$200,000	\$210,000	\$260,000	\$230,000		\$980,000
Total	\$80,000	\$200,000	\$210,000	\$260,000	\$230,000		\$980,000
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement	\$25,000		\$180,000	\$260,000	\$230,000		\$695,000
Expansions and New Facilities or Equipment	\$55,000	\$200,000	\$30,000				\$285,000
Total	\$80,000	\$200,000	\$210,000	\$260,000	\$230,000		\$980,000

9.2.5 Transportation Improvements

Major street projects are typically funded through grants. The most common grant sources have been federal (Surface Transportation Program), (Federal Safety Program) and the State Transportation Improvement Board (TIB). Most programs require a 15% match by the City and in some instances no match is required. The match is possible from funds allocated to the Arterial Streets Department annually from the general fund.

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
Impact Fees	\$30,000	\$120,000	\$930,000	\$262,500	\$225,000		\$1,567,500
Arterial St (102)	\$558,250	\$895,000	\$400,000	\$516,100	\$940,000		\$3,309,350
Grants	\$1,866,750	\$3,485,000	\$5,270,000	\$2,145,400	\$4,335,000		\$17,102,150
From Previous Years							\$170,250
Total	\$2,455,000	\$4,500,000	\$6,600,000	\$2,924,000	\$5,500,000		\$22,149,250
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000		\$2,000,000
Expansions and New Facilities or Equipment	\$2,055,000	\$4,100,000	\$6,200,000	\$2,524,000	\$5,100,000		\$19,979,000
Total	\$2,455,000	\$4,500,000	\$6,600,000	\$2,924,000	\$5,500,000		\$22,149,250

9.3 Project List

9.3.1 Buildings and Grounds

Painting							
Project Number:	PW-BG-1-2018		Completion Year:		2022		
Location:	Public Safety Building, Senior Center, Parks & Rec, Fire Station, City Hall, VIC						
Description:	Paint buildings – exterior & interior						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$180,000
Total:	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$180,000

HVAC Maintenance							
Project Number:	PW-BG-2-2018		Completion Year:		2022		
Location:	Various City buildings						
Description:	HVAC Maintenance						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$60,000

Community Center Kitchen							
Project Number:	PW-BG-3-2018		Completion Year:		2018		
Location:	Community Center						
Description:	Stainless steel clad wall behind kitchen exhaust hoods to comply with fire code						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$8,000						\$8,000
Total:	\$8,000						\$8,000
Total:	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$60,000

Parks and Recreation Renovation							
Project Number:	PW-BG-4-2018		Completion Year:		2022		
Location:	Parks and Recreation Building						
Description:	Renovations to building for better community use and recreational programs						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$50,000	\$100,000	\$100,000	\$100,000	\$100,000		\$450,000
Total:	\$50,000	\$100,000	\$100,000	\$100,000	\$100,000		\$450,000

Extended Boom Lift							
Project Number:	PW-BG-5-2018		Completion Year:		2018		
Location:	Buildings & Grounds equipment pool						
Description:	Genie Self-Propelled Articulating Booms Model Z-62/40. Replaces boom truck.						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$60,000						\$60,000
Total:	\$60,000						\$60,000

Emergency Generator Replacement							
Project Number:	PW-BG-6-2018		Completion Year:		2018		
Location:	Fire station						
Description:	Replace emergency generator at Fire Station						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$100,000						\$100,000
Total:	\$100,000						\$100,000

Source Capture Exhaust System							
Project Number:	PW-BG-7-2018		Completion Year:		2018		
Location:	Fire station						
Description:	Install system to purge exhaust from fire trucks entering and exiting the truck bays						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$30,000						\$30,000
Grant	\$120,000						\$120,000
Total:	\$150,000						\$150,000

Door Lock Replacement							
Project Number:	PW-BG-8-2018		Completion Year:		2018		
Location:	Public Safety Building						
Description:	Replace problematic door locking system						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$20,000						\$20,000
Total:	\$20,000						\$20,000

Vehicle Replacement

Project Number:	PW-BG-9-2018		Completion Year:		2022		
Location:	Buildings and Grounds equipment pool						
Description:	Buildings and Grounds ½ ton Full Size Pickup Trucks total of (3)						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$25,000		\$25,000		\$27,000		\$77,000
Total:	\$25,000		\$25,000		\$27,000		\$77,000

Fire Station Office Space Remodel

Project Number:	PW-BG-10-2018		Completion Year:		2019		
Location:	Fire Station						
Description:	Office Space Remodel						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund		\$25,000					\$25,000
Total:		\$25,000					\$25,000

Backup Generator for City Hall

Project Number:	PW-BG-11-2018		Completion Year:		2019		
Location:	City Hall						
Description:	Backup Generator						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund		\$150,000					\$150,000
Total:		\$150,000					\$150,000

Lawn Mower Replacement

Project Number:	PW-BG-12-2018		Completion Year:		2019		
Location:	Buildings and Grounds Shop						
Description:	Commercial lawn mower replacement						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund		\$20,000					\$20,000
Total:		\$20,000					\$20,000

Custodian Vans

Project Number:	PW-BG-13-2018		Completion Year:		2019-2022		
Location:	Buildings & Grounds equipment pool						
Description:	Buildings and Grounds Custodian Transit City Vans Total (3)						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund		\$22,000		\$22,000	\$25,000		\$69,000
Total:		\$22,000		\$22,000	\$25,000		\$69,000

Community Center Remodel

Project Number:	PW-BG-14-2018		Completion Year:		2020		
Location:	Community Center						
Description:	Community Center Main Kitchen and Warming Kitchen Complete Remodel						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund			\$75,000				\$75,000
Total:			\$75,000				\$75,000

Parking Lot Paving

Project Number:	PW-BG-15-2018	Completion Year:			2020		
Location:	Parks and Recreation Building						
Description:	Repave Parks and Recreation Parking Lot						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund			\$50,000				\$50,000
Total:			\$50,000				\$50,000

Solar Power and LED Lights

Project Number:	PW-BG-16-2018		Completion Year:		2022		
Location:	City Hall, Public Safety Building and Fire Station						
Description:	Install Roof Top Solar Panels and replace interior lights with LED's						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund				\$150,000	\$150,000		\$300,000
Total:				\$150,000	\$150,000		\$300,000

9.1.2 Sewer

Sewer Line Infiltration & Inflow							
Project Number:	PW-SS-1-2018		Completion Year:		Ongoing		
Location:	Various areas of the City						
Description:	Replace & repair deteriorated runs of sewer main for infiltration & inflow reduction						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10	\$100,000	\$100,000	\$100,000	\$125,000	\$150,000	\$100,000	\$485,000
Total:	\$100,000	\$100,000	\$100,000	\$125,000	\$150,000	\$100,000	\$675,000

Annual Equipment Replacement							
Project Number:	PW-SS-2-2018		Completion Year:		Ongoing		
Location:	Wastewater Treatment Plant						
Description:	Replace equipment which has reached the end of its service life						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10	\$225,000	\$225,000	\$225,000	\$225,000	\$250,000		\$1,150,000
Total:	\$225,000	\$225,000	\$225,000	\$225,000	\$250,000		\$1,150,000

Sewer Line Replacement Program							
Project Number:	PW-SS-3-2018		Completion Year:		Ongoing		
Location:	Various locations within the City						
Description:	Replace old sanitary sewer lines (1% - 2% annually)						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10	\$275,000	\$275,000	\$300,000	\$300,000	\$300,000		\$1,450,000
Total:	\$275,000	\$275,000	\$300,000	\$300,000	\$300,000		\$1,450,000

Pump Station #4 Upgrade							
Project Number:	PW-SS-4-2018		Completion Year:		2018		
Location:	Section Street north of Rio Vista Avenue						
Description:	Design & upgrade existing pump station with new hardware, piping and electric panel						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10	\$500,000						\$500,000
Total:	\$500,000						\$500,000

Pump Station #13 Upgrade							
Project Number:	PW-SS-5-2018		Completion Year:		2018		
Location:	Goldenrod Road						
Description:	Upgrade pumps and add standby power						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10	\$250,000						\$250,000
Total:	\$250,000						\$250,000

Pump Station #9 Upgrade							
Project Number:	PW-SS-6-2018		Completion Year:		2019		
Location:	16505 Ovenell Road						
Description:	Upgrade existing pump station with new piping, hardware and electric panel						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10	\$65,000	\$500,000					\$565,000
Total:	\$65,000	\$500,000					\$565,000

Bio Solids Dryer							
Project Number:	PW-SS-7-2018		Completion Year:		2019		
Location:	Wastewater Treatment Plant						
Description:	Replace dryer for biosolids						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10		\$630,000					\$630,000
Total:		\$630,000					\$630,000

Technology Upgrade Camera Truck

Project Number:	PW-SS-8-2018		Completion Year:		2020		
Location:	Camera Truck used by Wastewater Treatment Plant						
Description:	Software and hardware upgrades to replace 10 year old technology						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10			\$50,000				\$50,000
Total:			\$50,000				\$50,000

Primary Clarifier Upgrade

Project Number:	PW-SS-9-2018		Completion Year:		2020		
Location:	Wastewater Treatment Plant						
Description:	Design and replace drive units and associated mechanical hardware						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10			\$425,000				\$425,000
Total:			\$425,000				\$425,000

Pump Station #8 Generator Replacement

Project Number:	PW-SS-10-2018		Completion Year:		2020		
Location:	17331 Peterson Rd						
Description:	Replace 200 KW generator						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10			\$135,000				\$135,000
Total:			\$135,000				\$135,000

Rio Vista Sewer Line Replacement

Project Number:	PW-SS-11-2018		Completion Year:		2020		
Location:	Rio Vista Avenue						
Description:	Replace sanitary sewer main line in Rio Vista Avenue from Skagit St. to Pine St.						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10			\$470,000				\$470,000
Total:			\$470,000				\$470,000

Koch Street Sewer Line Replacement

Project Number:	PW-SS-12-2018		Completion Year:		2020		
Location:	Koch St. and in east/west alley north of W. Fairhaven						
Description:	Replace 6" sanitary sewer line in street and adjacent alley						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10			\$300,000				\$300,000
Total:			\$300,000				\$300,000

Pump Station Generators

Project Number:	PW-SS-13-2018		Completion Year:		2021		
Location:	Pump stations 1, 2, 7, and 9						
Description:	Install emergency generators in pump stations 1, 2, 7 and 9						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10				\$300,000			\$300,000
Total:				\$300,000			\$300,000

Sewer Comprehensive Plan

Project Number:	PW-SS-14-2018		Completion Year:		2021		
Location:	City wide						
Description:	Update 2011 sewer comprehensive plan						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10				\$85,000			\$85,000
Total:				\$85,000			\$85,000

Boiler Replacement

Project Number:	PW-SS-15-2018		Completion Year:		2022		
Location:	Wastewater Treatment Plant						
Description:	Replace digester boiler which is 20+ years old						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10					\$75,000		\$75,000
Total:					\$75,000		\$75,000

Pump Station #14 Pumps Replacement

Project Number:	PW-SS-16-2018	Completion Year:			2022		
Location:	1717 Walton Dr						
Description:	Replace two pumps in pump station #14						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10					\$65,000		\$65,000
Total:					\$65,000		\$65,000

Primary Digester Design Report

Project Number:	PW-SS-17-2018		Completion Year:		2022		
Location:	Wastewater Treatment Plant						
Description:	Design report to upgrade primary digester for future capacity						
Funding:	2018	2019	2020	2021	2022	2023	Total
402-000-594-35-64-10					\$40,000		\$40,000
Total:					\$40,000		\$40,000

Storm Pump Station #6 Enclosure

Project Number:	PW-SW-5-2018	Completion Year:			2018		
Location:	Pump Station 6 along County Shop Lane						
Description:	Install pump station building to add life to electrical components						
Funding:	2018	2019	2020	2021	2022	2023	Total
425	\$35,000						\$35,000
Total:	\$35,000						\$35,000

Surface Water Management Plan

Project Number:	PW-SW-6-2018	Completion Year:			2018		
Location:	Citywide						
Description:	Update Stormwater Management Plan						
Funding:	2018	2019	2020	2021	2022	2023	Total
425	\$75,000						\$75,000
Total:	\$75,000						\$75,000

Pervious Concrete Phase 2

Project Number:	PW-SW-7-2018	Completion Year:		2020			
Location:	Pine Street						
Description:	Replace gravel shoulders with Pervious concrete						
Funding:	2018	2019	2020	2021	2022	2023	Total
425	\$30,000	\$30,000	\$500,000				\$560,000
Grant	\$87,500	\$87,500	\$1,500,000				\$1,675,000
Total:	\$117,500	\$117,500	\$2,000,000				\$2,235,000

9.1.4 Street Maintenance and Operations

Decant Facility Upgrade

Project Number:	PW-SO-1-2018		Completion Year:		2018		
Location:	Streets headquarters						
Description:	Reconstruct facility to separate sweeper and jet-vac waste						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund	\$5,000						\$5,000
Total:	\$5,000						\$5,000

Skid Steer Loader

Project Number:	PW-SO-2-2018		Completion Year:		2018		
Location:	Streets Equipment Pool						
Description:	Skid steer loader						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund - 501-000-594-42-60-03	\$55,000						\$55,000
Total:	\$55,000						\$55,000

Trailer Mounted Air Compressor

Project Number:	PW-SO-3-2018		Completion Year:		2018		
Location:	Streets Equipment Pool						
Description:	Air compressor mounted on a trailer for transporting to remote job sites						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund - 501-000-594-42-60-04	\$20,000						\$20,000
Total:	\$20,000						\$20,000

Paving Machine

Project Number:	PW-SO-4-2018		Completion Year:		2019		
Location:	Street’s Equipment Pool						
Description:	Asphalt paving machine for repairs and patching of asphalt surfaces						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund - 501-000-594-42-60-05		\$200,000					\$200,000
Total:		\$200,000					\$200,000

Dump Truck Replacement

Project Number:	PW-SO-5-2018		Completion Year:		2019		
Location:	Street's Equipment Pool						
Description:	Replace 5-yard dump truck						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund - 501-000- 594-42-60-06			\$70,000				\$70,000
Total:			\$70,000				\$70,000

Mower

Project Number:	PW-SO-6-2018		Completion Year:		2020		
Location:	Street's equipment pool						
Description:	Mower with 10' deck to maintain large vegetated areas						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund - 501-000- 594-42-60-07			\$40,000				\$40,000
Total:			\$40,000				\$40,000

Three Axle Pulp Trailer

Project Number:	PW-SO-7-2018		Completion Year:		2020		
Location:	Street's equipment pool						
Description:	Three axle dump trailer for towing behind a dump truck for large earthwork projects						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund - 501-000- 594-42-60-08			\$30,000				\$30,000
Total:			\$30,000				\$30,000

One Ton 4 x 4 Dump Truck

Project Number:	PW-SO-8-2018		Completion Year:		2020		
Location:	Street's equipment pool						
Description:	One ton 4x4 dump truck						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund - 501-000- 594-42-60-09			\$70,000				\$70,000
Total:			\$70,000				\$70,000

Vector Truck Replacement

Project Number:	PW-SO-9-2018		Completion Year:		2021		
Location:	Street's equipment pool						
Description:	Existing vector truck will require replacement						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund - 501-000- 594-42-60-10				\$260,000			\$260,000
Total:				\$260,000			\$260,000

Street Sweeper Replacement

Project Number:	PW-SO-10-2018		Completion Year:		2022		
Location:	Street's equipment pool						
Description:	Existing street sweeper replacement						
Funding:	2018	2019	2020	2021	2022	2023	Total
General Fund - 501-000- 594-42-60-11					\$230,000		\$230,000
Total:					\$230,000		\$230,000

9.1.5 Transportation Improvements

Overlay Program

Project Number:	PW-T-1-2018		Completion Year:		Ongoing		
Location:	Citywide						
Description:	Asphalt Overlay (Repave Streets)						
Funding:	2018	2019	2020	2021	2022	2023	Total
Fund 102	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$2,400,000
Total:	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000	\$2,400,000

George Hopper Improvements – Design East of the Interchange

Project Number:	PW-T-2-2018		Completion Year:		2018		
Location:	George Hopper Road / Interstate 5 Interchange						
Description:	Design interchange expansion from Burlington Blvd to I-5 bridge						
Funding:	2018	2019	2020	2021	2022	2023	Total
Impact Fees	\$15,000						\$15,000
Grants	\$85,000						\$85,000
Total:	\$100,000						\$100,000

George Hopper Improvements – Construction East of the Interchange

Project Number:	PW-T-3-2018		Completion Year:		2020		
Location:	George Hopper Road / Interstate 5 Interchange						
Description:	Construct interchange expansion from Burlington Blvd to I-5 bridge						
Funding:	2018	2019	2020	2021	2022	2023	Total
Impact Fees			\$180,000				\$180,000
Grants			\$1,020,000				\$1,020,000
Total:			\$1,200,000				1,200,000

Fairhaven Improvements at 5-way intersection

Project Number:	PW-T-4-2018		Completion Year:		2018		
Location:	Cherry Street at Fairhaven						
Description:	Street reconstruction for safety improvements and create pedestrian plaza						
Funding:	2018	2019	2020	2021	2022	2023	Total
Bike/Ped Grant	\$800,000						\$800,000
Total:	\$800,000						\$800,000

George Hopper / Costco Drive Signal Safety Project - Design

Project Number:	PW-T-5-2018		Completion Year:		2018		
Location:	George Hopper Road / Costco Drive Intersection						
Description:	Design of safety improvements to signal and repave to Burlington Blvd						
Funding:	2018	2019	2020	2021	2022	2023	Total
Fund 102	\$12,750						\$12,750
Grants	\$72,250						\$72,250
Total:	\$85,000						\$85,000

George Hopper / Costco Drive Signal Safety Project - Construction

Project Number:	PW-T-6-2018		Completion Year:		2018		
Location:	George Hopper Road / Costco Drive Intersection						
Description:	Construction of safety improvements to signal and repave to Burlington Blvd						
Funding:	2018	2019	2020	2021	2022	2023	Total
Fund 102	\$100,500						\$100,500
Grants	\$569,500						\$569,500
Total:	\$670,000						\$670,000

East – West Connector - Design

Project Number:	PW-T-7-2018		Completion Year:		2018		
Location:	Burlington Blvd/Costco Drive Intersection to Walnut Street directly east						
Description:	Design new arterial to serve undeveloped properties east of Costco						
Funding:	2018	2019	2020	2021	2022	2023	Total
Fund 102	\$45,000						\$45,000
Grant	\$255,000						\$255,000
Total:	\$300,000						\$300,000

East – West Connector - Construction

Project Number:	PW-T-8-2018		Completion Year:		2019		
Location:	Burlington Blvd/Costco Drive Intersection to Walnut Street directly east						
Description:	Right of way & construct new arterial to serve undeveloped properties east of Costco						
Funding:	2018	2019	2020	2021	2022	2023	Total
Fund 102		\$495,000					\$495,000
Grant		\$2,805,000					\$2,805,000
Total:		\$3,300,000					\$3,300,000

Traffic Signal @ SR-20/Skagit Street - Design

Project Number:	PW-T-9-2018		Completion Year:		2018		
Location:	State Route 20 @ Skagit Street						
Description:	Design Signal to Provide Safety and Capacity Improvements						
Funding:	2018	2019	2020	2021	2022	2023	Total
Impact Fee	\$15,000						\$15,000
Grant	\$85,000						\$85,000
From Previous Years							\$70,250
Total:	\$100,000						\$170,250

Traffic Signal @ SR-20/Skagit Street - Construction

Project Number:	PW-T-10-2018		Completion Year:		2021		
Location:	State Route 20 @ Skagit Street						
Description:	Construction of Signal to Provide Safety and Capacity Improvements						
Funding:	2018	2019	2020	2021	2022	2023	Total
Impact Fee				\$262,500			\$262,500
Grant				\$1,487,500			\$1,487,500
Total:				\$1,750,000			\$1,750,000

George Hopper Improvements – Design West Side

Project Number:	PW-T-11-2018		Completion Year:		2019		
Location:	George Hopper Road / Interstate 5 Interchange						
Description:	Design improvements across bridge and partial cloverleaf on west side						
Funding:	2018	2019	2020	2021	2022	2023	Total
Impact Fees		\$120,000					\$120,000
Grants		\$680,000					\$680,000
Total:		\$800,000					\$800,000

George Hopper Improvements – Construct West Side

Project Number:	PW-T-12-2018		Completion Year:		2020		
Location:	George Hopper Road / Interstate 5 Interchange						
Description:	Construct improvements across bridge and partial cloverleaf on west side						
Funding:	2018	2019	2020	2021	2022	2023	Total
Impact Fees			\$750,000				\$750,000
Grants			\$4,250,000				\$4,250,000
Total:			\$5,000,000				\$5,000,000

Nonmotorized Trail – Construct from Cascade Mall to Pease Road

Project Number:	PW-T-13-2018		Completion Year:		2021		
Location:	Burlington Boulevard from Cascade Mall Drive to Pease Road						
Description:	Shared Use Path						
Funding:	2018	2019	2020	2021	2022	2023	Total
Fund 102				\$48,600			\$48,600
Grants				\$275,400			\$275,400
Total:				\$324,000			\$324,000

SR20/Avon Bike and Pedestrian Path - Design

Project Number:	PW-T-14-2018		Completion Year:		2021		
Location:	Burlington Boulevard to Skagit Street on north side of SR20/Avon						
Description:	Design a shared use path						
Funding:	2018	2019	2020	2021	2022	2023	Total
Fund 102				\$37,500			\$37,500
Grants				\$212,500			\$212,500
Total:				\$250,000			\$250,000

SR20/Avon Bike and Pedestrian Path - Construct

Project Number:	PW-T-15-2018		Completion Year:		2022		
Location:	Burlington Boulevard to Skagit Street on north side of SR20/Avon						
Description:	Construct a shared use path						
Funding:	2018	2019	2020	2021	2022	2023	Total
Fund 102					\$300,000		\$300,000
Grants					\$1,700,000		\$1,700,000
Total:					\$2,000,000		\$2,000,000

Railroad Overcrossing – design only

Project Number:	PW-T-16-2018		Completion Year:		2022		
Location:	Undetermined location over BNSF RR						
Description:	Safety and Capacity improvements						
Funding:	2018	2019	2020	2021	2022	2023	Total
Impact Fee					\$225,000		\$225,000
Grant					\$1,275,000		\$1,275,000
Total:					\$1,500,000		\$1,500,000

Gardner Road Improvements - Design							
Project Number:	PW-T-17-2018		Completion Year:		2021		
Location:	Gardner Road						
Description:	Design curb, gutter and sidewalks and repave						
Funding:	2018	2019	2020	2021	2022	2023	Total
Fund 102				\$30,000			\$30,000
Grant				\$170,000			\$170,000
Total:				\$200,000			\$200,000

Gardner Road Improvements - Construction							
Project Number:	PW-T-18-2018		Completion Year:		2022		
Location:	Gardner Road						
Description:	Design curb, gutter and sidewalks and repave						
Funding:	2018	2019	2020	2021	2022	2023	Total
Fund 102					\$240,000		\$240,000
Grant					\$1,360,000		\$1,360,000
Total:					\$1,600,000		\$1,600,000

10 Parks and Recreation

10.1 Department Description

The mission of the Parks and Recreation Department is to provide and facilitate safe, quality recreational services, programs, parks and facilities while preserving and enhancing natural resources and stimulating the economic vitality of the community.

The Parks and Recreation Department is comprised of a recreation division, parks and cemetery division and administrative division. The recreation division is responsible for planning and implementing a variety of large and small community events and a variety of ongoing recreation programming for all ages and abilities. The parks and cemetery division maintains and develops a diverse park system that includes a cemetery, large regional athletic facility, neighborhood parks, trails, open space and park facilities. The administrative division develops and maintains the department's budgets, policies, procedures, manages the special event process and processes the registrations/reservations of all the recreation programs and parks and facility rentals.

10.2 Funding and Expenditure Summary

Potential Funding							
	2018	2019	2020	2021	2022	2023	Total
REET	\$565,000	\$350,000	\$200,000	\$100,000	\$200,000	\$200,000	\$1,615,000
Impact Fees		\$200,000		\$70,000	\$50,000	\$100,000	\$420,000
Total	\$565,000	\$550,000	\$200,000	\$170,000	\$250,000	\$300,000	\$2,035,000
Planned Expenditures							
	2018	2019	2020	2021	2022	2023	Total
Repair and Replacement	\$65,000						\$65,000
Expansions and New Facilities or Equipment	\$500,000	\$550,000	\$200,000	\$170,000	\$250,000	\$300,000	\$1,970,000
Total	\$565,000	\$550,000	\$200,000	\$170,000	\$250,000	\$300,000	\$2,035,000

10.3 Capital Projects

The Parks and Recreation Department is establishing baselines for levels of service for parks and recreation services. Instituting these is critical to establishing the accurate delivery of services to the community. One of the key tools that will help with this process is developing a PROS Plan (Parks, Recreation and Open Space). A PROS Plan is also a required document for

Cities to apply for State funding through the RCO (Recreation and Conservation Office) Grant process. To expand the recreation program offerings for all ages the current parks and recreation building will need to be remodeled to accommodate recreation programming needs.

Many of the parks in the City need a master plan to determine the best use of the park through community engagement. Skagit River Park is the largest park in the City; it hosts large athletic tournaments for many sports and is the main playfield for practice and games of many sports including soccer, lacrosse, ultimate Frisbee, Radio Control Vehicles, Horseshoes, Disc Golf and baseball/softball. A master plan for Skagit River Park is needed to determine compatibility of uses, allocation of space and parking and traffic flow in the park. To maintain the city's asset at Skagit River Park better irrigation options need to be researched and implemented. Without proper irrigation proper turf maintenance cannot be implemented which will further deteriorate the grass fields.

10.4 Challenges

The City will be eligible for Recreation Conservation Grants (RCO) starting in the 2020 grant cycle. Burlington has not applied for these funds for many years so there is not a recent track record for approval of grant funding. However, the city has received funding support from RCO in the past. Implementing building remodels, the Maiben Park Master Plan and the Skagit River Park Master Plan have large funding implications and the city will most likely need matching funds through grants over the course of several years to fully implement these projects.

10.5 Project List

Skagit River Park Irrigation Project							
Project Number:	PR-1-2018			Completion Year:		2018	
Location:	1100 South Skagit Street						
Description:	Due to low water pressure and lack of public water supply connections there is insufficient water to sustain an optimal playing surface and support a turf maintenance program. This affects approximately 50 acres of playfields. Different water sources and methods of irrigation need to be researched and implemented. Research will include the purchase of water rights, use of well water and different irrigation methods, systems, and equipment.						
Funding:	2018	2019	2020	2021	2022	2023	Total
REET	\$300,000						\$300,000
Total:	\$300,000						\$300,000

Skagit River Park Master Plan							
Project Number:	PR-2-2018			Completion Year:		2018	
Location:	1100 South Skagit Street						
Description:	Develop master plan for Skagit River Park to increase utilization, confirm the space is used to maximize compatibility, accommodate parking, and ensure good traffic flow to support the many events and uses occurring at the park.						
Funding:	2018	2019	2020	2021	2022	2023	Total
REET	\$70,000						\$70,000
Total:	\$70,000						\$70,000

Maiben Park Picnic Shelter Remodel							
Project Number:	PR-3-2018		Completion Year:			2018	
Location:	1011 East Greenleaf Avenue						
Description:	Renovate picnic shelter in Maiben Park, including new roof, paint, and picnic tables.						
Funding:	2018	2019	2020	2021	2022	2023	Total
REET	\$15,000						\$15,000
Total:	\$15,000						\$15,000

Park Equipment - Mower							
Project Number:	PR-4-2018			Completion Year:		2018	
Location:	N/A						
Description:	Purchase new mower to ensure staff safety and increase efficiency.						
Funding:	2018	2019	2020	2021	2022	2023	Total
REET	\$50,000						\$50,000
Total:	\$50,000						\$50,000

Bunkers with Covers - Park Shop							
Project Number:	PR-5-2018			Completion Year:		2018	
Location:	951 South Section Street						
Description:	Construct bunkers to store materials for park and turf maintenance such as sand, bark and baseball dirt. To keep the materials usable the bunkers need covers.						
Funding:	2018	2019	2020	2021	2022	2023	Total
REET	\$50,000						\$50,000
Total:	\$50,000						\$50,000

Parks & Recreation Bldg. Renovation

Project Number:	PR-6-2018			Completion Year:		2019	
Location:	900 East Fairhaven						
Description:	The current Parks and Recreation Building has good structure, but it was constructed as a City Hall not a Community Center. Renovated building will create spaces to accommodate recreational uses and staff will be able to provide greater recreation services to the community. As part of the renovation the old library space in the large room could be used as a large group/event rental space creating additional revenue.						
Funding:	2018	2019	2020	2021	2022	2023	Total
Impact Fees		\$200,000					\$200,000
REET		\$150,000					\$150,000
Total:		\$350,000					\$350,000

Parks Shop Remodel & PreFab Building

Project Number:	PR-7-2018		Completion Year:			2019	
Location:	951-A South Section Street						
Description:	Convert current office/lunch room space in park shop building into a space for equipment storage and purchase a pre-fab building for the Parks Crew office, restroom and lunch room space.						
Funding:	2018	2019	2020	2021	2022	2023	Total
REET		\$200,000					\$200,000
Total:		\$200,000					\$200,000

Skagit River Park West Playfields Restroom

Project Number:	PR-8-2018		Completion Year:			2020	
Location:	1100 S. Skagit Street						
Description:	Provide additional restrooms for Skagit River Park to meet demand and reduce use of portable toilets.						
Funding:	2018	2019	2020	2021	2022	2023	Total
REET			\$200,000				\$200,000
Total:			\$200,000				\$200,000

Jason Boerner Park Master Plan

Project Number:	PR-10-2018		Completion Year:		2021		
Location:	Norris Street W. Fairhaven						
Description:	Retain landscape architect and work with community to develop master plan for Jason Boerner park.						
Funding:	2018	2019	2020	2021	2022	2023	Total
REET				\$50,000			\$50,000
Total:				\$50,000			\$50,000

Park Equipment

Project Number:	PR-11-2018		Completion Year:			2021	
Location:	N/A						
Description:	Implement equipment replacement program to help staff determine when to replace park equipment.						
Funding:	2018	2019	2020	2021	2022	2023	Total
REET				\$50,000			\$50,000
Total:				\$50,000			\$50,000

Rotary Park Playground

Project Number:	PR-12-2018		Completion Year:		2021		
Location:	821 South Section Street						
Description:	Make Rotary Park a full-service neighborhood park by adding a play structure next to existing picnic shelter.						
Funding:	2018	2019	2020	2021	2022	2023	Total
Impact Fees				\$70,000			\$70,000
Total:				\$70,000			\$70,000

Gages Slough Master Plan/Design

Project Number:	PR-13-2018			Completion Year:		2022	
Location:	Adjacent to Tami Wilson Trail and Cascade Mall						
Description:	Develop Master plan for portion of Gages Slough recently donated to the City. Plan will enable the City to develop a phased project list to guide funding and spending.						
Funding:	2018	2019	2020	2021	2022	2023	Total
Impact Fees					\$50,000		\$50,000
Total:					\$50,000		\$50,000

SRP Parking and Traffic Flow							
Project Number:	PR-14-2018			Completion Year:		2022	
Location:	1100 S. Skagit Street						
Description:	Make parking and traffic flow improvements to Skagit River park.						
Funding:	2018	2019	2020	2021	2022	2023	Total
REET					\$200,000		\$200,000
Total:					\$200,000		\$200,000

Implement Design of Maiben Park							
Project Number:	PR-15-2018			Completion Year:		2023	
Location:	1011 E. Greenleaf Ave.						
Description:	Construct planned improvements to Maiben Park.						
Funding:	2018	2019	2020	2021	2022	2023	Total
REET						\$200,000	\$200,000
Total:						\$200,000	\$200,000

Dog Park Design/Mater Plan							
Project Number:	PR-16-2018			Completion Year:		2023	
Location:	N/A						
Description:	Create and plan and preliminary design for a dog park.						
Funding:	2018	2019	2020	2021	2022	2023	Total
Impact Fees						\$100,000	\$100,000
Total:						\$100,000	\$100,000

Dfgsf

Development of PROS Plan (Parks, Recreation & Open Space Plan)							
Project Number:	PR-17-2018		Completion Year:			2018	
Location:	N/A						
Description:	A PROS Plan is needed for grant-eligibility of State RCO grants. The document also is a working plan for maintenance of parks, recreation activity offerings, inventory of parks and open space and determines level of service. The funds will be used to hire a consultant to help staff prepare the PROS Plan.						
Funding:	2017	2018	2019	2020	2021	2022	Total
REET		\$80,000					
Total:		\$80,000					



ITEM #: 5

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: December 28, 2017

Subject: Phase five of the Comprehensive Municipal Code Update and Reorganization – Final adoption of code and map updates

Brad Johnson, Senior Planner

Attachments:

(1) SEPA DNS, (2) SEPA Checklist (3) Ordinance 1849 with exhibits, (4) Ordinance 1850 with exhibits, (5) Ordinance 1851 with exhibits, (6) Ordinance 1852 with exhibits, (7) Ordinance 1853 with exhibits, (8) Ordinance 1854 with exhibits, (9) Ordinance 1855 with exhibits, and (10) Ordinance 1856 with exhibits

Public Hearing Required: YES (X) NO ()

SUMMARY

The City's comprehensive municipal code update has been divided into five phases. This agenda item represents the fifth and final phase of this project and will complete the City's municipal code update by formally adopting the proposed code amendments. Phase one was completed when the City Council adopted a schedule for the proposed update and accepted the Planning Commission's recommendations on updated zoning and comprehensive plan maps. Phases two and three were completed when the City Council accepted the Planning Commission's recommendations on November 21, 2017. Phase four was completed when the City Council accepted the Planning Commission's recommendation on updates to Title 17 BMC on December 14, 2017.

RECOMMENDATION

For each individual ordinance the Planning Department recommends the City Council make a motion to accept the Planning Commission's recommendation and adopt the ordinance.



SEPA DETERMINATION OF NON-SIGNIFICANCE (DNS) AND INCORPORATION BY REFERENCE OF EXISTING ENVIRONMENTAL DOCUMENTS

DATE:

October 24, 2017

DESCRIPTION:

The City of Burlington is amending the Burlington Municipal Code and adopting updated zoning and comprehensive plan maps. The Municipal Code updates are largely structural, organization, and non-substantive; however, significant changes are being made to the City's permit processing procedures, including the adoption of a Hearing Examiner system. Technical corrections have also been made to the City's zoning and comprehensive plan maps to address incorrect, overlapping, and outdated zoning and comprehensive plan designations.

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 its 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 October 24, 2017; therefore comments must be submitted, in writing, by December 24, 2017.

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



CODE UPDATE

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 Code 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:

October 24, 2017

5. Agency requesting checklist:

City of Burlington (non-project action)

6. Proposed timing or schedule (including phasing, if applicable):

SEPA threshold determination: October 24, 2017 – Comment period: October 24, 2017 through

December 24, 2017 – Final action by City Council to adopt CIP update: December 28, 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 – any site specific construction impacts 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.

No

10. List any government approvals or permits that will be needed for your proposal, if known.

None, this is a non-project action involving non-substantive changes to the City's municipal code and technical updates to the City's zoning and comprehensive plan maps.

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 revisions to the City's Municipal Code. These revisions are largely organization and non-substantive; however, significant changes are proposed to the City's permit processing procedures, including the adoption of a Hearing Examiner system. The City is also adopting updated zoning and comprehensive plan maps. The changes made to the zoning and comprehensive plan maps are technical and nonsubstantive. The map updates are not intended to change the City's existing zoning designations.

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- Projects subject to the City's municipal code requirements 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- Projects subject to the City's municipal code requirements 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- Projects subject to the City's municipal code requirements 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- Projects subject to the City's municipal code requirements 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- Projects subject to the City's municipal code requirements 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- Projects subject to the City's municipal code requirements 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)?

N/A – non-project action- Projects subject to the City's municipal code requirements 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- Projects subject to the City's municipal code requirements 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- Projects subject to the City's municipal code requirements 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- Projects subject to the City's municipal code requirements 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- Projects subject to the City's municipal code requirements 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- Projects subject to the City's municipal code requirements may take place on a variety of sites throughout the City; however, connection to PUD water is required for all new projects.

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

Projects subject to the City's municipal code requirements 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 subject to the City's regulatory requirements 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.

Projects subject to the City's municipal code requirements may take place on a variety of sites throughout the City.

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- Projects subject to the City's municipal code requirements may take place on a variety of sites throughout the City; however, the City requires that all new uses requiring water receive water from the Skagit PUD.

- 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.

N/A – non-project action - Projects subject to the City's municipal code requirements may take place on a variety of sites. No substantive changes have been made to the City's storm-water regulations.

- 2) Could waste materials enter ground or surface waters? If so, generally describe.

N/A – non-project action - Projects subject to the City's municipal code requirements may take place on a variety of sites. No substantive changes have been made to the City's storm-water regulations.

- 3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

N/A – non-project action - Projects subject to the City's municipal code requirements may take place on a variety of sites. No substantive changes have been made to the City's storm-water regulations.

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

N/A – non-project action - Projects subject to the City's municipal code requirements may take place on a variety of sites. No substantive changes have been made to the City's storm-water regulations. The changes made to the municipal code are anticipated to make the code easier to implement which may make existing storm-water regulations more effective.

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 - Projects subject to the City's municipal code requirements may take place on a variety of sites. 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 - Projects subject to the City's municipal code requirements may take place on a variety of sites.

c. List threatened and endangered species known to be on or near the site.

N/A – non-project action - Projects subject to the City's municipal code requirements may take place on a variety of sites. 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:

N/A – non-project action - Projects subject to the City's municipal code requirements may take place on a variety of sites. 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 - Projects subject to the City's municipal code requirements 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 - Projects subject to the City's municipal code requirements 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.

N/A – non-project action - Projects subject to the City's municipal code requirements may take place on a variety of sites throughout the City. No substantive changes have been made to the City's floodplain regulations. The changes made to the municipal code are anticipated to make the code easier to implement which may make existing floodplain regulations more effective.

- 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 code changes are not intended to address or change existing agricultural land use policies or the size of the City's UGA. 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 code changes are not intended to address, or change, existing agricultural land use policies or the size of the City's UGA. 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 – the code update involves all of the City's zones and all land within the City's municipal boundaries. Other than technical changes necessary to ensure consistency between the adopted ordinances, codes, and the zoning map, no zoning changes are proposed.

- f. What is the current comprehensive plan designation of the site?

N/A – non-project action – proposal effects propertyer 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 –proposal effects propertyer 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. No substantive changes are proposed to the City's critical area 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:

The proposed amendments to the City's municipal code are intended to improve the code's organization, readability, and effectiveness. It is hoped that these changes will make it easier to ensure future projects are consistent with adopted land use plans and policies.

m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:

N/A – all projects subject to the City's regulations 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 no impacts

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.

N/A – non-project action – no transportation impacts no significant changes have been made to density, allowed uses, parking requirements, or concurrency requirements.

- 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 - no transportation impacts no significant changes have been made to density, allowed uses, parking requirements, or concurrency requirements.

- 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 – no significant changes are proposed to zoning classifications, allowed densities, or allowed uses.

- b. Proposed measures to reduce or control direct impacts on public services, if any.

N/A – no probable impacts

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: _____

10/24/2017

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?

N/A – municipal code update – no significant changes to air, water, or noise impact regulations.

Proposed measures to avoid or reduce such increases are:

N/A – no impacts probable.

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's Urban Growth Area has not been expanded during this CIP period. Most development within the City of Burlington involves redevelopment and the intensification of uses on existing developed sites. The projects subject to the City's updated regulations are intended to facilitate 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 than older buildings.

Proposed measures to protect or conserve energy and natural resources are:

N/A – municipal code update

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 reviews 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?

N.A – code update.

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?

N/A – non-project action - no transportation impacts no significant changes have been made to density, allowed uses, parking requirements, or concurrency requirements.

Proposed measures to reduce or respond to such demand(s) are:

N/A – non-project action - no transportation impacts no significant changes have been made to density, allowed uses, parking requirements, or concurrency requirements.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

N/A – no substantive changes proposed to City's existing environmental protection laws and regulations.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BURLINGTON, WASHINGTON IN THE MATTER OF
ADOPTING UPDATED ZONING AND COMPREHENSIVE PLAN MAPS**

WHEREAS, the City of Burlington, Washington, (the "City") is a non-charter code city organized under the laws of Title 35A RCW now in effect; and

WHEREAS, in accordance with RCW 36.70A.040 the City is required to adopt and maintain a comprehensive plan; and

WHEREAS, the City's comprehensive plan must include a land use element and a future land use map ("comprehensive plan map") pursuant to RCW 36.70A.070; and

WHEREAS, the City previously adopted a comprehensive plan and comprehensive plan map; and

WHEREAS, the City is authorized by RCW 36.70A.130(2) to amend the comprehensive plan map; and

WHEREAS, the City's comprehensive plan map must be amended and updated to clarify boundaries, correct inaccurate information, eliminate outdated designations, and convert the map to a more legible format; and

WHEREAS, the City's Planning Department has produced an updated and amended comprehensive plan map to address the issues outlined above; and

WHEREAS, the City has the authority to adopt development regulations pursuant to RCW 35A.11.020 and 35A.63.100, and in compliance with Chapter 36.70A RCW, WAC 365-196-600 through WAC 365-196-660 and WAC 365-196-800 through 365-196-870; and

WHEREAS, the City previously adopted a zoning map depicting the boundaries and locations of the City's various zoning districts; and

WHEREAS, in accordance with RCW 35A.63.105 and RCW 36.70A.040 the zoning map must be consistent with and implement the comprehensive plan map; and

WHEREAS, the City's zoning map must be amended to ensure consistency with the comprehensive plan map, correct inaccurate information, eliminate outdated or expired designations, clarify boundaries, and convert the map to a more legible format; and

WHEREAS, City's Planning Department produced an updated and amended zoning map to address the issues outlined above; and

WHEREAS, the Planning Commission of the City held a public hearing on September 20, 2017 and adopted a schedule and work plan for updating the City's comprehensive plan map, zoning map, and the Burlington Municipal Code; and

WHEREAS, the Planning Commission held a public hearing in compliance with RCW 36.70A.035 on September 20, 2017 to consider the updated zoning and comprehensive plan maps; and

WHEREAS, the Planning Commission voted to recommend the City Council adopt the updated zoning and comprehensive plan maps; and

WHEREAS, the Planning Commission adopted written findings in support of their recommendation which are attached to this ordinance as exhibit "A"; and

WHEREAS, after reviewing an Environmental Checklist, the City's SEPA Responsible Official issued a Determination of Non-significance (DNS) on October 24, 2017 for the amendments to the zoning and comprehensive plan maps and mailed the DNS to all affected public agencies. Notice of Determination of Non-significance was published in the Skagit Valley Herald on October 31, 2017; and

WHEREAS, following the issuance of the DNS a 60 day period was provided for public comment; and

WHEREAS, the revised zoning and comprehensive plan maps were forwarded to the Washington State Department of Commerce for review pursuant to RCW 36.70A.106 on October 25, 2017; and

WHEREAS, the Planning Commission's findings and recommendation were presented to the City Council at a regular public meeting on October 12, 2017; and

WHEREAS, the revised comprehensive plan map is consistent with the land use element of the City's adopted comprehensive plan as required by RCW 36.70A.040; and

WHEREAS, the revised zoning map is consistent with the revised comprehensive plan map and the City's adopted comprehensive plan; and

WHEREAS, after considering the Planning Commission's recommendation, and after further consideration of the updated zoning and comprehensive plan maps, and the Council being otherwise fully informed.

**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 September 20, 2017 and attached hereto as exhibit "A"; and
2. The City Council hereby adopts the updated comprehensive plan map attached hereto as exhibit "B" and the updated zoning map attached hereto as exhibit "C"; and
3. The City's existing comprehensive plan map shall be replaced and superseded by the map attached to this ordinance as exhibit "B"; and
4. The City's existing zoning map shall be replaced and superseded by the map attached to this ordinance as exhibit "C"; and
5. The Mayor is authorized to sign official copies of the updated zoning and comprehensive plan maps and these official copies shall be maintained by the Planning Department; and
6. The updated zoning and comprehensive plan maps adopted by this ordinance shall become effective on January 1, 2018;

INTRODUCED AND PASSED at a regular meeting of the City Council of the City of Burlington on this 28th day of December, 2017.

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: 12/28/2017
Signed by the Mayor: 12/xx/2016
Published: 12/xx/2016
Effective date: 1/1/2018



PLANNING COMMISSION RECOMMENDATION

DATE: September 20, 2017

PROJECT: Comprehensive Municipal Code Update and Reorganization – Phase 1
Adoption Schedule and Map Updates

LOCATION: N/A – Citywide Municipal Code Update

NUMBER: DRA/CPA 1-2017

APPLICANT: City of Burlington

SUMMARY:

The Planning Commission has established a schedule for the review and adoption of the comprehensive Burlington Municipal Code update. The Planning Commission also recommends adoption of updated zoning and comprehensive plan maps, and an amendment to Burlington Municipal Code to allow the Planning Commission to schedule its own meeting times and dates.

FINDINGS:

Code Update Schedule

1. The City's zoning code has not been comprehensively reviewed or updated since the City adopted a Growth Management Act (GMA) compliant comprehensive plan and development regulations in the 1990s. However, numerous changes have been made to zoning code and development regulations in the intervening years resulting redundant, conflicting, and contradictory code requirements. These changes have also compromised the organization of the original zoning code.
2. In order to address the challenges noted above, the City retained a consultant to review the City's development regulations and make organizational, grammatical, and spelling changes. The consultant was also charged with auditing the code for compliance with current legal requirements, consistency with recent court decisions, and eliminating redundant or contradictory code sections.

3. The Planning Commission understands the proposed changes have been developed through a collaborative effort between the City's consultant and the City's Planning, Public Works, Building, and Administrative divisions.
4. In order to ensure a thorough and well considered review of the proposed amendments the Planning Commission directed the City's Planning Department to present the amendments in an incremental fashion. The Planning Department has developed a schedule for the review and adoption of the proposed code amendments. This schedule will allow the Planning Commission to consider the proposed code updates at a number of meetings.

Meeting Times

5. Currently the Planning Commission's meeting times are set by BMC 17.76.020 which states that: *"the Commission shall meet on the third Wednesday of the month at 7:00 P.M..."* The Planning Commission finds that holding meetings at 5:30, rather than 7:00, will make it easier for members of the public to attend meetings, and will be less burdensome for Planning Commission members and Planning Department staff.
6. Large, complex, or contentious issues may require more than one meeting in order to provide adequate opportunities for public comment, staff presentations and Planning Commission deliberations.
7. In order to allow meetings to be held at 5:30, and to accommodate large, complex, and potentially contentious issues, the Planning Commission finds that BMC 17.76.020 should be amended to eliminate any reference to a specific meeting time. Instead, BMC 17.76.020 should be amended to enable the Planning Commission to establish its own meeting times.

Zoning and Comprehensive Plan Maps

8. The Planning Commission finds that the City's zoning and comprehensive plan maps contain errors and have not been consistently updated to reflect zoning changes. In addition the Planning Commission finds that the CAD format of the current maps is difficult for Planning Department staff to update and makes computerized analysis difficult.
9. The Planning Commission has reviewed the updated zoning and comprehensive plan maps prepared by the Planning Department and finds that these maps will address the errors identified by the Planning Department, insure consistency between the zoning and comprehensive plan maps, and make long range planning and computerized analysis work easier.

RECOMENDATION:

Based on the findings presented above the Planning Commission respectfully makes the following recommendations to the City Council:

1. The City Council should, by resolution, adopt the schedule attached as exhibit "A".
2. The City Council should adopt a resolution in support of the updated zoning and comprehensive plan maps attached as exhibits "B" and "C".
3. The City Council should adopt an ordinance amending the language of BMC 17.76.020 to allow the Planning Commission to establish its own meeting times. Specifically, the Planning Commission recommends the language of BMC 17.76.020 be amended as shown on attached exhibit "D".

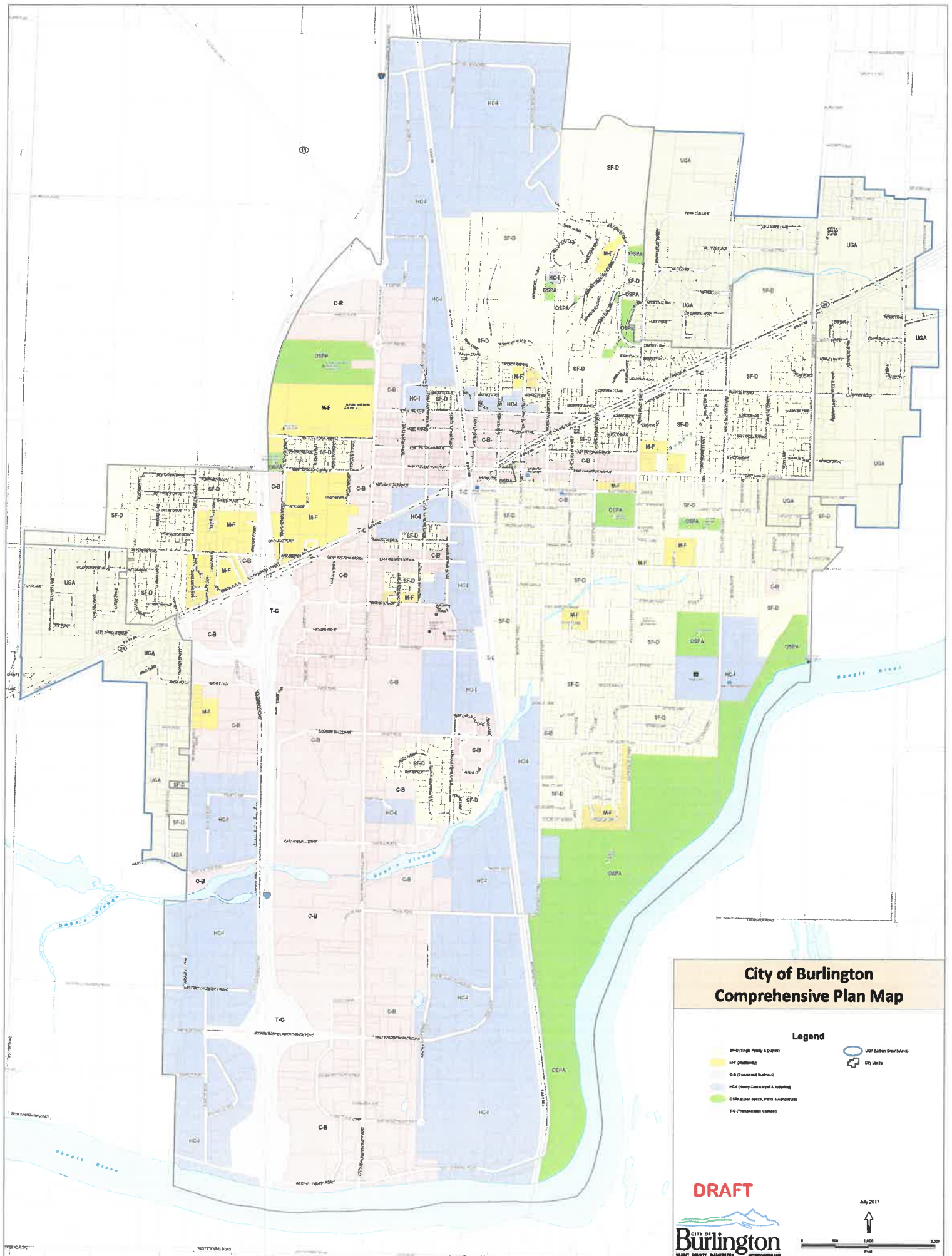
DATED this 20th day of September 2017



Chair, City of Burlington Planning Commission

Exhibits:

- | | |
|-----|---|
| "A" | Code update review and adoptions schedule |
| "B" | Updated zoning map |
| "C" | Updated comprehensive plan map |
| "D" | Proposed revisions to BMC 17.76.020 |



ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BURLINGTON, WASHINGTON IN THE MATTER OF
AMENDING TITLE 1 OF THE BURLINGTON MUNICIPAL CODE**

WHEREAS, the City of Burlington, Washington, (the "City") is a non-charter code city organized under the laws of Title 35A RCW now in effect; and

WHEREAS, the City has the authority to adopt development regulations pursuant to RCW 35A.11.020 and 35A.63.100, and in compliance with Chapter 36.70A RCW, WAC 365-196-600 through WAC 365-196-660 and WAC 365-196-800 through 365-196-870; and

WHEREAS, the Planning Commission of the City held a public hearing on September 20, 2017 and adopted a schedule and work plan for updating the Burlington Municipal Code; and

WHEREAS, Title 1 of the Burlington Municipal Code must be revised to remove repetitive, contradictory, and obsolete language and provide clear direction for the use and enforcement of those titles of the Burlington Municipal Code relating to the regulation and development of land, specifically Title 1, Title 2, Title 8, Title 14, Title 14A, Title 15, Title 16, and Title 17; and

WHEREAS, in order to address the issues outlined above the City's Planning Department proposed revising Chapters 1.24 and 1.34 of the Burlington Municipal Code and adopting an additional code chapter to be codified as Chapter 1.44; and

WHEREAS, after reviewing an Environmental Checklist the City's SEPA Responsible Official issued a Determination of Non-significance (DNS) on October 24, 2017 for the proposed amendments and mailed the DNS to all affected public agencies. Notice of Determination of Non-significance was published in the Skagit Valley Herald on October 31, 2017; and

WHEREAS, following the issuance of the DNS a 60 day period was provided for public comment; and

WHEREAS, the City's Planning Commission reviewed the proposed changes to the Burlington Municipal Code at a public hearing on October 18, 2017 in compliance with RCW 36.70A.035; and

WHEREAS, the revisions to Title 1 drafted by the Planning Department were forwarded to the Washington State Department of Commerce for review pursuant to RCW 36.70A.106 on October 25, 2017; and

WHEREAS, the Planning Commission held a public meeting on November 8, 2017 and voted to recommend the City Council adopt the proposed revisions to Title 1; and

WHEREAS, the Planning Commission adopted written findings in support of their recommendation which are attached to this ordinance as exhibit "A"; and

WHEREAS, the Planning Commission's findings and recommendation were presented to the City Council at a regular public meeting on November 21, 2017; and

WHEREAS, the revisions to Title 1 recommended by the Planning Commission are attached to this ordinance as exhibits "B", "C", and "D"; and

WHEREAS, the revisions to Title 1 recommended by the Planning Commission are consistent with and implement the provisions of the City of Burlington Comprehensive Plan as required by RCW 36.70A.040; and

WHEREAS, after considering the Planning Commission's recommendation, and after further consideration of such Title 1, and the Council being otherwise fully informed.

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 8, 2017 and attached hereto as exhibit "A"; and
2. The text of exhibit "B" shall replace and supersede the text of Chapter 1.24 BMC; and
3. The text of exhibit "C" shall replace and supersede the text of Chapter 1.34 BMC; and
4. The text of exhibit "D" shall be added to Title 1 of the Burlington Municipal Code and codified as Chapter 1.44; and
5. The amendments to the Burlington Municipal Code adopted by this ordinance shall become effective on January 1, 2018;

INTRODUCED AND PASSED at a regular meeting of the City Council of the City of Burlington on this 28th day of December, 2017.

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: 12/28/2017
Signed by the Mayor: 12/xx/2016
Published: 12/xx/2016
Effective date: 1/1/2018



PLANNING COMMISSION RECOMMENDATION

DATE: November 8, 2017

PROJECT: Comprehensive Municipal Code Update and Reorganization – Phase 2
Titles 1, 8, and 14A – Option “A”

LOCATION: N/A – Citywide Municipal Code Update

NUMBER: DRA/CPA 1-2017

APPLICANT: City of Burlington

SUMMARY:

The Planning Commission has reviewed the proposed amendments to titles 1, 8, and 14A of the Burlington Municipal Code. The proposed amendments to titles 1 and 8 would consolidate the City’s penalty and enforcement provisions into a single chapter and expand the enforcement options available to the City Attorney. Title 14A would consolidate the City’s permit processing procedures and public notification requirements in a single location. In addition, the adoption of Title 14A would recognize the establishment of a Hearing Examiner system. The Hearing Examiner would be charged with reviewing administrative appeals, variances, and complex permit applications.

FINDINGS:

Code Enforcement Provisions

1. Over time new code chapters and sections have been added to the Burlington Municipal Code to address emerging issues. Often, additional code enforcement provisions were added at the same time. As a result, the Burlington Municipal Code currently contains a patchwork of code enforcement penalties and enforcement provisions.
2. The existing patchwork of penalties and code enforcement provisions has made it difficult for City staff to address code violations effectively.

3. The proposed amendments to titles 1 and 8 of the Burlington Municipal Code will consolidate the numerous code enforcement provisions and penalties in a single code title and allow the City to address code violations as criminal violations, civil infractions, or as nuisances.
4. The Planning Commission finds that the proposed amendments will make the City's code enforcement process more transparent, efficient, and effective.
5. The Planning Commission has concerns that some of the penalty provision identified in titles 1 and 8 may conflict with one another. In order to ensure there are no conflicting penalty provisions, the Planning Commission finds that staff should review these code titles for consistency and make any necessary corrections before final action by the City Council.
6. The proposed code changes include provisions in BMC 1.24.080 and 1.44.120 that allow the City to revoke or suspend "permits granted in error". The Planning Commission has concerns that this provision may be unconstitutional or contrary to established legal precedent. The Planning Commission finds that it would be prudent for staff to review these code provisions with the City's legal counsel and make any necessary changes before final action by the City Council.

Permit Processing Procedures

7. Currently many of the City's permit processing procedures, timelines, and public notice requirements are located in chapter 17.68 BMC. However, permit processing procedures are also located in a number of other code sections. In some instances these various permit processing procedures are conflicting, redundant, or out of compliance with Washington State law.
8. The Planning Commission finds that proposed code title 14A will create a single location in the municipal code which clearly identifies decision authorities, permit processing timelines, and public notice requirements.
9. Currently the Burlington Municipal Code grants the Board of Adjustment authority to decide variance requests and certain administrative appeals. The Planning Commission has authority to approve, or make recommendations to the City Council, on certain permit types, and the City Council has final authority over administrative appeals, subdivisions, and conditional use permits.
10. The Planning Commission finds that the current permit processing and appeal system may unnecessarily expose the City to liability, fails to produce a comprehensive decision record, and needlessly delays permit decisions.

11. The Planning Commission finds that establishing a Hearing Examiner system would allow an independent, semi-autonomous official to review City land use decisions and decide appeals. The Planning Commission further finds that this system would provide permit applicants, city residents, and property owners with timely, consistent, fact-based, permit decisions.
12. The draft of title 14A provided to the Planning Commission would vest final decision making authority for all type III decisions in the Hearing Examiner. Hearing Examiner decisions would then only be appealable to Superior Court by filing a petition under the Washington State Land Use Petition Act (LUPA). The Planning Commission finds that in the interest of preserving legislative oversight, and in interest of preserving a low cost accessible appeal process, title 14A should be amended as shown on attached exhibit “A” to provide at least one administrative appeal opportunity for type I, II, and III land use decisions.

RECOMENDATION:

Based on the findings presented above the Planning Commission respectfully makes the following recommendations to the City Council:

1. The City Council should adopt the proposed changes to titles 1 and 8 of the Burlington Municipal Code. These changes are identified under tabs 1-B and 2-B of the binders provided to the City Council.
2. Staff should transmit a list to the City Council of any changes necessary to ensure consistency between the penalty provisions identified in titles 1 and 8. These changes should be incorporated into the final code drafts adopted by the City Council.
3. Staff should review the permit suspension and revocation provisions set forth in BMC 1.24.080 and 1.44.120 to ensure these provisions are constitutional and consistent with established legal precedent. Any resulting changes should be incorporated into the final drafts adopted by the City Council.
4. The City Council should adopt the proposed consolidated permit processing procedures and codify these changes under Burlington Municipal Code Title 14A. The proposed consolidated permit processing code language is identified under tab 4-B in the binders provided to the City Council. The final draft adopted by the City Council should be revised to include the revised administrative appeal procedures identified on attached exhibit “A”.
5. If the Hearing Examiner system referenced in proposed Title 14A BMC is adopted, the City Council should disband the Board of Adjustment.

City of Burlington - Planning Department Staff Report
Comprehensive Municipal Code Update and Reorganization
Phase 2 – Titles 1, 8, and 14A

DATED this 8th day of November 2017

A handwritten signature in blue ink, reading "Maire Marik-Adams", is written over a horizontal line.

Chair, City of Burlington Planning Commission

OPTION "A"

EXHIBIT "A"

8. Conditional use permits. (BMC 14.05.140)
9. Shoreline substantial development permits, variances and conditional use permits. (BMC 18.09.020)
10. Any other land use action or project permit approval identified by Burlington Municipal Code as a type III review.

D. **Type IV** decisions are legislative decisions made by the city council and limited quasi-judicial final decisions pursuant to the criteria identified in this chapter, in its capacity to establish policy and manage public lands, pursuant to existing legislative standards and based on the hearings examiner or planning commission's record, public meeting and recommendation, and an open and/or closed record public hearing by the city council, the staff report provided by the Planning Department and evidence presented at time of hearing before the city council. Notice of such hearing shall be as provided by BMC 14A.05.130.

Type IV decisions include the following:

1. Final decisions on subdivisions approval and site specific zoning map amendments. (Chapter 16.05 BMC, BMC 14A.05.180 respectively)
2. Essential public facility conditional use permits. (Chapter 17.105 BMC)
3. Zoning text amendments. (BMC 14A.05.180, 17.125.090).
4. Area wide zoning map amendments. (BMC Sections 14A.05.180, 17.125.070)
5. Comprehensive plan adoption and amendment. (BMC 17.125.050)
6. Final decision as to appeals or adjustments of impact fees as per title 15.12. (BMC Section 15.12.100)
7. All decisions on site specific zoning amendments and text amendments which are not consistent with or require a corresponding change to the comprehensive plan.
- 7-8. Appeals of decisions on Type III project permit applications. (BMC 14A.05.060.D)
- 8-9. Any other land use action or project permit approval identified by Burlington Municipal Code as a type IV review.

14A.05.070 Applications – Generally.

- A. Applications for project permits and other land use actions shall be made by the property owner, lessee, contract purchaser, or a city agency, or by an authorized agent thereof.
- B. All applications for project permits or other land use actions shall be made to the director on a form provided by the community development department.
- C. Applications shall be accompanied by payment of the applicable filing fees, if any, as adopted by city council resolution in the current city fee schedule.

3. SEPA. An appeal of a SEPA threshold determination associated with a type II land use action shall be considered together with the appeal of the associated land use action.

4. Appeal Decision. The hearing examiner shall hear appeals of type II land use actions in a closed record hearing. Appeals of type II land use actions shall be processed as a type III decision. Notice of the appeal hearing and appeal decision shall be provided to all parties of record.

C. Type III decisions.

1. Appeal Decisions. Hearing Examiner decisions on appeals of Type I and II decisions ~~Type III land use actions shall be appealed to Superior Court in accordance with the provisions of chapter 36.70C RCW, except that appeals of shoreline substantial development, shoreline variance, and shoreline conditional use permits shall be filed with the Shoreline Hearings Board as provided for by chapter 90.58 RCW.~~

2. Permit Decisions. Hearing Examiner decisions on Type III project permit applications ~~may be appealed to the City Council by any party of record. Hearing Examiner decisions may be appealed only if, within 14 calendar days after written notice of the decision is mailed, a written appeal is filed with the Director.~~

3. SEPA Decisions ~~An appeal of a SEPA threshold determination associated with a type III land use action shall be considered together with the appeal of the associated land use action by whichever authority is charged with considering the appeal of the associated land use action.~~

4. Submittal Requirements. ~~Appeals filed with the City Council shall contain the following information:~~

a. The specific permit number or decision being appealed.

b. The name of the applicant and property owner;

c. If multiple parties file an appeal, the appeal shall designate a single representative or contact person.

d. The specific aspects of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and

e. Any applicable appeal fee identified in the fee schedule adopted by the City Council.

5. City Council Action. ~~Within 30 days of receiving an appeal the City Council shall hold a closed record hearing. At the conclusion of the hearing the City Council shall either;~~

a. Decline to consider the appeal; or

Formatted: Indent: Left: 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

Formatted: List Paragraph, Left, No bullets or
numbering

Formatted: p3, Left, Indent: Left: 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

Formatted: Indent: Left: 0.5"

Formatted: Numbered + Level: 2 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.75" + Indent
at: 1"

b. Consider the appeal and uphold the Hearing Examiner's decision; or

c. If, based solely on the record created by the Hearing Examiner, the City Council finds that the Examiner's decision is in error as a matter of fact or law the City Council may reverse the Examiner's decision. If the City Council reverses the Hearing Examiner's decision it shall make specific findings identifying the aspects of the Hearing Examiner's decision which are in error.

D. Type IV decisions. Type IV decision shall be appealed to Superior Court pursuant to Chapter 36.70C RCW, the Growth Management Hearings Board pursuant to RCW 36.70A.280, the Shoreline Hearings Board pursuant to chapter 90.58 RCW or other applicable statutory authority in accordance with Washington State law. An appeal of a SEPA threshold determination associated with a type IV land use action shall be considered together with the appeal of the associated land use action.

Formatted: Indent: Left: 1"

Formatted: Numbered + Level: 2 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.75" + Indent
at: 1"

Formatted: List Paragraph, Left, No bullets or
numbering

Formatted: Numbered + Level: 2 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.75" + Indent
at: 1"

Formatted: Indent: Left: 0.25"

Chapter 1.24

VIOLATIONS AND PENALTIES

Sections:

- 1.24.010 Purpose and application.
- 1.24.020 Criminal violations.
- 1.24.030 Civil infractions pursuant to RCW 7.80.
- 1.24.040 Nuisance and civil violations.
- 1.24.050 Joint and several liability.
- 1.24.060 Filing notice or order.
- 1.24.070 Change of Ownership.
- 1.24.080 Specific provisions concerning a violation of BMC 14.01, 14.05, and BMC 13.14.

1.24.010 Purpose and application.

The purpose of this chapter is to identify and provide for the enforcement alternatives available to the City of Burlington when a City ordinance is violated. These alternatives are (1) a criminal violation, (2) a civil infraction pursuant to the provisions of RCW 35A.11.020, RCW 35.12.140, RCW 7.80 and BMC 1.34; (3) a civil violation and nuisance pursuant to the provisions of RCW 35A.11.020, RCW 35.12.140 and BMC 8.12, including where necessary, the abatement of a nuisance. The city attorney shall have the discretion to prosecute any violation of the code under any of these alternatives.

1.24.020 Criminal violations.

A. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of any ordinance of the city is guilty of a misdemeanor. Except in cases where a different punishment is prescribed by any ordinance of the city, any person convicted of a misdemeanor under the ordinances of the city shall be punished by a fine not to exceed \$1,000 or imprisonment not to exceed 90 days in jail, or both. In the event a Washington state statute provides a penalty for conduct prescribed by a Burlington city ordinance, then, in that event, the penalty for such conduct shall not exceed the maximum penalty provided for by Washington state statute.

B. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the city is committed, continued or permitted by any such person, and he is punishable accordingly.

C. Notwithstanding any other provision of the Burlington Municipal Code, every person convicted of a gross misdemeanor as defined in RCW Title 9A and adopted by reference by the city shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than 364 days, or by a fine in an amount fixed by the court of not more than \$5,000, or by both such imprisonment and fine. (Ord. 1740 § 1, 2011).

1.24.030 Civil infractions pursuant to RCW 7.80.

Any violation of a City Ordinance shall be considered a civil infraction pursuant to RCW 35A.11.020, RCW 35A.12.140 and chapter 7.80 RCW. The procedure and system for adjudicating civil infractions and the penalties for such infractions shall be as is set forth in chapter 7.80 RCW and BMC 1.34.

1.24.040 Nuisance and civil violations.

Any violation of a City Ordinance shall be considered a public nuisance and civil violation. The procedure and system for adjudicating civil violations and the penalties for such violations and abatement as deemed necessary shall be as is set forth in BMC 8.12.

1.24.050 Joint and several liability

Each responsible party is jointly and severally liable for a violation of a City ordinance. The designated official may take enforcement action, in whole or in part, against any responsible party. All applicable penalties may be imposed against each responsible party. In the event enforcement action is taken against more than one responsible party, recoverable damages, costs, and expenses may be allocated among the responsible parties 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 under chapter 1.34 BMC.

1.24.060 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.

1.24.070 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.

1.24.080 Specific provisions concerning a violation of chapters 14.01, 14.05, and 13.04 BMC.

A. Additional relief. 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:

1. Immediately comply with all applicable requirements; and
2. 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).

B. Suspension or revocation. 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).

C. Date of initial enforcement. 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).

D. Specific Violations.

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.

E. 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).

Chapter 1.34

ENFORCEMENT OF CIVIL INFRACTIONS PURSUANT TO RCW 7.08

Sections:

- 1.34.010 Purpose.
- 1.34.020 Definitions.
- 1.34.030 Voluntary compliance.
- 1.34.040 Notice of civil violation.
- 1.34.050 Monetary penalty.
- 1.34.060 Additional enforcement procedures.
- 1.34.070 Conflicts.
- 1.34.080 Severability.

1.34.010 Purpose.

The purpose of this chapter is to establish an alternative system to enforce the laws and regulations of the city of Burlington; to define the violations of such regulations as civil infractions; to establish monetary penalties for civil infractions as authorized by RCW 35A.11.020 and chapter 7.80 RCW; and to establish a standard procedure to be used by the city to abate such infractions. (Ord. 1760 § 1, 2012).

1.34.020 Definitions.

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

A. “Abate” means to take whatever steps are deemed necessary by an enforcement officer to rectify and correct a code violation. Abatement may include, but is not limited to, rehabilitation, demolition, removal, replacement or repair.

B. “Act” means doing or performing something.

C. “Day(s)” means a business day when five days or fewer are allowed to complete an act required by this chapter or a court of competent jurisdiction; when more than five days are allowed, “day(s)” shall mean calendar day.

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

E. Enforcement Officer. As used in this chapter, “enforcement officer” means a peace officer holding a full or a limited law enforcement commission and who is authorized to enforce the provisions of the title or ordinance in which the civil infraction is established.

F. “Infraction Rules for Courts of Limited Jurisdiction” means those rules that govern the procedure in courts of limited jurisdiction for cases involving infractions, as adopted by the Washington Supreme Court, as may now exist or hereafter be amended.

G. “Notice of infraction” means a form prescribed by the Administrative Office of the Courts pursuant to Rule 2.1 of the Infraction Rules for Courts of Limited Jurisdiction.

H. “Omission” means the failure to act.

I. “Person” means any individual, firm, association, partnership, corporation or any entity, public or private.

J. “Person responsible for the violation” means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission that is a civil violation, or causes or permits a civil violation to occur or remain upon property in the city; and includes but is not limited to the owner(s), lessor(s), tenant(s), contractor performing work on behalf of the owner(s), or other person(s) entitled to control, use and/or occupancy of the property where a civil violation may occur. More than one person may be responsible for a violation.

K. "Prosecuting authority" means the Burlington city attorney, or the city attorney's delegate.

L. "Regulation" means and includes the following as now or hereafter amended:

1. BMC Title 5 – Business Licenses and Regulations; Title 6 – Animals; Title 8 – Health and Safety; Title 12 – Streets, Sidewalks and Public Places; Title 13 – Public Services; Title 14 – Environmental Regulations; Title 14A - Project Permit Review; Title 15 – Buildings and Construction; Title 16 – Subdivisions; and Title 17 – Comprehensive Zoning Ordinance;
2. All standards, regulations and procedures adopted pursuant to the above;
3. The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city; and
4. Any state or federal statute, administrative rule, or order explicitly adopted by the Burlington city council pursuant to the foregoing.

M. "Violation" means an act or omission contrary to a city of Burlington regulation, including an act or omission at the same or different location by the same person, and including a condition resulting from such act or omission. (Ord. 1760 § 1, 2012).

1.34.030 Voluntary compliance.

A. Applicability. This section applies whenever the enforcement officer has probable cause to believe, and does believe, that a violation of a regulation has occurred or is occurring.

B. General. An enforcement officer may pursue voluntary correction of a violation when, in the enforcement officer's judgment, such efforts are likely to be successful.

C. Issuance of Voluntary Compliance Agreement. A voluntary compliance agreement may be entered into between the person responsible for the violation and the city, acting through the mayor. For the purposes of this chapter, the mayor is hereby authorized to enter into such voluntary compliance agreements on behalf of the city. The voluntary compliance agreement is a contract between the city and the person responsible for the violation in which such person agrees to abate the violation within a specified time and according to specified conditions. All voluntary compliance agreements shall be approved by the city attorney or the city attorney's delegate before becoming effective.

1. Content. The voluntary compliance agreement shall include the following:

- a. The name and address of the person responsible for the violation;
- b. The street address or a description sufficient for identification of the building, structure, premises, or land upon which or within which the violation has occurred or is occurring;
- c. A description of the violation and a reference to the provision(s) of the regulation that has been violated;
- d. The necessary corrective action to be taken, and a date and time by which the corrective action must be completed; and
- e. An agreement by the person responsible for the violation that the city of Burlington may abate the violation and recover its costs and expenses and a monetary penalty pursuant to this chapter from the person responsible for the violation if all terms of the voluntary compliance agreement are not met.

2. Extension/Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the enforcement officer if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances render correction under the original conditions unattainable.

3. Abatement by the City. The city may abate the violation in accordance with BMC 1.34.050 and BMC 1.34.060 if the terms of the voluntary compliance agreement are not met.

4. Collection of Costs. If the terms of the voluntary compliance agreement are not met, the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter in accordance with BMC 1.34.050, plus any costs and expenses of abatement, as set forth in BMC 1.34.050 or BMC 1.34.060. (Ord. 1760 § 1, 2012).

1.34.040 Notice of civil infraction.

A. Generally. An infraction proceeding is initiated by the issuance, service, and filing of a notice of infraction as set forth in this section, RCW 7.80.050, and in accordance with the Infraction Rules for Courts of Limited Jurisdiction. In the event of a conflict between this chapter and RCW 7.80.050 or the infraction rules, the infraction rules or RCW 7.80.050 shall prevail. An infraction is issued on the date the infraction is signed by the enforcement officer or prosecuting authority.

B. Who May Issue. A notice of infraction may be issued upon certification that the issuer has probable cause to believe, and does believe, that a person has committed an infraction contrary to law:

1. By an enforcement officer. The infraction need not have been committed in the officer's presence, except as provided by statute; or
2. By the prosecuting authority.

C. Content. The notice of infraction shall include the following information:

1. The name, address, and phone number of the court where the notice of infraction is to be filed;
2. The name, address, date of birth, sex, and physical characteristics of the defendant;
3. The infraction which the defendant is alleged to have committed and the accompanying statutory citation or ordinance number, the date, time, and place the infraction occurred, the date the notice of infraction was issued, and the name and, if applicable, the number of the enforcement officer;
4. A statement that the defendant must respond to the notice of infraction within 15 days of issuance;
5. The monetary penalty which respondent may pay in lieu of appearing in court;
6. A statement that a mailed response must be mailed not later than midnight on the day the response is due;
7. The statements required by RCW 46.63.060 or other applicable statute; and
8. Any additional information determined necessary by the administrator for the courts.

D. Service and Filing of Notice. A notice of infraction may be served either by:

1. The enforcement officer serving the notice of infraction on the person named in the notice of infraction at the time of issuance;
2. The enforcement officer or the prosecuting authority filing the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at his or her address. If a notice of infraction served by mail is returned to the court as undeliverable, the court shall issue a summons.
3. Filing of Notice. When a notice of infraction has been issued, the notice shall be filed with a court having jurisdiction over the infraction or with a violations bureau subject to such court's supervision. The notice must be filed within five days after issuance of the notice, excluding Saturdays, Sundays, and holidays. In the absence of good cause shown, a notice of infraction not filed within the time limits of this section shall, upon motion, be dismissed without prejudice.

E. Final Determination. A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless contested as provided in the Infraction Rules for Courts of Limited Jurisdiction. (Ord. 1760 § 1, 2012).

1.34.050 Monetary penalty.

A. Penalty Schedule. A person found to have committed a civil infraction shall be assessed a monetary penalty. The maximum monetary penalty for each separate violation per day or portion thereof shall be as follows:

1. First day of each violation (the first day is the date of issuance): \$100.00;
2. Second day of each violation: \$200.00;
3. Third day of each violation: \$300.00;
4. Fourth day of each violation: \$400.00;
5. Each additional day of each violation beyond four days: \$500.00 per day.

B. Joint and Several Liability. More than one person, firm, corporation, association or agent may be found responsible for a single violation. The court may impose a monetary penalty for each violation as a joint and several penalty, or individually.

C. Continued Duty to Correct. Payment of the monetary penalty does not relieve the person to whom the notice of infraction was issued of the duty to correct the violation. (Ord. 1760 § 1, 2012).

1.34.060 Additional enforcement procedures.

The provisions of this chapter are not exclusive, and may be used in addition to other enforcement provisions authorized by this code, except as precluded by law. (Ord. 1760 § 1, 2012).

1.34.070 Conflicts.

The provisions of the penal code, BMC Title 9, do not apply to this title. (Ord. 1760 § 1, 2012).

1.34.080 Severability.

If any one or more sections, subsections or sentences of this chapter are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this chapter and the same shall remain in full force and effect. (Ord. 1760 § 1, 2012).

Chapter 1.44
COMPLIANCE AND ENFORCEMENT NUISANCES AND CIVIL VIOLATIONS

Sections:

- 1.44.010 Purpose and scope.
- 1.44.020 Investigation and notice of violation.
- 1.44.030 Time to comply.
- 1.44.040 Extension of compliance date.
- 1.44.050 Liability and defenses of responsible parties.
- 1.44.060 Emergency order.
- 1.44.070 Abatement.
- 1.44.080 Abatement by owner or other responsible person.
- 1.44.090 Civil penalty.
- 1.44.100 Additional relief.
- 1.44.110 Voluntary compliance agreement.
- 1.44.120 Suspension or revocation.
- 1.44.130 Abatement.
- 1.44.140 Abatement by owner or other responsible person.
- 1.44.150 Civil penalty.
- 1.44.160 Additional relief.
- 1.44.170 Administrative Appeal

1.44.010 Title.

This Chapter shall be called Compliance and Enforcement, Nuisances and Civil Violations.

1.44.020 Application.

This chapter sets forth the enforcement procedures for violations of the following:

A. Chapter 8.12 Nuisances; and

B. Violations of any provisions of BMC Title 5 – Business Licenses and Regulations; Title 6 – Animals; Title 8 – Health and Safety; Title 12 – Streets, Sidewalks and Public Places; Title 13 – Public Services; Title 14 – Environmental Regulations; Title 14A - Project Permit Review; Title 15 – Buildings and Construction; Title 16 – Subdivisions; Title 17 – Comprehensive Zoning Ordinance; and Title 18 Shoreline Master Program.

1.44.030 Purpose.

The purpose of this chapter is to set forth the procedures and penalties for enforcement of violations of code sections identified in Section 1.44.020 above. This chapter is intended to establish one of several methods of enforcement available to the city attorney as more specifically listed in Chapter 1.24 Violations and Penalties.

1.44.040 Authority

Enforcement of civil violations and nuisances including the abatement of nuisances under this chapter is authorized pursuant to the provisions of RCW 35A.11.020, RCW 35.12.140 and BMC 8.12.

1.44 050 Liability and defenses of responsible parties.

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 14.01.060. 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. For violations of chapter 14.05 BMC, Surface Water Management, 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).

1.44.060 Investigation and notice of violation.

A. The person charged with the enforcement of the code at issue, or the designated enforcement officer, shall investigate any violation of any code provision identified above as well as any premises, structure or use which may not comply with the standards and requirements of the applicable code provisions.

B. If after investigation it is determined that the standards or requirements have been violated, a notice of violation shall be served upon the owner or responsible person for the violation. The notice of violation shall state separately each standard or requirement violated, shall state what corrective action is necessary to comply with the standards or requirements; and shall set a reasonable time for compliance.

C. The notice shall be served upon the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or service cannot be accomplished and the enforcement officer makes an affidavit to that effect, then service of the notice upon such person or persons may be made by:

1. Publishing the notice once each week for two consecutive weeks in the city official newspaper; and

2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.

D. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

E. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to BMC 1.44.090 or BMC 1.44.100. The notice may be mailed, or cause to be delivered to all residential and/or nonresidential rental units in the structure or posted at a conspicuous place on the property, a notice shall inform each recipient or resident about the notice of violation, stop work order or emergency order and the applicable requirements and procedures.

F. A notice or an order may be amended at any time in order to:

1. Correct clerical errors; or
2. Cite additional authority for a stated violation.

G. The notice of violation shall not be amended by the enforcement officer to include additional violations as a result of any reinspection for compliance or other purpose except upon a clear showing that the amendment is necessary for the protection of public safety, health and general welfare and that the additional violation did not exist or could not reasonably have been discovered at the time of original inspection. (Ord. 1207 § 6, 1992; Ord. 1148 § 6, 1989).

1.44.070 Time to comply.

A. When calculating a reasonable time for compliance, the following criteria shall be considered:

1. The type and degree of violation cited in the notice;
2. The stated intent, if any, of a responsible person or owner to take steps to comply;
3. The procedural requirements for obtaining a permit to carry out corrective action;
4. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and
5. Any other circumstances beyond the control of the responsible person or owner.

B. Unless a request for extension of compliance date is made in accordance with BMC 1.44.080 the notice of violation shall become the final order. A copy of the notice shall be filed with the Skagit County auditor. The person charged with the enforcement of the applicable code provision or the enforcement officer may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property. (Ord. 1207 § 7, 1992).

1.44.080 Extension of compliance date.

An extension of time for compliance with a notice of violation may be granted in writing by the person charged with the enforcement of the applicable code or the enforcement officer upon receipt of a written request therefor. A written request to grant an extension of time may be approved after finding that required actions have been started and that the work is progressing at a satisfactory rate. (Ord. 1207 § 8, 1992).

1.44.090 Stop work order.

Whenever a continuing violation of this code will materially impair the person responsible for enforcement of the applicable code or the enforcement officer's ability to secure compliance with this code, or when the continuing violation threatens the health or safety of the public, a stop work order may be issued specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a stop work order shall constitute a separate violation. (Ord. 1207 § 9, 1992).

1.44.100 Emergency order.

A. Whenever any use or activity in violation of this code threatens the health and safety of the occupants of the premises or any member of the public, the person responsible for the enforcement of the code or the enforcement officer may issue an emergency order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The emergency order shall specify the time for compliance and shall be

posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an emergency order shall constitute a separate violation.

B. Any condition described in the emergency order which is not corrected within the time specified is declared to be a public nuisance and the person responsible for the enforcement of the code or the enforcement officer is authorized to summarily abate such nuisance by such means as may be available and necessary to protect the public health and safety, or pursuant to the provisions set forth in sections 1.44.130 and 1.44.140 below. The cost of such abatement shall be recovered from the owner or responsible person or both in the manner provided by law. (Ord. 1207 § 10, 1992).

1.44.110 Voluntary compliance agreement.

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. By entering into a voluntary compliance agreement, a responsible party waives the right to an administrative appeal of the violation.

| D. 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.

| ED. 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).

1.44.120 Suspension or revocation.

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).

1.44.130 Abatement.

~~A.~~ The enforcement officer may also seek relief in superior court to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this chapter when the civil or criminal remedies provided in this chapter are inadequate to effect compliance. (Ord. 1207 § 11, 1992; Ord. 1148 § 7, 1989).

1.44.140 Abatement by owner or other responsible person.

If and when an owner or other responsible person shall undertake to abate any condition described in this chapter, whether by order of the enforcement officer or otherwise, all needful and legal conditions pertinent to the abatement may be imposed by the person responsible for enforcement of the applicable code or the enforcement officer. It is unlawful for the owner or other responsible person to fail to comply with such conditions. Nothing in this chapter shall relieve any owner or other responsible person of the obligation of obtaining any required permit to do any work incidental to the abatement. (Ord. 1207 § 12, 1992; Ord. 1148 § 8, 1989).

1.44.150 Civil penalty.

A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of code provisions identified by this chapter shall be subject to a cumulative penalty in the amount of \$75.00 per day for each violation from the date set for compliance until the order is complied with.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the city. The city attorney shall be notified in writing of the name of any person subject to the penalty, and the city attorney shall take appropriate action to collect the penalty.

C. The violator may show as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or
2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant. (Ord. 1207 § 13, 1992; Ord. 1148 § 10, 1989).

1.44.160 Additional relief.

Other and additional legal or equitable relief may be sought to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of code provisions identified in this chapter when penalties set forth in this chapter or as identified in Chapter 1.24 are inadequate to effect compliance. (Ord. 1207 § 15, 1992).

1.44.170 Administrative Appeal

Any person aggrieved by the issuance of a Notice and Order of violation, Stop Work Order or emergency Order or the imposition of a penalty issued pursuant to this chapter may appeal the same to the hearing examiner within 14 days of issuance of the Notice, Order or penalty.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BURLINGTON, WASHINGTON IN THE MATTER OF
AMENDING TITLE 8 OF THE BURLINGTON MUNICIPAL CODE**

WHEREAS, the City of Burlington, Washington, (the "City") is a non-charter code city organized under the laws of Title 35A RCW now in effect; and

WHEREAS, the City has the authority to adopt development regulations pursuant to RCW 35A.11.020 and 35A.63.100, and in compliance with Chapter 36.70A RCW, WAC 365-196-600 through WAC 365-196-660 and WAC 365-196-800 through 365-196-870; and

WHEREAS, the Planning Commission of the City held a public hearing on September 20, 2017 and adopted a schedule and work plan for updating the Burlington Municipal Code; and

WHEREAS, Chapter 8.12 of the Burlington Municipal Code must be revised to remove repetitive, contradictory, and obsolete language and provide clear direction for the use and enforcement of those titles of the Burlington Municipal Code relating to the regulation and development of land, specifically Title 1, Title 2, Title 8, Title 14, Title 14A, Title 15, Title 16, and Title 17; and

WHEREAS, in order to address the issues outlined above the City's Planning Department proposed revising Chapter 8.12 of the Burlington Municipal Code; and

WHEREAS, after reviewing an Environmental Checklist the City's SEPA Responsible Official issued a Determination of Non-significance (DNS) on October 24, 2017 for the proposed amendments and mailed the DNS to all affected public agencies. Notice of Determination of Non-significance was published in the Skagit Valley Herald on October 31, 2017; and

WHEREAS, following the issuance of the DNS a 60 day period was provided for public comment; and

WHEREAS, the revisions to Chapter 8.12 recommended by the Planning Commission are consistent with and implement the provisions of the City of Burlington Comprehensive Plan as required by RCW 36.70A.040; and

WHEREAS, the City's Planning Commission reviewed the proposed changes to the Burlington Municipal Code at a public hearing on October 18, 2017 in compliance with RCW 36.70A.035; and

WHEREAS, the proposed revisions to Chapter 8.12 were forwarded to the Washington State Department of Commerce for review pursuant to RCW 36.70A.106 on October 25, 2017; and

WHEREAS, the Planning Commission held a public meeting on November 8, 2017 and voted to recommend the City Council adopt the proposed revisions to Chapter 8.12; and

WHEREAS, the Planning Commission adopted written findings in support of their recommendation which are attached to this ordinance as exhibit "A"; and

WHEREAS, the Planning Commission's findings and recommendation were presented to the City Council at a regular public meeting on November 21, 2017; and

WHEREAS, the revisions to Chapter 8.12 recommended by the Planning Commission are attached to this ordinance as exhibit "B"; and

WHEREAS, after considering the Planning Commission's recommendation, and after further consideration of such Chapter 8.12, and the Council being otherwise fully informed;

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 8, 2017 and attached hereto as exhibit "A"; and
2. The text of exhibit "B" shall replace and supersede the text of Chapter 8.12 BMC; and
3. The amendments to the Burlington Municipal Code adopted by this ordinance shall become effective on January 1, 2018;

INTRODUCED AND PASSED at a regular meeting of the City Council of the City of Burlington on this 28th day of December, 2017.

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



PLANNING COMMISSION RECOMMENDATION

DATE: November 8, 2017

PROJECT: Comprehensive Municipal Code Update and Reorganization – Phase 2
Titles 1, 8, and 14A – Option “A”

LOCATION: N/A – Citywide Municipal Code Update

NUMBER: DRA/CPA 1-2017

APPLICANT: City of Burlington

SUMMARY:

The Planning Commission has reviewed the proposed amendments to titles 1, 8, and 14A of the Burlington Municipal Code. The proposed amendments to titles 1 and 8 would consolidate the City’s penalty and enforcement provisions into a single chapter and expand the enforcement options available to the City Attorney. Title 14A would consolidate the City’s permit processing procedures and public notification requirements in a single location. In addition, the adoption of Title 14A would recognize the establishment of a Hearing Examiner system. The Hearing Examiner would be charged with reviewing administrative appeals, variances, and complex permit applications.

FINDINGS:

Code Enforcement Provisions

1. Over time new code chapters and sections have been added to the Burlington Municipal Code to address emerging issues. Often, additional code enforcement provisions were added at the same time. As a result, the Burlington Municipal Code currently contains a patchwork of code enforcement penalties and enforcement provisions.
2. The existing patchwork of penalties and code enforcement provisions has made it difficult for City staff to address code violations effectively.

3. The proposed amendments to titles 1 and 8 of the Burlington Municipal Code will consolidate the numerous code enforcement provisions and penalties in a single code title and allow the City to address code violations as criminal violations, civil infractions, or as nuisances.
4. The Planning Commission finds that the proposed amendments will make the City's code enforcement process more transparent, efficient, and effective.
5. The Planning Commission has concerns that some of the penalty provision identified in titles 1 and 8 may conflict with one another. In order to ensure there are no conflicting penalty provisions, the Planning Commission finds that staff should review these code titles for consistency and make any necessary corrections before final action by the City Council.
6. The proposed code changes include provisions in BMC 1.24.080 and 1.44.120 that allow the City to revoke or suspend "permits granted in error". The Planning Commission has concerns that this provision may be unconstitutional or contrary to established legal precedent. The Planning Commission finds that it would be prudent for staff to review these code provisions with the City's legal counsel and make any necessary changes before final action by the City Council.

Permit Processing Procedures

7. Currently many of the City's permit processing procedures, timelines, and public notice requirements are located in chapter 17.68 BMC. However, permit processing procedures are also located in a number of other code sections. In some instances these various permit processing procedures are conflicting, redundant, or out of compliance with Washington State law.
8. The Planning Commission finds that proposed code title 14A will create a single location in the municipal code which clearly identifies decision authorities, permit processing timelines, and public notice requirements.
9. Currently the Burlington Municipal Code grants the Board of Adjustment authority to decide variance requests and certain administrative appeals. The Planning Commission has authority to approve, or make recommendations to the City Council, on certain permit types, and the City Council has final authority over administrative appeals, subdivisions, and conditional use permits.
10. The Planning Commission finds that the current permit processing and appeal system may unnecessarily expose the City to liability, fails to produce a comprehensive decision record, and needlessly delays permit decisions.

11. The Planning Commission finds that establishing a Hearing Examiner system would allow an independent, semi-autonomous official to review City land use decisions and decide appeals. The Planning Commission further finds that this system would provide permit applicants, city residents, and property owners with timely, consistent, fact-based, permit decisions.
12. The draft of title 14A provided to the Planning Commission would vest final decision making authority for all type III decisions in the Hearing Examiner. Hearing Examiner decisions would then only be appealable to Superior Court by filing a petition under the Washington State Land Use Petition Act (LUPA). The Planning Commission finds that in the interest of preserving legislative oversight, and in interest of preserving a low cost accessible appeal process, title 14A should be amended as shown on attached exhibit “A” to provide at least one administrative appeal opportunity for type I, II, and III land use decisions.

RECOMENDATION:

Based on the findings presented above the Planning Commission respectfully makes the following recommendations to the City Council:

1. The City Council should adopt the proposed changes to titles 1 and 8 of the Burlington Municipal Code. These changes are identified under tabs 1-B and 2-B of the binders provided to the City Council.
2. Staff should transmit a list to the City Council of any changes necessary to ensure consistency between the penalty provisions identified in titles 1 and 8. These changes should be incorporated into the final code drafts adopted by the City Council.
3. Staff should review the permit suspension and revocation provisions set forth in BMC 1.24.080 and 1.44.120 to ensure these provisions are constitutional and consistent with established legal precedent. Any resulting changes should be incorporated into the final drafts adopted by the City Council.
4. The City Council should adopt the proposed consolidated permit processing procedures and codify these changes under Burlington Municipal Code Title 14A. The proposed consolidated permit processing code language is identified under tab 4-B in the binders provided to the City Council. The final draft adopted by the City Council should be revised to include the revised administrative appeal procedures identified on attached exhibit “A”.
5. If the Hearing Examiner system referenced in proposed Title 14A BMC is adopted, the City Council should disband the Board of Adjustment.

City of Burlington - Planning Department Staff Report
Comprehensive Municipal Code Update and Reorganization
Phase 2 – Titles 1, 8, and 14A

DATED this 8th day of November 2017

Maria Manick-Alex

Chair, City of Burlington Planning Commission

OPTION "A"

EXHIBIT "A"

8. Conditional use permits. (BMC 14.05.140)
9. Shoreline substantial development permits, variances and conditional use permits. (BMC 18.09.020)
10. Any other land use action or project permit approval identified by Burlington Municipal Code as a type III review.

D. **Type IV** decisions are legislative decisions made by the city council and limited quasi-judicial final decisions pursuant to the criteria identified in this chapter, in its capacity to establish policy and manage public lands, pursuant to existing legislative standards and based on the hearings examiner or planning commission's record, public meeting and recommendation, and an open and/or closed record public hearing by the city council, the staff report provided by the Planning Department and evidence presented at time of hearing before the city council. Notice of such hearing shall be as provided by BMC 14A.05.130.

Type IV decisions include the following:

1. Final decisions on subdivisions approval and site specific zoning map amendments. (Chapter 16.05 BMC, BMC 14A.05.180 respectively)
2. Essential public facility conditional use permits. (Chapter 17.105 BMC)
3. Zoning text amendments. (BMC 14A.05.180, 17.125.090).
4. Area wide zoning map amendments. (BMC Sections 14A.05.180, 17.125.070)
5. Comprehensive plan adoption and amendment. (BMC 17.125.050)
6. Final decision as to appeals or adjustments of impact fees as per title 15.12. (BMC Section 15.12.100)
7. All decisions on site specific zoning amendments and text amendments which are not consistent with or require a corresponding change to the comprehensive plan.
- 7-8. Appeals of decisions on Type III project permit applications. (BMC 14A.05.060.D)
- 8-9. Any other land use action or project permit approval identified by Burlington Municipal Code as a type IV review.

14A.05.070 Applications – Generally.

- A. Applications for project permits and other land use actions shall be made by the property owner, lessee, contract purchaser, or a city agency, or by an authorized agent thereof.
- B. All applications for project permits or other land use actions shall be made to the director on a form provided by the community development department.
- C. Applications shall be accompanied by payment of the applicable filing fees, if any, as adopted by city council resolution in the current city fee schedule.

3. SEPA. An appeal of a SEPA threshold determination associated with a type II land use action shall be considered together with the appeal of the associated land use action.

4. Appeal Decision. The hearing examiner shall hear appeals of type II land use actions in a closed record hearing. Appeals of type II land use actions shall be processed as a type III decision. Notice of the appeal hearing and appeal decision shall be provided to all parties of record.

C. Type III decisions.

1. Appeal Decisions. Hearing Examiner decisions on appeals of Type I and II decisions
~~Type III land use actions shall be appealed to Superior Court in accordance with the provisions of chapter 36.70C RCW, except that appeals of shoreline substantial development, shoreline variance, and shoreline conditional use permits shall be filed with the Shoreline Hearings Board as provided for by chapter 90.58 RCW.~~

Formatted: Indent: Left: 0.5"

2. Permit Decisions. Hearing Examiner decisions on Type III project permit applications
~~may be appealed to the City Council by any party of record. Hearing Examiner decisions may be appealed only if, within 14 calendar days after written notice of the decision is mailed, a written appeal is filed with the Director.~~

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

3. SEPA Decisions. An appeal of a SEPA threshold determination associated with a type III land use action shall be considered together with the appeal of the associated land use action by whichever authority is charged with considering the appeal of the associated land use action.

Formatted: List Paragraph, Left, No bullets or
numbering

4. Submittal Requirements. Appeals filed with the City Council shall contain the following information:

a. The specific permit number or decision being appealed.

b. The name of the applicant and property owner;

c. If multiple parties file an appeal, the appeal shall designate a single representative or contact person.

d. The specific aspects of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and

e. Any applicable appeal fee identified in the fee schedule adopted by the City Council.

Formatted: p3, Left, Indent: Left: 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

5. City Council Action. Within 30 days of receiving an appeal the City Council shall hold a closed record hearing. At the conclusion of the hearing the City Council shall either;

Formatted: Indent: Left: 0.5"

Formatted: Numbered + Level: 2 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.75" + Indent
at: 1"

a. Decline to consider the appeal; or

b. Consider the appeal and uphold the Hearing Examiner's decision; or

c. If, based solely on the record created by the Hearing Examiner, the City Council finds that the Examiner's decision is in error as a matter of fact or law the City Council may reverse the Examiner's decision. If the City Council reverses the Hearing Examiner's decision it shall make specific findings identifying the aspects of the Hearing Examiner's decision which are in error.

D. Type IV decisions. Type IV decision shall be appealed to Superior Court pursuant to Chapter 36.70C RCW, the Growth Management Hearings Board pursuant to RCW 36.70A.280, the Shoreline Hearings Board pursuant to chapter 90.58 RCW or other applicable statutory authority in accordance with Washington State law. An appeal of a SEPA threshold determination associated with a type IV land use action shall be considered together with the appeal of the associated land use action.

Formatted: Indent: Left: 1"

Formatted: Numbered + Level: 2 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.75" + Indent
at: 1"

Formatted: List Paragraph, Left, No bullets or
numbering

Formatted: Numbered + Level: 2 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.75" + Indent
at: 1"

Formatted: Indent: Left: 0.25"

Chapter 8.12

NUISANCES

Sections:

- 8.12.010 Definitions.
- 8.12.020 Types of nuisances.
- 8.12.030 Violations.
- 8.12.040 Duty to enforce.
- 8.12.050 Disposal of diseased animal carcass.
- 8.12.055 Graffiti removal fund and graffiti removal.
- 8.12.060 Compliance, authority and administration.

8.12.010 Definitions.

A. "Abate" means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such manner and to such an extent as the enforcement officer, in his or her judgment, determines is necessary in the interest of the general health, safety and welfare of the community.

B. "Building materials" means and includes lumber, plumbing materials, wallboard, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing material, cans of paint and similar materials.

C. "Enforcement officer" means the code enforcement officer in the Burlington police department or any alternate designated by the chief of police.

D. "Garbage" means all discarded putrescible waste matter, including small dead animals weighing not over 15 pounds, but not including sewage or human or animal excrement.

E. "Graffiti" means the defacing, damaging or destroying by spraying of paint or marking of ink, chalk, dye or other similar substances on public or private buildings, structures, vehicles and places.

F. "Graffiti abatement" means the abatement procedure which identifies graffiti, issues notices to the property owner to abate the graffiti, and cures in the absence of response.

G. "Litter" means refuse such as, but not limited to, disposable packages and containers susceptible of being dropped, discarded or otherwise disposed of upon any property.

H. "Premises" means any building, lot, parcel, real estate or land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

I. "Refuse" means either garbage or rubbish or both garbage and rubbish, and includes litter.

J. "Responsible person" means any agent, lessee or other person occupying or having charge or control of any premises, except the owner.

K. "Rubbish" means all discarded nonputrescible waste matter. (Ord. 1352 § 1, 1997; Ord. 1207 § 1, 1992; Ord. 1148 § 2, 1989).

8.12.020 Types of nuisances.

Each of the following conditions, unless otherwise permitted by law, is declared to constitute a public nuisance, and whenever the enforcement officer determines that any of these conditions exist upon any premises, whether residential, commercial or industrial, or in any lake, river, stream, drainage way or wetlands, the officer may require or provide for the abatement thereof pursuant to this chapter:

A. The existence of any weeds, trash, dirt, filth, the carcass of any animal, waste, shrubs, accumulation of lawn or yard trimmings or other offensive matter.

B. The existence of any dead, diseased, infested or dying tree that may constitute a danger to street trees, streets or portions thereof.

C. The existence of any tree, shrub or foliage, unless by consent of the city, which is apt to destroy, impair, interfere or restrict:

1. Streets, sidewalks, sewers, utilities or other public improvements; and

2. Visibility on or free use of, or access to such improvements.

D. The planting, setting, placing or installation of any shrub, bush or tree in any public parking strip or other public place except on approval of the city supervisor. The following trees are prohibited in any public parking strip: Poplar, willow, cottonwood, fruit woods (except ornamental type), nut trees, ailanthus, mountain ash and Oregon or big leaf maple.

E. The existence of any vines or climbing plants growing into or over any street tree, or any public hydrant, pole or transformer, or the existence of any shrub, vine or plant growing on, around or in front of any hydrant, standpipe, sprinkler system connection or any other appliance or facility provided for fire protection purposes in such a way as to obscure the view thereof or impair the access thereto.

F. The existence of any accumulation of materials or objects in a location when the same endangers property, safety or constitutes a fire hazard.

G. The existence of a sidewalk or portion of a sidewalk adjacent to any premises which is out of repair, and in a condition to endanger persons or property, or in a condition to interfere with the public convenience in the use of such sidewalk.

H. The burning or disposal of refuse, sawdust or any other material without a permit.

I. The existence of any obstruction to a street, alley, crossing or sidewalk, and any excavation in or under any street, alley, crossing or sidewalk, which is by ordinance prohibited, or which is made without lawful permission, or which, having been made by lawful permission, is kept and maintained after the purpose thereof has been accomplished, and for an unreasonable length of time.

J. The erecting, maintaining, using, placing, depositing, leaving or permitting to be or remain in or upon any private lot, building, structure or premises, or in or upon any street, alley, sidewalk, park, parkway or other public or private place in the city, any one or more of the following disorderly, disturbing, unsanitary, fly-producing, rat-harboring, disease-causing places, conditions or things:

1. Any putrid, unhealthy or unwholesome bones, meat, hides, skins, the whole or any part of any dead animal, fish or fowl, or waste parts of fish, vegetable or animal matter in any quantity; but nothing in this chapter shall prevent the temporary retention of waste in approved covered receptacles;
2. Any privies, vaults, cesspools, sumps, pits or like places which are not securely protected from flies and rats, or which are foul or malodorous;
3. Any filthy, littered or trash-covered dwellings, cellars, house yards, barnyards, stable yards, factory yards, vacant areas in the rear of stores, vacant lots, houses, buildings or premises;
4. Any animal manure in any quantity which is not securely protected from flies or weather conditions, or which is kept or handled in violation of any ordinance of the city;
5. Any poison oak or poison ivy, Russian thistle or other noxious weeds, whether growing or otherwise; but nothing in this chapter shall prevent the temporary retention of such weeds in approved covered receptacles;
6. Any bottles, cans, glass, ashes, small pieces of scrap iron, wire, metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster and all such trash, or abandoned material, unless it is kept in approved covered bins or galvanized iron receptacles;
7. Any trash, litter, rags, accumulations of empty barrels, boxes, crates, packing cases, mattresses, bedding, excelsior, packing hay, straw or other packing materials, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, or anything whatsoever in which flies or rats may breed or multiply or which may be a fire hazard;
8. Any litter, refuse, rubbish or garbage.

K. The depositing or burning or causing to be deposited or burned in any street, alley, sidewalk, park, parkway or other public place which is open to travel, of any hay, straw, paper, wood, boards, boxes, leaves, manure or other rubbish or material.

L. The storage or keeping on any premises for more than 30 days of any used or unused building materials as defined in BMC 8.12.010, whose retail cost new would exceed \$100.00, without a special permit from the building official; provided, that nothing herein shall:

1. Prohibit such storage without a permit when done in conjunction with a construction project for which a building permit has been issued and which is being prosecuted diligently to completion;

2. Prohibit such storage without a permit upon the premises of a bona fide lumber yard, dealer in building materials or other commercial enterprise when the same is permitted under the zoning ordinance and other applicable laws; and

3. Make lawful any such storage or keeping when it is prohibited by other ordinances or laws.

M. The existence of any fence or other structure or thing on private property abutting or fronting upon any public street, sidewalk or place which is in a sagging, leaning, fallen, decayed or other dilapidated or unsafe condition.

N. The existence or maintenance on any premises of a storage area, junkyard or dumping ground for the wrecking or disassembling of automobiles, trucks, trailers, house trailers, boats, tractors or other vehicle or machinery of any kind, or for the storing or leaving of worn out, wrecked, inoperative or abandoned automobiles, trucks, trailers, house trailers, boats, tractors or other vehicle or machinery or any major parts thereof.

O. The existence on any premises of any abandoned or unused well, cistern or storage tank without first demolishing or removing from the city such storage tank or securely closing and barring any entrance or trapdoor thereto or without filling any well or cistern or capping the same with sufficient security to prevent access thereto by children.

P. The existence on any premises, in a place accessible to children, of any unattended and/or discarded icebox, refrigerator or other large appliance.

Q. The existence of any drainage onto or over any sidewalk or public pedestrian way.

R. The existence or maintenance of graffiti, and other defacement of public and private property, including walls, rocks, bridges, buildings, fences, gates, vehicles, signs, road surfaces and other structures, trees, and all other real and personal property within the city.

S. The existence of any strong or offensive odor at the property line, including but not limited to rotting or decaying fish or other dead animals, rotting garbage, animal manure, strong chemical smells, and other strong or offensive odors.

T. Any other activity which has been declared a public nuisance by ordinances of the city as they currently exist or may hereafter be amended. (Ord. 1352 § 1, 1997; Ord. 1207 § 2, 1992; Ord. 1148 § 3, 1989).

8.12.030 Violations.

A. It is a violation of this chapter for any responsible person or owner to permit, maintain, suffer, carry on or allow, upon any premises or in any lake, river, stream, drainage way or wetlands, any of the acts or things declared by this chapter to be a public nuisance.

B. It is unlawful for any person to create, maintain, carry on or do any of the acts or things declared by this chapter to be a public nuisance.

C. It is a violation of this chapter for anyone to fail to comply with any notice, complaint or order issued in accordance this chapter.

D. It shall be unlawful for any person to write, paint, or draw upon any wall, rock, bridge, building, fence, gate, vehicle, sign, road surface or other structure, tree, or other real or personal property, either publicly or privately owned, any drawing, inscription, figure or mark of the type which is commonly known and referred to as "graffiti" within the city. Violation of this section shall be considered a misdemeanor and shall be punishable as set forth in chapter 1.24 BMC. (Ord. 1352 § 3, 1997; Ord. 1207 § 3, 1992; Ord. 1148 § 4, 1989).

8.12.040 Duty to enforce.

A. It shall be the duty of the enforcement officer to enforce this chapter. The enforcement officer may call upon the police, fire, health or other appropriate city departments to assist in enforcement.

B. Upon presentation of proper credentials, the enforcement officer or duly authorized representative of the officer may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by the nuisance code.

C. The nuisance code 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 nuisance code to place the obligation of complying with its requirements upon the owner or responsible person for the condition of the land and buildings within the scope of this code.

E. No provisions 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 civil action.

F. It is unlawful for any responsible person or owner to permit, maintain, suffer, carry on or allow, upon any premises or in any lake, river, stream, drainage way or wetlands, any of the acts or things declared by this chapter to be a public nuisance.

G. It is unlawful for any person to create, maintain, carry on or do any of the acts or things declared by this chapter to be a public nuisance.

H. It is unlawful for anyone to deposit, throw, keep or place any garbage, rubbish, refuse or litter on any property, public or private, or in any public place except in garbage cans, or detachable containers where authorized, placed on private property or placed on the street or alley for collection when necessary, authorized or required. The owner or responsible person who is responsible for the condition of private property shall be responsible for removing any unlawful garbage, rubbish, refuse and litter. (Ord. 1207 § 4, 1992).

8.12.050 Disposal of diseased animal carcass.

Every person owning or having in charge any animal that has died or been killed on account of disease shall immediately bury the carcass thereof at least three feet underground at a place approved by the city health officer, or cause the same to be consumed by fire. No person shall sell or offer to sell or give away the carcass of any animal which died or was killed on account of disease. (Ord. 1207 § 5, 1992; Ord. 1148 § 5, 1989).

8.12.055 Graffiti removal fund and graffiti removal.

A. The city hereby creates a graffiti removal fund which will accept donations or fines levied for violations of the graffiti provisions of this code. The funds shall be for supplies for the removal of graffiti.

B. Whenever the enforcement officer determines that graffiti exists on any public or private buildings, structures, vehicles and places which are visible to any person utilizing any public road, parkway, alley, sidewalk or other right-of-way within the city, and when seasonable temperatures permit the painting of exterior surfaces, the enforcement officer shall cause a notice to be issued that there is graffiti and that the graffiti must be removed within 10 days of the notice, or the city will remove the graffiti using funds donated for that purpose.

C. Upon failure of persons to comply with the notice by the designated date, or such continued date thereafter as enforcement officer approves, the enforcement officer is authorized and directed to cause the graffiti to be abated by the city or by private contract, and the city or its private contractor is expressly authorized to enter upon the premises for such purposes. All reasonable efforts to minimize damage from such entry shall be taken by the city, and any paint used to obliterate or cover graffiti shall be as close as practicable to the background color(s). If the enforcement officer provides for the removal of the graffiti, the city shall not authorize nor undertake to provide for the painting or repair of any more extensive area than the area where the graffiti is located.

D. Property owners may consent in advance to city entry onto private property for graffiti removal purposes. (Ord. 1352 § 4, 1997).

8.12.060 Compliance, authority and administration.

In order to discourage public nuisances and otherwise promote compliance with this chapter, the director may, in response to field observations, determine that violations of this chapter have occurred or are occurring, and may utilize any of the compliance provisions contained in Chapter 1.44.



PLANNING COMMISSION RECOMMENDATION

DATE: November 8, 2017

PROJECT: Comprehensive Municipal Code Update and Reorganization – Phase 3
Titles 14, 15, and 16

LOCATION: N/A – Citywide Municipal Code Update

NUMBER: DRA/CPA 1-2017

APPLICANT: City of Burlington

SUMMARY:

The Planning Commission has reviewed the proposed amendments to titles 14, 15, and 16 of the Burlington Municipal Code. Titles 14 and 15 have been amended to consolidate all of the City's environmental regulations in a single place. Title 16, which concerns land divisions, has been rewritten to provide clear and explicit procedures for reviewing and approving land division requests. The overall effect of the code remains largely unchanged but significant organizational and procedural changes have been made.

FINDINGS:

Titles 14 and 15:

1. Currently the City's critical area regulations and State Environmental Policy Act (SEPA) procedures are located in title 15 BMC which is labeled "Buildings and Construction". When possible code provisions dealing with similar topics should be grouped together or consolidated under a single code title in order to reduce confusion and to make the code easier to navigate. The Planning Commission finds that the City's SEPA provisions and critical area regulations should be relocated to title 14 in order to accomplish this objective.

Title 16:

2. The City's current Platting regulations lack clarity and do not, in all cases, articulate permit procedures and decision making authorities for land division applications. The Planning Commission finds that the proposed changes will address these issues.

RECOMENDATION:

Based on the findings presented above the Planning Commission respectfully makes the following recommendations to the City Council:

1. The City Council should adopt the proposed changes to titles 14 and 15 of the Burlington Municipal Code. These changes are identified under tabs 3-B and 5-B of the binders provided to the City Council.
2. The City Council should adopt the proposed land division regulations and procedures identified in title 16 BMC. These changes are located under tab 6-B in the binders provided to the City Council.

3. STAFF SHOULD MAKE CHANGES REQUIRED TO
ADDRESS REFERENCES, CITATIONS AND OTHER
CLARIFICATION,
DATED this 8th day of November 2017

manmanik - All

Chair, City of Burlington Planning Commission

Title 14
ENVIRONMENTAL REGULATIONS

- 14.01 General Provisions**
- 14.05 Surface Water Management**
- 14.10 Environmental Policy**
- 14.15 Critical Area Regulations**

Chapter 14.01 GENERAL PROVISIONS

Sections:

- 14.01.010 Title.
- 14.01.020 Application.
- 14.01.030 Purpose.
- 14.01.040 Authority.
- 14.01.050 Adoption by Reference.
- 14.01.060 Definitions.
- 14.01.070 Liability.
- 14.01.080 Minimum Requirements.
- 14.01.090 Violations and penalties.
- 14.01.100 Appeal.
- 14.01.110 Severability.

14.01.010 Title.

This title shall be called “Environmental Regulations”. This chapter shall be called “General Provisions.”

14.01.020 Application.

This title shall be applicable as is set forth in the following chapters.

14.01.030 Purpose.

The purpose of this title is to include all regulations concerning the protection of the environment and critical areas. The specific chapters included are General Provisions, Surface Water Management, Environmental Policy, and Critical Area Regulations. The Shoreline Master Program is adopted separately as Title 18 Shoreline Master Program.

14.01.040 Authority.

This title is authorized by the general provisions of RCW 35A.63 and RCW 36.70A, the specific authority set forth in each chapter and other applicable laws and regulations.

14.01.050 Adoption by Reference.

Statutes, codes or regulations identified or adopted herein shall be the existing version of that statute, code or regulation and any subsequent amendment to the same, unless expressly stated otherwise.

14.01.060 Definitions.

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. Words used in the singular include the plural, and words used in the plural include the singular. (Ord. 1273 § 2, 1994).

Additional defined terms applicable to Chapter 14.10 Environmental Policy can be found in that Chapter or adopted WAC provisions found at WAC 197-11-700 through 197-11-799.

“A”.

“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).

“Aquifer recharge areas, critical” refer to areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of water.

“B”.

“Basement” means any area of the building having its floor subgrade (below ground level on all sides).

“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).

“Buffer, critical area” is an area which provides a reasonable margin of safety through protection of slope stability, attenuation of surface water flows and landslide hazards reasonably necessary to minimize risk to the public from loss of life or well-being or property damage resulting from natural disasters; or an area which is an integral part of a stream or wetland ecosystem and which provides shading, input of organic debris and coarse sediments, room for variation in stream or wetland boundaries, habitat for wildlife, and protection from harmful intrusion necessary to protect the public from losses suffered when the functions and values of aquatic resources are degraded.

“C”.

“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.

“Certificate of Occupancy” means a written document issued by the governing authority in accordance with the provisions of the building permit. The certificate of occupancy indicates that, in the opinion of the building official, the project has been completed in accordance with the building and zoning codes. This document gives the owner permission from the authorities to occupy and use the premises for the intended purpose.

“City Engineer” means the Burlington Director of Public Works.

“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).

“Community Development Director” means the City Administrator or designee.

“Compensatory mitigation” is replacing project-induced critical area losses or impacts, and includes, but is not limited to, restoration, creation, or enhancement.

“Complete application” or “completed application” means an application that contains all of the materials and information required by Burlington Municipal Code in accordance with the requirements of title 14 BMC.

“Critical areas” include the following areas and ecosystems:

1. Wetlands;
2. Areas with a critical recharging effect on aquifers used for potable water;
3. Fish and wildlife habitat conservation areas;
4. Frequently flooded areas; and
5. Geologically hazardous areas.

“Critical facility” means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or

hazardous waste.

“D”.

“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.

“Delineation” is the precise determination of wetland boundaries in the field according to the application of specific methodology as described in the most recently adopted Washington State Wetlands Identification and Delineation Manual, Washington State Department of Ecology Publication.

“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” means any manmade change to the land or improvements occurring after the effective date of the ordinance codified in this chapter including structures, mining, dredging, drilling, filling, grading, paving or excavation, storage of equipment and materials, and excluding the removal of vegetation; provided, that development located within the area of special flood hazard includes removal of substantial amounts of vegetation, or alteration of natural site characteristics. Where a project is dividable into parts, the entire scope of such changes or improvements constituting an integral, functional project should be considered the development for purposes of determining whether such development is allowed or requires a permit.

“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 Community Development Director.

“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 14.35.070 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).

“E”.

“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).

“Erosion” means the wearing away of the ground surface as a result of mass wasting or the movement of wind, water and/or ice.

“F”.

“FEMA” means the Federal Emergency Management Agency and its predecessor and successor agencies.

“Fish and wildlife habitat conservation areas” is as defined in the critical areas code, 14.15 BMC.

“Flood fringe” means those portions of the floodplain other than floodways and special flood risk zones.

“Floodplain” or “frequently flooded areas” are lands subject to a one percent or greater chance of flooding in any given year, which means all lands that would be covered by the 100-year flood (A zones), together with all B zones, as established by FEMA in the “Flood Insurance Study, City of Burlington,” dated July 3, 1984, and any revisions thereto, with accompanying flood insurance rate map (FIRM), dated January 3, 1985. That document is on file at Burlington City Hall, 833 South Spruce Street.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot. Floodways in Burlington consist of all areas riverward of the riverward toe of dikes and levees along the Skagit River.

“Flood prone area” is as defined in the critical areas code, Chapter 14.15 BMC. (Ord. 1273 § 2, 1994).

“G”.

“Geologically hazardous areas” are areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

“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).

“H”.

“Habitats of local importance” include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands.

“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.

“Hearings Examiner” means a person who reviews and interprets land use regulations, conducts hearings, makes decisions and recommendations on land use applications, hears administrative appeals on permits, decisions or determinations made by city officials, and reviews and hears other matters.

The Hearings Examiner serves in a role similar to that of a judge. The Hearings Examiner ensures that parties receive proper due process; and issues final decisions on some land use applications and makes recommendations to the City Council on others. Hearing examiner for the City of Burlington shall be the person designated under chapter 17.120 BMC.

“Hyperchlorinated” means water that contains more than 10 milligrams per liter of chlorine. (Ord. 1681 § 7, 2009).

“I”.

“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 convey 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 as expressly defined by BMC 14.05.070.

“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).

“L”.

“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 action” means an action taken by the appropriate City of Burlington review authority concerning the development or use of land or street right-of-way including project permits as defined in BMC 14A.01.060.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter found in BMC 14.15.400.G.6.

“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.

“M”.

“Manufactured home” means a single-family dwelling unit built in accordance with regulations adopted under the national manufactured housing construction and safety standards act of 1974 (42 U.S.C. 5401 et seq.) and (RCW 43.22.335). This term includes modular homes as defined in this chapter but does not include mobile homes. This term also does not include recreational vehicles, park models, trailers, and other similar vehicles which are licensed for use on public roads, capable of being licensed for use on public roads, or designed and constructed to be licensed for use on public roads. Only structures which are certified by the State of Washington or federal government for use as a permanent habitable dwelling are included in this definition.

“Mean sea level” means the average height of the sea for all stages of tide; also equals National Geodetic Vertical Datum.

“Manufactured home park” means an area of land occupied or designed for the occupancy of two or more manufactured homes.

“Mobile home” means a factory built dwelling unit that does not meet current State or federal standards for factory built dwellings, modular homes, or manufactured homes. This definition does not include manufactured or modular homes as defined in this chapter or site built homes constructed in accordance with City building code requirements. Mobile homes may not be placed within the City of Burlington; however, existing legally established mobile homes shall be considered a nonconforming use and shall be subject to the nonconforming standards set forth in chapter 17.100 BMC.

“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).

“N”.

“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).

“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; or
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.

“O”.

“One-hundred-year flood” means that flood having a one percent chance of being equaled or exceeded in any given year, as established by FEMA.

“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 agent. (Ord. 1273 § 2, 1994).

“P”.

“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.

“Party of record” means all persons, agencies or organizations who have submitted written comments in response to a notice of application, made oral comments in a formal public hearing conducted on the application, or requested in writing to be a “party of record.” In all cases the permit applicant and property owner shall be considered parties of record. Notwithstanding any of the foregoing, no person shall be a party of record who has not furnished an accurate post office mailing address.

“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.

“Primary drainage system” means a drainage system serving a watershed of 20 acres or greater.

“Project permit” means a land use action subject to the provisions of Chapter 36.70B RCW and applicable provisions of Title 14A BMC, and as defined in BMC 14A.01.060.

“Public drainage control system” means a drainage control system owned or used by the city of Burlington serving city streets and adjacent property.

“Public facilities” include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreation facilities, and schools.

“Public services” include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

“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).

“Public Works Director” means the director of public works or designee.

“Private storm drain” means the part of a private drainage control system which is wholly or partially piped, is owned or operated by a private entity, and is designed to carry only drainage water.

“Q”.

“Qualified expert” means a person having substantial demonstrated experience as a practicing specialist and who has a degree in a related field from an accredited college or university or who has equivalent training.

“R”.

“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.

“Residential health care facilities” means facilities caring for elderly or infirm persons wherein clients are partly or entirely residents or detainees thereof. They include hospitals, convalescent homes and homes for the elderly where some supervision or health care is provided.

“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).

“S”.

“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).]

“Seismic hazard areas” are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction. The city of Burlington is located in Seismic Zone 3 and construction is required to comply with the International Building Code seismic standards.

“Serve” or “service,” when used regarding a document, means the procedures set forth in BMC 14.05.160.

“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). See BMC Title 18 Shoreline Master Program.

“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.

“Special flood risk zone” means a zone of high flood risk consisting of those areas of the floodplain described as follows:

1. Those areas in Gages Slough having a ground elevation which is 3 feet or more below the 100-year floodplain elevation and having alignment with other such areas along Gages Slough to allow passage of floodwaters; and
2. Lying within 300 feet of the landward toe of dikes and levees along the Skagit River, excluding floodways.

“Species of local importance” are those species that are of local concern due to their population status or their sensitivity to habitat manipulation or that are game species.

“Steep slope areas” are areas with slopes greater than 15 percent.

“Standard design” is a design approved by the Burlington public works department for drainage and erosion control for a typical site.

“Storm Drain”. See “private storm drain,” “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 premise 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).

“Structure” means a walled and roofed building or mobile home, or gas or liquid storage tank that is principally above ground.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement” means any repair, reconstruction, or improvement to a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

1. Before the improvement is started; or
2. If the structure has been damaged and is being restored, before the damage occurred.

This term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are necessary to assure safe living conditions; or
2. Any alteration of a structure listed in the National or State Register of Historic Places.

“U”.

“Uncontaminated” means, for the purposes of this title, not containing sediment or other pollutants or contaminants 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).

“Urban growth” refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural produce, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. “Characterized by urban growth” refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be

appropriate for urban growth.

“W”.

“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” or “wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include these artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands, if permitted by the city. (Ord. 1808 § 2, 2015; Ord. 1800 § 2, 2014; Ord. 1795 § 2, 2014; Ord. 1785 § 2, 2013; Ord. 1776 § 2, 2013; Ord. 1767 § 1, 2012; Ord. 1764 § 2, 2012; Ord. 1754 § 2, 2012; Ord. 1739 § 2, 2011; Ord. 1724 § 2, 2010; Ord. 1718 § 2, 2010; Ord. 1695 § 2, 2009; Ord. 1683 § 1, 2009; Ord. 1680 § 2, 2009; Ord. 1654 § 2, 2008; Ord. 1627 § 2, 2007; Ord. 1611 § 2, 2007; Ord. 1578 § 2, 2005; Ord. 1555 § 2, 2004; Ord. 1523 § 2, 2003; Ord. 1508 § 2, 2002; Ord. 1495 § 2, 2002).

14.01.070 Liability.

It is the specific intent of this title to place the obligation of compliance upon the property owner or party subject to the provisions of the chapters contained within this title. 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 officers, employees or agents for any injury or damage resulting from the failure of the property owner or party subject to the provisions of the chapters contained within this title, 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 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).

14.01.080 Minimum Requirements.

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).

14.01.090 Violations and penalties.

All acts or omissions in violation of any provision contained within this title, or acts or omissions that cause or contribute to a violation of any provision contained within this title, are hereby determined to be detrimental to the public health, safety and general welfare and shall constitute a public nuisance. Further, as specified in chapter 1.24 BMC, such acts or omissions shall be subject to fines and abatement under chapter 8.12 BMC, criminal penalties as set forth in chapter 1.24 BMC, penalties for civil infractions as set forth in chapter 1.34 BMC, or civil violations as set forth in chapter 1.44 BMC.

14.01.100 Appeal.

Decisions made pursuant to this title are appealed in the manner set forth in Title 14A BMC.

14.01.110 Severability.

If any portion of this title is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section of this title.

Chapter 14.05
SURFACE WATER MANAGEMENT

Sections:

- 14.05.010 Title.
- 14.05.020 Application.
- 14.05.030 Purpose.
- 14.05.040 Authority.
- 14.05.050 Authority of the Community Development and Public Works Directors.

PART ONE: STORM WATER, DRAINAGE AND EROSION CONTROL

- 14.05.060 Scope.
- 14.05.070 Prohibited discharges.
- 14.05.080 Requirements for existing discharges and land uses.
- 14.05.090 Storm water, drainage, and erosion control requirements.
- 14.05.100 Scope of drainage control review and application requirements.
- 14.05.110 Drainage control plan registry.
- 14.05.120 Installation of drainage control facilities.
- 14.05.130 Modifications of drainage control facilities during construction.

PART TWO: STORM WATER AND SURFACE WATER INSPECTION AND MAINTENANCE

- 14.05.140 Scope.
- 14.05.150 Compliance.
- 14.05.160 Responsibility for inspection and maintenance.
- 14.05.170 Inspection program.
- 14.05.180 Entry for inspection and abatement purposes.
- 14.05.190 Disposal of waste from maintenance activities.
- 14.05.200 Records of installation and maintenance activities.
- 14.05.210 Exceptions to requirements.

PART THREE: PUBLIC STORM SEWERS

- 14.05.220 Plans required.
- 14.05.230 Design criteria.
- 14.05.240 Storm sewer permits required.
- 14.05.250 Fees.
- 14.05.260 Financial assurance and covenants.
- 14.05.270 Date of initial enforcement.

14.05.010 Title.

This chapter shall be called "Surface Water Management." (Ord. 1273 § 2, 1994).

14.05.020 Application.

This chapter applies to:

- A. All grading, 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).

14.05.030 Purpose.

A. The provisions of this chapter 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.

14.05.040 Authority.

This chapter is authorized by the provisions of RCW 35A.63, 36.70A, the Western Washington Phase II Municipal Stormwater Permit and other applicable laws and regulations.

14.05.050 Authority of the Public Works Director/City Engineer.

A. The public works director is authorized to issue, monitor, stop work or require modifications of storm water permits and inspections for the construction, capping, alterations, or repairs of privately owned and operated drainage control systems as more specifically set forth in BMC 14.05.120; require modification of drainage control facilities and associated project designs during construction and approve and file approved drainage control plans as more specifically set forth in BMC 14.05.130; and accept and approve when appropriate storm sewer permits for the

construction or alteration of all stormwater systems as more specifically set forth in BMC 14.05.240. 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.

B. 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 14.05.070, 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 under this title. The public works director shall also have the authority to review and approve or disapprove required submittals and applications for approvals and permits as set forth in this title. 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 as designated by the public works director.

The public works director is further 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).

PART ONE: STORM WATER, DRAINAGE AND EROSION CONTROL

14.05.060 Scope.

Sections 14.05.060 - Section 14.05.130 are applicable to:

A. General. All new and existing discharges subject to this title as set forth in BMC 14.05.030, 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 exempted by the public works director pursuant to the authority granted in BMC 14.05.050 and as specifically set forth in this chapter.

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).

14.05.070 Prohibited discharges.

A. Storm Water Discharges to Sanitary and Combined Sewers. In consultation with the local sewage treatment agency, the public works 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 public works 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 14.01.060.

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 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. 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. Discharges from emergency firefighting 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. 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 public works director has reason to believe that any discharge is an illicit discharge, the public works director or designee 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 public works 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).

14.05.080 Requirements for existing discharges and land uses.

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 public works 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 public works director or designee 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 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 public works director or designee 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 department 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, sediment, 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).

14.05.090 Storm water, drainage, and erosion control requirements.

A. Stormwater Management Manual Adopted. The city of Burlington hereby adopts as a technical reference manual hereafter referred to as the "storm water manual". The 2014 State Department

of Ecology Stormwater Management Manual for Western Washington, as amended by Sections 1 through 6 of Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit August 1, 2013, modified January 16, 2015 as now or hereafter amended. The city hereby further 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 2014 Ecology Stormwater Management Manual for Western Washington.
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 site assessment and analysis along with 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 – The City requires a site analysis and technical evaluation to ensure that all sites meeting the minimum qualifications shall utilize 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 are required when such protections are feasible. 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 through minimizing the impervious surface coverage and loss of vegetation and 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. (Ord. 1708 § 9, 2010; Ord. 1441 § 2, 2000; Ord. 1273 § 2, 1994).

14.05.100 Scope of drainage control review and application requirements.

A. Scope of Review. Where drainage and approval are required by BMC 14.05.090, 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 14.05.090 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 14.05.090 shall be reviewed by the public works director or designee. The public works director or designee 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 14.05.212, 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 14.05 BMC (Public Storm Sewers) and with associated rules and regulations adopted by the public works director.

2. The public works director or designee 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 public works director or designee 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).

14.05.110 Drainage control plan registry.

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 14.05.212, 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).

14.05.120 Installation of drainage control facilities.

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 department of community development design and installation specifications adopted by administrative rule, the public works director 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).

14.05.130 Modifications of drainage control facilities during construction.

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 public works 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 community development director. (Ord. 1273 § 2, 1994).

PART TWO: STORM WATER AND SURFACE WATER INSPECTION AND MAINTENANCE

14.05.140 Scope.

Sections 14.05.140 - Section 14.05.200 are intended 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; and

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).

14.05.150 Compliance.

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).

14.05.160 Responsibility for inspection and maintenance.

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:

1. Within one year for typical maintenance of facilities, except catch basins.

2. Within six months for catch basins.

3. 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).

14.05.170 Inspection program.

The public works director shall 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).

14.05.180 Entry for inspection and abatement purposes.

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, the property owner shall obtain approval from the public works director. 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 14.05.170, 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 public works director or designee, 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 public works director or designee 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 public works director, prior to entry, shall obtain a search warrant as authorized by the laws of the state.

4. The public works director or designee 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).

14.05.190 Disposal of waste from maintenance activities.

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).

14.05.200 Records of installation and maintenance activities.

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 public works director. 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 public works director during inspection of the facility and at other reasonable times upon request of the public works director. (Ord. 1273 § 2, 1994).

14.05.210 Exceptions to requirements.

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).

PART THREE: PUBLIC STORM SEWERS

14.05.220 Plans required.

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, and
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).

14.05.230 Design criteria.

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 public works 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; and
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).

14.05.240 Storm sewer permits required.

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. Applications for storm sewer permits shall be processed as type I decisions in accordance with the provisions of title 14A BMC.

B. To obtain a storm sewer permit, an application shall be filed with the community development department. Applications for storm sewer permit approval shall be made on forms provided by the Community Development Director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with title 14A BMC. A complete application shall include:

1. A detailed description of the work to be covered by the permit;
2. A description of 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. Any plans, diagrams, computations and specifications, or other data as required in this title;
4. Any applicable fees in accordance with the fee schedule established by the City Council;
4. Applications must be signed by the applicant, or the applicant's authorized agent; and

C. The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the public works director. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the public works 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 public works director shall issue a permit therefor to the applicant.

When the public works director issues the permit where plans are required, the public works 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 public works director, and all work regulated by this title shall be in accordance with the approved plans. (Ord. 1273 § 2, 1994).

14.05.250 Fees.

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).

14.05.260 Financial assurance and covenants.

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 14.05.240 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).

14.05.270 Date of initial enforcement.

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).

Chapter 14.10

ENVIRONMENTAL POLICY

Sections:

- 14.10.010 Title.
- 14.10.020 Application.
- 14.10.030 Purpose.
- 14.10.040 Authority.
- 14.10.050 Basic Requirements and adoption by reference.
- 14.10.060 Additional definitions.
- 14.10.070 Designation of responsible official.
- 14.10.080 Lead agency determination and responsibilities.
- 14.10.090 Transfer of lead agency status to a state agency.
- 14.10.100 Additional consideration in time limits applicable to the SEPA process.
- 14.10.110 Categorical Exemptions and threshold determinations, purpose and adoption by reference.
- 14.10.120 Flexible thresholds for categorical exemptions.
- 14.10.130 Use of exemptions.
- 14.10.140 Environmental checklist.
- 14.10.150 Mitigated DNS.
- 14.10.160 Environmental Impact Statements (EIS) Purpose and adoption by reference.
- 14.10.170 Preparation of EIS – Additional considerations.
- 14.10.180 Additional elements to be covered in an EIS.
- 14.10.190 Commenting, Adoption by reference.
- 14.10.200 Public notice.
- 14.10.210 Designation of official to perform consulted agency responsibilities for the city.
- 14.10.220 Using Existing Environmental Documents, Purpose of this part and adoption by reference.
- 14.10.230 SEPA and Agency Decisions, Purpose and adoption by reference.
- 14.10.240 Substantive authority.
- 14.10.250 SEPA Appeals.
- 14.10.260 Planned action.
- 14.10.270 Notice/statute of limitations.
- 14.10.280 Definitions - Purpose of this part and adoption by reference.
- 14.10.290 Agency Compliance, Purpose and adoption by reference.
- 14.10.300 Forms - Adoption by reference.

14.10.010 Title.

This chapter shall be called “Environmental Policy.”

14.10.020 Application.

The provisions of this chapter shall apply to all proposals as defined in WAC 197-11 where the city is presented with an application or has a goal and is actively preparing to make a decision on the means of accomplishing that goal and environmental impacts can be reasonably identified.

Application of this chapter shall be implemented in a manner consistent with WAC 197-11-055.

14.10.030 Purpose.

The purpose of this chapter is to establish uniform requirements for compliance with RCW 43.21C and WAC 197-11, in a manner that is consistent with the provisions of WAC 197-11-020 and 030.

14.10.040 Authority.

A. The city adopts the ordinance codified in this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, Chapter 197-11 WAC, RCW 36.70A, and other applicable laws and regulations.

B. This chapter contains the city's SEPA procedures and policies.

C. The SEPA rules, Chapter 197- 11 WAC, must be used in conjunction with this chapter. (Ord. 1309 § 1, 1995).

14.10.050 Basic Requirements and adoption by reference.

This part contains the basic requirements that apply to the SEPA process. This city adopts the following sections of chapter 197-11 WAC by reference:

WAC

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-158 SEPA/GMA project review – Reliance on existing plans, laws, and regulations.
- 197-11-210 SEPA/GMA integration.
- 197-11-220 SEPA/GMA definitions.
- 197-11-228 Overall SEPA/GMA integration procedures.
- 197-11-230 Timing of an integrated SEPA/GMA process.

- 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- 197-11-235 SEPA/GMA integration documents.
- 197-11-238 SEPA/GMA monitoring.
- 197-11-250 SEPA/Model Toxics Control Act integration.
- 197-11-253 SEPA lead agency for MTCA actions
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance for MTCA remedial actions.
- 197-11-262 Determination of significance and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA actions.
- 197-11-268 MTCA interim actions.

(Ord. 1397 § 1, 1999; Ord. 1309 § 1, 1995).

14.10.060 Additional definitions.

In addition to those definitions contained within WAC 197-11-700 through 197-11-799 and 197-11-220, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

- A. “Department” means any division, subdivision or organizational unit of the city established by ordinance, rule or order.
- B. “SEPA rules” means chapter 197-11 WAC adopted by the Department of Ecology.
- C. “Ordinance” means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.
- D. “Early notice” means the city’s response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant’s proposal (mitigated determination of nonsignificance (DNS) procedures).

14.10.070 Designation of responsible official.

- A. For those proposals for which the city is the lead agency, the responsible official shall be the community development director.
- B. For all proposals for which the city is the lead agency, the responsible official shall make the

threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the “lead agency” or “responsible official” by those sections of the SEPA rules that were adopted by reference in BMC 14.10.050.

C. The city shall retain all documents required by the SEPA rules (Chapter 197-11 WAC) and make them available in accordance with Chapter 42.56 RCW. (Ord. 1309 § 1, 1995).

14.10.080 Lead agency determination and responsibilities.

A. If the city receives an application for or initiates a proposal that involves a nonexempt action, the city shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940, unless the lead agency has been previously determined or the city is aware that another agency is in the process of determining the lead agency.

B. When the city is not the lead agency for a proposal, the city shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. The city shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the city may conduct supplemental environmental review under WAC 197-11-600.

C. If the city receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of receipt of the determination, or the city must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the 15-day time period. Any such petition on behalf of the city may be initiated by the responsible official.

D. The city is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided, that the responsible official and any city department that will incur responsibilities as the result of such agreement approve the agreement.

E. The city, in making a lead agency determination for a private project, shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is: which agencies require nonexempt licenses?).

F. When the city/county is lead agency for a MTCA remedial action, the Department of Ecology shall be provided with an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6). The city/county shall decide jointly with Ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency. (Ord. 1397 § 3, 1999; Ord. 1309 § 1, 1995).

14.10.090 Transfer of lead agency status to a state agency.

For any proposal for a private project where the city would be the lead agency and for which one or

more state agencies have jurisdiction, the city's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the city shall be an agency with jurisdiction. To transfer lead agency duties, the city's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the city shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

14.10.100 Additional consideration in time limits applicable to the SEPA process.

Time estimates contained in this section (expressed in calendar days) shall apply when the city processes licenses for all private projects and those governmental proposals submitted to the city by other agencies. The actual time may vary with the complexity of the project, availability of staff, cooperation of agencies with jurisdiction or expertise, etc. The time estimates contained herein shall not be construed to be mandatory. Time periods for making threshold determinations shall commence upon payment of fees.

A. Categorical Exemptions. The city will normally identify whether an action is categorically exempt within seven days of receiving a completed application.

B. Threshold Determinations.

1. For project actions involving the issuance of a City license or permit the City shall make a threshold determination on a completed application using the optional DNS process provided for in WAC 197-11-355 unless the responsible official determines the proposed action is unusually complex or significant uncertainties exist with respect to potential environmental impacts.

2. For projects where the optional DNS process is used the City shall issue a Threshold Determination together with the notice of application required by Chapter 14A BMC.

3. If the optional DNS process provided for in WAC 197-11-355 is not used the City will normally complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within 15 days of the date an applicant's completed application and completed checklist are submitted.

4. When the responsible official requires further information from the applicant or consultation with other agencies with jurisdictions:

a. The city will normally request such further information within 15 days of receiving a completed application and completed environmental checklist;

b. The city will normally wait no longer than 30 days for a consulted agency to respond;

c. The responsible official will normally complete the threshold determination within 15 days of receiving the requested information from the applicant or the consulted agency.

5. When the city must initiate further studies, including field investigations, to obtain the information to make the threshold determination, the city will normally complete the studies within 30 days of receiving a completed application and a completed checklist.

6. The city will normally complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impact(s) described in the application, within 15 days of receiving a completed application and completed checklist. (Ord. 1309 § 1, 1995).

14.10.110 Categorical exemptions and threshold determinations, purpose and adoption by reference.

This part contains the rules for deciding whether a proposal has a “probable significant, adverse environmental impact” requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS (MDNS).
- 197-11-355 Optional DNS process.
- 197-11-360 Determination of significance (DS)/initiating of scoping.
- 197-11-390 Effect of threshold determination.
- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.

197-11-890 Petitioning DOE to change exemptions.

(Ord. 1397 § 5, 1999; Ord. 1309 § 1, 1995).

14.10.120 Flexible thresholds for categorical exemptions.

A. Categorical exemptions are adopted by reference under BMC 14.10.110. The city establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b) based on local conditions:

1. For residential dwelling units in WAC 197-11-800(1)(b)(i): nine units;
2. For agriculture structures in WAC 197-11-800(1)(b)(ii): 10,000 square feet;
3. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): 4,000 square feet and 20 parking spaces;
4. For parking lots in WAC 197-11-800(1)(b)(iv): 20 parking spaces;
5. For landfills and excavations in WAC 197-11-800(1)(b)(v): 100 cubic yards;
6. Demolition of any structure or facility up to the maximum exempt level provided in WAC 197-11-800;
7. Replacement, addition of up to 20 percent of gross floor area, alteration or modification of an existing commercial structure, up to 12,000 square feet.

14.10.130 Use of exemptions.

A. Upon receiving an application for a license or, in the case of governmental proposals, the department initiating the proposal, the city shall determine whether the license and/or the proposal is exempt. The city's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal.

B. In determining whether or not a proposal is exempt, the city shall make certain the proposal is properly defined and shall identify the governmental licenses required. (WAC 197-11-060) If a proposal includes exempt and nonexempt actions, the city shall determine the lead agency, even if the license application that triggers the city's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The city shall not give authorization for:
 - a. Any nonexempt action; or

- b. Any action that would have an adverse environmental impact; or
- c. Any action that would limit the choice of alternatives; or
- d. Any combination of exempt activities which when considered together would not be exempt.

2. The city may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved.

3. The city may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

D. Proposed short subdivision of land that is adjacent to previous short subdivisions or adjacent to land on which a subdivision is pending shall not be exempt if adjacent subdivisions share any improvements or access easements. In such cases, the proposed short plat will be considered physically or functionally related regardless of ownership. (Ord. 1309 § 1, 1995).

14.10.140 Environmental checklist.

A. Except as provided in subsection C of this section, a completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; provided, that a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency and if the city is the lead agency, for determining the responsible official and for making the threshold determination.

B. For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

C. For projects submitted as planned actions under WAC 197-11-164, the city shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the Department of Ecology to allow at least a 30-day review prior to use. (Ord. 1397 § 6, 1999; Ord. 1309 § 1, 1995).

14.10.150 Mitigated DNS.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the city is lead agency; and
2. Precede the city's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within 15 working days. The response shall:

1. Be written;
2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific areas of concern that are leading the city to consider a DS; and
3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

E. When the applicant submits a changed or clarified proposal along with a revised or amended environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within 15 days of receiving the changed or clarified proposal.

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a DNS under WAC 197-11-340(2).
2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate.
3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate whereas proposals, to "muffle machinery to X decibel" or "construct 200-foot stormwater retention pond at Y location" are adequate.
4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

F. A mitigated DNS is issued either under WAC 197-11-340(2), requiring a 14-day comment

period and public notice, or under WAC 197-11-335, which may require no additional comment period beyond the comment period on the notice of application.

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city. Failure to comply with the designated mitigation measures shall be grounds for suspension and/or revocation of any issued license or permit.

H. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (Withdrawal of DNS).

I. The city's written response under subsection B of this section shall not be construed as a determination of significance. In addition, preliminary discussions of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination. (Ord. 1397 § 7, 1999; Ord. 1309 § 1, 1995).

14.10.160 Environmental Impact Statements (EIS) Purpose and adoption by reference.

This part contains the rules for preparing environmental impact statements. The city adopts the following sections by reference, as supplemented by this part:

WAC

- 197-11-400 Purpose of EIS.
- 197-11-402 General requirements.
- 197-11-405 EIS types.
- 197-11-406 EIS timing.
- 197-11-408 Scoping
- 197-11-410 Expanded scoping (optional)..
- 197-11-420 EIS preparation.
- 197-11-425 Style and size.
- 197-11-430 Format.
- 197-11-435 Cover letter or memo.

- 197-11-440 EIS contents.
- 197-11-442 Contents of EIS on nonproject proposals.
- 197-11-443 EIS contents when prior nonproject EIS.
- 197-11-444 Elements of the environment.
- 197-11-448 Relationship of EIS to other considerations.
- 197-11-450 Cost-benefit analysis.
- 197-11-455 Issuance of DEIS.
- 197-11-460 Issuance of FEIS.

(Ord. 1309 § 1, 1995).

14.10.170 Preparation of EIS – Additional considerations.

A. Preparation of draft and final EIS's (DEIS and FEIS) and draft and final supplemental EIS's (SEIS) is the responsibility of the city under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and chapter 197-11 WAC.

B. The DEIS and FEIS or draft and final SEIS shall be prepared by city staff, the applicant, or by a consultant selected by the city or the applicant. A consultant selected by the applicant requires written approval by the City to ensure compliance with the provisions of Chapter 43.21C RCW and Chapter 197-11 WAC. (See WAC 197-11-420(1)-(4)). If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the city may request under another ordinance or statute.)

D. The environmental impact statement may be combined with the recommendation or report on the proposal or issues as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document. (Ord. 1309 § 1, 1995).

E. the applicant shall be responsible for reimbursing or compensating the city for all costs associated with the preparation of draft and final EIS's (DEIS and FEIS) and draft and final supplemental EIS's (SEIS). Work shall not proceed on such documents until arrangements for all

associated costs have been made and approved in writing by the City. (See WAC 197-11-420, 914)

14.10.180 Additional elements to be covered in an EIS.

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter:

A. Economy of the area;

B. Social policy analysis;

C. Cost-benefit analysis;

D. Such other elements as may be required by the responsible official. (Ord. 1309 § 1, 1995).

14.10.190 Commenting, adoption by reference.

This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The city adopts the following sections by reference, as supplemented in this part:

WAC

197-11-500 Purpose of this part.

197-11-502 Inviting comment.

197-11-504 Availability and cost of environmental documents.

197-11-508 SEPA register.

197-11-510 Public notice.

197-11-535 Public hearings and meetings.

197-11-545 Effect of no comment.

197-11-550 Specificity of comments.

197-11-560 FEIS response to comments.

197-11-570 Consulted agency costs to assist lead agency.

(Ord. 1397 § 8, 1999; Ord. 1309 § 1, 1995).

14.10.200 Public notice.

A. Whenever the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the city shall give public notice as required by chapter 14A.05 BMC. (Ord. 1309 § 1, 1995).

B. Whenever the City issues a DNS or MDNS under WAC 197-11-355 the City shall combine the SEPA threshold determination notice and the notice of application required by Chapter 14A BMC and issue a single notice using the timelines and procedures prescribed by Chapter 14A BMC.

14.10.210 Designation of official to perform consulted agency responsibilities for the city.

A. The responsible official shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The responsible official shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate city departments. (Ord. 1309 § 1, 1995).

14.10.220 Using Existing Environmental Documents, Purpose of this part and adoption by reference.

This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the city's own environmental compliance. The city adopts the following sections by reference:

WAC

- 197-11-164 Planned actions – Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions – Procedures for adoption.
- 197-11-172 Planned actions – Project review.
- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement – Procedures.
- 197-11-625 Addenda – Procedures.
- 197-11-630 Adoption – Procedures.
- 197-11-635 Incorporation by reference – Procedures.

197-11-640 Combining documents.

(Ord. 1397 § 9, 1999; Ord. 1309 § 1, 1995).

14.10.230 SEPA and Agency Decisions, Purpose and adoption by reference.

This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The city adopts the following sections by reference:

WAC

197-11-650 Purpose of this part.

197-11-655 Implementation.

197-11-660 Substantive authority and mitigation.

197-11-680 Appeals.

(Ord. 1309 § 1, 1995).

14.10.240 Substantive authority.

A. The policies and goals set forth in this chapter are supplementary to those set forth in RCW 43.21C and WAC 197-11 and those identified in Section D below.

B. The city may attach conditions to a permit or approval for a proposal so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
2. Such conditions are in writing; and
3. The conditions or mitigation measures included in such conditions are reasonable and capable of being accomplished; and
4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse

environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

2. A finding is made that no reasonable mitigation measures are capable of being accomplished that are sufficient to mitigate the identified impact; and 3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document. RCW 43.21c and WAC 197-11 or

D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:

1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

- a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- d. Preserve important historic, cultural, and natural aspects of our national heritage;
- e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The city adopts by reference the policies in the following:

- a. Burlington Municipal Code, including all other chapters contained in Title 15, Buildings and Construction, as may be further amended;
- b. Burlington Comprehensive Plan dated June, 1994, and map, as may be further amended;

- c. Shoreline Management Act, as may be further amended;
- d. Growth Management Act, as may be further amended;
- e. Forest Practice Act and Regulations as may be further amended. (Ord. 1309 § 1, 1995).

14.10.250 SEPA Appeals.

A. Any person may appeal the issuance of:

- 1. A determination of nonsignificance;
- 2. A determination of significance when issued in conjunction with a project permit; or
- 3. A final environmental impact statement.

The appeal of a SEPA decision not requiring a legislative decision, conditioning or denying a proposal, to the city council as set forth in RCW 43.21C.060, shall only be available where expressly provided for in this section.

B. An appeal must be filed in writing with the responsible official (WAC 197-11-680) within 14 calendar days of the date the decision becomes final. The appeal shall identify the decision, contain a summary of the grounds for the appeal and be accompanied by an appeal fee in an amount established by the adopted Fee Ordinance or applicable resolution. Following receipt of the appeal and the fee, the responsible official shall transmit a copy of the appeal to the Hearing Examiner, unless the decision is made by the Hearing Examiner, in which case an appeal shall go directly to City Council or to whatever authority that has jurisdiction over the underlying action.

C. Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to the appeal of a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action.

D. Unless otherwise provided by this section:

- 1. Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations.
- 2. Appeals of environmental determinations made or the lack thereof, under this chapter shall be combined with and commenced within the time and in the manner required to appeal the governmental action which is subject to environmental review, pursuant to Chapter 14A.05.
- 3. An appeal of a determination of significance may be filed as set forth above, prior to and

separate from a final hearing and determination of a project action and a determination of non-significance of a non-project action initiated by the city may also be made independent of the underlying action, in the manner set forth in 14.10.250 (B)

14.10.260 Planned action.

A. A planned action, as provided for in subsection B of this section, does not require a threshold determination or the preparation of an environmental impact statement under this chapter, but is subject to environmental review and mitigation as provided in this chapter.

B. 1. For purposes of this section, a planned action means one or more types of project action that:

- a. Are designated planned actions by an ordinance or resolution adopted by a county, city or town planning under RCW 36.70A.040;
- b. Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with (i) a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or (ii) a phased project;
- c. Are subsequent or implementing projects for the proposals listed in (1)(b) of this subsection;
- d. Are located within an urban growth area, as defined in RCW 36.70A.030;
- e. Are not essential public facilities, as defined in RCW 36.70A.200; and
- f. Are consistent with the comprehensive plan adopted under chapter 36.70A RCW.

2. The City shall limit planned actions to development or specific geographical areas that are less extensive than the jurisdictional boundaries of the City and may limit a planned action to a time period identified in the environmental impact statement or the ordinance or resolution adopted under this subsection. (Ord. 1309 § 1, 1995).

14.10.270 Notice/statute of limitations.

A. The city, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk, applicant or proponent pursuant to RCW 43.21C.080. (Ord. 1309 § 1, 1995).

14.10.280 Definitions - Purpose of this part and adoption by reference.

This part contains uniform usage and definitions of terms under SEPA. The city adopts the following sections by reference, as supplemented by BMC 14.10.060.

WAC

197-11-700	Definitions.
197-11-702	Act.
197-11-704	Action.
197-11-706	Addendum.
197-11-708	Adoption.
197-11-710	Affected tribe.
197-11-712	Affecting.
197-11-714	Agency.
197-11-716	Applicant.
197-11-718	Built environment.
197-11-720	Categorical exemption.
197-11-721	Closed record appeal.
197-11-722	Consolidated appeal.
197-11-724	Consulted agency.
197-11-726	Cost-benefit analysis.
197-11-728	County/city.
197-11-730	Decision maker.
197-11-732	Department.
197-11-734	Determination of nonsignificance (DNS).
197-11-736	Determination of significance (DS).
197-11-738	EIS.
197-11-740	Environment.
197-11-742	Environmental checklist.

197-11-744	Environmental document.
197-11-746	Environmental review.
197-11-750	Expanded scoping.
197-11-752	Impacts.
197-11-754	Incorporation by reference.
197-11-756	Lands covered by water.
197-11-758	Lead agency.
197-11-760	License.
197-11-762	Local agency.
197-11-764	Major action.
197-11-766	Mitigated DNS.
197-11-768	Mitigation.
197-11-770	Natural environment.
197-11-772	NEPA.
197-11-774	Non-project.
197-11-775	Open record hearing.
197-11-776	Phased review.
197-11-778	Preparation.
197-11-780	Private project.
197-11-782	Probable.
197-11-784	Proposal.
197-11-786	Reasonable alternative.
197-11-788	Responsible official.

- 197-11-790 SEPA.
- 197-11-792 Scope.
- 197-11-793 Scoping.
- 197-11-794 Significant.
- 197-11-796 State agency.
- 197-11-797 Threshold determination.
- 197-11-799 Underlying governmental action.

(Ord. 1397 § 10, 1999; Ord. 1309 § 1, 1995).

14.10.290 Agency Compliance, Purpose and adoption by reference.

This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions which do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The city adopts the following sections by reference:

WAC

- 197-11-900 Purpose of this part.
- 197-11-902 Agency SEPA policies.
- 197-11-916 Application to ongoing actions.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licensing from more than one agency, when one of the agencies is county/city.

- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.

(Ord. 1397 § 11, 1999; Ord. 1309 § 1, 1995).

14.10.300 Forms - Adoption by reference.

The city adopts the following forms and sections by reference.

WAC

- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of non-significance (DNS).
- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

(Ord. 1309 § 1, 1995).

Chapter 14.15

CRITICAL AREA REGULATIONS

Sections:

- 14.15.010 Title.
- 14.15.020 Application.
- 14.15.030 Purpose.
- 14.15.040 Authority.
- 14.15.050 Jurisdiction and coordination.
- 14.15.060 Resource information and maps.
- 14.15.070 General requirements and authorizations required.
- 14.15.080 Public notice and records.
- 14.15.090 Application submittal requirements.
- 14.15.100 Administration.
- 14.15.110 Critical areas checklist, site assessment and conditions of approval.
- 14.15.120 Application of standards.
- 14.15.130 General construction and maintenance standards.
- 14.15.140 Reasonable use exception.
- 14.15.150 Critical area and buffer mitigation requirements – General provisions.
- 14.15.160 Protected critical area (PCA) requirements.
- 14.15.170 Incentives.

WETLANDS

- 14.15.180 Wetlands identification and rating.
- 14.15.185 Wetland buffers.
- 14.15.190 Wetlands initial project review.
- 14.15.200 Wetlands site assessment requirements.
- 14.15.210 Alteration of wetlands.
- 14.15.220 Wetland mitigation standards.

AQUIFER RECHARGE AREAS

- 14.15.230 Aquifer recharge areas.
- 14.15.240 Aquifer recharge area designations.
- 14.15.250 Aquifer recharge applicability and prohibited activities.
- 14.15.260 Aquifer recharge initial project review.
- 14.15.270 Aquifer recharge site assessment report.
- 14.15.280 Aquifer recharge area mitigation.

GEOLOGICALLY HAZARDOUS AREAS

- 14.15.300 Geologically hazardous area designations.
- 14.15.310 Geologically hazardous area initial project review.
- 14.15.320 Geologically hazardous area site assessment requirements.

14.15.330 Geologically hazardous area mitigation standards.

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

14.15.350 Fish and wildlife habitat conservation area designations.

14.15.360 Fish and wildlife habitat conservation areas initial project review.

14.15.370 Fish and wildlife habitat conservation area site assessment requirements.

14.15.380 Fish and wildlife habitat conservation area mitigation standards.

FLOOD HAZARD AREA

14.15.390 Flood hazard area designations.

14.15.400 Development in floodplains – General.

14.15.410 Development in special flood risk zone.

14.15.420 Development in the floodway.

14.15.430 Critical facility.

COMPLIANCE AND ENFORCEMENT

14.15.440 Compliance with critical area regulations.

14.15.450 Construction.

14.15.460 Severability.

14.15.470 State Environmental Policy Act.

14.15.480 Liability disclaimer.

14.15.010 Title.

This chapter shall be known as “Critical Area Regulations”.

14.15.020 Application.

A. This chapter shall apply to land use, development and platting located in the city limits of Burlington, within the geographical areas that meet the definitions and criteria for critical areas regulation as set forth in this chapter.

B. The following shall constitute critical areas:

1. Wetlands and riparian corridors, including Gages Slough. Wetlands serve many important ecological and environmental functions and help to protect public health, safety and welfare by providing flood storage and conveyance, erosion control, fish and shellfish production, fish and wildlife habitat, recreation, water quality protection, water storage, education, scientific research and other public benefits. It is the purpose of this chapter to protect these functions to prevent the continual loss of wetlands, and where practical to enhance or restore wetlands functions and values.

2. Fish and wildlife habitat conservation areas. In addition to their intrinsic value, certain

species of fish and wildlife represent important historic, cultural, recreational and economic resources. Many species serve as indicators of the condition of the environment and the quality of life that local residents have invested in, enjoy and respect. It is the purpose of this chapter to protect, restore where practical, and enhance fish and wildlife populations and their associated habitats.

3. Frequently flooded areas. It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in the floodplain and the floodway according to the provisions established under this code; and

4. Geologically hazardous areas. Geologically hazardous areas include areas susceptible to the effects of erosion, sliding, earthquake, or other geologic events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development is sited in areas of a hazard. Geologic hazards pose a risk to life, property, and resources when steep slopes are destabilized by inappropriate activities and development or when structures or facilities are sited in areas susceptible to natural or human caused geologic events. Some geologic hazards can be reduced or mitigated by engineering, design, or modified construction practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building and other construction within identified geologically hazardous areas shall be prohibited. (Ord. 1495 § 2, 2002).

14.15.030 Purpose.

A. This chapter is adopted to assist in orderly development, conserve the value of property, safeguard the public welfare, and provide protection for defined critical areas.

B. It is the purpose of this chapter to prevent contamination and depletion, avoid exorbitant cleanup costs, hardships and potential physical harm to people.

C. The ordinance codified in this chapter was developed under the directives of the Growth Management Act to conserve and protect critical areas pursuant to RCW 36.70A.172. Critical areas are defined as wetlands, aquifer recharge areas, flood hazard areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. Some of these areas, such as geologic hazards and flood hazard areas are critical because of the hazard they represent to public health. Others, such as fish and wildlife habitats and wetlands are critical because of their public value.

D. Maps are useful primarily as an indicator of the distribution and extent of critical areas. Maps will be used wherever possible as parts of the screening process for evaluating individual permit applications. Although a number of map resources are utilized in this chapter, regulatory measures such as buffer requirements are based upon the identification of critical areas during the permit, development authorization, or other approval processes.

E. Critical areas will be designated by definition and then classified through site assessments so that they can be identified using scientifically based criteria and protected. The use of site assessments to confirm the actual presence and classification of critical areas is central to the management approach developed under this chapter.

F. The ordinance codified in this chapter was drafted to provide regulatory structure for identification, designation and protection of critical areas. This chapter allows staff to provide site visits, preliminary reviews, and pre-application meetings to assist in the identification of critical areas. (Ord. 1495 § 2, 2002).

G. These regulations are intended to:

1. Protect human life, property, and the public health and safety of the citizens of Burlington;
2. Minimize the expenditure of public money;
3. Maintain the city's flood insurance eligibility while avoiding regulations which are unnecessarily restrictive or difficult to administer;
4. Ensure that wetland and other critical area functions and values are protected to provide public benefits.

14.15.040 Authority.

The ordinance codified in this chapter is adopted under the authority of chapter 36.70 RCW and chapter 36.70A RCW, and Article 11 of the Washington State Constitution. (Ord. 1495 § 2, 2002).

14.15.050 Jurisdiction and coordination.

A. Relationship to Other Federal, State and County Jurisdictional Agencies' Regulations. Many state, federal and regional regulations apply to projects conducted within critical areas. Uses otherwise allowed by local codes do not eliminate other agency regulatory requirements.

1. Federal regulations include:
 - a. Clean Water Act, Section 404, 401;
 - b. Coastal Zone Management Act;
 - c. Endangered Species Act;
 - d. Federal Water Pollution Control Act;
 - e. Food Security Act – Swampbuster;
 - f. National Environmental Policy Act;
 - g. National Floodplain Insurance Program;
 - h. River and Harbor Act, Section 10.

2. State regulations include:

- a. Chapter 43.21C RCW, State Environmental Policy Act;
- b. Chapter 75.20 RCW, Construction Projects in State Waters;
- c. Chapter 76.09 RCW, Forest Practices Regulations;
- d. Chapter 77.12 RCW, Powers and Duties;
- e. Chapter 78.44 RCW, Surface Mining Act;
- f. Chapter 86.16 RCW, Floodplain Management (Formerly Flood control zones by state);
- g. Chapter 90.03 RCW, Water Code;
- h. Chapter 90.48 RCW, Water Pollution Control Act;
- i. Chapter 90.58 RCW, Shoreline Management Act of 1971.

3. Local regulations include:

- a. Chapter 14.10 BMC, Environmental Policy;
- b. BMC Title 14.05, Surface Water Management;
- c. Skagit County Shoreline Management Program.

B. Jurisdictional Substitution. In cases where other agencies possess jurisdictional control over critical areas and it is determined by the director that the permit conditions satisfy the requirements of this chapter, those requirements may substitute for the requirements of this chapter. Such requirements shall be a condition of critical area approval and be enforceable under this chapter. Such agencies may include, but are not limited to, the United States Army Corps of Engineers, Environmental Protection Agency, and Fish and Wildlife Service, the Swinomish Tribe, and the Washington State Department of Ecology, Department of Natural Resources and Department of Fish and Wildlife. The applicant shall be notified in writing when any such substitution is made. (Ord. 1495 § 2, 2002).

14.15.060 Resource information and maps.

A. Critical areas defined and identified in this chapter shall be mapped whenever possible. These maps shall be advisory and used by the director to provide guidance in determining applicability of the standards to a property. All sites which contain or include critical areas, whether mapped or not, shall be subject to the provisions of this chapter.

B. Critical area maps, with the exception of the Flood Insurance Rate Map used to designate

certain flood hazard areas, are provided only as a general guide to alert the user to the possible distribution, location and extent of critical areas. Map identification of critical areas provides only approximate boundaries and locations. The actual locations and boundaries of critical areas, as well as their quality and quantity, shall be based upon the presence of the features applicable to each critical area element in this chapter. Maps shall not be considered a regulatory standard or substitute for site-specific assessments. The application of definitions, methodologies and performance standards pursuant to the site-specific assessment requirements provided in this chapter is the controlling factor in determining the actual presence and extent of critical areas.

C. Critical area maps maintained by the department shall utilize the best information currently available and should be updated on a continual basis.

D. Critical areas mapped under the site assessment requirements of this chapter should be compiled in a database and incorporated into critical area maps. This map information shall be utilized to facilitate tracking of compliance with the requirements of this chapter to ensure long-term protection of critical areas.

E. The city will make interpretations where needed as to exact location of the boundaries of the areas of special flood hazard (e.g., where there appears to be a conflict between a mapped boundary and actual field conditions). If there is a disagreement about the location of the boundary, additional information from a licensed surveyor may be needed, and the application shall be given a reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of Section 60.6 of the rules and regulations of the National Flood Insurance Program (44 CFR 59-76). (Ord. 1683 § 2, 2009; Ord. 1495 § 2, 2002).

14.15.070 General requirements and authorizations required.

A. In addition to any other requirements identified in this chapter, or otherwise imposed by the Burlington Municipal Code, all development occurring in critical areas, or critical area buffers, shall meet the following general requirements:

1. Site. Complete stabilization of all portions of a site which are disturbed or impacted by the proposed development, including all development coverage and construction activity areas, shall be required. Complete stabilization of all portions of a site refers to the process and actions necessary to ensure that existing and proposed site improvements are stabilized, and that all on-site areas and adjacent properties which are disturbed or impacted are stabilized. The proposed development shall be limited and controlled to avoid adverse impacts and potential harm and ensure safe, stable and compatible development appropriate to site conditions. Other reasonable and appropriate solutions to solve site stability problems may be required by the director.

2. Adjacent Site, Surrounding Area, and Drainage Basin. The proposed development shall ensure safe, stable and compatible development which avoids adverse environmental impacts and potential harm to adjacent sites, the surrounding neighborhood, and the drainage basin. Detailed analysis of impacts of the development upon wetlands, riparian corridors, native vegetation and wildlife habitats, water quality, natural water temperature, slope and soil

conditions, and surface water drainage may be required at the request of the director when site and area conditions indicate the need for this analysis. Supplemental technical reports may be required by the director to specify measures to preserve, protect, and maintain adjacent sites and the drainage basin and ensure safe, stable and compatible development.

B. With the exception of activities identified as exempt under BMC 14.15.120, any land use activity that can impair the functions and values of critical areas or their buffers through a development activity or by disturbance of the soil or water, and/or by removal of, or damage to, existing vegetation shall require critical areas review and written authorization pursuant to this chapter. Vegetation destruction or removal, other than the normal maintenance of existing landscaping identified as exempt under BMC 14.15.120, shall be prohibited within a critical area or its required buffer, unless there is an approved buffer management plan pursuant to the requirements of the particular critical area that demonstrates there will be no adverse impact to the critical area with the proposed vegetation removal and disturbance of the soil or water and includes any mitigation or buffer enhancement necessary to address critical areas impacts. Authorizations required under this chapter overlay other permit and approval requirements of the Burlington Municipal Code. Regardless of whether a development permit or approval is required, any proposed alteration that can adversely affect a critical area or its standard buffers' functions must comply with the substantive and procedural requirements of this chapter. Critical areas review pursuant to this chapter shall be conducted as part of the underlying permit or approval, where applicable. It is the responsibility of the landowner, or designee, who conducts or proposes to undertake land use activities that can adversely impact critical areas or their buffers to obtain authorization prior to commencing such activities. In some cases, the typical thresholds that trigger review and permits have been reduced to zero for any development activity located within a critical area or its required buffer.

C. Procedures. No land use development permit, land division, development approval, or other authorization required shall be granted until the applicant has demonstrated compliance with the applicable provisions of this chapter.

1. The applicant shall demonstrate that the proposal submitted conforms to the purposes and standards of this chapter, assesses impacts on the critical area from activities and uses proposed, and identifies protective mechanisms adequate to meet the requirements of this chapter.

2. T Each proposal shall be reviewed by the director for consistency with the applicable regulations identified in this chapter and to ensure the protective mechanisms proposed are sufficient to protect the critical area, public health, safety and welfare. If not, conditions of approval shall be specified as necessary to ensure compliance with the provisions of this chapter. If there are no conditions under which the proposal could be approved, then the proposal shall be denied.

D. All land use actions shall be conditioned as necessary to mitigate impacts to critical areas as required by this chapter and any project that cannot adequately mitigate its impacts to critical areas shall be denied.

E. Conflicts with Other Provisions. If any provision of this chapter conflicts with any other applicable code provision, the more restrictive shall apply unless specifically accepted in this chapter.

F. Satisfaction of the requirements of this chapter shall also be sufficient to satisfy the requirement for critical areas analysis and mitigation pursuant to chapter 43.21C RCW, State Environmental Policy Act and chapter 14.10 BMC, Environmental Policy.

G. SEPA Compliance. The goals, policies and purposes set forth in this chapter shall be considered policies of the State Environmental Policy Act. When applicable the applicant must meet SEPA requirements.

H. Other Permits Required. It is recognized that many local, state, and/or federal permit conditions may apply to the proposed action, and that compliance with the provisions of the chapter may not necessarily constitute compliance with other such requirements. (Ord. 1495 § 2, 2002).

14.15.080 Public notice and records.

Public notice for projects subject to the provisions of this chapter shall be provided pursuant to the requirements of title 14A BMC, Land Use Permit Process.

14.15.090 Application submittal requirements.

In addition to the application submittal requirements specified in other codes, a complete application for development subject to this chapter shall include the following additional information:

A. Surveyed Site Plan. A surveyed site plan shall be prepared by a state of Washington licensed surveyor and shall include the following, when required by the Community Development Director:

1. Existing topography at two-foot contour intervals on site within 25 feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements;
2. Terrain and drainage flow characteristics within the site, within 25 feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements;
3. Proposed location and boundaries of all required undisturbed fenced areas and buffers on-site and on adjacent lands;
4. Location of all vegetation, including location and description of all trees over six inches in diameter measured five feet above the base of the trunk, shrubs over eight feet tall or six feet wide, and noting their species;

5. Location and boundaries of all existing and proposed site improvements on the site and within 25 feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements. This shall include the limits of development coverage, impervious surfaces and construction activity areas (noting total square footage and percentage of site occupied);

6. Location of all grading activities in progress or proposed, and all drainage control facilities or systems in existence in progress or proposed within 25 feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements;

7. Location of all existing and proposed utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on-site, on adjacent lands within 25 feet of the site's property lines, and in the full width of abutting public rights-of-way, and proposed methods and locations for the proposed development to hookup to these services;

8. Such other additional site plan information as necessary to complete review of a project or waive specific submittal requirements when not necessary for project review.

B. Technical Reports. Technical reports shall be prepared and submitted as required by this chapter.

14.15.100 Administration.

A. The Director shall, be responsible for the administration of this chapter, including:

1. Review applications for land use actions to verify compliance with this chapter, issues permit decisions, or make recommendations to the Hearing Examiner in accordance with the permit processing procedures identified in title 14A BMC;

2. Review applications for land use actions to assure that all necessary permits have been obtained from those federal, state or local government agencies from which prior approval is required;

3. Recording and maintaining records of:

a. As-built elevation above mean sea level of the lowest floor including basement of all new and substantially improved structures requiring a floodplain approval and whether same structure contains a basement,

b. Certification by registered professional engineer or architect as required by this chapter,

c. Floodplain approvals and other actions pursuant to the administration of this chapter;

4. Notification to adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse with copy to FEMA, and maintenance within the altered or relocated portion of said watercourse so that flood-carrying capacity is not diminished;

5. When base flood elevation data has not been provided, obtaining, reviewing, and reasonably utilizing any base flood elevation and floodway data that should become available from a federal, state or other source in order to administer standards and floodways;

6. Issuance of development permits pursuant to chapter 14A BMC, Land Use Permits, and chapter 15.04 BMC, Uniform Codes, before construction or development begins within the city limits;

B. This chapter shall be administered in accordance with chapter 86.16 RCW and chapter 508-60 WAC. This chapter shall be revised as necessary to conform with any changes in state rules pertaining to flood control zones which may be adopted by the State Department of Ecology subsequent to the effective date of delegation of the state's permit program to the city.

C. The administrative procedure for critical areas review shall be as follows:

1. Determination that an Activity Requires Standard Review. All applications for approval of activities requiring written authorization pursuant to BMC 14.15.070 shall require the submission of a critical areas checklist completed and filed by the applicant on the forms provided by the planning department. If not otherwise required, all applications for critical areas review shall include a description of the proposed activity and a site plan showing the location of the proposed activity and associated area of disturbance in relation to all known critical areas or critical area indicators. Upon receipt of the application, a determination shall be made as to whether or not the proposed activity fits within any of the exempt activities found in BMC 14.15.120. If the proposed activity is classified as exempt, and meets the associated conditions for such an allowance, no other critical areas review shall be required, except as necessary to ensure that any conditions for such an allowance are met in practice. This determination shall be made in writing and included in the application file.

Proposed activities identified under BMC 14.15.120 that do not meet the conditions for such an allowance or that may result in significant adverse impacts to a critical area or its buffer shall be subject to standard critical areas review.

2. Method for Initial Determination of Critical Areas. Upon determination that the proposed activity requires detailed critical areas review, and upon receipt of a completed critical areas checklist, the following method shall be used to determine whether critical areas or their required buffers will possibly be affected by the proposed activity:

- a. Review the critical areas checklist together with the maps and other critical areas resources identified in the relevant sections of this chapter; and
- b. Complete the critical areas staff checklist; and
- c. Inspect the site; and

d. Complete the critical areas field indicator form.

3. Determination that Critical Areas Are not Affected. If critical area indicators are not present within 200 feet of the proposed activity or within a distance otherwise specified in this chapter, then the review required pursuant to this chapter is complete, except as necessary to ensure that the proposed activity is undertaken as described in the application and as shown on the site plan. This determination shall be noted in the application file and provide written authorization shall be provided for the project or activity to proceed as proposed in the application or, where applicable, with any specific conditions of approval. This determination shall not constitute approval of any use or activity or its compliance with the requirements of this chapter, outside the scope of that stated in the application. Any proposed change in use or scope of activity from that contained in the application shall be subject to further review under this chapter. The applicant shall acknowledge in writing that the determination regarding the apparent absence of critical area indicators and the likelihood that critical areas will not be affected is not intended as an expert certification regarding the presence or absence of critical areas and that the critical areas review process is subject to possible reopening if new information is received as described in subsection (4) below. If the applicant wants greater assurance of the accuracy of any such critical area indicators determination, the applicant shall hire a qualified critical areas expert to provide such assurances.

4. Re-opening of Review Process.

a. If at any time prior to completion of the public input process on the associated permit or approval, the City receives new evidence that a critical area may be present within 200 feet of the project area or within a distance otherwise specified in this chapter, then the critical areas review process shall be reopened pursuant to this chapter and shall require whatever level of critical areas review and mitigation as is required by this chapter.

b. Once the public input process on the associated permit or approval is completed and the record is closed, then the City's determination regarding critical areas pursuant to this chapter shall be final; provided, however, that the critical areas review process may be reopened if it is determined that incomplete or incorrect information was provided by the applicant in the application or checklist. For the purposes of this subsection, "incomplete or incorrect information" means information regarding the nature and/or location of the proposed activity as presented in the application or regarding the presence of a critical area or critical area indicators on the subject property which the applicant knew or should have known was relevant at the time of the submittal of the checklist. Prior to reopening a critical areas review under this subsection, the City shall conduct a site visit. No critical areas review shall be reopened under this section unless it is determined, after the site visit, that incomplete or incorrect information was provided.

5. Determination that Critical Areas Are Affected. If the City determines that critical area indicators are present within 200 feet of the proposed activity or within a distance otherwise specified in this chapter, then the determination shall be recorded in the project file and the applicant shall provide a critical areas site assessment as specified in this chapter.

Development of a site assessment may precede a site visit, provided that no disturbance of vegetation or land surface occurs prior to authorization.

6. Critical Areas Determination and Conditions of Approval. Based on the critical areas site assessment report and other available critical areas information, the City shall make a determination on the proposed activity. A determination to approve a proposed activity shall include designation of protected critical areas (PCAs) pursuant to chapter 14.15 BMC and stipulation of binding conditions and required mitigation, monitoring, maintenance or other conditions of approval pursuant to this chapter. If there are no conditions under which the proposed activity could be approved, then the Community Development Director shall deny the proposal. (Ord. 1495 § 2, 2002).

14.15.110 Critical areas checklist, site assessment and conditions of approval.

A. Critical Areas Checklist. Every application for an activity that might alter or adversely affect a critical area or critical area buffer shall include a critical area checklist on a form provided by the director. The checklist shall identify all critical area indicators and/or all known critical areas within 200 feet of the proposed activity or within a distance otherwise specified in this chapter. The checklist shall be signed by the applicant and shall inform the applicant that if the information on the checklist is later determined incorrect, then any permit or approval issued based on information provided may be rescinded and the site restored to its original, predevelopment, condition.

B. Site Assessment Required. If, after a site visit, the City determines that the proposed activity area is within 200 feet, or within a distance otherwise specified in this chapter, of an area that may contain critical area indicators, or if the City determines that the proposed activity will adversely impact a critical area or its associated buffer, then a complete critical areas site assessment shall be required. Critical areas site assessments, as described in more detail in the various sections for each type of critical area, shall be submitted as part of a complete application for a development permit or other approval of land use activities having the potential to impact critical areas or their buffers, by a qualified expert.

C. Site Assessment Preparation. The critical area site assessment shall be prepared by a qualified expert for the type of critical area or areas involved and shall contain the information specified for each type of critical area. In general, the site assessment shall include critical area inventory, assessment of impacts and, where applicable, proposed mitigation, land-use restrictions and landowner management, maintenance and monitoring responsibilities. The City may require peer review or review by personnel from state and federal agencies with expertise.

D. Any site plans required by this chapter may be combined into a single site plan wherever possible.

E. Critical Areas Determination and Conditions of Approval. After receiving a complete site assessment report, the City shall determine whether or not the proposed activity meets the requirements of this chapter and under what conditions. This determination shall utilize the information provided in the site assessment report and all other resource information available.

Critical area determinations shall be made in writing, contain findings addressing the requirements of this chapter, and shall identify any conditions of approval, land use prohibitions, and mitigation, management, monitoring and maintenance requirements.

14.15.120 Application of standards.

This chapter shall apply to all public and private land use actions and development including, but not limited to, new structures, additions, land divisions, grading, and filling located on either public or private property. Projects may be exempted from the detailed critical area review requirements of this chapter when the following situations and/or conditions apply:

A. Emergencies that threaten the public health, safety and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods that can address the emergency but also that have the least possible impact to the critical area or its buffer. The responsible party (property owner or agent) shall restore the critical area and buffer after the emergency to the extent feasible. The person or agency undertaking such action shall notify the director within one working day or as soon as practical following commencement of the emergency activity. Following such notification, the director shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the director determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provision shall apply.

B. Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, ponds, or public and private roads and driveways associated with pre-existing residential or commercial development, provided any maintenance or repair activities shall use reasonable methods with the least amount of potential impact to the critical areas and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.

C. Normal maintenance, repair, or operation of existing structures, facilities, and improved areas accessory to a single-family residential use, provided any maintenance or repair activities shall use reasonable methods with the least amount of potential impact to the critical area and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.

D. Modification of an existing single-family residence that does not change the use from residential, does not expand the building footprint or increase septic effluent, and does not adversely impact critical areas or their buffers.

E. Modification of other than a single-family use which does not expand the building footprint, alter the use or increase septic effluent, pursuant to the requirements of the nonconforming use and structure provisions, and does not adversely impact critical areas or their buffers.

F. Outdoor recreational activities which do not adversely impact critical areas or their buffers.

G. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling soil, planting crops, or changing existing topography, water conditions or water sources and provided further that the activity does not adversely impact critical areas or their buffers.

H. The operation and maintenance, construction and reconstruction of diking and drainage systems which protect life and property along the Skagit River.

I. Education and scientific research activities which do not adversely impact critical areas or their buffers.

J. Construction or modification of navigational aids and channels markers.

K. Site investigation work necessary for land use applications such as surveys, soil logs, percolation tests and other related activities which do not adversely impact critical areas or their buffers. In every case, critical area impacts shall be minimized and disturbed areas shall be immediately restored.

L. Maintenance activities such as mowing and normal pruning, provided that such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity.

M. Fish, wildlife, wetland and/or riparian enhancement activities not required as mitigation provided that the project is approved by the U. S. Department of Fish and Wildlife, the Washington State Department of Fish and Wildlife or the Washington State Department of Ecology.

N. Developments in the floodplain other than the following shall require a floodplain approval:

1. Minor structures and additions for which a building permit is not required and which create no new residence such as a slab on grade, or a storage building less than 120 square feet in area, or other structures exempt from permits in the International Building Code;
2. Fills of less than 12 cubic yards or which will not raise the level of the land above that of the surrounding area;
3. Normal maintenance, resurfacing and rebuilding, at comparable grade of streets, and accessways;
4. Underground improvements and excavations;
5. Maintenance and minor repair of existing improvements;

6. Improvements to structures listed on the National or State Register of Historic Places;
7. Other minor developments which cause no significant impoundment or displacement of floodwaters, such as open fences, signs and small unenclosed structures.

All such activities shall be carried out in ways that cause the least impact to critical areas and their buffers. If any damage is caused to a critical area or buffer in connection with such activity, the critical area and its buffer must be restored to the extent feasible. To be exempt does not give permission to destroy a critical area or ignore risk. Proponents of such activities shall be responsible for notifying the Community Development Director if any damage occurs and shall provide all necessary restoration or mitigation. For information on identifying, protecting or mitigating adverse impacts to critical areas, refer to sections in this chapter on wetlands, aquifer recharge areas, geologically hazardous areas, fish and wildlife habitat conservation areas, and flood hazard areas. (Ord. 1495 § 2, 2002).

14.15.130 General construction and maintenance standards.

All land use actions and development activities located in critical areas or critical area buffers shall be subject to the following general construction and maintenance standards:

- A. All buffer areas and other designated protected areas shall be fenced with a highly visible and durable protective barrier during construction to prevent access and protect critical areas.
- B. All disturbed areas on the site, including development coverage and construction activity areas, shall be controlled in a manner sufficient to control drainage and prevent erosion during construction, and revegetated to promote drainage control and prevent erosion after construction. In cases where erosion potential is severe, a vegetation and revegetation report prepared by a qualified professional with landscaping, plant ecology and botany education and experience may be required. All revegetation shall consist of trees, shrubs, and groundcover that is suitable for the location and does not require permanent irrigation systems for long-term survival.
- C. When development is proposed in a critical area or critical area buffer, grading activities shall be strictly limited to areas located on the most environmentally suitable portion of the site
- D. All drainage associated with the development shall be managed using an approved drainage control system in accordance with the provisions of title 14 BMC.
- E. Land use actions and development shall comply with the seismic design requirements identified in the building code adopted by, or referenced in, title 15 BMC.
- F. All grading in critical areas shall not occur prior to March 31st and shall be stabilized by October 31st unless demonstrated to the satisfaction of the director based on approved technical analysis that no environmental harm or safety issues would result from grading between November 1st and March 31st.
- G. Construction activities shall adhere to a prepared schedule approved by the City prior to

issuance of a building or development permit. This schedule shall include, but not be limited to a schedule for compliance with project conditions, limits of construction and work activities, equipment to be used, start and duration of each phase, and work sequencing.

H. Dumping or filling is prohibited in wetlands and special flood risk areas. Dumping includes deposit of yard waste, trash, litter, refuse, dirt, concrete, asphalt, rocks or similar materials, but shall not include work authorized by approved plans and permits. (Ord. 1708 § 19, 2010; Ord. 1495 § 2, 2002).

14.15.140 Reasonable use exception.

If the application of this chapter would result in denial of reasonable and economically viable use of a property, then a landowner may seek a reasonable use exception from the standards of this chapter, except for the Flood Hazard Critical Area where no exceptions are allowed. Reasonable use exceptions shall only apply to legal lots of record established prior to the effective date of this chapter. Reasonable use exceptions are intended as a “last resort” when no plan for mitigation can meet the requirements of this chapter and allow the applicant a reasonable economically viable use of their property. Reasonable use exceptions may only be granted under the following conditions:

A. The application of this chapter would deny all reasonable and economically viable use of the property and there is no reasonable and economically viable use with a lesser impact on the critical area than the use proposed; and

B. The proposed development does not pose a threat to the public health and safety; and any proposed modification to a critical area will be evaluated through consideration of a site assessment and mitigation plan prepared by the applicant’s qualified consultant pursuant to the requirements of this chapter, and will be the minimum necessary to allow reasonable and economically viable use of the property; and

C. Reasonable use determinations may be issued with conditions of approval, including modifications to the size and placement of structures and facilities to minimize impacts to critical areas and associated buffers. Mitigation requirements may also be imposed to ensure that all impacts are mitigated to the maximum extent feasible.

14.15.150 Critical area and buffer mitigation requirements – General provisions.

A. Buffers.

1. As described in more detail in each relevant section, buffers have in some cases been determined necessary and appropriate to protect critical areas and their functions or to prevent risk from a critical area hazard. In those sections of this chapter where specific buffers are identified, those buffers are deemed “required” or “standard” buffers. If a project or activity does not propose any alteration of those buffers or of the associated critical area and the City determines that these buffers are adequate to protect the critical area or to prevent risk of a hazard from the critical area, then subject to the provisions of this section, no additional mitigation will be required. Once the critical area and its buffer have properly been delineated

through a critical areas assessment and any conditions of approval have been established to ensure protection of the critical area function, no further critical areas mitigation assessment is required, except as necessary to ensure that long-term protection of critical areas and buffers is met in practice through compliance with the provisions of this section. The applicant shall ensure the protection of critical area by performing a site assessment on the entire parcel.

2. If, however, based on a site assessment by a qualified expert, unique features of the particular critical area or its buffer or of the proposed development, the qualified expert determines that additional buffers and/or mitigation measures beyond these buffers are necessary to adequately protect the function of the critical area or to prevent risk of a hazard from the critical area, such additional mitigation requirements may be imposed, provided the qualified expert can demonstrate, based on best available science, why that additional mitigation or buffering is required to adequately protect the critical area function or to prevent hazard from a critical area.

3. If the applicant proposes to reduce buffers or to alter the critical area or its required buffer, then the applicant shall demonstrate, based on best available science, why such buffer and/or critical area modification, together with such alternative mitigation proposed in the critical areas assessment, is sufficient to provide equal or better protection of the critical area function or provide no increased risk of a hazard from the critical area.

4. The critical areas assessment and the conditions of approval shall make adequate provision for long-term protection related to critical areas and buffers, and shall fully address the requirements of this chapter.

However, critical areas and/or buffers identified as protected critical areas (PCAs) as defined in this chapter do not require any provisions for public access, and appropriate restrictions may be included in the easement or title documents. Critical areas and/or buffers identified as PCAs are however subject to periodic inspection by the director, upon prior notification to the landowner, to ensure long-term protection.

5. Protected Critical Areas (PCAs).

a. For proposed land divisions, critical areas and their associated buffers identified through the site assessment and City review process shall be designated as PCAs and placed in separate tracts or easements and protected through protective covenants shown on the face of the recorded plat. (See BMC 14.15, Protected critical area requirements.)

b. For development projects or land use activities not involving a new land division, the critical area and its associated buffer identified through the site assessment process shall instead be identified as a PCA by either easement, open space designation or permit conditions, all including restrictive covenants and recorded with the auditor on a site plan to insure long-term protection. Critical areas and/or buffers identified as PCAs are subject to periodic inspection, upon prior notification to the landowner, to ensure long-term protection.

6. Open Space – Protected Area. If a portion of a parcel contains a proposed development project that triggers a development permit, and has not had its critical areas and associated buffers delineated because it was outside the project or area affected by the project, then further critical areas assessment may be required in the future prior to any change of use, or new development permit for that portion of the site. See BMC 14.15.

B. Mitigation. All proposed alterations to critical areas or associated buffers shall require mitigation sufficient to provide for and maintain the functional values of the critical area or to prevent risk from a critical area hazard and shall give adequate consideration to the reasonable economically viable use of the property. Mitigation of one critical area impact should not result in unmitigated impacts to another critical area. Mitigation may include, but is not limited to: buffers, setbacks, limits on clearing and grading, best management practices for erosion control and maintenance of water quality, or other conditions appropriate to avoid or mitigate identified adverse impacts.

C. Preferred Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated critical areas or their buffers. The preferred sequence of mitigation is defined below:

1. Avoid the impact altogether by not taking a certain action or parts of an action;
2. Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;
4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments;
6. All proposed mitigation shall be included in the critical areas assessment. The critical areas mitigation shall include the following:
 - a. Description of proposed mitigations (critical areas lost/critical areas gained);
 - b. Analysis of avoidance, minimization, reduction, and compensation;
 - c. Functional analysis of mitigation/analysis of prevention of risk hazard;
 - d. Proposed applicant or landowner monitoring or inspection measures and schedule,

including specification of method and frequency of submittal of reports on results; and

e. Contingency plan.

D. Mitigation requirements shall be identified in written conditions of approval and shall be included in an approved mitigation plan.

E. Financial Assurance. The approved mitigation plan shall be completed prior to final approval of the development permit. For all projects with an estimated mitigation cost of \$4,000 or over, the financial assurance may be required to assure compliance with the mitigation plan if the complete mitigation proposed in the site assessment cannot be completed prior to final approval of the development permit. Financial assurance shall be in the form of either a surety bond, performance bond, assignment of savings account or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney, shall be in the amount of 125 percent of the estimated cost of the uncompleted actions or construction, and shall be assigned in favor of the city of Burlington. The term of the financial assurance shall remain in place until the required mitigation is complete.

F. Monitoring of Critical Areas Mitigation. On a regular basis, but no less frequently than once every two years, the City shall survey a sampling of projects and activities for which critical area site assessments were required, including mitigation plans, potentially impacting fish-bearing streams and/or Category I, II or III wetlands. The sample shall be taken from permits or approvals issued more than 10 months prior to the sampling date. The selected sites shall be inspected for critical area and buffer size and condition and for compliance with any required mitigation or other conditions of approval. Results of such sampling shall be included in the permanent record for the project or activity, shall be reported to the city council, and shall also be utilized for enforcement purposes. (Ord. 1495 § 2, 2002).

14.15.160 Protected critical area (PCA) requirements.

A. PCA Identification and Recording.

1. PCA Identification. Approval of development projects which trigger a development permit and other land-use activities that can cause adverse impacts to critical areas and/or their buffers shall require the identification and designation of PCAs by the Community Development Director. This section is intended to apply to unique critical area elements such as buffers or wellhead protection areas that can cause adverse impacts; location in the floodplain unless adjacent to a wetland or riparian corridor does not require recording of a PCA. PCAs shall include all critical areas and associated buffers on the proposed project site which have been identified through the site assessment process.

2. PCA Recording. All PCAs shall be recorded with the county auditor in accordance with the procedures established under this section. The applicant shall be responsible for all fees and other costs associated with recording of PCAs.

3. For each project or activity that requires recording of PCAs, the following information shall

be recorded with the auditor and be readily available to the public upon request:

- a. Recorded documents signed by the landowner and the director which stipulates any special conditions of approval, protective covenants, binding conditions, or other requirements such as use restrictions, required mitigation, and/or landowner maintenance or monitoring requirements established at the time of approval;
- b. Required final plat map or site plan clearly showing the locations of PCAs, existing vegetation and permanent buffer edge markers;
- c. Additional information necessary to document the critical areas inventory at the time of approval, including descriptions of identified critical areas, their locations, functions and values, and existing critical areas or buffer vegetation;
- d. Identification of any local responsibilities beyond those required by this chapter;
- e. Reference to the file containing the complete record of information pertaining to approval of the project or activity.

4. Permanent Buffer Edge Markers. Except as provided under subsection (a) below, the outer edges of all PCAs, with the exception of aquifer recharge areas may be required, and if required shall be clearly marked on-site by the applicant or landowner with permanent rebar stakes and critical area markers. Critical area markers may be either approved critical area signs or inexpensive steel posts painted a standard color approved by the director that is clearly identifiable as a critical area marker. Installation of permanent markers shall be the responsibility of the landowner.

a. The director may waive or modify the requirement for permanent buffer edge markers provided that any such decision shall be based on a site-specific determination that future verification of PCA locations will not be substantially more difficult without the placement of permanent markers and that such waiver or modification will not result in reduced long-term protection of critical areas. The determination shall be included in the permanent record.

b. Where such permanent markers are required, the director shall specify their frequency of placement and general location. Permanent markers shall be placed to locate the edge of the PCA to an approximate accuracy of within five percent of the specified buffer width or within five feet, whichever is larger. The spacing intervals of the markers shall be such as to provide comparable accuracy of line-of-sight determination of buffer edges. The locations of all required stakes/markers shall be shown on the plat map or site map recorded with the auditor.

B. Protected Critical Area (PCA) Designations for New Land Divisions.

1. For land divisions where site assessments have occurred pursuant to this chapter, all PCAs

shall be placed into separate tracts or easements, whose uses shall be regulated by the provisions of this chapter and any conditions of approval, including protective covenants and binding agreements as provided for under subsection (A) of this section. Area within a PCA can be included in total acreage for development purposes and may be used in lot area or density calculations. PCAs may be owned and maintained by the owner of the lot of which they are a part or transferred to the homeowners association or land trust. Wetlands and buffers in the Gages Slough corridor may be donated to the city in exchange for park impact fee credit.

2. Recording. PCA designations shall be recorded with the auditor as part of the plat approval process.

The auditor file number referencing the agreement shall be on the face of the plat and its provisions shall run with the land.

3. PCA Descriptions. The location of PCAs shall be clearly identified on site plans and on preliminary and final plat maps. PCAs shall be labeled using the letters A through Z, or another labeling system approved by the Community Development Director. Where more than one lot is involved, each lot shall carry independent labeling as described in subsection (D)(1) of this section.

4. Ingress, Egress and Use. Owners of PCAs shall grant ingress and egress by the Community Development Director or his or her agent for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation. As part of an approved land division, the use limitations required of a designated and regulated critical area according to the provisions of this chapter, including the conclusions of the critical areas site assessment report and any conditions of approval, protective covenants and other binding conditions, shall be clearly stated on the face of the recorded plat.

C. PCAs on Pre-Existing Lots.

1. For development proposals and other land use activities that can adversely impact critical areas on pre-existing lots, not part of a proposed land division or other form of multiple lot development, PCAs shall be identified on a scaled site plan showing the location of the PCA, structures (existing and proposed) and their distances from the PCA and lot lines to show relative location within the subject parcel(s). The project or activity shall be conditioned for critical area protection and the resulting information recorded with the auditor as defined under subsection (A) above. The site plan may be prepared by the applicant and all distances and locations of structures may be measured from the established PCA boundary to within plus or minus five feet.

2. Ingress and Egress. The City shall be granted access to PCAs for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation.

D. PCA Mapping, Labeling, and Area Calculations.

1. All PCAs shall be mapped. The area shall be delineated on the final plat map or on a site plan to an accuracy of plus or minus five feet horizontal and monumented in the field by a qualified expert.

2. During construction phases of development, clear temporary marking using flagging and staking shall be maintained along the outer limits of the delineated PCA or the limits of the proposed site disturbance outside of the PCA. Prior to the start of construction activity, and as necessary during construction, temporary markings shall be inspected and approved by the Community Development Director or designee. The person responsible for inspecting the temporary flagging shall provide written confirmation to be included in the record as to whether or not the flagging has been installed consistent with the permit requirements prior to commencement of the permitted activity.

3. All PCAs shall include the necessary labeling to show calculated area (in square feet or acreage), and type and/or class of critical area within each lot. This information shall be noted on the face of the approved plat or site plan.

4. Sign, Marker and Fence Maintenance. It is the responsibility of the landowner, to maintain the required PCA markers, signs or fences in working order throughout the duration of the development project or land use activity. Maintenance includes any necessary replacement. Removal of required signs, markers or fences without prior written approval of the director shall be considered a violation of this chapter. (Ord. 1495 § 2, 2002).

14.15.170 Incentives.

The following incentives are intended to minimize the burden to individual property owners from application of the provisions of this chapter and assist the city in achieving the goals of this chapter:

A. Open Space. Any property owner on whose property a critical area or its associated buffer is located and who proposes to put the critical area and buffer in a separate open space tract may apply for current use property tax assessment on that separate tract pursuant to chapter 84.34 RCW.

B. Conservation Easement. Any person who owns an identified critical area or its associated buffer may place a conservation easement over that portion of the property by naming a qualified designee under RCW 64.04.130 as beneficiary of the conservation easement. This conservation easement can be used in lieu of the creation of a separate critical areas tract to qualify for open space tax assessment described in subsection (A) of this section.

The purpose of the easement shall be to preserve, protect, maintain, restore and limit future use of the property affected. The terms of the conservation easement may include prohibitions or restrictions on access and shall be approved by the property owner and the qualified designee. (Ord. 1495 § 2, 2002).

WETLANDS

14.15.180 Wetlands identification and rating.

A. Identification and Delineation. Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this chapter. Wetland delineations are valid for five years; after such date the city shall determine whether a revision or additional assessment is necessary.

B. Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, effective January 2015) or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met.

Category I. Category I wetlands are: (1) relatively undisturbed estuarine wetlands larger than 1 acre; (2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger than 1 acre; (5) wetlands in coastal lagoons; (6) interdunal wetlands that score 8 or 9 habitat points and are larger than 1 acre; and (7) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.

Category II. Category II wetlands are: (1) estuarine wetlands smaller than 1 acre, or disturbed estuarine wetlands larger than 1 acre; (2) interdunal wetlands larger than 1 acre or those found in a mosaic of wetlands; or (3) wetlands with a moderately high level of functions (scoring between 20 and 22 points).

Category III. Category III wetlands are: (1) wetlands with a moderate level of functions (scoring between 16 and 19 points); (2) can often be adequately replaced with a well-planned mitigation project; and (3) interdunal wetlands between 0.1 and 1 acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

14.15.185 Wetland Buffers

A. **Standard Wetland Buffer Widths.** The standard buffer widths in Table 15.15.200-1 have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington state wetland rating system for western Washington.

Buffer Conditions.

1. These buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

2. **Measurement of Wetland Buffers.** All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

3. **Buffers on Mitigation Sites.** All mitigation sites shall have buffers consistent with the buffer requirements of this Chapter to the extent feasible. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

4. **Overlapping Critical Area Buffers.** If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

5. **Buffer Maintenance.** Except as otherwise specified or allowed in accordance with this Chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive non-native weeds is required for the duration of the required maintenance and monitoring timeline, which ranges from 5-10 years depending on location.

Table 14.15.200-1. Width of buffers needed to protect wetlands in western Washington considering impacts of proposed land uses.

Category of Wetland	Land Use with Low Impact *	Land Use with Moderate Impact *	Land Use with High Impact*
IV	25 ft	40 ft	50 ft
III	75 ft	110 ft	150 ft
II	150 ft	225 ft	300 ft
I	150 ft	225 ft	300 ft
* See Table 15-15.200-2 below for types of land uses that can result in low, moderate, and high impacts to wetlands.			

Table 14.15.200-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations
High	<ul style="list-style-type: none"> • Commercial • Urban • Industrial • Institutional • Retail sales • Residential (more than 1 unit/acre) <ul style="list-style-type: none"> • Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.) • High-intensity recreation (golf courses, ball fields, etc.) • Hobby farms
Moderate	<ul style="list-style-type: none"> • Residential (1 unit/acre or less) • Moderate-intensity open space (parks with biking, jogging, etc.) <ul style="list-style-type: none"> • Conversion to moderate-intensity agriculture (orchards, hay fields, etc.) • Paved trails • Building of logging roads <ul style="list-style-type: none"> • Utility corridor or right-of-way shared by several utilities and including access/maintenance road
Low	<ul style="list-style-type: none"> • Forestry (cutting of trees only) • Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.) • Unpaved trails • Utility corridor without a maintenance road and little or no vegetation management.

B. Increased Wetland Buffer Widths. Buffer widths shall be increased on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

1. The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
2. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or

3. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

C. **Decreased Wetland Buffer Widths.** Buffer widths shall be decreased on a case by case basis as determined by the City. This determination shall be supported by appropriate documentation showing that it still protects the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

1. Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:

a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area.

b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.

c. The total area of the buffer after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either $\frac{3}{4}$ of the required width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

2. Buffer averaging to allow reasonable use of a parcel may be permitted when **all** of the following are met:

a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.

b. The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a critical areas report from a qualified wetland professional.

c. The total buffer area after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either $\frac{3}{4}$ of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever category is applicable.

D. **Allowed Buffer Uses.** The following uses may be allowed within a wetland buffer in accordance with the review procedures of this chapter; provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer

and adjacent wetland:

1. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.
2. Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:
 - a. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.
 - b. Wildlife-viewing structures.
3. Educational and scientific research activities.
4. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.
5. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
6. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column is disturbed.
7. Enhancement of a wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
8. Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer

twenty-five percent (25%) of the buffer of Category III or IV wetlands only, provided that:

- a. No other location is feasible; and
- b. The location of such facilities will not degrade the functions or values of the wetland; and
- c. Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

9. Non-Conforming Uses. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

E. Signs and Fencing of Wetlands and Buffers:

1. Temporary markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the Community Development Director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

2. Permanent signs. As a condition of any permit or authorization issued pursuant to this chapter, the City may require the installation of permanent signs along the boundary of a wetland or buffer.

- a. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one (1) per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the Community Development Director:

Protected Wetland Area
No Dumping - Do Not Disturb
Thank you

- b. The provisions of Subsection (a) may be modified as necessary to assure protection of sensitive features or wildlife.

3. Fencing

- a. The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.

- b. Fencing installed as part of a proposed activity or as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

14.15.190 Wetlands initial project review.

A. A site visit shall be conducted to confirm the presence of wetland indicators listed in the critical areas checklist or identified on critical areas map references as being within 300 feet of a proposed project or activity. A positive confirmation by the Community Development Director that site indicators are present or that the proposed project may impact the wetland area will then require a professional site assessment.

B. The following map references shall be used to assist in making a determination:

1. Wetlands mapped under the National Wetland Inventory by the U. S. Department of Interior; Fish and Wildlife Service;
2. Areas mapped as hydric soils under the Soil Survey of Skagit County Area, Washington by the United States Department of Agriculture; Soil Conservation Service;
3. A water of the state as defined under WAC 222-16-030 and maintained in the Washington State Department of Natural Resources Stream Type Maps; and
4. Wetlands previously identified through the methodology specified under this title for another project.

14.15.200 Wetlands site assessment requirements.

If a wetlands site assessment is required, it shall meet the following requirements:

A. A wetland reconnaissance shall be performed by a qualified wetlands professional. The reconnaissance shall identify the presence of wetlands within 300 feet of the project or activity area. If this wetland reconnaissance demonstrates no wetlands within 300 feet of the activity area, then no further study is required.

B. A wetland delineation shall be performed as part of a site assessment where a wetland reconnaissance confirms the presence of a wetland or the applicant chooses to perform delineation instead of a wetland reconnaissance. The delineation shall be performed by a qualified wetland professional trained in conducting delineations in accordance with the methodology specified under this title.

C. If the site of a proposed development includes, is likely to include, or is adjacent to a wetland, a wetland report, prepared by a qualified professional, shall be required. The expense of preparing the wetland report shall be borne by the applicant.

D. Minimum Standards for Wetland Reports. The written report and the accompanying plan sheets shall contain the following information, at a minimum:

1. The written report shall include at a minimum:

- a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; a description of the proposal; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
- b. A statement specifying the accuracy of the report and all assumptions made and relied upon.
- c. Documentation of any fieldwork performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.
- d. A description of the methodologies used to conduct the wetland delineations, rating system forms, or impact analyses including references.
- e. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.
- f. For each wetland identified on site and within 300 feet of the project site provide: the wetland rating, including a description of and score for each function, per Wetland Ratings of this title; required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.
- g. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative.
- h. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development.
- i. A description of reasonable efforts made to apply mitigation sequencing pursuant to Mitigation Sequencing to avoid, minimize, and mitigate impacts to critical areas.
- j. A discussion of measures, including avoidance, minimization, and compensation,

proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity.

k. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.

l. An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.

2. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:

a. Maps (to scale) depicting delineated and surveyed wetland and required buffers on site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates).

b. A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.

14.15.210 Alteration of wetlands.

A. A regulated wetland or its required buffer can only be altered if the wetlands site assessment shows that the proposed alteration does not degrade the quantitative and qualitative functioning of the wetland, or any degradation can be adequately mitigated to protect the wetland function. Any alteration approved pursuant to this section shall include mitigation necessary to mitigate the impacts of the proposed alteration on the wetland as described in BMC 14.15.220, Wetland mitigation standards.

B. Storm water discharges to wetlands shall be controlled and treated to provide all known and reasonable methods of prevention, control, and treatment as mandated in the State Water Quality Standards, chapter 173-201A WAC, as required by state law and implemented in BMC chapter 14.05, Surface Water Management.

14.15.220 Wetland mitigation standards.

A. Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference:

1. Avoid the impact altogether by not taking a certain action or parts of an action.
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.

3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
4. Reduce or eliminate the impact over time by preservation and maintenance operations.
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
6. Monitor the required compensation and take remedial or corrective measures when necessary.

B. Requirements for Compensatory Mitigation:

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Publication #09-06-32, Olympia, WA, December 2009).
2. Mitigation ratios shall be consistent with Subsection G of this Section.
3. Mitigation requirements may also be determined using the credit/debit tool described in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report (Ecology Publication #10-06-011, Olympia, WA, March 2012, or as revised) consistent with subsection H of this Chapter.

C. Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or
2. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the City, such as replacement of historically diminished wetland types.

D. Preference of Mitigation Actions. Mitigation for lost or diminished wetland and buffer functions shall rely on the types below in the following order of preference:

1. Restoration (re-establishment and rehabilitation) of wetlands:

a. The goal of re-establishment is returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

b. The goal of rehabilitation is repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.

2. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native species. Establishment results in a gain in wetland acres. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.

a. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland scientist that:

i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;

ii. The proposed mitigation site does not contain invasive plants or noxious weeds or that such vegetation will be completely eradicated at the site;

iii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and

iv. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.

3. Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement should be part of a mitigation package that includes replacing the altered area and meeting appropriate ratio requirements. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Applicants proposing to enhance wetlands or associated buffers shall demonstrate:

a. How the proposed enhancement will increase the wetland's/buffer's functions;

b. How this increase in function will adequately compensate for the impacts; and

c. How all other existing wetland functions at the mitigation site will be protected.

4. Preservation. Preservation of high-quality, at-risk wetlands as compensation are generally acceptable when done in combination with restoration, creation, or enhancement, provided that a minimum of 1:1 acreage replacement is provided. Ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1, as determined

on a case-by-case basis, depending on the quality of the wetlands being altered and the quality of the wetlands being preserved.

Preservation of high-quality, at-risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:

- a. The area proposed for preservation is of high quality. The following features may be indicative of high-quality sites:
 - i. Category I or II wetland rating (using the wetland rating system for western Washington)
 - ii. Rare wetland type (for example, bogs, mature forested wetlands, estuarine wetlands)
 - iii. The presence of habitat for priority or locally important wildlife species.
 - iv. Priority sites in an adopted watershed plan.
- b. Wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA listed species.
- c. There is no net loss of habitat functions within the watershed or basin.
- d. Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost.
- e. Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by a land trust, or land in public ownership.
- f. The impact area is small (generally $< \frac{1}{2}$ acre) and/or impacts are occurring to a low-functioning system (Category III or IV wetland).

All preservation sites shall include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.

E. Location of Compensatory Mitigation. Compensatory mitigation actions shall be conducted within the same sub-drainage basin and on the site of the alteration except when all of paragraphs 1-4 below apply. In that case, mitigation may be allowed off-site within the subwatershed of the impact site. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank, an in-lieu fee program, or advanced mitigation.

1. There are no reasonable opportunities on site or within the sub-drainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands

when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);

2. On-site mitigation would require elimination of high-quality upland habitat.
3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.
4. Off-site locations shall be in the same sub-drainage basin unless:
 - a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site; or
 - b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument;
 - c. Fees are paid to an approved in-lieu fee program to compensate for the impacts.

The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which would require the construction of berms to hold the water.

F. Timing of Compensatory Mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

1. The Community Development Director may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall

not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the city.

G. Wetland Mitigation Ratios¹:

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement
Category I: Bog, Natural Heritage site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

H. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance “*Wetland Mitigation in Washington State Parts I and II*” (Ecology Publication #06-06-011a-b, Olympia, WA, March, 2006), the Community Development Director may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in “*Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report*,” (Ecology Publication #10-06-011, Olympia, WA, March 2012, or as revised).

¹ Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or re-establishment. See Table 1a, *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance--Version 1*, (Ecology Publication #06-06-011a, Olympia, WA, March 2006 or as revised). See also Paragraph D.4 for more information on using preservation as compensation.

I. Compensatory Mitigation Report. The report must include a written report and plan sheets that must contain, at a minimum, the following elements. Full guidance can be found in *Wetland Mitigation in Washington State— Part 2: Developing Mitigation Plans (Version 1)* (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised).

a. The written report must contain, at a minimum:

i. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.

ii. Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.

iii. Description of the existing wetland and buffer areas proposed to be altered. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding lands uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on *Wetland Ratings* of this Chapter.

iv. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. . v. A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands.

v. A description of the proposed mitigation construction activities and timing of activities.

vi. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).

vii. A bond estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five (5) years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring.

viii. Proof of establishment of Notice on Title for the wetlands and buffers on the project site, including the compensatory mitigation areas.

b. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:

- i. Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.
- ii. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be altered, and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation.
- iii. Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Also, illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.
- iv. Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.
- v. Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this Chapter.
- vi. A plant schedule for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, timing of installation.
- vii. Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring schedule, and maintenance schedule and actions by each biennium.

J. Buffer Mitigation Ratios. Impacts to buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

K. Protection of the Mitigation Site. The area where the mitigation occurred and any associated buffer shall be located in a critical area tract or a conservation easement or land in public ownership.

L. Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

M. Wetland Mitigation Banks.

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

- a. The bank is certified under state rules;
- b. The City determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
- c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.

2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

N. In-Lieu Fee. To aid in the implementation of off-site mitigation, the city may develop an in-lieu fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu-fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu-fee program may be used when paragraphs 1-6 below apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.
2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu-fee program instrument.
3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.
4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.
5. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program.
6. Credits from an approved in-lieu-fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.

O. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations.

P. Exceptions to Mitigation Requirements. Requirements for mitigation do not apply under the following circumstances:

1. When a wetland alteration is intended exclusively for the enhancement or restoration of an existing regulated wetland and the proposal will not result in a loss of wetland function and value, subject to the following conditions:

- a. The enhancement or restoration project shall not be associated with a development activity.

- b. An enhancement or restoration plan shall be submitted for site plan review. The restoration or enhancement plan must include the information required under this title.

2. When a wetland is a part of a development activity that is permitted by the Corps of Engineers NWP permitting crossing of wetlands as part of road construction.

AQUIFER RECHARGE AREAS

14.15.230 Aquifer recharge areas.

A. Intent. This section establishes areas determined to be critical in maintaining both groundwater quantity and quality. This section specifies regulatory requirements to be enacted when development within these areas is proposed to occur and provides a methodology by which the level of review and any mitigation required is determined. The intent of this section is to:

1. Define minimum regulatory requirements to protect groundwater quality and quantity for existing and future use; and

2. Identify the practices, alternatives, or mitigations that can minimize the adverse impacts of proposed projects; and

3. Insure adequate design, construction, management, and operations to protect groundwater quality and quantity.

B. Existing and future beneficial uses of groundwater shall be maintained and protected and degradation of groundwater quality that would interfere with or become injurious to beneficial uses shall be avoided or minimized.

C. Wherever groundwaters are determined to be of a higher quality than the criteria established for said waters under this section, the existing water quality shall be protected, and contaminants that

will reduce the existing quality thereof shall not be allowed to enter such waters, except in those instances where it can be demonstrated that:

1. An overriding consideration of the public interest will be served; and
2. All contaminants proposed for entry into said groundwater(s) shall be provided with all known, available, and reasonable methods of prevention, control, and treatment prior to entry.

D. It is the intent of this regulation to be consistent with and implement the requirements of chapter 90.48 RCW, chapter 90.54 RCW, chapter 173-200 WAC, chapter 173-201A WAC, chapter 173-160 WAC, chapter 246-290 WAC, and chapter 246-291 WAC, as the same may hereafter be amended. (Ord. 1495 § 2, 2002).

14.15.240 Aquifer recharge area designations.

Two categories are designated for aquifer recharge areas. These categories are designated to assist the City in determining the level of assessment necessary to evaluate specific proposed land use actions. The categories are based on the determination that certain areas require additional scrutiny of the potential impacts of a proposed land use with consideration given to hydrogeologic vulnerability. All designated areas are subject to change as data and information are updated or become available.

A. Designation Categories.

1. **Category I** areas are those so designated because of the need to provide them special protection due to a specific pre-existing land use, or because they are identified by the local, state or federal government as areas in need of special aquifer protection where a proposed land use may pose a potential risk which increases aquifer vulnerability.

Category I includes areas served by groundwater which have been designated as a "Sole Source Aquifer Area" under the Federal Safe Drinking Water Act; areas identified within a "closed" or "low-flow" stream watershed designated by the Department of Ecology pursuant to chapter 90.22 RCW; areas identified by the Department of Ecology as sea water intrusion areas; and areas designated as "Wellhead Protection Areas" pursuant to WAC 246-290-135(4) and the groundwater contribution area in WAC 246-291-100(2)(e). Wellhead protection areas shall, for the purpose of this regulation, include the identified recharge areas associated with either Group A public water supply wells, those Group B wells with a wellhead protection plan filed with the Skagit County health department, or plats served by five or more individual wells where the average lot size is equal to or less than two acres for which a well head protection plan has been completed and filed with the Skagit County health department. Category I areas are shown on the Aquifer Recharge Area map.

2. **Category II** is designated as areas not identified as Category I areas.

3. When any portion of the proposed project area lies partly within a Category I area, the proposed project shall be subject to the level of scrutiny provided for Category I area. (Ord.

1495 § 2, 2002).

14.15.250 Aquifer recharge applicability and prohibited activities.

A. Applicability. All development projects are subject to the provisions of this section except for the following:

1. Existing activities that currently and legally exist at the time this chapter became effective. However, expansions or changes in use are subject to this section and the review process contained herein.
2. Single-family residential building permits, including accessory building permits, which are outside Category I areas.
3. Residential short plats outside Category I areas where each lot is 2.5 acres or greater.
4. Single-family residential building permits where a site assessment report was required to be completed for the land division, in which case, to meet the conditions of this exemption, the applicant must comply with the recorded plat notes and the applicable mitigations contained in the site assessment report.

B. Prohibited Activities. The following activities are prohibited in Category I areas due to the probability and/or potential magnitude of their adverse effects on groundwater:

1. Landfill activities as defined in chapter 173-304 WAC and chapter 173-351 WAC.
2. Class V injection wells, including:
 - a. Agricultural drainage wells;
 - b. Untreated sewage waste disposal wells;
 - c. Cesspools;
 - d. Industrial process water and disposal wells; and
 - e. Radioactive waste disposal.
3. Radioactive disposal sites. (Ord. 1495 § 2, 2002).

14.15.260 Aquifer recharge initial project review.

A. General Procedures. Applicants for all development projects not allowed under this title shall be required, through a site assessment report prepared pursuant to this title, to evaluate potential impacts to aquifer recharge areas, and appropriate mitigation measures to reduce or eliminate the potential for adversely impacting aquifer recharge areas shall be identified. The level of study and report detail required will be determined by the City based on the type of land use being proposed,

the designated aquifer recharge area category, and the vulnerability of the underlying aquifer(s) to contamination. The goal of this section is to require applicants to identify and characterize vulnerability only to the level necessary to determine appropriate mitigation measures necessary, to either reduce potential adverse impacts to established parameters or eliminate potential adverse impacts to underlying aquifer(s).

B. Scoping. The level of study which will be required o shall be based on an initial project review that may include staff from the County health department, State Health Department, State Department of Ecology, and a hydrogeologist.

Elements for the report that are required at a minimum and other elements that may be required as part of the scope for the study are listed in this title. Subsequent findings from the study or other information made available after the initial project review may obligate the applicant to additional evaluation, development of a mitigation plan, and/or development of a groundwater monitoring plan. The following outlines the review process:

1. The required scope of the site assessment report shall be determined by the City following consultation with the County Health Department and appropriate State agencies. The scope of site assessment required may be conveyed to the applicant and/or his or her representative in writing.
2. The site assessment report shall be submitted and reviewed by City. The City may consult with the County Health Department and appropriate State agencies as necessary and may approve the site assessment report as submitted, require additional evaluation, or require development of a mitigation plan. If additional information is required beyond the initial site assessment report, the applicant may be notified in writing.
3. When, to the satisfaction of the City, all information is provided and appropriate mitigation measures have been identified in accordance with the requirements of this chapter, the permit review process may move forward. (Ord. 1495 § 2, 2002).

14.15.270 Aquifer recharge site assessment report.

A. The scope of the site assessment report shall be based on the initial project review specified in this title. The scope of the report may be reduced by utilizing appropriate mitigation measures, or if the water quality or quantity issue(s) are already known.

B. The site assessment report shall be prepared by, or under the direction of, and signed by a professional engineer, licensed in the state of Washington, trained and qualified to analyze geologic, hydrologic, and groundwater flow systems; or by a geologist or hydrogeologist who earns his or her livelihood from the field of geology and/or hydrogeology and has received a degree in geological sciences from an accredited four-year institution of higher education and who has relevant training and experience analyzing geologic, hydrologic, and groundwater flow systems.

C. Site Assessment Report Requirements. A site plan shall be prepared in accordance with the

requirements of this code. In addition, a site assessment report shall include:

1. A description of the project including those activities, practices, materials, or chemicals that have a potential to adversely affect the quantity or quality of underlying aquifer(s).
2. Identification of appropriate mitigation measures and description of how they will prevent degradation of underlying aquifer(s).
3. A site plan or another appropriately scaled map showing the approximate location of known or geologically representative well(s) (abandoned and active), spring(s), and surface watercourses within 1,000 feet of the subject project property. All well logs available through the health department for identified wells within 1,000 feet of the project property shall be included.
4. A description of the site-specific hydrogeologic characteristics regarding impact to the quantity or quality of underlying aquifer(s). At a minimum this will include a description of the lithology, depth to and static water level of known underlying aquifer(s), and depiction of groundwater flow direction and patterns on the appropriate map.
5. Identification of the initial receptors of potential adverse impacts located hydraulically down-gradient from the project within 1,000 feet or as otherwise required by the scoping process identified above.

D. Additional Site Assessment Elements. After the initial project review, one or more of the site assessment elements listed below may be required based upon the proposed project activity, aquifer recharge area classification, complexity of underlying hydrogeologic conditions, and/or the perceived potential to adversely impact hydraulically downgradient receptors. One or more of these additional elements may also be required if the applicant chooses to demonstrate that certain mitigation measures are not necessary to protect the quantity or quality of the underlying aquifer(s), or that the project does not pose a detrimental risk to hydraulically downgradient receptors.

1. Lithologic characteristics and stratigraphic relationships of the affected aquifer(s) and overlying geologic units (includes soil types) including thickness, horizontal and vertical extent, permeability, and infiltration rates of surface soils.
2. Delineation of identified structural features such as faults, fractures, and fissures.
3. Aquifer characteristics including determination of recharge and discharge areas, transmissivity, storage, hydraulic conductivity, porosity, and estimate of groundwater flow direction, velocity and patterns for the affected aquifer(s).
4. Estimate of precipitation, evaporation, and evapotranspiration rates for the project area.
5. Preparation of appropriate hydrogeologic cross sections depicting at a minimum underlying

lithology and stratigraphy, aquifer(s), and potential or probable contaminant pathways from a chemical release.

6. Contaminant fate and transport including probable migration pathways and travel time of potential contaminant release(s) from the site through the unsaturated zone to the aquifer(s) and through the aquifer(s), and how the contaminant(s) may be attenuated within the unsaturated zone and the aquifer(s). Includes consideration of advection, dispersion, and diffusion of contaminants in the groundwater.

7. Delineation of areas potentially affected by contaminant migration on the ground surface and/or through the affected aquifer(s).

8. Determination of background or existing groundwater quality underlying the project area.

9. Development of a groundwater monitoring program to measure potential impacts of the development to underlying aquifer(s).

10. Development of a spill plan and/or contingency plan describing the specific actions, which will be taken if a release of a contaminant(s) occurs, or if groundwater monitoring results indicate a contaminant(s) from the site has entered the underlying aquifer(s).

11. The degree of continuity between groundwater and nearby surface water including potential impact to “closed” or “low-flow” streams (as described in title 14 BMC) from proposed groundwater withdrawals, and potential impacts to surface water quality from site runoff or contaminated groundwater discharge.

12. In conjunction with the Department of Ecology Seawater Intrusion Policy and subsequent policies or ordinances, applicable projects shall be required to determine appropriate pumping rates and schedules that maintain dynamic drawdown levels above mean sea level.

13. Applicable projects such as special use permits, short plats, or long plats shall test existing and/or test wells for nitrate levels and where appropriate calculate the nitrate loading rate at full build-out of the project. If the calculated nitrate loading in the intended water supply equals or exceeds five mg/L nitrate as nitrogen, the proposal will need to develop a mitigation plan. The point of compliance shall be determined based on project specifics. (Ord. 1495 § 2, 2002).

14.15.280 Aquifer recharge area mitigation.

A. The City in consultation with the county health department shall review development proposals to assess aquifer(s) vulnerability and establish needed mitigation. Where determined to be necessary through the site assessment process, development approvals shall include conditions designed to prevent significant degradation of water quality or reduction in water quantity in aquifer recharge areas. The project shall not cause degradation of the groundwater quality below the standards described in chapter 173-200 WAC or Department of Ecology’s seawater intrusion policy.

B. Wellhead Protection Mitigation. Where a wellhead protection plan that addresses the project area exists, the City and/or health officer shall use the recommendations contained in the wellhead protection plan as a basis for formulating mitigations. In the absence of such a mitigation plan, the county health department and Public Utility District #1 shall jointly develop recommended mitigations, for review by the City, a summary of which shall be signed by the applicant and recorded with the applicant's property title. All new development shall be required to connect to the Public Utility District #1 Water System. (Ord. 1495 § 2, 2002).

GEOLOGICALLY HAZARDOUS AREAS

14.15.300 Geologically hazardous area designations.

A. Geologically hazardous areas include erosion hazards, landslide hazards, mine hazards, volcanic hazards and seismic hazards, and shall be designated consistent with the definitions provided in WAC 365-190-080(4).

B. Geologically hazardous areas shall be classified as "known or suspected risk," or "unknown risk." (Ord. 1495 § 2, 2002).

14.15.310 Geologically hazardous area initial project review.

A site visit shall be conducted by the director to determine whether: (1) "Areas of Known or Suspected Risk" identified below are or may be present within 300 feet of the project or activity; (2) the proposed project or activity is or may be within a distance from the base of an adjacent landslide hazard area equal to the vertical relief of said hazard area; (3) the proposed activity may result in or contribute to an increase in hazard; and (4) whether the project or hazard areas pose a risk to life, property, or other critical areas on or off the project area sufficient to require a site assessment. Areas of known or suspected risk:

A. Erosion Hazard Indicators.

1. Those project areas located within 300 feet of map unit delineations #51 Dystic Xerorthents, #99 Mundt and #117 Saxon or mapped as moderate to severe, severe or very severe erosion hazard or as having severe rill and inter-rill erosion hazard as identified in the U. S. Department of Agriculture Natural Resources Conservation Service Soil Survey of Skagit County Area, WA (1989) or most currently adopted.

2. Those project areas that fall within any soil sloping greater than or equal to 30 percent.

3. The project area falls within areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two Skagit County (1978 or most currently adopted) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide);

4. Those project areas that may be considered to have an erosion hazard as a result of rapid stream incision or stream bank erosion.

B. Landslide Hazards Indicators.

1. The project area falls within or 300 feet from areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two, Skagit County (1978 or most currently adopted) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide);

2. The project area falls within or 300 feet from slopes having the following characteristics: Gradients of 15 percent or greater intersecting geologic contacts with permeable sediments overlying low permeability sediment or bedrock and springs or groundwater seepage are present;

3. The project area falls within or 300 feet from any area having a 40 percent slope or steeper and with a vertical relief of 10 feet or more;

4. The project area falls within or 300 feet from any areas of historic failure such as areas designated as quaternary earth slumps, earthflows, mudflows, lahars, debris flows, rock slides, landslides or other slope failures on maps or technical reports published by the U. S. Geological Survey such as topographic or geologic maps, or the Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies;

5. The project area falls within or 300 feet from any areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action shall be addressed as a flood hazard consistent with this chapter;

6. Areas that have shown movement during the Holocene epoch or which are underlain or covered by wastage debris of that epoch;

7. The project area falls within or 300 feet from any slopes that are parallel or sub-parallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

8. The project area falls within or 300 feet from any slopes with a gradient greater than 80 percent and subject to rock fall during seismic shaking;

9. The project area falls within or 300 feet from any areas that show evidence of or are at risk from snow avalanches.

C. Seismic Hazards. Seismic hazard areas shall include areas that are subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

1. The project includes structures (as defined in the International Building Code) proposed to be located in any of the areas described in subsection (A) or (B) of this section or located in areas to have a potential for soil liquefaction and soil strength loss during ground shaking as

identified on the U. S. Geologic Survey Relative Slope Stability Map of the Port Townsend Quadrangle, Puget Sound Region, Washington (1985 or most currently adopted), or as identified in the field. A geologic hazard site assessment is not required for soil liquefaction and soil strength loss resulting from seismic activity unless other criteria provided in this section apply. The building official shall require evaluation using the provisions set forth in the adopted building code.

2. The structures or critical facilities are proposed to be located on a Holocene fault line. (No critical facilities shall be located on a Holocene fault line as indicated on investigative maps or described in studies by the United States Geologic Survey, Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies, or as identified in the field.) All developments on a Holocene fault line shall require a disclosure statement indicating the property is located on an active fault and may be geologically hazardous.

D. Volcanic Hazards. The project area is located in a volcanic hazard zone for Glacier Peak, Washington (Open-File Report 95-499); or in a volcanic hazard area of Mount Baker, Washington (Open-File Report 95-498). A site assessment is not required for volcanic hazard areas unless other criteria provided in this section apply.

E. Other Geologic Hazard Indicators.

1. The project area falls within or 300 feet from an alluvial fan as designated on the Skagit County Alluvial Fan Study Orthophoto Maps;

2. The project area falls within or 300 feet from a mine hazard area as designated on the Department of Natural Resources Map: Coal Measures of Skagit County (1924) or within 300 feet of any other current or historic mine operations determined to be geologic hazards as described in Title 14, geologically hazardous areas;

3. Areas of Unknown Geologic Hazards. As part of any development application where no current information is available to confirm that the items identified in this section are present on the project area, the critical areas review required by this chapter shall provide a description of the known and visible site features and be used by the City in evaluating whether a geologically hazardous area site assessment is required pursuant to this section. (Ord. 1495 § 2, 2002).

14.15.320 Geologically hazardous area site assessment requirements.

A. Site Visit Determination. A determination shall be made as follows:

1. No Site Assessment. Where the City determines that the project or activity area has no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off-site, no additional site assessments shall be required prior to approval under the provisions of this chapter.

2. Site Assessment Required. If the City determines during the site visit that the proposed development activity falls within 300 feet of an “Area of Known or Suspected Risk” and the geologic condition may pose a risk to life and property on or off the project area, then a geologically hazardous area site assessment of the project area by a qualified professional as described in subsection (B) of this section shall be required as part of the complete development permit application.

B. Geologically Hazardous Area Site Assessment. Site assessment reports shall be prepared by a qualified professional. Portions of the report relating to recommended design or mitigation shall be prepared under supervision of a licensed professional engineer. A qualified professional shall mean an engineer, licensed in the state of Washington, with training and experience analyzing geologic, hydrologic, and groundwater flow systems in Washington state; or by a geologist who earns his or her livelihood from the field of geology and/or geotechnical analysis, with training and experience analyzing geologic, hydrologic and groundwater flow systems in Washington State, who has received a relevant degree from an accredited four-year institution of higher education.

The geologically hazardous area site assessment report shall classify the type of hazard in accordance with this title. The site assessment report shall include the following as appropriate:

1. A site plan must be prepared in accordance with the development permit requirements. The site plan shall depict the height of slope, slope gradient and cross section of the site. The site plan shall indicate the location of all existing structures, proposed structures and any significant known geologic features on the subject site. The site plan shall also include the location of springs, seeps, or other surface expressions of groundwater. The site plan shall also depict any evidence of surface water or storm water runoff;

2. A detailed description of the project, its relationship to potential geologic hazard(s), and its potential impact upon the hazard area(s), the subject property and adjacent properties. The description shall make a determination if a geologically hazardous area(s), , is present on the subject site.

The narrative shall include a full discussion of the geologic factors and conditions on the subject site resulting in the qualified professionals conclusions;

3. An assessment of the geologic characteristics and engineering properties of the soils, sediments, and/or rock of the subject property and potentially affected adjacent properties. Soils analysis shall be accomplished in accordance with the Unified Soil Classification System;

4. A description of load intensity including surface water and groundwater conditions, public and private sewage disposal systems, fills and excavations and all structural development;

5. An assessment describing the extent and type of vegetative cover to include tree attitude;

6. For potential landslide hazards: Estimate slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure. Quantitative analysis of slope stability or slope stability modeling may be required by the City;

7. Additional site assessment standards may be required if necessary to demonstrate compliance with this chapter.

C. Site Assessment Conclusions.

1. Where the qualified professional determines that a geologically hazardous condition is not present on the subject site and/or will not occur as a result of the proposed project, will have no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off-site, no additional site assessments shall be required prior to approval under the provisions of this chapter. The qualified professional shall be required to certify that a geologic hazard is not present on the subject parcel.

2. Properties containing geologically hazardous conditions shall require a geologically hazardous area mitigation plan. Essential public facilities shall not be sited within designated geologically hazardous areas (Exception: volcanic hazard areas). No residential structures shall be located in geologically hazardous areas or their buffers that cannot be fully mitigated. (Ord. 1495 § 2, 2002).

14.15.330 Geologically hazardous area mitigation standards.

The mitigation plan shall be prepared by a professional engineer or geologist under supervision of a professional engineer and include a discussion on how the project has been designed to avoid and minimize the impacts. The plan shall also make a recommendation for the minimum building setback from any bluff or slope edge and/or other geologic hazard shall be based upon the geotechnical analysis required under this title. Mitigation plans shall include the location and methods of drainage, locations and methods of erosion control, a vegetation management and/or restoration plan and/or other means for maintaining long-term stability of geologic hazards. The plan shall also address the potential impact of mitigation on the hazard area, the subject property and affected adjacent properties. The mitigation plan must be approved by the City and be implemented as a condition of project approval.

Within designated geologic hazards, mitigation plans shall address the appropriate items listed below as required by the site assessment. One or more of the following mitigation standards shall be included as components of a mitigation plan pursuant to the requirements of this title, Site assessment report. Other mitigation standards, other than those listed below, may be required depending on the geologic hazard and the site conditions.

A. Mitigation Standards.

1. A temporary erosion and sedimentation control plan prepared in accordance with the requirements of BMC Title 14, Surface Water Management, as amended.

2. A drainage plan for the collection, transport, treatment, discharge and/or recycle of water in accordance with the requirements of BMC Title 14, Surface Water Management, as amended.
3. All proposals involving excavations and placement of fills shall be subject to structural review under the appropriate provisions as found in the Uniform Building Code.
4. Critical facilities shall not be sited within designated geologically hazardous areas. (Exception: volcanic hazard areas).
5. Surface drainage shall not be directed across the face of a landslide hazard (including ravines). If drainage must be discharged from the hazard area into adjacent waters, it shall be collected above the hazard and directed to the water by tight line drain and provided with an energy dissipating device at the point of discharge.
6. All infiltration systems such as, storm water detention and retention facilities, and curtain drains utilizing buried pipe or French drain, are prohibited in geologically hazardous areas and their buffers unless a site assessment report indicates such facilities or systems will not affect slope stability and the systems are designed by a licensed civil engineer. The engineer shall also certify that the system and/or facilities are installed as designed.
7. Vegetation Removal and Replanting. Removal of vegetation in landslide hazard, erosion hazard and coastal bluff hazard areas shall be minimized. Any replanting that occurs shall consist of trees, shrubs, and ground cover that is compatible with the existing surrounding vegetation, meets the objectives of erosion prevention and site stabilization, and does not require permanent irrigation for long-term survival.
8. A minimum buffer with a width of 30 feet shall be established from the top, toe and all edges of all landslide hazardous areas. Existing native vegetation shall be maintained in accordance with mitigation recommendations within the buffer area. Any modifications to the buffer requirement shall be based on the report and recommendations of the professional geologist under supervision of a licensed professional engineer. The buffer may be reduced to a minimum of 10 feet when an applicant demonstrates to the director that the reduction will adequately protect the proposed development, adjacent developments and uses and the subject critical area. The buffer may be increased by the Community Development Director for development adjacent to a ravine which is designated as unstable on the Coastal Zone Atlas, Washington, Volume Two Skagit County (1978 or most current edition) or where a larger buffer is necessary to prevent risk of damage to proposed and existing development (as in the case where the area potentially impacted by a landslide exceeds 30 feet). Normal non-destructive pruning and trimming of vegetation for maintenance purposes; or thinning of limbs of individual trees to provide a view corridor, shall not be subject to these buffer requirements.
9. Seismic Hazard Areas. Structural development proposals shall meet all applicable provisions of the Uniform Building Code.

The City shall evaluate documentation submitted including the, site assessment report, and condition permit approvals to minimize the risk on both the subject property and affected adjacent properties. All conditions on approvals shall be based on known, available, and reasonable methods of prevention, control and treatment. Evaluation of geotechnical reports may also constitute grounds for denial of the proposal.

B. Alterations of the Buffer and/or Geologically Hazardous Area. Alterations of the buffer and/or geologically hazardous area may occur for development meeting the following criteria:

1. No reasonable alternative exists; and
2. A site assessment report is submitted and certifies that:
 - a. There is a minimal hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a qualitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties; or the geologically hazardous area can be modified or the development proposal can be designed so that the hazard is eliminated or mitigated so that the site is as safe as a site without a geologically hazardous area;
 - b. The development will not significantly increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;
 - c. The development will not decrease slope stability on adjacent properties; and
 - d. Such alterations will not adversely impact other critical areas.

C. Noncompliance and Failed Mitigation Plans.

1. Projects found to be in noncompliance with the mitigation conditions issued as part of the development approval are subject to enforcement actions necessary to bring the development into compliance with this chapter.
2. Mitigation plans which do not fulfill the performance required based on the site assessment/geotechnical report findings or otherwise fail to meet the intent of this chapter shall be revised and the subject development brought into compliance with the revised mitigation plan.
3. Mitigation Plan Certification. Upon completion of the project, a qualified professional shall certify that the mitigation plan has been properly implemented. The certification shall be required prior to final approval of the project by the director. (Ord. 1495 § 2, 2002).

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

14.15.350 Fish and wildlife habitat conservation area designations.

A. Fish and wildlife habitat conservation areas (HCAs) shall be designated and classified as provided for in the definition section of this chapter. The map and species references indicated are intended to serve only as a guide during development review. In all cases, actual presence or absence for the listed species or habitat shall prevail.

B. In addition to the HCAs, additional species and habitats of local importance may be designated by the community development director based on declining populations, sensitivity to habitat manipulation or special value including but not limited to commercial, game or public appeal.

C. In order to nominate an area or a species to the category of habitats and species of local importance, an individual or organization must:

1. Demonstrate a need for special consideration based on:

- a. Declining population,
- b. Sensitivity to habitat manipulation, or
- c. Commercial or game value or other special value, such as public appeal.

2. Propose relevant management strategies considered effective and within the scope of this chapter; and

3. Provide species habitat location(s) on a map (scale 1:24,000). Submitted proposals will be reviewed by the Community Development Director and forwarded to the Departments of Fish and Wildlife, Natural Resources, and/or other county and state agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies. A public hearing will be held for proposals found to be complete, accurate, and potentially effective and within the scope of this chapter. Approved nominations will become designated "Habitats/Species of Local Importance" and will be subject to the provisions of this chapter.

D. The following species and habitats have been designated on a site-specific basis according to the official Species and Habitats of Local Significance Map:

- 1. Great blue heron nest sites;
- 2. Vaux's swifts communal roosts;
- 3. Pileated woodpecker nest sites;
- 4. Osprey nest sites;
- 5. Townsend big-eared bat communal roosts;

6. Cavity nesting ducks breeding areas;
7. Trumpeter swan concentrations;
8. Harlequin duck breeding areas;
9. Waterfowl concentrations. (Ord. 1495 § 2, 2002).

14.15.360 Fish and wildlife habitat conservation areas initial project review.

A. A site visit shall be conducted to determine whether HCAs identified on a critical area checklist or on available map resources or whether HCAs not previously identified are present within 200 feet of the project or activity site.

B. Habitat Conservation Areas are designated by definition in this title and are referenced as follows:

1. An area with which anadromous fish, endangered, threatened or sensitive species have a primary association and/or their habitat such as those designated and mapped by the Washington State Department of Fish and Wildlife, Priority Habitats and Species Program;
2. A water of the state as defined under WAC 222-16-030;
3. A Critical Biological Area as designated and mapped by the Department of Ecology Coastal Zone Atlas dated June 1978 and/or the maps;
4. Designated species and habitats of local importance;
5. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;
6. Lakes, ponds, streams, and rivers planted with game fish by a government or tribal entity;
7. Areas with which anadromous fish species have a primary association; and
8. State Natural Area Preserves and Natural Resource Conservation Areas.

C. If the director determines through the site visit described in subsection (A) of this section that a fish and wildlife habitat conservation area (HCA) may be present within 300 feet of the proposed project or activity area, then a site assessment/habitat management plan, shall be required as part of the complete application. (Ord. 1495 § 2, 2002).

14.15.370 Fish and wildlife habitat conservation area site assessment requirements.

Site assessment/habitat management plans shall be prepared by a qualified fish and wildlife biologist with experience assessing the relevant species and habitats and include at a minimum, the

following requirements:

A. Site plan prepared in accordance with the permit requirements indicating all fish and wildlife habitat conservation areas falling within 300 feet of the subject property. This site plan may be prepared by the applicant subject to review by the qualified fish and wildlife biologist;

B. Project narrative describing the proposal including, but not limited to, associated grading and filling, structures, utilities, adjacent land uses, description of vegetation both within and adjacent to the habitat conservation area, and when deemed necessary by the administrative officer, surface and subsurface hydrologic analysis;

C. Impact analysis identifying and documenting the presence of all habitat conservation areas and discussing the project's effects on the fish and wildlife habitat conservation areas;

D. Regulatory analysis including a discussion of any federal, state, tribal, and/or local requirements or special management recommendations which have been developed for species and/or habitats located on the site;

E. Mitigation report including a discussion of proposed measures of mitigating adverse impacts of the project and an evaluation of their potential effectiveness. Measures may include but are not limited to: establishment of buffer zones, preservation of critically important plants, and trees, limitation of access to habitat areas, seasonal restrictions of construction activities, establishment of a timetable for periodic review of the plan and/or establishment of performance or maintenance bonds;

F. Management and maintenance practices including a discussion of ongoing maintenance practices that will assure protection of all fish and wildlife habitat conservation areas on-site after the project has been completed. This section should include a discussion of proposed monitoring criteria, methods and schedule;

G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in this title. (Ord. 1495 § 2, 2002).

14.15.380 Fish and wildlife habitat conservation area mitigation standards.

Fish and wildlife habitat conservation areas shall be protected in accordance with local determination of appropriate conditions considering the site-specific recommendations from agencies with jurisdictions over the specific area, which may include but not be limited to the Washington State Department of Fish and Wildlife (WDFW), Department of Ecology, federally recognized Indian tribes located within Skagit County, WDFW Management Recommendations for Washington Priority Habitats and Species, and site-specific information supplied by the applicant.

Development proposals shall be reviewed for potential impacts to fish and wildlife habitat conservation areas. The determination of potential impacts shall be dictated by site conditions and be made in consultation with the Washington State Departments of Ecology, Fish and Wildlife and

Natural Resources and federally recognized Indian tribes located in Skagit County. If it is determined that a proposed project may have an adverse effect on a fish and wildlife habitat conservation area, the applicant shall implement a habitat management plan including mitigation measures in conformity with the performance standards outlined below.

A. Riparian Performance Standards. Riparian buffer areas shall be established from the ordinary high water mark. The intent of riparian buffers is to protect five basic riparian forest functions that influence in-stream and near-stream habitat quality. These are:

1. Recruitment of large woody debris (LWD) to the stream: LWD recruitment creates habitat structures necessary to maintain salmon/trout productive capacity and species diversity.
2. Shade. Shading by the forest canopy maintains cooler water temperatures and influences the availability of oxygen for salmon/trout.
3. Bank Integrity (Root Reinforcement). Bank integrity helps maintain habitat quality and water quality by reducing bank erosion and creating habitat structure and instream hiding cover for salmon and trout.
4. Runoff Filtration. Filtration of nutrients and sediments in runoff (surface and shallow subsurface flows) helps maintain water quality.
5. Wildlife Habitat. Functional wildlife habitat for riparian-dependent species is based on sufficient amounts of riparian vegetation to provide protection for nesting and feeding.

B. Standard Riparian Buffers. Riparian areas have the following standard buffer requirements (Note: Riparian areas do not extend beyond the toe of the slope on the landward side of existing dikes or levees unless specifically exempt from Federal Vegetation Management requirements. See also 14.15 for list of activities allowed within critical areas, including riparian areas.):

Water Type Riparian Buffer	
Type 1 and 2	200 feet
Type 3	100 feet
Type 4 and 5	50 feet

Once buffers are established, they shall not be altered except as allowed below. Riparian buffers not currently meeting the minimum standards shall be restored; provided, that such restoration does not conflict with other provisions of this chapter. In implementing buffer widths other than the standard riparian buffers identified above, the director shall provide opportunity for review and comment from appropriate federal, state or tribal natural resource agencies to ensure the use of best available science. These comments shall be included in the public record along with the basis and rationale for requirement or approval of any such non-standard buffers.

1. Increasing Buffer Widths. The City may increase the standard buffer widths on a case-by-case basis, or to establish non-riparian buffer widths, when such buffers are necessary

to protect priority fish or wildlife (e.g., great blue heron nesting colonies, osprey or cavity nesting ducks) using the HCA. This determination shall be supported by appropriate documentation from the Departments of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife using the HCA.

2. Decreasing Buffer Widths. Decreasing standard buffers will be allowed only if the applicant demonstrates that all of the following criteria are met:

- a. A decrease is necessary to accomplish the purposes of the proposal and no reasonable alternative is available; and
- b. Decreasing width will not adversely affect the fish and wildlife habitat functions and values; and
- c. If a portion of a buffer is to be reduced, the remaining buffer area will be enhanced, using native vegetation, artificial habitat features, vegetative screening and/or barrier fencing as appropriate to improve the functional attributes of the buffer and to provide equivalent or better protection for fish and wildlife habitat functions and values; and
- d. The buffer width shall not be reduced below 50 percent of the standard buffer width unless t no other reasonable alternative exists and that no net loss of HCA riparian functional values will result, based on a functional assessment provided by the applicant utilizing a methodology approved by the City.

C. Allowed Uses in HCAs or Buffers.

1. Docks. Docks designed to facilitate low-impact uses, such as education and/or private, non-commercial recreation may be permitted within fish and wildlife HCAs under the following conditions:

- a. The activity will have minimum adverse impact to the fish and wildlife habitat conservation area;
- b. The activity will not significantly degrade surface water or groundwater;
- c. The intrusion into the fish and wildlife habitat conservation area and its buffers is fully mitigated; and
- d. An opportunity for review and comment by federal, state and tribal natural resource agencies shall be provided.

2. Limited park or recreational access to a fish and wildlife habitat area or its required buffer, provided that all of the following are satisfied:

- a. The access is part of a public park or a recreational resort development that is dependent on the access for its location and recreational function;
- b. The access is limited to the minimum necessary to accomplish the recreational function;
- c. The access and the balance of the development is consistent with other requirements of the Burlington Municipal Code and the Burlington Shoreline Master Program; and
- d. The proponent obtains a written approval from the city council for the limited access and associated mitigation.

3. Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved provided, that such activity shall not result in a decrease in riparian functional values and shall not prevent or inhibit the buffer's recovery to at least pre-altered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails, viewing platforms, and storm water management facilities such as grass-lined swales.

4. In the riparian buffer, removal of hazardous, diseased or dead trees and vegetation when necessary to control fire, or to halt the spread of disease or damaging insects consistent with the State Forest Practices Act, chapter 76.09 RCW, or when the removal is necessary to avoid a hazard such as landslides or pose a threat to existing structures may be permitted with prior written approval. Any removed tree or vegetation shall be replaced with appropriate species. Replacement shall be performed consistent with accepted restoration standards for riparian areas within one calendar year. The Community Development Director may approve alternative tree species to promote fish and wildlife habitat.

Prior to commencement of tree or vegetation removal and/or replacement, the landowner must obtain written approval from the director.

Performance-Based Riparian Standards*

(These standards must be exceeded before additional activity can be permitted within the riparian zone)

Watertype Performance standards

Type 1 & 2

(Fish Bearing)

Maintain 95 percent of total LWD recruitment expected to enter the stream from a mature stand; and

Maintain 85 percent of the trees which are greater than 24-inch DBH within 100 feet of stream;
and

Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge)

The applicant may further request some limited timber harvest of up to 30 percent of the merchantable timber within the outer 100 feet of any 200-foot required buffer provided the harvest:

- a. Does not reduce the LWD and canopy requirements; and
- b. The applicant will increase the total buffer size by 50 feet to mitigate for the limited timber harvest in the required buffer to provide additional wildlife habitat. The additional 50 foot buffer shall retain a minimum of 50 percent of the total number of trees with 25 percent of the total trees left having a diameter at breast height (DBH - 4 1/2 feet) greater than 12 inches; and
- c. No more than 50 percent of the dominant trees in the outer 100 feet may be harvested.

Type 3

(Fish Bearing)

Maintain 85 percent of total LWD recruitment expected to enter the stream from a mature stand;
and

Maintain 85 percent of the trees which are greater than 18-inch DBH within 100 feet of stream;
and

Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge).

Type 4 & 5

(Non-fish Bearing)

Maintain 50 percent of total LWD recruitment expected to enter the stream from a mature stand;
and

Maintain 85 percent of the trees which are greater than 24-inch DBH within 50 feet of stream; and

Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge).

*Note: Applicants electing to employ performance based mitigation in accordance with the above matrix shall include appropriate analysis and justification in their site assessment/habitat management plan.

D. Bald eagle habitats shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292); a cooperative habitat management plan shall be developed in coordination with the Department of Fish and Wildlife whenever activities that alter habitat are proposed near a verified nest territory or communal roost.

E. Wetlands that are identified as a fish and wildlife habitat conservation area shall be protected according to the provisions in this title, referencing increasing buffer widths. If the wetland buffer widths, standard buffer widths conflict with this section, the buffer widths providing the greatest protection shall apply.

F. All other fish and wildlife habitat conservation area, including Habitats/Species of Local Significance, shall be protected on a case by case basis by means of a habitat management plan based on the PHS program, Initial Project Review and site assessment/habitat management plan.

G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in this title. (Ord. 1495 § 2, 2002).

FLOOD HAZARD AREA

14.15.390 Flood hazard area designations.

Flood hazard areas shall be designated as those areas identified as A, AE, AO, AH, A1-10, A12, A14, A16, A18, A21-22, V1 and V4 zones on the Official Flood Insurance Rate Map for the city of Burlington as amended. Cumulatively these zones represent the floodway and 100-year floodplain. (Ord. 1495 § 2, 2002).

14.15.400 Development in floodplains – General.

The following provisions shall apply to all lands within the floodplain:

A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

B. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of the over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

C. Construction Materials and Methods. All development requiring a floodplain permit shall be constructed utilizing materials and utility equipment resistant to flood damage, and methods which minimize flood damage, which methods shall include anchoring adequately to prevent flotation,

collapse, or lateral movement.

D. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

E. Utilities. New and replacement water and sewer systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from sewage systems into floodwaters.

On-site sewage disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

F. Subdivisions. Subdivisions shall be designed to minimize flood damage, including:

1. Public utilities and facilities which are resistant to flood damage;
2. A drainage system designed to minimize flood damage;
3. One-hundred-year flood elevation data provided on all subdivisions;
4. Where base flood elevation data has not been provided or is not available from another authorized source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).

G. Elevation or Floodproofing of Structures. New and substantially improved residential structures shall have the lowest floor including basement elevated to at least one foot above the 100-year flood elevation. The application for a permit to develop in the affected area must include the elevations of the 10-, 50-, and 100-year floods, where such data are available.

New and substantially improved nonresidential structures, excluding structures listed on the National or State Register of Historic Places, shall either be elevated to at least one foot above the 100-year flood elevation, or together with attendant utility and sanitary facilities, shall:

1. Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to a height of one foot above the 100-year flood elevation;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certification shall be provided to the official.

4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (G)(6) of this section;

5. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as constructed to one foot below that level);

6. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided,

b. The bottom of all openings shall be no higher than one foot above grade,

c. Openings may be equipped with screens, louvers, or other coverings or devices; provided that they permit the automatic entry and exit of floodwaters.

H. Buildings utilizing crawlspace construction, where any portion of the crawlspace is below the grade on all sides, shall meet the following requirements as excerpted from FEMA Technical Bulletin 11-01, which is hereby adopted by reference.

1. Crawlspace construction is not permitted in V zones.

2. Crawlspace construction is not permitted in zones A0 and A1-A30 where velocities exceed five feet per second, unless it can be shown through engineering analysis that the structural components will resist flotation, collapse and lateral movement from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

3. The interior grade of a crawlspace must not be more than two feet below the lowest adjacent exterior grade.

4. The height of the crawlspace, measured from the interior grade of the crawlspace to the top of the foundation wall, must not exceed four feet at any point. The height measured from the crawl space grade to the top of the next higher floor shall not exceed five feet at any point.

5. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace, within a reasonable time, after a flood event.

I. Manufactured Homes. All manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above one foot above the base flood elevation and be securely

anchored to an adequately anchored foundation system in accordance with the provisions of subsection (B) of this section.

J. **Recreational Vehicles.** Recreational vehicles shall be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use, on their wheels, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions.

K. **Prohibition Against Encroachment.** The cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the 100-year flood more than one foot at any point.

L. The applicant must record a notice on title that the property contains land within the riparian habitat zone and/or 100-year floodplain before a permit may be issued. (Ord. 1767 § 2, 2012; Ord. 1635 § 1, 2007; Ord. 1495 § 2, 2002).

14.15.410 Development in special flood risk zone.

A. Development other than the following is prohibited in the special flood risk zone; provided, that nothing in this section shall be construed as authorizing construction or fill in wetlands:

1. Minor structures and additions for which a building permit is not required and which create no new residences;
2. Minor fills and excavations of less than 12 cubic yards or which will not raise the level of land above that of the surrounding area;
3. Normal maintenance, resurfacing and rebuilding at comparable grade of bridges, streets and accessways;
4. Underground improvements;
5. Maintenance, repair, alteration and like replacement of existing improvements;
6. Other minor development which causes no significant impoundment or displacement of floodwaters, such as signs and small unenclosed structures;
7. Elevated structures which allow floodwaters to flow underneath and which meet the following criteria:
 - a. All structures shall be elevated so that the lowest supporting member is located no lower than one foot above the 100-year flood elevation, with all space below the lowest supporting member open so as not to impede the flow of water, except for breakaway walls as provided below.
 - b. Solid walls are prohibited below the base flood elevation to keep the area free of obstruction unless they are designed to breakaway. A breakaway wall shall have a design

safe loading resistance of not less than 10 and no more than 20 pounds per square foot.

c. All structures shall be securely anchored on piling, columns, or foundation walls oriented to the axis of the flow path. Said support elements shall be certified by a registered professional engineer or architect as capable of withstanding all applied loads of the 100-year flood flow.

d. There shall be no fill used for structural support.

B. Regardless of method of construction, operation, development, substantial improvement, or expansion of residential health care facilities is prohibited in the special flood risk zone.

C. New multifamily residential structures are prohibited in the special flood risk zone.

D. Subdivision of new residential lots, including short plats and full subdivisions, shall be prohibited unless the applicant can demonstrate that there will be a positive effect on the special flood risk area, including but not limited to the following:

1. New structures shall be located further away from the Slough than prior to subdivision.

2. New structures shall fully comply with this chapter.

3. New structures shall be located outside the special flood risk zone boundary, while some yards may encroach into the special flood risk zone.

4. New structures shall be located so that the proposed project will not affect the hydrologic or hydraulic characteristics of a flooding source and will comply with BMC 15.15.610(K). Designs for meeting this requirement must be certified by a registered professional engineer.

E. The following criteria shall be met in order to approve a proposed structure exceeding \$250,000 in value:

1. The proposed structure does not have a significant adverse impact on flood hazard.

2. All physically feasible alternatives to locating in the special flood risk zone have been evaluated and there is no viable choice other than to locate in the special flood risk zone.

3. Mailed notice shall be sent to adjacent property owners, if public notification is not already required by chapter 14A BMC.

4. Impact on the character of the existing neighborhood.

F. Developments for which a floodplain approval is required are prohibited between the riverward toe of dikes and levees along the Skagit River and the locations described as follows:

1. Lying within the area mapped, attached to the ordinance codified in this section, extending the distance shown from the landward toe of dikes and levees along the Skagit River in the corridor between the Railroad Bridge on the east and the city limits on the west;

2. Except as provided in subsection (F)(1) of this section, a line 100 feet landward of the landward toes of said dikes and levees.

This prohibition shall not apply to improvements to the dikes and levees themselves or improvements designed to aid in floodfighting, or interim uses involving no fill, asphalt or permanent structures when approved by the community development director in consultation with Dike District No. 12 and the public works director, with a temporary land use permit reviewed at six-month intervals. (Ord. 1683 § 3, 2009; Ord. 1523 § 3, 2003; Ord. 1508 § 3, 2002; Ord. 1495 § 2, 2002).

14.15.420 Development in the floodway.

Development for which a floodplain approval is required is prohibited in the floodway, other than utility outfall structures authorized by the Corps of Engineers and levee construction to maintain the structural integrity of critical infrastructure. (Ord. 1707 § 1, 2010; Ord. 1495 § 2, 2002).

14.15.430 Critical facility.

Construction of new critical facilities shall have the lowest floor elevated three feet or more above the 100-year flood elevation. (Ord. 1495 § 2, 2002).

COMPLIANCE

14.15.440 Compliance with critical area regulations.

No permit for a development proposal described in BMC 14.15 shall be issued unless it also complies with the regulations of this chapter. (Ord. 1495 § 2, 2002).

14.15.450 Construction.

In any case where the provisions of this chapter conflict with the provisions of the underlying zoning, the provisions of this chapter shall apply. (Ord. 1495 § 2, 2002).

14.15.460 Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person, owner, or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons, owners or circumstances. (Ord. 1495 § 2, 2002).

14.15.470 State Environmental Policy Act.

This chapter establishes minimum standards which are to be applied to specific land use and platting actions in order to prevent further degradation of critical areas in the city, and is not intended to limit the application of the State Environmental Policy Act (SEPA). Projects subject to SEPA shall be reviewed and may also be conditioned or denied. (Ord. 1495 § 2, 2002).

14.15.480 Liability disclaimer.

Since floods more severe than the 100-year flood occur on rare occasions, reliance on this chapter will not altogether guarantee freedom from flood damage, nor shall this chapter create liability on the part of the city for such damage. It is further noted that other data regarding 100-year floodplain elevations may exist which indicate a more severe threat than the data established by FEMA. Information on these other data sources shall be kept and made available at Burlington City Hall. (Ord. 1495 § 2, 2002).

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BURLINGTON, WASHINGTON IN THE MATTER OF
ADDING TITLE 14A TO THE BURLINGTON MUNICIPAL CODE AND AMENDING THE
CITY'S PERMIT PROCESSING PROCEDURES**

WHEREAS, the City of Burlington, Washington, (the "City") is a non-charter code city organized under the laws of Title 35A RCW now in effect; and

WHEREAS, the City has the authority to adopt development regulations pursuant to RCW 35A.11.020 and 35A.63.100, and in compliance with Chapter 36.70A RCW, WAC 365-196-600 through WAC 365-196-660 and WAC 365-196-800 through 365-196-870; and

WHEREAS, the Planning Commission of the City held a public hearing on September 20, 2017 and adopted a schedule and work plan for updating the Burlington Municipal Code; and

WHEREAS, the City's permit processing and appeal procedures, public notification requirements, and review timelines are currently codified in numerous locations throughout the Burlington Municipal Code; and

WHEREAS, the City's permit processing and appeal procedures, public notification requirements, and review timelines must be revised to remove repetitive, contradictory, and obsolete language and provide clear direction for the use and enforcement of those titles of the Burlington Municipal Code relating to the regulation and development of land, specifically Title 1, Title 2, Title 8, Title 14, Title 14A, Title 15, Title 16, and Title 17; and

WHEREAS, it is necessary to retain and empower a Hearing Examiner to issue decisions on complex development permits and decide appeals; and

WHEREAS, in order to address the issues outlined above the City's Planning Department proposed consolidating the City's permit processing and appeal procedures, public notification requirements, and review timelines in a new code title to be codified as Title 14A; and

WHEREAS, after reviewing an Environmental Checklist the City's SEPA Responsible Official issued a Determination of Non-significance (DNS) on October 24, 2017 for the proposed amendments and mailed the DNS to all affected public agencies. Notice of Determination of Non-significance was published in the Skagit Valley Herald on October 31, 2017; and

WHEREAS, following the issuance of the DNS a 60 day period was provided for public comment; and

WHEREAS, the City's Planning Commission reviewed the proposed changes to the Burlington Municipal Code at a public hearing on October 18, 2017 in compliance with RCW 36.70A.035; and

WHEREAS, the language of proposed Title 14A was forwarded to the Washington State Department of Commerce for review pursuant to RCW 36.70A.106 on October 25, 2017; and

WHEREAS, the Planning Commission held a public meeting on November 8, 2017 and voted to recommend the City Council adopt an ordinance adding Title 14A to the Burlington Municipal Code; and

WHEREAS, the Planning Commission adopted written findings in support of their recommendation which are attached to this ordinance as exhibit "A"; and

WHEREAS, the Planning Commission's findings and recommendation were presented to the City Council at a regular public meeting on November 21, 2017; and

WHEREAS, the language of Title 14A recommended by the Planning Commission is attached to this ordinance as exhibit "B"; and

WHEREAS, the language of Title 14A recommended by the Planning Commission is consistent with and implements the provisions of the City of Burlington Comprehensive Plan as required by RCW 36.70A.040; and

WHEREAS, after considering the Planning Commission's recommendation, and after further consideration of such Title 14A, and the Council being otherwise fully informed;

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 8, 2017 and attached hereto as exhibit "A"; and
2. The text of exhibit "B" shall be added to the Burlington Municipal Code and codified as Title 14A BMC; and
3. The Board of Adjustment established by Chapter 17.78 BMC shall be disbanded; and

4. The amendments to the Burlington Municipal Code adopted by this ordinance shall become effective on January 1, 2018;

INTRODUCED AND PASSED at a regular meeting of the City Council of the City of Burlington on this 28th day of December, 2017.

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



PLANNING COMMISSION RECOMMENDATION

DATE: November 8, 2017

PROJECT: Comprehensive Municipal Code Update and Reorganization – Phase 2
Titles 1, 8, and 14A – Option “A”

LOCATION: N/A – Citywide Municipal Code Update

NUMBER: DRA/CPA 1-2017

APPLICANT: City of Burlington

SUMMARY:

The Planning Commission has reviewed the proposed amendments to titles 1, 8, and 14A of the Burlington Municipal Code. The proposed amendments to titles 1 and 8 would consolidate the City’s penalty and enforcement provisions into a single chapter and expand the enforcement options available to the City Attorney. Title 14A would consolidate the City’s permit processing procedures and public notification requirements in a single location. In addition, the adoption of Title 14A would recognize the establishment of a Hearing Examiner system. The Hearing Examiner would be charged with reviewing administrative appeals, variances, and complex permit applications.

FINDINGS:

Code Enforcement Provisions

1. Over time new code chapters and sections have been added to the Burlington Municipal Code to address emerging issues. Often, additional code enforcement provisions were added at the same time. As a result, the Burlington Municipal Code currently contains a patchwork of code enforcement penalties and enforcement provisions.
2. The existing patchwork of penalties and code enforcement provisions has made it difficult for City staff to address code violations effectively.

3. The proposed amendments to titles 1 and 8 of the Burlington Municipal Code will consolidate the numerous code enforcement provisions and penalties in a single code title and allow the City to address code violations as criminal violations, civil infractions, or as nuisances.
4. The Planning Commission finds that the proposed amendments will make the City's code enforcement process more transparent, efficient, and effective.
5. The Planning Commission has concerns that some of the penalty provision identified in titles 1 and 8 may conflict with one another. In order to ensure there are no conflicting penalty provisions, the Planning Commission finds that staff should review these code titles for consistency and make any necessary corrections before final action by the City Council.
6. The proposed code changes include provisions in BMC 1.24.080 and 1.44.120 that allow the City to revoke or suspend "permits granted in error". The Planning Commission has concerns that this provision may be unconstitutional or contrary to established legal precedent. The Planning Commission finds that it would be prudent for staff to review these code provisions with the City's legal counsel and make any necessary changes before final action by the City Council.

Permit Processing Procedures

7. Currently many of the City's permit processing procedures, timelines, and public notice requirements are located in chapter 17.68 BMC. However, permit processing procedures are also located in a number of other code sections. In some instances these various permit processing procedures are conflicting, redundant, or out of compliance with Washington State law.
8. The Planning Commission finds that proposed code title 14A will create a single location in the municipal code which clearly identifies decision authorities, permit processing timelines, and public notice requirements.
9. Currently the Burlington Municipal Code grants the Board of Adjustment authority to decide variance requests and certain administrative appeals. The Planning Commission has authority to approve, or make recommendations to the City Council, on certain permit types, and the City Council has final authority over administrative appeals, subdivisions, and conditional use permits.
10. The Planning Commission finds that the current permit processing and appeal system may unnecessarily expose the City to liability, fails to produce a comprehensive decision record, and needlessly delays permit decisions.

11. The Planning Commission finds that establishing a Hearing Examiner system would allow an independent, semi-autonomous official to review City land use decisions and decide appeals. The Planning Commission further finds that this system would provide permit applicants, city residents, and property owners with timely, consistent, fact-based, permit decisions.
12. The draft of title 14A provided to the Planning Commission would vest final decision making authority for all type III decisions in the Hearing Examiner. Hearing Examiner decisions would then only be appealable to Superior Court by filing a petition under the Washington State Land Use Petition Act (LUPA). The Planning Commission finds that in the interest of preserving legislative oversight, and in interest of preserving a low cost accessible appeal process, title 14A should be amended as shown on attached exhibit "A" to provide at least one administrative appeal opportunity for type I, II, and III land use decisions.

RECOMENDATION:

Based on the findings presented above the Planning Commission respectfully makes the following recommendations to the City Council:

1. The City Council should adopt the proposed changes to titles 1 and 8 of the Burlington Municipal Code. These changes are identified under tabs 1-B and 2-B of the binders provided to the City Council.
2. Staff should transmit a list to the City Council of any changes necessary to ensure consistency between the penalty provisions identified in titles 1 and 8. These changes should be incorporated into the final code drafts adopted by the City Council.
3. Staff should review the permit suspension and revocation provisions set forth in BMC 1.24.080 and 1.44.120 to ensure these provisions are constitutional and consistent with established legal precedent. Any resulting changes should be incorporated into the final drafts adopted by the City Council.
4. The City Council should adopt the proposed consolidated permit processing procedures and codify these changes under Burlington Municipal Code Title 14A. The proposed consolidated permit processing code language is identified under tab 4-B in the binders provided to the City Council. The final draft adopted by the City Council should be revised to include the revised administrative appeal procedures identified on attached exhibit "A".
5. If the Hearing Examiner system referenced in proposed Title 14A BMC is adopted, the City Council should disband the Board of Adjustment.

City of Burlington - Planning Department Staff Report
Comprehensive Municipal Code Update and Reorganization
Phase 2 – Titles 1, 8, and 14A

DATED this 8th day of November 2017

Mani Malik - A.B.

Chair, City of Burlington Planning Commission

OPTION "A"

EXHIBIT "A"

8. Conditional use permits. (BMC 14.05.140)
9. Shoreline substantial development permits, variances and conditional use permits. (BMC 18.09.020)
10. Any other land use action or project permit approval identified by Burlington Municipal Code as a type III review.

D. **Type IV** decisions are legislative decisions made by the city council and limited quasi-judicial final decisions pursuant to the criteria identified in this chapter, in its capacity to establish policy and manage public lands, pursuant to existing legislative standards and based on the hearings examiner or planning commission's record, public meeting and recommendation, and an open and/or closed record public hearing by the city council, the staff report provided by the Planning Department and evidence presented at time of hearing before the city council. Notice of such hearing shall be as provided by BMC 14A.05.130.

Type IV decisions include the following:

1. Final decisions on subdivisions approval and site specific zoning map amendments. Chapter 16.05 BMC, BMC 14A.05.180 respectively)
2. Essential public facility conditional use permits. (Chapter 17.105 BMC)
3. Zoning text amendments. (BMC 14A.05.180, 17.125.090).
4. Area wide zoning map amendments. (BMC Sections 14A.05.180, 17.125.070)
5. Comprehensive plan adoption and amendment. (BMC 17.125.050)
6. Final decision as to appeals or adjustments of impact fees as per title 15.12. (BMC Section 15.12.100)
7. All decisions on site specific zoning amendments and text amendments which are not consistent with or require a corresponding change to the comprehensive plan.
- 7-8. Appeals of decisions on Type III project permit applications. (BMC 14A.05.060.D)
- 8-9. Any other land use action or project permit approval identified by Burlington Municipal Code as a type IV review.

14A.05.070 Applications – Generally.

- A. Applications for project permits and other land use actions shall be made by the property owner, lessee, contract purchaser, or a city agency, or by an authorized agent thereof.
- B. All applications for project permits or other land use actions shall be made to the director on a form provided by the community development department.
- C. Applications shall be accompanied by payment of the applicable filing fees, if any, as adopted by city council resolution in the current city fee schedule.

3. SEPA. An appeal of a SEPA threshold determination associated with a type II land use action shall be considered together with the appeal of the associated land use action.

4. Appeal Decision. The hearing examiner shall hear appeals of type II land use actions in a closed record hearing. Appeals of type II land use actions shall be processed as a type III decision. Notice of the appeal hearing and appeal decision shall be provided to all parties of record.

C. Type III decisions.

1. Appeal Decisions. Hearing Examiner decisions on appeals of Type I and II decisions Type III land use actions shall be appealed to Superior Court in accordance with the provisions of chapter 36.70C RCW, except that appeals of shoreline substantial development, shoreline variance, and shoreline conditional use permits shall be filed with the Shoreline Hearings Board as provided for by chapter 90.58 RCW.

Formatted: Indent: Left: 0.5"

2. Permit Decisions. Hearing Examiner decisions on Type III project permit applications may be appealed to the City Council by any party of record. Hearing Examiner decisions may be appealed only if, within 14 calendar days after written notice of the decision is mailed, a written appeal is filed with the Director.

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

3. SEPA Decisions. An appeal of a SEPA threshold determination associated with a type III land use action shall be considered together with the appeal of the associated land use action by whichever authority is charged with considering the appeal of the associated land use action.

Formatted: List Paragraph, Left, No bullets or
numbering

4. Submittal Requirements. Appeals filed with the City Council shall contain the following information:

a. The specific permit number or decision being appealed.

b. The name of the applicant and property owner;

c. If multiple parties file an appeal, the appeal shall designate a single representative or contact person.

d. The specific aspects of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and

e. Any applicable appeal fee identified in the fee schedule adopted by the City Council.

Formatted: p3, Left, Indent: Left: 0.5"

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

5. City Council Action. Within 30 days of receiving an appeal the City Council shall hold a closed record hearing. At the conclusion of the hearing the City Council shall either:

Formatted: Indent: Left: 0.5"

Formatted: Numbered + Level: 2 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.75" + Indent
at: 1"

a. Decline to consider the appeal; or

b. Consider the appeal and uphold the Hearing Examiner's decision; or

c. If, based solely on the record created by the Hearing Examiner, the City Council finds that the Examiner's decision is in error as a matter of fact or law the City Council may reverse the Examiner's decision. If the City Council reverses the Hearing Examiner's decision it shall make specific findings identifying the aspects of the Hearing Examiner's decision which are in error.

D. Type IV decisions. Type IV decision shall be appealed to Superior Court pursuant to Chapter 36.70C RCW, the Growth Management Hearings Board pursuant to RCW 36.70A.280, the Shoreline Hearings Board pursuant to chapter 90.58 RCW or other applicable statutory authority in accordance with Washington State law. An appeal of a SEPA threshold determination associated with a type IV land use action shall be considered together with the appeal of the associated land use action.

Formatted: Indent: Left: 1"

Formatted: Numbered + Level: 2 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.75" + Indent
at: 1"

Formatted: List Paragraph, Left, No bullets or
numbering

Formatted: Numbered + Level: 2 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.75" + Indent
at: 1"

Formatted: Indent: Left: 0.25"

Title 14A
LAND USE DECISIONS

Chapters:

14A.01 General Provisions

14A.05 Processing Land Use Actions –Decision Making Framework

Chapter 14A.01 GENERAL PROVISIONS

Sections:

- 14A.01.010 Title.
- 14A.01.020 Application.
- 14A.01.030 Purpose.
- 14A.01.040 Authority.
- 14A.01.050 Adoption by Reference.
- 14A.01.060 Definitions.
- 14A.01.070 Liability.
- 14A.01.080 Severability.

14A.01.010 Title.

This title shall be called “Land Use Decisions.”

14A.01.020 Application.

This title shall apply to land use decisions made by the city of Burlington. This title consolidates the review and decisions procedures for land use decisions identified in BMC Title 18 Shoreline Master Program; BMC Title 17, Zoning; BMC Title 16, Subdivisions; BMC Title 15, Building and Construction; and BMC Title 14, Environmental Regulations.

14A.01.030 Purpose.

The purpose of this title is to identify land use decisions to be made by the city, the person or department responsible for making such decisions, the criteria to be applied when making such a decision, and the applicable notice, hearing and appeal procedures.

14A.01.040 Authority.

This chapter is authorized pursuant to Chapters 36.70B and 36.70C RCW, Chapter 43.21C RCW and other applicable laws and regulations.

14A.01.050 Adoption by Reference.

Statutes, codes or regulations identified or adopted herein shall be the existing version of that statute, code or regulation and any subsequent amendment to the same, unless expressly stated otherwise.

14A.01.060 Definitions.

For the purpose of this title, the words listed in this chapter shall have the following meanings unless the context clearly indicates otherwise. Words used in the singular include the plural, and words used in the plural include the singular. (Ord. 1273 § 2, 1994).

“C”.

“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.

“Comprehensive Plan.” Means to comprehensive plan for the city of Burlington and any amendments thereto adopted pursuant to RCW 36.70A.

“Community Development Director” means the city administrator or designee.

“Conditional Use” allows certain uses listed as conditional in the zoning code, or for the establishment of uses not listed as permitted or conditional in any zone, if certain conditions can be met.

“D”

“Development Code” means Titles 14, 14A, 15, 16, 17 and 18 of the Burlington Municipal Code.

“Director” means the community development director.

“E”.

“Environmental Review.” Means the procedural requirements of the State Environmental Policy Act (SEPA), Chapter 43.21C RCW.

“H”.

“Hearing Examiner” means a person who may review and interpret land use regulations, conducts hearings, makes decisions and recommendations on land use applications, hears administrative appeals on permits, decisions or determinations made by city officials, and reviews and hears other matters as provided for in the Burlington Municipal Code and other ordinances. The hearing examiner serves in a role similar to that of a judge. The hearing examiner ensures that parties receive proper due process; and issues final decisions on some land use applications and makes recommendations to the City Council on others.

“L”

“Land use action” means an action taken by the appropriate city of Burlington review authority concerning the use and/or development of land or street right-of-way governed by the provisions of this Title, including project permits as defined in BMC 14A.01.060.

“Land division decision” means a review or approval required by title 16 BMC.

“O”.

“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 agent. (Ord. 1273 § 2, 1994).

“Open record hearing” means a hearing, conducted by the planning commission, hearings examiner 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.

“P”.

Party of record” means all persons, agencies or organizations who have submitted written comments in response to a notice of application, made oral comments in a formal public hearing conducted on the application, or requested in writing to be a “party of record”. In all cases the permit applicant and property owner shall be considered parties of record. Notwithstanding any of the foregoing, no person shall be a party of record who has not furnished an accurate post office mailing address.

“Person” means an individual, firm, partnership, corporation, municipal corporation, and government, and the individual’s or entity’s heirs, successors and assigns.

“Plan Review.” Plan review by the planning department is required for most land use actions 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.

“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.

“Project Permit.” A project permit or project permit application is defined as any land use or environmental permit or license required from a local government for a project action, including but not limited to:

- Administrative permits;
- Building permits;
- Building site plans;
- Conditional use permits;
- Critical area permits or approvals;
- Environmental determinations;
- Planned unit developments;
- Preliminary and final subdivision and short subdivisions;
- Shoreline substantial development permits or exemptions;
- Site plan review;
- Site-specific zoning map amendments that do not require a corresponding comprehensive plan amendment; or
- Variances.

A project permit does not include appeals, the adoption or amendment of a comprehensive plan or subarea plan, area wide amendments to the zoning map, or text amendments to the development code.

“Public meeting” means an informal meeting, hearing, workshop or other public gathering of people to obtain comments on a permit, plan or regulation for a proposed land use permit before the city’s decision. A public meeting may include, but is not limited to, community meeting or a meeting of the planning commission, a task force or neighborhood group, on plans, proposals, projects or issues. 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 record. (Ord. 1318 § 2, 1996; Ord. 1221 § 10, 1992).

“U”

“Use – Establish or Change.”

“Use” means the activity or purpose for which land or structures or combination of land and structures are designed, arranged, occupied, or maintained together with any associated site improvement. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any grading, leveling, paving or excavation. “Use” also means any existing or proposed configuration of land, structures, and site improvements, and the use thereof

“Z”

Zoning Exceptions and Changes.

- Variance. Allows relief from the dimensional or performance standards of the zoning code, such as front, side or rear setbacks.
- Rezone. This is a zoning map amendment. It changes the list of permitted uses of a specific site or sites under single ownership as well as the height, setback and other limitations, such as changing from residential to commercial or industrial. Rezones may be considered site specific or area wide. Rezones may or may not require corresponding changes to the comprehensive plan.
- 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. Zoning text amendments may or may not require corresponding changes to the comprehensive plan.

14A.01.070 Liability.

It is the specific intent of this title to place the obligation of compliance upon the property owner or party subject to the provisions of the chapters contained within this title. 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 officers, employees or agents for any injury or damage resulting from the failure of the property owner or party subject to the provisions of the chapters contained within this title, 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 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).

14A.01.080 Severability.

If any portion of this title is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section of this title.

Chapter 14A.05
PROCESSING LAND USE ACTIONS –DECISION MAKING FRAMEWORK

Sections:

- 14A.05.010 Title.
- 14A.05.020 Application.
- 14A.05.030 Purpose.
- 14A.05.040 Authority.
- 14A.05.050 Project permit applications – Consideration – Requirements.
- 14A.05.060 Classification of land use actions.
- 14A.05.070 Applications – Generally.
- 14A.05.080 Review criteria for decisions.
- 14A.05.090 Notice requirements, type and content of notice – General.
- 14A.05.100 Notice of application requirements and comment period.
- 14A.05.110 Public hearing requirements.
- 14A.05.120 Notice of decision requirements and content of notice.
- 14A.05.130 Standards to ensure performance and compliance with conditions.
- 14A.05.140 Conditional use applications, when required, submittal requirements, review criteria and conditions of approval.
- 14A.05.150 Variance applications, when required, submittal requirements, review criteria and conditions of approval.
- 14A.05.160 Plan review, when required, application submittal requirements, review criteria and conditions of approval.
- 14A.05.170 Reclassification of property including rezones and zoning ordinance text amendments, initiation of amendments, review criteria and conditions of approval.
- 14A.05.180 Amendments to the comprehensive plan, review criteria and conditions of approval.
- 14A.05.190 Appeal procedures.

14A.05.010 Title.

This chapter shall be called “Processing Land Use Actions- Decision Making Framework.”

14A.05.020 Application.

This chapter shall apply to all land use actions including project permits as defined in 14A.01.060.

14A.05.030 Purpose.

The purpose of this chapter is to identify the process for accepting and reviewing land use applications to determine consistency with applicable state regulations, the zoning map and Burlington Municipal Code requirements, the comprehensive plan and other applicable regulations.

14A.05.040 Authority.

This chapter is authorized pursuant to chapter 36.70A, 36.70B RCW, chapter 43.21C RCW and other applicable laws and regulations.

14A.05.050 Project permit applications – Consideration – Requirements.

A. Each proposed project permit, as defined in BMC 14A.01.060, shall file an application for a project permit. No project permit shall proceed without a valid project permit issued by the city. Applications shall contain all documents and information required by the applicable provisions of the BMC.

B. Within 28 days after receiving a project permit application, the planning department shall mail or provide in person a written determination to the applicant, stating either:

1. That the application is complete; or
2. That the application is incomplete and what is necessary to make the application complete.

The notice of complete application described above shall be combined with and issued simultaneously with the notice of application. The notice should also identify other local, state, or federal government agencies that may have jurisdiction over some aspect of the application.

C. A project permit application is complete for purposes of this section when it meets the procedural submission requirements of the land use regulations in effect on the date of application, and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

D. The determination of completeness may include the following as optional information:

1. A preliminary determination of those development regulations that will be used for project mitigation;
2. A preliminary determination of consistency with the comprehensive plan and development regulations; or
3. Other information the planning department chooses to include.

E. Applications shall automatically be deemed complete unless the applicant is notified within 28 days that the application is incomplete as required by BMC 14A.05.050(B).

F. Within 14 days after an applicant has submitted to the city additional information identified by the city as being necessary for a complete application, the planning department shall notify the applicant whether the application is complete or what additional information is necessary. (Ord. 1294 § 2, 1995).

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; and
4. Compliance with specific development standards.

H. Project review shall be used to identify specific project design and conditions relating to compliance with applicable regulations.

I. 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).

J. SEPA appeal hearings shall be combined with the hearing on the underlying project or any appeal of the underlying project or permit except where independent review is provided for by BMC 14.10.250.

14A.05.060 Classification of land use actions.

Land use actions governed by this Title are classified into four categories as set forth below. Projects requiring more than one type of decision should, whenever possible, be consolidated under the higher classification.

A. **Type I** decisions are administrative decisions which require no notice or hearing. These decisions are made by the appropriate administrative official based upon the application materials received and the specific criteria identified in this chapter. Type I decisions which are not categorically exempt from SEPA shall be processed as a Type II decisions.

Type I decisions include the following:

1. Building Permit including plan review. (See Title 15 BMC)
2. Boundary Line Adjustments. (Chapter 16.60 BMC)
3. Binding Site Plans. (Chapter 16.30 BMC)
4. Site Plan Review. (BMC 14A.05.160)
5. Code interpretations and other administrative decisions. (Chapter 17.01 BMC)
6. Temporary uses for less than one year where SEPA is not required.
7. Permits to establish or change uses that are permitted outright. (Chapter 17.01 BMC)
8. Final short subdivision approvals. (Chapter 16.20 BMC)

9. Final long subdivision approval, except that City Council approval shall be required pursuant to BMC 16.20.060.

10. Minor adjustments to approved land use and conditional use permits.

11. Shoreline exemptions. (Chapter 18.10 BMC)

12. Any other land use action or project permit approval identified by Burlington Municipal Code as a type I review.

B. Type II decisions are administrative decisions that require notification but do not require a hearing. These decisions are made by the appropriate administrative official based upon the application materials received and the specific criteria identified in this chapter.

Type II decisions include the following:

1. Accessory dwelling units. (BMC 17.15.070)
2. Shoreline Substantial Development Permits. (Chapter 18.09 BMC)
3. Preliminary short subdivision approval. (Chapter 16.10 BMC)
4. Permits and land use actions normally classified as a Type I decisions which are not categorically exempt from SEPA.
5. SEPA threshold determinations not associated with a land use action.
6. Shoreline variances. (Chapter 18.09 BMC)
7. Any other land use action or project permit approval identified by Burlington Municipal Code as a type II review.

C. Type III decisions are quasi-judicial decisions made by the hearing examiner pursuant to the criteria identified in this chapter, the staff report provided by the Planning Department and evidence presented at time of hearing before the hearing examiner.

Type III decisions include the following:

1. Reasonable use exemptions (Chapter 14.15 BMC)
2. Variances. (BMC 14A.05.150 17.95.140)
3. Appeals of Type I decisions. (Chapter 14A.05 BMC)
4. Appeals of Type II decisions. (Chapter 14A.05 BMC)
5. Preliminary long subdivision approval. (Chapter 16.05 BMC).
6. Site specific zoning map amendments (consistent with and not requiring an amendment to the comprehensive plan. (BMC 14A.05.170 and 17.125.080)

7. Conditional use permits. (BMC 14A.05.140)
8. Shoreline conditional use permits. (Chapter 18.09 BMC)
9. Any other land use action or project permit approval identified by Burlington Municipal Code as a type III review.

D. Type IV decisions are legislative decisions made by the city council and limited quasi-judicial final decisions pursuant to the criteria identified in this chapter, in its capacity to establish policy and manage public lands, pursuant to existing legislative standards and based on the hearings examiner or planning commission's record, public meeting and recommendation, and an open and/or closed record public hearing by the city council, the staff report provided by the Planning Department and evidence presented at time of hearing before the city council.

Type IV decisions include the following:

1. Final approval of site specific zoning map amendments.(BMC 17.125.080 and 14A.05.170)
2. Essential public facility conditional use permits. (Chapter 17.105 BMC)
3. Zoning text amendments. (BMC 14A.05.170 and Chapter 17.125).
4. Area wide zoning map amendments. (BMC Sections 14A.05.170, 17.125.070)
5. Comprehensive plan adoption and amendment. (Chapter 17.125 BMC and BMC 14A.05.180)
6. Final decision as to appeals or adjustments of impact fees pursuant to Chapter 15.12 BMC.
7. Zoning map and text amendments which are not consistent with, and require, a corresponding change to the comprehensive plan.
8. Appeals of decisions on Type III project permit applications. (BMC 14A.05.060.D).
9. Any other land use action or project permit approval identified by Burlington Municipal Code as a type IV review.

14A.05.070 Applications – Generally.

A. Applications for project permits and other land use actions shall be made by the property owner, lessee, contract purchaser, or a city agency, or by an authorized agent thereof.

B. All applications for project permits or other land use actions shall be made to the director on a form provided by the community development department.

C. Applications shall be accompanied by payment of the applicable filing fees, if any, as adopted by city council resolution in the current city fee schedule.

D. All project permit or land use actions necessary for a project shall, whenever possible, be included in the same application.

E. All applications shall contain the submittal information required by the applicable sections of this title and related sections of BMC Title 18 Shoreline Master Program; BMC Title 17 Zoning; BMC Title 16 Subdivisions; BMC Title 15 Buildings and Construction; BMC Title 12 Streets, Sidewalks, and Public Places; and BMC Title 14 Environmental Regulations. 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.

F. 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 in writing, the period for such submission if it is determined that the delay was not the fault of the applicant. (Ord. 1221 § 10, 1992).

G. Final Decision.

1. The city shall issue its notice of final decision on an application within 120 days after the city notifies the applicant that the application is complete (determination of completeness) unless the project permit is requested under Title 16 BMC, in which case a final decision shall be issued within 90 days. 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 BMC 14A.05.050.B is insufficient, it shall notify the applicant of the deficiencies and the procedures 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 an 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.

2. If the City 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.

3. The time limits established by subsection (1) above of this section do not apply if the application:

- a. Is initiated by the city or a department of the city;
- b. Requires an amendment to the comprehensive plan, an area-wide zone change or a text change to the development code;
- c. Requires approval of the siting of an essential public facility;
- d. 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 15.06.050 and 14A.05.050; or
- e. Another time period is prescribed by State law and the city is enjoined from using the time periods identified in this section. In such cases the time period prescribed by State law shall be used.

H. 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).

14A.05.080 Review criteria for decisions.

A. General Compliance: Compliance with all applicable statutes, codes, ordinances, standards and procedures, including the provisions of this title, is required prior to approval of a land use action. This includes, but is not limited to, Voluntary Mitigation Agreements entered into pursuant to SEPA and Title 14 BMC, and Development Agreements entered into pursuant to Chapter 36.70B RCW and Chapter 17.125 BMC.

B. Site plan review. See BMC 14A.05.160.

C. Conditional Use Permits. See BMC 14A.05.140.

D. Variances. See BMC 14A.05.150

E. Subdivisions and Short Subdivisions. See Title 16 BMC.

F. Environmental compliance. See Title 14 BMC.

G. Site specific zoning map amendment. See BMC 14A.05.170 and 17.125.080.

H. Area wide zoning map amendment. See BMC 14A.05.170 and 17.125.070.

I. Zoning code text amendment. See BMC 14A.05.170 and Chapter 17.125 BMC.

J. Comprehensive plan amendment. See BMC 14A.05.180 and Chapter 17.125 BMC.

14A.05.090 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 is using the optional DNS process or has made a determination of significance under SEPA and Chapter 14.10 BMC Environmental Policy, concurrently with the notice of application, the notice of application shall be combined with the optional DNS notice required by WAC 197-11-355(2) or 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. The 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 types of notice required are as set forth in Table 14A.05.100. The characteristics of required notice are set forth as follows:

1. Post a large sign on the site. 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. Individually mailed notices to owners and occupants in a 600-foot radius of the site. The notices 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. A periodic land use bulletin maintained on the department's website. This should include application notices, meeting and hearing dates, and permit decisions. The land use bulletin need not include information concerning type I permits.
5. Notice to parties of record. Parties of record shall receive direct notification of all related notices, meeting and hearing dates, and decisions.
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. Property owners within 600 feet of a site where a Type III use is proposed shall be sent a notice of application. This shall also apply to Type II accessory dwelling unit and short plat applications.

C. Types of Notice Required

Permit Type	Website Land Use Bulletin	Mailed Notice of Application	Mailed Notice of Decision	Publish in Newspaper	Large Sign	Mail Notice of Application to property owners within 600 feet	Notice of Public Meeting or Hearing
I		X ¹	X				
II	X	X	X	X	X ²	X ³	
III	X	X	X	X	X ²	X	X
IV	X	X ⁴	X ⁴	X ⁴	X ^{2,4}	X ⁴	X

1. Notice to applicant and property owner[s] only.
2. Sign not required for projects which are limited to interior remodels and changes or for SEPA non-project actions.
3. Only for preliminary short subdivision decisions.
4. Only required for site-specific permit decisions without a corresponding preliminary decision processed as a Type I, II or III permit. Notice for amendments to the comprehensive plan, area-wide changes to the zoning map or text changes to the development code are subject to notice requirements set forth in RCW 36.70A, BMC Chapter 17.130, SEPA requirements set forth in Chapter 14.10 BMC and other applicable provisions of the BMC.

D. Contents of Notice.

1. Notice of application shall include:

- a. The notice shall provide a description of the proposed land use action and its nature and location.
- b. The date of application, the date of the notice of completeness (BMC 14A.05.050 and 15.06.050) 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. Except for the large sign requirement, each notice shall also include a list of the land use decisions sought. The planning director shall specify detailed requirements for large signs;
- e. If applicable, a statement indicating that a hearing or meeting will take place, and if scheduled at the time of the notice, the date time, place and type of hearing. if no hearing is scheduled at the time of the notice, instructions on how to obtain information concerning the date, time, and place of any applicable hearing; and

f. 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 14A.05.050; and

g. If the optional DNS process is being used, the notice required by WAC 197-11-355(2); and

h. Any other information deemed appropriate by the community development director.

2. Notice of open public hearing shall include elements (D)(1)(a), (e), (g), (h) and (i) above.

E. 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).

14A.05.100 Notice of application requirements and comment period.

A. Notice of Application. When a land use permit application requiring a Type II, III or IV 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 15.06.050 and 14A.05.050. 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, III or IV 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 or if otherwise required by State law. The comment period shall begin on the date notice of application is issued by the City. 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).

14A.05.110 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 matters before the hearing examiner shall be pursuant to Chapter 17.120 BMC. Procedures for matters before the city council shall be adopted by administrative rule.

A. Draft Environmental Impact Statement. An open public hearing is required before the planning director to take comments for inclusion in the final environmental impact statement.

B. Conditional Use Permit. One open public hearing is required, before the hearings examiner.

C. Zoning and Sign Variance and Reasonable Use Exceptions. An open public hearing is required before the hearings examiner.

D. Preliminary long subdivision. See BMC Title 16 for detailed requirements. One open public hearing is required, before the hearings examiner.

E. Site Specific Rezone. For site specific rezones that are consistent with, and implement the comprehensive plan, an open public hearing is required before the hearings examiner. The recommendation of the hearings examiner shall be submitted to the city council for a closed-record hearing.

F. Zoning Text and Map Amendments which are not site specific, involve more than one project or site or which are not consistent with the comprehensive plan. An open public hearing is required before the planning commission and recommendations are submitted to the city council. The council may hold additional public hearings or meetings. The council may reject, adopt or amend by ordinance the recommendations of the planning commission.

G. Comprehensive Plan Adoption and Amendment. A public hearing is required before the planning commission. The council may adopt by ordinance the plan or any part of the plan. (Ord. 1396 § 60, 1999; Ord. 1318 § 7, 1996; Ord. 1221 § 10, 1992).

14A.05.120 Notice of decision requirements and content of notice.

Decisions on project permits and land use decisions shall be in writing and include written findings and conclusions in support of the decision. A copy of the decision shall be sent to all parties of record.

14A.05.130 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. Development agreement pursuant to RCW 36.70B.170-220 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 development agreements pursuant to RCW 36.70B.170-220.

G. Agreement to participate in a local improvement district or other public improvement project at a later date.

14A.05.140 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. A conditional use permit is also required for uses which are not listed as conditional or permitted in any zone. The community development director is authorized to waive the conditional use permit requirement for unlisted

uses if the director determines the use is substantially the same as another use permitted in the zone in which the proposed use will be located.

B. An application shall be required for approval of a conditional use permit. Applications for conditional use permit approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with title 14A BMC. A complete application shall include:

1. Vicinity map;
2. Name, address, phone number of property owner;
3. Name, address, phone number of engineer or agent;
4. A site plan drawn to scale showing all of the following:
 - a. Boundaries and dimensions of property;
 - b. Adjacent public streets;
 - c. Easements, existing and proposed;
 - d. Location and size of all existing and proposed utilities;
 - e. Location of buildings, including setbacks;
 - f. Location and layout of off-street parking;
 - g. Location and height of fences;
 - h. Location and size of signs;
 - i. Landscape detail;
5. Elevation drawings showing the height of all proposed buildings.

C. The site plan shall be adopted and made part of the permit. All subsequent permits authorizing development, building, site improvements or construction activity shall be in accordance with the approved site plan. Adjustments to the site plan may be approved as follows:

1. Minor Adjustments. Minor adjustments to previously approve conditional use permits may be approved by the Community Development Director. Minor adjustments shall be limited to those adjustments which may affect the precise dimensions or siting of buildings and improvements, but which do not affect the basic character, arrangement or function of the buildings and improvements, or the site coverage of the development, open space requirements, or impacts associated with the development. Dimensional adjustments shall not vary more than 10 percent from the original approval. Requests for minor adjustments shall be processed as a Type I permit in accordance with the procedures set forth in this section.

2. Major Adjustments. Major adjustments to previously approved conditional use permits may be approved by the hearing examiner. Any adjustment or modification which would deviate from the originally approved dimensions by more than 10 percent, or which the director determines is not consistent with the definition of a minor adjustment, shall be considered a major adjustment. Requests for major adjustments shall be processed as a Type III permit in accordance with the procedures set forth in this section.

3. The cumulative effect of multiple minor adjustments shall be considered and the director shall not approve a request for a minor adjustment if, when considered together with the effect of previously approved adjustments, the adjustment would be classified as a major adjustment.

4. The application requirements and approval criteria for adjustments to conditional use permits shall be the same as those applicable to new conditional use permit applications, provided that the director may waive those application requirements that relate solely to aspects of the project that are not affected by and do not affect the proposed adjustments.

D. Approval Criteria. Conditional use permits shall only be approved if consistent with all of the following criteria:

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; and

2. The proposal is in accordance with the goals, policies and objectives of the comprehensive plan; and

3. The proposal complies with all the requirements of this title; and

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; and

5. The proposal will not adversely affect the public infrastructure.

E. Conditional use permit decisions shall include written findings of fact demonstrating compliance with each of the approval criteria enumerated above.

F. Conditions of Approval. In order to mitigate any adverse impact or address a finding of fact associated with the proposal, conditions may be imposed which increase requirements in the standards, criteria, or regulations of this title or other city legislation or adopted policies.

14A.05.150 Variance applications, when required, submittal requirements, review criteria and conditions of approval.

A. The purpose of a variance is to permit a deviation from the specific height, bulk, setback, dimensional, or performance standards of this title where the strict application of such standards would deprive a property of the rights and privileges enjoyed by other properties in the same zone and vicinity. Variances shall only be authorized in those instances where the hardship imposed on the property is the result of special circumstances inherent in the subject property related to size, shape, topography, location, or surroundings. Variance requests shall be processed as a Type III application in accordance with the procedures set forth in this section.

B. Application requirements. Applications for variances shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with title 14A BMC. A complete application shall include:

1. A written statement identifying the specific dimensional or performance standard of the zoning code from which the applicant is requesting to deviate and addressing, individually, each of the approval criteria enumerated in this section.
2. A site plan drawn to scale and illustrating the following:
 - a. Adjacent streets and alleys;
 - b. Boundaries and dimensions of site and setbacks;
 - c. Location and dimensions of buildings;
 - d. Location and dimensions of parking areas; and
 - e. Location and dimensions of feature needing variance.

C. Approval criteria. The hearings examiner may approve a variance only if the request conforms to all of the following approval criteria. The hearing examiner must enter findings of fact and conclusions which support the following criteria and any conditions:

1. 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; and
2. 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; and
3. The variance, if granted, will not alter the character of the neighborhood, or be detrimental to surrounding properties in which the property is located; and
4. The special circumstances and conditions associated with the variance are not a result of the actions of the applicant or previous owners; and

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; and
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; and
7. The variance will not allow an increase in the number of dwelling units permitted by the zoning district; and
8. The authorization of such variance will not adversely affect the comprehensive plan; and
9. The variance shall not allow a land use which is not permitted under the zoning district in which the property is located; and
10. The variance is the minimum necessary to afford relief; and
11. The variance will not constitute a grant of special privilege not enjoyed by other properties in the areas; and
12. The variance shall not change any regulations or permit deviations from any conditions established by permits, contract rezones; or shown on the face of a binding site plan or plat.

D. Conditions of Approval. In authorization of a variance, the hearings examiner 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. Critical Areas reasonable use exceptions shall be processed in accordance with the provisions of BMC 14.15.140.

14A.05.160 Site plan review, when required, application submittal requirements, review criteria and conditions of approval.

A. Site plan review under this section shall be required for each of the actions listed below.

1. All development requiring more than 5 parking spaces;
2. All development requiring the preparation of a landscaping plan; or
3. Temporary uses for not more than one year.

B. Applications for site plan approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with title 14A BMC. A complete application shall include:

1. Vicinity map;
2. Name, address, phone number of property owner;
3. Name, address, phone number of engineer or agent;

4. A site plan drawn to scale showing all of the following:

a. Boundary lines and dimensions for the property and all proposed lot lines. Future building locations in phased developments shall be indicated.

b. Natural features of the site, including existing significant trees, wetlands areas and special flood risk areas.

c. Location, dimensions and names of all existing or platted streets or alleys, easements, railroad rights-of-way, on or adjacent to the property.

d. Location and dimensions of all existing structures, improvements or utilities to remain, and structures to be removed.

e. Approximate location and size of storm water retention or detention facilities and storm drains.

f. 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.

g. Service areas for waste disposal, recycling, loading and delivery and location of mail boxes.

h. Location and dimensions of any proposed signs;

5. Landscaping plans consistent with the requirements of Chapter 17.80 BMC.

6. Elevation drawings showing the height of all proposed buildings.

C. Approval Criteria. No land use permit application shall be approved unless the proposal complies with all applicable Burlington Municipal Code requirements.

D. Conditions of Approval. Conditions may be attached to a land use permit if deemed necessary to enforce the requirements of the Burlington Municipal Code or to ensure consistency with the comprehensive plan.

14A.05.170 Reclassification of property including rezone and zoning ordinance text amendments, initiation of amendments, review criteria and conditions of approval.

A. Initiation of Amendments.

1. Site specific zoning map amendments.

a. Owner(s) of a property may submit an application requesting a reclassification of the property;

b. The hearing examiner shall conduct a public hearing on the reclassification of property, and make a recommendation to the city council.

2. Zoning code text amendments consistent with the comprehensive plan.

- 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.

3. Area wide rezones, changes to the text of the zoning code which are not consistent with the comprehensive plan, and all other code and map amendments requiring corresponding changes to the comprehensive plan shall be processed in accordance with the applicable procedures identified in Chapter 17.125 BMC.

B. Review Criteria. When the Hearing Examiner is considering recommendations for reclassifications, or when the city council is considering approval of reclassifications, the Hearing Examiner 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.

14A.05.180 Amendments to the comprehensive plan, review criteria and conditions of approval.

Amendments to the comprehensive plan, comprehensive plan map, and all other zoning text and map amendments which require corresponding changes to the comprehensive plan shall be made pursuant to the provisions of Chapter 17.125 BMC.

14A.05.190 Appeal procedures.

Procedures shall apply to appeals of land use actions by the City.

A. Type I decisions.

1. A final decision regarding a type I land use action may be appealed by any interested party. Final decisions may be appealed only if, within 14 calendar days after written notice of the decision is mailed, a written appeal is filed with the director.
2. Submittal Requirements. Appeals shall be submitted on forms provided by the director and shall include all of the following:
 - a. The specific permit number or decision being appealed.
 - b. The name of the applicant and property owner;
 - c. If multiple parties file an appeal, the appeal shall designate a single representative or contact person.
 - d. The specific aspects of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and
 - e. Any applicable appeal fee identified in the fee schedule adopted by the City Council.
3. Appeal Decision. The hearing examiner shall hear appeals of type I land use actions in a closed record hearing. Appeals of type I land use actions shall be processed as a type III decision except that notice of the appeal hearing and appeal decision need only be provide to the property owner and applicant.

B. Type II decisions.

1. A final decision regarding a type II land use action may be appealed by any party of record. Final decisions may be appealed only if, within 14 calendar days after written notice of the decision is mailed, a written appeal is filed with the director.
2. Submittal Requirements. The appeal shall contain the following information:
 - a. The specific permit number or decision being appealed;
 - b. The name of the applicant and property owner;
 - c. If multiple parties file an appeal, the appeal shall designate a single representative or contact person;
 - d. The specific aspects of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and
 - e. Any applicable appeal fee identified in the fee schedule adopted by the City Council.

3. SEPA. An appeal of a SEPA threshold determination associated with a type II land use action shall be considered together with the appeal of the associated land use action.

4. Appeal Decision. The hearing examiner shall hear appeals of type II land use actions in a closed record hearing. Appeals of type II land use actions shall be processed as a type III decision. Notice of the appeal hearing and appeal decision shall be provided to all parties of record.

C. Type III decisions.

1. Appeal Decisions. Hearing Examiner decisions on appeals of Type I and II decisions shall be appealed to Superior Court in accordance with the provisions of chapter 36.70C RCW.

2. Permit Decisions. Hearing Examiner decisions on Type III project permit applications may be appealed to the City Council by any party of record. Hearing Examiner decisions may be appealed only if, within 14 calendar days after written notice of the decision is mailed, a written appeal is filed with the Director.

3. SEPA Decisions. An appeal of a SEPA threshold determination associated with a type III land use action shall be considered together with the appeal of the associated land use action by whichever authority is charged with considering the appeal of the associated land use action.

4. Submittal Requirements. Appeals filed with the City Council shall contain all of the following information:

a. The specific permit number or decision being appealed;

b. The name of the applicant and property owner;

c. If multiple parties file an appeal, the appeal shall designate a single representative or contact person;

d. The specific aspects of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and

e. Any applicable appeal fee identified in the fee schedule adopted by the City Council.

5. City Council Action. Within 30 days of receiving an appeal the City Council shall hold a closed record hearing. At the conclusion of the hearing the City Council shall either;

a. Decline to consider the appeal; or

- b. Consider the appeal and uphold the Hearing Examiner's decision; or
- c. If, based solely on the record created by the Hearing Examiner, the City Council finds that the Examiner's decision is in error as a matter of fact or law the City Council may reverse the Examiner's decision. If the City Council reverses the Hearing Examiner's decision it shall make specific findings identifying the aspects of the Hearing Examiner's decision which are in error.

D. Type IV decisions. Type IV decisions shall be appealed to Superior Court pursuant to Chapter 36.70C RCW, the Growth Management Hearings Board pursuant to RCW 36.70A.280, the Shoreline Hearings Board pursuant to Chapter 90.58 RCW, or other applicable statutory authority in accordance with Washington State law. An appeal of a SEPA threshold determination associated with a type IV land use action shall be considered together with the appeal of the associated land use action.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BURLINGTON, WASHINGTON IN THE MATTER OF
AMENDING TITLE 15 OF THE BURLINGTON MUNICIPAL CODE**

WHEREAS, the City of Burlington, Washington, (the "City") is a non-charter code city organized under the laws of Title 35A RCW now in effect; and

WHEREAS, the City has the authority to adopt development regulations pursuant to RCW 35A.11.020 and 35A.63.100, and in compliance with Chapter 36.70A RCW, WAC 365-196-600 through WAC 365-196-660 and WAC 365-196-800 through 365-196-870; and

WHEREAS, the Planning Commission of the City held a public hearing on September 20, 2017 and adopted a schedule and work plan for updating the Burlington Municipal Code; and

WHEREAS, Title 15 of the Burlington Municipal Code currently contains the City's State Environmental Policy Act requirements, critical area protection standards, and the City's building, fire, and property maintenance regulations; and

WHEREAS, it is desirable to consolidate similar code requirements in a single title of the Burlington Municipal Code; and

WHEREAS, Title 15 of the Burlington Municipal Code must be revised to remove repetitive, contradictory, and obsolete language and provide clear direction for the use and enforcement of those components of the Burlington Municipal Code relating to building construction, fire safety, and property maintenance; and

WHEREAS, in order to address the issues outlined above the City's Planning Department proposed revising Title 15 of the Burlington Municipal Code; and

WHEREAS, after reviewing an Environmental Checklist the City's SEPA Responsible Official issued a Determination of Non-significance (DNS) on October 24, 2017 for the proposed amendments and mailed the DNS to all affected public agencies. Notice of Determination of Non-significance was published in the Skagit Valley Herald on October 31, 2017; and

WHEREAS, following the issuance of the DNS a 60 day period was provided for public comment; and

WHEREAS, the proposed revisions to Title 15 were forwarded to the Washington State Department of Commerce for review pursuant to RCW 36.70A.106 on October 25, 2017; and

WHEREAS, the City's Planning Commission reviewed the proposed changes to the Burlington Municipal Code at a public hearing on November 8, 2017 in compliance with RCW 36.70A.035; and

WHEREAS, the Planning Commission voted to recommend the City Council adopt the proposed revisions to Title 15; and

WHEREAS, the Planning Commission adopted written findings in support of their recommendation which are attached to this ordinance as exhibit "A"; and

WHEREAS, the Planning Commission's findings and recommendation were presented to the City Council at a regular public meeting on November 21, 2017; and

WHEREAS, the revisions to Title 15 recommended by the Planning Commission are attached to this ordinance as exhibit "B"; and

WHEREAS, the revisions to Title 15 recommended by the Planning Commission are consistent with and implement the provisions of the City of Burlington Comprehensive Plan as required by RCW 36.70A.040; and

WHEREAS, after considering the Planning Commission's recommendation, and after further consideration of such Title 15, and the Council being otherwise fully informed;

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 8, 2017 and attached hereto as exhibit "A"; and
2. The text of exhibit "B" shall replace and supersede the text of Title 15 BMC; and
3. The amendments to the Burlington Municipal Code adopted by this ordinance shall become effective on January 1, 2018;

INTRODUCED AND PASSED at a regular meeting of the City Council of the City of Burlington on this 28th day of December, 2017.

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



PLANNING COMMISSION RECOMMENDATION

DATE: November 8, 2017

PROJECT: Comprehensive Municipal Code Update and Reorganization – Phase 3
Titles 14, 15, and 16

LOCATION: N/A – Citywide Municipal Code Update

NUMBER: DRA/CPA 1-2017

APPLICANT: City of Burlington

SUMMARY:

The Planning Commission has reviewed the proposed amendments to titles 14, 15, and 16 of the Burlington Municipal Code. Titles 14 and 15 have been amended to consolidate all of the City's environmental regulations in a single place. Title 16, which concerns land divisions, has been rewritten to provide clear and explicit procedures for reviewing and approving land division requests. The overall effect of the code remains largely unchanged but significant organizational and procedural changes have been made.

FINDINGS:

Titles 14 and 15:

1. Currently the City's critical area regulations and State Environmental Policy Act (SEPA) procedures are located in title 15 BMC which is labeled "Buildings and Construction". When possible code provisions dealing with similar topics should be grouped together or consolidated under a single code title in order to reduce confusion and to make the code easier to navigate. The Planning Commission finds that the City's SEPA provisions and critical area regulations should be relocated to title 14 in order to accomplish this objective.

Title 16:

2. The City's current Platting regulations lack clarity and do not, in all cases, articulate permit procedures and decision making authorities for land division applications. The Planning Commission finds that the proposed changes will address these issues.

RECOMENDATION:

Based on the findings presented above the Planning Commission respectfully makes the following recommendations to the City Council:

1. The City Council should adopt the proposed changes to titles 14 and 15 of the Burlington Municipal Code. These changes are identified under tabs 3-B and 5-B of the binders provided to the City Council.
2. The City Council should adopt the proposed land division regulations and procedures identified in title 16 BMC. These changes are located under tab 6-B in the binders provided to the City Council.

3. STAFF SHOULD MAKE CHANGES REQUIRED TO
ADDRESS REFERENCES, CITATIONS AND OTHER
CLARIFICATION,
DATED this 8th day of November 2017

Matthew A. Hill

Chair, City of Burlington Planning Commission

Title 15
BUILDINGS AND CONSTRUCTION

- 15.01 General Provisions**
- 15.04 Uniform Codes**
- 15.06 Requirements for Building Permit Applications**
- 15.08 Fire Code**
- 15.10 Addresses**
- 15.12 Transportation, Parks and Fire Impact Fees**
- 15.14 Overnight Lodging**

Chapter 15.01 GENERAL PROVISIONS

Sections:

- 15.01.010 Title.
- 15.01.020 Application.
- 15.01.030 Purpose.
- 15.01.040 Authority.
- 15.01.050 Adoption by Reference.
- 15.01.060 Definitions.
- 15.01.070 Liability.
- 15.01.080 Minimum Requirements.
- 15.01.090 Violations and Penalty.
- 15.01.100 Appeal.
- 15.01.110 Severability.

15.01.010 Title.

This title shall be known as “Building and Construction.” This chapter shall be called “General Provisions”.

15.01.020 Application.

This title shall be applicable as is set forth in the following chapters.

15.01.030 Purpose.

The purpose of this title is to identify the international, uniform, and fire codes adopted by the City; to establish regulations for the construction, maintenance, and operation of buildings and structures; to establish a uniform system of addressing; and to establish provisions for the collection and assessment of transportation, park, and fire impact fees.

15.01.040 Authority.

The provisions of this title are authorized pursuant to Chapter 19.27 RCW, Chapter 36.70A RCW, RCW 82.02.050 - 090 and other applicable laws and regulations as well as the authority identified in the chapters contained within this title.

15.01.050 Adoption by Reference.

Statutes, codes or regulations identified or adopted herein shall be the existing version of that statute, code or regulation and any subsequent amendment to the same, unless expressly stated otherwise.

15.01.060 Definitions.

The words listed in this title 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 International Building Code or Fire Code. Words used in the singular include the plural, and words used in the plural include the singular.

(Ord. 1273& 2, 1994)

“A”

“Act” means the Growth Management Act, as codified in chapter 36.70A RCW, as now in existence or as hereafter amended.

“B”

“Boundary line adjustment” or “lot boundary adjustment” shall have the same meaning as set forth in BMC Title 16.

“Building official” means the building official who is responsible for the enforcement of the building code, residential code, mechanical code, fuel gas code, plumbing code, energy conversation code, housing code, abatement of dangerous building code, all special hazards codes which may now or hereafter be adopted, of the City. Building Official shall also be known as a department head.

“Building permit” means an official document or certification which is issued by the building official and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure.

“C”

“Capital facilities” means streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools. “Capital facilities” also means any buildings, structures, equipment, and physical improvements necessary to provide public services.

“Capital facilities plan” means the capital facilities element of the City’s comprehensive plan. The capital facilities plan (CFP) is a general plan for providing the facilities and services necessary serve the projected population and employment growth identified in the land use element of the comprehensive plan and is used as the basis for the development, and annual revision of, the capital improvement plan (CIP).

“Capital Improvement Plan” (CIP) means the detailed six year financing plan required by WAC 365-196-415(1)(d). The capital improvement plan is a component of the comprehensive plan and is revised and updated annually as a means to address changing budgetary conditions and is used to implement the capital facilities plan.

“Certificate of Occupancy” means a written document issued by the governing authority in accordance with the provisions of the building permit. The certificate of occupancy indicates that, in the opinion of the building official, the project has been completed in accordance with the building and zoning codes. This document gives the owner permission from the authorities to occupy and use the premises for the intended purpose. “City” means the city of Burlington.

“City Administrator” means the duly appointed City Administrator or his/her designee under the authority of the Mayor.

“City engineer” means the officially appointed and acting public works director for the city, also referred to herein as a department head.

“Community Development Director” means the City Administrator or designee.

“Council” means the city council of the city of Burlington.

“County” means Skagit County.

“D”

“Developer” means an individual, group of individuals, partnership, corporation, state agency, or other person undertaking development activity, and their successors and assigns.

“Development” or “development activity” “Development” means any activity that results in a use or modification of land or its resources. Development activities include, but are not limited to: dredging, drilling, dumping, filling, earth movement, grading, clearing or removal of vegetation; storage of materials or equipment; building or construction; the placement of manufactured homes; land division, boundary line adjustments, lot segregations, subdivision and short subdivisions; binding site plans; land use permit approvals; variances; shoreline development or substantial development; and activities or uses allowed through conditional use permits; or any change in use of land that creates additional demand and need for public streets and roads, publicly owned parks, open space and recreational facilities, and fire protection facilities.

“Development approval” means any written authorization from the city, other than a building permit, which authorizes the commencement of a development activity, including, but not limited to, plat approval, binding site plan approval, boundary line adjustment, and a conditional use permit.

“Director” means community development director.

“Dwelling Unit” means any building or portion thereof which contains complete living facilities, including provisions for sleeping, cooking, eating, and sanitation, for not more than one family.

“E”

“Encumbered” means to reserve, set aside, or otherwise earmark the impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for public facilities.

“F”

“Family.” Family: A person, or two or more persons related by blood or marriage or law living together as a single housekeeping unit in a single dwelling. In addition, the following shall be included in the definition of family pursuant to the requirements of state and/or federal law:

1. Adult family homes licensed pursuant to RCW 70.128.150;
2. Foster homes for the placement of the disabled, or expectant mothers in a residential setting including, but not limited to, foster family homes licensed pursuant to Chapter 74.15 RCW, community group care facilities licensed pursuant to Chapter 74.15 RCW and crisis residential centers pursuant to Chapter 13.32A RCW;
3. Consensual living arrangements of the disabled protected pursuant to the Federal Fair Housing Act amendments; and
4. A housekeeping unit as defined by chapter 17.01 BMC.

“Feepayer” is a person, corporation, partnership, an incorporated association, or any other similar entity, or department or bureau of any governmental entity or municipal corporation, commencing a development activity which creates the demand for planned facilities, and which requires development approval and/or the issuance of a building permit. “Feepayer” includes an applicant for an impact fee credit.

“Fire Chief” means the duly appointed chief of the Burlington Fire Department or his/her designee, also referred to herein as a department head.

“Fire Code Official” means the officially appointed and acting fire official or designee.

“Fire impact fee” means the impact fee designated to pay for a proportionate portion of fire protection facilities identified in the capital improvement plan

“H”

“Hearing Examiner” means the official designated under the provisions of Chapter 17.120 BMC.

“I”

“Impact fee” means a payment of money imposed by the city on development activities pursuant to this chapter as a condition of granting development approval and/or a building permit in order to pay for the planned facilities needed to serve new growth and development activity. “Impact fee” does not include a reasonable permit fee, an application fee, the administrative fee for collecting and handling impact fees, the cost of reviewing independent fee calculations, or the administrative fee required for an appeal pursuant to this chapter.

“Impact fee account” or “account” means the account or accounts established for the planned facilities for which impact fees are collected. The accounts shall be established pursuant to this chapter, and comply with the requirements of RCW 82.02.070.

“Independent fee calculation” means the impact calculation and/or economic documentation prepared by the feepayer to support the assessment of an impact fee other than by the use of the impact fees adopted herein and on file in the office of the Finance Director, or the calculations prepared by the Public Works Director/City Engineer in the case of Traffic Impact fees, the Parks and Recreation Director in the case of Park Impact Fees and/or the Fire Chief in the case of Fire Impact Fees, where none of the impact fee categories or impact fee amounts in this ordinance accurately describe or capture the impacts of the development activity on public streets and roads, publicly owned parks, open space and recreational facilities, and fire protection facilities. All independent fee calculations shall be prepared by the respective department director(s) as specified above, and shall be submitted to the City Administrator/Community Development Director for review and recommendation to City Council for final determination.

“Interest” means the average interest rate earned by the city of Burlington in the last fiscal year, if not otherwise defined.

“L”

“Legally existing” means a use or structure which was established in compliance with all applicable rules, regulations, and laws in effect at the time of its establishment, including the requirement to obtain permits, authorizations, or approvals.

“Land use permit” is a consolidated development approval or permit issued pursuant to Chapter 14A BMC.

“Level of service (LOS)” means the quantity and quality of service which the city council has determined to be appropriate and desirable for the city. A measure of the LOS may include, but is in no way limited to, maximum levels of congestion on city streets and roads, maximum commute times, maximum wait at stops, maximum fire department response time, minimum fire suppression capabilities, minimum park space per capita for a variety of types of parks, minimum distance from residences to parks, and any other factors the city council may deem appropriate.

“M”

“Manufactured home” means a single-family dwelling unit built in accordance with regulations adopted under the national manufactured housing construction and safety standards act of 1974 (42 U.S.C. 5401 et seq.) and (RCW 43.22.335). This term includes modular homes as defined in this chapter but does not include mobile homes. This term also does not include recreational vehicles, park models, trailers, and other similar vehicles which are licensed for use on public roads, capable of being licensed for use on public roads, or designed and constructed to be licensed for use on public roads. Only structures which are certified by the State of Washington or federal government for use as a permanent habitable dwelling are included in this definition.

“Mobile home” means a factory built dwelling unit that does not meet current State or federal standards for factory built dwellings, modular homes, or manufactured homes. This definition does not include manufactured or modular homes as defined in this chapter or site built homes constructed in accordance with City building code requirements. Mobile homes may not be

placed within the City of Burlington; however, existing legally established mobile homes shall be considered a nonconforming use and shall be subject to the nonconforming standards set forth in chapter 17.100 BMC.

“Manufactured home park” or “mobile home park” means an area of land occupied or designed for the occupancy of two or more manufactured homes.

“Modular home” means factory built housing as defined by RCW 43.22.450(3) which has been approved by the Department of Labor and Industries in accordance with RCW 43.22.455.

“O”

“Owner” means the owner of record of real property or a person with an unrestricted written option to purchase property, provided that if the real property is being purchased under a recorded real estate contract, the purchaser shall be considered the owner of the real property.

“P”

“Parks Director” means the parks and recreation director of the city parks and recreation department, also referred to herein as a department head.

“Parks impact fee” means the impact fee designated to pay for publicly owned parks, open space and recreation capital facilities, projects and equipment listed within the capital facilities element of the comprehensive plan (adopted annually by resolution of city council in the form of the six year CIP).

“Peak PM hour” means the consecutive 60-minute periods during the 4:00 p.m. to 6:00 p.m. peak period during which the highest volume of trips on the city’s street system occurs.

“Planned facilities” shall mean public streets, roads and associated transportation equipment, facilities and infrastructure, publicly owned parks, open space, parks and recreation equipment and facilities, and fire protection equipment and facilities included in the capital facilities element of the comprehensive plan, capital facility plan, and/or six year capital improvement plan (CIP) for Burlington.

“Project improvements” means site improvements and facilities that are planned and designed to provide service for a particular development project or users of the project, that are necessary for the use and convenience of the occupant or users of the project, and are not listed in the capital facilities plan or capital facilities element of the comprehensive plan [six year city capital improvement plan (CIP)] adopted by resolution of the city council annually and used in the fee calculation.

“Public Works Director/City Engineer” means the director of the department of public works/city engineer or his/her designee.

“Public Services” means fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

“R”

“Residential structure” means a house, apartment, mobile home, manufactured home or modular home containing one or more dwelling units.

“S”

“State” means the state of Washington.

“Square footage” means the square feet of the gross floor area of a development or structure.

“System improvements” means planned facilities that are designed to provide service to the community at large, in contrast to project improvements. In the instance of transportation impact fees, “system improvements” are those public facilities that are included in the city of Burlington’s capital facilities plan or capital improvement plan, and form the basis of calculating the city’s traffic/transportation impact fees.

“T”

“Traffic/Transportation impact fees” means the impact fee designated to pay for public streets and roads, capital facilities and equipment identified in the City’s capital facilities plan or capital improvement plan.

“V”

“Voluntary agreement” means an agreement between the developer and the city or as authorized by RCW 82.02.020.

“W”

“Way-of-travel” means a roadway of whatever sort, including but not limited to, avenues, boulevards, courts, drives, lanes, loops, places, tracts and ways, which is capable of carrying vehicular traffic. (Ord. 1403 § 4, 1999).

Ways-of-travel include:

- Alley
- Avenue
- Boulevard
- Court
- Designate
- Drive
- Lane
- Road

- Street
- Way
- “Alley” means a public or private way-of-travel 16 feet or less in width not designated or improved for general travel and used as a secondary means of access to the rear of residential, business or other property.
- “Avenue” means a way-of-travel which runs generally east and west.
- “Boulevard” means a way-of-travel that extends north and south through the commercial and industrial district.
- “Court” means a way-of-travel under two grid blocks long.
- “Designate” means to name a way-of-travel whether by name or number.
- “Drive” means a way-of-travel.
- “Lane” means a way-of-travel one block long.
- “Place” means a way-of-travel.
- “Road” means a way-of-travel which heretofore has been designated a road.
- “Street” means a way-of-travel which generally runs north and south.
- “Way” means a way-of-travel.

15.01.070 Liability.

It is the specific intent of this title to place the obligation of compliance upon the property owner or party subject to the provisions of the chapters contained within this title. 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 officers, employees or agents for any injury or damage resulting from the failure of the property owner or party subject to the provisions of the chapters contained within this title, 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 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).

15.01.080 Minimum Requirements.

The requirements of this title are minimum requirements. They do not replace, repeal, abrogate, supersede or effect 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)

15.01.090 Violations and Penalty.

All acts or omissions in violation of any provision contained within this title, or acts or omissions that cause or contribute to a violation of any provision contained within this title, are hereby determined to be detrimental to the public health, safety and general welfare and shall constitute a public nuisance. Further, as specified in chapter 1.24 BMC, such acts or omissions shall be subject to fines and abatement under chapter 8.12 BMC, criminal penalties as set forth in chapter 1.24 BMC, penalties for civil infractions as set forth in chapter 1.34 BMC, or civil violations as set forth in chapter 1.44 BMC.

15.01.100 Appeal.

Appeal of any land use decision made by community development director pursuant to this title may be appealed to the Hearing Examiner or in some cases the city council as identified in the manner set forth in Title 14A BMC.

15.01.110 Severability.

If any portion of this title is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section of this title.

Chapter 15.04 UNIFORM CODES

Sections:

- 15.04.010 Title.
- 15.04.020 Application.
- 15.04.030 Purpose.
- 15.04.040 Authority.
- 15.04.050 Codes and standards designated – Adopted by reference.
- 15.04.060 Electrical standards and inspection – State responsibility.
- 15.04.070 Administration and enforcement of chapter provisions.
- 15.04.080 Uniform codes – Copies on file.
- 15.04.105 Premises identification.
- 15.04.110 Violations and Penalty.

15.04.010 Title.

This chapter shall be known as “Uniform Codes.” (Ord. 969 § 1, 1981).

15.04.020 Application.

This chapter shall be applicable to the erection, construction, enlargement, alteration, repair, moving, improvement, removal, converting or demolishing, equipping, using, occupying, or maintaining any building or structure in the city, or cause the same to be done, in violation of any of the provisions of this chapter.

15.04.030 Purpose.

The purpose of this chapter is to establish uniform codes governing the activities set forth in 15.04.020 to protect the general health, safety and welfare.

15.04.040 Authority.

The provisions of this chapter are authorized pursuant to Chapter 19.27 RCW, WAC 51.51, and other applicable laws and regulations.

15.04.050 Codes and standards designated – Adopted by reference.

A. International Building Code, 2012 Edition, published by the International Code Council, together with all supplements thereto, mandated amendments and subject to modifications set forth by the state of Washington in Chapter 51-50 WAC;

B. International Residential Code, 2012 Edition, published by the International Code Council, together with all supplements thereto, excluding Appendix F and subject to the modifications set forth by the state of Washington in Chapter 51-51 WAC;

C. International Mechanical Code, 2012 Edition, published by the International Code Council, together with all supplements thereto, and subject to the modifications set forth by the state of Washington in Chapter 51-52 WAC;

D. Uniform Plumbing Code, 2012 Edition, published by the International Association of Plumbing and Mechanical Officials, together with all supplements and amendments thereto, and subject to the modifications set forth by the state of Washington in Chapters 51-56 and 51-57 WAC;

E. International Fuel Gas Code, 2012 Edition, published by the International Code Council, together with standards NFPA 58 and NFPA 54;

F. The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published by the International Conference of Building Officials;

G. Appendix Chapter J, Grading, of the International Building Code, 2012 Edition, published by the International Code Council;

H. The Washington State Energy Code, 2012 Edition, and Reference Standard 29 developed by the Washington State Building Code Council, and set forth in Chapter 51-11 WAC, as may be further amended;

I. Installation of Factory Built Housing and Commercial Structures, RCW 43.22.460, together with WAC 296-150C-0540, 296-150F-0540 and the installation of manufactured and mobile homes, RCW 43.22.440 and WAC 296-150M-0650;

J. International Existing Building Code, 2012 Edition, published by the International Code Council;

K. International Property Maintenance Code, 2012 Edition, published by the International Code Council. (Ord. 1783 § 1, 2013; Ord. 1716 § 1, 2010; Ord. 1651 § 1, 2008; Ord. 1625 § 1, 2007).

15.04.060 Electrical standards and inspection – State responsibility.

The city relinquishes to the state all responsibilities for electrical construction standards and electrical inspection, heretofore assumed by the city under the provisions of laws of the state, RCW 19.28. (Ord. 668 § 1, 1965).

15.04.070 Administration and enforcement of chapter provisions.

A. The building official as appointed by the mayor shall administer and enforce the provisions of this chapter.

B. The Building Official shall use the edition of the Building Safety Journal/Building Valuation Data Tables as published by the International Code Council that is referenced in the fees Resolution #08-2014 or alternative methods such as architect and design engineer's estimates, contractor bids or other established methods to establish the valuation of all construction as authorized by city council.

C. When submittal documents are required by International Building Code for plan review, a plan review fee shall be paid at the time the permit is issued. Such plan review fee shall be 65 percent of the building permit fee. The plan review fees specified in this section are separate fees from the building permit fee, and are in addition to the building permit fee. When submittal

documents are revised so as to require additional plan review or when the project involves deferred submittal items as defined by International Building Code, an additional plan review fee shall be charged. Plan review fees for planning and engineering reviews shall be based on the fee schedule as adopted by resolution of the city council. Permit applicants shall be responsible for the payment of plan review fees regardless of whether a building permit is issued.

D. Payment of Permit Fees. Upon notification by the city that a permit application has been approved, the applicant shall submit payment to the city for all permit fees for which approval has been received prior to permit application expiration. All permit applications shall expire 180 days from the date the application was submitted. The applicant shall promptly advise the city of any changes that would limit or otherwise hinder the city in contacting the applicant.

E. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

F. Where a plan review has been conducted, and no building permit is issued, it shall be the applicant's responsibility to pick up all submitted plans and documents within three weeks following payment of the plan review fees. Following such three-week period, the plans and documents may be discarded or destroyed by the city.

G. The community development director may authorize a refund of any fee paid pursuant to the provisions of this chapter which was erroneously paid or collected. The community development director may authorize a refund of not more than 80 percent of the building permit fee paid when no work has been done under a permit issued in accordance with this chapter. Any refund shall be reduced by the actual costs incurred in reviewing the application. The community development director shall not authorize the refunding of any fee paid except upon the written application filed by the original permittee. Plan review fees are not refundable. (Ord. 1746 § 1, 2011; Ord. 1669 § 6, 2009; Ord. 1211 § 3, 1992; Ord. 969 § 6, 1981).

15.04.080 Uniform codes – Copies on file.

At least one copy of the adopted codes will be kept on file in the office of the building official and is available for public inspection during business hours. (Ord. 1040 § 2, 1984; Ord. 969 § 3, 1981).

15.04.105 Premises identification.

Section 502, Premises Identification, of the International Building Code is hereby amended to read as follows:

Approved numbers or addresses shall be provided for all new buildings in such a position as to be plainly visible and legible from the street or road fronting the property, and shall conform to the standards of Burlington Municipal Code Chapter 15.10.(Ord. 1403 § 2, 1999).

15.04.110 Violations and Penalty.

A. It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure in the city, or cause the same to be done, in violation of provisions contained within or adopted by this chapter or any of the provisions of this chapter.

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 to each be found in violation of this chapter.

Chapter 15.06
REQUIREMENTS FOR BUILDING PERMIT APPLICATIONS

Sections:

15.06.010 Title.

15.06.020 Application.

15.06.030 Purpose.

15.06.040 Authority.

15.06.050 Building permit application – Consideration – Requirements.

15.06.010 Title.

This chapter shall be known as “Requirements for Building Permit Applications.”

15.06.020 Application.

This chapter shall be applicable to all building permit applications.

15.06.030 Purpose.

The purpose of this chapter is to set forth the purpose of all building permit applications.

15.06.040 Authority.

The provisions of this chapter are authorized pursuant to Chapter 19.27 RCW and other applicable laws and regulations.

15.06.050 Building permit application – Consideration – Requirements.

A. A valid and fully complete building permit application for a structure that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use controls in effect on the date of application.

B. The requirements for a fully completed application shall consist of the elements required by RCW 19.27.095 (State Building Code Act), sections 107.1 through 107.3.4 of the International Building Code, subsection (F) of this section, and all of the following:

1. The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;
2. The property owner’s name, address, and phone number;
3. The prime contractor’s business name, address, phone number, and current state contractor registration number; and
4. Either:
 - a. The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

b. The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the bond is for an amount not less than 50 percent of the total amount of the construction project.

5. Applications for permits to construct a building which requires potable water shall include evidence of an adequate water supply for the intended use of the building consistent with RCW 19.27.097.

6. Any information requested by the City under the provisions of Chapter 14A BMC for purposes of determining consistency with applicable land use, engineering, zoning, development, or environmental regulations and controls.

7. Any applicable fees established by the fee schedule adopted by the City Council;

8. Applications for building permit approval shall be submitted on forms provided by the Community Development Director and shall include any additional information required by the form.

C. The information required on the building permit application by subsections (B)(1) through (4) of this section shall be set forth on the building permit document which is issued to the owner, and on the inspection record card which shall be posted at the construction site.

D. The information required by subsection (B) of this section and information supplied by the applicant after the permit is issued under subsection (E) of this section shall be kept on record in the office where building permits are issued and made available to any person on request. If a copy is requested, a reasonable charge may be made.

E. If any of the information required by subsection (B)(4) of this section is not available at the time the application is submitted, the applicant shall so state and the application shall be processed forthwith and the permit issued as if the information had been supplied, and the lack of the information shall not cause the application to be deemed incomplete for the purposes of vesting under subsection (A) of this section. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.

F. The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW (the State Environmental Policy Act).

G. In addition to the information required by BMC 15.06.050B, applications to construct, modify, expand, or repair civil infrastructure, utilities, streets, or sidewalks shall include:

1. A complete set of plans showing plan and profile of all existing and proposed development to a scale acceptable to the city engineer and stamped by a civil engineer licensed in the state of Washington;

2. The plans shall show all utilities, sidewalks, curb and gutter, typical cross-sections, construction notes and any other details that are necessary to properly build the project;

3. The submittal shall also include a drainage control plan that meets the minimum technical requirements set forth in BMC Title 14. (Ord. 1746 § 2, 2011; Ord. 1708 § 20, 2010; Ord. 1294 § 2, 1995).

4. The plans shall contain all of the information required by, and shall comply with, the applicable provisions of titles 12, 13, and 14 BMC.

H. Except as explicitly modified by this chapter, building and grading permit applications shall be processed as type I decisions in accordance with the provisions of title 14A BMC.

Chapter 15.08 FIRE CODE

Sections:

- 15.08.010 Title.
- 15.08.020 Application.
- 15.08.030 Purpose.
- 15.08.040 Authority.
- 15.08.050 International Fire Code adopted by reference.
- 15.08.060 Bureau of fire prevention established – Enforcement authority.
- 15.08.070 Storage of explosives and fireworks.
- 15.08.080 Storage of flammable/combustible liquids and liquefied petroleum gas.
- 15.08.090 *Repealed.*
- 15.08.100 Explosives and blasting agents – Vehicle transportation route establishment.
- 15.08.110 Hazardous materials – Vehicle transportation route establishment.
- 15.08.120 Premises identification.
- 15.08.130 Violations.

15.08.010 Title.

This chapter shall be known as the “Fire Code.”

15.08.020 Application.

This chapter shall be applicable to the erection, construction, enlargement, alteration, repair, moving, improvement, removal, converting or demolishing, equipping, using, occupying, or maintain any building or structure in the city, or cause the same to be done, in violation of any of the provisions of this chapter.

15.08.030 Purpose.

The purpose of this chapter is to establish international codes governing the activities set forth in 15.04.020 to protect the general health, safety and welfare.

15.08.040 Authority.

The provisions of this chapter are authorized pursuant to Chapter 19.27 RCW, WAC 51.51, and other applicable laws and regulations.

15.08.050 International Fire Code adopted by reference.

The International Fire Code, 2012 Edition, published by the International Code Council, including Appendix Chapters B through G, mandated state amendments and local administrative rules, and subject to modifications as set forth by the state of Washington in Chapter 51-54 WAC, is adopted as the official fire code of the city of Burlington. (Ord. 1783 § 2, 2013; Ord. 1716 § 2, 2010; Ord. 1625 § 2, 2007; Ord. 1554 § 1, 2004).

15.08.060 Bureau of fire prevention established – Enforcement authority.

A. The fire code shall be enforced by the fire department of the city which is established and which shall be operated under the supervision of the fire chief or designee of the Burlington fire

department. The Bureau of fire prevention shall be known as the Burlington Fire Department

B. The chief of the fire department may detail such members of the fire department as inspectors as shall be necessary. The chief of the fire department may deploy technical inspectors within the limits of the fire department's annual budget appropriations.

C. A report of the fire department shall be made annually to the mayor and the report shall contain such information and recommendations as the chief of the fire department considers necessary to properly advise the city on matters concerning fire prevention. (Ord. 1293 § 2, 1995; Ord. 1039 § 2, 1984; Ord. 970 § 2, 1981).

15.08.070 Storage of explosives and fireworks.

The storage of explosives, fireworks and blasting agents is prohibited in all areas of the city except those areas designated M-1 on the Burlington zoning map and meeting the approval of the fire marshal. (Ord. 1554 § 2, 2004).

15.08.080 Storage of flammable/combustible liquids and liquefied petroleum gas.

The bulk storage, as defined by the fire code, of flammable or combustible liquids and of liquefied petroleum gas in aboveground tanks is prohibited in all areas of the city except areas designated M-1 on the Burlington zoning map and meeting the approval of the fire marshal. (Ord. 1554 § 3, 2004).

15.08.090 Liquefied petroleum gas storage – District limit establishment.

Repealed by Ord. 1554. (Ord. 1039 § 5, 1984; Ord. 970 § 5, 1981).

15.08.100 Explosives and blasting agents – Vehicle transportation route establishment.

Vehicles transporting explosive materials shall be routed, where practicable, to avoid congested traffic and heavily populated areas. The fire chief or chief's designee is authorized to designate such routes of travel and the times of use. (Ord. 1296 § 3, 1995; Ord. 1039 § 6, 1984; Ord. 970 § 6, 1981).

15.08.110 Hazardous materials – Vehicle transportation route establishment.

Vehicles transporting hazardous materials shall be routed, where practicable, to avoid congested traffic and heavily populated areas. The fire chief or chief's designee is authorized to designate such routes of travel and the times of use. (Ord. 1296 § 4, 1995; Ord. 1039 § 7, 1984; Ord. 970 § 7, 1981).

15.08.120 Premises identification.

Section 505, Premises Identification, of the International Fire Code is hereby amended to read as follows:

Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property and shall conform to the standards of Burlington Municipal Code Chapter 15.10.(Ord. 1554 § 5, 2004).

15.08.130 Violations.

It is unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove convert or demolish, equip, use, occupy or maintain any building or structure in the city, or cause the same to be done, or to transport or store any material or substance, contrary to or in violation of any of the provisions of this chapter.

Chapter 15.10 ADDRESSES

Sections:

- 15.10.010 Title.
- 15.10.020 Application.
- 15.10.030 Purpose.
- 15.10.040 Authority.
- 15.10.050 Planning department to assign address numbers.
- 15.10.060 Numbering system prescribed.
- 15.10.070 Way-of-travel names.
- 15.10.080 Building owner to post and maintain address signs.
- 15.10.090 Enforcement.

15.10.010 Title.

This chapter shall be known as “Addresses.”

15.10.020 Application.

This chapter shall be applicable to all buildings and structures used or constructed within the city of Burlington.

15.10.030 Purpose.

The purpose of this chapter is to establish a uniform methodology for assigning way-of-travel names and building address numbers under the administration of the planning department and permit center, and to establish the authority to retroactively remedy incorrect addresses, and improve signage for existing building and premises identification. (Ord. 1403 § 4, 1999).

15.10.040 Authority.

The provisions of this chapter are authorized pursuant to Chapter 19.27 RCW, WAC 51.51, the codes adopted by this chapter, and other applicable laws and regulations.

15.10.050 Planning department to assign address numbers.

A. The community development department shall determine the address of any property in the city in accordance with the numbering system established in this chapter.

B. Addresses for new buildings, premises, and tenant spaces shall be assigned as part of the building permit review process. If no associated building permit exists, an address shall be assigned using a type I review process in accordance with the provisions of title 14A BMC.

C. Applications for address assignment shall be made on forms provided by the Community Development Director and shall include all of the information required by the form.

15.10.060 Numbering system prescribed.

A. The numerical designation of all doorways and entrances to buildings, lots, yards and grounds fronting upon the several ways, avenues, streets, drives and places of the city are established in accordance with the following system:

1. Except where otherwise specified, 100 numbers are allotted to each block, the city of Burlington addressing grid map, to be spaced evenly along the grid with 50 numbers on each side of the street or way in each grid line. The grid has been adjusted in areas of the city where the blocks differ in length. Even numbers shall be used on the southerly side of avenues or ways extending in an easterly and westerly direction and on the easterly side of streets or ways extending in a northerly and southerly direction; odd numbers shall be used on the northerly side of avenues or ways extending in an easterly and westerly direction and on the westerly side of streets or ways extending in a northerly and southerly direction.
2. In the case of irregular drives, places, streets, ways or avenues, the frontages shall be numbered as near as may be possible, according to the uniform series of block numbers with which they most nearly correspond.

B. For new buildings, a site plan showing the footprint of the building, all front door entrances, location and name of adjoining street or way and a north arrow is required. The number for new buildings is assigned according to this section as follows:

1. If the project is multifamily with multiple entrances, each building receives an address and numbering is assigned for that building with the first floor having the 100 series, the second floor 200 series, the third floor 300 series.
2. A single entrance for a multiple tenant building receives one common number, with each tenant receiving a separate suite number. Separate entrance doors receive a separate address.

C. New addresses are added to the address data base, mapped and copies distributed to emergency service agencies, utilities, the post office and city departments. (Ord. 1403 § 4, 1999).

D. Whenever the irregularity of plats, the changing direction of streets, avenues, or other highways, the interruption of the continuity of highways or any other condition causes doubt or difference of opinion as to the correct number of any piece or property or any building thereon, the number shall be determined by the department. The planning department shall be guided by the specific provisions of this chapter as far as they are applicable, and on the recommendations of the fire and police departments. (Ord. 1403 § 4, 1999).

15.10.070 Way-of-travel names.

A. The city council shall designate all public or private ways-of-travel, now existing or hereafter created; provided, that a name shall be designated that is different than any existing way-of-travel name currently in the address system and that will not be easily confused with an existing name.

B. The baseline for ways-of-travel shall be Fairhaven Avenue and shall bear the suffix "E" (east) on the east side of Burlington Boulevard and the suffix "W" (west) on the west side of Burlington Boulevard.

C. The meridian line for ways-of-travel, running generally north-south shall be Burlington Boulevard and shall bear the suffix “N” (north) on the north side of Fairhaven Avenue and the suffix “S” (south) on the south side of Fairhaven Avenue. (Ord. 1403 § 4, 1999).

15.10.080 Building owner to post and maintain address signs.

A. The owner of any building or other structure shall maintain the street number of each building and structure in a conspicuous place over or near the principal street entrance, or in other conspicuous places so that the address may be easily seen from the street.

B. It shall be the responsibility of the owner of any new building to obtain and post an approved sign as required by this chapter. It shall be the responsibility of the city to provide an approved sign for existing buildings on a one-time basis. The owner of an existing building shall be responsible to post it as provided in this chapter.

C. EXCEPTION: Where there are multiple buildings on a site, the department may waive the requirement for posting an address on appurtenant or accessory buildings where individual identification of each building is not essential. Where a property has frontage along more than one named street or for any other property where there may be confusion regarding the address of a building or structure, the department may require the complete address, including street number and street name to be conspicuously posted.

D. Numbers and letters shall be of approved reflective material that is easily legible and shall have a high contrast with the background color. Letters and numbers shall be white reflective material and shall not be less than five inches (76 mm) in height. The sign background shall be blue reflective material. The department shall maintain a list of vendors approved to make address signs. (Ord. 1403 § 4, 1999).

E. Approved address signs shall be posted prior to approval of a final building permit inspection or occupancy approval.

15.10.090 Enforcement.

Should the planning department find that any building, structure or premises is not provided with numbers as herein required, or is not correctly numbered, the planning department shall notify the owner, agent or tenant of the correct street number and shall require that the same shall be properly placed, in accordance with the provisions of this chapter, within 30 days unless additional time is provided for in writing by the planning department. Failure to respond to such notification shall be considered a violation of this chapter.

Buildings served by a private road or a common driveway shall post their address number(s) at the head of the road or driveway in a manner that can be easily read from the intersecting street. This posting requirement shall be in addition to the requirement to post the number on the building itself. Where the existing street grid may not adequately allow for the assignment of street addresses which will promote the easy locating of such addresses, or for any other reason consistent with the intent of this chapter, the planning department may assign a name to the private road or common driveway which shall be used for addressing purposes. The city council shall assign a name to the private road or common driveway when there are four or more parcels served by it. In addition, one or more property owners along the road or driveway may be

required to post a sign displaying the assigned name at a location near the intersection of the road or driveway with a named public street. (Ord. 1403 § 4, 1999).

Chapter 15.12
TRANSPORTATION, PARKS, AND FIRE IMPACT FEES

Sections:

- 15.12.010 Title.
- 15.12.020 Application.
- 15.12.030 Purpose.
- 15.12.040 Authority.
- 15.12.060 Assessment of impact fees
- 15.12.070 Exemptions.
- 15.12.080 Credits.
- 15.12.090 Tax Adjustment
- 15.12.100 Appeals.
- 15.12.110 Establishment of impact fee accounts.
- 15.12.120 Impact Fees
- 15.12.130 Refunds.
- 15.12.140 Use of funds.
- 15.12.150 Review.
- 15.12.160 Independent fee calculations.
- 15.12.170 Existing authority unimpaired.
- 15.12.180 Adoption of Traffic/Transportation, Parks and Fire Impact Fees.
- 15.12.190 Authorization to adopt capital project, facility and equipment lists and impact fee calculation formula or methodology by resolution.

5.12.010 Title.

This chapter shall be called “Transportation, Parks, and Fire Impact Fees.”

15.12.020 Application.

This chapter shall apply to all building permits, applications building permits and development authorized by the city. This includes, but is not limited to, the development of residential, commercial, retail, industrial and office land, including the expansion of existing uses that creates a demand for additional planned facilities, as well as a change in existing use that creates a demand for additional planned facilities.

15.12.030 Purpose.

The city council of the city of Burlington (the “council”) hereby finds and determines that growth and development activity in the city will create additional demand and need for public streets and roads, publicly owned parks, open space and recreational facilities, and fire protection facilities in the city, and the council finds that growth and development activity should pay a proportionate share of the cost of such planned facilities needed to serve the growth and development activity and that concurrency requirements of chapter 36.70A RCW need to be complied with.

15.12.040 Authority.

This chapter is authorized pursuant to Chapter 82.02.050-090 and Chapter 36.70A RCW. (Ord.

1347 § 2, 1997). (Ord. 1650 § 1, 2008; Ord. 1347 § 2, 1997).

15.12.060 Assessment of impact fees.

A. It is a policy of the city of Burlington to assess transportation, fire and park impact fees in compliance with this title. The city shall collect impact fees as listed in this ordinance and based on the most currently adopted Traffic/Transportation, Parks and Fire Impact Fee formula or methodology resolution, from any applicant seeking a building permit from the city. This shall include, but is not limited to, the development of residential, commercial, industrial, retail, and office buildings and/or land, and includes the expansion of existing uses and/or structures that create a demand for additional planned facilities, as well as a change in existing use that create a demand for additional planned facilities.

B. Except as may be due to exemptions or credits provided pursuant to this chapter, pursuant to an independent fee calculation pursuant to this title, or impact fees imposed pursuant to this chapter, the city shall not issue a building permit(s) unless and until the impact fees set forth in the schedules in this title, have been paid.

C. Impact fees may also be collected pursuant to the timeline provisions of an adopted development agreement as provided in BMC 14A.

D. Collection of impact fees associated with the construction of a single-family home may be deferred until the final building permit inspection if requested by a permit applicant provided that:

1. The permit applicant submits a written request to defer impact fees at the time of building permit application on a form provided by the community development director; and
2. Not more than twenty deferrals shall be granted to an applicant in a single calendar year. For purposes of interpreting this requirement, "applicant" shall mean a contractor as identified by his or her contractor registration number; and
3. Impact fees shall be based on the fee schedule in effect at the time a complete building permit application is submitted.
4. No final inspection shall be conducted and no certificate of occupancy shall be granted until all impact fees have been paid.

15.12.070 Exemptions.

A. The following shall be exempted from the payment of impact fees:

1. Replacement and reconstruction of legally existing residential structures. Legally existing residential structures may be replaced or reconstructed on the same site or lot; provided a valid building permit is obtained within 24 months of the demolition or destruction of the existing residential structure and no additional dwelling units are created.

2. Alterations, expansion, enlargement, remodeling, rehabilitation or conversion of an existing a legally existing residential structure where no additional dwelling units are created and the use is not changed.

3. The construction of accessory structures that will not result in an increase use of planned facilities.

4. Miscellaneous appurtenant improvements, including but not limited to fences, walls, swimming pools, and signs.

5. Demolition or moving of a structure.

6. Expansion of a residential structure provided the expansion does not result in the creation of any additional dwelling units.

7. Alteration or replacement of an existing non-residential structure that does not expand the usable space or change the existing land use.

8. Parking garages and building space that are constructed solely to park motor vehicles that are not for sale, lease or rent, or part of a stock in trade are exempt from the requirement to pay any impact fees. The conversion of parking garages or vehicle parking areas exempted by this subpart to other uses requires the payment of impact fees.

9. Temporary uses and structures authorized by this title. Temporary Uses, or its successor, are exempt from the requirement to pay any impact fees.

10. Where the development activity is exempt from the payment of impact fees pursuant to RCW 82.02.100, or its successor, in that the property is part of a development activity that mitigated its impacts on all of the system improvements funded by impact fees under the State Environmental Policy Act (SEPA).

11. Developments owned and/or operated by the City of Burlington.

B. Any claim of exemption shall be made no later than the time of application for a building permit. If a building permit is not required for the development activity, the claim shall be made when the fee is tendered. Any claim not made when required by this section shall be deemed waived.

C. Developments that are not exempt from the requirement to pay impact fees may be entitled to an adjustment as set forth in BMC 15.12.150.

D. The community development director shall be authorized to determine whether a particular development activity falls within an exemption identified in this section, in any other section, or under other applicable law. Determinations of the community development director shall be in writing and shall be subject to the appeals procedures set forth in BMC 14A. (Ord. 1650 § 3, 2008; Ord. 1533 § 2, 2004; Ord. 1347 § 2, 1997).

15.12.080 Credits.

A. Credit Available. After the effective date of the ordinance codified in this chapter, credit against the amount of the impact fees for developer dedications of land necessary for the construction of planned facilities included within the adopted city capital facility plan or for, construction of infrastructure or capital facilities included within the adopted capital facilities plan shall be governed by this section. This section allows for the provision of reasonable credit(s) to a feepayer for the value of any dedication of land for, improvements to, or new construction of one or more projects included within the adopted City of Burlington capital facility plan (capital facility element of the comprehensive plan/6-year CIP), on file in the office of the city finance director, by a feepayer, pursuant to RCW 82.02.060(3), as further provided herein. The amount of the credit for a particular improvement or facility shall be limited to the cost of that improvement or facility as set forth in the capital facility plan (capital facility element of the comprehensive plan/6-year CIP), on file in the office of the city finance director, as now or hereafter amended. Credits shall be specific to the type of improvements or dedications made, such that dedications of land for, construction of or improvements to publicly owned parks, open space or recreational facilities shall be applicable only to the parks impact fee; dedications of land for, construction of or improvements to public transportation facilities shall be applicable only to the transportation impact fee; and dedications of land for, construction of or improvements to fire protection facilities shall be applicable only to the fire impact fee. Credit shall not include increased housing density.

B. No credit shall be given for project improvements, or any other improvements or infrastructure required as part of approval of a development proposal or as mitigation for development related impacts

C. Application for Credit – Determination of Suitability of Land, Improvements, Construction. The feepayer applying for credit (hereinafter, “the applicant”) shall direct the request for a credit or credits to the City Administrator/Community Development Director, who shall refer the request to the finance director, Community Development Director, director of public works/city engineer, the fire chief and/or the parks and recreation director as applicable. The applicable department head shall first determine the general suitability of the land, improvements, and/or construction for city purposes. The finance director shall then evaluate whether the land, improvements, and/or the facilities constructed are included within the city’s adopted capital facilities plan and shall forward results of said evaluation to the City Administrator/Community Development Director. Recommendations regarding the appropriateness and amount of credit provided shall be submitted by the applicable director(s)/department heads to the City Administrator/Community Development Director for review. The City Administrator shall make a recommendation to City Council as to whether the proposed dedication of land and/or equipment or facility(ies) proposed are included within the capital facility plan and also shall recommend the appropriate amount of credit provided. In all cases, the City Administrator/Community Development Director shall inform the applicant and city council of his/her recommendation at the next available council meeting. City Council shall render a

decision as to the amount of credit, if any, provided to an applicant.

D. The value of credit for land provided under this section, including right-of-way and easements, shall be established on a case-by-case basis by an appraiser selected by, or acceptable to, the applicable department director.

E. The feepayer shall pay for the cost of the appraisal or request that the cost of the appraisal be deducted from any credit provided to the feepayer, in the event that credit is awarded.

F. Determination of Credit Amounts. For each request for credit the city shall first determine that the land, improvements, and/or construction would be suitable for city purposes, does not constitute a project improvement, and that the project is listed within the adopted capital facility plan. The value of a credit for structures, facilities or other improvements shall be established by original receipts provided by the applicant for one or more of the same system improvements for which the impact fee is being charged.

G. For donations of land, the applicable appraiser must be licensed and in good standing by the state of Washington for the category of the property appraised. The appraiser must possess an MAI or other equivalent certification and shall not have a fiduciary or personal interest in the property being appraised. A description of the appraiser's certification shall be included with the appraisal, and the appraiser shall certify that he/she does not have a fiduciary or personal interest in the property being appraised. The appraisal shall be in accord with the most recent version of the Uniform Standards of Professional Appraisal Practice.

H. The applicant shall be entitled to a credit for a reasonable value of the land, improvements, and/or construction that is made or dedicated, based upon the actual cost of improvements and/or construction, or the agreed upon or actual predevelopment value of land dedicated. In the event an appraisal is necessary to determine the value of land dedicated, an appraiser shall be designated by the city and the full cost of such appraisal shall be paid by the applicant. The City Administrator/Community Development Director shall then issue a credit certificate as approved by city council in the amount of the determination of value.

I. Use of Credits. The applicant, upon receipt of a credit certificate, shall have the right to use the certificate to offset any future impact fee assessed for any development activity that will be required to pay impact fees. The administration and application of the credit certificates will be as described in subsection H of this section. The application of any credit certificate will be specific to the transportation impact fee, the park impact fee, or the fire impact fee.

J. Credit Certificates – Administration. After city council makes a determination of the amount of the credit, the City Administrator/Community Development Director shall issue and provide the applicant with a document hereinafter known as a credit certificate, setting forth the dollar amount of the credit, the date of issuance of the credit certificate, the date of expiration of the

credit and the credit certificate, the reason for the credit, the legal description of the property donated, and/or the improvement or construction for which was the basis the credit certificate is registered (the “credit holder”). The applicant must sign and date the credit certificate, and return such signed credit certificate to the city finance director for filing in the city’s credit certificate registry before the credit will be awarded. The failure of the applicant to sign, date, and return the credit certificate within 60 calendar days shall nullify the credit. The original credit certificate shall be kept registered in the city’s records, and the credit holder shall be provided a duplicate copy. The city finance director shall develop reasonable rules and regulations for the administration of the credit certificate program, including the calculation of credits, procedures for use of credits and application of credits to particular parcels of land which may be by recorded document, and the ability to levy an administrative fee in an amount sufficient to cover actual costs to the city.

K. Transfer of Credit – Partial Use of Credit. Credit certificates may be transferred or sold to third parties by the credit holder; provided, that in order to transfer credits to another party, the current credit holder shall register the transfer with the city finance director in accordance with the procedures for registration of credit transfers developed by the city finance director. Only the credit holder who is reflected on the city’s registration system pursuant to the city’s registration system may utilize the credit. Registration with the city of credit certificates shall be conclusive evidence of credit ownership. To the extent that a credit holder wishes to utilize only a portion of the credit reflected on the credit certificate against impact fees due on a particular project, the city finance director shall develop procedures for reducing the amount of credit reflected on the credit certificate accordingly or issuing a new credit certificate with the remaining credit amount.

L. Limitations on Utilization of Credits. Utilization of credit against payment of impact fees must in all cases be made prior to payment of the impact fee. No reimbursement of impact fees will be made for credit not utilized at the time the impact fee was due. In no event shall the city be under any obligation to advise any applicant for a building permit or other development approval of the existence or possible existence of the availability of credits. The burden of investigating and determining if credits may be available shall rest solely with such applicant. Credit utilized shall never exceed the amount of the impact fee due.

M. Credit for Significant Past Tax Payments. For each request for a credit for significant past tax payments made for particular improvements or land acquisitions, the feepayer shall submit proof of payments and calculation of past tax payments earmarked for or proratable to the particular improvements or land acquisitions. The city finance director shall establish procedures for determining the amount of credit for significant past tax payment made for particular improvements or land acquisitions.

N. Appeals. Determinations made pursuant to this section shall be subject to the appeals procedures set forth in this chapter.

O. Expiration of Credits. Credits shall expire, and credit certificates shall become null and void, on a date ten years from the date of issuance of the original credit certificate by the City Administrator/Community Development director. Transfer of credits or partial use of credits which may involve reissuance of credit certificates shall in no event extend the expiration date of those credits.

15.12.090 Tax adjustments.

Pursuant to and consistent with the requirements of RCW 82.02.060, the capital facilities plan has provided adjustments for future taxes to be paid by the developer which are earmarked or proratable to the planned facilities which will serve the development activity. The impact fees as adopted herein have been reasonably adjusted for taxes and other revenue sources which are anticipated to be available to fund particular planned facilities.

15.12.100 Appeals.

Any feepayer may pay the impact fees imposed by this chapter under protest in order to obtain the development approval and/or a building permit. Appeals regarding the impact fees imposed on any development activity may only be taken by the feepayer of the property where such development activity will occur. No appeal shall be permitted unless and until the impact fees at issue have been paid. The feepayer must first file an appeal with the City Administrator/Community Development Director, as follows:

1. The appeal shall be in writing on the form provided by the city and shall specify the reasons for the appeal; and
2. The appeal shall be filed within twenty one (21) calendar days of the feepayer's payment of the impact fees at issue. The failure to timely file such a request shall constitute a final bar to alter seeking such review; and
3. No administrative fee will be imposed for said appeal; and
4. The City Council shall review appeals to administrative decisions issued under this chapter and shall issue a determination in writing following conduct of a public hearing; and
5. In the case of appeal of a decision by city council pertaining to issuance of Impact Fee Credits under this chapter and/or Independent Fee Calculations under this chapter, appeals shall be made to Skagit County Superior Court, in Skagit County Washington, within twenty one (21) days of receipt of a written city council decision.

15.12.110 Establishment of impact fee accounts.

A. The city shall establish separate impact fee accounts for the following: (1) transportation impact fees; (2) parks impact fees; (3) fire impact fees. The accounts shall be interest-bearing accounts.

B. Funds withdrawn from the impact fee accounts must be used in accordance with the

provisions of this chapter. The interest earned shall be retained in each account and expended for the purposes for which the impact fees were collected.

C. On an annual basis, the city finance director shall provide a report to the council on the impact fee accounts, showing the source and amount of all moneys collected, earned, or received, and the planned facilities that were financed in whole or in part by impact fees.

D. Impact fees shall be expended or encumbered within ten years of receipt, unless the city council identifies in written findings extraordinary and compelling reasons or reasons to hold the impact fees beyond the ten-year period. Under such circumstances, the council shall establish the period of time within which the impact fees shall be expended or encumbered.

15.12.120 Impact Fees.

The impact fees set forth in this chapter, and the supporting formula or methodology and analysis under which these impact fees have been developed, are adopted by resolution of the city council on file in the office of the finance director, are based upon the data and assumptions set forth therein, and the information and public input provided to the city council in considering adoption of the ordinance codified in this chapter. Except as otherwise provided in BMC 15.12.070, 15.12.080 or 15.12.160, all development activity in the city will be charged the impact fees set forth in this chapter. (Ord. 1817 § 8, 2015).

15.12.130 Refunds.

A. If the city fails to expend or encumber the impact fees within ten years of when the impact fees were paid or, where extraordinary or compelling reasons exist, such other time periods as established pursuant to this chapter, the current owner of the property on which impact fees have been paid may receive a refund of such impact fees. In determining whether impact fees have been expended or encumbered, impact fees shall be considered expended or encumbered on a first-in, first-out basis.

B. The city shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of such claimants. A potential claimant or claimant must be the owner of the property.

C. Owners seeking a refund of impact fees must submit a written request for a refund of the impact fees to the community development director within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later.

D. Any impact fees for which no application for a refund has been made within this one-year period shall be retained by the city and expended on the appropriate planned facilities.

E. Refunds of impact fees under this section shall include any interest earned on the impact fees by the city, calculated at the average interest rate earned by the city on the impact fee account over the preceding fiscal year.

F. When the city seeks to terminate any or all components of the impact fee program, all unexpended or unencumbered funds from any terminated component or components, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all impact fee requirements are to be terminated, the city shall place notice of such termination and the

availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail at the last known address of the claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the city, but must be expended for the appropriate planned facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within the impact fee account(s) being terminated.

G. The city shall also refund to the current owner of property for which impact fees have been paid all impact fees paid, including interest earned on the impact fees, if the development activity for which the impact fees were imposed did not occur; provided, that if the city has expended or encumbered the impact fees in good faith prior to the application for a refund, the city can decline to provide the refund. If the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner can petition the city for an offset. The petitioner must provide proof of payment of impact fees previously paid for a development of the same or substantially similar nature on the same property or some portion thereof. The community development director shall determine whether to grant an offset. Determinations of the city shall be in writing and shall be subject to the appeals procedures set forth in this chapter. (Ord. 1734 § 1, 2011; Ord. 1347 § 2, 1997).

15.12.140 Use of funds.

A. Pursuant to this chapter:

1. Impact fees collected for public streets and roads, impact fees for publicly owned parks, open space and recreational facilities, and impact fees for fire protection facilities shall be used solely for those respective purposes, and only those that will reasonably benefit the development activity.
2. Impact fees shall not be imposed to make up for deficiencies in existing facilities serving existing developments.
3. Impact fees shall not be used for maintenance or operation.

B. Impact fees may be spent for planned facilities, including but not limited to planning, land acquisition, construction, engineering, architectural, permitting, financing, and administrative expenses, applicable impact fees or mitigation costs, capital equipment pertaining to planned facilities, and any other similar expenses which can be capitalized.

C. Impact fees may also be used to recoup city improvement costs previously incurred by the city to the extent that new growth and development activity will be served by the previously constructed improvements or incurred costs.

D. In the event that bonds or similar debt instruments are or have been issued for the advanced provision of city improvements for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section and are used to serve the development activity. (Ord. 1347 § 2, 1997).

15.12.150 Review.

The impact fee schedules adopted herein shall be reviewed by the council as it may deem

necessary and appropriate in conjunction with the annual update of the capital facilities plan element of the city's comprehensive plan and/or six year capital improvement plan.

The city's cost of administering the impact fee program shall be as set forth in the City's Fee Ordinance.

15.12.160 Independent fee calculations.

A. If the Public Works Director/City Engineer as pertains to traffic impact fees, and/or the Fire Chief as pertains to fire impact fees, and/or the Parks and Recreation Director as pertains to parks impact fees believes in good faith that none of the impact fee categories or impact fee amounts set forth in this ordinance, accurately describe or capture the impacts of a development activity on planned facilities, the applicable director may conduct independent fee calculation recommendations for review by the City Administrator/Community Development Director as per the procedures detailed for application of credits under this chapter. The City Administrator/Community Development Director may recommend that city council act to impose alternative impact fees on a specific development activity based on these calculations. The alternative impact fees and the calculations shall be set forth in writing.

B. If a feepayer opts not to have the impact fee determined according to the schedules set forth in this ordinance, then the feepayer shall prepare and submit to the applicable director(s) an independent fee calculation for the development activity for which final plat, binding site plan, or other development approval, or a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. The applicable department head(s) shall review the independent fee calculation and provide an analysis to the City Administrator/Community Development Director concerning whether the independent fee calculation should be accepted, rejected, or accepted in part. The City Administrator/Community Development Director shall after review of the materials submitted, make recommendation to City Council, who may adopt, reject or adopt in part the independent fee calculation based on the analysis prepared by appropriate department head(s) and/or recommended by the City Administrator/Community Development Director, and based on the specific characteristics of the development activity, and/or principles of fairness. The impact fees or alternative impact fees and the calculations recommended by the City Administrator/Community Development Director shall be set forth in writing and shall be mailed to the feepayer.

C. Any feepayer submitting an independent fee calculation will be required to pay to the City of Burlington a fee to cover the cost of reviewing the independent fee calculation. The fee shall be the actual cost of any additional staff time not to exceed \$500.00 spent in review plus the cost of consultant services if the city deems these services to be necessary; provided, however, for independent fee calculations for single residential lots where, in the sole discretion of the City Administrator/Community Development Director, the issues involved are easily handled and the fee is clearly excessive, the \$500.00 maximum fee may be reduced.

D. While there is presumption that the calculations set forth in the city's capital facilities plan are valid, in making an independent fee calculation recommendation to city council, the City Administrator/Community Development Director shall consider the documentation submitted by the feepayer and the analysis prepared by the appropriate department heads, but is not required to accept such documentation or analysis which the applicable director and/or City Administrator/Community Development Director reasonably deems to be inaccurate or not reliable, and may, in the alternative, recommend to city council that it require the feepayer to submit additional or different documentation for consideration. The city council is authorized to adjust the impact fees on a case-by-case basis based on the independent fee calculation, the specific characteristics of the development activity, and/or principles of fairness. City council's decision regarding impact fees and the calculations shall be set forth in writing and shall be mailed to the feepayer.

E. An independent fee calculation determination made by the city council pursuant to this section may be appealed as per this chapter.

15.12.170 Existing authority unimpaired.

Nothing in this chapter shall preclude the city from requiring mitigation of adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, based on the environmental documents accompanying the underlying development approval process, and/or Chapter 58.17 RCW, governing plats and subdivisions; provided, that the exercise of this authority is consistent with BMC 15.13.040 and with RCW 43.21C.065 and 82.20.100. (Ord. 1347 § 2, 1997).

15.12.180 Adoption of Traffic/Transportation, Parks and Fire Impact Fees.

1. Traffic/Transportation Impact Fee:

\$2,665 per peak PM hour trip based on factors listed in the most current ITE Manual (Institute of Traffic Engineers); or based upon an independent fee calculation as specified in Section 15.13.140.

2. Park Impact Fee:

Single Family Residence:	\$655/unit
Multifamily Residence:	\$655/unit
Commercial/Industrial Development:	\$0.50/Square Foot

3. Fire Impact Fee:

Single Family Residence:	\$253.73/unit
Multifamily Residence:	\$253.73/unit

Commercial/Industrial Development: **\$0.219/Square Foot**

15.12.190 Authorization to adopt capital project, facility and equipment lists and impact fee calculation formula or methodology by resolution.

The city council is authorized to adopt by resolution specific capital project, facility and equipment lists and impact fee calculation formula or methodology in support of the fees adopted in this chapter as listed above or as amended in the future. The formula and methodology is attached hereto as Appendix A.

Chapter 15.14

OVERNIGHT LODGING ESTABLISHMENTS

Sections:

15.14.010	Title.
15.14.020	Application.
15.14.030	Purpose.
15.14.040	Authority.
15.14.050	Definitions.
15.14.060	License required.
15.14.070	Application requirements.
15.14.080	Approval criteria.
15.14.090	Review process.
15.14.100	Maintenance and operations.
15.14.110	General requirements.
15.14.120	License suspension and revocation.
15.14.130	Appeals.
15.14.140	Existing overnight lodging establishments.
15.14.150	Liability.
15.14.160	Severability.
15.14.170	Effective date.

15.14.010 Title.

This Chapter shall be known as Overnight Lodging Establishments.

15.14.020 Application.

This Chapter shall be applicable to all overnight lodging establishments.

15.14.030 Purpose.

This ordinance shall provide for the licensing and inspection of all overnight lodging establishments, and the enforcement of violations of this ordinance.

15.14.040 Authority.

This ordinance is adopted by the Burlington City Council which authorizes the City to perform all or part of the licensing, inspection and enforcement duties.

15.14.050 Definitions.

For the purposes of interpreting this Chapter the following definitions shall be used unless the context clearly indicates otherwise. If a word or term is not defined in this section, but is defined in Title 17 BMC, the definition in Title 17 BMC shall be used. Words used in the singular include the plural, and words used in the plural include the singular. The word “shall” and “must” is always mandatory and the words “may” and “should” denote the use of discretion in making a decision.

“Bed and Breakfast” means a single family dwelling, as defined in Title 17 BMC, where up to two rooms or lodging units are let as temporary accommodations for travelers or guests by the

owner or occupant of the single family dwelling. Bed and breakfast establishments may provide limited food service to guests.

“Boarding house” or “rooming house” means a dwelling unit, other than a hotel, where meals and/or lodging are provided for compensation. This term does not include buildings meeting the definition of a hotel, bed and breakfast, single-family home, or multifamily dwelling. Boarding houses are differentiated from overnight lodging establishments by providing accommodations for periods of thirty (30) days or more.

“Building code” means the codes identified in, or adopted by, Chapter 15.04 BMC.

“Building official” means the Building Official for the City of Burlington designated pursuant to the provisions of BMC 2.34.030.

“Clean” means without visible or tangible soil or residue including absence of dirt, grease, rubbish, garbage, rodents, pests, and other offensive, unsightly or extraneous matter.

“City” means the City of Burlington, Washington.

“County” means the County of Skagit.

“Department” means the Planning and Community Development Department of the City of Burlington.

“Director” or “Community Development Director” means the City Administrator or designee.

“Fire code” means the codes identified in, or adopted by, Chapter 15.08 BMC and WAC 246-360-220.

“Good Repair” means free of corrosion, breaks, cracks, chips, excessive wear and tear, leaks, obstructions and similar defects so as to constitute a good and sound condition.

"Guest" means any individual occupying, or registered to occupy an overnight lodging unit.

“Hearing examiner” means the Hearing Examiner for the City of Burlington as defined in Title 14A BMC, or if no Hearing Examiner is under contract with the City, the term Hearing Examiner shall mean the Board of Adjustment.

“Licensee” means an overnight lodging establishment operator to whom the City issues an overnight lodging license.

"Local health jurisdiction" or “Health Department” means the Skagit County Public Health Department.

“Lodging Unit” means one self-contained unit designated by number, letter or some other method of identification.

“Operator” means any person who operates an overnight lodging establishment either as owner, lessee, manager, agent or in any other capacity.

“Overnight Lodging Establishment” means transient accommodations, bed and breakfasts, and vacation rentals.

“Overnight lodging license” means a license issued by the City authorizing the use or operation of an overnight lodging establishment.

“Person” means individual, firm, partnership, corporation, Limited Liability Corporation, company, association or joint stock association, and the legal successor thereof.

“State” means the State of Washington.

“State Department of Health” means the Washington State Department of Health.

"Transient accommodation" means any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to guests for periods of less than thirty (30) days and may include food service operations in accordance with Chapter 246-215 WAC. Only transient accommodations with a valid city license and State Department of Health approval are an authorized use.

“Vacation rental” means a dwelling unit, or a portion of a dwelling unit, used to provide lodging for guests for periods of less than thirty (30) days.

15.14.060 License required.

- A. It is unlawful to operate an overnight lodging establishment without a current and valid overnight lodging license.
- B. All licenses issued pursuant to this Chapter are nontransferable and valid for a period of one year unless suspended or revoked.
- C. Applications for license renewal shall be submitted to the City at least thirty (30) days prior to the expiration of the overnight lodging license. All applications for renewal shall be submitted on forms provided by the Director and shall include the applicable fee identified in the fee schedule adopted by the City Council.

15.14.070 Application requirements.

Applications for overnight lodging licenses shall be submitted on forms provided by the Director. Applications shall include any information identified on the form and all of the following:

- A. The name and address of the overnight lodging operator.
- B. A floor plan depicting the general layout of the overnight lodging establishment. The floor plan shall clearly illustrate the location of all entrances and exits, and the location

and identifying number, letter, or name, of each lodging unit.

- C. A copy of the certificate of occupancy for the building housing the overnight lodging establishment. If no certificate of occupancy is available, the Building Official shall verify the building housing the overnight lodging establishment was constructed or established in compliance with any applicable building code requirements in effect at the time of its establishment.
- D. A copy of a current, valid transient accommodation license issued by the Washington State Department of Health pursuant to Chapter 246-360 WAC, unless the overnight lodging establishment is specifically exempt from State licensing requirements.
- E. The applicable fee identified in the fee schedule adopted by the City Council.

15.14.080 Approval criteria.

- A. No overnight lodging license shall be issued or renewed unless all of the following criteria are met:
 - 1. The overnight lodging establishment shall fully comply with the requirements of this Chapter;
 - 2. The overnight lodging establishment is in compliance with the building and property maintenance code requirements identified, or referenced, in Chapter 15.04 BMC;
 - 3. The overnight lodging establishment shall be in compliance with the fire code requirements identified, or referenced, in Chapter 15.08 BMC and WAC 246-360-220;
 - 4. The overnight lodging establishment shall be in compliance with the applicable standards, requirements, and regulations identified, or referenced, in title 17 BMC;
 - 5. The overnight lodging establishment shall be in compliance with the applicable requirements identified in Chapter 246-360 WAC (see Exhibit “A”);
 - 6. The overnight lodging establishment shall have a current, valid license issued by the State Department of Health pursuant to the provisions of Chapter 246-360 WAC, unless the overnight lodging establishment is explicitly exempt from such requirements.
 - 7. The overnight lodging establishment shall be in compliance with Chapters 8.04 and 8.06 BMC.
- B. Prior to issuing or renewing a license for an overnight lodging establishment the Director shall conduct an inspection of the establishment to ensure compliance with requirements of this Chapter. This may include an examination of the guest registry to show compliance with this Chapter.

15.14.090 Review process.

- A. Applications for overnight lodging licenses, and the renewal of existing overnight lodging licenses, shall be reviewed using a Type I process in accordance with the provisions of Title 14A BMC.
- B. All decisions regarding the issuance or renewal of overnight lodging licenses shall be made in writing and shall be final and conclusive unless appealed.
- C. When issuing or renewing an overnight lodging license the Director shall provide the operator with a signed certificate including the following information:
 - 1. The name and address of the overnight lodging establishment;
 - 2. The name and address of the overnight lodging operator;
 - 3. A statement indicating the establishment has been reviewed and inspected for compliance with Burlington Municipal Code requirements;
 - 4. The approval date of overnight lodging license;
 - 5. The expiration date of the overnight lodging license.

15.14.100 Maintenance and operations.

- A. A current, valid overnight lodging license shall be displayed on the office or lobby wall inside the overnight lodging establishment so that it is clearly visible to any person or guest. If the overnight lodging establishment does not have an office or lobby, the license shall be displayed in an alternative location that is open, accessible, and visible to all guests.
- B. All lodging units shall be equipped, arranged, and maintained as follows:
 - 1. An occupancy level for each lodging unit shall be established based on the number of beds and their intended maximum usage and the maximum occupancy level shall not be exceeded.
 - 2. Floors, ceilings, doors, walls, carpet, windows, electrical switches and fixtures, and locking mechanisms shall be in working condition, free from defects, clean, and in good repair.
 - 3. Wall and ceiling mounted lighting fixtures shall be firmly secured, functional, and in good repair.
 - 4. All wiring, lighting, appliances, and electrical fixtures shall be free from defects, functional, and in compliance with all applicable laws, regulations, and permitting

requirements.

5. Each lodging unit shall be provided with heating and ventilation and all heating and ventilation equipment shall be functional, free from defects, and in good repair.
 6. A functioning phone shall be provided in each lodging unit and shall be capable of allowing immediate communication with emergency services.
 7. All lodging units shall be free from rodent or insect infestation.
 8. All lodging units shall be free from chemical or biological hazards.
 9. All lodging units shall be free from mold or mildew.
- C. Overnight lodging operators shall maintain a record of all guests. The record shall be consistent with the following requirements:
1. A record of the arrival and departure of guests shall be maintained for at least one year from the date of departure. The record shall include the name, address, driver's license or government issued ID type and number, and phone number of each guest, and shall indicate the lodging unit used by the guest. In the case of corporate, tour, or other group bookings, the name, address and phone number of the person responsible for the booking, and a rooming list of occupants and their assigned room numbers shall be included in the guest record.
 2. The names and addresses of all guests shall be verified by requiring each guest to present a driver's license, passport, or other government-issued identification.
 3. The overnight lodging operator shall permit law enforcement personnel to inspect the guest record where there is reasonable suspicion of criminal conduct, or as otherwise allowed by law.
- D. No operator shall knowingly permit an overnight lodging establishment to be used for illegal purposes.
- E. No operator shall knowingly provide a lodging unit to a person known to be in violation of a court order if said order is caused to be violated by his/her presence or activity at the overnight lodging establishment.
- F. No operator shall permit a lodging unit to be occupied for a period longer than thirty (30) days per BMC Title 17 and WAC 246-360 (see Exhibit "A"). Consecutive thirty (30) day periods are not permitted in one establishment.

G. Water, sewer, electrical power, and garbage service shall be provided to the overnight lodging establishment at all times and maintained in compliance with all applicable laws, regulations, and service provider policies. Failure to continuously maintain such services and utility connections shall constitute a violation of this chapter

H. Utility accounts shall be in good standing.

15.14.110 General requirements.

A. The following general requirements shall apply to all overnight lodging establishments, operators, overnight lodging licenses, and applications for overnight lodging licenses:

1. No person shall make any material false statement in the application or omit material information required on the application.
2. No license shall enable any person to engage in any dishonest, illegal act, practice or enterprise.
3. Overnight lodging establishments shall be established and maintained in compliance with all applicable zoning, building, fire, health, and sanitation laws and regulations.
4. Operators shall permit the Director, building official, or fire marshal to conduct an inspection of the overnight lodging establishment at any time for the purpose of ensuring compliance with the requirements of this Chapter, as well as fire, building, safety, health, and sanitation laws and regulations, provided that prior to conducting an inspection reasonable notice shall be provided to the operator.
5. The Director shall inspect all overnight lodging establishments prior to issuing or renewing an overnight license.

B. Failure to comply with the general requirements identified in this section shall be grounds for denial, suspension, or revocation of an overnight lodging license.

C. Prior to issuing or renewing a business license for an overnight lodging establishment the City may require the applicant to demonstrate compliance with this Chapter and obtain an overnight lodging license. All overnight lodging establishments shall comply with this Chapter and shall require an overnight lodging license.

15.14.120 License suspension and revocation.

A. Grounds for suspension or revocation. The Director may suspend or revoke an overnight lodging license for any violation of this Chapter. The Director should generally adhere to the following progressive enforcement steps, but may, at their discretion, suspend or revoke an overnight lodging license based the severity of the violation, the risk to public health and safety, or a record of previous violations by the operator.

1. Correction notices. The Director may issue correction notices in instances where minor violations of this Chapter exist which do not constitute immediate threats to

public health or safety. Correction notices shall be in writing, shall identify the issue requiring corrective action, and shall be provided to the operator in person or mailed to the address indicated on the operator's license application. Correction notices shall also specify a date by which the violation shall be remedied or corrected.

2. Suspension. The Director may suspend an overnight lodging license where immediate threats to public health or safety exist, or in instances where the operator has failed to address previous correction notices. Suspensions shall remain in effect until the violations which caused the suspension have been corrected. The Director may also issue conditional suspensions which identify specific lodging units, or areas of the overnight lodging establishment, which shall not be available to guests during the period of suspension.
 3. Revocation. The Director may revoke an overnight lodging license when numerous immediate threats to public health or safety exist, or where the operator has failed to address previous correction notices or suspensions.
- B. Notice of suspension or revocation. Prior to suspending or revoking an overnight lodging license the Director shall provide the operator with a written notice. The notice shall be provided to the operator in person or mailed to the address indicated on the operator's license application, and shall include the following:
1. The specific violations or reasons for the suspension or revocation;
 2. The date upon which the license will be suspended or revoked;
 3. If the notice concerns a license suspension, a statement identifying the time period of the suspension;
 4. If the notice concerns a conditional suspension, a statement identifying the specific lodging units, or areas of the overnight lodging establishment, which shall not be available to guests;
 5. A statement indicating that if the license is suspended or revoked, continued operation of the business is a criminal offense (WAC 246-360-035/ RCW 70.62.280); and
 6. A statement indicating that future license applications, or renewal requests, may be denied if the operator's license has been suspended more than once in a given year, or revoked within the preceding five years.
- C. It shall be unlawful to display a license which has been suspended or revoked. When a conditional suspension has been issued, the Director shall provide the operator with a revised license indicating the conditions to which the license is subject and the operator shall display the revised license during the period of suspension.

- D. When an overnight lodging license has been suspended or revoked, the Director shall post notices on or near the entrances to the overnight lodging establishment stating that the establishment's license has been suspended or revoked and indicating that lodging units may not be occupied or provided to guests.
- E. In addition to the reasons outlined in Chapter 5.04, a business license for overnight lodging establishment may be revoked under Chapter 5.04 if gambling or lewd, boisterous, or disorderly conduct is permitted in or about any such overnight lodging establishment.
- F. Repeated violations. If an overnight lodging establishment's license has been suspended more than once in the preceding year, or has been revoked in the preceding five (5) years, the Director may deny subsequent applications for licenses or license renewals.
- G. All decisions regarding the suspension or revocation of overnight lodging licenses shall be made in writing and shall be final and conclusive unless appealed in accordance with the provisions of BMC 15.14.130 and Title 14A BMC.

15.14.130 Appeals.

- A. Decisions regarding applications for overnight lodging licenses, or overnight lodging license renewals, may be appealed using the appeal procedures applicable to Type I decisions identified in Title 14A BMC.
- B. Decisions regarding the suspension or revocation of an overnight lodging license may be appealed using the appeal procedures applicable to Type I decisions identified in title 14A BMC.

15.14.140 Existing overnight lodging establishments.

Within six (6) months of the effective date of this ordinance the operators of existing overnight lodging establishments shall apply for an overnight lodging license and shall be required to obtain a license with one year of the effective date of this ordinance.

15.14.150 Liability.

Whenever a license as provided for in this Chapter is issued to a firm or corporation, any member of such firm or any managing officer, agent, or employee of such firm or corporation shall, upon conviction of a violation of the provisions of this title, be liable in the same manner and subject to the same penalties as the principal.

15.14.160 Severability.

If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, clause or phrase of this ordinance.

15.14.170 Effective Date.

This ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BURLINGTON, WASHINGTON IN THE MATTER OF
AMENDING TITLE 16 OF THE BURLINGTON MUNICIPAL CODE**

WHEREAS, the City of Burlington, Washington, (the "City") is a non-charter code city organized under the laws of Title 35A RCW now in effect; and

WHEREAS, the City has the authority to adopt development regulations pursuant to RCW 35A.11.020 and 35A.63.100, and in compliance with Chapter 36.70A RCW, WAC 365-196-600 through WAC 365-196-660 and WAC 365-196-800 through 365-196-870; and

WHEREAS, the Planning Commission of the City held a public hearing on September 20, 2017 and adopted a schedule and work plan for updating the Burlington Municipal Code; and

WHEREAS, Title 16 of the Burlington Municipal Code contains the City's platting and land division regulations; and

WHEREAS, Title 16 of the Burlington Municipal Code must be revised to remove repetitive, contradictory, and obsolete language and provide clear direction for the use and enforcement of those components of the Burlington Municipal Code relating to platting and land division; and

WHEREAS, in order to address the issues outlined above the City's Planning Department proposed revising Title 16 of the Burlington Municipal Code; and

WHEREAS, after reviewing an Environmental Checklist the City's SEPA Responsible Official issued a Determination of Non-significance (DNS) on October 24, 2017 for the proposed amendments and mailed the DNS to all affected public agencies. Notice of Determination of Non-significance was published in the Skagit Valley Herald on October 31, 2017; and

WHEREAS, following the issuance of the DNS a 60 day period was provided for public comment; and

WHEREAS, the proposed revisions to Title 16 were forwarded to the Washington State Department of Commerce for review pursuant to RCW 36.70A.106 on October 25, 2017; and

WHEREAS, the City’s Planning Commission reviewed the proposed changes to Title 16 at a public hearing on November 8, 2017 in compliance with RCW 36.70A.035; and

WHEREAS, the Planning Commission voted to recommend the City Council adopt the proposed revisions to Title 16; and

WHEREAS, the Planning Commission adopted written findings in support of their recommendation which are attached to this ordinance as exhibit “A”; and

WHEREAS, the Planning Commission’s findings and recommendation were presented to the City Council at a regular public meeting on November 21, 2017; and

WHEREAS, the revisions to Title 16 recommended by the Planning Commission are attached to this ordinance as exhibit “B”; and

WHEREAS, the revisions to Title 16 recommended by the Planning Commission are consistent with and implement the provisions of the City of Burlington Comprehensive Plan as required by RCW 36.70A.040; and

WHEREAS, the revisions to Title 16 are consistent with and implement the requirements of Chapter 58.70 RCW; and

WHEREAS, after considering the Planning Commission’s recommendation, and after further consideration of such Title 16, and the Council being otherwise fully informed;

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 8, 2017 and attached hereto as exhibit “A”; and
2. The text of exhibit “B” shall replace and supersede the text of Title 16 BMC; and
3. The amendments to the Burlington Municipal Code adopted by this ordinance shall become effective on January 1, 2018;

INTRODUCED AND PASSED at a regular meeting of the City Council of the City of Burlington on this 28th day of December, 2017.

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



PLANNING COMMISSION RECOMMENDATION

DATE: November 8, 2017

PROJECT: Comprehensive Municipal Code Update and Reorganization – Phase 3
Titles 14, 15, and 16

LOCATION: N/A – Citywide Municipal Code Update

NUMBER: DRA/CPA 1-2017

APPLICANT: City of Burlington

SUMMARY:

The Planning Commission has reviewed the proposed amendments to titles 14, 15, and 16 of the Burlington Municipal Code. Titles 14 and 15 have been amended to consolidate all of the City's environmental regulations in a single place. Title 16, which concerns land divisions, has been rewritten to provide clear and explicit procedures for reviewing and approving land division requests. The overall effect of the code remains largely unchanged but significant organizational and procedural changes have been made.

FINDINGS:

Titles 14 and 15:

1. Currently the City's critical area regulations and State Environmental Policy Act (SEPA) procedures are located in title 15 BMC which is labeled "Buildings and Construction". When possible code provisions dealing with similar topics should be grouped together or consolidated under a single code title in order to reduce confusion and to make the code easier to navigate. The Planning Commission finds that the City's SEPA provisions and critical area regulations should be relocated to title 14 in order to accomplish this objective.

Title 16:

2. The City's current Platting regulations lack clarity and do not, in all cases, articulate permit procedures and decision making authorities for land division applications. The Planning Commission finds that the proposed changes will address these issues.

RECOMENDATION:

Based on the findings presented above the Planning Commission respectfully makes the following recommendations to the City Council:

1. The City Council should adopt the proposed changes to titles 14 and 15 of the Burlington Municipal Code. These changes are identified under tabs 3-B and 5-B of the binders provided to the City Council.
2. The City Council should adopt the proposed land division regulations and procedures identified in title 16 BMC. These changes are located under tab 6-B in the binders provided to the City Council.

3. STAFF SHOULD MAKE CHANGES REQUIRED TO
ADDRESS REFERENCES, CITATIONS AND OTHER
CLARIFICATION,
DATED this 8th day of November 2017

manmanh-ale

Chair, City of Burlington Planning Commission

Title 16
LAND DIVISIONS AND ADJUSTMENTS

- 16.01 General Provisions**
- 16.10 Preliminary Plat Review**
- 16.20 Final Plat Review**
- 16.30 Binding Site Plans**
- 16.40 Survey and Design Standards**
- 16.50 Alterations and Vacations**
- 16.60 Boundary Line Adjustments**
- 16.70 Innocent Purchaser and Testamentary Divisions**

Chapter 16.01

GENERAL PROVISIONS

Sections:

- 16.01.010 Title.
- 16.01.020 Application.
- 16.01.030 Purpose.
- 16.01.040 Authority.
- 16.01.050 Exemptions from platting review.
- 16.01.060 Definitions.
- 16.01.070 Effect of noncompliance.
- 16.01.080 Liability.
- 16.01.090 Violations and penalties.
- 16.01.100 Appeal.
- 16.01.110 Severability.

16.01.010 Title.

A. Title. This Title shall be called “Land Divisions and Adjustments”.

B. Chapter. This chapter shall be called “General Provisions”.

16.01.020 Application.

A. All land divisions, boundary line adjustments, and lot combinations shall be subject to the requirements this title and the provisions of chapter 58.17 RCW.

B. Land divisions shall be classified as either “exempt” or “non-exempt”. A non-exempt division is a land division or adjustment subject to platting review. Non-exempt divisions include subdivisions and short subdivisions. Only those divisions and adjustments specifically classified by this title as exempt shall be considered exempt.

C. An exemption from platting review shall not be construed as an exemption from other applicable laws, regulations, and Burlington Municipal Code requirements. As specified in this title, some exempt land divisions and adjustments are subject to alternative review and approval requirements.

16.01.030 Purpose.

A. To ensure land divisions and adjustments comply with the requirements of chapter 58.17 RCW.

B. To implement the Burlington Comprehensive Plan and carry out the requirements of the chapter 36.70A RCW, the Growth Management Act.

C. To ensure the public interest will be served by subdivisions, short subdivisions, and dedications, and to ensure that appropriate provisions have been made 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, and sites for schools and school

grounds. Subdivisions and short subdivisions meeting all of the requirements of this title shall be construed to serve the public interest and be consistent with the above purposes.

D. Provide a means of conveying information to property owners or perspective buyers regarding restrictions and limitations on the use of land within a subdivision or short subdivision.

16.01.040 Authority.

This title is adopted pursuant to chapters 58.17, 36.70, 36.70A, 36.70B RCW as well as other applicable laws and regulations.

16.01.050 Exemptions from platting review.

The following actions are classified as exempt and shall not require platting review:

A. Cemeteries and burial plots when used for that purpose;

B. Divisions made by testamentary provisions or the laws of decent, subject to compliance with chapter 16.70 BMC;

C. Binding site plans, when a binding site plan has been approved by the City and recorded with the Auditor subject to compliance with chapter 16.30 BMC;

D. Divisions of land made for the sole purpose of providing sites for public and private utility facilities, provided that any remaining lots are consistent with applicable zoning regulations, a record of survey depicting the division is recorded, and a covenant or deed restriction is recorded limiting the use of the utility site to utility purposes;

E. Boundary line adjustments which do not create any additional lot, tract, parcel, site, or division, or create a lot, tract, parcel, site, or division which does not comply with the minimum standards for area or dimension prescribed by the zoning code, subject to compliance with chapter 16.15 BMC;

F. Divisions of land due to condemnation, or sale under the threat of condemnation, by any agency or division of government, provided a record of survey depicting the division is recorded;

G. Existing parcels created by the establishment of public road rights-of-way prior to the adoption of applicable State platting laws or City platting regulations;

H. Existing parcels, created by the City or another municipal corporation prior to the effective date of this title, for port purposes, moorage, boat launches, parks, open space, critical area protection, conservation, or other public purposes;

I. Assessor's combinations and segregations for purposes of taxation only. Such parcels shall not be recognized as separate legal lots for purposes of sale, lease, transfer, building, or permitting.

16.01.060 Definitions.

For the purposes of interpreting this title the following definitions shall be used unless the context clearly indicates otherwise. If a word or term is not defined in this section, but is defined in title 17 BMC, the definition in title 17 BMC shall be used. Words used in the singular include the plural, and words used in the plural include the singular. The word “shall” is always mandatory and the words “may” and “should” denote the use of discretion in making a decision.

“A”

“Auditor” or “Auditor’s Office” means the Skagit County Auditor.

“B.”

“Binding site plan” means a detailed recorded plan that divides land into individual lots for the purpose of facilitating commercial, industrial, or mixed-use development, or for the purpose of creating condominiums or a manufactured home park. Binding site plans are subject to the provisions of chapter 16.30 BMC.

“Binding site plat alternation” means a modification or change to a recorded binding site plan. This term also includes the vacation, or elimination, of a recorded binding site plan, a portion of a binding site plan, or any easement, dedication, or feature created by, or shown on the face of a binding site plan.

“Binding site plan amendment” means a minor modification or amendment to an approved preliminary binding site plan. Binding site plan amendments are submitted after the preliminary approval, but prior to the recording.

“Boundary line adjustment” or “lot line adjustment” means a division made for the purpose of adjusting boundary lines between platted or un-platted lots or both, which does not create an additional lot, tract, parcel, site, or division, or create a lot, tract, parcel, site, or division that does not comply with the minimum standards for area or dimension prescribed by the zoning code.

“Boundary line” or “property line” means a lot line as defined in title 17 BMC.

“Block” means a group of lots, tracts, or parcels within well-defined and fixed boundaries.

“C.”

“Certificate of Occupancy” means a written document issued by the governing authority in accordance with the provisions of the building permit. The certificate of occupancy indicates that, in the opinion of the building official, the project has been completed in accordance with the building and zoning codes. This document gives the owner permission from the authorities to occupy and use the premises for the intended purpose.

“City” means the City of Burlington.

“City engineer” means the Burlington director of public works or designee.

“Critical area” for the limited purposes of interpreting this title, “critical area” shall mean a wetland or fish and wild life habitat conservation area as defined in chapter 365-190 WAC.

“Critical area buffer” for the limited purposes of interpreting this title, “critical area buffer” shall mean the protective buffer or area required by title 14 BMC for wetlands and fish and wildlife habitat conservation areas.

“Code” means the Burlington Municipal Code.

“D.”

“Dedication” means 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.

“Director” means the City Administrator or designee.

“F.”

“Final plat” means the final drawing of a subdivision or short subdivision prepared for filing for record with the Auditor and containing all elements and requirements set forth in this title and chapter 58.17 RCW.

“I”

“Illegal lot” means a lot created in violation of the platting or zoning regulations in effect at the time of its creation or subsequent adjustment.

“Innocent purchaser” means the owner of a lot created in violation of the requirements of this title or chapter 58.17 RCW that purchased the property for value and in good faith, and did not have knowledge of the fact that the lot was divided from a larger parcel, or adjusted, in violation of this title or chapter 58.17 RCW.

“L.”

“Lot” means a fractional part of divided lands having fixed boundaries. This term shall also include the terms “parcel”, “site”, and “tract”.

“Long plat” means the plat of a subdivision.

“Legal lot” means a lot created in compliance with all of the platting and zoning regulations in effect at the time of its creation or subsequent adjustment. This term shall also include lots which have been certified by the City as legal lots in accordance with provisions of chapter 16.70 BMC.

“N”

“Natural hazard” for the limited purpose of interpreting this title, “natural hazard” shall mean a critical aquifer recharge area, geologically hazardous area, or frequently flooded area as defined in chapter 365-190 WAC.

“P.”

“Plat” means a map or representation of a subdivision or short subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

“Plat alteration” means a modification or change to a recorded plat. This term also includes the vacation, or elimination, of a recorded plat, a portion of a plat, or any easement, dedication, or feature created by, or shown on the face of a plat.

“Plat amendment” means a minor modification or amendment to an approved preliminary plat. Plat amendments are submitted after the approval of a preliminary plat, but prior to the recording of a final plat.

“Platting review” means the review process set forth in chapters 16.10 and 16.20 BMC for subdivisions and short subdivisions. Platting review shall consist of both a preliminary and final review process.

“Preliminary plat” means a complete and accurate drawing of a proposed subdivision or short subdivision showing the general layout of the streets, alleys, lots, blocks, and other elements of the proposed subdivision or short subdivision required by this title.

“Preliminary plat approval” means the review and approval process specified in chapter 16.10 BMC for subdivisions and short subdivisions.

“R”

“Record” means to file for recording with the Skagit County Auditor.

“S.”

“Short plat” means the plat of a short subdivision.

“Short subdivision” means the division, or re-division, of land into nine or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. This term does not include the re-division of a lot within the boundaries of a short plat, within five years of the recording date, if the re-division would have the effect of creating more than nine parcels within the original short plat boundaries.

“Subdivision” means the division, or re-division, of land into ten or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership. This term shall also include the re-division of a lot within the boundaries of a short plat, if the re-division occurs within five years of the date the short plat was recorded, and the re-division would have the effect of creating more than nine parcels within the original short plat boundaries.

“Surveyor” means a land surveyor licensed in the State of Washington.

“T”

“Testamentary division” means a division of land made by testamentary provisions, or the laws of descent

16.01.070 Effect of noncompliance.

No building permit or other development permit shall be issued for any lot created, divided, or adjusted in violation of Washington State law, or this title, unless the City finds that the owner of the lot is an innocent purchaser and that the public interest will not be adversely affected in accordance with the provisions of chapter 16.70 BMC.

16.01.080 Liability.

It is the specific intent of this title to place the obligation of compliance upon the property owner or party subject to the provisions of the chapters contained within this title. 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 officers, employees or agents for any injury or damage resulting from the failure of the property owner or party subject to the provisions of the chapters contained within this title, 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 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).

16.01.090 Violations and penalties.

All acts or omissions in violation of any provision contained within this title, or acts or omissions that cause or contribute to a violation of any provision contained within this title, are hereby determined to be detrimental to the public health, safety and general welfare and shall constitute a public nuisance. Further, as specified in chapter 1.24 BMC, such acts or omissions shall be subject to fines and abatement under chapter 8.12 BMC, criminal penalties as set forth in chapter 1.24 BMC, penalties for civil infractions as set forth in chapter 1.34 BMC, or civil violations as set forth in chapter 1.44 BMC.

16.01.100 Appeal.

Appeals of decisions made pursuant to this title shall be filed and processed in accordance with the applicable procedures identified in title 14A BMC.

16.01.110 Severability.

If any portion of this title is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section of this title.

Chapter 16.10

PRELIMINARY PLAT REVIEW

Sections:

- 16.10.010 Title.
- 16.10.020 Application.
- 16.10.030 Purpose.
- 16.10.040 Authority.
- 16.10.050 Review process.
- 16.10.060 Application requirements.
- 16.10.070 Distribution of applications.
- 16.10.080 Approval process.
- 16.10.090 Critical areas and natural hazards.
- 16.10.100 Dedications.
- 16.10.110 Effect of preliminary plat approval.
- 16.10.120 Amendments.

16.10.010 Title.

This chapter shall be called “preliminary plat approval”.

16.10.020 Application.

This chapter shall apply to all applications for preliminary plat approval and shall apply to both subdivisions and short subdivisions.

16.10.030 Purpose.

A. Provide a coordinated interdepartmental process for reviewing proposed land divisions and ensuring that subdivisions and short subdivisions comply with all applicable Burlington Municipal Code requirements and Washington State platting laws;

B. Identify the services, facilities, dedications, and improvements necessary to serve proposed subdivisions or short subdivisions;

C. Establish appropriate conditions, restrictions, and requirements for the use and development of the land within the boundaries of a subdivision or short subdivision;

16.10.040 Authority.

This subchapter is adopted pursuant to the provisions of chapters 36.70, 36.70A, 36.70B, and 58.17 RCW and other applicable laws and regulations.

16.10.050 Review process.

A. Preliminary short subdivision applications shall be processed as type II decisions in accordance with the provisions of title 14A BMC.

B. Preliminary subdivision applications shall be processed as type III decisions in accordance with the provisions of title 14A BMC.

C. Unless the applicant requests otherwise, applications for preliminary subdivision or short subdivision approval shall be combined and processed together with any other applications associated with the proposed land division, such as zoning amendments, variances, or critical area approvals. In accordance with chapter 14A.05 BMC, combined applications shall be processed using the procedures applicable to the permit with the highest classification.

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. This period of time shall be extended by any period after the City has requested information and the applicant has not provided the same. For the purpose of interpreting this provision, "date of filing" shall mean the date the City determines the application is complete in accordance with title 14A BMC.

16.10.060 Application requirements.

Applications for preliminary subdivision or short subdivision approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with title 14A BMC. A complete application shall include:

A. Any applicable fees in accordance with the fee schedule established by the City Council;

B. Additional copies of all required information. The Director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy;

C. A soils report prepared in accordance with the requirements of BMC 17.68.150.B.12;

D. A preliminary drainage report showing how storm-water will be managed and identifying areas suitable for storm-water infiltration, treatment, and low impact development features in accordance with the requirements of BMC 17.45.110;

E. A SEPA checklist or other SEPA documentation and reports if required;

F. Critical areas information or reports, if required, in accordance with the requirements of chapter 14.15 BMC;

G. Written verification from the Skagit Public Utility District indicating they are able and willing to provide water service to the proposed subdivision or short subdivision;

H. A preliminary plat prepared by a land surveyor licensed in the State of Washington. The preliminary plat shall be consistent with the applicable standards and requirements identified in chapter 16.40 BMC.

16.10.070 Distribution of applications.

Applications which have been deemed complete in accordance with the requirements of title 14A BMC and BMC 16.10.060 shall be distributed and reviewed as follows:

A. The Building Official shall review the application for compliance with requirement of chapter 15.04 BMC and the flood development regulations identified in chapter 14.15 BMC;

B. The Fire Marshall shall review the application for compliance with the requirements of chapter 15.08 BMC;

C. The City Engineer shall review the application for compliance with titles 12 and 13, and chapter 14.05 BMC.

D. Each official identified above shall review the preliminary plat application and, within 30 days, provide the director with a report; each report shall:

1. Document whether or not the application complies with the municipal code requirements, laws, and other regulations the official is are charged with administering; and
2. Recommended conditions of approval. If the official concludes that conditions are necessary in order to ensure the proposal complies with applicable regulatory requirements, recommended conditions of approval shall be included in the report; and
3. Specify the extent and type of improvements, infrastructure, utilities, roads, and dedications necessary to serve the subdivision or short subdivision; and
4. Identify any permits or other regulatory approvals, such as grading permits, flood development permits, and right-of-way permits that will be required prior to beginning the construction phase.

16.10.080 Approval process.

A. Short subdivisions. Following the review process specified above in BMC 16.10.70, the Director shall prepare a report documenting, through written findings of fact, whether or not the proposed short subdivision complies with applicable municipal code requirements. If the Director finds that the application complies with all applicable municipal code requirements, it shall be approved. If Director finds that the application does not comply, or cannot comply, through the application of reasonable conditions of approval, it shall either be denied or returned to the applicant for corrections.

B. Subdivisions. Following the review process specified above in BMC 16.10.070, the Director shall schedule a public hearing before the Hearing Examiner. The Director shall forward a report

outlining the proposed subdivision's compliance with applicable municipal code requirements to the Hearing Examiner. Following the receipt of the director's report and recommendation, and a public hearing, the Hearing Examiner shall approve, approve with conditions, or deny the proposed subdivision as follows:

1. If the proposed subdivision complies with all applicable municipal code requirements it shall be approved; or
2. If, in the hearing examiner's opinion, the proposed subdivision can be made to comply with all applicable municipal code requirements through the application of reasonable conditions of approval, it shall be approved; or
3. If the proposed subdivision does not comply with all applicable municipal code requirements, or if in the hearing examiner's opinion, it cannot be made to comply through the application of reasonable conditions of approval, it shall be denied.
4. The hearing examiner's decision shall be in writing and shall be supported by written findings of fact.

C. Conditions of approval. Preliminary subdivision or short subdivision applications may be approved with conditions if the conditions are necessary to ensure compliance with applicable municipal code requirements, chapter 58.17 RCW, or to identify specific improvements or actions which must be completed prior to final plat approval.

16.10.090 Critical areas and natural hazards

The following standards shall apply to all preliminary plat applications when critical areas, critical area buffers, or natural hazards are present within, or adjacent to, the proposed plat:

1. No lot shall be created through a subdivision or short subdivision which lacks an adequate building site outside of critical areas and critical area buffers, unless restrictive notes are included on the face of the plat permanently prohibiting development of the lot;
2. No lot shall be created through a subdivision or short subdivision which lacks an adequate building site outside the floodway or special flood risk area, unless restrictive notes are included on the face of the plat permanently prohibiting development of the lot, or restricting the use of the lot to flood control structures and improvements;
3. No lot shall be created through a subdivision or short subdivision which lacks an adequate building site unencumbered by natural hazards or natural hazard buffers unless the hazards can be mitigated to an acceptable level through the construction of protective improvements or other means consistent with provisions of chapter 14.15 BMC;
4. Under no circumstances shall a lot be created through a subdivision or short subdivision that necessitates subsequent critical area variances or reasonable use determinations. Restrictive notes shall be included on the face of all plats containing critical areas, critical

area buffers, or natural hazards identifying the applicable development regulations and stating that no critical area variances or reasonable use determinations will be granted within the plat boundaries.

5. Critical areas and critical area buffers shall be identified on the face of the plat and placed within protective tracts or easements as required by chapter 14.15 BMC.
6. Natural hazards and any associated setbacks, restrictions, or buffers required by chapter 14.15 BMC shall be shown on the face of the plat.
7. Land within a floodway or special flood risk zone shall be placed within a separate tract or easement if required by chapter 14.15 BMC.
8. Plats shall be subject to any other applicable requirements identified in chapter 14.15 BMC shall be addressed.

16.10.100 Dedications.

Dedications shall be shown on the preliminary plat in accordance with the requirements identified in chapter 16.40 BMC. Dedications proposed by the applicant that are not required by Burlington Municipal Code shall also be shown.

16.10.110 Effect of preliminary plat approval.

A. Following preliminary approval, all improvements and infrastructure required as conditions of the preliminary approval shall be constructed or installed. No application for final plat approval shall be accepted until all of the required improvements and infrastructure have been completed.

B. All work done during the construction phase shall be consistent with the approved preliminary plat and any conditions of approval.

C. All required permits and approvals must be obtained prior to beginning the construction phase, and all subsequent work shall be in strict accordance with the approved permits.

D. A final plat meeting all of the requirements of this chapter shall be submitted to the City for approval within the following time periods:

1. Subdivisions. A final plat shall be submitted to the City for approval and recorded within the period of time specified in chapter 58.17 RCW.
2. Short Subdivisions. Preliminary short plat approvals shall be valid for a period of two years. A final short plat shall be submitted to the City for approval and recorded prior to the expiration of the preliminary approval.

E. If a final plat meeting the requirements of this title is not submitted to the City and recorded within the allowable period the preliminary approval shall be null and void and any subsequent application shall be subject to the regulatory requirements in effect at the time of reapplication.

16.10.120 Amendments.

Approved preliminary plats may be modified or amended subject to the following requirements:

A. Applications to amend an approved preliminary plat must be submitted before a final plat is recorded. Once a final plat has been recorded all subsequent modifications shall be subject to the plat alteration requirements identified in chapter 16.50 BMC.

B. Applications for plat amendments shall be processed as type I decisions in accordance with the procedures identified in chapter 14A BMC.

C. Applications for plat amendments shall be subject to the following approval criteria. No plat amendment shall be approved unless it is consistent with all of the following:

1. Except as explicitly authorized below, the conditions of preliminary approval shall not be eliminated or modified except to correct simple non-substantive spelling, grammatical, or mathematical errors;
2. The plat boundaries shall not be expanded and no additional parcels or land area shall be included except to address survey errors;
3. The number of lots in a short plat shall not be increased if the effect of the amendment would result in the creation of ten or more lots;
4. The overall density permitted within the plat boundaries shall not be increased by more than 10 percent;
5. The amount of open space provided within the plat boundaries shall not be decreased by more than 10 percent;
6. The proposal shall not increase the amount of impervious surface coverage within the plat boundaries by more than 10 percent;
7. The amendment shall be consistent with this title and all other applicable Burlington Municipal Code requirements.
8. The amendments shall be consistent with any studies, reports, or environmental documents prepared in support of the original application.

D. Proposed changes which are not consistent with the criteria identified above shall require a new application for preliminary plat approval.

E. The approval of a plat amendment shall not affect or extend the timelines and expiration dates identified in BMC 16.10.110. Timelines and expiration dates shall be calculated from the date of preliminary plat approval even if a plat amendment is subsequently approved.

F. If multiple plat amendment applications are submitted, the cumulative effect of such amendments shall not violate the requirements of this section.

Chapter 16.20 FINAL PLAT REVIEW

Sections:

- 16.20.010 Title.
- 16.20.020 Application.
- 16.20.030 Purpose.
- 16.20.040 Authority.
- 16.20.050 Approval required.
- 16.20.060 Review process.
- 16.20.070 Application requirements.
- 16.20.080 Distribution of applications.
- 16.20.090 Approval process.
- 16.20.100 Effect of final plat approval.

16.20.010 Title.

This chapter shall be called “Final Plat Review”.

16.20.020 Application.

This chapter shall apply to all applications for final plat approval.

16.20.030 Purpose.

The purpose of this chapter is to establish the procedures and requirements for reviewing applications for final plat approval.

16.20.040 Authority.

This subchapter is adopted pursuant to the provisions of chapters 36.70, 36.70A, 36.70B, and 58.17 RCW and other applicable laws and regulations.

16.20.050 Approval required.

A. No plat shall be recorded prior to obtaining both preliminary and final plat approval.

B. Applications for final plat approval shall not be accepted without an approved preliminary plat.

C. No application for final plat approval shall be accepted until the construction phase is completed.

16.20.060 Review process.

A. Applications for final short plat approval shall be processed as type I decisions in accordance with the procedures identified in title 14A BMC.

B. Applications for final subdivision approval shall be processed as type I decisions in accordance with the procedures identified in title 14A BMC, except that City Council approval shall be required.

C. Applications for final plat approval shall be submitted within the time periods prescribed by BMC 16.10.110.

16.20.070 Application requirements.

Applications for final plat approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with title 14A BMC. A complete application shall include:

A. Any applicable fees in accordance with the fee schedule established by the City Council;

B. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy;

C. A copy of the approved preliminary plat and the decision granting preliminary approval;

D. A statement from the City Engineer indicating the construction phase is complete and all required utilities, infrastructure, streets, roads, sidewalks, and other improvements have been installed in accordance with the approved preliminary plat and any other applicable City requirements;

E. A statement from the Skagit Public Utility District indicating water service has been extended to serve each lot in the plat, unless the lot is designated on the face of the plat for non-building purposes;

F. A title report provided by a title insurance company licensed in the State of Washington, dated not more than 30 days prior to the application date, confirming that the title of the lands as described and shown on the face of the plat is in the name of the owners signing the certificate;

G. A full set of survey notes consistent with the requirements of chapter 16.40 BMC.

H. A final plat prepared by a land surveyor licensed in the State of Washington. The final plat shall be consistent with the applicable standards and requirements identified in chapter 16.40 BMC.

16.20.080 Distribution of applications.

Applications which have been deemed complete in accordance with the requirements of title 14A BMC and BMC 16.20.070 shall be distributed and reviewed as follows:

A. The Building Official shall review the application to ensure that any conditions of preliminary plat approval relating to chapter 15.04 BMC and the flood development regulations identified in chapter 14.15 BMC have been met.

B. The Fire Marshall shall review the application to ensure that any conditions of preliminary plat approval related to chapter 15.08 BMC have been met.

C. The City Engineer shall review the application with respect to accuracy, engineering standards, the survey and design requirements of chapter 16.40 BMC, and to ensure that any conditions of preliminary plat approval related to titles 12 and 13, and chapter 14.05 BMC have been met.

D. Each official identified above shall review the final plat application and provide the Director with a report addressing all of the following:

1. Whether or not the application complies with the municipal code requirements, laws, and regulations the official is are charged with administering; and
2. Whether or not the conditions specified in the preliminary approval have been satisfied; and
3. Verifying that all improvements, infrastructure, utilities, roads, and dedications required by the preliminary approval have been provided, constructed, or installed; and
4. Verifying that all required permits or other regulatory approvals such as grading permits, flood development permits, and right-of-way permits have been obtained.

16.20.090 Approval process.

A. Short subdivisions. Following the review process specified above in BMC 16.20.080, the Director shall approve the final plat application, return it to the applicant for corrections, or deny it.

B. Long Subdivisions. Following the review process specified above in BMC 16.20.080, the director shall forward the final subdivision plat to the City Council. The City Council shall, by ordinance, either approve the final plat application or deny it. If the City Council approves the final plat, it shall inscribe and execute written approval on the face of the plat and the original plat shall be transmitted to the Auditor for recording. Copies of approved final plat shall also be transmitted to the Director and City Engineer.

C. Approval criteria. Applications for final plat approval shall be approved, denied, or returned to applicant for corrections based on the following criteria. Applications for final plat approval which meet all of the following criteria shall be approved:

1. The final plat is consistent with the approved preliminary plat; and
2. All of the conditions of approval associated with the preliminary plat have been satisfied; and
3. All of the infrastructure and improvements required as a condition of preliminary plat approval have been constructed or installed; and
4. The City Engineer has certified that the final plat is technically correct and accurate, complies with all applicable survey and mapping standards, and all lot corner markers and permanent control monuments have been installed; and
5. The title insurance report submitted with the final plat application confirms that title of the land and the proposed short subdivision is vested in the name of the owners whose signatures appear on the face of the plat certificate; and
6. All other applicable requirements of this chapter have been addressed.

D. Resubmission. Any final plat which is disapproved may, at the applicant's option, be resubmitted for approval consistent with the following:

1. The deficiencies of the final plat application which caused it to be rejected or returned shall be addressed;
2. The final plat shall be resubmitted prior to the expiration of the preliminary plat in accordance with the applicable timelines identified in BMC 16.10.110;
3. Final plats being resubmitted for approval shall be treated as new final plat applications, shall be subject to the same review fees as new applications, and must be consistent with all of the requirements identified in this chapter;
4. If the final plat application was denied with prejudice against resubmission, a new application for preliminary plat approval shall be submitted, in which case the application shall be considered a new and separate application and shall be subject to all of the applicable regulatory requirements in effect at the time of submittal;
5. Final plat applications may not be resubmitted after the expiration the preliminary approval.

16.20.100 Effect of final plat approval.

A. Once a final plat has been approved and recorded, development within the plat shall be governed by the terms of the approved plat, and the statutes, ordinances, and regulations in effect at the time of its approval for a period of five years from the date of recording unless the City Council finds that a change in conditions creates a serious threat to the public health or safety.

B. Lots within a final plat that has been approved and recorded shall be considered legal lots.

C. Recorded plats may only be altered, modified, or vacated in accordance with chapter 16.50 BMC.

Chapter 16.30 BINDING SITE PLANS

Sections:

- 16.30.010 Title.
- 16.30.020 Application.
- 16.30.030 Purpose.
- 16.30.040 Authority.
- 16.30.050 Approval required.
- 16.30.060 Review process.
- 16.30.070 Preliminary application requirements.
- 16.30.080 Distribution of preliminary applications.
- 16.30.090 Approval criteria for preliminary applications.
- 16.30.100 Critical areas and natural hazards.
- 16.30.110 Final application requirements.
- 16.30.120 Distribution of final applications.
- 16.30.130 Final binding site plan approval process.
- 16.30.140 Effect of final approval.

16.30.010 Title.

This chapter shall be called “Binding Site Plan Approval”

16.30.020 Application.

Land may be divided using the provisions of this chapter as an alternative to the platting review process for subdivisions and short subdivisions. Only the following land divisions shall be eligible for approval using the binding site plan approval process:

- A. Commercial, industrial, and mixed use developments. Land with a zoning classification allowing commercial, industrial, or mixed use development may be divided into two or more lots using the binding site plan process;
- B. Manufactured home parks. Land may be divided using the binding site plan process for the purpose of lease when no residential structures other than manufactured homes or travel trailers are permitted to be placed upon the land, provided the site plan complies with all applicable manufactured home park regulations and the zoning code requirements;
- C. Condominiums. Land may be divided using the binding site plan process for the purpose of creating condominiums, or sites for condominiums, in accordance with the provisions of chapters 65.32 and 65.34 RCW or other applicable State laws and regulations.

16.30.030 Purpose.

This purpose of this chapter is to provide an alternative method of land division to enable the establishment of condominiums or manufactured home parks, or to create lots for lease or sale in commercial or industrial zones. This method may be employed as an alternative to the platting

review process required for subdivisions and short subdivisions, provided the proposed land division is consistent with one of the applicable development types listed above in BMC 16.30.020.

16.30.040 Authority.

This chapter is adopted pursuant to chapters 36.70, 36.70A, 36.70B, 58.17 RCW and other applicable laws and regulations.

16.30.050 Approval required.

A. All binding site plans shall require City approval and shall be subject to the requirements of this chapter.

B. No binding site plan shall be recorded prior to obtaining both preliminary and final binding site plan approval.

C. Applications for final binding site plan approval shall not be accepted without an approved preliminary binding site plan.

D. No application for final binding site plan approval shall be accepted until the installation and construction of all required improvements is completed.

16.30.060 Review process.

Binding site plans shall be subject to both a preliminary and final review process as follows:

A. Applications for preliminary binding site plan approval shall be processed as type II decisions in accordance with title 14A BMC.

B. Applications for final binding site plan approval shall be processed as type I decisions in accordance with title 14A BMC.

C. Unless the applicant requests otherwise, applications for preliminary binding site plan approval shall be combined and processed together with any other applications associated with the proposed land division, such as zoning amendments, variances, or critical area approvals. In accordance with chapter 14A.05 BMC, combined applications shall be processed using the procedures applicable to the permit with the highest classification.

16.30.070 Preliminary application requirements.

Applications for preliminary binding site plan approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with title 14A BMC. A complete application shall include:

A. Any applicable fees in accordance with the fee schedule established by the City Council;

- B. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy;
- C. Soils report prepared in accordance with the requirements of BMC 17.68.150.B.12;
- D. Preliminary drainage report showing how storm-water will be managed and identifying areas suitable for storm-water infiltration, treatment, and low impact development features in accordance with the requirements of BMC 17.45.110;
- E. SEPA checklist or other SEPA documentation and reports if required;
- F. Critical areas information or reports in accordance with the requirements of chapter 15.15 BMC;
- G. Written verification from the Skagit Public Utility District indicating they are able and willing to provide water service to the proposed binding site plan;
- H. A preliminary binding site plan prepared by a land surveyor licensed in the State of Washington. The preliminary binding site plan shall be consistent with the applicable standards and requirements identified in chapter 16.40 BMC.
- I. If the applicant or property owner owns or controls adjoining contiguous parcels the application shall be accompanied by a sketch showing how the proposed street system would be extended to serve the adjoining parcels in the future so the street system can be considered as a whole;
- J. Binding site plans shall be prepared consistent with the survey and design standards identified in chapter 16.40 BMC.

16.30.080 Distribution of preliminary applications.

Applications which have been deemed complete in accordance with the requirements of title 14A BMC and BMC 16.30.060 shall be distributed and reviewed as follows:

- A. The Building Official shall review the application for compliance with chapter 15.04 BMC and the flood development regulations identified in chapter 14.15 BMC;
- B. The Fire Marshall shall review the application for compliance with chapter 15.08;
- C. The City Engineer shall review the application for compliance with titles 12, and 13, and chapter 14.05 BMC.
- D. Each official identified above shall review the preliminary binding site plan application and, within 30 days, provide the director with a report; each report shall:

1. Document whether or not the application complies with the municipal code requirements, laws, and other regulations the official is charged with administering; and
2. Recommended conditions of approval. If the official concludes that conditions are necessary in order to ensure the proposal complies with applicable regulatory requirements, recommended conditions of approval shall be included in the report; and
3. The extent and type of improvements, infrastructure, utilities, roads, and dedications necessary to serve the subdivision or short subdivision; and
4. Any permits or other regulatory approvals, such as grading permits, flood development permits, and right-of-way permits, that will be required prior to beginning the construction phase.

16.30.090 Approval criteria for preliminary applications.

A. Following the review process specified above in BMC 16.30.080, the director shall prepare a report documenting, through written findings of fact, whether or not the proposed binding site plan complies with applicable municipal code requirements. If the director finds that the application complies with all applicable municipal code requirements, it shall be approved. If director finds that the application does not comply, or cannot comply, through the application of reasonable conditions of approval, it shall either be denied or returned to the applicant for corrections.

B. Preliminary binding site plan applications may be approved with conditions if the conditions are necessary to ensure compliance with applicable municipal code requirements, or to identify specific improvements or actions which must be completed prior to final approval.

16.30.100 Critical areas and natural hazards

The following standards shall apply to all applications where critical areas, critical area buffers, or natural hazards are present within, or adjacent to, the proposed binding site plan:

- A. No lot shall be created through a binding site plan which lacks an adequate building site outside of critical areas and critical area buffers unless restrictive notes are included on the face of the binding site plan permanently prohibiting development of the lot;
- B. No lot shall be created through a site plan which lacks an adequate building site outside the floodway or special flood risk area, unless restrictive notes are included on the face of the binding site plan permanently prohibiting development of the lot or restricting the use of the lot to flood control structures and improvements;
- C. No lot shall be created through a binding site plan which lacks an adequate building site unencumbered by natural hazards or natural hazard buffers unless the hazards can be mitigated to an acceptable level through the construction of protective improvements or other means consistent with provisions of chapter 14.15 BMC;

- D. Under no circumstances shall a lot be created through a binding site plan which necessitates subsequent critical area variances or reasonable use determinations. Restrictive notes shall be included on the face of all binding site plans containing critical areas, critical area buffers, or natural hazards identifying the applicable development regulations and stating that no critical area variances or reasonable use determinations will be granted within the binding site plan boundaries.

16.30.105 Effect of preliminary binding site plan approval.

A. Following preliminary approval, all improvements and infrastructure required as conditions of the preliminary approval shall be constructed or installed. No application for final binding site plan approval shall be accepted until all of the required improvements and infrastructure have been completed.

B. All work done during the construction phase shall be consistent with the approved preliminary binding site plan and any conditions of approval.

C. All required permits and approvals must be obtained prior to beginning the construction phase, and all subsequent work shall be in strict accordance with the approved permits.

D. Preliminary binding site plan approvals shall be valid for a period of two years. A final binding site plan shall be submitted to the City for approval and recorded prior to the expiration of the preliminary approval.

16.30.110 Final application requirements.

Following the approval of a preliminary binding site plan, and the installation or construction of any required improvements, an application for final binding site plan approval may be submitted. Applications for final binding site plan approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with title 14A BMC. A complete application shall include:

A. Any applicable fees in accordance with the fee schedule established by the City Council;

B. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy;

C. A copy of the approved preliminary binding site plan and decision granting preliminary approval;

D. A statement from the City Engineer indicating that the construction phase is complete and all required utilities, infrastructure, streets, roads, sidewalks, and other improvements have been installed in accordance with the approved preliminary binding site plan and any other applicable City requirements;

E. A statement from the Skagit Public Utility District indicating that water service has been extended to serve each lot in the binding site plan, unless the lot is designated on the face of the binding site plan for non-building purposes;

F. A title report provided by a title insurance company licensed in the State of Washington, dated not more than 30 days prior to the application date, confirming that the title of the lands as described and shown on the face of the binding site plan is in the name of the owners signing the certificate;

G. A full set of survey notes consistent with the requirements of chapter 16.40 BMC.

H. A final plat prepared by a land surveyor licensed in the State of Washington. The final plat shall be consistent with the applicable standards and requirements identified in chapter 16.40 BMC.

16.30.120 Distribution of final applications.

Applications which have been deemed complete in accordance with the requirements of title 14A BMC and BMC 16.10.110 shall be distributed and reviewed as follows:

A. The Building Official shall review the application to ensure that any conditions of preliminary approval relating to chapter 15.04 BMC and the flood development regulations identified in chapter 14.15 BMC have been met;

B. The Fire Marshall shall review the application to ensure that any conditions of preliminary approval related to chapter 15.08 BMC have been met;

C. The City Engineer shall review the application with respect to accuracy, engineering standards, the survey and design requirements of chapter 16.40 BMC, and to ensure that any conditions of preliminary approval related to titles 12, and 13, and chapter 14.05 BMC have been met.

D. Each official identified above shall review the final binding site plan application and provide the Director with a report addressing all of the following:

1. Whether or not the application complies with the municipal code requirements, laws, and regulations the official is are charged with administering; and
2. Whether or not the conditions specified in the preliminary approval have been satisfied; and
3. Verifying that all improvements, infrastructure, utilities, roads, and dedications required by the preliminary approval have been provided, constructed, or installed; and
4. Verifying that all required permits or other regulatory approvals such as grading permits, flood development permits, and right-of-way permits have been obtained.

16.30.130 Final binding site plan approval process.

A. Following the review process specified above in BMC 16.30.120, the Director shall approve the final plat application, return it to the applicant for corrections, or deny it within the 30 days after filing an application meeting the criteria below.

B. Approval criteria. Applications for final binding site plan approval shall be approved, denied, or returned to applicant for corrections based on the following criteria. Applications for final binding site plan approval which meet all of the following criteria shall be approved:

1. The final binding site plan is consistent with the approved preliminary approval; and
2. All of the conditions of associated with the preliminary approval have been satisfied; and
3. All of the infrastructure and improvements required by the preliminary approval have been constructed, installed, or provided; and
4. The City Engineer has certified that the final binding site plan is technically correct and accurate, complies with all applicable survey and mapping standards, and that all lot corner markers and permanent control monuments have been installed; and
5. The title insurance report submitted with the final application confirms that title of the land and in the proposed binding site plan is vested in the name of the owners whose signatures appear on the face of the binding site plan certificate; and
6. All other applicable requirements of this chapter have been addressed.

16.30.140 Effect of final approval.

A. Once a final binding site plan has been approved and recorded, development within the binding site plan shall be governed by the terms of the approved binding site plan, and the statutes, ordinances, and regulations in effect at the time of its approval for a period of five years from the date of recording unless the City Council finds that a change in conditions creates a serious threat to the public health or safety.

B. Lots within a binding site that has been approved and recorded shall be considered legal lots.

C. Recorded binding site plans may only be altered, modified, or vacated in accordance with chapter 16.50 BMC.

Chapter 16.40

SURVEY AND DESIGN STANDARDS

Sections:

- 16.40.010 Title.
- 16.40.020 Application.
- 16.40.030 Purpose.
- 16.40.040 Authority.
- 16.40.050 Design standards.
- 16.40.060 Improvements.
- 16.40.070 Design and improvement variances.
- 16.40.080 Survey requirements.
- 16.40.090 Preliminary plat and binding site plan requirements.
- 16.40.100 Final plat and binding site plan requirements.

16.40.010 Title.

This chapter shall be called “Survey and Design Standards”

16.40.020 Application.

This chapter shall apply as follows:

- A. Plats and binding site plans shall be subject to this chapter;
- B. The design specifications identified in this chapter shall apply to the design and construction of streets, roads, drainage facilities, sidewalks and other improvements serving a plats and binding site plans;
- C. No plat or binding site plan shall be granted final approval unless the streets, roads, drainage facilities, sidewalks, and other improvements required by this chapter have been constructed, installed, or provided.

16.40.030 Purpose.

- A. Ensure that plats and binding site plans include appropriate provisions for the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school-grounds, sidewalks, and planning features that assure safe walking conditions for students traveling to and from school;
- B. Establish uniform standards for the preparation of plats and binding site plans;
- C. Ensure that plats and binding site plans are accurate and consistent with applicable laws and regulations;

- D. Establish uniform design standards for the design and construction of streets, roads, drainage facilities, sidewalks, and other infrastructure or improvements within plats and binding site plans.
- E. Ensure that streets, roads, drainage facilities, sidewalks, and other improvements serving plats and binding site plans are compatible with, and can be easily connected to, adjoining properties and developments, thereby creating a uniform and interconnected system of public improvements.

16.40.040 Authority.

This chapter is adopted pursuant to chapters 36.70, 36.70A, 36.70B, 58.17 RCW and other applicable laws and regulations.

16.40.050 Access standards.

The design standards in this section shall apply to the design and construction of all plats and binding site plans. Vehicle and pedestrian access shall be provided as follows:

A. General.

1. Plats and binding site plans shall be served by one or more streets providing adequate ingress and egress.
2. The alignment of streets within plats and binding site plans shall conform to the City's street plan and allow streets adjoining the plat or binding site plan to be extended through the site.
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 conform to any applicable fire code requirements to ensure adequate access for emergency vehicles and equipment.
5. Unless warranted by special physical circumstances, the right-of-way for public streets shall be at least 60 feet wide.
6. Alleys shall be at least 16 feet wide plus such additional width as shall be necessary for an adequate turning radius.
7. Public streets, roads, alleys, and sidewalks shall conform to applicable standards identified in chapter 12.28 BMC.
8. Low impact development features such as bio-retention areas, rain gardens, and permeable paving shall be incorporated into the design and construction of all streets 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 with 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".

9. All streets, bridges, sidewalks, and pedestrian access facilities shall be designed and constructed in accordance with plans and specifications prepared or approved by the City Engineer.
10. 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 streets shall be surfaced according to plans and specifications prepared or approved by the City Engineer.

B. Private streets. Vehicle and pedestrian access should be provided by public streets dedicated to the City. However, private streets and shared driveways may, at the City's discretion, be authorized if all of the following criteria are met.

1. The goals of the zoning code to provide for adequate light, air and usable open space between structures would not be compromised; and
2. The dedication and improvement of a public street is not necessary to facilitate the provision of public utilities such as water, sanitary sewer, 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 to connect with existing streets, or to serve potential development sites adjacent to the plat or binding site plan; and
6. Private streets shall be designed and constructed in accordance with the applicable standards identified in chapter 17.85 BMC.

C. Sidewalks and pedestrian access.

1. Sidewalks and pedestrian access shall be designed and constructed in accordance with the applicable standards identified in chapter 17.85 BMC.

2. Sidewalks should be provided along both sides of streets unless the street adjoins the boundary of the plat or binding site plan and there is no potential for future development along the opposite side of the boundary.

16.40.060 Design of lots and blocks.

A. Blocks.

1. Blocks shall be designed and arranged to provide for the safe and efficient movement of vehicles and pedestrians.
2. Blocks shall be identified on the face of the plat or binding site plan by by letters or numbers.

B. Lots.

1. Lots shall either adjoin a street, or be served by a private access easement if permitted by this chapter and chapter 17.85 BMC.
2. Lots shall be numbered with reference to blocks.

16.40.070 Utilities.

A. Easements shall be provided for all utilities including storm-water facilities.

B. All utility easements shall be designed and configured to allow access for inspection, maintenance, and repair purposes.

C. The design and configuration of easements for storm-water and sanitary sewer facilities shall be reviewed and approved by the City Engineer.

D Low impact development techniques shall be incorporated into the design and construction of all plats and binding site plans in accordance with the provisions of Chapter 17.70 BMC.

E. All storm-water facilities shall be approved by the City Engineer and shall be designed and constructed in accordance with the applicable standards identified in Title 14 BMC.

F. Above ground utility installations, such as power and telephone lines, shall not be permitted unless the City Engineer determines that topographic or geologic conditions make below ground installation infeasible.

G. Each lot in a plat or binding site plan shall be provided with a connection to a public water supply system. Lots used for non-building purposes shall be exempt from this requirement provided a note is included on the face of the plat restricting the use of the lot to non-building purposes.

H. Public water supply systems and connections shall be designed and construction in accordance with any standards adopted by the Skagit Public Utility District.

I. Each lot in a plat or binding site plan shall be provided with a connection to the City's sanitary sewer system. Lots used for non-building purposes shall be exempt from this requirement provided a note is included on the face of the plat restricting the use of the lot to non-building purposes.

J. Sewer system components and connections shall be designed and constructed in accordance with any applicable standards adopted by the City of Burlington and shall be approved by the City Engineer.

K. Service Mains and Fire Hydrants. Service mains and fire hydrants shall be installed and inspected by the City Engineer and Fire Marshal prior to final approval of plats and binding site plans. The design and construction of service mains and fire hydrants shall be consistent with all applicable standards and regulations, and all plans shall be approved by the City Engineer and Fire Marshall.

16.40.080 Survey Requirements.

Plats and binding site plans shall be based on a thorough survey and shall be prepared by a land surveyor licensed in the State of Washington. Plats and binding site plans shall be consistent with the following requirements:

A. The surveyor shall furnish the City engineer with a full set of survey notes which include:

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, short subdivision, or binding site plan 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 the corners of adjoining plats or binding site plans, or portions of plats or binding site plans, shall be identified and ties shown.

D. Prior to final plat or binding site plan approval permanent control monuments shall be established at:

1. All controlling corners on the boundaries of the plat or binding site plan;

2. The intersections of centerlines of roads within the plat or binding site plan;
3. The beginning and ends of curves on centerlines;
4. All block corners.

E. Permanent control monuments may be placed on the offset lines. The position and type of every permanent monument shall be noted on all plats and binding site plans. Permanent control monuments shall be of a type approved by the City Engineer.

F. Permanent control monuments within the streets shall be set after the streets are graded.

F. 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).

H. Prior to final plat or binding site plan approval the City Engineer shall verify the required permanent control monuments and lot corner markers have been installed in accordance with the requirements of this chapter.

I. Property contiguous to water. If any land in a plat or binding site plan 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 plat or binding site plan or forms the boundary of a plat or binding site plan, such thread shall be defined by bearings and distances as it exists at the time of the survey. (Ord. 1220 § 2, 1992).

16.40.090 Preliminary plat and binding site plan requirements.

Preliminary plats and binding site plans shall be prepared by a land surveyor licensed in the State of Washington and shall include all of the following:

- A. A complete survey of the parcel being divided;
- B. The name of the proposed plat or binding site plan;
- C. North point and scale;
- D. The location of existing property lines, streets, buildings, watercourses, natural hazards, critical areas and critical area buffers, significant topographic features, and existing utilities;
- E. A legal description of the land contained within the plat or binding site plan;
- F. The names and addresses of all persons, firms and corporations holding interest in the lands, including easement rights and interest;

- G. The proposed locations, dimensions, and names of streets, alleys, and roadways,
- H. The location and dimensions of all proposed lots, lot lines, easements, common areas, storm-water facilities, and dedications;
- I. The locations, dimensions, and centerlines of all public and private streets, roadways, and access easements adjoining the proposed plat or binding site plan;
- J. The approximate location of utilities adjoining the proposed plat or binding site plan;
- K. The proposed location and routing of utilities necessary to serve lots within the proposed plat or binding site plan;
- L. The names of adjoining plats or binding site plans;
- M. The surveyor's signature, license stamp, name, and contact information;
- N. The date of the survey;
- O. All existing monuments and markers located by the survey;
- P. The zoning classification applicable to the land within the plat or binding site plan;
- Q. The conditions of or the limitations on dedications, if any, including slope rights;
- R. Contour intervals as required, based upon city datum;
- S. Any other information required by Burlington Municipal Code or deemed necessary by the Director for purposes of demonstrating compliance with regulatory requirements.

16.40.100 Final plat and binding site plan requirements.

Final plats and binding site plans shall be prepared by a land surveyor licensed in the State of Washington and shall include all of the following:

- A. A complete survey of the section or sections in which the plat, or re-plat, is located, or as many sections as may be necessary to properly orient the plat within the section or sections;
- B. Complete field and computation notes as provided in BMC 16.30.070;
- C. The final plat or binding site plan shall be printed on paper or other material acceptable to the Skagit County Auditor and shall be 18 inches by 24 inches in size;
- D. The accuracy and completeness of the final plat or binding site plan shall be the sole responsibility of the surveyor preparing the plat or binding site plan. The surveyor shall make field surveys and investigations as necessary to insure the map is complete and accurate in every detail;

E. The final plat or binding site plan shall be presented at a scale not smaller than 100 feet to one inch;

F. The final plat or binding site plan shall include the following:

1. The name of the plat or binding site plan;
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 adjoining plats and binding site plans;
6. The scale and north point;
7. The boundary of the tract as covered by the plat or binding site plan 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 notes, restrictions, or information required by Burlington Municipal Code or as a condition of preliminary plat or binding site plan approval.
12. Inscriptions or notes on the face of the plat or binding site plan setting forth all limitations and conditions for the use of land;
13. Inscription or notes on the face of the plat or binding site plan requiring that any development of the subject property be in conformance with the plat or binding site plan.

G. Any additional information necessary to meet the standards for mapping set forth in chapter 332-130 WAC.

H. In the case of a plat alteration or binding site plan alteration, the lots, blocks, streets, alleys, easements and parks appearing on the original plat or binding site plan shall be shown by dotted

lines in their proper position in relation to the new arrangement of the plat or binding site plan, and the new plat or binding site plan shall be shown clearly in solid lines to avoid ambiguity.

I. The following certificates and signature blocks shall be included on the face of the plat or binding site plan. The Director may specify the specific content, or format, of the required signature blocks and certificates unless a specific format is prescribed by State law.

1. A dated surveyor's certificate including the surveyor's signature and license stamp;
2. A certificate giving a full and correct description of the lands divided as they appear on the plat or binding site plan, including a statement that the subdivision, short subdivision, or binding site plan 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;
3. A statement of approval from the City Engineer as to the survey data, the layout of streets, alleys, and other rights-of-way, design of bridges, sewage and water systems, and other structures, and indicating the plat complies with titles 12, 13, and 14 BMC;
4. A statement of approval from the Director indicating the plat or binding site plan complies with titles 15, 16, 17, and 18 BMC;
5. For subdivisions, a signature block indicating the City Council's approval;
6. Be acknowledged by the person filing the plat before the auditor of the county in which the land is located, or any other officer who is authorized by law to take acknowledgment of deeds, and a certificate of said acknowledgment shall be enclosed or annexed to such plat or binding site plan and recorded therewith;
7. A certification from the Skagit County Treasurer 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;
8. A certification from the City Treasurer 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;

9. 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 or binding site plan and recorded with it.
10. For binding site plans where a condominium or condominium conversion is proposed, the final plan drawing shall include a statement indicating that the plan is either for a “condominium development” or a “condominium conversion.”

16.40.110 Dedications.

A. All subdivisions and short subdivisions shall include adequate provisions for the dedication of drainage ways, streets, alleys, easements, critical areas, parks, and other public open space areas as may be required by Burlington Municipal Code, Washington State law, or other applicable regulatory requirements. Dedications shall be provided as follows:

B. All dedications shall be clearly and precisely indicated on the face of plat or binding site plan along with the intended purpose of the dedication and any associated restrictions on its use.

C. Protective improvements and easements allowing access, inspection, and maintenance of such improvements shall be dedicated to the City in accordance with applicable municipal code requirements.

D. City-owned and operated storm-water facilities, infiltration areas, and conveyance or collection systems, as well as easements allowing access, inspection, and maintenance of such features shall be dedicated to the City in accordance with applicable municipal code requirements.

E. Easements being dedicated, and their intended purpose, shall be shown on the face of the plat or binding site plan and included in the certificate of dedication.

F. Convenient pedestrian and vehicular access to every lot shall be provided by a dedicated street unless a private street is authorized pursuant to BMC 16.40.050.B.

G. If the City concludes that the public interest will be served the City 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 such cases, prior to the time of filing a final plat or binding site plan for approval, articles of incorporation and bylaws of the grantee organization and with evidence of the conveyance or of a binding commitment to convey shall be provide to the City. The articles of incorporation shall provide that membership in the corporation shall be conditioned upon ownership of land in the plat or binding site plan, 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.

H. Any dedication, donation or grant as shown on the face of the plat or binding site plan 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.

Chapter 16.50

ALTERATIONS AND VACATIONS

Sections:

- 16.50.010 Title.
- 16.50.020 Application.
- 16.50.030 Purpose.
- 16.50.040 Authority.
- 16.50.050 Approval required.
- 16.50.060 Review process.
- 16.50.070 Application requirements.
- 16.50.080 Approval criteria.
- 16.50.090 Effect of approval.

16.50.010 Title.

The chapter shall be called “Alterations and Vacations”

16.50.020 Application.

This chapter shall apply to alterations, modifications, and vacations of recorded plats and binding site plans as follows:

A. Public streets and roads. The provisions of this section shall not apply to vacation requests that are strictly limited to vacating a public street or road. In such cases the procedures for street vacation as set forth in chapter 35.79 RCW.

B. All other vacations. The provisions of this section shall apply to all other alteration and vacation applications, and to proposals involving the vacation or alteration of a plat or binding site plan, or a portion of a plat or binding site plan, together with streets or roads within the plat or binding site plan.

16.50.030 Purpose.

The purpose of this section is to establish procedures and approval criteria for the alteration and vacation of recorded plats and binding site plans consistent with Washington State law (RCW [58.17.215](#) and [58.17.217](#)).

16.50.040 Authority.

This chapter is adopted pursuant to chapters 36.70, 36.70A, 36.70B, 58.17 RCW and other applicable laws and regulations.

16.50.050 Approval required.

No recorded plat or binding site plan shall be modified, vacated, or altered without City approval.

16.50.060 Review process.

A. Short subdivisions. Applications to alter a recorded short plat shall be processed in the same manner as new applications for short plat approval and shall require both preliminary and final approval.

B. Subdivisions. Applications to alter a recorded subdivision shall be processed in the same manner as new applications for subdivision approval and shall require both preliminary and final approval.

C. Binding site plans. Applications to alter a recorded binding site plan shall be processed in the same manner as new applications for binding site plan approval and shall require both preliminary and final approval.

16.50.070 Application requirements.

In addition to any information normally required for preliminary or final approval, alteration applications shall be subject to the following additional requirements:

1. The application shall include the signatures of a majority of those persons having an ownership interest in the lots, tracts, parcels, sites, or divisions that would be modified or affected by the proposed alteration. If the subdivision, short subdivision, or binding site plan is subject to restrictive covenants that were filed at the time the original plat or binding site plan was recorded, and if the proposed alteration would result in the violation of the covenants, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the proposed alteration;
2. Plats and binding site plans submitted for preliminary and final approval shall be titled "Alteration of (insert subdivision/short subdivision/binding site plan name)" and shall show the entire plat or binding site plan and the portion being altered. The final plat or binding site plan shall be prepared in such a way that the altered portions or features can be easily distinguished from the portions or features which will remain unaltered. The altered plat or binding site plan shall also include a note indicating the nature of the alteration;
3. If an easement created by the original plat or binding site plan will be altered or vacated the application shall include written approval from any person, utility, company, or other entity that has a vested interest in the easement.

16.50.080 Approval Criteria.

A. General. The alteration shall not be used to create additional lots

B. Short subdivisions. Alterations of short subdivisions shall be subject to the same approval criteria applicable to new short subdivisions.

C. Subdivisions. Alterations of subdivisions shall be subject to the same approval criteria applicable to new subdivisions.

D. Binding site plans. Alterations of binding site plans shall be subject to the same approval criteria applicable to new binding site plans.

16.50.090 Effect of approval.

A. Lots modified by a recorded plat alteration shall be considered legal lots.

B. If an alteration vacates land dedicated to the public the land shall be deeded to the City unless the City determines that retaining title to the land would not serve the public interest.

C. Title to vacated property, other than land dedicated to the public, shall vest with the rightful owner as shown in the county records. If the vacated land is land was dedicated to the public, and the City has found that retaining title to the land is not in the public interest, title to the vacated land shall vest with the property owners on each side of the dedication, as determined by the City.

D. When a public street is vacated title to the vacated street shall vest with the property owners on each side of the street.

Chapter 16.60
BOUNDARY LINE ADJUSTMENTS

Sections:

- 16.60.010 Title.
- 16.60.020 Application process.
- 16.60.030 Purpose.
- 16.60.040 Authority.
- 16.60.050 Review Process
- 16.60.060 Application Requirements
- 16.60.070 Approval Criteria
- 16.60.080 Effect of Approval

16.60.010 Title.

This chapter shall be called "Boundary Line Adjustments."

16.60.020 Application.

A. This chapter shall apply to the adjustment of boundary lines between platted or un-platted lots or both.

B. The elimination of lot lines or the combination of lots shall be subject to this chapter.

C. This chapter shall not apply to any action which creates an additional lot, parcel, site, or division.

16.60.030 Purpose.

This chapter is intended to create a process for reviewing boundary line adjustments and lot combinations for compliance with the requirements of this chapter, title 17 BMC, Washington State law, and other applicable regulatory requirements.

16.60.040 Authority.

This chapter is adopted pursuant to chapters 58.17, 36.70, 36.70A, 36.70B RCW as well as other applicable laws and regulations.

16.60.050 Review process.

A. Approval Required. City approval is required for all boundary line adjustments and lot combinations. Any lots created, combined, or reconfigured without City approval shall be considered illegal lots.

B. Applications for boundary line adjustments and lot combinations shall be processed as type I decisions in accordance with title 14A BMC.

16.60.060 Application requirements.

Applications for boundary line adjustment and lot combination approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to

all of the items listed below. Only applications which include all of the information required by this section shall be deemed complete for purposes of complying with title 14A BMC. A complete application shall include:

A. A site plan showing the existing lot configuration and a site plan showing the proposed lot configuration. The required site plans shall be prepared as follows:

1. All drawings shall be submitted on 8.5" x 11" or legal sized paper and shall be prepared by a land surveyor licensed in the State of Washington.
2. Margins shall be provided consistent with any requirements established by the Skagit County Auditor for recorded documents.
3. Existing site plan. The site plan showing existing conditions and lot configurations shall include:
 - a. Layout and dimensions of all lots included in the adjustment or combination;
 - b. Assessor's parcel numbers for each lot;
 - c. North arrow;
 - d. Date of preparation;
 - e. Scale;
 - f. The area of each lot included in the adjustment or combination in square feet;
 - g. Each existing lot shall be assigned an identifying number or letter;
 - h. The location of all existing buildings, structures, utilities, driveways, sidewalks, and easements;
 - i. The location of all public and private roads abutting the lots included in the adjustment or combination.
 - j. Surveyor's license stamp, signature, and contact information.
4. Proposed site plan. The site plan showing proposed conditions and lot configurations shall include:
 - a. Layout and dimensions for the proposed lot configurations;
 - b. North arrow;

- c. Date of preparation;
- d. Scale;
- e. The proposed area of each lot in square feet;
- f. Each proposed lot shall be assigned an identifying number or letter;
- g. The location of all existing buildings, structures, utilities, driveways, sidewalks, and easements in relation to the proposed lots lines;
- h. The location of all public and private roads abutting the lots included in the adjustment or combination.
- i. Surveyor's license stamp, signature, and contact information.

B. Names and contact information for each property owner involved in the adjustment or combination.

C. Name and contact information for the applicant.

D. Legal descriptions prepared by a title company or licensed land surveyor for the existing and proposed lot configurations.

E. Any applicable fees in accordance with the fee schedule established by the City Council.

F. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy;

16.60.070 Approval criteria.

Boundary line adjustments shall not be approved unless consistent with all of the following:

A. No additional lots shall be created.

B. All of the lots included in the boundary line adjustment or lot combination shall be legal lots unless the purpose of the adjustment or combination is to remedy a zoning or platting violation.

C. The boundary line adjustment or lot combination shall not create a lot which lacks sufficient area to meet the minimum lot size requirements for zone in which it is located. For boundary line adjustments involving non-conforming lots, the adjustment shall not cause a lot to become smaller, or less conforming, with respect to the applicable standards for area or dimension.

D. The boundary line adjustment shall not cause a building or structure to violate a required property line setback. For boundary line adjustments involving structures which are

non-conforming with respect to setback requirements, the adjustment or combination shall not increase the degree of non-conformity.

E. The boundary line adjustment or lot combination shall not create a lot which lacks legal access.

F. All of the resulting lots shall comply with the Burlington Municipal Code standards for access.

G. The following statement shall appear on deeds or conveyance documents effecting the adjustment: "This boundary line adjustment is not for the purpose of creating an additional lot".

H. The boundary line adjustment or lot combination shall not create a lot which is bisected by a zoning district or comprehensive plan designation boundary.

I. The boundary line adjustment or lot combination shall not create a lot which is bisected by an urban growth area boundary.

J. The boundary line adjustment or lot combination shall not create a lot which is bisected by the jurisdictional boundary between the City of Burlington, another city, or unincorporated Skagit County.

K. The boundary line adjustment shall not cause a lot, structure, or development to violate the Burlington Municipal Code.

16.60.080 Final approval.

A. Following the review process specified above, the Director shall approve the final plat application, return it to the applicant for corrections, or deny it within the 30 days after filing an application meeting the criteria above.

B. Boundary line adjustments and lot combinations approved by the City shall be signed by the Director and returned to the applicant for recording. One copy of the approved boundary line adjustment shall be retained by the City.

C. Approved boundary line adjustments shall be recorded within two years of the date of approval and a copy of the recorded boundary line adjustment shall be provided to the City.

16.60.090 Effect of boundary line adjustment approval.

Lots reconfigured by an approved boundary line adjustment or lot combination shall be considered legal lots.

Chapter 16.70
Innocent Purchaser and Testamentary Divisions

Sections:

16.70.010	Title
16.70.020	Application
16.70.030	Purpose
16.70.040	Authority
16.70.050	Approval required
16.70.060	Review process
16.70.070	Application requirements
16.70.080	Approval criteria
16.70.090	Effect of approval

16.70.010 Title

This chapter shall be called “Innocent Purchaser and Testamentary Divisions.”

16.70.020 Application

A. This chapter shall apply to all lots created through testamentary provisions and laws of decent.

B. Applications for innocent purchaser status shall be subject to this chapter.

16.70.030 Purpose

A. To provide a means of ensuring that lots created through testamentary divisions comply with applicable zoning and development standards.

B. To provide a process for granting relief to innocent purchasers of lots created in violation of platting and zoning regulations.

16.70.040 Authority

This chapter is adopted pursuant to chapters 58.17, 36.70, 36.70A, 36.70B RCW as well as other applicable laws and regulation

16.70.050 Approval required.

A. No lot created by a testamentary division shall be recognized as a legal lot without City approval.

B. No owner of an illegal lot shall be recognized as an innocent purchaser without City approval.

16.70.060 Review Process

A. Testamentary divisions. Applications for recognition of lots created through testamentary provisions shall be processed as type I decisions in accordance with the provisions of title 14A BMC.

B. Innocent purchaser. Applications for innocent purchaser status shall be processed as type II decisions in accordance with the provisions of title 14A BMC.

16.70.070 Application Requirements

A. Testamentary divisions. Applications for recognition of lots created through testamentary provisions shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications which include all of the information required by this section shall be deemed complete for purposes of complying with title 14A BMC. A complete application shall include:

1. A completed application form;
2. Any applicable fees in accordance with the fee schedule established by the City Council;
3. Documentation establishing the lots were created by testamentary provisions or the laws of descent;
4. A survey prepared by a land surveyor licensed in the State of Washington showing the area and dimensions of the lots;
5. Legal descriptions for each lot prepared by a title company or surveyor;
6. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy;

B. Innocent purchaser. Applications for innocent purchaser status shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications which include all of the information required by this section shall be deemed complete for purposes of complying with title 14A BMC. A complete application shall include:

1. A completed application form;
2. Any applicable fees in accordance with the fee schedule established by the City Council;
3. Documentation establishing the owner of the lot purchased the property for value and in good faith, and did not have knowledge of the fact that the property acquired was created in violation of this title;
4. A survey prepared by a land surveyor licensed in the State of Washington showing the area and dimensions of the lot;
5. Legal descriptions for each of the lots prepared by a title company or surveyor;

6. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy;

16.70.080 Approval Criteria.

A. Testamentary divisions.

1. Each lot shall meet the minimum standards for area and dimension prescribed by the zoning code;
2. Each lot shall adjoin or have legal access to a public road right-of-way or private road easement;

B. Innocent purchaser.

1. Substantial evidence is provided that clearly indicates the property owner purchased the illegally created lot without notification or knowledge of the fact it was illegally divided from a larger parcel or adjusted without City approval;
2. The property in question shall comply with minimum standards for area and dimension prescribed by the zoning code. Lots that do not comply with the applicable standards for area and dimension may be eligible for recognition provided they are large enough to accommodate a building site outside of the setbacks required by the zoning code, critical areas, and critical area buffers. In such cases a survey shall be submitted showing the location and dimensions of the proposed building envelope. As a condition of approval the survey shall be recorded and shall include a notation indicating that subsequent variances or reasonable use determinations will not be grated for the purpose of authorizing development outside of the envelope shown on the survey;
3. If the property owner owns adjoining lots, and if combining the illegal lot with the adjoining lots would remedy the platting or zoning violation which caused the lot to be considered illegal, the lots shall be combined as a condition of approval.

16.70.090 Effect of Approval.

A. Testamentary divisions. Once recognized by the City lots created by a testamentary division shall be considered legal lots.

B. Innocent purchaser. If the City recognizes the owner of an illegally created lot as an innocent purchaser the lot shall be considered a legal lot.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BURLINGTON, WASHINGTON IN THE MATTER OF
AMENDING TITLE 17 OF THE BURLINGTON MUNICIPAL CODE**

WHEREAS, the City of Burlington, Washington, (the "City") is a non-charter code city organized under the laws of Title 35A RCW now in effect; and

WHEREAS, the City has the authority to adopt development regulations pursuant to RCW 35A.11.020 and 35A.63.100, and in compliance with Chapter 36.70A RCW, WAC 365-196-600 through WAC 365-196-660 and WAC 365-196-800 through 365-196-870; and

WHEREAS, the Planning Commission of the City held a public hearing on September 20, 2017 and adopted a schedule and work plan for updating the Burlington Municipal Code; and

WHEREAS, Title 17 of the Burlington Municipal Code contains the City's zoning and land development regulations; and

WHEREAS, Title 17 of the Burlington Municipal Code must be revised to remove repetitive, contradictory, and obsolete language and provide clear direction for the use and enforcement of those components of the Burlington Municipal Code relating to zoning, land use, and development;

WHEREAS, in order to address the issues outlined above the City's Planning Department proposed revising Title 17 of the Burlington Municipal Code; and

WHEREAS, after reviewing an Environmental Checklist the City's SEPA Responsible Official issued a Determination of Non-significance (DNS) on October 24, 2017 for the proposed amendments and mailed the DNS to all affected public agencies. Notice of Determination of Non-significance was published in the Skagit Valley Herald on October 31, 2017; and

WHEREAS, following the issuance of the DNS a 60 day period was provided for public comment; and

WHEREAS, the proposed revisions to Title 17 were forwarded to the Washington State Department of Commerce for review pursuant to RCW 36.70A.106 on October 25, 2017; and

WHEREAS, the City's Planning Commission reviewed the proposed changes to Title 17 at a public hearing on November 22, 2017 in compliance with RCW 36.70A.035; and

WHEREAS, the Planning Commission voted to recommend the City Council adopt the proposed revisions to Title 17; and

WHEREAS, the Planning Commission adopted written findings in support of their recommendation which are attached to this ordinance as exhibit "A"; and

WHEREAS, the Planning Commission's findings and recommendation were presented to the City Council at a regular public meeting on December 14, 2017; and

WHEREAS, the revisions to Title 17 recommended by the Planning Commission are attached to this ordinance as exhibit "B"; and

WHEREAS, the revisions to Title 17 recommended by the Planning Commission are consistent with and implement the provisions of the City of Burlington Comprehensive Plan as required by RCW 36.70A.040; and

WHEREAS, after considering the Planning Commission's recommendation, and after further consideration of such Title 17, and the Council being otherwise fully informed;

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 22, 2017 and attached hereto as exhibit "A"; and
2. The text of exhibit "B" shall replace and supersede the text of Title 17 BMC; and
3. The amendments to the Burlington Municipal Code adopted by this ordinance shall become effective on January 1, 2018;

INTRODUCED AND PASSED at a regular meeting of the City Council of the City of Burlington on this 28th day of December, 2017.

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



PLANNING COMMISSION RECOMMENDATION

DATE: November 22, 2017

PROJECT: Comprehensive Municipal Code Update and Reorganization – Phase IV - Title 17

LOCATION: N/A – Citywide Municipal Code Update

NUMBER: DRA/CPA 1-2017

APPLICANT: City of Burlington

SUMMARY:

The Planning Commission has reviewed the proposed amendments to Title 17 of the Burlington Municipal Code. Title 17 has been amended for clarity, organization, and consistency. The Planning Commission also considered several significant policy decisions involving small lot development standards, mixed used development in commercial zones, and the City's Agricultural Heritage Program.

FINDINGS:

Title 17:

1. Title 17 contains the City's development standards, design guidelines, landscaping requirements, and zoning regulations. Because Title 17 contains the most significant regulatory provisions used to implement the comprehensive plan and shape new development, the Planning Commission finds that it is imperative that the code be written and organized in a clear, concise, and consistent manner.
2. Title 17 has been revised, updated, and amended many times, and as a result, the code contains inconsistent and conflicting requirements, structural problems, and suffers from poor organization and editing. The Planning Commission finds that the proposed changes to Title 17 BMC will address these shortcomings.

3. The proposed changes to Title 17 will introduce clear and consistent list formats, break lengthy paragraphs and requirements into separate provisions, and provide a single, consolidated list of definitions. The Planning Commission finds that these changes will make the code easier for Planning Department staff to administer. The Planning Commission also finds that the proposed changes will make it easier for the public to understand the City's code requirements.

4. THE PLANNING COMMISSION FINDS THAT THE SMALL LOT DEVELOPMENT PROVISIONS IN BMC 17.15.055 SHALL APPLY TO ALL R1 ZONES, THE R-2 ZONE AND THE R-3 ZONE.

4. ~~The Planning Commission finds that the small lot development provisions in BMC 17.15.055 should only apply to the City's R1-6, R 2, and R 3 zones.~~
5. The Planning Commission finds that it is appropriate to allow residential development in the City's commercial zones if the residential development is part of a larger development plan that also involves commercial uses along street frontages.
6. The Planning Commission finds that the Agricultural Heritage Program guidelines in Chapter 17.70 BMC should be retained to avoid inconsistencies and to ensure compliance with RCW 36.70A.040 and 36.70A.070.

RECOMENDATION:

Based on the findings presented above the Planning Commission respectfully makes the following recommendations to the City Council:

1. The City Council should adopt the proposed changes to Title 17 of the Burlington Municipal Code. These changes are organized under tab 7-B in the binders provided to the City Council.
2. The draft code should be amended to retain Chapter 17.70 BMC.
3. Planning Department staff should thoroughly review Title 17 BMC for consistency, grammar, organization, and technical corrections before presenting the code changes to the City Council for final adoption.

DATED this 22nd day of November 2017

Man Manito -File

Chair, City of Burlington Planning Commission

Title 17
COMPREHENSIVE ZONING ORDINANCE

17.01	General Provisions
17.05	District Establishment, Maps & Boundaries
17.15	R-1 Land Use Districts
17.20	R-2 Two-family Residence Districts
17.25	R-3 Multifamily Residence Districts
17.30	R-S Semi-Public District
17.35	OSP Open Space, Parks and Agriculture District
17.40	MR-NB Medium Density Residential and Neighborhood Business Districts
17.45	B-1 Business District
17.50	C-1 General Commercial District
17.55	C-2 Heavy Commercial District
17.60	M-1 Industrial District
17.65	BP Business Park District
17.70	Supplemental Development Standards
17.80	Landscaping
17.85	Access, Parking and Loading
17.90	Public Utilities
17.95	Signs
17.100	Nonconforming Structures, Land and Uses
17.105	Essential Public Facilities
17.110	Agricultural Heritage Credit Program
17.115	Planning Commission
17.120	Hearing Examiner
17.125	Amendments to Comprehensive Plan and Development Regulations

Chapter 17.01 GENERAL PROVISIONS

Sections:

17.01.010	Title.
17.01.020	Application.
17.01.030	Purpose.
17.01.040	Authority.
17.01.050	Definitions.
17.01.060	Land Use Permit Required.
17.01.070	Condition of Ministerial Errors.
17.01.080	Administrative interpretations.
17.01.090	Zoning for annexed land.
17.01.100	Relationship to other titles, chapters and codes.
17.01.110	Violation and penalties
17.01.115	Duty to enforce.
17.01.120	Appeal.
17.01.125	Severability.

17.01.010 Title.

This title shall be called “The Comprehensive Zoning Ordinance.” This chapter shall be called “General Provisions.”

17.01.020 Application.

A. This chapter shall apply to all chapters in this Title. The provisions of this Title shall apply to both public and private use of all land within the corporate limits of the city of Burlington.

B. No use shall be conducted, and no development, building, structure, or appurtenance shall be initiated, erected, relocated, remodeled, reconstructed, altered, or enlarged unless in compliance with the provisions of this title and with the comprehensive plan, 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. 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.

D. No division of land pursuant to Title 16 BMC shall occur unless in compliance with the provisions of this title.

E. 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

within an existing improved, and maintained, City right-of-way necessary to support the general public welfare and conducted, or carried out, by the city of Burlington, or agents of the City working under a contract or franchise. Private utilities and infrastructure improvements, and public utilities located outside an improved public right-of-way, shall be subject to this Title.

17.01.030 Purpose.

The provisions of this chapter shall be liberally construed to accomplish the following purposes:

A. This title is intended to address the requirements of Chapter 36.70A RCW, the Growth Management Act, and shall be used to implement and enforce the provisions of City's comprehensive plan. This title is also intended to protect 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).

17.01.040 Authority.

This title is created pursuant to the authority set forth in chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws and regulations.

17.01.050 Definitions.

For the purpose of this title, the words listed in this chapter shall have the following meanings unless the context clearly indicates otherwise. Words used in the singular include the plural, and words used in the plural include 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).

"A".

“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.

“Accessory building” or “Accessory Structure” means a subordinate building or structure, the use of which is incidental to the use of the main, or primary, building on the same lot. (Ord. 1206 § 2, 1992).

“Accessory use” means a use incidental and subordinate to a principal use and located on the same lot or in the same building as the principal use. (Ord. 1206 § 2, 1992).

“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 herein. (Ord. 1206 § 2, 1992).

“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).

“Alteration” means a change, rearrangement, expansion, or modification of an existing building, structure, use, development, or facility. Alterations also include moving buildings, structures, and uses from one location to another. In buildings used for business, commercial, industrial or other similar purposes the installation or rearrangement of interior partitions affecting more than one-third of a single floor area shall be considered an alteration. (Ord. 1206 § 2, 1992).

“Animated sign” means a sign employing actual motion or the illusion of motion. Note that animation is prohibited by BMC 17.95.130(B)(2), except for temporary signs in BMC 17.95.120. 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 active” 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.

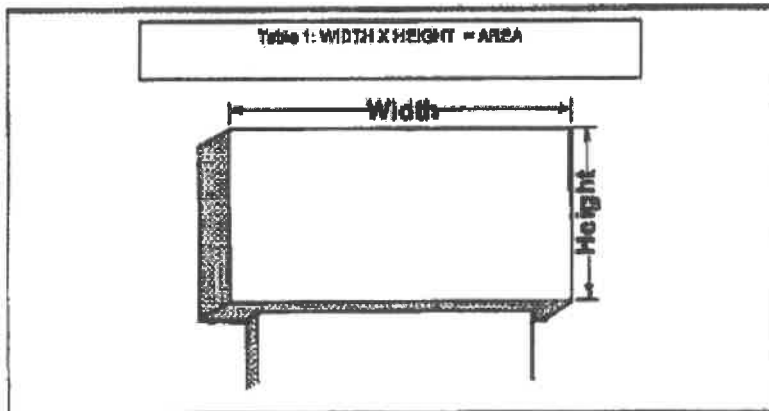
“Antenna” means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio frequency signals.

1. “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.
2. “Directional antenna” (also known as a “panel antenna”) transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees.
3. “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).

“Area of sign”, “surface area of sign”, or “sign area”, 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



“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).

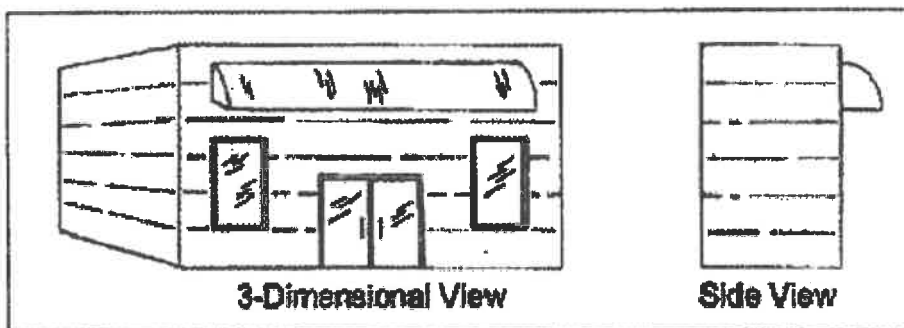
“Automotive parts and accessories sales” means an automotive retail sales and service use in which goods are rented or sold primarily for use in motorized vehicles, but excluding gas stations.

“Automotive retail sales and service” means a retail sales and service use in which goods are rented or sold primarily for use in motorized vehicles, but excluding gas stations:

“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).

“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.

“B”.

“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.

“Bed and breakfast” means a single family dwelling where up to two rooms or lodging units are let as temporary accommodations for travelers or guests by the owner or occupant of the single family dwelling. Bed and breakfast establishments may provide limited food service to guests.

“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 17.95.125(A).

“Boarding house” or “rooming house” means a dwelling unit, other than a hotel, where meals and/or lodging are provided for compensation. This term does not include buildings meeting the definition of a hotel, bed and breakfast, or multifamily dwelling. Boarding houses are differentiated from hotels and bed breakfasts by providing accommodations for periods of 30 days or more.

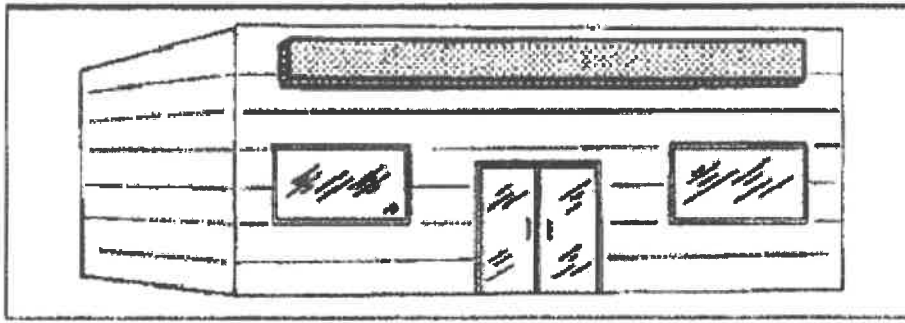
“Building” means a structure as defined in this chapter. When separated by division walls without openings each portion so separated shall be considered a separate building. (Ord. 1206 § 2, 1992).

“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 18 inches in from the outside edge of a cantilevered roof. (Ord. 1206 § 2, 1992).

“Building height” 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).

“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



“C”.

“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.

“Caretaker apartment” or “caretaker dwelling” mean an apartment or dwelling unit associated with, and subordinate to, a primary permitted use or development and used to provide housing for a person(s) employed to care for, or operate, the primary permitted use or development.

“Certificate of Occupancy” means a written document issued by the governing authority in accordance with the provisions of the building permit. The certificate of occupancy indicates that, in the opinion of the building official, the project has been completed in accordance with the building and zoning codes. This document gives the owner permission from the authorities to occupy and use the premises for the intended purpose.

“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.

“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).

“Commercial child day care center” means a building, or a portion of a building, used to provide early childhood education and learning services as defined in RCW 43.215.010.

“Commission” shall mean the planning commission of the city. (Ord. 1206 § 2, 1992).

“Community Development Director” means the City Administrator or designee.

“Conditional use” means a use or development which may, through a discretionary approval process, be conditionally permitted in one or more zones. Conditional uses are those uses and developments which are either identified as conditional in a particular zone, or which are not listed as permitted or conditional in any zone. Conditional uses generally have the following characteristics:

1. The impacts associated with the use or development are difficult to predict or ascertain due to variabilities in the size, scale, and design of the use or development, or because the activities associated with, or the technological processes employed by, the use or development are untested, experimental, unproven, or poorly documented;
2. The exact location of the use or development may determine its impact on, and compatibility with, surroundings uses, public streets, improvements and facilities;
3. The use or development requires a high level of analysis to determine if it will be, or can be made to be, consistent with applicable comprehensive plan goals and policies, abutting and adjacent uses, and the character of the surrounding neighborhood.
4. The use or development requires detailed and specific conditions of approval in order to be compatible with surrounding uses, public streets, improvements, and facilities;
5. The use or development is not substantially similar in form, function, size, scale, or impact to another use listed as permitted in one or more zones.

“Corner lot” means a lot at the junction of, and fronting on two or more intersecting streets. A corner lot has a front lot line and a street side lot line. (Ord. 1206 § 2, 1992).

“Council” or “city council” shall mean the city council of the city of Burlington. (Ord. 1206 § 2, 1992).

“Coverage”, “lot coverage”, or “building coverage” means the area of a lot which is covered by a roofed structure. (Ord. 1206 § 2, 1992).

“D”.

“Density” means the ratio of dwelling units to lot area.

“Detached building” means a building surrounded on all sides by open space. (Ord. 1206 § 2, 1992).

“Developed land area” means those parts of a lot, site, or area of land that have been extensively improved for an existing land use including building coverage, parking and loading areas, service yards, impervious surfaces, and landscaped areas. (Ord. 1206 § 2, 1992).

“Development” means any activity that results in a use or modification of land or its resources. Development activities include, but are not limited to: dredging, drilling, dumping, filling, earth movement, grading, clearing or removal of vegetation; storage of materials or equipment; building or construction; land division, boundary line adjustments, lot segregations, subdivision and short subdivisions; binding site plans; land use permit approvals; variances; shoreline development or substantial development; and activities or uses allowed through conditional use permits.

“Development complex sign” means a free-standing sign identifying a multiple-tenant development, such as a shopping center or planned industrial park, which is controlled by a single owner or landlord.

“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 .

“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.

“Director” means the Community Development Director or designee.

“District” or “zone” means a zoning district as described in Chapter 17.05 BMC or as shown on the City’s adopted zoning map.

“Driveway” means an area improved with an all-weather driving surface providing vehicle access to a single dwelling unit from a public or private street in accordance with applicable city standards and requirements. This term does not include public or private streets.

“Double-faced sign” means a sign with two faces, back to back.

“Duplex” means a building containing two dwelling units. See “two family dwelling”.

“Dwelling unit” means a building, or a portion of a building, providing complete housekeeping facilities for one family or housekeeping unit. (Ord. 1206 § 2, 1992).

“E”.

“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.

“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 17.95.115 for requirements regarding electronic signs.

“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).

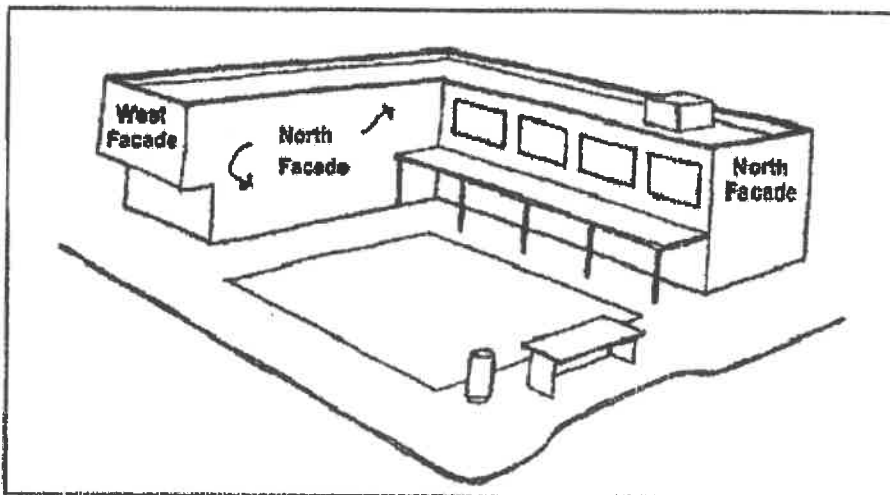
“Exterior lot” means a lot which directly abuts or adjoins at least one public or private street.

“Exterior sign” means any sign placed outside a building.

“F”.

“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. Façade



“Family.” Family: A person, or two or more persons related by blood or marriage or law living together as a single housekeeping unit in a single dwelling. In addition, the following shall be included in the definition of family pursuant to the requirements of state and/or federal law:

1. Adult family homes licensed pursuant to RCW 70.128.150;
2. Foster homes for the placement of the disabled, or expectant mothers in a residential setting including, but not limited to, foster family homes licensed pursuant to Chapter 74.15 RCW, community group care facilities licensed pursuant to Chapter 74.15 RCW and crisis residential centers pursuant to Chapter 13.32A RCW;
3. Consensual living arrangements of the disabled protected pursuant to the Federal Fair Housing Act amendments; and
4. A housekeeping unit as defined in this chapter.

Secure community transition facilities, as defined in Chapter 71.09 RCW, are not included in the definition of “family.”

“Family Day Care Home” means a residential dwelling used by a family day care provider to provide day care services in accordance with the provisions of RCW 36.70A.450 and RCW 43.215.010.

“Family Day Care Provider” means a child care provider who regularly provides early childhood education and early learning services for not more than twelve children in the provider's home in the family living quarters.

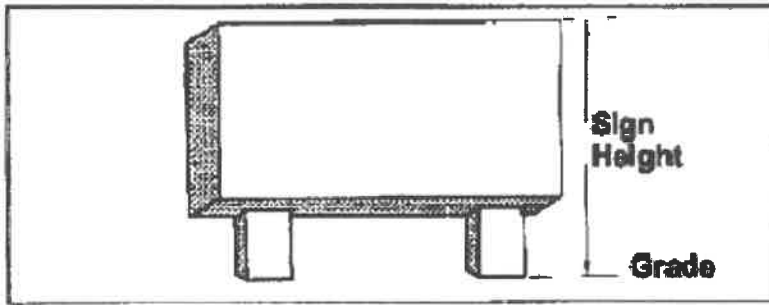
“Flashing Sign.” See “animated sign, electrically activated.”

“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 17.85.050(F). (Ord. 1206 § 2, 1992).

“Foster family home” means a dwelling unit used as a foster family home as defined in WAC 388-25-010 and chapter 74.13 RCW.

“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 community development director or designee.

“G”.

“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.

“Guest cottage” or “guest house” means a detached accessory building secondary and subordinate to a dwelling unit used by the family occupying the dwelling unit for the purpose of housing members of the family or guests. A guest cottage does not contain a kitchen or cooking facilities and is not used as separate dwelling unit. This term does not include accessory dwelling units as defined in this chapter which may contain kitchens or cooking facilities and which may be used as separate dwelling units.

“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).

“H”.

“Health care facility”, “medical service” or “outpatient clinic” means a building, or a portion of a building, containing offices for providing medical, dental, immediate care clinics, or psychiatric services not involving overnight housing of patients. This term does not include hospitals or nursing homes as defined in this chapter.

“Height of sign” or “sign height” 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.

“Home occupation” means an occupation or profession which is customarily incidental to or carried on in a dwelling unit 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).

“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).

“Hotel” means a building, or a portion of a building, designed or used to provide transient accommodations and consisting of three or more lodging units. An eating and drinking establishment and accessory shops and services catering to the general public may be provided as accessory uses. This definition does not include institutions housing persons under legal restraint or requiring medical attention or care. (Ord. 1206 § 2, 1992).

“Housekeeping unit” means one household where all the members have common access to and common use of all living, kitchen, and eating areas within the dwelling unit, and household activities and responsibilities such as meals, chores, expenses, and maintenance of the premises are shared or carried out according to a household plan or other customary method, If the dwelling unit is rented, the household members must jointly occupy the unit under a single lease in order to be considered a housekeeping unit. This term does not include “boarding or “rooming houses” as defined in this chapter where rooms within a dwelling unit are rented or leased to individuals under separate leases.

“I”.

“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).

“Impervious surface” means a hard surface which either prevents or retards the entry of water into the soil mantle 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 and 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.

“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.

“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).

“Interior lot” means a lot which has no street frontage and which can only be accessed through a driveway or shared driveway.

“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.

“J”.

“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 International Fire Code. See also chapter 8.12 BMC, Nuisance. (Ord. 1396 § 11, 1999; Ord. 1206 § 2, 1992).

“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).

“K”.

“Kennel” means a facility, structure, property, or development where more than four dogs and/or one litter of unweaned pups are kept. (Ord. 1668 § 1, 2009; Ord. 1206 § 2, 1992).

“L”.

“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).

“Land use permit” means a document issued by the City which documents or authorizes a particular use or development. A land use permit formally documents the City’s land use decision and may establish, or document, the conditions and restrictions applicable to the use or development. (Ord. 1206 § 2, 1992).

“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).

“Lodging unit” means a room or a group of interconnected rooms, intended for sleeping, that is rented on a short term basis to guest(s) to provide transient accommodations and is individually designated by number, letter, or other means of identification. Lodging units may contain cooking facilities; however, this definition does not include long term, non-transient accommodations such as multifamily dwellings and boarding houses.

“Lot” means 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. This definition includes only those lots, tracts, parcels, and sites which were created in compliance with the zoning and platting regulations in effect at the time of their establishment, or which are subsequently recognized by the City as separate lots consistent with applicable municipal code requirements and Washington State law.

“Lot area” means the area of a lot contained within the lot lines. Lot area includes areas within easements, submerged lands, and wetland areas. For purposes of determining compliance with this title the City may require that lot area(s) be calculated by a licensed land surveyor.

“Lot line” means a line or boundary which separates a lot, tract, parcel, or site from another lot tract, parcel or site, or from an adjoining public street or right-of-way. For purposes of compliance with this title the City may require that the location of lot lines be determined by a licensed land surveyor.

1. “Front lot line” means the lot line parallel to and abutting a public or private street. For interior lots, or lots with more than one street frontage, the front lot line shall be side which provides the primary means of access to the lot. If a lot has frontage on a street and an alley, the property line adjoining the alley shall not be considered a front lot line regardless of the point of access.
2. “Rear lot line” means the lot line which is opposite from and generally parallel to the front property line.
3. “Side lot line” means any lot line other than the front line or rear lot line. Generally a side property line is perpendicular to and connects the front and rear property lines.
4. “Street side lot line” means a lot line, other than a front lot line, which adjoins a public or private street.

“Lot depth” means the mean dimension of the lot from the front lot line to the rear lot line.

“Lot width” means the dimension across the lot between the side lot lines at the front setback line.

“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.

“M”.

“Macro facility” means 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 in the aggregate as viewed from any one point. (Ord. 1396 § 13, 1999).

“Manufactured home” means a single-family dwelling unit built in accordance with regulations adopted under the national manufactured housing construction and safety standards act of 1974 (42 U.S.C. 5401 et seq.) and (RCW 43.22.335). This term includes modular homes as defined in

this chapter but does not include mobile homes. This term also does not include recreational vehicles, park models, trailers, and other similar vehicles which are licensed for use on public roads, capable of being licensed for use on public roads, or designed and constructed to be licensed for use on public roads. Only structures which are certified by the State of Washington or federal government for use as a permanent habitable dwelling are included in this definition.

“Manufactured home park” means an area of land occupied or designed for the occupancy of two or more manufactured homes.

“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).

“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).

“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).

“Mean depth” means 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).

“Medical service” means a retail sales and service use in which health care for humans is provided on an outpatient basis including, but not limited to, offices for doctors, dentists, chiropractors, and other health care practitioners. (Ord. 1396 § 15, 1999).

“Mini Commercial child day care center” or “mini commercial day care” means a commercial child day care center that provides services to not more than 12 children at any one time.

“Mobile home” means a factory built dwelling unit that does not meet current State or federal standards for factory built dwellings, modular homes, or manufactured homes. This definition does not include manufactured or modular homes as defined in this chapter or site built homes constructed in accordance with City building code requirements. Mobile homes may not be placed within the City of Burlington; however, existing legally established mobile homes shall be considered a nonconforming use and shall be subject to the nonconforming standards set forth in chapter 17.100 BMC.

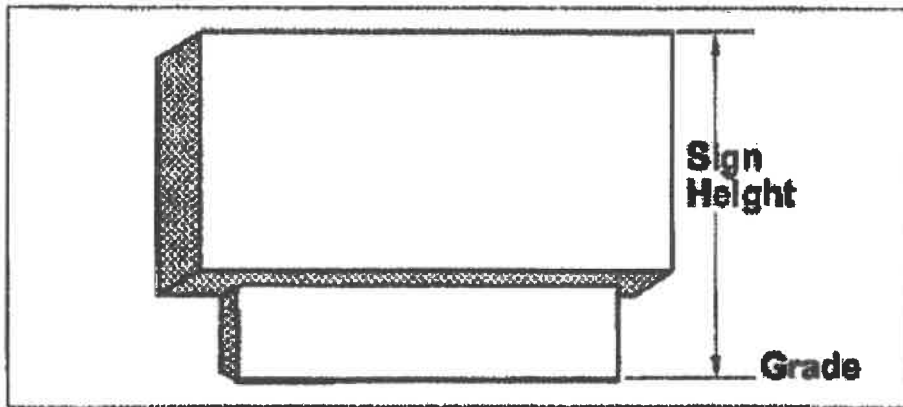
“Modular home” means factory built housing as defined by RCW 43.22.450(3) which has been approved by the Department of Labor and Industries in accordance with RCW 43.22.455.

“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).

“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).

“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



“Multifamily dwelling” means a building containing three or more dwelling units. (Ord. 1206 § 2, 1992).

“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.

“N”.

“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.

“Nonconforming lot” means a lot which was legally established but which does not conform to current zoning or development regulations including any applicable standards for width, depth, or area. For purposes of interpreting this definition, “legally established” means the lot was created in compliance with the zoning and platting regulations, if any, in effect at the time the lot was created. A lot may also be considered a legal nonconforming lot if it is subsequently recognized by the City as a separate lot consistent with applicable municipal code requirements and Washington State law.

“Nonconforming structure” means a structure which was lawfully established but which does not conform to current zoning or development regulations. A structure shall be considered lawfully established if it conformed to the applicable zoning and development regulations in effect at the

time it was built or established. This includes the requirement to obtain city approvals or permits. A structure shall also be considered lawfully established if a permit for the structure has been granted and has not expired. Subsequent expansions or modifications of a legally established structure shall conform to all applicable zoning and development regulations in effect at the time of the modification or expansion. Specific regulations governing nonconforming structures can be found in Chapter 17.100 BMC.

“Nonconforming use” means the use of land or a structure for a purpose which was lawful at the time the use was established or initiated but which does not now conform currently applicable zoning or development regulations. A use shall be considered lawfully established if it was consistent with all of the applicable zoning and development regulations in effect at the time it was established or initiated. This includes the requirement to obtain city approvals or permits. A use shall also be considered lawfully established if a permit authorizing the use has been granted and has not expired. Subsequent expansions or modifications of a legally established use shall conform to all applicable zoning and development regulations in effect at the time of the modification or expansion. Specific regulations governing nonconforming uses can be found in Chapter 17.100 BMC.

“Nursing home” or “convalescent home” means a facility licensed by the State of Washington providing 24 hour supervised nursing care, personal care, therapy, nutrition management, organized activities, social services, room, board, and laundry for persons requiring regular medical attention by reason of chronic illness or infirmity, but excluding surgical or emergency medical services. This definition excludes hospitals, multifamily dwellings, boarding houses, and hotels as defined in this chapter.

“O”.

“Off-premises sign” 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.

“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.

1. “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.
2. “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).

“On-premises sign” means a sign which displays a message which is directly related to the use of the property on which it is located.

“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).

“P”.

“Parking space” means a space used to temporarily park a motor vehicle and having access to a public street or alley. (Ord. 1206 § 2, 1992).

“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).

“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.

1. “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.
2. “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.
3. “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.
4. “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).

“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.

“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).

“Professional office” means a small scale office used as a place of business by licensed professionals, or persons in other generally recognized professions, which use training or knowledge of a technical, scientific or other academic discipline as opposed to manual skills, and which does not involve outside storage or fabrication, or on-site sale or transfer of commodity. This term includes office space for lawyers, accountants, engineers, architects, consultants, and other similar professions.

“Projecting sign” means a building mounted sign which projects past the face of a building for the purpose of displaying the sign content in a direction other than parallel to the building façade.

“Public hearing” means a duly advertised public meeting called by the hearing examiner, council, 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).

“R”.

“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.

“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.

“Recreational vehicle” or “RV” means a structure or vehicle containing living space intended to provide short term accommodations for recreational purposes and licensed for use on public roads, designed to be licensed for use on public roads, or capable of being licensed for use on public roads. This term includes trailers, campers, motor homes, park models, and other similar vehicles but does not include manufactured homes as defined in this chapter. A recreational vehicle shall not be considered a dwelling unit and shall not be used a permanent place of habitation.

“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).

“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 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).

“Rezone” means an amendment to the official land use map to change the zone classification of an area. (Ord. 1206 § 2, 1992).

“Roof sign” means a sign or sign structure erected above a roof, parapet, canopy, or porte cochere of a building or structure.

“S”.

“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.

“School” means an institution of learning, whether public or private, which offers instruction in those courses of study required by the Washington Education Code or which is maintained pursuant to standards required by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school or any special institution of education, and also includes higher education institutions and vocational schools, but does include health and fitness clubs or facilities that solely provide artistic or musical instruction.

“Secure community transition facilities (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).

“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. for land generally eligible as sending sites for the purpose of this chapter. (Ord. 1717 § 12, 2010).

“Service yard” or “Storage yard” means an accessory yard or outdoor area used to store equipment, vehicles, materials, or used for outdoor fabrication or processing of materials. (Ord. 1206 § 2, 1992).

“Setback” means the space or distance required between a lot line and a building, structure, or development. Required setback areas are intended to remain free of buildings and structures and open to the sky as specified in this title. Setbacks may also be required between different and incompatible uses.

1. “Front setback” means an open unoccupied space parallel and adjacent to the front property line and extending from one side property line to the opposite side property line. No building or structure shall be placed within or extend into a required front setback unless explicitly authorized by this Title.
2. “Rear setback” means an open unoccupied space parallel and adjacent to the rear property line and extending from one side property line to the opposite side property line. No building or structure shall be placed within or extend into a required rear setback except as explicitly authorized by this Title.
3. “Side setback” means an open unoccupied space parallel and adjacent to a side property line and extending from the front property line to the rear property line. Buildings and structures shall not be placed within or extend into a required side setback except as explicitly authorized by this Title.
4. “Street setback” means an open unoccupied space parallel and adjacent to a public or private street and extending from one side property line to the opposite side property line. No building or structure shall be placed within or extend into a required front setback unless explicitly authorized by this Title. This definition does not include the front setback area as defined in this title and is intended to be applied to property lines which adjoin or abut streets when a lot has more than one street frontage.

“Shared driveway” means an area improved with an all-weather driving surface providing vehicle access to two to four dwelling units from a public or private street in accordance with applicable city standards and requirements. This term does not include public or private streets.

“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.

“Single-family dwelling” means a detached building used as a single dwelling unit. This definition does not include “accessory dwelling unit” as defined in this chapter.

“Single-faced sign” means a sign with only one face, displaying content on only one side and in only one direction.

“Site area” means the total horizontal area within the property lines excluding external streets. (Ord. 1206 § 2, 1992).

“Small lot development” or “residential small lot” means a subdivision or short subdivision process that allows lots to be created that are smaller than would be allowed under the normally applicable zoning requirements. Small lot development, construction on lots created through the small lot development process, and boundary line adjustments of lots created through the small lot development process are subject to the standards set forth in BMC 17.15.110.

“Specified anatomical areas” means:

1. 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
2. Human male genitals in a discernible turgid state, even if completely and opaquely covered. (Ord. 1206 § 2, 1992).

“Specified sexual activities” means:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy;
3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast. (Ord. 1206 § 2, 1992).

“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).

“Street” means a public or private thoroughfare which is consistent with the classification scheme identified in chapter 12.28 BMC and which affords the principal means of access to abutting properties, dwelling units, or commercial premises. This term does not include “driveway” or “shared driveway” as defined in this chapter.

“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).

“T”.

“Telecommunication 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 includes the wireless communication facility support structure. (Ord. 1396 § 16, 1999).

“Telecommunication 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 from any one point. (Ord. 1396 § 17, 1999).

“Topless club” means a public or private club employing persons exposing “specified anatomical areas” as defined herein. (Ord. 1206 § 2, 1992).

“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.

“Tract” means a lot, usually several acres in area. (Ord. 1206 § 2, 1992).

“Traffic control devices” means signs, signals, directional symbols, and similar devices specifically intended to direct traffic to, from, and within a site.

“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. Units shall at all times be prepared for evacuation in event of a flood warning. This term does not include manufactured home parks. (Ord. 1227 § 1, 1993).

“Transient accommodations” means the provision of lodging units, room, board, or sleeping space to guests on a short term basis for periods of less than 30 days. This term does not include multifamily dwellings or boarding houses as defined in this chapter.

“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:

1. Monopoles;
2. Lattice towers;
3. Guyed towers. (Ord. 1396 § 24, 1999).

“Two-family dwelling” or “duplex” means a building containing two dwelling units. (Ord. 1206 § 2, 1992).

“V”.

“Variance” means relief from certain provisions of this title as authorized by the hearing examiner after determining that the criteria established for the granting of variances have been satisfied. (Ord. 1206 § 2, 1992).

“Vehicle repair, major” means an automotive retail sales and service use in which one or more of the following activities are carried out:

- a. Reconditioning of any type of motorized vehicle including any repairs made to vehicles over 10,000 pounds gross vehicle weight;
- b. Collision services, including body, frame, or fender straightening or repair;
- c. Overall painting of vehicles in a paint shop;
- d. Dismantling of motorized vehicles in an enclosed structure.

“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.”

“W”.

“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).

“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).

“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).

“Y”.

“Yard” see “setback”

“Z”

“Zone” or “zoning district” means a zoning district as described in Chapter 17.05 BMC or as shown on the City’s adopted zoning map.

17.01.060 Land Use Permit Required.

A land use permit issued pursuant to Title 14A BMC shall be required to establish or change use as provided by this title. Compliance with the procedural requirements set forth in title 14A BMC shall be required.

17.01.070 Condition of Ministerial Errors.

The 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).

17.01.080 Administrative interpretations.

A. The 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 director may permit a use in a zone that is not listed as permitted or conditional in the zone, if the director determines the use is consistent with the intent of the zone, the applicable goals and policies of the comprehensive plan, and has similar characteristics and impacts to the other uses listed as permitted or conditional in the zone, provided that the use is not prohibited or listed as permitted or conditional in another zone.

C. An administrative interpretation may be appealed using the process set forth in Title 14A BMC.

D. 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).

E. In all cases this title shall be interpreted and applied in a manner which is consistent with, and best implements the comprehensive plan.

17.01.090 Zoning for annexed land.

At the time of any parcel of land being annexed to the city, the property shall 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. (Ord. 1230 § 1, 1993; Ord. 1221 § 1, 1992).

17.01.100 Relationship to other titles, chapters and codes.

The administrative provisions of Title 14A BMC shall apply to requests for project permits under this Title.

17.01.110 Violation and penalties

A. All acts or omissions in violation of any provision contained within this title, or acts or

omissions that cause or contribute to a violation of any provision contained within this title, are hereby determined to be detrimental to the public health, safety and general welfare and shall constitute a public nuisance. Further, as specified in chapter 1.24 BMC, such acts or omissions shall be subject to enforcement fines and abatement under chapter 8.12 BMC, criminal penalties as set forth in chapter 1.24 BMC, penalties for civil infractions as set forth in chapter 1.34 BMC, or civil violations as set forth in chapter 1.44 BMC.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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).

17.01.115 Duty to enforce.

A. It shall be the duty of the director to enforce this Title. 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 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.

17.01.120 Appeal.

Appeals of decisions made pursuant to this title shall be subject to the procedures and regulations set forth in title 14A BMC.

17.01.125 Severability.

If any portion of this title is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section of this title.

Chapter 17.05
DISTRICT ESTABLISHMENT, MAPS AND BOUNDARIES

Sections:

- 17.05.010 Title.
- 17.05.020 Application.
- 17.05.030 Purpose.
- 17.05.040 Authority.
- 17.05.050 Districts Established.
- 17.05.060 District boundaries – Established.
- 17.05.070 District boundaries – Shown on zoning map.
- 17.05.080 District boundaries – Rules for interpretation.
- 17.05.090 Conformity with district regulations required.
- 17.05.100 Adoption of special planning areas map.

17.05.010 Title.

This chapter shall be called “District Establishment, Maps and Boundaries.”

17.05.020 Application.

This chapter shall apply to all zoning in the City and all zoning actions as specified in this Title.

17.05.030 Purpose.

This chapter sets forth the zoning classifications for the City and general provisions applicable to such classifications.

17.05.040 Authority.

This chapter is created pursuant to the authority set forth in BMC 17.01.040, chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws.

17.05.050 Districts Established.

The City is divided into a number of zoning districts in order to implement the City’s comprehensive plan and to classify, segregate, and regulate the uses of land, buildings, and structures. Each zoning district, and its corresponding comprehensive plan designation, is shown below.

Comprehensive Plan Designation	Zoning Designation
SF-D (Single Family and Duplex)	R-1-6.0 R-1-7.6 R-1-8.4 R-1-9.6 R-2
M-F (Multi Family Residential)	R-3
OSPA (Open Space, Parks, and Agriculture)	OSP
C-B (Commercial Business)	B-1 C-1

	MR-NB R-S
HC-I (Heavy Commercial and Industrial)	C-2 M-1 B-P

(Ord. 1221 § 3, 1992; Ord. 979 § 3, 1981; Ord. 890 § 2.1, 1977).

17.05.060 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, setbacks, 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).

17.05.070 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).

17.05.080 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 a street, alley, highway, public right-of-way, or railroad 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, alley, highway, public right-of-way, or railroad the boundary line shall be construed to be parallel to the centerline.

C. Where districts, or district boundaries, appear to follow both sides of, and thereby exclude from designation, a street, alley, highway, public right-of-way, or railroad the boundaries of the adjoining districts shall be construed to extend to the centerline. Where the same zoning designation is present on both sides of such a feature, that zoning designation shall be construed to extend across the feature.

D. 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.

E. 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.

F. 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.

G. In case uncertainty exists which cannot be determined by application of the foregoing rules, the hearing examiner upon application by the City or affected property owner shall recommend, and the city council shall determine, the location of such use district boundaries. (Ord. 890 § 2.4, 1977).

17.05.090 Conformity with district regulations required.

Except as otherwise provided in this title:

A. All development within the City of Burlington shall be consistent with the requirements of this title. An exemption from a requirement to obtain a permit shall not be construed as an exemption from compliance with other applicable requirements.

B. 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, or modified 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.

C. 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, setback and height regulations established by this title or amendments thereto for the use district in which such building or structure is located.

D. No setback 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 setback or open space for any other building or structure. (Ord. 890 § 2.6, 1977).

E. If a use is not listed as permitted or conditional in a district, but is listed as permitted or conditional in one or more other districts, it shall be considered a prohibited use in the district in which it is unlisted. If a use is not listed as permitted or conditional in any district it shall be considered a conditional use unless the director determines the use is substantially similar to and has the same characteristics, functions, and impacts as a use listed as permitted in the district in which it is being considered.

17.05.100 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 17.15

R-1 LAND USE DISTRICTS

Sections:

17.15.010	Title.
17.15.020	Application.
17.15.030	Purpose.
17.15.040	Authority.
17.15.050	District subdivisions designated.
17.15.060	Permitted primary uses.
17.15.070	Permitted accessory uses.
17.15.080	Conditional uses.
17.15.090	Additional regulations.
17.15.100	Development standards.
17.15.105	Cluster developments.
17.15.110	Residential small lot.

17.15.010 Title.

This chapter shall be called “R-1 Land Use Districts.”

17.15.020 Application.

This chapter shall apply to all uses and developments in areas designated R-1.

17.15.030 Purpose.

The primary purpose of the R-1 district is to accommodate lower density residential development and compatible accessory uses. Development in the R-1 district should generally be limited to single-family dwellings and detached structures. Other uses and structures may be appropriate in limited circumstances when not inconsistent with the primary purpose of the zone.

17.15.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW, and other applicable laws and regulations.

17.15.050 District subdivisions designated.

District R-1 is further subdivided into sub-districts differing only in the requirements for minimum lot area:

Sub-district	Minimum Lot Area Per Dwelling Unit
R-1- 6.0	6,000 sq. ft.
R-1- 7.6	7,600 sq. ft.
R-1- 8.4	8,400 sq. ft.
R-1- 9.6	9,600 sq. ft.

In addition residential small lots with a minimum lot area of 3,000 square feet may be developed in any sub-district in accordance with the standards and procedures set forth in BMC 17.15.110. The minimum lot area requirements and density limits identified in this chapter shall not be construed to prohibit accessory dwelling units. (Ord. 1502 § 1, 2002; Ord. 1260 § 1, 1994; Ord. 1221 § 4, 1992; Ord. 1206 § 3, 1992).

17.15.060 Permitted primary uses.

Buildings, structures, and lots in the R-1 district shall only be used for the following, unless otherwise provided for in this title:

- A. Single-family dwelling units, provided that no more than one single-family dwelling unit shall be permitted on a single lot;
- B. Municipal parks and playgrounds;
- C. Boarding houses accommodating 10 persons or less.

17.15.070 Permitted accessory uses.

A. Normal residential appurtenances. The following uses and structures may be authorized as an accessory use in conjunction with a residential dwelling: garage, guest cottage, recreation room, storage shed, noncommercial greenhouse, decks, driveway, onsite utilities and utility connections, fences, and swimming pool.

B. Keeping of not more than six household pets, four of which may be dogs, kept in the home. This limit shall not include birds, fish or suckling young of pets;

C. Family day care homes;

D. Foster family care homes accessory to a dwelling unit;

E. Accessory dwelling units associated with a single family dwelling unit subject to the following approval criteria:

1. The general appearance and character of the single-family residence shall be maintained.
2. New entrances shall face the side or rear property lines.
3. Parking shall be provided in accordance with the applicable standards set forth in BMC 17.85.070.
4. Accessory dwelling units shall be contained within, or attached to, the existing single-family home. A detached accessory building may only be used as an accessory dwelling unit if the subject lot is 12,000 square feet or larger.
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. A Covenant or declaration regarding ownership requirements shall be recorded with the Skagit County Auditor.

6. In all cases the accessory dwelling unit must be located on the same lot as the single family dwelling it's associated with.

F. Telecommunication micro facility, subject to the following requirements, except as limited by the Telecommunication Act of 1996 as amended:

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 design review 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).

17.15.080 Conditional Uses.

The following uses shall require a conditional use permit.

A. Mini commercial child day care center;

B. Commercial child day care center, if located on an arterial.

C. 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;

D. Government facilities, other than those listed as a permitted use;

E. Kennels;

F. Manufactured home park;

G. Neighborhood recreational buildings and facilities;

H. Private country clubs and golf courses, excluding driving ranges;

I. Religious facilities and fraternal organizations;

J. Schools

K. 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).

17.15.090 Additional regulations.

A. Manufactured homes may be placed on any lot in an R-1 zone and regulated in accordance with the same standards and requirements applicable to site built single-family homes, except that the following additional regulations shall apply. These standards and requirements do not apply to legally established, non-conforming manufactured homes or manufactured homes placed within a manufactured home park.

1. The manufactured home shall be set upon a permanent foundation, as specified by the manufacturer, and the space between the bottom of the home and the ground shall be enclosed by concrete or an approved concrete product which may be either load bearing or decorative;
2. The manufactured home shall have been originally constructed with and shall now have a composition or wood shake or shingle, coated metal, or similar roof of nominal 3:12 pitch;
3. The manufactured home shall have exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences
4. The placement of the manufactured home shall be consistent with all other regulatory requirements generally applicable to new homes.

B. Accessory buildings:

1. All accessory buildings shall be located behind the primary structure, and individually, or cumulatively, shall not cover more than 50 percent of the required rear setback area for the primary structure; and
2. All accessory buildings shall comply with the setback, height, and size limits specified in BMC 17.15.100.F

C. 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.

D. No trailer, recreational vehicle, boat, camping trailer, fifth wheel, camper, van, car, 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. Only site built structures which comply with all applicable building code requirements and manufactured or modular homes which meet applicable State or federal standards for use as a dwelling unit may be used as a place of habitation.

E. All uses and developments shall comply with the parking requirements set forth in chapter 17.85 BMC.

F. Junk and inoperable vehicles shall not be stored outdoors unless completely surrounded by a solid, site obscuring fence and not visible from an adjoining street or public right of way. Outdoor storage shall also be subject to the following additional restrictions and requirements:

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 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.

G. Where alley access is available, parking shall be located off the alley and no curb cuts shall be permitted. This requirement shall apply to all land divisions, the construction of new homes and accessory buildings, and requests for curb cuts to serve existing homes and accessory buildings

H. Home occupations are allowed subject to compliance with BMC 17.70.115.

I. 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).

J. New subdivisions with 40 or more lots shall provide common open space, a playground, or a park.

17.15.100 Development standards.

A. Lot area and dimension. The following requirements shall apply to land divisions and boundary line adjustments in the R-1 zone except that small lot development shall be subject to the standards and requirements set forth in BMC 17.15.110 and cluster developments shall be subject to the standards in BMC 17.15.105.

1. Minimum lot area:
 - a. R1-6.0: 6,000 square feet.
 - b. R1-7.6: 7,600 square feet.
 - c. R1-8.4: 8,400 square feet.
 - d. R1-9.6: 9,600 square feet
2. Minimum lot width: 30 feet.
3. Minimum lot depth: 80 feet.

B. Minimum setback requirements.

1. Front: 17 feet.
2. Street side: 20 feet.
3. Side: 5 feet. Provided that the total of the two side yards shall not be less than 15 feet.
4. Rear: 20 feet.
5. Setback exceptions:
 - a. Accessory buildings: see BMC 17.15.100.E
 - b. All other buildings and structures: see BMC 17.70.080
6. Minimum buildings separation: All detached structures shall be subject to a minimum building separation of 10 feet.

C. Maximum building and impervious surface coverage.

1. Building coverage: 35 percent.
2. Impervious surface coverage: 40 percent.

D. Maximum building height. Buildings and structures in the R-1 zones shall be subject to the following maximum height limits, except that spire, fleche, campanile or high nave, a dome and lantern, or a clock tower may exceed these limits if authorized by a conditional use permit.

1. Primary structures: 35 feet.
2. Accessory structures: 20 feet, see table in BMC 17.15.100.E

E. Accessory buildings and structures 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
9,601 – 10,890 square feet (1/4 acre)	960 square feet	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

17.15.105 Cluster Developments

Cluster developments may be permitted through a subdivision or short subdivision process. For such developments, the normally applicable requirements for lot width and lot width at the building line, lot depth, lot area, building and impervious surface coverage, and property line setbacks may be reduced or altered; provided that:

1. Housing types may include single-family detached, townhouses, zero lot line, multi-family, or a combination of housing types, provided that no structure or building shall contain more than eight dwelling units.
2. The maximum number of dwelling units permitted within the boundaries of the subdivision or short subdivision shall not exceed the number permitted by the zoning district in which the subdivision or short subdivision is located.
3. When 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 development is consistent with the coverage limits prescribed by the underlying zone.
4. The resulting subdivision or short subdivision design shall clearly retain a substantial area of continuous, publicly accessible open space, wetlands, areas adjacent to wetlands, steep slopes, geologically hazardous areas, wildlife habitat areas, or other critical areas. 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. Lot size reductions shall be limited to 20 percent of the minimum lot size required by the zoning district in which the subdivision or short subdivision is located. 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.
6. When deviations from lot size and dimension requirements are granted, restrictive plat note shall be included prohibiting future divisions or adjustments if such divisions or adjustments would have the effect of increasing the overall density of the subdivision or short subdivision.
7. Open space areas created through a cluster development shall be placed within separate tracts.

8. Restrictive notes shall be included on the face of the plat, or short plat, limiting future use and development of open space tracts to uses and developments that are consistent with the intended purpose of the open space tracts.

17.15.110 Residential small lot.

Residential small lots may be created in any R-1 zone through a subdivision or short subdivision process if the following requirements are met:

A. Minimum Lot Area: 3,000 square feet.

B. Maximum Height Limit: 20 feet.

C. All structures placed on a residential small lot shall have a pitched roof as follows:

1. Structures with finished living space on only one floor shall have a minimum roof pitch of 4:12.
2. Structures with finished living space on more than one floor shall have a minimum roof pitch of 12:12.

D. Maximum Structure Depth: 60 feet. Garages, decks, balconies, and bay windows shall be excluded from measurement for the purposes of this provision.

E. Setbacks Requirements.

1. Front: 17 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. Street side: 20 feet
3. Rear: 10 feet
4. Side: 5

F. Maximum building coverage: 45 percent.

G. Maximum impervious surface coverage: 60 percent

G. Small lot subdivisions and short subdivisions shall include restrictive plat notes identifying the requirements of this section.

¹ Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.20
R-2 TWO-FAMILY
RESIDENCE DISTRICTS

Sections:

17.20.010	Title.
17.20.020	Application.
17.20.030	Purpose.
17.20.040	Authority.
17.20.050	Permitted primary uses.
17.20.060	Permitted accessory uses.
17.20.070	Conditional uses.
17.20.080	Additional regulations.
17.20.090	Development standards.
17.20.100	Cluster developments.
17.20.105	Residential small lot.

17.20.010 Title.

This chapter shall be called “R-2 Two-Family Residence Districts.”

17.20.020 Application.

This chapter shall apply to all uses and developments in areas designated R-2.

17.20.030 Purpose.

The R-2, two-family residence, zone is intended to permit up to two dwelling units on a single lot at moderate densities above those permitted in the R-1 zones, but below those permitted in the R-3 zone.

17.20.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63A, 36.70A, and 36.70B RCW and other applicable laws and regulations.

17.20.050 Permitted primary uses.

Any use listed as a permitted use in the R-1 zone shall be considered a permitted use in the R-2 zone. The following additional uses shall also be considered permitted uses in the R-2 zone:

A. Two family (duplex) dwellings; provided that no more than one duplex building shall be permitted on a single lot;

17.20.060 Permitted accessory uses.

Any use identified as a permitted accessory use in the R-1 zone shall be considered a permitted accessory use in the R-2 zone, subject to any standards identified in BMC 17.15.070.

17.20.070 Conditional Uses.

Any use listed as a conditional use in the R-1 zone may be permitted as a conditional use in the R-2 zone subject to the procedural requirements applicable to conditional use permits. The following additional uses may also be permitted as conditional uses in the R-2 zone:

- A. Boarding houses accommodating more than 10 persons;
- B. Duplexes, more than one per lot;
- C. Museums;
- D. Nursing homes;
- E. Utility substations. (Ord. 1396 § 34, 1999; Ord. 1206 § 3, 1992).

17.20.080 Additional regulations.

All structures, uses, and developments located in the R-2 zone shall be subject to the “additional regulations” identified in the R-1 zone (BMC 17.15.090).

17.20.090 Development regulations.

All structures, uses, and developments shall comply with the “development standards” identified in the R-1 zone (BMC 17.15.100) except as follows:

A. Lot area and dimension. The following requirements shall apply to land divisions and boundary line adjustments in the R-2 zone except that small lot development shall be subject to the standards and requirements in BMC 17.15.110 and cluster developments shall be subject to the standards and requirements in BMC 17.15.105.

- 1. Minimum lot area: 7,600 square feet.
- 2. Minimum lot width: 70 feet

B. Maximum building and impervious surface coverage:

- 1. Building coverage: 40 percent.
- 2. Impervious surface coverage: 60 percent. See table in BMC 17.15.100.F

All other area and dimensional regulations shall be the same as those identified in the R-1 zone.

17.20.100 Cluster developments

Cluster developments may be permitted in the R-2 zone as part of the subdivision or short subdivision process subject to the applicable provisions set forth in the R-1 zone (BMC 17.15.105).

17.20.105 Residential small lot

Residential small lots may be created in an R-2 zone through a subdivision or short subdivision process subject to the applicable provisions set forth in the R-1 zone (BMC 17.15.110).

1 Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.25
R-3 MULTIFAMILY
RESIDENCE DISTRICTS¹

Sections:

17.25.010	Title.
17.25.020	Application.
17.25.030	Purpose.
17.25.040	Authority.
17.25.050	Permitted primary uses.
17.25.060	Permitted accessory uses.
17.25.070	Conditional uses.
17.25.080	Additional regulations.
17.25.090	Development standards
17.25.100	Cluster development
17.25.105	Residential small lot

17.25.010 Title.

This chapter shall be called “R-3 Multifamily Residence Districts.”

17.25.020 Application.

This chapter shall apply to all uses and developments in areas designated R-3.

17.25.030 Purpose.

The R-3 district is intended to accommodate a variety of higher density housing types, including, but not limited to, attached townhomes, multi-family apartment buildings, and duplexes.

17.25.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63A, 36.70A, and 36.70B RCW and other applicable laws and regulations.

17.25.050 Permitted primary uses.

Any use listed as a permitted use in the R-1 or R-2 zones shall be considered a permitted use in the R-3 zone. The following additional uses shall also be considered permitted uses in the R-3 zone:

A. Multifamily dwellings. The construction and development of multifamily dwellings shall be subject to the following requirements:

1. Parking areas shall be screened from the street.
2. Pedestrian access shall be provided throughout the site and shall provide a complete and logical circulation system that connects each dwelling unit with streets, adjoining developments, parking areas, common areas, and recreation areas. Any additional pedestrian access circulation and access requirements

identified in chapter 17.85 BMC (Off Street Parking and Loading) shall also be addressed.

3. Trash and recycling areas and containers shall be fully enclosed and screened from view with a solid site obscuring fence or wall and gate. Trash and recycling containers shall not be visible from adjoining public streets or adjacent properties.
4. Developments with 40 or more units shall provide a children's play area(s) at a rate of 225 square feet plus 20 additional square feet for each unit.
5. Developments with 40 or more units shall provide common open space for passive or active recreation at the rate of 50 square feet per unit.
6. Laundry and storage facilities shall be provided, either in each unit or in a central facility.
7. Exterior lighting shall be provided for parking areas, access streets and pedestrian walkways. Lighting shall be designed to direct light away from residential units to prevent glare.

17.25.060 Permitted accessory uses.

Any use identified as a permitted accessory use in the R-1 or R-2 zones shall be considered a permitted accessory use in the R-3 zone, subject to any standards identified in BMC 17.15.070. The following additional uses shall also be considered permitted accessory uses in the R-3 zone:

A. 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 design review 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).

17.25.070 Conditional Uses.

Any use listed as a conditional use in the R-1 or R-2 zones may be permitted as a conditional use in the R-3 zone subject to the procedural requirements applicable to conditional use permits. The following additional uses may also be permitted as conditional uses in the R-3 zone:

- A. Commercial child day care center;
- B. Health care facilities;
- C. Professional offices;
- D. Government facilities, other than those listed as a permitted use.

17.25.080 Additional regulations.

All structures, use, and developments located in the R-3 zone shall be subject to the “additional regulations” identified in the R-1 zone (BMC 17.15.090).

17.25.090 Development standards.

All structures, uses, and developments shall comply with the “development regulations” identified in the R-1 zone (BMC 17.15.100) except as follows:

A. Lot area and dimension. The following requirements shall apply to land divisions and boundary line adjustments and not to the use of existing lots.

- 1. Minimum lot area: 6,000 square feet.
- 2. Minimum lot width: 60 feet
- 3. Minimum lot depth: 80 feet

B. Maximum density: The maximum permissible density for multifamily development shall be calculated as follows; one unit per lot plus one additional unit for every 3,000 square feet of lot area, provided that additional density may be permitted through the agricultural heritage credit program.

C. Maximum building and impervious surface coverage: 70 percent.

D. Maximum building height: 35 feet.

E. Minimum building separation.

- 1. Between primary structures located on the same lot: 30 feet

2. Between primary structures and accessory structures: 10 feet.

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.

17.25.100 Cluster developments

Cluster developments may be permitted in the R-3 zone as part of the subdivision or short subdivision process subject to the applicable provisions set forth in the R-1 zone (BMC 17.15.105).

17.25.105 Residential small lot

Residential small lots may be created in an R-3 zone through a subdivision or short subdivision process subject to the applicable provisions set forth in the R-1 zone (BMC 17.15.110).

¹ Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.30
R-S SEMI-PUBLIC DISTRICT¹

Sections:

17.30.010	Title.
17.30.020	Application.
17.30.030	Purpose.
17.30.040	Authority.
17.30.050	Permitted primary uses.
17.30.060	Permitted accessory uses.
17.30.070	Conditional uses.
17.30.080	Additional regulations.
17.30.090	Development standards.

17.30.010 Title.

This chapter shall be called “R-S Semi-Public District.”

17.30.020 Application.

This chapter shall apply to all uses and developments in areas designated R-S.

17.30.030 Purpose.

The R-S residential office zone encompasses Burlington’s original town site and 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).

17.30.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A and 36.70B RCW and other applicable laws and regulations.

17.30.050 Permitted primary uses.

Any use listed as a permitted use in the R-1, R-2 or R-3 zones shall be considered a permitted use in the R-S zone. The following additional uses shall also be considered permitted uses in the R-S zone:

- A. Professional offices

17.30.060 Permitted accessory uses.

Any use identified as a permitted accessory use in the R-1, R-2, or R-3 zones shall be considered a permitted accessory use in the R-S zone, subject to any standards identified in BMC 17.15.070. The following additional uses shall also be considered permitted accessory uses in the R-S zone:

- A. Accessory buildings or uses incidental and subordinate to primary permitted commercial use, including but not limited to; 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.

17.30.070 Conditional Uses

Any use listed as a conditional use in the R-1 or R-2 zones may be permitted as a conditional use in the R-S zone subject to the procedural requirements applicable to conditional use permits. The following additional uses may also be permitted as conditional uses in the R-S zone:

- A. Multifamily housing at densities higher than those allowed in the R-3 zone.

17.30.080 Additional regulations.

All structures, use, and developments located in the R-S zone shall be subject to the “additional regulations” identified in the R-1 zone (BMC 17.15.090) except as noted below.

- A. 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 17.75 BMC shall provide the criteria for measurement of such nuisances.
- B. Parking shall be provided as required by chapter 17.85 BMC (Off Street Parking and Loading).
- C. Signs and signage shall comply with the regulations identified in chapter 17.95 BMC (Signs)
- D. All parking areas and storage yards shall be fully screened from view

17.30.090 Development standards.

All structures, uses, and developments shall comply with the “development regulations” identified in the R-1 zone (BMC 17.15.100) except as follows:

- A. A. Minimum lot area: 6,000 square feet. This requirement shall apply to land divisions and boundary line adjustments and not to the use of existing lots.
- B. Minimum setback requirements: All buildings, structures, and development shall be subject to the minimum setback requirements identified in the R-1 zone (BMC 17.15.100).
- C. Maximum floor area ratio. Nonresidential buildings shall be limited to a maximum floor area ratio of one square foot of building floor area for every three square feet of lot area. Nonresidential buildings with greater floor area ratios may be approved through a conditional use permit process.
- D. Maximum building height: 45 feet, except that spire, fleche, campanile or high nave, a dome and lantern, or a clock tower may exceed these limits if authorized by a conditional use permit.

E. Minimum building separation:

1. Between primary structures located on the same lot: 30 feet
2. Between primary structures and accessory structures: 10 feet.

1 Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.35
OSP OPEN SPACE AND
PARKS DISTRICT

Sections:

17.35.010	Title.
17.35.020	Application.
17.35.030	Purpose.
17.35.040	Authority.
17.35.050	Permitted primary uses.
17.35.060	Uses requiring permit.
17.35.070	Additional regulations.
17.35.080	Area and dimensional regulations.

17.35.010 Title.

This chapter shall be called “OSP Open Space and Parks District.”

17.35.020 Application.

This chapter shall apply to all uses and developments in areas designated OSP.

17.35.030 Purpose.

It is the purpose of this chapter 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, agricultural, 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. Ord. 1260 § 9, 1994).

17.35.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws.

17.35.050 Permitted primary uses.

Buildings, structures, and 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;

E. Reclamation areas limited to soil, forest, wildlife special flood risk or wetland.

F. Community centers, recreational buildings, band shells and similar facilities.

G. Existing agricultural uses.

H. Existing single-family dwellings.

17.35.060 Conditional Uses.

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 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 14A.05.150, 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).

17.35.070 Permitted accessory uses.

A. Restrooms, storage buildings and refreshment stands associated with parks, playgrounds, and playfields;

B. Parking facilities to support a permitted use identified in this chapter.

17.35.080 Development standards.

A. Lot area and dimension. The following requirements shall apply to land divisions and boundary line adjustments and not to the use of existing lots.

1. Minimum lot area: 40 acres
2. Minimum lot width: none
3. Minimum lot depth: none

B. 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.

C. Maximum building height: 20 feet.

Chapter 17.40
MR-NB MEDIUM DENSITY RESIDENTIAL AND
NEIGHBORHOOD BUSINESS DISTRICT

Sections:

17.40.010	Title.
17.40.020	Application.
17.40.030	Purpose.
17.40.040	Authority.
17.40.050	Permitted primary uses.
17.40.060	Permitted accessory uses.
17.40.070	Conditional uses.
17.40.080	Additional regulations.
17.40.090	Development standards.

17.40.010 Title.

This Chapter shall be called “MR-NB Medium Density Residential and Neighborhood Business District.”

17.40.020 Application.

This chapter shall apply to all uses and developments in areas designated MR-NB.

17.40.030 Purpose.

This area is intended to provide a mixed use zone for residences, business and other 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 commercial uses be compatible with residential uses. (Ord. 1260 § 10, 1994).

17.40.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B and other applicable laws and regulations.

17.40.050 Primary permitted uses.

- A. Multi-family dwellings;
- B. Art, music and dance studios;
- C. Artisanal uses, such as photographer, artist studio dwelling;
- D. Contractors office and storage;

E. Laboratories, such as dental or soil testing.

F. Light industry;

G. Municipal parks and playgrounds;

H. Personal service uses such as barber and beauty shops;

I. Professional offices;

J. Fraternal organizations and religious facilities, existing;

K. Single family dwellings;

L. Two family dwellings;

M. Trades and subcontractors such as plumbing, electrical, HVAC;

N. Utilities;

O. Woodworking uses complying with the International Building Code exception from hazardous occupancies.

(Ord. 1260 § 10, 1994).

17.40.060 Permitted accessory uses.

A. Outdoor storage that is screened with a solid fence and perimeter landscaping, accessory to the primary use.

B. Home occupations;

C. Family day care homes;

D. Automobile parking;

E. Foster family care homes associated with a single family dwelling;

F. Telecommunication mini facility, subject to the following requirements, except as limited by the Telecommunications Act of 1996 as amended:

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 community development director or designee 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).

17.40.070 Conditional uses.

The following uses shall be considered conditional uses and shall require a conditional use permit:

- A. Eating and drinking establishments with less than 1000 square feet of floor area;
- B. Commercial child day care center;
- C. Fraternal organizations and religious facilities.

17.40.080 Additional regulations.

A. Uses generating noise levels incompatible with residential occupancy shall not be permitted and the following regulations shall apply to all uses:

1. Truck loading activities and similar noisy activities shall be prohibited except between the hours of 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 International Fire Code.

C. Parking areas shall be fully screened from view and shall be landscaped in accordance with the requirements identified in chapter 17.80 BMC.

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).

17.40.090 Development standards.

A. Lot area and dimension.

1. Minimum lot area: none
2. Minimum lot width: none
3. Minimum lot depth: none

B. Maximum density. New residential development, and the addition of dwelling units to existing residential structures, shall be subject to the following standards:

1. Dwelling units per building: A multifamily building shall not contain more than 8 dwelling units;
2. Maximum density: The maximum permissible density for multifamily development shall be calculated as follows; one unit per lot plus one additional unit for every 3,000 a square feet of lot area, provided that additional density may be permitted through the agricultural heritage credit program.

C. Minimum Setback Requirements.

1. Front: 17 feet
2. Side: 5 feet
3. Street: 20 feet
4. Rear: 10 feet
5. Setback exceptions: Buildings or structures which do not conform to the setback standards identified above, may be expanded or modified provided that any wall or façade which extends into a required setback may be further extended along the established building line but may not extend further into the required setback;

D. Maximum building and impervious surface coverage: none.

E. Maximum building height: 35 feet

(Ord. 1717 § 5, 2010; Ord. 1260 § 10, 1994).

Chapter 17.45

B-1 BUSINESS DISTRICT¹

Sections:

17.45.010	Title.
17.45.020	Application.
17.45.030	Purpose.
17.45.040	Authority.
17.45.050	Permitted primary uses.
17.45.060	Accessory uses.
17.45.070	Conditional uses.
17.45.080	Additional regulations.
17.45.090	Development standards.

17.45.010 Title.

This chapter shall be called “B1 Business District.”

17.45.020 Application.

This chapter shall apply to all areas zoned B-1.

17.45.030 Purpose.

The B-1 zone should be applied to the historic city center. This area has traditionally served as the City’s center for financial, commercial, government, and professional services. This area also provides the greatest concentration of cultural amenities and pedestrian oriented commercial enterprises.

The purpose of the B-1 zone, and the following regulations, is to preserve and enhance the unique characteristics of the historic city center by encouraging the preservation, expansion, and establishment of smaller scale, pedestrian oriented businesses and uses, and by discouraging or prohibiting incompatible uses such as gas stations, outdoor storage yards, and drive-through uses.

17.45.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A, and 36.70B RCW and other applicable laws.

17.45.050 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, provided they are located in a multistory building the ground floor of which must contain another permitted use listed in this section;

B. Multifamily dwellings, provided they are located in a multistory building, the ground floor of which must contain another permitted use as listed in this section;

- C. Art, music and photography studios;
- D. Automotive parts and accessories;
- E. Customer service office, excluding drive-in facilities;
- F. General personal and household retail sales and service;
- G. Hotels;
- H. Major durables, sales, service and rentals;
- I. Health care facilities, provided such uses shall be prohibited along Fairhaven Avenue;
- J. Multipurpose convenience store;
- K. Eating and drinking establishments;
- L. Schools, including art, business, barber, beauty, dancing, martial arts and music;
- M. Specialty food store;
- N. Theaters, except drive-in;

(Ord. 1717 § 6, 2010; Ord. 1396 § 41, 1999; Ord. 1356 § 1, 1997; Ord. 1206 § 3, 1992).

17.45.060 Permitted accessory uses.

A. Accessory buildings or multi-building 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. Automobile parking;
- C. Outdoor seating associated with an eating and drinking establishment;
- D. Caretaker apartment;
- E. Macro telecommunication facilities, subject to the following standards:

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 director 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.
 - a. 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.
 - b. 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).

17.45.070 Conditional uses.

The following uses shall be considered conditional uses and shall require a conditional use permit:

- A. Administrative offices located on the ground floor;
- B. Multifamily dwellings without a permitted ground floor use;
- C. Arcades;
- D. Utility substations.

17.45.080 Additional regulations.

A. Off-Street Parking and Loading Area Requirements: See chapter 17.85 BMC

B. 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 associated with an eating and drinking establishment, theater, or other entertainment;

4. Temporary uses as permitted by the fire marshal, building official, community development director or designee or city engineer pursuant to the applicable ordinances;
5. Unloading and loading areas;
6. Utility substations;
7. Refuse and recycling containers, provided they are fully screened from view in accordance with any applicable standards set forth in this title;
8. Play areas for child day care centers and schools.

C. Any on premises repair work shall be incidental only, and limited to repairing the types of merchandise sold on the premises. The floor area devoted to such repair work shall not exceed 30 percent of the total floor area occupied by the primary use, except that the limitations of this subsection shall not apply to electronic devices, shoe, radio, television, or other small appliance repair services.

D. 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.

E. 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.

F. 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).

17.45.090 Development standards.

A. Lot area and dimension.

1. Minimum lot size: None
2. Minimum lot width: None
3. Minimum lot depth: None

B. Maximum density: The maximum permissible density for multifamily development shall be calculated as follows; one unit per lot plus one additional unit for every 3,000 a square feet of lot area, provided that additional density may be permitted through the agricultural heritage credit program.

C. Maximum building and impervious surface coverage: none.

D. Minimum setback requirements:

1. Front: None;
2. Side: None;
3. Street: None;
4. Rear: None

E. Maximum front setback along Fairhaven Avenue: zero feet, provided that exceptions to this requirement may be authorized when:

1. A wider sidewalk or additional landscaping is approved at the building entrance; or
2. A greater setback is necessary to maintain the continuity of the street front because of the setback line of the buildings on either side.

F. Maximum Setback Requirement in all other locations: Ten feet from the property line on the front and street side. The maximum setback shall apply to each lot line adjacent to a street.

G. Maximum building height: 45 feet

H. Fences: see BMC 17.70.100

I. Parking: Parking shall not be located between a building and a street.

J. Landscaping: see chapter 17.80 BMC.

K. Signs: see chapter 17.95 BMC. (Ord. 1717 § 8, 2010; Ord. 1502 § 4, 2002; Ord. 1396 § 45, 1999; Ord. 1233 § 2, 1993; Ord. 1206 § 3, 1992).

1 Prior legislation: Ords. 890 (Chapter 4), 11

Chapter 17.50
C-1 GENERAL
COMMERCIAL DISTRICT¹

Sections:

- 17.50.010 Title.
- 17.50.020 Application.
- 17.50.030 Purpose.
- 17.50.040 Authority.
- 17.50.050 Permitted primary uses.
- 17.50.060 Permitted accessory uses.
- 17.50.070 Conditional uses.
- 17.50.080 Additional regulations.
- 17.50.090 Development standards.

17.50.010 Title.

This chapter shall be called “C-1 General Commercial District.”

17.50.020 Application.

This chapter shall apply to all uses and developments in areas designated C-1.

17.50.030 Purpose.

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. (Ord. 1396 § 46, 1999; Ord. 1206 § 3, 1992).

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.

17.50.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws and regulations.

17.50.050 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 17.05.100.

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. Multifamily dwellings, provided they are located in a mixed use development with commercial on the street frontage and apartments in a separate structure or on the upper floor(s);

B. Art, music and photography studios;

C. Automotive parts and accessories sales;

D. Banking and related financial institutions, excluding drive-in facilities, and located in a building containing another permitted use;

E. Bowling alleys, bingo halls, skating rinks and other commercial recreation;

F. Bus passenger terminals;

G. Civic, social, and fraternal clubs;

H. Commercial child day care centers;

I. Existing automobile service stations;

J. Funeral homes;

K. Health care facilities;

L. Hospitals and health care, to include small animal, but does not allow outside runs or kennels;

M. Hotels;

N. Meeting rooms and/or reception facilities;

O. Nursing homes;

P. Offices;

Q. Personal and household retail sales and service;

R. Printing and publishing;

S. Religious institutions;

T. Existing single-family and duplex dwellings;

U. Eating and drinking establishments, provided drive through uses may only be permitted through a conditional use permit process as specified in BMC 17.50.070.E;

V. Schools, including art, business, barber, beauty, dancing, martial arts and music;

W. Theaters, except drive-in;

X. Trailer parks within 1,000 feet of the Skagit River Levee, 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.

Y. Other uses may be permitted by the community development director or designee if the use is determined to be consistent with the intent of the zone and substantially the same with respect to

function and impacts as another use permitted in the zone, provided that if the use is listed as permitted or conditional in another zone it shall not be permitted;

17.50.060 Permitted accessory uses.

A. Automobile parking facilities;

B. Caretaker apartment;

C. Family day care home;

D. Foster family home;

E. 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 community development director or designee 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).

17.50.070 Conditional Uses.

The following uses shall be considered conditional uses and shall require a conditional use permit:

A. Multifamily dwellings, either single purpose or as part of a mixed use development where the street frontage is primarily residential; provided that an additional criterion for approval is that the site is better suited for housing than commercial development. Multifamily dwellings authorized under this provision shall comply with the plan review criteria in BMC 17.24.020 and 17.24.050;

B. Arcades;

C. Dance halls;

D. Drive-in facilities, including banks and restaurants, when located on a tenant pad on an existing development site or at a signalized intersection;

E. Government facilities, other than those listed as a permitted use;

F. 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;

G. 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).

17.50.080 Additional regulations.

A. All uses shall be conducted entirely within a building or structure except:

1. Automobile parking lots accessory to a permitted use;
2. Existing automobile sales and leasing areas;
3. When accessory to a permitted use; 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 accessory to a permitted use;
5. Play areas accessory to a child day care center or school;
6. Refuse and recycling containers associated with a permitted use, provided they are screened from view in accordance with the requirements of chapter 17.80 BMC;

7. Temporary uses as permitted by the fire marshal, building official, community development director or designee or city engineer pursuant to the applicable ordinances;
8. Unloading and loading areas accessory to a permitted use;
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 electronic equipment, 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. Parking areas shall not be located between buildings and adjoining streets.

G. Commercial land abutting directly a residential zone shall provide for a transition to the residential use as required in chapter 17.75 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 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.

17.50.090 Development standards.

A. Lot area and dimension.

1. Minimum lot area: None
2. Minimum lot width: None

3. Minimum lot depth: None

B. Maximum lot coverage: None required.

C. Minimum setbacks:

1. Front: None

2. Side: None

3. Street: None

4. Rear: None

D. Maximum Setbacks:

1. Front: 10 feet

2. Street: 10 feet

3. Exceptions: Exceptions to the maximum setbacks identified above may be authorized in the following instances:

- a. A greater setback for drive through uses may be authorized through the conditional use permit for the drive-in use, provided that the building shall be located as close as possible to adjoining streets and shall be setback only the distance necessary to accommodate the drive through and any associated queuing lanes.
- b. The presence of a utility easement makes compliance with the maximum setback impossible, provided that the building shall still be located as close as possible to adjoining streets.
- c. The building entrance may be setback a greater amount to accommodate a wider sidewalk or additional landscaping.
- d. A greater setback is necessary to accommodate an architectural design feature, such as; a unique building entrance, outside seating area, pocket park, or similar element.
- e. Deviations from the maximum setback requirements may be granted for development on irregular shaped lots where the street frontages are angular or curvilinear. In such instances buildings shall be located as close as possible to the street frontages.

- f. The expansion or modification of existing buildings, when a greater setback is needed to preserve existing visual and physical access.
- g. Other similar exceptions may be granted when consistent with the intent of providing a well-defined street edge and pedestrian-oriented streetscape.

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
- 2. An additional 15 feet of height may be permitted when parking is located under the building.

F. Fences: see BMC 17.70.100.

G. Parking: see chapter 17.85 BMC.

H. Landscaping: see chapter 17.80 BMC.

I. Signs: see chapter 17.95 BMC. (Ord. 1717 § 10, 2010; Ord. 1237 § 6, 1993; Ord. 1233 § 3, 1993; Ord. 1206 § 3, 1992).

1 Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

Chapter 17.55
C-2 HEAVY COMMERCIAL DISTRICT¹

Sections:

17.55.010	Title.
17.55.020	Application.
17.55.030	Purpose.
17.55.040	Authority.
17.55.050	Permitted primary uses.
17.55.060	Permitted accessory uses.
17.55.070	Conditional uses.
17.55.080	Additional regulations.
17.55.090	Development standards.

17.55.010 Title.

This chapter shall be called “C-2 Heavy Commercial District.”

17.55.020 Application.

This chapter shall apply to all uses and developments in areas designated C-2.

17.55.030 Purpose.

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).

17.55.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A, and 36.70B RCW and other applicable laws and regulations.

17.55.050 Permitted primary 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 17.05.100.

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. Automotive parts and accessories sales;
- E. Banking and related financial institutions;
- F. Bowling alleys, bingo halls, skating rinks and other commercial recreation;
- G. Building contractor services;
- H. Bus passenger terminals;
- I. Car wash;
- J. Civic, social and fraternal associations;
- K. Dance halls;
- L. Commercial child day care centers;
- M. Eating and drinking establishments;
- N. Equipment rental and leasing, does not include heavy construction equipment;
- O. Food locker services;
- P. Funeral homes;
- Q. Gas stations;
- R. Health and physical fitness clubs;
- S. Hospitals, to include small animal, but does not allow outside runs or kennels;
- T. Hotels;
- U. Lumber yards;
- V. Manufactured/mobile home sales lots;
- X. Massage parlors;
- Y. Health care facilities;
- Z. Meeting rooms and/or reception facilities;

AA. Mini-storage warehouses;

BB. Offices;

CC. Personal and household retail sales and service;

DD. Printing and publishing;

EE. Sales and rental of motorized vehicles;

FF. Schools, including art, business, barber, beauty, dancing, driving, martial arts and music;

GG. Theaters, including drive-ins;

HH. Vehicle repair, major;

II. Vehicle repair, minor. (Ord. 1396 § 49, 1999; Ord. 1260 § 13, 1994; Ord. 1227 § 4, 1993; Ord. 1206 § 3, 1992).

17.55.060 Permitted accessory uses.

A. Automobile parking facilities;

B. Outdoor storage yards;

C. Caretaker apartments;

D. Storage warehousing;

E. Accessory buildings and structures associated with a permitted primary use;

F. 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 community development director or designee 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).

17.55.070 Conditional Uses

The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of BMC 14A.05.150:

A. Multifamily dwellings, either single purpose or as part of a mixed use development where the street frontage is primarily residential; 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. Government facilities, other than those listed as a permitted use;

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).

17.55.080 Additional regulations.

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 the public right-of-way or an adjacent residential 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;
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; and
3. Measures shall be taken to prevent light and glare from being directed to residential uses.

1 Prior legislation: Ords. 890 (Chapter 4), 1136 § 2, 1187 § 2, and 1200 § 4.

17.55.090 Development standards.

A. Lot area and dimension.

1. Minimum lot area: None
2. Minimum lot width: None
3. Minimum lot depth: None

B. Maximum building and impervious surface coverage:

1. Building coverage: none
2. Impervious surface coverage: 80 percent

C. Minimum setbacks:

1. Front: None
2. Side: None
3. Street: None
4. Rear: None

D. Maximum Setback:

1. Front: 10 feet
2. Street: 10 feet

3. Exceptions: Exceptions to the maximum setbacks identified above may be authorized in the following instances:

- a. A greater setback for drive through uses may be authorized through the conditional use permit for the drive-in use, provided that the building shall be located as close as possible to adjoining streets and shall be setback only the distance necessary to accommodate the drive through and any associated queuing lanes.
- b. The presence of a utility easement makes compliance with the maximum setback impossible, provided that the building shall still be located as close as possible to adjoining streets.
- c. The building entrance may be setback a greater amount to accommodate a wider sidewalk or additional landscaping.
- d. A greater setback is necessary to accommodate an architectural design feature, such as; a unique building entrance, outside seating area, pocket park, or similar element.
- e. Deviations from the maximum setback requirements may be granted for development on irregular shaped lots where the street frontages are angular or curvilinear. In such instances buildings shall be located as close as possible to the street frontages.
- f. The expansion or modification of existing buildings, when a greater setback is needed to preserve existing visual and physical access.
- g. Other similar exceptions may be granted when consistent with the intent of providing a well-defined street edge and pedestrian-oriented streetscape.

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
2. An additional 15 feet of height may be permitted when parking is located under the building.

F. Fences: see BMC 17.70.100.

G. Parking: see chapter 17.85 BMC.

H. Landscaping: see chapter 17.80 BMC.

I. Signs: see chapter 17.95 BMC. (Ord. 1237 § 7, 1993; Ord. 1233 § 4, 1993; Ord. 1206 § 3, 1992).

Chapter 17.60

M-1 INDUSTRIAL DISTRICT

Sections:

17.60.010	Title.
17.60.020	Application.
17.60.030	Purpose.
17.60.040	Authority.
17.60.050	Permitted primary uses.
17.60.060	Permitted accessory uses.
17.60.070	Conditional uses.
17.60.080	Additional regulations.
17.60.090	Development standards.

17.60.010 Title.

This chapter shall be called “M-1 Industrial District.”

17.60.020 Application.

This chapter shall apply to all uses and developments in areas designated M-1.

17.60.030 Purpose.

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).

17.60.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A, and 36.70B RCW and other applicable laws.

17.60.050 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. Adult motion picture theater; 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;

B. Automobile parking and storage;

- C. Basic wood processing including sawmills, planing mills, veneering and laminating of wood;
- D. Building movers;
- 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, where the course of instruction is related to another permitted use;
- 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. Recreational marijuana processors, producers and retail stores. All such uses shall meet the following development standards:

1. The definitions set forth in Section 17.01.050 shall apply.
2. 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. Motor freight terminals and transportation;

X. Office with more than 50,000 square feet of floor space;

Y. Outside storage yards;

Z. Printing, publishing, and allied industries including such processes as lithography, etching, and engraving, binding, blueprinting, photocopying, and film processing;

AA. Dwelling units, existing;

BB. Topless club; 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;

CC. Warehousing and distribution facilities, to include wholesale trade not open to general public;

17.60.060 Permitted accessory uses.

A. Caretaker apartments;

B. Offices related to an on-site permitted use or larger than 50,000 square feet of floor area;

C. On-site day commercial child day center serving the employees of a permitted use;

D. On-site recreational facilities serving the employees of a permitted use;

E. Research, development and testing;

F. Eating and drinking establishment;

G. Retail and wholesale trade of products produced, manufactured, or assembled onsite;

H. Telecommunication macro facilities may be permitted, subject to the following requirements, except as limited by the Telecommunications Act of 1996 as amended:

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 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.
3. 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.

I. 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).

17.60.070 Conditional uses.

The following uses shall be considered conditional uses and shall require a conditional use permit:

A. Auction houses, excluding animals;

B. Automobile wrecking yard;

C. Banks and financial institutions;

D. Car wash;

E. Family day care home;

F. Commercial child day care centers;

G. Eating and drinking establishments other than those serving a permitted use on the same site;

- H. Equipment rental and leasing and sales;
- I. Health and physical fitness clubs;
- J. Mini storage warehouses;
- K. Offices with less than 50,000 feet of floor space and not accessory to a permitted use, including corporate headquarters;
- L. Personal and household retail sales and service;
- M. Reupholstery and furniture repair;
- N. Secretarial services;
- O. Small appliance repair;
- P. Towing service;
- Q. Vehicle repair, major and minor.
- R. Animal auction houses;
- S. 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;
- T. 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;
- U. Concrete mixing and batching plants, including ready-mix concrete facilities;
- V. Drive-in theaters;
- W. Government facilities, other than those listed as a permitted use;
- X. Hotels;
- Y. Radio and television transmitting towers;
- Z. Rock crushing plants;

AA. Sales and rental of motorized vehicles;

BB. Transmission towers on Burlington Hill where co-location exists subject to the following additional criteria, except as limited by the Telecommunications Act of 1996 as amended:

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 17.75 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 17.75.120, 17.75.125 and 17.75.130).

CC. Utility substations, unless clearly incidental and part of a permitted use;

DD. 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).

17.60.080 Additional regulations.

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 International Fire Code.

B. Industrial land abutting directly a residential zone shall provide for a transition to the residential use required in chapter 17.75 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 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.
4. A 20-foot setback shall be required for sites that abut or adjoin a residential zone. This setback requirement shall also apply to sites which are separated from a residential zone by a street less 50 feet or less in width and when the abutting property is located outside the City of Burlington.

17.60.090 Development standards.

A. Lot area and dimension.

1. Minimum lot area: None
2. Minimum lot width: None
3. Minimum lot depth: None

B. Maximum building and impervious surface coverage:

1. Building coverage: none
2. Impervious surface coverage: 80 percent

C. Minimum setbacks:

1. Front: None
2. Side: None
3. Street: None
4. Rear: None

D. 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

2. An additional 15 feet of height may be permitted when parking is located under the building.

E. Fences: see BMC 17.70.100.

F. Parking: see chapter 17.85 BMC.

G. Landscaping: see chapter 17.80 BMC.

H. Signs: see chapter 17.95 BMC.

I. Performance standards: see chapter 17.75 BMC. (Ord. 1233 § 5, 1993; Ord. 1206 § 3, 1992).

Chapter 17.65
BP BUSINESS PARK DISTRICT

Sections:

17.65.010	Title.
17.65.020	Application.
17.65.030	Purpose.
17.65.040	Authority.
17.65.050	Permitted primary uses.
17.65.060	Permitted accessory uses.
17.65.070	Conditional uses.
17.65.080	Additional regulations.
17.65.090	Development standards.

17.65.010 Title.

This chapter shall be called “BP Business Park District.”

17.65.020 Application.

This chapter shall apply to all areas zoned BP.

17.65.030 Purpose.

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.

17.65.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A, and 36.70B RCW and other applicable laws and regulations.

17.65.050 Permitted primary uses.

Any use listed as a permitted or conditional use in the B-1, R-3, C-1, C-2, and M-1 zones shall be considered a permitted use in the BP zone except as limited or restricted by provisions in this Chapter that outdoor activities such as storage, fabrication, or sales shall be prohibited.

17.65.060 Permitted accessory uses.

- A. Caretaker apartments;
- B. Offices related to an on-site permitted use or larger than 50,000 square feet of floor area;
- C. On-site day commercial child day center serving the employees of a permitted use;
- D. On-site recreational facilities serving the employees of a permitted use;
- E. Research, development and testing;
- F. Eating and drinking establishment;

G. Retail and wholesale trade of products produced, manufactured, or assembled onsite;

H. Telecommunication macro facilities may be permitted, subject to the following requirements, except as limited by the Telecommunications Act of 1996 as amended:

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 community development director or designee 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.

I. 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).

17.65.070 Conditional uses

17.65.080 Additional Regulations

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 properties and streets in accordance with any applicable municipal code requirements;
3. Horticulture activities;
4. Play areas for commercial child day care centers and schools;

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).

17.65.105 Development standards.

A. Lot area and dimension.

1. Minimum lot area: None
2. Minimum lot width: None
3. Minimum lot depth: None

B. Maximum building and impervious coverage:

1. Building coverage: none
2. Impervious surface coverage: 80 percent

C. Minimum setbacks:

1. Front: None
2. Side: None
3. Street: None

4. Rear: None

D. 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
2. An additional 15 feet of height may be permitted when parking is located under the building.

E. Fences: see BMC 17.70.100.

F. Parking: see chapter 17.85 BMC.

G. Landscaping: see chapter 17.80 BMC.

H. Signs: see chapter 17.95 BMC.

I. Performance standards: see chapter 17.70 BMC.

**Chapter 17.70
SUPPLEMENTAL
DEVELOPMENT STANDARDS¹**

Sections:

17.70.010	Title.
17.70.020	Application.
17.70.030	Purpose.
17.70.040	Authority.
17.70.050	Special height restrictions.
17.70.060	Obstructions, generally prohibited.
17.70.070	Fences.
17.70.080	Standards setback exceptions
17.70.090	Home occupations.
17.70.100	Responsibility for animals.
17.70.105	Outdoor vending machines
17.70.110	Performance standards.
17.70.115	Height limits for transitional zones
17.70.120	Setback requirements for transitional zones
17.70.125	Telecommunications facilities.
17.70.130	Mechanical equipment.
17.70.135	Low impact development.

17.70.010 Title.

This chapter shall be called “Supplemental Development Standards.”

17.70.020 Application.

The standards of this section shall apply to all new uses, structures, and development, and to the expansion or modification of existing uses, structures and developments, except:

17.70.030 Purpose.

The purpose of supplemental development standards is to achieve compatible land uses within zoning districts and surrounding areas by providing uniform regulations throughout each district, encouraging neighborhood stability and consistency, and promoting commercial viability and compatibility.

17.70.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A, and 36.70B RCW and other applicable laws and regulations.

17.70.050 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).

17.70.060 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).

17.70.070 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 way of an administrative permit issued by the community development director or designee 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 shall only be permitted in the OSP district and only when associated with an agricultural use. (Ord. 1396 § 56, 1999; Ord. 1340 § 5, 1997; Ord. 1221 § 6, 1992).

17.70.080 Standard setback exceptions.

A. The following may project into a required setback:

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 a required setback area;
2. Uncovered porches and platforms less than 30 inches in height: 18 inches into side yards and six feet into the front yard and rear yard;
3. Planting boxes or masonry planters not exceeding 42 inches in height may be placed in a required setback area;
4. Eaves may protrude into a required setback provided they do not exceed 24 inches a required setback area.
5. Ramps and other structures necessary to provide handicap access.

17.70.090 Home occupations.

A. General requirements. All home occupations, including permitted and conditional home occupations, shall be consistent with the following:

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 17.70.115 as long as the use is not conducted on more than four days in any given two year period 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. Additional requirements. In addition to the requirements identified above, any home occupation identified as a conditional use shall be subject to the following:

1. In considering applications for home occupation conditional use permits, the hearing examiner 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.

2. The hearing examiner 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).

17.70.100 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).

17.70.105 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 the use, maintenance, and placement of vending machines shall be consistent with the requirements of this chapter. 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 community development director or designee 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 banking 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 permissible 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
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).

1 Prior legislation: Ords. 890 §§ 5.1, 5.5, 5.6, 5.7, 5.11 and 979 § 3.

17.70.110 Performance standards.

The purpose of this section is to establish the following performance standards which are intended to reduce the visual, physical, and environmental impacts of new development on existing uses and developments. (Ord. 1322 § 10, 1996; Ord. 1221 § 6, 1992).

A. 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).

B. 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).

C. 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).

D. 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).

E. 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).

F. 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).

G. Toxic gases and matter. No emissions of toxic gases or matter shall be permitted. (Ord. 1221 § 6, 1992).

H. 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).

I. 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).

17.70.115 Height requirements for transitional zones.

All commercial, industrial, and multifamily development within 45 feet of single-family zone shall be limited to a maximum height of 35 feet.

17.70.120 Setback requirements for transition zones.

The following setback requirements shall apply to all commercial, industrial, and multifamily development on properties adjacent to single-family zones.

A. Multifamily: The minimum side and rear setbacks for multifamily development adjacent to single-family zones shall be derived using a ratio of two feet of building setback for every one foot of building height.

B. Commercial: The minimum side and rear setbacks for commercial development adjacent to single-family zones shall be derived using a ratio of two feet building setback for every one foot of building height.

C. Industrial: The minimum side and rear setbacks 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).

17.70.125 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

17.70.130 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).

17.70.135 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.

Chapter 17.80 LANDSCAPING

Sections:

17.80.010	Title.
17.80.020	Application.
17.80.030	Purpose
17.80.040	Authority.
17.80.050	Application/review procedures.
17.80.060	General standards.
17.80.070	Minimum area standards.
17.80.080	Street frontage requirements.
17.80.090	Perimeter landscaping.
17.80.100	Parking lot landscaping.
17.80.105	Screening requirements.

17.80.010 Title.

This chapter shall be called "Landscaping."

17.80.020 Application.

The standards of this section shall apply to all new uses, structures, and development, and to the expansion or modification of existing uses, structures and developments, except:

- A. The construction of single-family homes on existing lots; and
- 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.
- C. Where a maximum setback is prescribed these standards shall not be construed as requiring a greater setback or buffer area.

(Ord. 1304 § 1, 1995; Ord. 1162 § 3, 1990).

17.80.030 Purpose

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).

17.80.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A RCW and other applicable laws.

17.80.050 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 community development director or designee shall review all landscape plans under the provisions of this chapter and may approve, deny, or approve with conditions, landscape plans for any development. In addition, the community development director or designee shall review and recommend action to the hearing examiner on the landscape plans for any development subject to hearing examiner review. The hearing examiner may authorize the community development director or designee to review any landscape plan, or final landscape plan, for any development which has come under their review.

C. Minor Modifications. Any applicant, or the community development director or designee, may request modification of any standard specified under this chapter, subject to the provisions of BMC 17.80.115. (Ord. 1162 § 4, 1990).

17.80.060 General standards.

The following general standards shall apply to all landscaping required under this section:

A. Landscape Materials.

1. Acceptable landscape materials 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. No artificial lawn or plants will be permitted in landscaped areas. Low Impact Development techniques and planting plans shall be employed to the maximum extent feasible in all landscaping plans.
2. At least 50% 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 hearing examiner, 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.

17.80.070 Minimum area requirements.

A. Minimum area 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 17.80.080 and BMC 17.80.090 for requirements.

B. Minor reductions. The minimum area requirements specified above in BMC 17.80.070.A may be reduced by up to 25 percent, if requested by the applicant, in cases where the normal requirement cannot be met due to lot size, the configuration of existing buildings and improvements, or topography.

C. 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 BMC17.80.090 shall be required as a minimum.

D. 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.

E. A licensed landscape architect shall be required to prepare the landscaping plans and supervise the installation of landscaping for all new development. 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).

17.80.080 Street frontage requirements.

Planting areas along street frontage shall be as follows:

A. Minimum Width. 10 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).

E. Exemptions:

1. Sidewalks and pedestrian access points. Sidewalks and pedestrian access points may be located within the landscape buffer strip required by BMC 17.80.080.A
2. Driveway approaches
3. The landscape buffer requirements identified above in BMC 17.80.080.A shall not apply in zones where buildings are required to be located at the front setback or street edge.

17.80.090 Perimeter landscaping.

Planting areas within side and rear setback areas which are not occupied by structures shall be as follows:

A. Minimum Width. 5 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 17.80.115.

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 17.80.110 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 17.80.080A 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).

17.80.100 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).

17.80.105 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 17.50.090, 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 community development director or designee

D. Uses Requiring Screening. The community development director or designee 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 community development director or designee, 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).

(Ord. 1260 § 24, 1994; Ord. 1162 § 11, 1990).

Chapter 17.85
ACCESS, PARKING
AND LOADING

Sections:

17.85.010	Title.
17.85.020	Application.
17.85.030	Purpose.
17.85.040	Authority.
17.85.050	General and exceptions.
17.85.060	Required off-street parking – Minimum standards.
17.85.070	Shared parking.
17.85.080	Cooperative parking.
17.85.090	Drive-in businesses.
17.85.100	Off-street parking area development and maintenance.
17.85.105	Development of required off-street parking spaces for one-family dwellings.
17.85.110	Off-street parking lots – Location and screening.
17.85.115	Off-street parking plan design standards.
17.85.120	Pedestrian circulation and access.
17.85.125	Existing off-street parking reduction.
17.85.130	Fractional spaces.
17.85.135	Off-street loading space.

17.85.010 Title.

This chapter shall be called “Off-street Parking and Loading.”

17.85.020 Application.

The standards of this section shall apply to all new uses, structures, and development, and to the expansion or modification of existing uses, structures and developments, except:

17.85.030 Purpose.

The purpose of this chapter is to provide for adequate, safe, and convenient off-street parking and loading areas for the different zones as described in this Title by specifying requirements for off-street parking and loading, and describing design standards and other required improvements.

17.85.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, 36.70B RCW and other applicable laws.

17.85.050 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 17.80 BMC.

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.

C. Parking Quantity Exceptions in the Downtown Special Planning Area.

1. No parking shall be required for new uses in existing structures, or when existing structures are remodeled.
2. No parking shall be required for the first 2,500 square feet of nonresidential floor space, or the nonresidential portion of a live-work unit.
3. No parking shall be required for any floor area used for human services or child care.
4. No parking shall be required for the addition of one residential unit to an existing building. 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, no parking shall be required for the first dwelling unit; provided, the lot area is not increased and existing any existing parking is screened and landscaped to the greatest extent practical.

D. Tandem Parking and Multifamily. Off-street parking for multifamily structures may be provided as tandem parking.

E. Parking and loading areas shall have reasonable access to a public street or alley.

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).

17.85.060 Required off-street parking – Quantity.

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 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.

USE	PARKING REQUIREMENT GENERAL
ANIMALS	
Dog day care with no outside runs or kennels	1 space for each 500 square feet
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, adult motion picture theatre	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
Commercial child day care centers and mini commercial child day care centers.	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
Family day care home	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	1 space for each 2,000 square feet
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
Multifamily dwellings	General: 1 1/2 per 1 and 2 bedroom; 2 per 3 or more bedroom and guest parking at a rate of one space for every three units. Downtown special planning area: See BMC 17.54.010.C
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	None
Residential small lot development	1.0 space for each dwelling unit
Duplex (2-family dwelling)	1 per 1 and 2 bedroom; 2 per 3 or more bedroom 1.0 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 Downtown special planning area: See BMC 17.85.050.C
Mobile home park or trailer park	2 per unit plus guest parking at 1 space for 3 units
Single-family dwelling including manufactured home	1 per 2 bedroom, 2 per 3 or more bedroom 1 downtown special planning area
Townhouse	1 per 1 and 2 bedroom; 2 per 3 or more bedroom 1 downtown special planning area
RETAIL AND SERVICE	
Banking and related financial institutions	1 space for each 350 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
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
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 special planning area	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	1 space for each 350 square feet

and fire stations	
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
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
<p>** 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.</p>	

(Ord. 1630 § 3, 2007).

17.85.070 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 17.85.050.
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;
 - a. Retail sales and services, except eating and drinking establishments, lodging uses, and entertainment uses;
 - b. Wholesale, storage and distribution uses;
 - c. Manufacturing uses; and

- d. Other similar primarily daytime uses, when authorized by the community development director or designee.
- 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 community development director or designee.
- 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).

17.85.080 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 17.85.050(B) and (C) and 17.85.080.
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).

17.85.090 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).

17.85.100 Off-street parking area development and maintenance.

A. All parking areas, including interior driveways and access to a public street, shall be paved with permeable pavement, asphalt concrete, or cement concrete pavement. 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.

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. 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. Outdoor sales areas shall be paved and landscaped in accordance with this title.

G. If lighting is provided, it shall be arranged to reflect away from the residential area, also from any public street or highway.

H. Drainage facilities for stormwater shall be provided for and be approved by the public works department.

I. Ingress and egress shall be approved as to location and design by the public works department.

J. Driveways and parking stalls shall be clearly marked.

K. Landscaping: see chapter 17.5075 BMC.

17.85.105 Development of required off-street parking spaces for single family dwelling units.

For parking areas serving single-family dwellings, this section shall apply in lieu of BMC 17.85.100.

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).

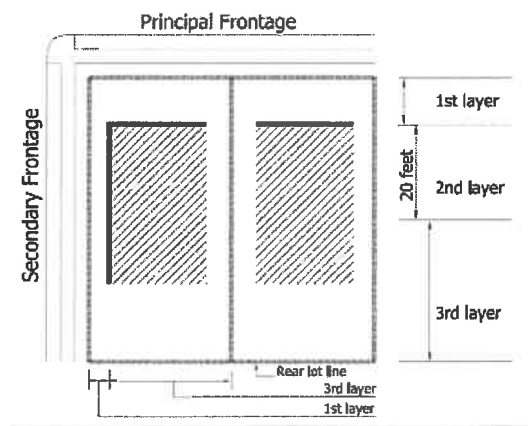
C. A note shall be included on the face of subdivisions and short subdivisions identifying any applicable impervious surface limits.

D. Driveways for single family dwellings may utilize a two track design to minimize impervious surface coverage.

17.85.110 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 illustrated below:

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. The following requirements shall apply in addition to any other parking, landscaping, setback, or site design requirements.

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 17.70.100.
4. Parking area illumination shall be directed away from residential uses.

5. Downtown special planning area. including. 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 serves.

D. Off-site parking. 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.

E. 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).

17.85.115 Off-street parking plan design standards.

A. Parking stalls and drive aisles shall be consistent with the dimensions specified in Figure “A” below.

B. 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 Community Development Director and shall be proportional to the dimensions shown below.

<p align="center">Figure A Minimum Parking Stall and Aisle Dimensions</p>							
Parking Angle	Stall Width	Curb Length	Stall Depth	Aisle Width		Unit Depth	
				1-Way	2-Way	1-Way	2-Way
0°	8.0	20.0	8.0	12.0	20.0	**	**
				12.0	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 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.

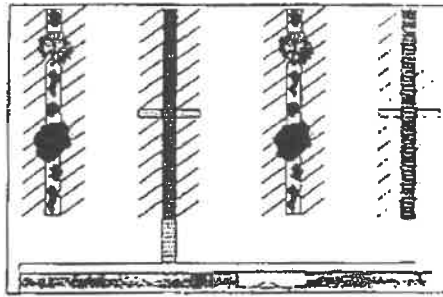
F. Driveways may cross required setbacks or landscaped areas in order to provide access between the off-street parking facilities and the street, provided no more than 10 percent of the required landscaping or setback area is displaced by the driveway. Driveways may be used for parking when serving single 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 International Building Code. It shall be designed to minimize direct illumination of abutting properties and adjacent streets. The city council shall have the authority to waive the requirement to provide lighting. (Ord. 1630 § 3, 2007).

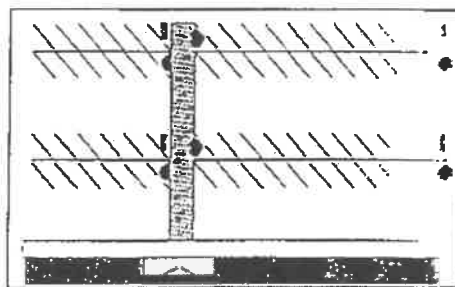
17.85.120 Pedestrian circulation and access.

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 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

17.85.125 Existing off-street parking reduction.

Off-street parking facilities shall not be eliminated or reduced to an amount less than that required for new uses. (Ord. 1630 § 3, 2007).

17.85.130 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).

17.85.135 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).

17.84.140 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 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 17.90 PUBLIC UTILITIES

Sections:

17.90.010	Title.
17.90.020	Application.
17.90.030	Purpose.
17.90.040	Authority.
17.90.050	Permitted when.
17.90.060	Visual compatibility.
17.90.070	Protective fencing.
17.90.080	Setbacks.
17.90.090	Commercial and industrial location.
17.90.100	Residential locations.

17.90.010 Title.

This chapter shall be called "Public Utilities."

17.90.020 Application.

The provisions of this chapter shall apply to all public utility and telecommunication carriers which occupy, use, construct, or maintain utility or telecommunication facilities within the City.

17.90.030 Purpose.

17.90.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A, and 36.70B RCW and other applicable laws.

17.90.050 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 subject to the requirements set forth in this chapter and any other applicable requirements. (Ord. 890 § 5.3, 1977).

17.90.060 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).

17.90.070 Protective fencing.

An unboxed 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).

17.90.080 Setbacks.

All buildings, installations and fences shall observe the setback requirements for buildings in the district in which they are located, except that in the R-1 district the side setback requirements shall be increased to 20 feet. Exceptions to these setback requirements may be permitted by variance. (Ord. 890 § 5.3.3, 1977).

17.90.090 Permit requirements.

All applications to develop or construct utilities shall include a complete plot plan and elevations showing the entire development, and photographs showing the location and character of all adjoining land improvements in addition to all other applicable permit application requirements. Permits for utilities and utility development shall be subject to review and approval by the City Engineer. (Ord. 890 § 5.3.4, 1977).

17.90.100 Residential locations.

In residential zones utility developments shall require a conditional use permit.

Chapter 17.95 SIGNS

Sections:

17.95.010	Title.
17.95.020	Application.
17.95.030	Purpose.
17.95.040	Authority.
17.95.050	General provisions.
17.95.060	Permit requirements.
17.95.070	Exceptions
17.95.080	Review of signs/design standards.
17.95.090	Residential district sign regulations.
17.95.100	Commercial, business, and industrial district sign regulations.
17.95.105	Medium density residential and neighborhood business sign regulations.
17.95.110	Areas zoned B-1 and C-1 and located in downtown on Fairhaven Avenue and Victoria Avenue sign regulations.
17.95.115	On-site traffic control and directories.
17.95.120	Electronic changing message sign requirements.
17.95.125	Permitted temporary or portable signs.
17.95.130	Off-premises signs.
17.95.135	Prohibited signs
17.95.140	Variances.

17.95.010 Title.

This Chapter shall be called “Signs.”

17.95.020 Application.

The provisions of this chapter shall apply to the construction, erection, installation, maintenance, alteration, expansion, or development of all signs, signage, and sign structures within the City of Burlington.

17.95.030 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).

17.95.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws.

17.95.050 General provisions.

A. Conflicting standards. All signs shall be subject to the provisions of this chapter, except where more specific standards for signs are specified for a special planning area, zone, or district. In such case the more specific standards shall apply.

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. Building code compliance. All signs for which a building permit is required shall comply with the applicable provisions of the building code adopted by the City and codified in title 15 BMC.

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. Nonconforming signs. Legally established signs and sign structures which do not comply with the regulations and requirements in this chapter shall be subject to the provisions of chapter 17.95 BMC as a nonconforming use, except that 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 17.95.080.

17.95.060 Permit requirements

A. A permit shall be required to erect, re-erect, construct, reface, alter, expand, or relocate any sign or sign structure unless the type of sign is specifically excepted pursuant to BMC 17.95.070 below.

B. Applications for sign permits shall be submitted to the director upon forms provided by the City. Sign permits applications shall include:

1. Two site (plot) plans showing the location of the affected site, lot, premises, 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).
5. A list identifying the size and type of each existing sign located on the building, lot, site, premises, or business establishment.

17.95.070 Exceptions.

The following shall not require a permit. These exceptions shall not be construed as an exemption from the other requirements of this chapter or other applicable laws and regulations.

A. Address signs, allowed without permit when the following 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. Temporary signs as defined in subsection (6) below are allowed without permit when the following conditions are met:

1. Only one sign is allowed for each street frontage of the property upon which the sign is located. Small directional signs may be placed at the end of the block where an occurrence requiring a sign is located with the property owner's permission
2. Signs shall not exceed 9 square feet in area and 6 feet in height; Flags must not exceed 15 square feet in area.
3. Signs shall not be illuminated;
4. 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 community development director or designee. Sign may not be placed on public street right-of-way or private property without an owner's permission. Directional signs may not be placed in any improved roadway. Portable signs must be placed in a way that does not unduly obstruct foot or vehicular traffic.
5. Temporary signs shall not be placed upon public utility poles.
6. Signs shall be placed or erected at the time of the occurrence requiring the use of the sign and removed within 48 hours of the end of the occurrence requiring use of the sign.
7. Temporary signs include signs intended to be or allowed to be displayed for a limited period of time. Excepted temporary signs do not include ongoing commercial signage or reader boards. Temporary signs typically include the following:

- a. Construction signs;
- b. Real estate signs;
- c. Directional signs;
- d. Flags;
- e. Garage sale signs;
- f. Public notification signs, and
- g. Signs, banners, streamers and other similar apparatus used in conjunction with a community event. 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.

Temporary signs that do not meet the description and conditions set forth above may be allowed pursuant to a permit pursuant to the conditions and terms of BMC 17.95.125.

C. Political signs. Political signs on private property where allowed by the property owner or upon properties that lawfully constitute a public forum. Such signs shall be removed within one week after the election for which the sign is posted. Signs shall not exceed 16 square feet in size as viewed from one direction unless placed on an approved offsite location with greater allowed size limitations. Such signs shall observe the corner vision requirements of this title, and shall not be situated in a manner which creates a hazard.

D. Incidental Signs located on the premises may be displayed on any window or door. Incidental signs are permanent signs that include emblems, decals, nameplates and other similar signs indicating residence, affiliation or membership in organizations, acceptance of credit cards, brand names of items sold, and other such information which pertains to the use of the premises.

E. 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.

F. 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.

17.95.080 Review of signs/design standards.

The size, design, color, lighting, location and supporting structures of non-exempt 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 multi-tenant 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).

17.95.090 Residential district sign regulations.

Only those sign types listed below or identified as exceptions in BMC 17.95.070 shall be permitted in the R-1, R-2, and R-3 zones.

A. Residential nameplate signs:

1. Permitted sign types: Building-mounted only.
2. Maximum sign area: 2 square feet.
3. Maximum number: 1 for each dwelling unit.
4. Location and setback requirements: May be mounted on a dwelling unit or accessory structure.
5. Permitted Illumination: External illumination only.

B. Home occupation signs:

1. Permitted sign types: Interior, building-mounted, or freestanding.
2. Maximum sign area: 6 square feet (24 inches by 36 inches).
3. Maximum number: 1 sign.

4. Location and setback requirements. Home occupation signs must be located on the same lot as the dwelling unit housing the home occupation and:
 - a. Interior signs shall be located within the building housing the home occupation; and
 - b. Building-mounted signs shall be affixed to the building housing the home occupation; and
 - c. Freestanding signs shall be located within 10 feet of the building housing the home occupation. Freestanding signs shall be subject to a maximum height of 4 feet - six inches.
5. Permitted Illumination: External illumination only.

C. Signs identifying multifamily developments or subdivisions:

1. Permitted sign types: Freestanding signs only.
2. Maximum sign height. 5 feet.
3. Maximum sign area: 30 square feet.
4. Maximum number. 1 sign shall be allowed for each 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.
5. Location and setback requirements: 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.
6. Permitted illumination: Internal or external illumination may be permitted. Externally illuminated signs shall be subject to BMC 17.95.050.G

D. Noncommercial public service signs:

1. Permitted sign types: Freestanding, building mounted, and reader board.
2. Maximum sign height: See BMC 17.95.100.B.
3. Maximum sign area:
 - a. Freestanding signs: 24 square feet per side.
 - b. Building-mounted signs: See BMC 17.95.100.F
4. Maximum number:
 - a. Freestanding signs: 1 freestanding sign on each premises.
 - b. Building-mounted signs: Building-mounted signs shall be subject to the maximum area limits specified in BMC 17.95.100.F
5. Permitted illumination. Internal or external illumination may be permitted. Externally illuminated signs shall be subject to BMC 17.95.050.G, except that internally illuminated signs in residential zones shall be turned off between 10:00 p.m. and 6:00 a.m.
6. Special standards. 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. (Ord. 1694 § 17, 2009; Ord. 1382 § 4, 1998; Ord. 1340 § 2, 1997; Ord. 1158 § 7, 1990).

17.95.100 Commercial, business, and industrial district sign regulations.

A. General. The following regulations and standards shall apply to all on-premises signs located in the B-1, B-P, C-1, C-2, and M-1 zones, provided that this section shall not apply to signs located within the downtown special planning area which shall be subject to the standards in BMC 17.95.110. Only those signs listed below shall be permitted.

B. Freestanding signs, individual on premises. Individual businesses or uses that are not located in a multiple-tenant development may be identified by a single freestanding on premises sign. The following regulations shall apply to all freestanding signs located in the B-1, B-P, C-1, C-2, and M-1 zones, except for freestanding signs located within a multiple-tenant development which shall be subject to the requirements identified in BMC 17.95.100.C and 17.95.100.D.

1. Maximum sign height. 25 feet except that:
 - a. Freestanding on-premises signs located within 500 feet of an I-5 interchange which are associated with a use catering to freeway travelers such as a gas station, eating and drinking establishment, or hotel may have a maximum height of 50 feet; and

- b. Freestanding on-premises signs located on lots with freeway frontage may be 45 feet in height.
- 2. Maximum sign area. 50 square feet as viewed from one direction, except that:
 - a. An additional 30 square feet may be permitted if the site is larger than one-half acre; and
 - b. An additional 30 square feet may be permitted if identification of more than one use within a development is included on the sign; and
 - c. An additional 30 square feet may be permitted if the sign uses natural materials (carved or sand-blasted wood, or marble or stone) and indirect illumination; and
 - d. An additional 30 square feet may be permitted for freestanding on-premises signs located within 500 feet of an I-5 interchange or on lots with freeway frontage when associated with a use catering to freeway travelers; and
 - e. 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 17.95.115; and
 - f. 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.
- 3. Maximum number: 1 sign for each tenant or use
- 4. Location and setback requirements:
 - a. All freestanding on-premises signs shall be located on the same site or premises as the tenant or use with which they are associated; and
 - b. All freestanding on-premises signs shall be located within a landscaped planter with protective curbs located at least 3 feet from all support elements; and
 - c. All freestanding on-premises signs with a sign area greater than 50 square feet, or a sign height exceeding 25 feet, shall be subject to a property line setback of 10 feet. This setback shall be measured from the outer edge of the sign closest to the property line.
- 5. Material and design requirements:

6. Permitted illumination. Internal or external illumination may be permitted. Externally illuminated signs shall be subject to BMC 17.95.050.G

C. Development complex signs, primary. The following standards and regulations shall apply to all multiple-tenant developments and to freestanding signs located in a multiple-tenant development.

1. Maximum sign height: See BMC 17.95.100.B.1
2. Maximum sign area: BMC 17.95.100.B.2
3. Maximum number. One development complex sign shall be allowed for each multiple-tenant development, even when more than one tax lot or ownership is included in the development, except that:
 - a. Two additional signs may be used to identify a multiple-tenant development if the development has access points located at different major arterials, provided that the additional signs shall be located at an arterial point, and further provided that only one such sign shall be located at each access point; and
 - b. Two single-faced signs oriented in opposite directions may be used in lieu of a single double-faced identification sign.
4. Location and setback requirements: Development complex signs shall be located within the multiple-tenant development with which they are associated and may only be used to advertise the development and the tenants and uses located within the development.
5. Material and design requirements:
6. Permitted illumination. Permitted illumination. Internal or external illumination may be permitted. Externally illuminated signs shall be subject to BMC 17.95.050.G.

D. Development complex signs, supplemental. A monument sign may be used to identify individual tenants within a multiple-tenant development which are not otherwise identified by a primary development complex sign subject to the following:

1. Permitted sign types: Freestanding only.
2. Maximum sign height: 6 feet.
3. Maximum sign area: 36 square feet.
4. Maximum number. Only one monument sign shall be allowed for each tenant or business.

5. Location and setback requirements:

- a. Each sign shall be located in front of the tenant or business it identifies; and
 - b. Each sign shall be located within a landscaped area surrounded by curbing located at least three feet from the base of the sign unless the sign is located next to a sidewalk.
 - c. Each sign shall be located at least 50 feet from any primary development complex sign and 100 feet from any supplemental development complex sign.
 - d. Signs shall not be located within a radius of 20 feet of the corner of any two streets or the corner of a driveway and street.
6. Material and design requirements. Colors and materials shall be the same, or substantially the same, as those used on the building housing the tenant or business identified by the sign.
7. Permitted illumination. Internal or external illumination may be used subject to the general illumination standards in BMC 17.95.050(G).

E. Building-mounted signs. Building-mounted signs identifying the use of space within the building on which the sign is mounted may be permitted subject to the following conditions:

1. Maximum sign area. The total combined area of all building mounted signs on a building frontage shall be limited to 2 square feet for each linear foot of building frontage, except that if a tenant is not identified by any other sign 60 square feet may be permitted regardless of frontage length.
2. Permitted illumination. Signs may be internally or externally illuminated subject to BMC 17.95.050(G).

F. Movie theaters. The following additional provisions shall apply to on-premises signs advertising movie theaters:

1. Movie theatres with freeway frontage or located within 500 feet of a freeway interchange may have up to two freestanding signs provided one freestanding sign is located along an arterial and on sign is located along the freeway frontage. Signs permitted by this provision shall be limited to 100 square feet per sign face.
2. Reader boards may be incorporated into freestanding signs or building mounted signs, provided that no moving messages shall be permitted and further provide that the total area of any such sign does not exceed the maximum permitted sign area. (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).

G. Permitted Temporary and Portable Signs. The following regulations shall apply to temporary and portable signs permitted pursuant to BMC 17.95.125:

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 17.45.100(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.

H. 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).

17.95.105 Neighborhood business district sign regulations.

A. General. The following regulations and standards shall apply to all on-premises signs located in the MR-NB and RS zones. Only those signs listed below shall be permitted.

B. Permitted sign types: Building-mounted or freestanding.

C. Maximum sign height: Freestanding signs shall be limited to a maximum height of 5 feet.

D. Maximum sign area: 20 square feet.

E. Maximum number: 1 sign for each building or premises.

F. Location and setback requirements: Freestanding signs shall be located in front of, and within 15 feet of, the building they are associated with.

G. Permitted illumination: Internally illuminated signs are prohibited. Externally illuminated signs shall be subject to the general standards in BMC 17.95.050.G

H. Permitted Temporary and Portable Signs. The following regulations shall apply to temporary and portable signs:

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 17.45.100(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.

I. 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).

17.95.110 Areas zoned B-1 and C-1 and located in Downtown on Fairhaven Avenue and Victoria Avenue sign regulations.

A. General. In addition to any other applicable standards or requirements identified in this chapter, signs located within the downtown special planning areas shall be reviewed for conformance with the Downtown Design Guidelines as adopted in the comprehensive plan.

B. Permitted sign types: Each building or premises may have either a freestanding sign or a building mounted sign. Building mounted signs may be projected signs.

C. Maximum sign height: Maximum sign height shall be 25 feet.

D. Maximum sign area: Maximum sign area shall be 25 square feet.

E. Maximum number. A single sign is permitted for each building or premises.

F. Special standards. Building-mounted signs which project over a sidewalk or alley (within the right-of-way) shall 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).

17.95.115 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 17.70.070 and 17.70.080.

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).

17.95.120 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 17.95.100.

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 17.95.100, to be included in maximum sign area.

C. Electronic message center signs and other changeable copy signs shall be incorporated into a permanent identification sign which is otherwise permitted by this chapter. Approval for electronic message center signs shall not be granted unless the following conditions are satisfied:

1. Only one electronic message center sign shall be used in a development;
2. The changeable copy sign or electronic message center shall be integrated into a nonelectronic sign and the electronic 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).

17.95.125 Permitted temporary or portable signs

The following regulations shall apply to all temporary or portable signs not exempt under 17.95.070.

A. Special events sign permit. Temporary sign, banners, lights, streamers, inflatables, balloons, and other similar apparatus used in conjunction with a special event may be used after obtaining a special event permit subject to the following conditions:

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, electric cord, streamer, banner, or other apparatus shall be situated or used in a manner which creates a hazard.

B. 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.

C. 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).

17.95.130 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 Community development director or designee 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 shall be established by planning commission. (Ord. 1694 § 24, 2009; Ord. 1382 § 8, 1998; Ord. 1158 § 11, 1990).

17.95.135 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 17.95.120:

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 17.95.120(D) for exceptions;

11. Persons carrying or wearing portable advertising signs or costumes designed to advertise a business. See BMC 17.95.120(E) for exceptions;

12. Signs mounted on the tops of roofs, projecting above parapet walls, are prohibited.

17.95.140 Variances.

Relief from or modifications of the size limits of signs regulated by this chapter require a zoning variance as provided in BMC 14A.05.150. (Ord. 1382 § 9, 1998).

Chapter 17.100
NONCONFORMING STRUCTURES,
LOTS AND USES¹

Sections:

- 17.100.010 Title.
- 17.100.020 Application.
- 17.100.030 Purpose.
- 17.100.040 Authority.
- 17.100.050 Continuance of nonconforming structures and uses.
- 17.100.060 Use of nonconforming land.
- 17.100.070 Changes of use, tenancy, ownership or management.
- 17.100.080 Maintenance, damage repairs and restorations, additions, enlargements, moving or relocation of nonconforming structures, and residential structures.
- 17.100.090 Abatement of nonconforming structures and uses.
- 17.100.100 Amortization and abatement of nonconforming signs.

17.100.010 Title.

This chapter shall be called “Nonconforming Structures, Lots and Uses.”

17.100.020 Application.

This chapter shall apply to buildings, structures, lots, developments, and uses which become nonconforming as a result of the application of this Title to them, or from classification or reclassification of the property under this Title, or any subsequent amendments thereto. This chapter must be read along with chapter 15.15 BMC Critical Areas and the more restrictive requirements shall apply.

17.100.030 Purpose.

Over time the adoption and amendment of regulations has resulted in lots, uses, structures, and developments which were lawful when established but would be prohibited or restricted by the regulations currently in effect. The purpose of this chapter is to permit the continuation and maintenance of nonconforming lots, uses, structures, and developments, but generally prohibit their expansion, modification, or reconstruction except in limited circumstances. (Ord. 1206 § 5, 1992).

17.100.040 Authority.

This chapter is adopted pursuant to the authority set forth in chapters 35A.63, 36.70A, 36.70B, and 36.70C RCW and other applicable laws.

17.100.050 Continuance of nonconforming structures and uses.

Any legally existing nonconforming structure or use 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. (Ord. 1206 § 5, 1992).

17.100.060 Nonconforming lots.

A. 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 17.70 BMC. (Ord. 1206 § 5, 1992).

B. Adjacent undeveloped lots in common ownership which do not meet current requirements for area or dimension shall be considered a single combined lot of record if the combination would have the effect of remedying or minimizing the extent of the non-conformity.

17.100.070 Nonconforming uses.

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 community development director or designee, 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).

C. 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.

D. This subsection also does not allow the expansion of any nonconforming hazardous material storage.

17.100.080 Nonconforming structures and developments.

A. Maintenance and repairs. 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. Alterations and expansions. No structural alterations, as defined by the International 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. Damage and replacement. 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 and developments 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.

E. 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.

F. 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 17.100.080(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.

G. 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.

H. 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).

I. This subsection also does not allow the expansion of any nonconforming hazardous material storage.

17.100.090 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).

17.100.100 Amortization and abatement of nonconforming signs.

A. All off-premises advertising and directional signs that do not comply with the requirements of chapter 17.95 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 17.105

ESSENTIAL PUBLIC FACILITIES

Sections:

17.105.010	Title.
17.105.020	Application.
17.105.030	Purpose.
17.105.040	Authority.
17.105.050	Procedure.
17.105.060	Applications for EPF projects.
17.105.070	CUP-EPF review criteria.
17.105.080	Building permit application.
17.105.090	Special provisions for secure community transition facilities (SCTFs).
17.105.100	Processing timelines.
17.105.105	CUP city council authority – Final decision.

17.105.010 Title.

This chapter shall be called “Essential Public Facilities.”

17.105.020 Application.

A. This chapter establishes the criteria that the city shall use in making a decision upon an application for an essential public facility (EPF). The community development director or designee 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 BMC 17.01.050 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 17.105.080. The director shall determine whether a proposed facility shall be reviewed as an EPF and subject to this review process. (Ord. 1670 § 3, 2009).

17.105.030 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 BMC 17.01.050. 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 BMC 17.01.050 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).

17.105.040 Authority.

This chapter is adopted pursuant to the authority set forth in chapter 36.70A RCW and other applicable laws and regulations.

17.105.050 Procedure.

Applications that seek approval for an EPF as defined by BMC 17.01.050 and listed under BMC 17.105.020 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 17.105.080, secure community transition facilities as defined in chapter 17.06 BMC shall also be consistent with the decision criteria described in BMC 17.105.100. (Ord. 1670 § 3, 2009).

17.105.060 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 community development director or designee as determined necessary to complete the preliminary analysis or to otherwise assist the community development director or designee, staff, and the in making recommendation(s) and the city council in making the final determination on the CUP-EPF. (Ord. 1670 § 3, 2009).

17.105.070 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 17.105.070 to the community development director or designee once it is known that the EPF is likely or required to be built.
4. The community development director or designee 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 17.105.070. The community development director or designee 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 community development director's or designee's determination shall be an administrative determination subject to appeal and procedures established in BMC 14A.05.060(A).

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 Title 14A 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 Title 14A 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 community development director or designee 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 community development director or designee 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. 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 Title 14A BMC and all other applicable provisions of the city code except BMC 14A.05.150;
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. 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).

17.105.080 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 community development director or designee 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 community development director or designee'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).

17.105.090 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 14A.05.150; 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 17.105.080, 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 community development director or designee 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 17.80.110 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 Title 14A BMC and BMC 17.105.070, 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).

17.105.100 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).

17.105.105 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 is consistent with the criteria established under BMC 17.105.080 and 17.105.1000 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, 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 17.105.080, 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 17.110
AGRICULTURAL HERITAGE CREDIT PROGRAM

Sections:

- 17.110.010 Purpose.
- 17.110.020 Application.
- 17.110.030 Definition of terms used in this chapter.
- 17.110.040 General requirements.
- 17.110.050 Procedure to sell or transfer development rights from sending site.

17.110.010 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. 1839 § 4 (Exh. C), 2016; Ord. 1717 § 12, 2010).

17.110.020 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. 1839 § 4 (Exh. C), 2016; Ord. 1717 § 12, 2010).

17.110.030 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 resolution¹ 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. 1839 § 4 (Exh. C), 2016; Ord. 1717 § 12, 2010).

17.110.040 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. 1839 § 4 (Exh. C), 2016; Ord. 1717 § 12, 2010).

17.110.050 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. 1839 § 4 (Exh. C), 2016; 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 17.115 PLANNING COMMISSION

Sections:

17.115.010	Title.
17.115.020	Application.
17.115.030	Purpose.
17.115.040	Authority.
17.115.050	Created – Membership – Appointment – Tenure – Compensation.
17.115.060	Organization – Meetings – Rules and records.
17.115.070	Quorum.
17.115.080	Powers and duties – Statutory authority.
17.115.090	Powers and duties – Designated.
17.115.100	Recommendations to city council.
17.115.105	Appeal

17.115.010 Title.

This chapter shall be called “Planning Commission.”

17.115.020 Application.

The provisions of this chapter shall be applicable to all actions of the planning commission as defined herein.

17.115.030 Purpose.

The purpose of this chapter is to establish the planning commission for proposed developmental action as specified in this Title.

17.115.040 Authority.

This chapter is adopted pursuant to the authority set forth in chapter 35.63 RCW and 35A.63 RCW allowing the creation of a planning commission and other applicable laws and regulations.

17.115.050 Created – Membership – Appointment – Tenure – Compensation.

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).

17.115.060 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. Planning Commission meetings shall be open to the public in accordance with the provisions of the Open Public Meetings Act and the time and date of each meeting shall be published in advance of the meeting. 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).

17.115.070 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).

17.115.080 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).

17.115.090 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 area-wide rezoning and development code text changes 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 17.115.100. (Ord. 1221 § 11, 1992).

17.115.100 Recommendations to city council.

A. The city council shall refer to the planning commission for its recommendation and report on:

1. All recommendations as required by the city zoning ordinance;
2. 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).

Chapter 17.120 HEARING EXAMINER

Sections:

17.120.010	Title.
17.120.020	Application.
17.120.030	Purpose.
17.120.040	Authority.
17.120.050	Creation of office.
17.120.060	Appointment.
17.120.070	Qualifications.
17.120.080	Removal.
17.120.090	Conflict of interest and appearance of fairness.
17.120.100	Freedom from improper influence.
17.120.110	Rules.
17.120.120	Duties.
17.120.130	Public hearings.
17.120.140	Examiner's decision.
17.120.150	Notice of examiner's decision.
17.120.160	Decision final action by city.
17.120.170	Conflicting code provisions and rules of procedure.

17.120.010 Title.

This chapter shall be called "Hearing Examiner."

17.120.020 Application.

The provisions of this chapter shall be applicable to all zones as set forth in this Title.

17.120.030 Purpose.

The purpose of this chapter is to establish a quasi-judicial hearing system which will ensure procedural due process and appearance of fairness in regulatory hearings and will provide an efficient and effective hearing process for quasi-judicial matters.

17.120.040 Authority.

This title is created pursuant to the authority set forth in chapter 35A.63 RCW and other applicable laws and regulations.

17.120.050 Creation of office.

The office of hearing examiner, hereinafter referred to as "examiner," is created. The examiner shall perform the duties and functions specified in this chapter, together with such other quasi-judicial duties and functions as may be delegated by the mayor and city council. Unless the context requires otherwise, the term "examiner" as used herein shall include any examiner pro tem who may be appointed.

17.120.060 Appointment.

The examiner shall be appointed by the mayor subject to confirmation by a majority vote of the city council. The terms of the examiner's employment shall be specified by a professional service contract. An examiner pro tem may also be appointed by the mayor subject to confirmation by majority vote of the city council. An examiner pro tem shall serve in the event of absence or disqualification of the examiner.

17.120.070 Qualifications.

The examiner shall be appointed solely with regard to his or her qualification for the duties of the office, and will have such training and experience as will qualify the examiner to conduct administrative and quasi-judicial hearings on regulatory enactments and to discharge such other functions conferred upon the examiner by the mayor and city council. The examiner shall hold no other elective or appointive office or position in city government.

17.120.080 Removal.

The examiner may be removed from office for cause by the mayor, subject to confirmation by majority vote of the city council.

17.120.090 Conflict of interest and appearance of fairness.

The examiner shall not conduct or participate in any hearing or decision in which the examiner has a direct or indirect personal interest which might influence the examiner or interfere with the examiner's decision-making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict. The hearing shall then be conducted by an examiner pro tem.

The appearance of fairness doctrine, as specified in Chapter 42.36 RCW, shall apply to all proceedings conducted by the examiner, and may result in the examiner's disqualification when necessary.

17.120.100 Freedom from improper influence.

No council member, city official, or any other person shall attempt to interfere with or improperly influence the examiner in the performance of his or her designated duties.

17.120.110 Rules.

The examiner shall have the power to prescribe rules and regulations for the scheduling and conduct of hearings and other procedural matters related to the duties of the office. The rules shall provide that all public hearings be held after 6:00 p.m., except under special circumstances authorized by the mayor.

17.120.120 Duties.

The examiner is vested with the duty and authority to hold public hearings and render decisions on the following matters:

1. Type III land use decisions as specified in chapter 14A.05 BMC;
2. Appeals of type I and II land use decisions as specified in chapter 14A.05 BMC;

3. Appeals of final administrative decisions made under chapter 8.12 BMC;
4. Complaints by citizens or city staff seeking administrative enforcement of provisions of city land use codes or conditions in development permits and approvals;
5. Violation notices, penalties, and other final administrative decisions made under chapter 8.12 BMC;
6. Such other regulatory, enforcement or quasi-judicial matters as may be assigned to the examiner by the mayor and city council.

17.120.130 Public hearings.

Where public hearings are required by state statute or city code, the examiner shall hold at least one such hearing prior to rendering a decision on any matter. All testimony at any such hearing shall be taken under oath. Public notice of the time and place of the hearing shall be given as required by city code.

17.120.140 Examiner's decision.

Within 15 calendar days after the conclusion of a hearing, unless a longer period is agreed to by the applicant in writing or verbally on the record at the public hearing, the examiner shall render a written decision which shall include at least the following:

1. Findings of fact based upon the record and conclusions therefrom which support the decision;
2. The decision shall state whether the application is either granted, granted in part, granted with conditions, modifications or restrictions, returned to the applicant for modification, denied with prejudice or denied without prejudice;
3. If a time limit exists for filing an administrative or judicial appeal of the decision, said time limit shall be disclosed.

17.120.150 Notice of examiner's decision.

Not later than five calendar days following the rendering of a written decision, copies thereof shall be mailed to the applicant and other parties of record as defined in title 14A BMC.

17.120.160 Decision final action by city.

Unless specifically provided otherwise by ordinance or State law, all decisions of the hearing examiner shall be final action by the city. Hearing examiner decisions shall be appealable pursuant to chapter 14A.05 BMC.

17.120.170 Conflicting code provisions and rules of procedure.

Any and all provisions of this code, and any and all provisions of the rules of procedure adopted by the examiner, which are in conflict with this chapter are superseded

Chapter 17.125
AMENDMENTS TO COMPREHENSIVE PLAN
AND DEVELOPMENT REGULATIONS

Sections:

- 17.125.010 Title.
- 17.125.020 Application.
- 17.125.030 Purpose.
- 17.125.040 Authority.
- 17.125.050 Comprehensive Plan text and map amendments.
- 17.125.060 Development agreements associated with a Comprehensive Plan amendment.
- 17.125.070 Area-wide rezones.
- 17.125.080 Site-specific zoning map amendments.
- 17.125.090 Development regulation text amendments.

17.125.010 Title.

This chapter shall be called “Amendments to Comprehensive Plan and Development Regulations.”

17.125.020 Application.

The provisions of this chapter shall be applicable to all zones as set forth in this Title.

17.125.030 Purpose.

The purpose of this chapter is to establish procedures and criteria for amending the City’s zoning map, development regulations, comprehensive plan, and comprehensive plan map.

17.125.040 Authority.

This title is created pursuant to the authority set forth in chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws.

17.125.050 Comprehensive Plan text and map amendments.

A. General. Pursuant to RCW 36.70A.130(2)(a) and the process set forth in Title 14A, proposed updates to the Comprehensive Plan shall only be processed only once a year except for the adoption of original subarea plans, amendments to the shoreline master program, the amendment of the capital facilities chapter concurrent with the adoption of the City budget, in the event of an emergency or to resolve an appeal of the Comprehensive Plan filed with the Growth Management Hearings Board.

B. Amendment procedures. Comprehensive Plan text and map amendments are classified as Type IV decisions and shall be processed pursuant to Title 14A.

17.125.060 Development agreements associated with a Comprehensive Plan amendment.

A. Pursuant to RCW 36.70B.170 through 36.70B.210, the City may enter into a development agreement with a person having ownership or control of real property within its jurisdiction as part of a Comprehensive Plan amendment and associated rezone. A development agreement and

subsequent rezone shall be consistent with applicable development regulations set forth in Title 14A.

B. Development agreements associated with a Comprehensive Plan amendment are classified as Type IV decisions and shall be processed in compliance with the Comprehensive Plan amendment and the regulations of RCW 36.70B.170 through 36.70B.210.

C. Development agreements associated with a comprehensive plan amendment and subsequent rezone may be used at the city council's discretion. Development agreements may be used to place restrictions on a proposed amendment to minimize the impacts of future development.

D. Development Agreement Contents. For the purpose of this section, development standards may include, but are not limited to, the following:

1. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
2. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provision, other financial contributions by the property owner, inspection fees, or dedications;
3. Mitigation measures, development conditions, and other requirements under Chapter 43.21C RCW;
4. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
5. Affordable housing;
6. Parks and open space preservation;
7. Phasing;
8. Review procedures and standards for implementing decisions;
9. A build-out or vesting period for applicable standards; and
10. Any other appropriate development requirement procedure.

E. The final decision authority for approval of the development agreement and development plan shall be the city council as set forth in Title 14A.

F. The decision of the city council on a development agreement and plan in conjunction with a Comprehensive Plan amendment and subsequent zoning change is the final decision of the City and may be appealed pursuant to Chapter 36.70C RCW.

G. A development agreement shall be recorded with the Skagit County auditor at the applicant's expense. During the term of the development agreement, the agreement is binding on the parties and their successors.

H. The City will process and decide upon an application for an amendment as if it were an application for a new development agreement in a manner set forth above unless it is deemed a minor modification as set forth in subsection I of this section.

I. Modifications of Development Plan.

1. The director of community development may approve minor modifications to the development plan pursuant to Title 14A.
2. Criteria for approving minor modifications include but are not limited to the following:
 - a. Shall conform to the terms of the development agreement;
 - b. Shall not reduce landscaping, buffering, or open space areas;
 - c. Shall not reduce setback requirements;
 - d. Shall not result in an increase in height of any structure;
 - e. Shall not result in a change in ingress or egress;
 - f. Shall not increase any adverse impacts or undesirable effects;
 - g. Shall not significantly alter the project.

17.125.070 Area-wide rezones.

A. Area-wide rezones shall be considered only in conjunction with updates to the Comprehensive Plan text and maps to ensure full consideration of the cumulative effects of all changes.

B. Area-wide rezones are classified as Type IV decisions and shall be processed pursuant to Title 14A.

17.125.080 Site-specific zoning map amendments.

A. Site-specific zoning map amendment requests, which are consistent with the comprehensive plan map, may be submitted at any time. Site-specific zoning map amendments consistent with the comprehensive plan map shall be processed as a Type III review pursuant to Title 14A. Amendments to the zoning map which are not consistent with the comprehensive plan map shall be processed as a type IV review and may only be considered in conjunction with a corresponding amendment to the comprehensive plan.

B. All site-specific zoning map amendment requests must meet all of the following criteria:

1. The requirements of RCW 36.70A.070(6), Concurrency;
2. The requested map amendment is consistent with the Comprehensive Plan;

3. The map amendment bears a substantial relation to the public health, safety and welfare;
4. The map amendment is warranted in order to achieve consistency with the Comprehensive Plan or because of a need for additional property in the proposed zoning district classification, or because the proposed zoning classification is appropriate for reasonable development of the subject property;
5. Property is adjacent and contiguous (which shall include corner touches and property located across a public right-of-way) to property of the same zoning classification;
6. The map amendment will not be materially detrimental to uses or property in the immediate vicinity of the subject property;
7. The map amendment has merit and value for the community as a whole.

17.125.090 Development regulation text amendments.

A. The text of the City's development regulations may be amended at any time provided the amendment is consistent with the comprehensive plan and does not interfere with its implementation. Text amendments that are consistent with the comprehensive plan shall be processed as a type IV review pursuant to Title 14A.

B. Text amendments which are not consistent with comprehensive plan shall be processed as a type IV review and may only be considered together with a corresponding amendment to the comprehensive plan. Text amendments which are not consistent with the comprehensive plan shall be subject to the annual processing limitation described in BMC 17.25.050.



ITEM #: 6

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: December 18, 2017 Subject:

Michael Luvera, Chief of Police

Attachments: NONE Public Hearing Required: YES () NO (X)

SUMMARY

Prior to my arrival, the Burlington Police Department identified that our patrol division was in need of jackets. Patrol officers were issued lighter jackets that no longer seem to resist water/rain. The first quote we received was over \$15,000 dollars. In working with a reputable uniform company we have identified a jacket that meets our winter needs and allows for the liner to be worn separately for times where a light jacket might be needed. Our cost to purchase this jacket is approximately \$8,500.00 dollars. After purchasing the jackets we will need to have patches and name tags sewn on and we are still working towards a quote for that work.

This need was identified in 2017 and there are 2017 funds available to make the purchase.

RECOMMENDATION

Authorize that police budget funds may be used to purchase jackets for officers at a cost of approximately \$8500.00 dollars.