



DATE: June 27, 2017

TO: Mayor Stokes and Members of the City Council

FROM: Carol Helland, Code and Policy Director 452-2724  
***Development Services Department***

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***City Attorney's Office***

**SUBJECT:** Public Hearing on Land Use Code (LUC) amendment to the quasi-judicial permit process to optimize the legislative role of the City Council, increase accessibility to the public during the permit review process, encourage meaningful public engagement early in the land use process, and promote fair, independent and efficient land use decision-making. File No. 17-114136-AD.

## **I. BACKGROUND**

### Procedural Information

On April 10, 2017, the City Council held its first study session regarding a potential LUC amendment that eliminates appeals to the City Council for Process I and Process III land use matters. Following discussion, the City Council decided to initiate the LUC amendment, and also retained authority to conduct the Public Hearing on the draft LUC amendment.

At a second study session on May 22, 2017, staff sought direction from the City Council regarding the draft LUC amendment and presented an outlined scope, timeline and engagement approach for moving the requested work forward. Following discussion, the City Council accepted the proposed process and schedule, and directed staff to set a Public Hearing on the draft LUC amendment.

On June 6, 2017, the East Bellevue Community Council (EBCC) held a Courtesy Public Hearing that included a presentation by staff and provided an opportunity for public comments concerning the draft LUC amendment.

On June 22, 2017, staff held a courtesy public meeting to provide additional opportunity for public engagement and participation.

A Public Hearing is scheduled during the City Council Regular Session on July 17, 2017. After deliberation and consideration of public comments received between April 10, 2017 and this Public Hearing, the City Council may direct staff to make the draft LUC amendment ready for adoption at a future City Council meeting.

### Current Code

Part 20.35 LUC provides for appeals to the City Council of Hearing Examiner decisions and recommendations on Process I and Process III permit matters. Process I Land Use matters include applications for Conditional Use Permits (CUP), Shoreline Conditional Use Permits (SCUP), Preliminary Subdivision Approval (Plats), and Planned Unit Developments (PUDs). Under the current LUC, the Hearing Examiner issues final decisions on Process I land use matters, and the Hearing Examiner's final decision is appealable to the City Council. Hearing Examiner Process I decisions do not require further Council action in the absence of an appeal to Council.

Process III Land Use matters include applications for all Rezones and SCUPs, along with all CUPs, Plats, and PUDs proposed within the jurisdiction of the EBCC. Under the current LUC, the Hearing Examiner issues a recommendation—not a decision—to the City Council on Process III Land Use matters. The City Council considers the Hearing Examiner's recommendation, and issues the final decision on Process III Land Use matters (subject to EBCC approval for CUPs, Plats, and PUDs within its jurisdiction). Hearing Examiner Process III recommendations go to the City Council irrespective of whether an appeal is filed. If an appeal is filed, Council adjudicates the merits of the appeal contemporaneously with the City Council's final decision on the rezone or permit at issue.

When the City Council makes final decisions on Process I and Process III appeals, it acts in a quasi-judicial capacity, which requires the City Council to adjudicate land use matters like a judge. Specifically, the City Council must review all of the evidence in the record and then apply the controlling law to the evidence to determine the outcome. Every quasi-judicial decision must be supported by written findings of fact and conclusions of law. A quasi-judicial decision that does not correctly apply the law to the facts, or is not supported by substantial evidence, will be overturned by the reviewing court in a subsequent legal challenge.

### Draft Proposal

On several occasions, the City Council has indicated a preference that appeals of Process I decisions and Process III recommendations by the Hearing Examiner should be adjudicated by state courts (or by the Shoreline Hearings Board, where required by law). The draft amendment to Part 20.35 LUC preserves the Hearing Examiner decision and recommendation provisions, but removes appeals of Hearing Examiner actions to the City Council.

If the draft LUC amendment is adopted, the City Council would retain its legislative authority to adopt clear and effective policies and codes that govern all land use permits, but the Council would not adjudicate land use appeals as part of the permit review process. The amendment is intended to provide a more efficient and reliable land use permitting process, and encourage public participation and citizen engagement to occur early and continue throughout the process. Attachment A provides a flow chart that illustrates how the permit review process would change with the requested LUC amendment.

### Rationale for Process Change

When acting in a quasi-judicial capacity, the City Council must avoid political influence or pressure from the public. For these actions, the City Council is required to be fair, impartial and unbiased, and must abide by specific rules related to contact with citizens regarding matters that Council will hear on appeal. The City Council's ultimate decision is subject to appeal to the Superior Court or, where required under state law, to the State Shoreline Hearings Board. Quasi-judicial decisions based on community desires, community displeasure, or public sentiments or complaints will not survive judicial scrutiny.

In contrast to the City Council, Hearing Examiners are trained land use experts who are impartial and objective decision-makers. Hearing Examiners are hired because of their background in land use and municipal adjudication, and their role is to conduct a fair and impartial public hearing, consider all of the evidence in the record, and then adopt conclusions of law by applying the controlling law to the evidence. As non-elected officials, Hearing Examiners are not susceptible to political pressure or threats from parties to the land use action, and they are trained to act as fair and unbiased judges whose decisions are not influenced by politics or election cycles.

Objective decision-making by a trained specialist promotes efficiency, reliability, and cost-effectiveness in the land use process. Over the past decade, many cities in the state have delegated increased authority to Hearing Examiners and removed their city councils from quasi-judicial land use appeals. For example, Everett, Covington, Edmonds, Kirkland, Mercer Island and Shoreline provide that appeals of Hearing Examiner decisions are adjudicated by state courts, rather than the city council. On the other hand, Vancouver's land use process allows quasi-judicial appeals to the city council, and Seattle's Land Use Code provides for quasi-judicial appeals to the city council of certain Hearing Examiner recommendations.

Further, this requested LUC amendment is a refinement of Bellevue's 1997 regulatory reform and is based on over 20-years of experience with the current LUC. In contrast to the current LUC, the draft LUC amendment would increase the City Council's accessibility to the public during the Process I permit review process. For example, by eliminating the quasi-judicial appeal provisions from the LUC, the City Council can communicate more freely with the public regarding Process I land use applications without the appearance of bias corrupting a future quasi-judicial decision by Council on the application.

Moreover, the amendment would encourage public participation early in the land use process—during the time period when public comment, community engagement, and relevant evidence is considered by the Director and the Hearing Examiner. The LUC amendment will encourage the public to be engaged and involved in the land use process prior to a closed-record appeal that does not allow public comment or the submission of additional evidence outside of the record developed before the Director's recommendation and the Hearing Examiner's action.

## **II. REVIEW PROCESS**

When the City Council initiated this LUC amendment at its April 10, 2017 Study Session, Council also decided that the required public hearing associated with the amendment should be held by the City Council in lieu of forwarding the amendment to the Planning Commission. This decision was necessary and appropriate because the code amendment is a procedural amendment that directly affects the City Council's role in the permitting process. The City Council also recognized that the Planning Commission has a full agenda and that Council initially requested staff to prepare the amendment for its review. By conducting the public hearing itself, the City Council will hear from the public directly concerning this LUC amendment.

The City Council again considered the draft LUC amendment during its May 22, 2017 Study Session. Thereafter, the EBCC held a Courtesy Public Hearing on June 6, 2017; staff conducted a courtesy public meeting on June 22, 2017; and the Public Hearing before the City Council is scheduled for July 17, 2017. These steps satisfy the City code requirements for adoption of the requested LUC amendment by the City Council, and final action may be taken at any time following the Public Hearing.

Following completion of the code amendment process, including the Public Hearing and adoption of a final ordinance by the City Council, the documents will be forwarded to the Washington State Department of Commerce.

## **III. PUBLIC ENGAGEMENT**

### Required Public Notice

The notice required for City Council Legislative Actions is governed by the terms of LUC sections 20.35.415 through 20.35.450. Notice of the LUC amendment application was published in the Weekly Permit Bulletin on June 1, 2017 and June 8, 2017, and availability of the Weekly Permit Bulletin was noticed in the Seattle Times. Notice of the Public Hearing scheduled for July 17, 2017, and availability of this staff report, was published in the Weekly Permit Bulletin and in the Seattle Times on June 29, 2017. Both notices were also provided to members of the EBCC, representatives of neighborhood associations, community groups, and others who have subscribed to receive these notices.

Pursuant to the Washington State Growth Management Act, proposed amendments to the LUC must be sent to the Washington State Department of Commerce. A copy of the required transmittal to the Department of Commerce, including a copy of the proposed amendments, was transmitted on June 9, 2017, and is available for review in the code amendment file. On June 26, 2017, staff received notification from the Department of Commerce that the City of Bellevue has met the Growth Management Act notice to state agency requirements in RCW 36.70A.106, and no state comments will be provided.

### Enhanced Public Outreach

In addition to the required public notice, the City Council requested enhanced outreach for this LUC amendment. This outreach included creation of a Code News website page for the Quasi-Judicial LUC amendment, expanded distribution of the public notice, the June 6, 2017 Courtesy Public Hearing held by the EBCC, and the June 22, 2017 courtesy public meeting conducted by staff at City Hall.

The Code News website was updated to include the Quasi-Judicial LUC amendment on June 1, 2017. The site provides access to materials regarding the draft amendment, information regarding the public meeting held by staff, and staff contact information. This webpage also allows interested parties to sign up and receive updates as the LUC amendment work has progressed. The website page can be accessed at the following link: <https://development.bellevuewa.gov/codes-and-guidelines/code-news/quasi-judicial-land-use-code-amendment/> .

Distribution of the notice of this draft LUC amendment was expanded as well. In addition to sending the Weekly Permit Bulletin to individuals who have subscribed to receive it, notice of this amendment was also sent to all individuals on the Energize Eastside mailing list and to individuals who have commented on any Process I or III application that is currently in review by the City. A total of 1,672 notices were sent via email and mail on three different dates—June 1, June 8 and June 29, 2017.

This LUC amendment does not have any effect on the EBCC's decision-making authority, and is not subject to approval/disapproval jurisdiction of the EBCC under RCW 35.14.040. However, staff provided a courtesy public briefing to the EBCC on June 6, and the EBCC held a Courtesy Public Hearing to take comments concerning the draft LUC amendment following the briefing. Approximately eight (8) individuals, along with the five (5) EBCC Councilmembers, attended the EBCC meeting to engage on this topic.

Staff also hosted a Public Meeting at City Hall on June 22. Although there is no requirement in the LUC for a public meeting on LUC amendments, staff calendared this event based on the City Council's request for additional engagement with the public concerning this amendment, to respond to public feedback that the amendment was complex, to respond to public comments regarding the lack of opportunity for public engagement concerning the amendment, and to provide an additional forum for the public to ask questions regarding the amendment. Eight (8) individuals attended the Public Meeting and engaged with staff directly regarding the LUC amendment from 6-9 p.m.

Individuals who have submitted comment on the draft LUC amendment, and who attended the Public Meeting are generally opposed to the changes that would eliminate Council appeals from Hearing Examiner decisions (Process I) and recommendations (Process III). The opportunity to appeal to the City Council, even in the context of a closed record appeal, is viewed as an essential step in the project review process that should not be removed. The following summary describes the themes raised during the

Public Meeting and in comment letters received by the City to-date. Staff has also summarized the response provided to interested parties on these themes.

Timing of the LUC Amendment. The majority of the public comments on the Quasi-Judicial LUC amendment state the amendment is moving too fast through the land use process and that opportunities for the public to engage in the Public Meeting and Public Hearing have been scheduled in June and July when the public is on summer vacation and less able to attend. Commenters have also noted that migration of the City website has made documents inaccessible, and people interested in the amendment cannot find the information that they need to engage effectively in the LUC amendment process.

Staff response: This LUC amendment was initiated by the City Council during its Study Session on April 10, 2017, and Council held an additional Study Session to endorse the scope, schedule and outreach associated with the amendment on May 22, 2017, at which time the draft code was made publicly available. Following the two Study Sessions—and in response to the public's concerns regarding the lack of opportunities for public engagement concerning the amendment—the EBCC held a courtesy Public Hearing on June 6, and staff scheduled the courtesy Public Meeting on June 22 at City Hall.

Attendance at the EBCC Public Hearing and the subsequent Public Meeting was roughly the same—approximately eight (8) members of the public. Staff provided notice to the public of any upcoming opportunities to engage via email, provided advanced notice of the courtesy Public Meeting at the EBCC Public Hearing, and provided advanced notice of the July 17, 2017 Public Hearing at the courtesy Public Meeting. Staff encouraged the public at each step of the process to submit comments, ask questions, and attend the scheduled public hearings and meeting. Staff also explained to the public that public hearings and public meetings are not the only way to engage.

The public comments submitted during the City Council's Study Sessions, via emails to the City, and during public hearings and meetings have generally covered the same topics. As of the writing of this staff report, staff have received email or letter communications from approximately 140 individuals regarding the Quasi-Judicial LUC amendment.

With respect to the timing of public engagement, the City Council has requested that staff process LUC amendments in a more efficient and effective manner to ensure that legislative actions do not languish. When changes to the LUC are not processed efficiently, the public is required to engage and comment over many months or years. In an effort to strike a balance between efficient processing of this LUC amendment and enhanced public engagement, staff has provided forums for public comment and interaction with staff that are not required by the LUC. Staff has also encouraged the public to participate at each step of the process and has provided the public with opportunities to raise questions with staff about the amendment in person.

Grandfathering and Effective Date of the LUCA. If the City Council proceeds with the draft Quasi-Judicial LUC amendment, commenters have requested that projects

currently in review, or that have been subject to Council review in the past, be grandfathered to the current procedures that allow for appeals to the City Council. Several individuals have raised issues about how this amendment will apply to projects of particular interest to them that are currently in review or scheduled for submittal in the near term. Projects mentioned by commenters included the Helistop Revocation, Energize Eastside, the Permanent Men's Shelter, and Fire Station 10. The comments have suggested that any LUC amendment that would change the quasi-judicial appeal process associated with these projects is untimely and unfair.

Staff Response: Although the required process on this LUC amendment is scheduled to be completed by August 7, 2017, the City Council has indicated during the two Study Sessions that it will be important to consider when the procedural change becomes effective, taking into account the projects that are currently in review or anticipated for submittal soon.

Council's Role in Conditional Use Permits. The public comments have also voiced concerns that the City Council, rather than a neutral Hearing Examiner, is better equipped to adjudicate CUP appeals because the City Council is more familiar with the LUC and long-term community vision for Bellevue. These comments have focused on (1) the elimination of a potential appeal to the City Council of Process I Hearing Examiner decisions on CUPs, (2) the City Council's ability to give voice to public concerns during the CUP appeal process, (3) the position that approval of a CUP application should be left within Council's discretion, (4) concerns that elimination of quasi-judicial appeals to the City Council will result in a more expensive land use process, and (5) concerns that under the draft LUC amendment, the public loses an opportunity to make an argument to the City Council that the Hearing Examiner erred when making the underlying decision/recommendation.

Staff response: The comments are correct that the draft LUC amendment will eliminate the City Council's role as a potential quasi-judicial decision-maker in Process I CUP appeals. However, when Council acts in a quasi-judicial capacity, it is not acting as an advocate for the public. This is because a quasi-judicial decision-maker cannot evaluate the merits of a CUP appeal based on public sentiments, community desires, complaints, or political threats. Instead, the decision-maker is required to independently evaluate the merits of the appeal based on the facts in the record and the controlling law.

While the draft LUC amendment does provide that the Hearing Examiner would be the final decision-maker on Process I CUP appeals, this change provides a more efficient, consistent, and reliable land use process. Hearing Examiners, unlike the City Council, are trained land use experts who are impartial and objective decision-makers. As non-elected officials, Hearing Examiners are not susceptible to political pressure or threats from parties to the land use action, and they are trained to act as fair and unbiased judges whose decisions are not influenced by politics or election cycles. Hearing Examiners are trained to think like a judge, act like a judge, and issue land use decisions that comply with the requisite legal standards.

Ultimately, under both the current LUC and the proposed amendment, the final Process I or Process III land use decision may be appealed to the Superior Court (or the Shoreline Hearings Board). Legal and procedural errors may result in a decision that is subsequently reversed by the court (or the Board), thereby increasing costs for all stakeholders and the City. Using a Hearing Examiner for quasi-judicial decisions on Process I CUP applications results in a more efficient, predictable, cost-effective and consistent process for all of the parties affected by the land use decision.

Public Engagement. Commenters on the LUC amendment have indicated that if the appeal to the City Council is removed, then the City should implement additional techniques to ensure that people are engaged at the beginning of the process when the ability to influence project outcomes is the greatest. Turnout of only eight (8) people at the June 22 Public Meeting was viewed as an indicator that, despite staff's efforts, the City does not do enough to ensure that citizens meaningfully participate in the code amendment process.

In response to this proposed LUC amendment, commenters have requested a range of notification techniques that should be required for Comprehensive Plan and LUC Amendments, and for project-specific applications (such as CUPs). These included: notifications on Nextdoor, press releases in the Bellevue Reporter (not just the Seattle Times), articles in It's Your City, dissemination of information to homeowner and neighborhood association presidents, dissemination of information to Bellevue Essential graduates, and development of interactive maps that the public can use to identify projects in their neighborhoods.

**Staff Response:** The City is committed to continued innovation in the area of outreach and citizen engagement. A central objective of the website update is to make it a more useful tool for the public in the long term, despite the short-term inconvenience of the recent migration. Many of the tools suggested by the public—press releases, articles in Its Your City, and mailed post cards—are already used for large substantive code amendments such as the Shoreline Master Program, Downtown Livability and the Eastgate LUC amendment. Information is also disseminated to members of the EBCC, representatives from neighborhood groups, community clubs, and other citizens' groups who have requested regular notice of land use actions, to meet noticing requirements contained within the code.

Staff are also working with the Chief Communication Officer and her team, and Neighborhood Outreach staff, to explore new avenues to reach out to the public. The City is on Twitter and Facebook, and is exploring the use of other applications to distribute messages. That said, we are also sensitive to citizen concerns that some forums (such as Nextdoor) are intended to support neighborhood-driven content and should not be used by the City as a means to deliver its official messages. The City is also in the process of developing interactive maps that will enhance the website functionality.

Planning Commission Involvement. Several commenters on the LUC amendment have raised concerns regarding the City Council decision to retain its authority to hold the

required Public Hearing. Commenters felt that the Planning Commission represents a valuable view from the public perspective, and circumventing the Planning Commission in a code amendment process is “divisive” and creates the impression that “the amendment process is being conducted in a covert way.”

Staff Response: It is necessary and appropriate for the City Council to consider public comment at a public hearing regarding a LUC amendment that will affect Council’s quasi-judicial role in Process I and Process III land use matters. On April 10, 2017, following discussion, the City Council decided to initiate this LUC amendment and retained authority to conduct the public hearing. The City Council concluded it was necessary for Council to conduct the public hearing because (1) the LUC amendment would impact only the City Council’s procedure under the LUC, (2) the Planning Commission has a full agenda, and (3) Council initiated the LUC amendment and should hear from the public directly. Moreover, staff has explained to the public that this proposed LUC amendment entails a procedural, rather than substantive, change to the LUC because the amendment contains no provisions affecting the use or modification of the physical environment.

The balance of this Staff Report analyzes the decision criteria in the Land Use Code that must be met to support adoption of LUC amendments.

#### **IV. DECISION CRITERIA**

LUC 20.30J.135 establishes the decision criteria for an application to amend the text of the Land Use Code. Those criteria, and the relationship of this proposed amendment to them, are discussed below:

A. The amendment is consistent with the Comprehensive Plan; and

**Finding:** The City of Bellevue has adopted two comprehensive plan policies that speak to the efficiency, consistency and predictability of the permitting process that guide citizen and applicant participation in development review:

Comprehensive Plan Policy CE-5:

*Develop and maintain Land Use Code provisions that define the process and standards relevant to each stage of land use decision making, and educate the public about these processes and standards to promote meaningful citizen engagement.*

Comprehensive Plan Policy ED-6:

*Strive to provide an efficient, streamlined, timely, predictable and customer-focused permit processes, conducted in a manner that integrates multiple city departments into a coordinated entity, recognizing the role of development in creating places for economic activity.*

The LUC contains the regulations that staff use to implement these comprehensive plan policies. The City Council adopted these regulations, along with the underlying policies, through its legislative (law-making) and long-term planning authority.

The proposed LUC amendment is consistent with and supports these Comprehensive Plan policies and their corresponding regulations by optimizing the role of the City Council, increasing accessibility to the public during the permit review process, encouraging meaningful public engagement early in the process, and promoting fair, independent and efficient land use decision-making.

B. The amendment enhances the public health, safety or welfare; and

**Finding:** There are several potential benefits to the City Council resulting from the requested LUC amendment to the Process I and Process III appeal procedures as follows:

- Councilmembers are elected as legislators, not as judges. The LUC amendment would optimize the legislative role of the City Council because the Council would retain its primary, legislative role to adopt comprehensive plan policies and development regulations to achieve the community vision.
- The City Council would no longer adjudicate complicated land use issues without necessary expertise. Hearing Examiners would adjudicate land use matters during the permit review process in order to ensure that the policies and regulations adopted by the City Council are applied correctly and lawfully. Unlike the City Council, the Hearing Examiner is an objective, impartial adjudicator with expertise in conducting quasi-judicial proceedings on land use matters.
- Based on records available from the Hearing Examiner's office, there were a total of eight (8) Process I appeals to the City Council between 2000 and 2017—five (5) PUD appeals and three (3) CUP appeals. Because there are very few matters that are or have the potential to be appealed to the City Council, Councilmembers are challenged to retain familiarity as to the process and procedures of an appeal. The requested LUC amendment would eliminate the need for Councilmembers to re-learn its quasi-judicial role and responsibilities for those seldom-occurring appeals.
- The City Council could communicate with the public throughout the permitting process without the appearance of bias providing a basis for a subsequent judicial challenge. Political pressure should not influence quasi-judicial decision-making, and the City Council's final quasi-judicial decision can be challenged based on presumed bias even when Councilmembers disclose their conversations with the public or an applicant as part of the quasi-judicial appeal proceeding. The requested

LUC amendment would eliminate the inherent tension that occurs when the City Council is interacting with the public in its legislative role while also presiding over appeals in its quasi-judicial role.

Potential benefits to the public resulting from the requested LUC amendment to the Process I and Process III appeal procedures include the following:

- When the City Council acts as a judge in a quasi-judicial capacity, the Council must follow strict rules that govern how the Council interacts with the public during the pendency of an appeal. Members of the public who otherwise could communicate freely with Councilmembers acting as legislators find this confusing and frustrating. The requested LUC amendment would allow the City Council to engage with the public throughout the land use process and would encourage public participation at each stage of the process without affecting the integrity of the quasi-judicial process.
- Similarly, the public benefits from an impartial and objective Hearing Examiner conducting the public hearing, considering all the evidence, and applying the laws and policies adopted by the City Council to reach a decision. This process ensures fairness to all stakeholders because the Hearing Examiner is a trained expert who is not susceptible to political threats (e.g., “If you do not rule in my favor, then I will not vote for you or fund your campaign”). The public is ill-served by the appearance of bias during a quasi-judicial appeal, or by a final decision that is not supported by the requisite legal analysis and expertise.
- Under the current LUC, quasi-judicial appeals to the City Council in Process I land use matters are closed-record appeals. This means that the Council cannot consider new testimony, public comment or evidence in addition to the evidence previously submitted to the Director and the Hearing Examiner. If the public fails to engage in the process early, its voice may not be memorialized in the closed record later considered by the quasi-judicial decision-maker. The amendment would encourage public participation early in the land use process—*i.e.*, during the time period when public comment, community engagement, and relevant evidence is presented and considered—and prior to a closed-record appeal that does not provide for public comment or the submission of additional evidence outside of the record developed before the Director’s recommendation and the Hearing Examiner’s action.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

**Finding:** The amendment is not contrary to the interests of citizens and property owners as it will optimize the role of the City Council to shape City policy, increase accessibility to the public during the permit review process, encourage

meaningful public engagement early in the land use process when the record is open for public comment and evidence, and promote fair, independent and efficient land use decision-making. Finally, all citizens and property owners in the City of Bellevue benefit from trained, expert quasi-judicial decision-making that ensures the integrity of the land use process.

#### **V. STATE ENVIRONMENTAL POLICY ACT**

Although the action to amend the LUC is subject to the State Environmental Policy Act (SEPA), the requested LUC amendment to Process I and III appeal procedures would be categorically exempt from SEPA review pursuant to WAC 197-11-800(19), which excludes procedural actions.

#### **VI. ALTERNATIVES**

1. Direct staff to prepare the LUC amendment for final City Council action at a future Council meeting and provide staff direction regarding the effective date.
2. Provide staff with alternate direction.

#### **VII. RECOMMENDATION**

Alternative 1.

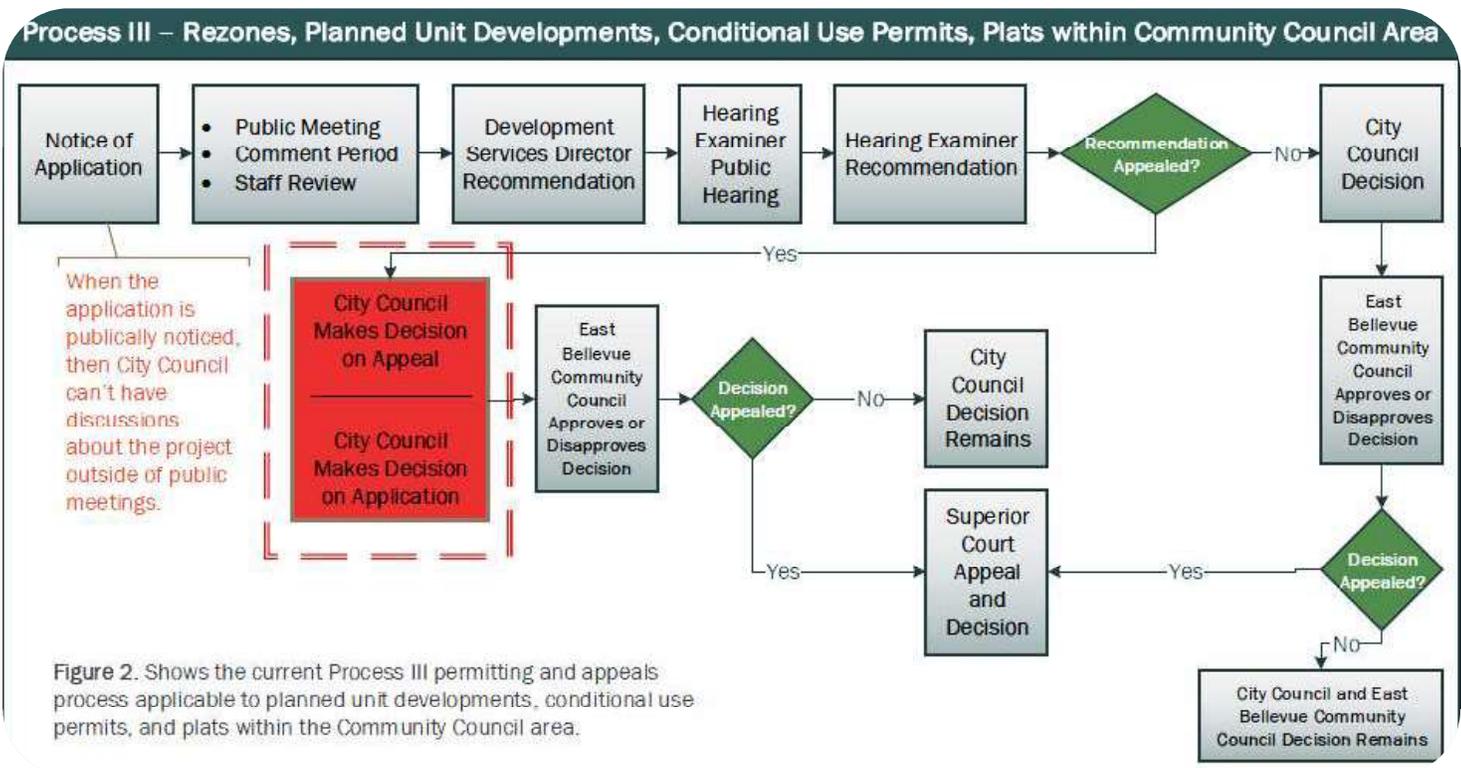
#### **ATTACHMENTS**

- A. Process Comparison Flow Chart
- B. Draft LUC Amendment regarding Quasi-Judicial Appeals

Below is a conceptual illustration of the proposed Quasi-Judicial Land Use Code Amendment. If approved, the code amendment would remove the process steps noted in red for Process I land use applications.



Below is a conceptual illustration of the proposed Quasi-Judicial Land Use Code Amendment. If approved, the code amendment would remove the process steps noted in red for Process III land use applications.



## Chapter 20.35

### REVIEW AND APPEAL PROCEDURES

#### Sections:

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20.35.520	Minimum comment period
20.35.525	Public meetings
20.35.530	Director's decision

- 20.35.535 Notice of decision  
20.35.540 Appeal of Process V decisions

**20.35.010 Purpose and scope.**

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

**20.35.015 Framework for decisions.**

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

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

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

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

1. Administrative amendments;
2. Administrative Conditional Use;
3. Design Review;
4. Home Occupation Permit;
5. Interpretation of the Land Use Code;
6. Preliminary Short Plat;
7. Shoreline Substantial Development Permit;
8. Variance and Shoreline Variance;
9. Critical Area Land Use Permits;
10. Master Development Plans;
11. Design and Mitigation Permits required pursuant to Part 20.25M LUC, Light Rail Overlay District; and

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

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

1. Site-specific or project-specific rezone;
2. Conditional Use, Shoreline Conditional Use, Preliminary Plat, and Planned Unit Development projects subject to the jurisdiction of a Community Council pursuant to RCW 35.14.040; and
3. A rezone of any property to the OLB-OS Land Use District designation.

E. Process IV decisions are legislative nonproject decisions made by the City Council under its authority to establish policies and regulations regarding future private and public development and management of public lands. The following are Process IV decisions:

1. Consideration of suggestions for amendments to the Comprehensive Plan;
2. Amendments to the text of the Land Use Code or Comprehensive Plan;
3. Amendments to the Comprehensive Plan Map;
4. Amendments to the Zoning Map (rezones) on a Citywide or areawide basis.

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

1. Temporary Encampment Permits.

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

1. Boundary Line Adjustment;
2. Final Plat (also requires Hearing Examiner approval prior to recording);
3. Final Short Plat;
4. Land Use Exemption;
5. Temporary Use Permit;
6. Vendor Cart Permit;
7. Requests for Reasonable Accommodation as defined by Part 20.30T LUC\*;
8. Applications and decisions for activities for which the Director of the Utilities Department has granted an exemption to the "minimum requirements for new development and redevelopment" pursuant to BCC 24.06.065.C. (Ord. 6197, 11-17-14, §§ 26, 27, 28; Ord. 6102, 2-27-13, § 6; Ord. 5727, 3-19-07, § 3; Ord. 5717, 2-20-07, § 11; Ord. 5683, 6-26-06, § 28; Ord. 5650, 1-3-06, § 3; Ord. 5615, 7-25-05, § 2; Ord. 5587, 3-7-05, § 10; Ord. 5481, 10-20-03, § 15; Ord. 5403, 8-5-02, § 12; Ord. 5328, 11-19-01, § 1; Ord. 5233, 7-17-00, § 2; Ord. 4978, 3-17-97, § 8; Ord. 4972, 3-3-97, § 3)

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

**20.35.020 Pre-application conferences.**

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

**20.35.030 Applications.**

**A. Who May Apply.**

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

1. The property owner, authorized agent of the owner, or Regional Transit Authority authorized by LUC 20.25M.010.C to apply for permits may apply for any type of Process I, Process II, or Process III land use decision.
2. A resident of the dwelling may apply for a Home Occupation Permit.
3. The City Council, the Director of the Development Services Department or the Planning Director may apply for a project-specific or site-specific rezone or for an areawide (Process IV) rezone.
4. The Planning Commission may propose site-specific and non-site-specific amendments to the Comprehensive Plan Map or to the text of the Comprehensive Plan for consideration pursuant to the procedure for consideration of Comprehensive Plan Amendments set forth in LUC 20.30I.130.B.2.
5. City Council, the Planning Commission, or the Director with the concurrence of either body, may initiate an amendment to the text of the Land Use Code.
6. A property owner or authorized agent of a property owner may apply to propose a site-specific amendment to the Comprehensive Plan pursuant to the annual procedure for consideration of Comprehensive Plan Amendments set forth in LUC 20.30I.130.A.
7. Any person may apply to propose a non-site-specific amendment to the Comprehensive Plan pursuant to the annual procedure for consideration of Comprehensive Plan Amendments set forth in LUC 20.30I.130.A.
8. Any person may request an interpretation of the Land Use Code. In addition, the Director may issue interpretations of the Land Use Code as needed.

**B. Submittal Requirements.**

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

**C. Notice of Complete Application.**

1. Within 28 days after receiving a land use permit application, the Director shall mail, fax, or otherwise provide to the applicant a written determination that the application is complete, or that the application is incomplete and what is necessary to make the application complete.
2. If the Director does not provide a written determination within the 28 days, the application shall be deemed complete as of the end of the 28th day.

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

4. A land use application is complete for purposes of this section when it meets the submittal requirements established by the Director and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the Director from requesting additional information or studies either at the time of the notice of completeness or subsequently, if new information is required to complete review of the application or substantial changes in the permit application are proposed.

D. Project Timelines.

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

**20.35.035 Method of mailing and publication.**

A. Mailing.

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

B. Publication.

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

**20.35.040 Construction notices.\***

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

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

**20.35.045 Land use decisions – When final.**

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

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

A. General. A final City decision on a land use permit application (Processes I through III and V), except for shoreline permits, may be appealed to Superior Court by filing a land use petition meeting the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040. Notwithstanding the provisions of this paragraph, the time for filing an appeal of a final Process II land use action that has been merged with a Process I or III application will be tolled until the Process I or III decision is ~~are~~ final. Requirements for fully exhausting City administrative appeal opportunities, if any are available, must be fulfilled. An appeal of a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, or a shoreline variance shall be to the State Shoreline Hearings Board and shall be filed within 21 days as set forth in RCW 90.58.180.

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

**20.35.080 Merger of certain decisions.**

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

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

**20.35.085 Appeals of nonland use matters.**

Certain other appealable administrative decisions are made by City departments, including but not limited to decisions pursuant to the City's Traffic Standards Code, Chapter 14.10 BCC; Transportation ~~Impact Fee Improvement~~ Program, Chapter 22.16 BCC; the School Impact Fees for Issaquah School District No. 411 ~~And Renton School District No. 403~~, Chapter 22.18 BCC; the Sewer ~~Utility~~ Code, Chapter 24.04 BCC; the Storm and Surface Water Utility Code, Chapter 24.06 BCC; the Sign Code, Chapter 22B.10 BCC; and the Environmental Procedures Code, Chapter 22.02 BCC. These types of non-Land Use Code appeals are heard and decided by the City Hearing Examiner. When associated with a consolidated Land Use permit application, the appeal will be heard in conjunction with any appeal on the Land Use application. In some cases, the relevant code modifies the appeal process slightly compared to Land Use Code appeals. (See e.g., Transportation ~~Impact Fee Improvement~~ Program: only ~~developer~~ ~~applicant~~ may appeal.) In such cases, and as to those codes only, the procedures governing other appeals shall control. In all cases, however, the final City decision on the administrative appeal is made by the Hearing Examiner. Information on non-Land Use Code appeals is available from the department administering the relevant code and from the City Hearing Examiner. (Ord. 4978, 3-17-97, § 9; Ord. 4972, 3-3-97, § 3)

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

A. LUC 20.35.100 through 20.35.150 contain the procedures the City will use in implementing Process I. This process begins with a complete application, followed by notice to the public of the application and a public comment period, during which time an informational meeting will be held. If required by the State Environmental Policy Act (SEPA) a threshold determination will be issued by the Environmental Coordinator. The threshold determination may be issued in conjunction with issuance of the Director's recommendation on the application. If an Environmental Impact Statement (EIS) is required, however, the threshold determination will be issued early and the EIS will be completed prior to issuance of the Director's recommendation. If the requirement to prepare an EIS or a supplemental EIS is appealed by the applicant, that appeal will also be resolved prior to issuance of the Director's recommendation.

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

C. The decision of the Hearing Examiner on a Process I application is ~~appealable to the City Council. The City Council action deciding the appeal and approving, approving with modifications, or denying a project is~~ the final City decision on a Process I application. A final decision by the Hearing Examiner on a Process I application may be appealed to Superior Court as set forth in LUC 20.35.070, except that an appeal of a shoreline conditional use permit shall be filed with the Shorelines Hearings Board.

D. Subject to LUC 20.35.070, the applicant may commence activity or obtain other required approvals authorized by the Process I decision the day following the Hearing Examiner's decision approving or approving with modifications the Process I application. Activity commenced before the expiration of the full appeal period in LUC 20.35.070, is at the sole risk of the applicant. (Ord. 4972, 3-3-97, § 3)

### **20.35.120 Notice of application.**

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

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

1. Publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed in a newspaper of general circulation in the City;
2. Mailed notice to owners of real property within 500 feet of the project site including the following information:
  - a. The date of application;
  - b. The project description and location;
  - c. The types of City permits or approvals applied for;
  - d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits or approvals required, related permits from other agencies or jurisdictions not included in the City permit process, the dates for any public meetings or public hearings, identification of any studies requested for application review, any existing environmental documents that apply to the project, and a statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation;

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

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

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

**20.35.125 Minimum comment period.**

- A. The Notice of Application shall provide a minimum comment period of 14 days. The Director's recommendation on a Process I application will not be issued prior to the expiration of the minimum comment period.
- B. Comments should be submitted to the Director as early in the review of an application as possible and should be as specific as possible.
- C. The Director may accept and respond to public comments at any time prior to the closing of the public hearing record.
- D. For projects requiring review under the State Environmental Policy Act (SEPA), a single comment letter may be submitted to the Director or the Environmental Coordinator addressing environmental impacts as well as other issues subject to review under the approval criteria for the Process I decision. (Ord. 4972, 3-3-97, § 3)

**20.35.127 Public meetings.**

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

**20.35.130 Director's recommendation.**

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

**20.35.135 Public notice of Director's recommendation.**

- A. Notice of Recommendation, SEPA Determination, and Hearing Examiner Hearing.
  1. Public Notice of the availability of the Director's recommendation shall be published in a newspaper of general circulation. If a Determination of Significance (DS) was issued by the Environmental Coordinator, the notice of the Director's recommendation shall state whether an EIS or Supplemental EIS was prepared or whether existing environmental documents were adopted. If a Determination of Nonsignificance (DNS) is issued, the DNS may be issued and published in conjunction with the Director's recommendation except as provided in the Environmental Procedures Code, BCC 22.02.031 and 22.02.160. The notice of recommendation shall also include the date of the Hearing Examiner public hearing for the application, which shall be scheduled no sooner than 14 days following the date of publication of the notice.
  2. The Director shall mail notice of the recommendation and public hearing to each owner of real property within 500 feet of the project site.
  3. The Director shall mail notice to each person who submitted comments during the comment period or at any time prior to the publication of the notice of recommendation.
  4. The Director shall mail notice to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be all

members of a Community Council and a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested regular notice of land use decisions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

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

**20.35.137 Hearing Examiner public hearing.**

A. Participation in Hearing.

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

B. Transmittal of File.

The Director shall transmit to the Hearing Examiner a copy of the Department file on the application including all written comments received prior to the hearing, and information reviewed by or relied upon by the Director or the Environmental Coordinator. The file shall also include information to verify that the requirements for notice to the public (notice of application, notice of SEPA decision, and notice of Director's recommendation) have been met.

C. Hearing Record.

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

**20.35.140 Hearing Examiner decision.**

A. Criteria for Decision.

The Hearing Examiner shall approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the Bellevue City Code. The applicant carries the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner shall deny the application.

B. Limitation on Modification.

If the Hearing Examiner requires a modification which results in a proposal not reasonably foreseeable from the description of the proposal contained in the public notice provided pursuant to LUC 20.35.135, the Hearing Examiner shall conduct a new hearing on the proposal as modified.

C. Conditions.

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

D. Written Decision of the Hearing Examiner.

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

1. The decision of the Hearing Examiner; and
2. Any conditions included as part of the decision; and

3. Findings of facts upon which the decision, including any conditions, was based and the conclusions derived from those facts; and
4. A statement explaining the process to appeal the decision of the Hearing Examiner to the City Council.

E. Distribution.

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

**~~20.35.150 Appeal of Hearing Examiner decision.~~**

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

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

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

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

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

~~5. Public Notice of Appeal Hearing.~~

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

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

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

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

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

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

~~6. Closed Record Hearing on Appeal to City Council.~~

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

~~b. How to Participate. A person entitled to participate may participate in the appeal hearing by: (1) Submitting written argument on the appeal to the City Clerk no later than the date specified in the City Council's Rules of Procedure; or (2) making oral argument on the appeal to the City Council at the appeal hearing. Argument on the appeal is limited to information-~~

~~contained in the record developed before the Hearing Examiner and must specify the findings or conclusions which are the subject of the appeal, as well as the relief requested from the Council.~~

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

~~7. City Council Decision on Appeal.~~

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

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

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

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

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

~~1. Conditions. The City Council may, based on the record, include conditions in any ordinance approving or approving with modifications an application in order to ensure conformance with the approval criteria specified in the Code or process under which the application was made.~~

~~2. Findings of Fact and Conclusions. The City Council shall include findings of fact and conclusions derived from those facts which support the decision of the Council, including any conditions, in the ordinance approving or approving with modifications the application. The City Council may by reference adopt some or all of the findings and conclusions of the Hearing Examiner.~~

~~C. Required Vote.~~

~~The City Council shall adopt an ordinance which approves or approves with modifications the application by a majority vote of the membership of the City Council.~~

~~D. Effect of Decision.~~

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

~~E. Commencement of Activity.~~

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

**20.35.200 Process II: Administrative decisions.**

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

B. If required by the State Environmental Policy Act (SEPA), a threshold determination will be issued by the Environmental Coordinator. The threshold determination is also a Process II decision, except as set forth in LUC 20.35.015.C, and may be issued in conjunction with the Director’s decision on the accompanying land use decision. If an Environmental Impact Statement (EIS) is required, however, the threshold determination will be issued early and the EIS will be completed prior to the issuance of the accompanying land use decision. If the requirement to prepare an EIS or a supplemental EIS is appealed by the applicant, that appeal will be resolved prior to the issuance of the land use decision. (See BCC 22.02.031 and 22.02.160 regarding timing of issuance of the threshold determination.)

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

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

**20.35.210 Notice of application.**

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

**Table 20.35.210.A**

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

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

1. For Process II decisions not included in Table 20.35.210.A, notice of application shall be provided by publication and mailing.
2. When required by Table 20.35.210.A, publishing shall include publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed, in a newspaper of general circulation in the City.
3. Mailing shall include mailed notice to owners of real property within 500 feet of the project site including the following information:
  - a. The date of application;
  - b. The project description and location;
  - c. The types of City permit(s) or approval(s) applied for;
  - d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits required, related permits from other agencies or jurisdictions not included in the City permit process, the dates for any public meetings or public hearings, identification of any studies requested for application review, any existing environmental documents that apply to the project, and a statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation.
4. If signs are required, two signs or placards shall be posted by the applicant on the site or in a location immediately adjacent to the site that provides visibility to motorists using adjacent streets. The Director shall establish standards for size, color, layout, design, wording, placement, and timing of installation and removal of the signs or placards.
5. Mailings shall also include mailing notice of the application including at least the information required in subsection A.1 of this section to each person who has requested such notice for the calendar year and paid any fee as established by the Director. This mailing shall also include all members of a Community Council and a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested notice of land use activity. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient. (Ord. 6197, 11-17-14, § 29; Ord. 5718, 2-20-07, §§ 1, 5; Ord. 5683, 6-26-06, § 30; Ord. 5587, 3-7-05, § 12; Ord. 5481, 10-20-03, § 20; Ord. 5089, 8-3-98, § 43; Ord. 4972, 3-3-97, § 3)

**20.35.225 Minimum comment period.**

- A. The Notice of Application shall provide a minimum comment period of 14 days. The Director's decision on a Process II application will not be issued prior to the expiration of the minimum comment period.
- B. Comments should be submitted to the Director as early in the review of an application as possible and should be as specific as possible.

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

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

**20.35.227 Public meetings.**

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

**20.35.230 Director's decision.**

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

**20.35.235 Notice of decision.**

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

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

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

**20.35.250 Appeal of Process II decisions.**

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

1. Who May Appeal. The project applicant or any person who submitted written comments prior to the date the decision was issued may appeal the decision.
2. Form of Appeal. A person appealing a Process II decision must file a written statement setting forth:
  - a. Facts demonstrating that the person is adversely affected by the decision;
  - b. A concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria;
  - c. The specific relief requested; and
  - d. Any other information reasonably necessary to make a decision on the appeal.

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

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

B. Shoreline Permit Appeals.

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

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

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

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

D. Notice of Appeal Hearing.

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

E. Hearing Examiner Hearing.

The Hearing Examiner shall conduct an open record hearing on a Process II appeal. The appellant, the applicant, and the City shall be designated parties to the appeal. Each party may participate in the appeal hearing by presenting testimony or calling witnesses to present testimony. Interested persons, groups, associations, or other entities who have not appealed may participate only if called by one of the parties to present information; provided, that the Examiner may allow nonparties to present relevant testimony if allowed under the Examiner's Rules of Procedure.

F. Hearing Examiner Decision on Appeal.

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

1. The appellant has carried the burden of proof; and
2. The Examiner finds that the Process II decision is not supported by a preponderance of the evidence.

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

G. Appeal of Hearing Examiner Decision.

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

H. Time Period to Complete Appeal Process.

In all cases except where the parties to an appeal have agreed to an extended time period, the administrative appeal process shall be completed within 90 days from the date the original administrative appeal period closed. Administrative appeals shall be deemed complete on the date of issuance of the Hearing Examiner's decision on the appeal. (Ord. 6197, 11-17-14, § 30; Ord. 5615, 7-25-05, § 7; Ord. 4972, 3-3-97, § 3)

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

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

**20.35.320 Notice of application.**

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

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

1. Publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed in a newspaper of general circulation in the City.
2. Mailed notice to owners of real property within 500 feet of the project site including the following information:
  - a. The date of application;
  - b. The project description and location;
  - c. The types of City permits or approvals applied for;
  - d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits or approvals required; related permits from other agencies or jurisdictions not included in the City permit process; the dates for any public meetings or public hearings; identification of any studies requested for application review; any existing environmental documents that apply to the project; and a statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation.
3. Mailed notice of the application including at least the information required in paragraph A.1 of this section to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested regular notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

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

**20.35.325 Minimum comment period.**

- A. The Notice of Application shall provide a minimum comment period of 14 days. The Director's recommendation on a Process III application will not be issued prior to the expiration of the minimum comment period.
- B. Comments should be submitted to the Director as early in the review of an application as possible and should be as specific as possible.
- C. The Director may accept and respond to public comments at any time prior to the closing of the public hearing record.
- D. For projects requiring review under the State Environmental Policy Act (SEPA), a single comment letter may be submitted to the Director or the Environmental Coordinator addressing environmental impacts as well as other issues subject to review under the approval criteria for the Process III decision. (Ord. 4972, 3-3-97, § 3)

**20.35.327 Public meetings.**

- A. A public meeting is required for all Process III applications. The Director may require the applicant to participate in the meeting to inform citizens about the proposal. Public meetings shall be held as early in the review process as possible for Process III applications. Notice of the public meeting shall be provided in the same manner as required for notice of the application. The public meeting notice will be combined with the notice of application whenever possible.
- B. Community Council Meetings. If an application is within the jurisdiction of a Community Council pursuant to Chapter 35.14 RCW, the public meeting shall be held as part of that Community Council's regular meeting. The meeting may be conducted according to the Community Council's rules for a courtesy public hearing or otherwise coordinated with that Council's meeting schedule. (Ord. 4972, 3-3-97, § 3)

**20.35.330 Director's recommendation.**

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

**20.35.335 Public notice of Director's recommendation.**

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

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

- B. The Director shall mail notice of the recommendation and public hearing to each owner of real property within 500 feet of the project site.
- C. The Director shall mail notice to each person who submitted comments during the comment period or at any time prior to the publication of the notice of recommendation.
- D. The Director shall mail notice to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood associations, community clubs, or other citizens' groups who have requested notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.
- E. See additional noticing requirements in LUC 20.45A.110 for preliminary subdivisions (plats). (Ord. 5718, 2-20-07, §§ 1, 7; Ord. 5481, 10-20-03, § 23; Ord. 4972, 3-3-97, § 3)

**20.35.337 Hearing Examiner public hearing.**

- A. Participation in Hearing.

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

- B. Transmittal of File.

The Director shall transmit to the Hearing Examiner a copy of the Department file on the application including all written comments received prior to the hearing, and information reviewed by or relied upon by the Director or the Environmental Coordinator. The file shall also include information to verify that the requirements for notice to the public (notice of application, notice of SEPA decision, and notice of Director's recommendation) have been met.

- C. Hearing Record.

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

**20.35.340 Hearing Examiner recommendation.**

- A. Criteria for Recommendation.

The Examiner shall recommend approval or approval with conditions or modification if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the Bellevue City Code. The applicant carries the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner shall recommend denial of the application.

- B. Limitation on Modification.

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

- C. Conditions.

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

- D. Written Recommendation of the Hearing Examiner.

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

1. The recommendation of the Hearing Examiner; and
2. Any conditions included as part of the recommendation; and
3. Findings of facts upon which the recommendation, including any conditions, was based and the conclusions derived from those facts; and
4. ~~A statement explaining the process to appeal the recommendation of the Hearing Examiner; and~~
5. ~~The date on which the matter has been scheduled for consideration by the City Council and information on how to find out whether the Examiner's recommendation has been appealed.~~

E. Distribution.

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

~~**20.35.350 Appeal of Hearing Examiner recommendation.**~~

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

1. ~~Who May Appeal. The recommendation of the Hearing Examiner may be appealed by any person who participated in the public hearing as provided for in LUC 20.35.337, or by the applicant or the City.~~
2. ~~Form of Appeal. A person appealing the recommendation of the Hearing Examiner must file with the City Clerk a written statement of the findings of fact or conclusions which are being appealed and must pay a fee, if any, as established by ordinance or resolution. The written statement must be filed together with an appeal notification form available from the Office of the City Clerk.~~
3. ~~Time and Place to Appeal. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City Clerk no later than 14 days following the date the recommendation of the Hearing Examiner was mailed.~~
4. ~~Hearing Required. The City Council shall conduct a closed record appeal hearing and shall decide upon an appeal of the recommendation of the Hearing Examiner prior to or in conjunction with taking final action on the application pursuant to LUC 20.35.355. The decision on any appeal of the Hearing Examiner's recommendation and final action on the application shall be made within such time as is required by applicable state law.~~
5. ~~Public Notice of Appeal Hearing.~~
  - a. ~~Content of Notice. The City Clerk shall prepare a notice of an appeal hearing containing the following:~~
    - i. ~~The name of the appellant, and if applicable the project name, and~~
    - ii. ~~The street address of the subject property, and a description in nonlegal terms sufficient to identify its location, and~~
    - iii. ~~A brief description of the recommendation of the Hearing Examiner which is being appealed, and~~

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

~~b. Time and Provision of Notice. The City Clerk shall mail notice of the appeal hearing on an appeal of the recommendation of the Hearing Examiner no less than 14 days prior to the appeal hearing to each person entitled to participate in the appeal pursuant to LUC 20.35.350.A.6.a.~~

~~6. Closed Record Hearing on Appeal to City Council.~~

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

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

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

~~7. City Council Decision on Appeal.~~

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

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

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

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

### **20.35.355 City Council decision on the application.**

#### **A. General.**

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

#### **B. Elements to be Considered.**

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

1. The complete record developed before the Hearing Examiner; and
2. The recommendation of the Hearing Examiner; and
3. The comments of a Community Council with jurisdiction pursuant to Chapter 35.14 RCW; ~~and~~

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

C. Decision.

The City Council shall either:

1. Approve the application, ~~incorporating its decision on any appeal pursuant to LUC 20.35.350;~~  
or
2. Approve the application with modifications, ~~also incorporating its decision on any appeal pursuant to LUC 20.35.350;~~ or
3. Remand the application to the Hearing Examiner and the Director for an additional public hearing limited to specific issues identified by the Council; or
4. Deny the application.

D. Ordinance.

1. Conditions. The City Council may, based on the record, include conditions in any ordinance approving or approving with modifications an application in order to ensure conformance with the criteria under which the application was made.
2. Findings of Fact and Conclusions. The City Council shall include findings of fact and conclusions derived from those facts which support the decision of the Council, including any conditions, in the ordinance approving or approving with modifications the application. The City Council may by reference adopt some or all of the findings and conclusions of the Hearing Examiner.

E. Required Vote.

The City Council shall adopt an ordinance which approves or approves with modifications the application by a majority vote of the membership of the City Council. Any other vote constitutes a denial of the application.

F. Distribution.

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

G. Effect of Decision.

1. The decision of the City Council on the application is the final decision of the City and may be appealed to Superior Court as provided in LUC 20.35.070.
2. For City Council decisions that are subject to the jurisdiction of a Community Council pursuant to RCW 35.14.040, the decision of the City Council shall be final upon the earlier of the date of Community Council action or upon the end of the 60th day following City Council action.

H. Commencement of Activity.

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

**20.35.365 Community Council review and decision.**

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

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

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

**20.35.400 Process IV: City Council legislative actions.**

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

**20.35.410 Planning Commission procedure.**

A. General.

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

B. Criteria.

The Planning Commission may recommend the Council adopt or adopt with modifications a proposal if it complies with the applicable decision criteria of the Bellevue City Code or Land Use Code. In all other cases, the Planning Commission shall recommend denial of the proposal.

C. Limitation on Modification.

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

D. Required Vote.

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

**20.35.415 Notice of application.**

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

1. Publication of a brief description of the action or approval requested; if the application involves specific property, the street address of the subject property; name of the applicant and project name;

date of application; and location where the complete application file may be reviewed in a newspaper of general circulation in the City.

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

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

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

#### **20.35.420 Public hearing notice.**

##### **A. Content.**

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

1. The name of the applicant, and, if applicable, the project name;
2. If the application involves specific property, the street address of the subject property;
3. A brief description of the action or approval requested;
4. The date, time and place of the public hearing; and
5. A statement of the right of any person to participate in the public hearing as provided for in LUC 20.35.430.

##### **B. Provision of Notice.**

1. The applicable Department Director shall provide for notice of the public hearing to be published in a newspaper of general circulation in the City at least 14 days prior to the date of the public hearing.
2. If the proposal involves specific property, rather than an areawide or zonewide change, two signs or placards shall be posted by the applicant on the site or in a location immediately adjacent to the site that provides visibility to motorists using the adjacent streets. The Director shall establish standards for size, color, layout, design, wording, placement, and timing of installation and removal of the signs or placards.
3. If the proposal involves specific property, rather than an areawide or zonewide change, notice of the public hearing shall be mailed to each owner of real property within 500 feet of any boundary of the subject property.
4. The Director shall mail notice to each person who has requested such notice and paid any fee as established by the Director. Included in this mailing shall be all members of a Community Council and a representative from each of the neighborhood groups, community clubs, and other citizens'

groups who have requested regular notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

5. The Director shall mail notice to each person who submitted comments during the comment period or at any time prior to the publication of the notice of public hearing. (Ord. 5718, 2-20-07, §§ 1, 9; Ord. 5481, 10-20-03, § 26; Ord. 5089, 8-3-98, § 47; Ord. 4972, 3-3-97, § 3)

**20.35.430 Public hearing.**

A. Participation.

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

B. Hearing Record.

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

**20.35.435 Community Council courtesy hearing.**

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

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

**20.35.440 City Council action.**

A. General.

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

B. City Council Action.

The City Council may take one of the following actions:

1. Adopt an ordinance or resolution adopting the proposal or adopting the proposal with modifications; or
2. Adopt a motion denying the proposal; or
3. Refer the proposal back to the Planning Commission for further proceedings, in which case the City Council shall specify the time within which the Planning Commission shall report back to the City Council with a recommendation.

C. Effect of City Council Action.

The action of the City Council on a Process IV proposal may be appealed together with any SEPA Threshold Determination by filing a petition with the Growth Management Hearings Board pursuant to the requirements set forth in RCW 36.70A.290. The petition must be filed within the 60-day time period set forth in RCW 36.70A.290(2). (Ord. 4972, 3-3-97, § 3)

**20.35.450 Community Council review and action.**

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

B. Notice.

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

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

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

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

**20.35.510 Notice of application.**

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

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

1. Publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed, in a newspaper of general circulation in the City.
2. Mailed notice to owners of real property within 500 feet of the project site including the following information:
  - a. The date of application;
  - b. The project description and location;
  - c. The types of City permit(s) or approval(s) applied for;
  - d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits required, related permits from other agencies or jurisdictions not included in the City permit process, the dates for any public meetings, identification of any studies requested for application review, any existing environmental documents that apply to the project, and a statement of the preliminary

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

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

**20.35.520 Minimum comment period.**

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

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

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

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

**20.35.525 Public meetings.**

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

**20.35.530 Director's decision.**

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

**20.35.535 Notice of decision.**

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

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

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

person, notice may be provided by electronic mail only, when requested by the recipient. (Ord. 5615, 7-25-05, § 13)

**20.35.540 Appeal of Process V decisions.**

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

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