

Title 14A
LAND USE DECISIONS

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Chapter 14A.01
GENERAL PROVISIONS

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14A.01.010 Title.

This title shall be called “Land Use Decisions.” (Ord. 1854 § 2 (Exh. B), 2018).

14A.01.020 Application.

This title shall apply to land use decisions made by the city of Burlington. This title consolidates the review and decisions procedures for land use decisions identified in BMC Title 18, Shoreline Master Program; Title 17, Comprehensive Zoning Ordinance; Title 16, Subdivisions; Title 15, Building and Construction; and Title 14, Environmental Regulations, Title 12, and Chapter 13.04 BMC. (Ord. 1854 § 2 (Exh. B), 2018).

14A.01.030 Purpose.

The purpose of this title is to identify land use decisions to be made by the city, the person or department responsible for making such decisions, the criteria to be applied when making such a decision, and the applicable notice, hearing and appeal procedures. (Ord. 1854 § 2 (Exh. B), 2018).

14A.01.040 Authority.

This chapter is authorized pursuant to chapters 36.70B, 36.70C and 43.21C RCW and other applicable laws and regulations. (Ord. 1854 § 2 (Exh. B), 2018).

14A.01.050 Adoption by reference.

Statutes, codes or regulations identified or adopted herein shall be the existing version of that statute, code or regulation and any subsequent amendment to the same, unless expressly stated otherwise. (Ord. 1854 § 2 (Exh. B), 2018).

14A.01.060 Definitions.

For the purpose of this title, the words listed in this chapter shall have the following meanings unless the context clearly indicates otherwise. Words used in the singular include the plural, and words used in the plural include the singular.

“C”

“Closed record appeal” means an administrative appeal on the record to the city council, following an open record hearing on a project permit application. When the appeal is on the record, the city council’s review shall be based on the record, with no or limited new evidence or information allowed to be submitted and only oral or written appeal argument based on the record.

“Community Development Department” or “Planning Department” means the City department responsible for reviewing or coordinating the review of project permits.

“Community Development Director” or “Planning Director” means the city administrator or designee official appointed and acting as the Community Development Director for the City of Burlington.

“Comprehensive plan” means the comprehensive plan for the city of Burlington and any amendments thereto adopted pursuant to chapter 36.70A RCW.

“Conditional use” allows certain uses listed as conditional in the zoning code, or for the establishment of uses not listed as permitted or conditional in any zone, if certain conditions can be met.

“D”

“Development code” or “development regulations” means BMC Titles [12](#), [14](#), [14A](#), [15](#), [16](#), [17](#) and [18](#) and [Chapter 13.04 BMC](#).

“Director” means the [C](#)ommunity [D](#)evelopment [D](#)irector.

“E”

“Environmental review” means the procedural requirements of the State Environmental Policy Act (SEPA), chapter 43.21C RCW.

“H”

“Hearing examiner” means a person who may review and interpret land use regulations, conducts hearings, makes decisions and recommendations on land use applications, hears administrative appeals on permits, decisions or determinations made by city officials, and reviews and hears other matters as provided for in the Burlington Municipal Code and other ordinances. The hearing examiner serves in a role similar to that of a judge. The hearing examiner ensures that parties receive proper due process; and issues final decisions on some land use applications and makes recommendations to the city council on others.

“L”

“Land division decision” means a review or approval required by BMC Title 16.

“Land use action” means an action taken by the appropriate city of Burlington review authority concerning the use and/or development of land or street right-of-way governed by the provisions of this title, including project permits as defined in this section.

“O”

“Open record hearing” means a hearing, conducted by the planning commission, hearing examiner or city council that creates the city’s record through testimony and submission of evidence and information. An open record hearing may be held prior to a decision on a project permit, known as an “open record predecision hearing.” An open record hearing may be held on an appeal, to be known as an “open record appeal hearing,” if no open record predecision hearing has been held on the project permit application.

“Owner” means any person having title to and/or responsibility for, a building or property, including a lessee, guardian, receiver or trustee and the owner’s duly authorized agent.

“P”

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

“Person” means an individual, firm, partnership, corporation, municipal corporation, and government, and the individual’s or entity’s heirs, successors and assigns.

Plan Review. Plan review by the planning department is required for most land use actions to assure that all land use permits and approvals comply with the use, development and all other standards of this title and related land use standards, rules, policies and procedures.

“Plot plan” is a scaled map of a site and adjacent public rights-of-way showing locations and dimensions of various existing and proposed features, such as buildings, curbs, driveways, sidewalks, trees, grades and drainage patterns.

“Project permit” or “project permit application” is defined as any land use or environmental permit or license required from a local government for a project action, including but not limited to:

1. Administrative permits;
2. Construction permits such as building and grading permits and other permits authorizing the construction or modification of buildings, structures, site improvements, or infrastructure such as streets, sewer connections, utilities, and storm-water improvements; Building permits;
3. ~~Building-Binding~~ site plans;
4. Conditional use permits;
5. Critical area permits or approvals;
6. Environmental determinations;
7. Planned unit developments;
8. Preliminary and final subdivisions and short subdivisions;
9. Shoreline substantial development permits or exemptions;
10. Site plan review;
11. Site-specific zoning map amendments that do not require a corresponding comprehensive plan amendment;
or
12. Variances.

A project permit does not include appeals, the adoption or amendment of a comprehensive plan or subarea plan, area wide amendments to the zoning map, or text amendments to the development code.

“Public meeting” means an informal meeting, hearing, workshop or other public gathering of people to obtain comments on a permit, plan or regulation for a proposed land use permit before the city’s decision. A public meeting may include, but is not limited to, community meeting or a meeting of the planning commission, a task force or neighborhood group, on plans, proposals, projects or issues. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the record.

“U”

Use – Establish or Change.

“Use” means the activity or purpose for which land or structures or combination of land and structures are designed, arranged, occupied, or maintained together with any associated site improvement. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any grading, leveling, paving or excavation. “Use” also means any existing or proposed configuration of land, structures, and site improvements, and the use thereof.

“Z”

Zoning Exceptions and Changes.

1. Variance. Allows relief from the dimensional or performance standards of the zoning code, such as front, side or rear setbacks.
2. Rezone. This is a zoning map amendment. It changes the list of permitted uses of a specific site or sites under single ownership as well as the height, setback and other limitations, such as changing from residential to commercial or industrial. Rezones may be considered site specific or area wide. Rezones may or may not require corresponding changes to the comprehensive plan.
3. Zoning Text Amendment. This is a change to the text of the code, such as adding a use to the list of uses permitted in a zone. Zoning text amendments may or may not require corresponding changes to the comprehensive plan. (Ord. 1854 § 2 (Exh. B), 2018).

14A.01.070 Liability.

It is the specific intent of this title to place the obligation of compliance upon the property owner or party subject to the provisions of the chapters contained within this title. Nothing contained in this title is intended to be or shall be construed to create or form the basis for liability on the part of the city of Burlington officers, employees or agents for any injury or damage resulting from the failure of the property owner or party subject to the provisions of the chapters contained within this title, to comply with the provisions of this title, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this code by the city of Burlington officers, employees or agents. This title is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms. (Ord. 1854 § 2 (Exh. B), 2018).

14A.01.080 Severability.

If any portion of this title is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section of this title. (Ord. 1854 § 2 (Exh. B), 2018).

Chapter 14A.05

PROCESSING LAND USE ACTIONS – DECISION MAKING FRAMEWORK

Sections:

14A.05.010	Title.
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14A.05.100	Notice of application requirements and comment period.
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14A.05.140	Conditional use applications, when required, submittal requirements, review criteria and conditions of approval.
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14A.05.160	Site plan review, when required, application submittal requirements, review criteria and conditions of approval.
14A.05.170	Reclassification of property including rezone and zoning ordinance text amendments, initiation of amendments, review criteria and conditions of approval.
14A.05.180	Amendments to the comprehensive plan, review criteria and conditions of approval.
14A.05.190	Appeal procedures.

14A.05.010 Title.

This chapter shall be called “Processing Land Use Actions – Decision Making Framework.” (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.020 Application.

This chapter shall apply to all land use actions including project permits as defined in BMC 14A.01.060. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.030 Purpose.

The purpose of this chapter is to identify the process for accepting and reviewing land use applications to determine consistency with applicable state regulations, the zoning map and Burlington Municipal Code requirements, the comprehensive plan and other applicable regulations. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.040 Authority.

This chapter is authorized pursuant to chapters 36.70A, 36.70B and 43.21C RCW and other applicable laws and regulations. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.050 Project permit applications – Consideration – Requirements.

A. Each proposed project permit, as defined in BMC 14A.01.060, shall file an application for a project permit. No project shall proceed without a valid project permit issued by the city. Applications shall contain all documents and information required by the applicable provisions of the BMC.

B. Within 28 days after receiving a project permit application, the planning department shall mail or provide in person a written determination to the applicant, stating either:

1. That the application is complete; or

2. That the application is incomplete and what is necessary to make the application complete.

The notice of complete application described above shall be combined with and issued simultaneously with the notice of application. The notice should also identify other local, state, or federal government agencies that may have jurisdiction over some aspect of the application.

C. A project permit application is complete for purposes of this section when it meets the procedural submission requirements of the land use regulations in effect on the date of application, and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.

D. The determination of completeness may include the following as optional information:

1. A preliminary determination of those development regulations that will be used for project mitigation;
2. A preliminary determination of consistency with the comprehensive plan and development regulations; or
3. Other information the planning department chooses to include.

E. Applications shall automatically be deemed complete unless the applicant is notified within 28 days that the application is incomplete as required by subsection (B) of this section.

F. Within 14 days after an applicant has submitted to the city additional information identified by the city as being necessary for a complete application, the planning department shall notify the applicant whether the application is complete or what additional information is necessary.

G. Consistency of a proposed project with the applicable development regulations or plans is determined by considering four factors as follows:

1. Type of land use allowed;
2. Level of development allowed, such as units per acre or other measures of density;
3. Infrastructure, such as the adequacy of public facilities and services to serve the proposed project; and
4. Compliance with specific development standards.

H. Project review shall be used to identify specific project design and conditions relating to compliance with applicable regulations.

I. Any public meeting or required open record hearing may be combined with any public meeting or open record hearing that may be held on the project by another local, state, regional, federal, or other agency, subject to the public notification requirements of this chapter.

J. SEPA appeal hearings shall be combined with the hearing on the underlying project or any appeal of the underlying project or permit except where independent review is provided for by BMC 14.10.250. (Ord. 1854 § 2 (Exh. B), 2018).

K. Completeness determinations shall be classified as Type I decisions regardless of the type of application they are associated with and may be appealed in accordance with the applicable appeal procedures identified in this title.

14A.05.060 Classification of land use actions.

Land use actions governed by this title are classified into four categories as set forth below. Projects requiring more than one type of decision should, whenever possible, be consolidated under the higher classification.

Commented [BJ1]: 3-8-2023 – BJ – provides due process for applicants who feel aggrieved by City completeness determinations and provides finality for the City.

A. Type I decisions are administrative decisions which require no notice or hearing. These decisions are made by the appropriate administrative official based upon the application materials received and the specific criteria identified in this chapter. Type I decisions which are not categorically exempt from SEPA shall be processed as Type II decisions.

Type I decisions include the following:

1. Building and grading permits including plan review (see BMC Title 15).
2. Boundary line adjustments (chapter 16.60 BMC).
3. Binding site plans (chapter 16.30 BMC).
4. Site plan review (BMC 14A.05.160).
5. Code interpretations and other administrative decisions (chapter 17.01 BMC).
6. Temporary uses for less than one year where SEPA is not required.
7. Permits to establish or change uses that are permitted outright (chapter 17.01 BMC).
8. Final short subdivision approvals (chapter 16.20 BMC).
9. Final long subdivision approval, except that city council approval shall be required pursuant to BMC 16.20.060.
10. Minor adjustments to approved land use and conditional use permits.
11. Shoreline exemptions (chapter 18.09 BMC).
12. Construction permits for site infrastructure, street improvements, utilities, and storm-water infrastructure.
13. Completeness determinations (BMC 14A.05.050.F) and decisions to close an application due to lack of information or failure to respond (BMC 14A.05.070.F).
132. Any other land use action or project permit approval identified by Burlington Municipal Code as a Type I review.

B. Type II decisions are administrative decisions that require notification but do not require a hearing. These decisions are made by the appropriate administrative official based upon the application materials received and the specific criteria identified in this chapter.

Type II decisions include the following:

1. Accessory dwelling units (BMC 17.15.070).
2. Shoreline substantial development permits (chapter 18.09 BMC).
3. Preliminary short subdivision approval (chapter 16.10 BMC).
4. Permits and land use actions normally classified as Type I decisions which are not categorically exempt from SEPA.
5. SEPA threshold determinations not associated with a land use action.
6. Shoreline variances (chapter 18.09 BMC).
7. Any other land use action or project permit approval identified by Burlington Municipal Code as a Type II review.

C. Type III decisions are quasi-judicial decisions made by the hearing examiner pursuant to the criteria identified in this chapter, the staff report provided by the planning department and evidence presented at time of hearing before the hearing examiner.

Type III decisions include the following:

1. Reasonable use exemptions (chapter 14.15 BMC).
2. Variances (BMC 14A.05.150 and 17.95.140).
3. Appeals of Type I decisions.
4. Appeals of Type II decisions.
5. Preliminary long subdivision approval (chapter 16.10 BMC).
6. Site specific zoning map amendments consistent with and not requiring an amendment to the comprehensive plan (BMC 14A.05.170 and 17.125.080).
7. Conditional use permits (BMC 14A.05.140).
8. Shoreline conditional use permits (chapter 18.09 BMC).
9. Any other land use action or project permit approval identified by Burlington Municipal Code as a Type III review.

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

Type IV decisions include the following:

1. Final approval of site specific zoning map amendments (BMC 14A.05.170 and 17.125.080).
2. Essential public facility conditional use permits (chapter 17.105 BMC).
3. Zoning text amendments (BMC 14A.05.170 and chapter 17.125 BMC).
4. Area wide zoning map amendments (BMC 14A.05.170 and 17.125.070).
5. Comprehensive plan adoption and amendment (BMC 14A.05.180 and chapter 17.125 BMC).
6. Final decision as to appeals or adjustments of impact fees pursuant to chapter 15.12 BMC.
7. Zoning map and text amendments which are not consistent with, and require, a corresponding change to the comprehensive plan.
8. Appeals of decisions on Type III project permit applications.
9. Any other land use action or project permit approval identified by Burlington Municipal Code as a Type IV review. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.070 Applications – Generally.

A. Applications for project permits and other land use actions shall be made by the property owner, lessee, contract purchaser, or a city agency, or by an authorized agent thereof.

B. All applications for project permits or other land use actions shall be made to the director on a form provided by the community development department.

C. Applications shall be accompanied by payment of the applicable filing fees, if any, as adopted by city council resolution in the current city fee schedule.

D. All project permit or land use actions necessary for a project shall, whenever possible, be included in the same application.

E. All applications shall contain the submittal information required by the applicable sections of this title and any other applicable development regulations such as related sections of BMC Title 18, Shoreline Master Program; Title 17, Comprehensive Zoning Ordinance; Title 16, Subdivisions; Title 15, Buildings and Construction; Title 12, Streets, Sidewalks, and Public Places; and Title 14, Environmental Regulations. The director may require additional material from the applicant such as maps, text, or models when the director determines that such material is needed to accurately assess the proposed project.

F. An application shall be closed and shall be deemed abandoned and void if the applicant has failed without reasonable justification to supply all required information or data within 60 days of a written request for it; provided, that the director may extend, in writing, the period for such submission if it is determined that the delay was not the fault of the applicant. A decision to close an application under this provision shall be classified as Type I decision regardless of the type of application it is associated with and may be appealed in accordance with the applicable appeal procedures identified in this title.

Commented [BJ2]: 3-8-2023 – provides appeal option for applicant if they feel aggrieved by decision to close the application and provides finality for City.

G. Final Decision.

1. The city shall issue its notice of final decision on an application within 120 days after the city notifies the applicant that the application is complete (determination of completeness) unless the project permit is requested under BMC Title 16, in which case a final decision shall be issued within 90 days. The following time periods shall be excluded:

a. Any period during which the applicant has been requested by the city to correct plans, perform studies, or provide additional required information. The period shall be calculated from the date the city notifies the applicant of the need for additional information until the earlier of the date the city determines whether the additional information satisfies the request for information or 14 days after the date the information has been provided to the local government;

b. If the city determines that the information submitted by the applicant under BMC 14A.05.050(B) is insufficient, it shall notify the applicant of the deficiencies and the procedures shall apply as if a new request for studies had been made;

c. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to chapter 43.21C RCW and chapter 14.10 BMC, subject to an agreement between the city and the applicant in writing to a time period for completion of an environmental impact statement;

d. Any period for administrative appeals of project permits, if an open record appeal hearing or a closed record appeal is allowed. The time period for an open record appeal hearing shall not exceed 90 days and 60 days for a closed record appeal. The parties to an appeal may agree to extend these time periods;

e. Any extension of time mutually agreed upon by the applicant and the local government.

2. If the city is unable to issue its final decision within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of the reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.

3. The time limits established by subsection (G)(1) of this section do not apply if the application:

a. Is initiated by the city or a department of the city;

- b. Requires an amendment to the comprehensive plan, an area wide zone change or a text change to the development code;
- c. Requires approval of the siting of an essential public facility;
- d. Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete under BMC 14A.05.050 and 15.06.050; or
- e. Another time period is prescribed by state law and the city is enjoined from using the time periods identified in this section. In such cases the time period prescribed by state law shall be used.

H. The applicant or authorized agent shall attend all public meetings and/or public hearings or the matter shall be continued until the applicant or authorized agent is available to attend. A single person or entity shall be designated by the applicant to receive determinations and notices required by this chapter. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.080 Review criteria for decisions.

A. General Compliance. Compliance with all applicable statutes, codes, ordinances, standards and procedures, including the provisions of this title, is required prior to approval of a land use action. This includes, but is not limited to, voluntary mitigation agreements entered into pursuant to SEPA and BMC Title 14, and development agreements entered into pursuant to chapter 36.70B RCW and chapter 17.125 BMC.

B. Site Plan Review. See BMC 14A.05.160.

C. Conditional Use Permits. See BMC 14A.05.140.

D. Variances. See BMC 14A.05.150

E. Subdivisions and Short Subdivisions. See BMC Title 16.

F. Environmental Compliance. See BMC Title 14.

G. Site Specific Zoning Map Amendment. See BMC 14A.05.170 and 17.125.080.

H. Area Wide Zoning Map Amendment. See BMC 14A.05.170 and 17.125.070.

I. Zoning Code Text Amendment. See BMC 14A.05.170 and chapter 17.125 BMC.

J. Comprehensive Plan Amendment. See BMC 14A.05.180 and chapter 17.125 BMC. (Ord. 1854 § 2 (Exh. B), 2018).

[K. Building and grading permits. See Title 15 BMC.](#)

[L. Construction permits for site improvements and infrastructure. See Title 12 BMC. and Title 13 BMC.](#)

14A.05.090 Notice requirements, type and content of notice – General.

A. Process for Notification. If public notice is required, notice shall be in accordance with subsection (D) of this section. The general intent is to give the broadest notice on application (notice of application). When notice of application is required, it shall be given to the public and city departments and agencies with jurisdiction as provided in this section. If the city is using the optional DNS process or has made a determination of significance under SEPA and chapter 14.10 BMC, Environmental Policy, concurrently with the notice of application, the notice of application shall be combined with the optional DNS notice required by WAC 197-11-355(2) or the determination of significance and scoping. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application. The next step is notice of public meeting and/or notice of public hearing, whichever applies to the project. This is followed by notice of decision/opportunity for appeal or opportunity to request further consideration.

B. Types of Public Notice. The types of notice required are as set forth in subsection (C) of this section. The characteristics of required notice are set forth as follows:

1. Post a ~~large public notice~~ sign on the site. ~~The sign shall be a four foot by four foot half sheet of plywood. There shall be precise specifications about what goes on the sign, and they shall all be of a standard design except for the specifics about the project. The Director shall establish standards for public notice signs specifying the size, location, and content of the public notice sign. These shall be furnished by the applicant.~~ The processing of the application will not begin until the large sign is in place. The large sign shall be located so as to be clearly visible from the adjacent street or sidewalk, and shall remain posted until final city action on the application has been completed. For sites that are not highly visible, alternative locations ~~of for~~ the large sign ~~shall may~~ be approved by the director or alternative means of notification provided to include mailed notice. ~~Non project actions, projects that are not site specific, and p~~Projects limited to interior remodeling or a changes of use are exempt from the public notice large sign requirement. ~~Large sign standards shall be adopted by administrative rule.~~

Commented [BJ3]: 3-8-2023 – BJ – Current sign requirements are overkill for most projects and typically necessitate the involvement of a professional sign company, significant expense, and delay. Department would like the flexibility to draft sign standards based on the type of development.

2. Publication of a notice in the official newspaper or newspaper of general circulation. The legal publication of notice shall be easily identifiable; language should be simple and descriptive, not bureaucratic.

3. Individually mailed notices to owners and occupants in a 600-foot radius of the site. The notices shall provide a brief description of the proposed project and its location and identify any opportunities for comment, appeal, public hearings, and the means for obtaining additional information.

4. A periodic land use bulletin maintained on the department’s website. This should include application notices, meeting and hearing dates, and permit decisions. The land use bulletin need not include information concerning Type I permits.

5. Notice to parties of record. Parties of record shall receive direct notification of all related notices, meeting and hearing dates, and decisions.

6. Open meeting notice. This shall include posting in city hall and the library and mailing to the news media and interested persons.

7. Mailed notice to adjacent property owners. Property owners within 600 feet of a site where a Type III use is proposed shall be sent a notice of application. ~~This shall also apply to Type II accessory dwelling unit and short plat applications.~~

8. Unless otherwise required by law or requested by a party of record “mailing” a notice may be accomplished by email.

Commented [BJ4]: 3-8-2023 –BJ –added for consistency with our current procedures. In practice most applicants and parties of record are submitting applications or communicating by email.

C. Types of Notice Required.

Table 14A.05.090

Permit Type	Website Land Use Bulletin	Mailed Notice of Application ¹	Mailed Notice of Decision	Publish in Newspaper	Large Public Notice Sign	Mail Notice of Application to Property Owners within 600 Feet	Notice of Public Meeting or Hearing
I		X ¹	X				
II	X	X	X	X	X ²	X ³	
III	X	X	X	X	X ²	X ³	X
IV	X	X ⁴	X ⁴	X ⁴	X ^{2,4}	X ⁴	X

1. Notice to applicant and property owner(s) only.
2. Sign not required for projects which are limited to interior remodels and changes or for SEPA non-project actions.
3. ~~Only for preliminary short subdivision decisions~~Not required for conditional use permits involving four dwelling units or less.
4. Only required for site-specific permit decisions without a corresponding preliminary decision processed as a Type I, II or III permit. Notice for amendments to the comprehensive plan, area wide changes to the zoning map or text changes to the development code are subject to notice

Commented [BJ5]: 3-8-2023 – BJ – short plat notice requirement appears to be a leftover from a state law no longer in effect. Changed to exempt short plats and small residential projects that don’t really have any impact except to adjacent properties who will get notice from the required sign.

requirements set forth in chapter 36.70A RCW, chapter 17.125 BMC, SEPA requirements set forth in chapter 14.10 BMC and other applicable provisions of the BMC.

D. Contents of Notice.

1. Notice of application shall include:

- a. The notice shall provide a description of the proposed land use action and its nature and location.
- b. The date of application, the date of the notice of completeness (BMC 14A.05.050 and 15.06.050) for the application, the date of the notice of application;
- c. If applicable, a list of any studies requested, identify any permits not included in the application to the extent known by the city, identify existing environmental documents that evaluate the proposed project, and the location where the application and any studies can be reviewed;
- d. Except for the large sign requirement, each notice shall also include a list of the land use decisions sought. The planning director shall specify detailed requirements for large signs;
- e. If applicable, a statement indicating that a hearing or meeting will take place, and if scheduled at the time of the notice, the date, time, place and type of hearing; if no hearing is scheduled at the time of the notice, instructions on how to obtain information concerning the date, time, and place of any applicable hearing;
- f. A statement of the preliminary determination, if one has been made at the time of notice of those development regulations that will be used for project mitigation and of consistency as provided in BMC 14A.05.050;
- g. If the optional DNS process is being used, the notice required by WAC 197-11-355(2); and
- h. Any other information deemed appropriate by the community development director.

2. Notice of open public hearing shall include subsections (D)(1)(a), (e), (g) and (h) of this section.

E. When a land use permit includes more than one decision component, notice requirements shall be consolidated and the broadest applicable notice requirements imposed. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.100 Notice of application requirements and comment period.

A. Notice of Application. When a land use permit application requiring a Type II, III or IV decision is submitted, the director shall provide notice of application and an opportunity for public comment as described in this chapter, within 14 days after the determination of completeness as provided in BMC 14A.05.050 and 15.06.050. No notice or public comment period shall be required for Type I decisions.

B. Comment Period. The director shall provide a 14-day public comment period prior to making a threshold determination of nonsignificance (DNS) or issuing a decision or recommendation on a proposed Type II, III or IV land use action; provided, that the comment period shall be extended to 30 days if a written request for extension is submitted within the initial 14-day comment period or if otherwise required by state law. The comment period shall begin on the date notice of application is issued by the city. Comments shall be filed with the director by 5:00 p.m. of the last day of the comment period. When the last day of the comment period is a Saturday, Sunday or federal or city holiday, the comment period shall run until 5:00 p.m. of the next business day. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.110 Public hearing requirements.

Public hearings are required as listed below for the following land use permit components prior to a recommendation, final environmental impact statement or land use decision being made. Notice of hearing shall be provided no later than 14 days prior to the hearing. Procedures for matters before the hearing examiner shall be pursuant to chapter 17.120 BMC. Procedures for matters before the city council shall be adopted by administrative rule.

- A. Draft Environmental Impact Statement. An open public hearing is required before the planning director to take comments for inclusion in the final environmental impact statement.
- B. Conditional Use Permit. One open public hearing is required, before the hearing examiner.
- C. Zoning and Sign Variance and Reasonable Use Exceptions. An open public hearing is required before the hearing examiner.
- D. Preliminary Long Subdivision. See BMC Title 16 for detailed requirements. One open public hearing is required, before the hearing examiner.
- E. Site Specific Rezone. For site specific rezones that are consistent with and implement the comprehensive plan, an open public hearing is required before the hearing examiner. The recommendation of the hearing examiner shall be submitted to the city council for a closed record hearing.
- F. Zoning Text and Map Amendments Which Are Not Site Specific, Involve More Than One Project or Site or Which Are Not Consistent with the Comprehensive Plan. An open public hearing is required before the planning commission and recommendations are submitted to the city council. The council may hold additional public hearings or meetings. The council may reject, adopt or amend by ordinance the recommendations of the planning commission.
- G. Comprehensive Plan Adoption and Amendment. A public hearing is required before the planning commission. The council may adopt by ordinance the plan or any part of the plan. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.120 Notice of decision requirements and contents of notice.

Decisions on project permits and land use decisions shall be in writing and include written findings and conclusions in support of the decision. A copy of the decision shall be sent to all parties of record. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.130 Standards to ensure performance and compliance with conditions.

Whenever a new development project is approved and substantial public and private improvements are required, the city shall use the following methods to ensure performance and compliance with the requirements of the land use permit:

- A. Development agreement pursuant to RCW 36.70B.170 through 36.70B.220 to perform at a later date.
- B. Performance bond or other security for defined time period with a 15 percent contingency fund.
- C. Cash deposit or interest-bearing savings account, or other acceptable instrument of credit with a 15 percent contingency fund.
- D. Covenants and/or easements that are filed with the Skagit County auditor's real property records.
- E. Conditional building permits with specified compliance requirements linked to called inspections.
- F. Preannexation development agreements pursuant to RCW 36.70B.170 through 36.70B.220.
- G. Agreement to participate in a local improvement district or other public improvement project at a later date. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.140 Conditional use applications, when required, submittal requirements, review criteria and conditions of approval.

A. A conditional use permit is required when the use proposed is listed as requiring a conditional use in the regulations for the zone in which it is located. A conditional use permit is also required for uses which are not listed as conditional or permitted in any zone. The community development director is authorized to waive the conditional use permit requirement for unlisted uses if the director determines the use is substantially the same as another use permitted in the zone in which the proposed use will be located.

B. An application shall be required for approval of a conditional use permit. Applications for conditional use permit approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with this title. A complete application shall include:

1. Vicinity map;
2. Name, address, phone number of property owner;
3. Name, address, phone number of engineer or agent;
4. A site plan drawn to scale showing all of the following:
 - a. Boundaries and dimensions of property;
 - b. Adjacent public streets;
 - c. Easements, existing and proposed;
 - d. Location and size of all existing and proposed utilities;
 - e. Location of buildings, including setbacks;
 - f. Location and layout of off-street parking;
 - g. Location and height of fences;
 - h. Location and size of signs;
 - i. Landscape detail;
5. Elevation drawings showing the height of all proposed buildings.

C. The site plan shall be adopted and made part of the permit. All subsequent permits authorizing development, building, site improvements or construction activity shall be in accordance with the approved site plan. Adjustments to the site plan may be approved as follows:

1. Minor Adjustments. Minor adjustments to previously approved conditional use permits may be approved by the community development director. Minor adjustments shall be limited to those adjustments which may affect the precise dimensions or siting of buildings and improvements, but which do not affect the basic character, arrangement or function of the buildings and improvements, or the site coverage of the development, open space requirements, or impacts associated with the development. Dimensional adjustments shall not vary more than 10 percent from the original approval. Requests for minor adjustments shall be processed as a Type I permit in accordance with the procedures set forth in this section.
2. Major Adjustments. Major adjustments to previously approved conditional use permits may be approved by the hearing examiner. Any adjustment or modification which would deviate from the originally approved dimensions by more than 10 percent, or which the director determines is not consistent with the definition of a minor adjustment, shall be considered a major adjustment. Requests for major adjustments shall be processed as a Type III permit in accordance with the procedures set forth in this section.
3. The cumulative effect of multiple minor adjustments shall be considered and the director shall not approve a request for a minor adjustment if, when considered together with the effect of previously approved adjustments, the adjustment would be classified as a major adjustment.
4. The application requirements and approval criteria for adjustments to conditional use permits shall be the same as those applicable to new conditional use permit applications; provided, that the director may waive

those application requirements that relate solely to aspects of the project that are not affected by and do not affect the proposed adjustments.

D. Approval Criteria. Conditional use permits shall only be approved if consistent with all of the following criteria:

1. The use will have no more adverse effect on the health, safety or comfort of persons living or working in the area, and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area, than would any use generally permitted in the district. Among matters to be considered are traffic flow and control, access to and circulation within the property, off-street parking and loading, refuse and service areas, utilities, screening and buffering, signs, yards and other open spaces, height, bulk and location of structures, location of proposed open space uses, hours and manner of operation, and noise, lights, dust, odor, fumes and vibration; and
2. The proposal is in accordance with the goals, policies and objectives of the comprehensive plan; and
3. The proposal complies with all the requirements of this title; and
4. The proposal can be constructed and maintained so as to be harmonious and appropriate in design, character, and appearance with the existing or intended character of the general vicinity and provides a high quality of development; and
5. The proposal will not adversely affect the public infrastructure.

E. Conditional use permit decisions shall include written findings of fact demonstrating compliance with each of the approval criteria enumerated above.

F. Conditions of Approval. In order to mitigate any adverse impact or address a finding of fact associated with the proposal, conditions may be imposed which increase requirements in the standards, criteria, or regulations of this title or other city legislation or adopted policies. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.150 Variance applications, when required, submittal requirements, review criteria and conditions of approval.

A. The purpose of a variance is to permit a deviation from the specific height, bulk, setback, dimensional, or performance standards of this title where the strict application of such standards would deprive a property of the rights and privileges enjoyed by other properties in the same zone and vicinity. Variances shall only be authorized in those instances where the hardship imposed on the property is the result of special circumstances inherent in the subject property related to size, shape, topography, location, or surroundings. Variance requests shall be processed as a Type III application in accordance with the procedures set forth in this section.

B. Application Requirements. Applications for variances shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with this title. A complete application shall include:

1. A written statement identifying the specific dimensional or performance standard of the zoning code from which the applicant is requesting to deviate and addressing, individually, each of the approval criteria enumerated in this section.
2. A site plan drawn to scale and illustrating the following:
 - a. Adjacent streets and alleys;
 - b. Boundaries and dimensions of site and setbacks;
 - c. Location and dimensions of buildings;
 - d. Location and dimensions of parking areas; and

e. Location and dimensions of feature needing variance.

C. Approval Criteria. The hearing examiner may approve a variance only if the request conforms to all of the following approval criteria. The hearing examiner must enter findings of fact and conclusions which support the following criteria and any conditions:

1. There are unique physical conditions including narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardships arise in complying with the provisions of this title; and
2. Because of such physical conditions, the development of the lot in strict conformity with the provisions of this title will not allow a reasonable and harmonious use of such lot; and
3. The variance, if granted, will not alter the character of the neighborhood, or be detrimental to surrounding properties in which the property is located; and
4. The special circumstances and conditions associated with the variance are not a result of the actions of the applicant or previous owners; and
5. Literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district; and
6. The approval of the variance will be consistent with the purpose of this title and the zoning district in which the property is located; and
7. The variance will not allow an increase in the number of dwelling units permitted by the zoning district; and
8. The authorization of such variance will not adversely affect the comprehensive plan; and
9. The variance shall not allow a land use which is not permitted under the zoning district in which the property is located; and
10. The variance is the minimum necessary to afford relief; and
11. The variance will not constitute a grant of special privilege not enjoyed by other properties in the area; and
12. The variance shall not change any regulations or permit deviations from any conditions established by permits, contract rezones, or shown on the face of a binding site plan or plat.

D. Conditions of Approval. In authorization of a variance, the hearing examiner may attach thereto such conditions regarding the location, character and other features of the proposed structure or use as may be deemed necessary to carry out the spirit and purpose of this title and in the public interest.

E. Critical areas reasonable use exceptions shall be processed in accordance with the provisions of BMC 14.15.140. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.160 Site plan review, when required, application submittal requirements, review criteria and conditions of approval.

A. Site plan review under this section shall be required for each of the actions listed below.

1. All development requiring more than five parking spacesConstruction of a building containing three or more dwelling units;

2. Construction of three or more dwelling units on a single lot;

3. All development requiring the preparation of a landscaping plan; orConstruction of a non-residential building with a footprint greater than 2,000 square feet or a floor area in excess of 4,000 square feet;

4. Additions or expansions to buildings requiring site plan review under this section:

5. Other construction or development that is not categorically exempt from SEPA:

6. Other construction or development that modifies previously approved landscaping or site improvements, or that conflicts with conditions imposed through a previous site plan review:

7. Temporary uses for not more than one year.

8. Site plan review requirements may be waived for simple small scale additions or site modifications when potential impacts or code requirements can be easily identified and addressed through the application of clear and unambiguous permit conditions.

Commented [BJ6]: 3-8-2023 – BJ – Added to address long standing confusion about what requires site plan review and what does not. Consistent with current interpretations.

B. Applications for site plan approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with this title. A complete application shall include:

1. Vicinity map;
2. Name, address, phone number of property owner;
3. Name, address, phone number of engineer or agent;
4. A site plan drawn to scale showing all of the following:
 - a. Boundary lines and dimensions for the property and all proposed lot lines. Future building locations in phased developments shall be indicated.
 - b. Natural features of the site, including existing significant trees, wetlands areas and special flood risk areas.
 - c. Location, dimensions and names of all existing or platted streets or alleys, easements, railroad rights-of-way, on or adjacent to the property.
 - d. Location and dimensions of all existing structures, improvements or utilities to remain, and structures to be removed.
 - e. Approximate location and size of storm water retention or detention facilities and storm drains.
 - f. Location and dimensions of all proposed structures and parking lots, to include parking and loading areas, pedestrian circulation and related access ways. Individual parking spaces shall be shown.
 - g. Service areas for waste disposal, recycling, loading and delivery and location of mail boxes.
 - h. Location and dimensions of any proposed signs;
5. Landscaping plans consistent with the requirements of chapter 17.80 BMC.
6. Elevation drawing showing the height of all proposed buildings.

C. Approval Criteria. No land use permit application shall be approved unless the proposal complies with all applicable Burlington Municipal Code requirements.

D. Conditions of Approval. Conditions may be attached to a land use permit if deemed necessary to enforce the requirements of the Burlington Municipal Code or to ensure consistency with the comprehensive plan. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.170 Reclassification of property including rezone and zoning ordinance text amendments, initiation of amendments, review criteria and conditions of approval.

A. Initiation of Amendments.

1. Site Specific Zoning Map Amendments.

- a. Owner(s) of a property may submit an application requesting a reclassification of the property;
- b. The hearing examiner shall conduct a public hearing on the reclassification of property, and make a recommendation to the city council.

2. Zoning Code Text Amendments Consistent with the Comprehensive Plan.

- a. The city council, upon its own motion, may request the planning commission to conduct a public hearing to amend any portion or all of this title;
- b. The planning commission may upon its own motion call for a public hearing to amend any portion or all of this title;
- c. Any resident or property owner of the city may petition the city to request an amendment to the text of this title.

3. Area wide rezones, changes to the text of the zoning code which are not consistent with the comprehensive plan, and all other code and map amendments requiring corresponding changes to the comprehensive plan shall be processed in accordance with the applicable procedures identified in chapter 17.125 BMC.

B. Review Criteria. When the hearing examiner is considering recommendations for reclassifications, or when the city council is considering approval of reclassifications, the hearing examiner or the city council shall investigate the request for reclassification and shall consider, among other questions, the following:

1. Is the request compatible with the city's comprehensive plan and development goals?
2. Are public utilities, public facilities and other services currently adequate to serve the proposed district?
3. Would the proposal adversely affect the health, safety, or welfare of the adjacent area of the area being considered?
4. Is the reclassification or land development needed at this time?
5. What are the economic impacts of the proposed action?
6. Are the arguments of support or opposition by local citizens valid?
7. Have conditions of the area substantially changed since the original zoning to justify a rezone?

C. Amendments to Rezone Requests. A requested rezone may be changed, conditioned or modified by the city council without requiring additional hearings subject to the following:

1. The modification or change shall not result in a more intense zone than the one requested.
2. The area of the request shall not be enlarged, however, the area may be lessened. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.180 Amendments to the comprehensive plan, review criteria and conditions of approval.

Amendments to the comprehensive plan, comprehensive plan map, and all other zoning text and map amendments which require corresponding changes to the comprehensive plan shall be made pursuant to the [applicable](#) provisions of ~~chapter-Title_17-125~~ BMC. (Ord. 1854 § 2 (Exh. B), 2018).

14A.05.190 Appeal procedures.

Procedures shall apply to appeals of land use actions by the city.

A. Type I Decisions.

1. A final decision regarding a Type I land use action may be appealed by any interested party. Final decisions may be appealed only if, within 14 calendar days after written notice of the decision is mailed, a written appeal is filed with the director.
2. Submittal Requirements. Appeals shall be submitted on forms provided by the director and shall include all of the following:
 - a. The specific permit number or decision being appealed;
 - b. The name of the applicant and property owner;
 - c. If multiple parties file an appeal, the appeal shall designate a single representative or contact person;
 - d. The specific aspects of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and
 - e. Any applicable appeal fee identified in the fee schedule adopted by the city council.
3. Appeal Decision. The hearing examiner shall hear appeals of Type I land use actions in a closed record hearing. Appeals of Type I land use actions shall be processed as a Type III decision except that notice of the appeal hearing and appeal decision need only be provide to the property owner and applicant.

B. Type II Decisions.

1. A final decision regarding a Type II land use action may be appealed by any party of record. Final decisions may be appealed only if, within 14 calendar days after written notice of the decision is mailed, a written appeal is filed with the director.
2. Submittal Requirements. The appeal shall contain the following information:
 - a. The specific permit number or decision being appealed;
 - b. The name of the applicant and property owner;
 - c. If multiple parties file an appeal, the appeal shall designate a single representative or contact person;
 - d. The specific aspects of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and
 - e. Any applicable appeal fee identified in the fee schedule adopted by the city council.
3. SEPA. An appeal of a SEPA threshold determination associated with a Type II land use action shall be considered together with the appeal of the associated land use action.
4. Appeal Decision. The hearing examiner shall hear appeals of Type II land use actions in an elosed open record hearing. Appeals of Type II land use actions shall be processed as a Type III decision. Notice of the appeal hearing and appeal decision shall be provided to all parties of record.

Commented [BJ7]: 3-8-2023 – BJ – added to address due process concerns identified by Hearing Examiner. At least one open record hearing must be provided.

C. Type III Decisions.

1. Appeal Decisions. Hearing examiner decisions on appeals of Type I and II decisions shall be appealed to superior court in accordance with the provisions of chapter 36.70C RCW.

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

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

4. Submittal Requirements. Appeals filed with the city council shall contain all of the following information:

- a. The specific permit number or decision being appealed;
- b. The name of the applicant and property owner;
- c. If multiple parties file an appeal, the appeal shall designate a single representative or contact person;
- d. The specific aspects of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and
- e. Any applicable appeal fee identified in the fee schedule adopted by the city council.

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

- a. Decline to consider the appeal; or
- b. Consider the appeal and uphold the hearing examiner's decision; or
- c. If, based solely on the record created by the hearing examiner, the city council finds that the examiner's decision is in error as a matter of fact or law, the city council may reverse the examiner's decision. If the city council reverses the hearing examiner's decision, it shall make specific findings identifying the aspects of the hearing examiner's decision which are in error.

D. Type IV Decisions. Type IV decisions shall be appealed to superior court pursuant to chapter 36.70C RCW, the Growth Management Hearings Board pursuant to RCW 36.70A.280, the Shoreline Hearings Board pursuant to chapter 90.58 RCW, or other applicable statutory authority in accordance with Washington State law. An appeal of a SEPA threshold determination associated with a Type IV land use action shall be considered together with the appeal of the associated land use action. (Ord. 1854 § 2 (Exh. B), 2018).